GPSTC

GEORGIA PUBLIC SAFETY TRAINING CENTER

SEARCH & SEIZURE FOR LAW ENFORCEMENT

Student Manual

Georgia Police Academy Division
www.gpstc.org

REV. 07/2015

Search & Seizure for Law Enforcement

GPSTC Course Schedule

Monday		**Instructor:**
0800 – 0830	Registration, Campus Familiarization & Introduction	Steve Barnhart Georgia Police Academy
0830 – 1000	Ethics for Search & Seizure	Steve Barnhart
1000 – 1200	Establishing ARS & PC (Part 1)	Steve Barnhart
1200 – 1300	Lunch	
1300 – 1500	Establishing ARS & PC (Part 2)	Steve Barnhart
1500 – 1700	Conducting Warrantless Searches & Seizures (Part 1)	Steve Barnhart
Tuesday		
0800 – 1200	Conducting Warrantless Searches & Seizures (Part 2)	Steve Barnhart
1200 – 1300	Lunch	
1300 – 1700	Conducting Warrantless Searches & Seizures (Part 3)	Steve Barnhart
Wednesday		
0800 – 1200	Conducting Warrantless Searches & Seizures (Part 4)	Steve Barnhart
1200 – 1300	Lunch	
1300 – 1700	Conducting Warrantless Searches & Seizures (Part 5)	Steve Barnhart
Thursday		
0800 – 0900	Obtaining a Search Warrant Court Order	Steve Barnhart
0900 – 1000	Introduction to the GPSTC Search Warrant Template	Steve Barnhart
1000 – 1200	Establishing Probable Cause for a Search Warrant	Steve Barnhart
1200 – 1300	Lunch	
1300 – 1600	Sources of Information	Steve Barnhart
1600 – 1700	Conducting Independent Investigations	Steve Barnhart
Friday		
0800 – 1100	Creation of a Search Warrant Affidavit & Command	Steve Barnhart
1100 – 1200	Execution and Return of Search Warrants (Part 1)	Steve Barnhart
1200 – 1300	Lunch	
1300 – 1400	Execution and Return of Search Warrants (Part 2)	Steve Barnhart
1400 – 1500	The No-Knock Clause	Steve Barnhart
1500 – 1600	Civil Liability for Search & Seizure	Steve Barnhart
1600 – 1700	Testing, Evaluation and Graduation	Steve Barnhart

Search & Seizure for Law Enforcement

Terminal Performance and Enabling Objectives

Section 1: Ethics for Law Enforcement

Terminal Performance Objective:

When employed as a law enforcement officer, students will make ethical decisions in accordance with the Search & Seizure for Law Enforcement Student Manual and classroom lecture.

Enabling Objectives:

- Discuss the process by which an officer makes an ethical decision
- Discuss the ***Golden Rule***
- Define ***hypervigilance***
- Discuss the ***hypervigilance biological rollercoaster***
- Discuss the ***continuum of compromise***
- Identify strategies to counter the *hypervigilence biological rollercoaster* and the *continuum of compromise*

Section 2: Establishing Articulable Reasonable Suspicion & Probable Cause

Terminal Performance Objective:

When acting in a law enforcement capacity, students will conduct police - citizen encounters within the boundaries established by federal and state statutory law and appellate decisions.

Enabling Objectives:

- Define the terms ***search*** and ***seizure***
- Define ***articulable reasonable suspicion***
- Define ***probable cause to arrest***
- Define ***probable cause to search***
- Describe the three types *of* ***police – citizen encounters***
- Identify important elements to be included in reports documenting *police – citizen encounters*

Section 3: Conducting Warrantless Searches & Seizures

Terminal Performance Objective:

While acting in a law enforcement capacity, officers will conduct warrantless searches and seizures in compliance with the fifteen exceptions to the search warrant requirement identified within federal and state statutory and case law.

Enabling Objectives:

- Understand the search & seizure implications created by a reasonable expectation of privacy
- Discuss the fifteen exceptions to the search warrant requirement and prerequisite circumstances required for each to apply
- Identify the nine potential justifications applicable to the search of an automobile
- Describe the components of the *2-3-4 Rule*

Section 4: Obtaining a Search Warrant Court Order

Terminal Performance Objective:

When authoring and obtaining search warrants, students will function with an understanding of the terminology and legal standards related to search warrants, in accordance with statutory and case law of Georgia and the United States.

