



# CaseLaw

## Update

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#### CaseLaw This Week

Week Ending July 23, 2004

- **Right to Counsel**
- **Expert Testimony,  
Witness Credibility –  
Bolstering**
- **Jury Instructions**

*Fortson v. State*, 272 Ga. 457 (2002), which held a motion to withdraw a guilty plea is a critical stage of a prosecution at which the right to counsel attaches. However, the Court ruled that this case states a new rule of procedure that will not be implemented retroactively in state habeas cases. This case occurred prior to the *Fortson* ruling, and defendant's rights were not violated.

#### Right to Counsel

*Carter v. Johnson*, S04A0213 (07/12/04), 04FCDR 2348, 2004 Ga. LEXIS 551.

During his trial for possession of cocaine with intent to distribute and possession of a firearm by a convicted felon in 1996, Defendant changed his plea to guilty. Defendant was represented by an attorney at that time. After sentencing, Defendant filed a timely motion to withdraw his plea which was denied. At the hearing, Defendant was not represented by counsel, was not informed of his trial right to have counsel, and did not waive that right. On appeal, Defendant contends that his right to counsel was violated by the court's failure to inform him of his right to counsel. The Georgia Supreme Court cited

#### Expert Testimony, Witness Credibility – Bolstering

*Morris v. State*, A04A0429 (07/02/04), 04 FCDR 2387, 2004 Ga. App. LEXIS 912.

Defendant was convicted for aggravated sexual battery and aggravated child molestation. On appeal, he claimed that the trial court erred in permitting a doctor, over objection, to improperly bolster the victim's credibility by testifying there was nothing in the witness' demeanor that would rule out abuse. **A witness' credibility may not, under any circumstances, be bolstered by the opinion of another, even an expert, as to whether the witness is telling the truth. O.C.G.A. § 24-9-80. What is forbidden is expert testimony that directly addresses the witness' credibility or goes**

**to the ultimate issue to be decided by the jury.** Here, the doctor was not asked to comment directly on the witness' veracity and did not testify that she believed the victim had been abused. The trial court did not err in overruling the objection.

### *Jury Instructions*

*Gary v. State*, A04A0248 (07/06/04), 04 FCDR 2397, 2004 Ga. App. LEXIS 918.

Defendant appealed his conviction for trafficking cocaine alleging that the court erred in giving the State's requested charge about leased property, permitting inference that lessee is in possession of all property located on or in the premises, because no evidence showed Defendant had ever signed a lease for the home in question. Evidence was presented that Defendant told the landlord's agent he wanted to show the lease to his wife, that he was the only person with a key to the house other than the agent, and that his car was parked in the garage. **There is no error in giving the leased property charge where there is sufficient evidence from which the jury could conclude Defendant had a possessory interest of some sort in the property.**

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