



# CaseLaw

## Update

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#### CaseLaw This Week

Week Ending October 15, 2004

- Evidence
- Search and Seizure

#### Evidence – Statement

*Bolden v. State*, S04A1473 (10/04/04), 04 FCDR 3200, 2004 Ga. LEXIS 827

Defendant's conviction for felony murder was affirmed. Defendant claimed that the trial court erred when it denied her motion to suppress a statement made to police. **The court found that defendant's statement was not custodial, and therefore did not require *Miranda* warnings, because defendant was repeatedly told that she was not under arrest and that handcuffed transportation was a required safety procedure; the handcuffs were promptly removed upon arrival at the police station, and defendant was told that she was free to leave at any time; defendant was not confined while awaiting her interview and was driven home afterwards.**

#### Search and Seizure

*State v. Stevens*, A04A1188 (09/29/04), 04 FCDR 3242, 2004 Ga. App. LEXIS 1287

Grant of defendant's motion to suppress was affirmed. Defendant's

girlfriend gave written consent for police to search her apartment after police had seen a pipe with possible drug residue on it in defendant's car and asked his girlfriend at the time of the search if he carried any items around with him that were in her apartment. The girlfriend described defendant's backpack and police found it in the pull-down attic. Defendant was not present during the search, and police did not attempt to obtain his consent for the search of the backpack. Defendant did not live in the apartment, and his name was not on the lease. **The court held that, because defendant was a visitor to the apartment, the search of his backpack required a justification that was independent from the search of the apartment. Because the State's sole justification of the backpack was the girlfriend's consent to search the apartment, there was no independent basis to uphold the search.**

*Leon-Velazquez v. State*, A04A1441 (09/28/04), 04 FCDR 3242, 2004 Ga. App. LEXIS 1283

Defendant's conviction for possession of cocaine and possession of a firearm were reversed. Two deputy sheriffs knocked on defendant's door after unsuccessfully trying to serve a warrant on the apartment number listed

in the warrant which number turned out not to exist. The deputies noticed that defendant resembled the description on the arrest warrant and stepped into the apartment once they became suspicious that defendant was lying about his identity. Defendant contended that the evidence against him was obtained as a result of a warrantless entry into his home. **The court agreed, finding that the state failed to provide any evidence that the officer's entry into the dwelling derived from an emergency situation or exigent circumstances, and the plain view doctrine did not apply because the officer was not constitutionally permitted to be inside defendant's home at the time the contraband was seized.**

*State v. Hicks*, A04A1581 (09/03/04), 04 FCDR 3244, 2004 Ga. App. LEXIS 1190

Grant of defendants' motion to suppress was reversed. The trial court found that the warrant failed to particularly describe the place to be searched. The court found that the trial court minutely considered only the description of the property and focused inordinately upon the facts that there were two intersections of the streets described in the warrant's directions to the duplex, there was no number on the duplex itself, and the duplex was the third building, not the fourth. **The court found that a reasonably prudent officer could have found the duplex from the description, directions, and address provided. That a scrivener's error described the duplex as the fourth, instead of the third, was not so material as to destroy the integrity of the affidavit or validity of the warrant.**



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