Enabling Objectives:

- Identify the advantages of securing a search warrant
- Identify the key requirements that define a search warrant
- Identify the two documents that combine to form a complete search warrant and their common names
- Discuss the application process for obtaining a search warrant in accordance with O.C.G.A. 17-5-20, -21 and -21.1
- Identify the five categories of evidence specified in O.C.G.A. 17-5-21 for which a Judicial Officer may issue a search warrant
- Identify the number of copies of the search warrant command that must be issued according to O.C.G.A. 17-5-24

Section 5: Introduction to the GPSTC SW Template

Terminal Performance Objective:

When a search warrant is required, students will utilize computer-based search warrant templates and programs in accordance with the organizational process discussed in class lecture and demonstration.

Enabling Objectives:

- Demonstrate proper utilization of the GPSTC search warrant template
- Describe the fields of the GPSTC search warrant template
- Utilizing the GPSTC search warrant template, prepare a sample search warrant

Section 6: Establishing Probable Cause for a Search Warrant

Terminal Performance Objective:

When a search warrant is required, students will provide clear and complete information supporting probable cause to the issuing judge, in accordance with statutory and case law of Georgia and the United States.

Enabling Objectives:

- Define and discuss the concept of *staleness*
- Explain the *particularity requirement* of the 4th Amendment and the importance of properly describing locations, vehicles, persons and other items to be searched or seized
- Discuss the use of officer knowledge, training and experience to establish and explain probable cause
- Discuss the use of independent investigations to assist in probable cause development

Section 7: Sources of Information

Terminal Performance Objective:

When providing information from or describing actions of sources to a judge during a warrant application, students will establish probable cause by providing the totality of the circumstances, in accordance with statutory and case law of Georgia and the United States.

Enabling Objectives:

- Discuss the role of concerned citizens, confidential informants, and anonymous tipsters in developing probable cause
- Discuss the *two prong test* for evaluation of source information established by *Aguilar v. Texas* and *Spinelli v. United States*
- Discuss the *totality of circumstances* test for evaluation of probable cause established by *Illinois v. Gates*
- Identify the three categories of informant relating to protection of source identity and potential requirement to reveal identity for each category

Section 8: Conducting Independent Investigations

Terminal Performance Objective:

When conducting independent investigations, students will establish a pattern of ongoing criminal activity for suspects and verify location and occupancy of targeted premises, in accordance with the GPSTC Search & Seizure for Law Enforcement program materials.

Enabling Objectives:

- Define the term ***independent investigation*** as it relates to probable cause for a search warrant
- Discuss the use of surveillance to assist in probable cause development
- Discuss the use of suspect criminal history and similar transactions to show a pattern of ongoing criminal behavior
- Discuss the use of utility records to establish residency
- Discuss the addition of driving directions to the location to be searched by a search warrant

Section 9: Creating a Search Warrant Affidavit & Command (Performance Examination)

Terminal Performance Objective:

When authoring a search warrant, students will utilize computer-based search warrant templates and programs in accordance with the organizational process discussed in class lecture and demonstration.

Enabling Objectives:

- Complete a search warrant affidavit and command based on a scenario provided by your instructor that meets legal standards and requirements
- Discuss results of performance examination and identify any common issues with student projects

Section 10: Execution and Return of Search Warrants

Terminal Performance Objective:

When serving a search warrant, students will comply with requirements for proper execution and return of the warrant, in accordance with statutory and case law of Georgia and the United States.

Enabling Objectives:

- Discuss the execution of a search warrant according to O.C.G.A. 17-5-25, 17-5-26, and 17-5-27
- Discuss the detention and search of persons found on the premises during the execution of the search warrant in accordance with O.C.G.A. 17-5-28
- Discuss the *knock and announce* requirement while executing a search warrant
- Describe the areas to be searched and seizable items in relation to the *scope of the search*
- Discuss the procedures for filing a *search warrant return* as annotated in O.C.G.A. 17-5-29

Section 11: The No-Knock Clause

Terminal Performance Objective:

When requesting a no-knock provision, students will comply with the reasonable suspicion standard for futility or destruction of evidence, in accordance with statutory and case law of Georgia and the United States.

Enabling Objectives:

- Discuss the arguments against a *no-knock provision*
- Identify the minimum legal standard that must be articulated in a *no-knock clause* to obtain a *no-knock provision*
- Identify common exigencies that may justify a *no-knock provision*

Section 12: Civil Liability for Search & Seizure

Terminal Performance Objective:

When authoring, obtaining and executing search warrants, students will function with an awareness of civil liability in accordance with federal and state statutory and appellate law.

