



CaseLaw

Update

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CaseLaw This Week

Week Ending August 6, 2004

- Evidence
- Search and Seizure
- Jury Charges

Search and Seizure

State v. Welch, A04A1103 (07/23/04), 04 FCDR 2551, 2004 Ga. App. LEXIS 993

The trial court's grant of defendant's motion to suppress evidence of chemical sobriety test results and all non-Mirandized statements made by defendant in response to the arresting officer's questions was affirmed. **Although defendant was traveling 10 miles per hour under the posted speed limit, the closest vehicle was more than six car lengths behind defendant's vehicle. The Court found that, under these facts, the officer's belief that defendant was impeding the flow of traffic was an insufficient basis for initiating an investigative stop.** Therefore, the trial court was correct in finding that there was no articulable suspicion for the stop and properly granted the motion to suppress.

State v. Davenport, A04A1557 (07/23/04), 04 FCDR 2552, 2004 Ga. App. LEXIS 997

Grant of defendant's motion to suppress evidence seized during a traffic stop was affirmed. The officer who testified at the suppression hearing did not know the tipster's name and had no experience with

Evidence – Identification

In the Interest of S.D.T.E., A04A0889; A04A0938 (07/23/04), 04 FCDR 2547, 2004 Ga. App. LEXIS 991

Defendant's convictions for theft by taking and criminal trespass were affirmed. The trial court did not err in denying of defendant's motion to strike the witness's in-court identification on the ground that the show-up at the police station was improper. **Although the witness did not see defendant's face, she observed him and two other youths jump over the car lot fence and run. The court noted that "identity is a question for the trier of fact, and where a witness identifies a defendant (whether the identification be based on the defendant's eyes, clothes, hairline or some intangible factor not capable of description), the credibility of the witness making such identification is not to be decided by [the] court."**

the tipster prior to the day of defendant's arrest. The Court further pointed out that the tipster merely pointed out an apartment and a car, but gave no name or description of the for the alleged drug dealer. **The police did not have reasonable articulable suspicion for stopping defendant based on a tip from a person arrested for drug possession.**

Jury Charges

Hendrix v. State, A04A0713 (05/12/04), 04 FCDR 2544, 2004 Ga. App. LEXIS 654

Defendant's convictions for aggravated assault and firearms offense were affirmed. **The trial court did not err in charging on self-defense, despite defendant's claim that he did not shoot the victim.** The fact that defendant presented evidence of conflicting defense did not invalidate the self-defense charge. **The Court found that "an instruction is not inapplicable where there is any evidence, however slight, on which to predicate it."**

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