Enabling Objectives:

- Define *official immunity*
- Define *qualified immunity*
- Discuss significant and recent appellate decisions relating to clearly established law and qualified or official immunity
- Identify common issues relating to search warrants with potential to result in violations of constitutional rights

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SEARCH & SEIZURE FOR LAW ENFORCEMENT

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Administration

- Verify Student Roster
- Student Sign-In Sheet
- Ethics Forms
- Campus Familiarization
- Firearms
- Electronics

Course Requirements

- A minimum of 90% attendance is required. Any absence must be excused (court, personal emergency, active investigation) by instructor.
- Students must complete all course assignments and actively participate during class lectures.
- Students must achieve a minimum score of 70% on final exam on Day 5.

Course Overview

Students successfully completing this course should be able to demonstrate knowledge of:

- Ethics for search and seizure
- Establishing reasonable suspicion and probable cause
- Conducting searches without a warrant
- Conducting searches with a warrant
- Civil liabilities for search and seizure
- Authoring of search warrants using the GPSTC template

Questions?

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SS4LE: ETHICS FOR SEARCH & SEIZURE

Steve Barnhart, Instructor
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Terminal Performance Objective:
Ethics for Search & Seizure

When employed as a law enforcement officer, students will make ethical decisions in accordance with the Search Warrants & Affidavits: Advanced student manual and classroom lecture.

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Enabling Objectives:
Ethics for Search & Seizure

- Discuss the process by which an officer makes an ethical decision
- Discuss the ***Golden Rule***
- Define ***hypervigilance***
- Discuss the ***hypervigilance biological rollercoaster***
- Discuss the ***continuum of compromise***
- Identify strategies to counter the *hypervigilence biological rollercoaster* and the *continuum of compromise*

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Words to Live By

If it is not right, do not do it.

If it is not true, do not say it.

Marcus Aurelius (c. 161 – 180 CE)

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Ethics

Means many things to different people:

- **Honesty**
- **Integrity**
- **Self-Esteem**
- **Personal Pride**
- **Professional Dedication**

What does it mean to you?

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Morals vs. Ethics

- Morals are personal beliefs or cultural values that distinguish between right and wrong
- Ethics is a set of moral principles; a theory or system of moral values that govern conduct governing an individual or group. Good vs. evil

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Morals vs. Ethics

	Ethics	Morals
What is it?	A set of moral principles recognized and used within a society - ***OBJECTIVE***	Personal beliefs or principles with respect to right or wrong conduct - ***SUBJECTIVE***
Source	Social system/External	Individual/Internal
Why we do it?	Because society says it is right or wrong	Because we believe something is right or wrong
What if we don't do it?	Disapproval, peer pressure, termination, criminal sanctions	Personal discomfort, feelings of remorse, depression
Flexibility	Dependent on others for interpretation	Generally consistent, but may change over time

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Making an Ethical Decision

- Am I acting out of anger, lust, or greed?
- Is my decision illegal?
- Will my co-workers, supervisors, and the legal system be proud of what I've done?
- Will my family be proud of me for what I've done?
- How will I feel about myself afterwards? What about a year later?
- Am I following the "*Golden Rule*"?

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Golden Rule

The interpretation of the ***Golden Rule*** for law enforcement is best explained as:

"Treat others only as you are willing to be treated in an identical situation."

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You Make the Call, Who's the Real Criminal?

False police report – **Felony**

Violating Oath of Office - **Felony**

Testifying at First Appearance – **Felony**

Testifying at Grand Jury – **Felony**

Testifying at Motion to Suppress – **Felony**

Testifying at Trial – **Felony**

The Officer ends up with: **6 Felonies**

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The Lives of Cops

- Hypervigilance
- Social Isolation
- Over-investment in the police role
- Emotional vulnerability
- Lack of control in one's life
- Family impact

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Hypervigilance

- "The necessary manner of viewing the world from a threat-based perspective, having the mindset to see events unfolding as potentially hazardous"
- Allows an on duty officer to develop a subjective state of increased awareness of surroundings to maximize officer safety

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The Hypervigilance Biological Rollercoaster®

- Dr. Kevin Gilmartin, Ph.D.
- On Duty: Increased sensation of involvement, energy, and alertness
- Off Duty: A sensation of apathy, detachment and boredom
- Symptoms include:
  - The Magic Chair
  - When asked to make a decision, your response is: "I don't care – you decide."

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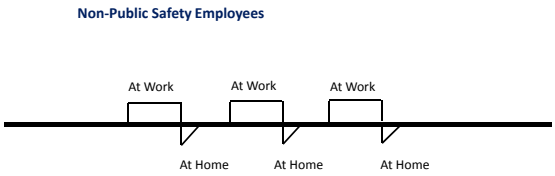
The Hypervigilance Biological Rollercoaster®



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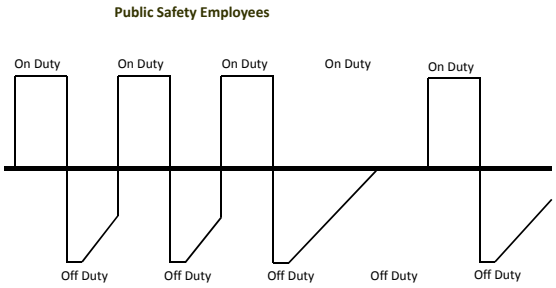
The Hypervigilance Biological Rollercoaster®



24+ Hour Recovery Time

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Public Safety Fine Print!

Everyone who works in public safety, regardless of personal performance, ability, or experience:

Will get screwed over by their agency at least one time in their career through no fault of their own…

…and there is nothing you can do about it.

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Public Safety Fine Print!

- When we get screwed over, we are likely to get angry and develop the perception of personal victimization
  - Victims are motivated to seek retribution and revenge against the offender – in this case, the employing agency

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Continuum of Compromise

- A perceived sense of victimization can lead to the rationalization and justification of conduct previously considered unethical:
  - Acts of omission
  - Acts of commission – administrative
  - Acts of commission – criminal
  - Entitlement vs. accountability
  - Loyalty vs. integrity

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What You DO NOT Control at Work

- Salary
- Assignment
- Work schedule
- On-call status
- Co-workers
- Supervisors
- Management
- Vehicles
- Equipment
- Complaints
- Policies
- Disciplinary actions

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What You DO Control at Work

- Your integrity
- Your professionalism
- How well you perform your assigned job

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What's the Answer?

- Only by investing effort into one's life away from the job will an officer overcome what is perceived to be a personal attack when they get screwed.

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What's the Answer?

- Avoid over-investing in the police role
- Have a plan for managing your personal time
- 30+ Minutes of non-stop aerobic exercise each day
- Invest in non-work related skills and activities that you control
- Emphasize family and friends in your life

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What's the Answer?

- If you know you cannot do this job legally or ethically, then get out of my profession!
- Learn to do your job legally and ethically!
  - Attend all the training you can whenever you can - 20 hours is not enough!
- Seek out positive role models for the legal and ethical answers you need

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Questions?

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SS4LE: ESTABLISHING ARTICULABLE REASONABLE SUSPICION & PROBABLE CAUSE

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Terminal Performance Objective:
Establishing ARS & PC

When acting in a law enforcement capacity, students will conduct police - citizen encounters within the boundaries established by federal and state statutory law and appellate decisions.

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Enabling Objectives:
Establishing ARS & PC

- Define the terms ***search*** and ***seizure***
- Define ***articulable reasonable suspicion***
- Define ***probable cause to arrest***
- Define ***probable cause to search***
- Describe the three types *of* ***police – citizen encounters***
- Identify **important elements** to be included in reports documenting *police – citizen encounters*

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Defn. *Objective* & *Subjective*

- *Objective:* (Of a person or their judgment) **not influenced by personal feelings or opinions** in considering and representing facts
- *Subjective*: **Based on or influenced by personal feelings**, **tastes**, or **opinions**

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4th Amendment

The Fourth Amendment to the United States Constitution and Article I, Section I, Paragraph XIII of the Constitution of the State of Georgia provide:

"The Right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures**, shall not be violated, and **no warrants** shall **issue**, but upon **probable cause**, supported by **oath or affirmation**, and **particularly describing** the **place** to be searched, and the **persons or things** to be seized."

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What is a Search? (1. REoP)

"A ***search*** occurs when an **expectation of privacy** that society is prepared to consider reasonable is infringed."

U.S. v. Jacobsen, 466 U.S. 109 (1984)

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What is a Search? (2. Trespass)

"[T]he Government's **physical intrusion** on an 'effect' for the purpose of obtaining information constitutes a '***search***.'"

U.S. v. Jones, 132 S.Ct. 945 (2012)

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What is a Seizure? (1. Property)

"A ***seizure*** of property occurs when there is some **meaningful interference** with an individual's possessory interests in that **property**."

U.S. v. Jacobsen, 466 U.S. 109 (1984)

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What is a Seizure? (2. Person)

A ***seizure*** triggering the Fourth Amendment's protections occurs only when government actors have, "by means of **physical force** or **show of authority**, ... in some way **restrained the liberty of a citizen**."

Terry v. Ohio, 392 U.S. 1 (1968)

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What is a Seizure? (2. Person)

- **Application of physical force** by officer, however slight. (*actual seizure*)
- **Submission** by subject to an officer's "**show of authority**" to restrain their liberty. (*constructive seizure*)

Terry v. Ohio, 392 U.S. 1 (1968)

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Legal Authority

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Legal Authority

What are the two types of legal authority available to a law enforcement officer?

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Legal Authority

The two types of legal authority are:

1. **Articulable Reasonable Suspicion**
2. **Probable Cause**

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ARS and PC

Articulating precisely what '**reasonable suspicion**' and '**probable cause**' mean **is not possible**. They are **commonsense**, **nontechnical** conceptions that deal with 'the factual and practical considerations of everyday life on which **reasonable and prudent men**, not legal technicians, act.' As such, the standards are "**not readily, or even usefully, reduced to a neat set of legal rules**." …

Ornelas v. United States, 517 U.S. 690 (1996)

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ARS and PC

… We have cautioned that these two legal principles **are not 'finely-tuned standards**,' comparable to the standards of proof beyond a reasonable doubt or of proof by a preponderance of the evidence. They are instead **fluid concepts** that take their substantive content from the particular contexts in which the standards are being assessed."

Ornelas v. United States, 517 U.S. 690 (1996)

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ARS and PC

"The probable-cause standard is **incapable of precise definition** or **quantification into percentages** because it deals with probabilities and depends on the totality of the circumstances."

Maryland v. Pringle, 540 U.S. 366 (2003)

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Legal Authority:

Articulable Reasonable Suspicion

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Two Types of Suspicion

The two types of suspicion are:

1. Mere Suspicion
2. Articulable Reasonable Suspicion

Mere Suspicion: When an officer has only a **subjective**, **unparticularized** suspicion or hunch.

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Defining *ARS*

A set of **facts and circumstances** in which a **reasonable and prudent peace officer** suspects, based on his/her **knowledge, training, and experience**, that **criminal activity is afoot or is about to occur**.

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ARS Explained

Reasonable suspicion is "**considerably less than** proof of wrongdoing by a **preponderance of the evidence**" and **less than probable cause**; nevertheless, the officer must articulate "some **minimal level of objective justification**."

United States v. Sokolow, 490 U.S. 1 (1989)

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Collective Knowledge

"Reasonable suspicion need not be based on an arresting officer's knowledge alone, but may exist based on the '**collective knowledge**' of the police when there is reliable communication between an officer supplying the information and an officer acting on that information."

Weldon v. State, 291 Ga.App. 309 (2008)

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Illinois v. Wardlow (SC 2000)

"This case, involving a brief encounter between a citizen and a police officer on a public street, is governed by Terry, under which an officer who has a reasonable, articulable suspicion that criminal activity is afoot may conduct a brief, investigatory stop.

Illinois v. Wardlow, 528 U.S. 119 (2000)

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Illinois v. Wardlow (USSC 2000)

"An individual's presence in a '**high crime area**,' standing alone, **is not enough** to support a reasonable, particularized suspicion of criminal activity, **but a location's characteristics are relevant** in determining whether the circumstances are sufficiently suspicious to warrant further investigation." …

Illinois v. Wardlow, 528 U.S. 119 (2000)

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Illinois v. Wardlow (USSC 2000)

"… In this case, moreover, it was also Wardlow's **unprovoked flight** that aroused the officers' suspicion. **Nervous, evasive behavior** is another pertinent factor in determining reasonable suspicion, and **headlong flight is the consummate act of evasion**."

Illinois v. Wardlow, 528 U.S. 119 (2000)

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Illinois v. Wardlow (USSC 2000)

"***Terry* accepts the risk that officers may stop innocent people**. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The *Terry* stop is **a far more minimal intrusion**, simply allowing the officer to briefly investigate further."

Illinois v. Wardlow, 528 U.S. 119 (2000)

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Florida v. J.L. (USSC 2000)

"An **anonymous tip** that a person is carrying a **gun** is **not**, **without more**, **sufficient** to justify a police officer's stop and frisk of that person."

Florida v. J.L., 529 U.S. 266 (2000)

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Florida v. J.L. (USSC 2000)

"If police officers may properly conduct Terry frisks on the basis of bare-boned tips about guns, it would be reasonable to maintain under the above-cited decisions that the police should similarly have discretion to frisk based on bare-boned tips about narcotics. … [T]he Fourth Amendment is not so easily satisfied."

Florida v. J.L., 529 U.S. 266 (2000)

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Alabama v. White (USSC 1990)

"[A]n **informant's tip may carry sufficient 'indicia of reliability**' to justify a *Terry* stop even though it may be insufficient to support an arrest or search warrant. …

Alabama v. White, 496 U.S. 325 (1990)

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Alabama v. White (USSC 1990)

"*Illinois v. Gates* adopted a "totality of the circumstances" approach to determining whether an informant's tip establishes probable cause, whereby the informant's veracity, reliability, and basis of knowledge are highly relevant. These factors are also relevant in the reasonable-suspicion context, although allowance must be made in applying them for the lesser showing required to meet that standard."

Alabama v. White, 496 U.S. 325 (1990)

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Navarette v. California (USSC 2014)

"The Fourth Amendment permits brief investigative stops when an officer has 'a **particularized and objective basis** for suspecting the particular person stopped of ... criminal activity.' …

Navarette v. California, 134 S.Ct. 1683 (2014)

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Navarette v. California (USSC 2014)

"Reasonable suspicion takes into account '**the totality of the circumstances**,' and depends 'upon **both the content of information possessed by police and its degree of reliability**,' An **anonymous tip** alone **seldom demonstrates** sufficient **reliability**, **but may do so** under appropriate circumstances."

Navarette v. California, 134 S.Ct. 1683 (2014)

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Legal Authority:
Probable Cause

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Probable Cause

Two types of PC:

Probable Cause – To Arrest

Probable Cause – To Search

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Where is PC on the Line?

Probable Cause?

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Banks v. State (GASC 2004)

"There is a **great difference** between what is required to prove guilt in a criminal case and what is required to show probable cause for arrest or search."

Banks v. State, 277 Ga. 543 (2004)

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Defining *PC to Arrest*

A set of **facts and circumstances** which would lead a **reasonable and prudent person**, using **all one's senses**, to believe that a **crime has been or is being committed**, by the person suspected.

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Use of All Senses

"'To justify the arrest without warrant, the officer need not see the act which constitutes the crime take place, ***if by any of his senses*** he has personal knowledge of its commission.' (Emphasis supplied, Cit. omitted). Hence, odor as well as sight, hearing, taste or touch can be used in establishing probable cause."

Berry v. State, 163 Ga.App. 705 (1982)

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Maryland v. Pringle (USSC 2003)

"To determine whether an officer had probable cause to make an arrest, a court must examine the events leading up to the arrest, and then decide '**whether these historical facts**, **viewed from** the **standpoint** of an **objectively reasonable police officer**, amount to' probable cause."

Maryland v. Pringle, 540 U.S. 366 (2003)

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Hughes v. State (GASC 2015)

"[I]f reasonable officers could have reached different conclusions—some concluding reasonably that Hughes probably had been driving under the influence, and others reasonably concluding otherwise—then probable cause by definition was established."

Hughes v. State, --- S.E.2d ----, 2015 WL 1135824 Ga.,2015.

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Defining *Probable Cause to Search*

Given all the circumstances, there is **a fair probability** that contraband, evidence of a crime or a fugitive **will be found** in a particular place.

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State v. Stephens (GASC 1984)

"By no means is probable cause to be equated with proof by even so much as a preponderance of evidence. As stated in *Gates,* "[P]robable cause does not demand the certainty we associate with formal trials" The issuing magistrate *now* need only conclude that there is a "fair probability that contraband or evidence of a crime will be found in a particular place."

State v. Stephens, 252 Ga.181 (1984)

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Maryland v. Pringle (USSC 2003)

"We have stated, however, that '[t]he substance of all the definitions of probable cause is a **reasonable ground for belief of guilt**," and that the belief of guilt must be **particularized** with respect **to the person to be searched or seized**.'

Maryland v. Pringle, 540 U.S. 366 (2003)

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Collective Knowledge

"Probable cause can be based upon the **collective knowledge** of multiple police officers 'when there is some degree of communication between them'"

Davis v. State, 304 Ga.App. 355 (2010)

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State v. Cartwright (GASC 2014)

"'[T]he officer's reasonable belief that an offense had been committed, though he may have been mistaken either as to fact or law, was yet a sufficient 'founding suspicion' to enable the trial court to determine the stop was not mere arbitrariness or harassment, which is the real question.'"

State v. Cartwright, A14A1392 (2014)

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Heien v. North Carolina (USSC 2014)

"The Fourth Amendment tolerates only ***reasonable*** mistakes, and those mistakes – whether of fact or of law – must be ***objectively*** reasonable. … Thus, an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce."

Hein v. North Carolina, (2014)

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"Reason to Believe"

"Recently, … phrases like "**reasonable belief**" and "**reason to believe**" have crept into Supreme Court opinions analyzing intrusions that generally require proof of probable cause. The Court has not specifically rejected the probable cause requirement or adopted a reasonable suspicion standard in these cases…"

Kinports, K. *Diminishing Probable Cause and Minimalist Searches*, 6 Ohio St. J. Crim. L. 649 (2009)

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The Three Types of Police/Citizen Encounters

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3 Types of Police – Citizen Encounters

Decisions of the United States Supreme Court have set forth three tiers of police-citizen encounters: "(1) communication between police and citizens involving **no coercion or detention** and therefore without the compass of the Fourth Amendment, (2) **brief seizures** that must be supported by reasonable suspicion, and (3) **full-scale arrests** that must be supported by probable cause."

Whitmore v. State, 289 Ga.App. 107 (2008).

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3 Types of Police – Citizen Encounters

- **Verbal Encounter**
- **Brief Stop**
- **Arrest**

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1. Verbal Encounter

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Verbal Encounter

- A.K.A. a Voluntary, Consensual, Tier 1 or First Tier Encounter
- No "legal authority" is required. Why?
- It's an "approach" not a "stop". As such law enforcement can "approach" a suspect on a "hunch"
- Can question without *Miranda* warnings

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Verbal Encounter

- No display of official authority beyond a statement of law enforcement identification
- Citizen do not have to comply and is "free to leave"
- Consent to search "can" be requested

Florida v. Bostick, 501 U.S. 429 (1991)

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Verbal Encounter

"During a first-tier encounter, police may approach citizens, ask for identification, ask for consent to search, and otherwise freely question the citizen without any basis or belief of criminal activity so long as the police do not detain the citizen or convey the message that the citizen may not leave."

Minor v. State, 298 Ga.App. 391 (2009)

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Verbal Encounter

"It is well settled that '**a citizen's ability to walk away** from or otherwise avoid a police officer is the touchstone of a first-tier encounter [.]'"

In the Interest of J. B., 314 Ga.App. 678 (2012)

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Verbal Encounter

"Factors to consider when determining if an officer's words or conduct are considered a seizure include: (1) whether there were **several officers present**, creating a threatening atmosphere; (2) whether **any weapon was displayed**; (3) whether any **physical touching** occurred; or (4) whether any **language or tone of voice** indicated that the defendant was **compelled to comply** with the officer's request."

State v. Dukes, 279 Ga.App. 247 (2006)

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2. Brief Stop

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Brief Stop

- A.K.A.: "Terry" Stop, Investigative Detention, Second Tier or Tier 2 Encounter
- LEO must have legal authority - Articulable Reasonable Suspicion (A.R.S.)
- Can temporarily detain for a "reasonable" period to conduct investigation

Terry v Ohio, 392 U.S. 1 (1968)

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Verbal Encounter

"A seizure or **second-tier encounter** 'only occurs when, in view of all the circumstances surrounding the incident, **a reasonable person believes that he is not free to leave**.'"

Carter v. State, 319 Ga.App. 624 (2013)

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ARS Explained

"An investigatory stop must be **justified by** some **objective manifestation** that the person stopped is, or is about to be, engaged in criminal activity."

U.S. v. Cortez, 449 U.S. 411 (1981)

"The officer must have some basis from which the court can determine that the **detention was neither arbitrary nor harassing**."

State v. Johnson, 282 Ga.App. 102 (2006)

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Brief Stop

- Can "frisk" the suspect for weapons if have ARS suspect is **armed and dangerous**

Terry v Ohio, 392 U.S. 1 (1968)

- Handcuff - Only when **objectively reasonable** for officer, public and suspect safety - advise suspect he/she IS NOT under arrest

Bolden v. The State, 278 Ga. 459 (2004)

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Brief Stop

"Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it **the right to use some degree of physical coercion** or threat thereof to effect it."

Terry v. Ohio, 392 U.S. 1 (1968)

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3. Arrest

Arrest

- AKA Third Tier or Tier 3 Encounter
- With or without a warrant
- Must have Probable Cause
- Must make appearance before a Judge in reasonable period (48/72)
- Must advise of Miranda warnings if subject is questioned (Custody plus Interrogation)

OCGA § 17-4-20(2) Arrest without a Warrant

A. The offense is committed in such officer's presence or within such officer's immediate knowledge;

B. The offender is endeavoring to escape;

C. The officer has probable cause to believe that an act of family violence, as defined in Code Section 19-13-1, has been committed;

D. The officer has probable cause to believe that the offender has violated a criminal family violence order, as defined in Code Section 16-5-95; provided, however, that such officer shall not have any prior or current familial relationship with the alleged victim or the offender;

OCGA § 17-4-20(2) Arrest without a Warrant

E. The officer has probable cause to believe that an offense involving physical abuse has been committed against a vulnerable adult, who shall be for the purposes of this subsection a person 18 years old or older who is unable to protect himself or herself from physical or mental abuse because of a physical or mental impairment; or

F. For other cause there is likely to be failure of justice for want of a judicial officer to issue a warrant.

OCGA § 16-5-95. Violation of family violence order

…

(2) "Criminal family violence order" means:

(A) Any order of pretrial release issued as a result of an arrest for an act of family violence; or

(B) Any order for probation issued as a result of a conviction or plea of guilty, nolo contendere, or first offender to an act of family violence.

Failure of Justice

"An arrest is constitutionally valid if, at the moment the arrest was made, the facts and circumstances within the arresting officers' knowledge based upon reasonably trustworthy information were sufficient to allow a prudent man to believe the suspect had committed, or was committing, a crime."

Fortson v. The State, 247 Ga.App. 533 (2001)

Failure of Justice

"The Supreme Court of Georgia has held that if an officer acquires probable cause to arrest an accused outside his home, a **failure of justice** is likely to occur **as a matter of law** if the officer delays the arrest until a warrant is obtained."

Fortson v. The State, 247 Ga.App. 533 (2001)

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Protective Sweep

"[O]fficers are authorized to perform a protective sweep in conjunction with an in-home arrest when they possess '**articulable facts** which, taken together with the **rational inferences** from those facts, would warrant a reasonably prudent officer in believing that **the area to be swept harbors an individual posing a danger to those on the arrest scene**.' …

Nelson v. State, 271 Ga.App. 658 (2005)

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Protective Sweep

"The fact that the sweep was **not performed incident to an arrest does not render it invalid** under the Fourth Amendment."

Nelson v. State, 271 Ga.App. 658 (2005)

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Documenting a Police – Citizen Encounter

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Report Writing 101

What's needed for an Incident Report?

- **Who**
- **What**
- **Where**
- **When**
- **Why**
- **How**

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Documenting ARS & PC

Don't just say what you mean, explain what you mean!

- **Knowledge**
- **Training**
- **Experience**
- **Date**
- **Time of Day**
- **Location**
- **Set of Circumstances**

- **Report of recent crime in area**
- **Suspect's reputation**
- **Suspicious conduct**
- **Information received**
- **Behavior on sighting a L.E. officer**
- **Flight at sight of L.E.**
- **Suspect fits a criminal profile**

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Questions?

?

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GEORGIA PUBLIC SAFETY TRAINING CENTER

SS4LE: CONDUCTING WARRANTLESS SEARCHES & SEIZURES

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Terminal Performance Objective

While acting in a law enforcement capacity, officers will conduct warrantless searches and seizures in compliance with the fifteen exceptions to the search warrant requirement identified within federal and state statutory and case law.

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Enabling Objectives

- Understand the search & seizure implications created by a reasonable expectation of privacy
- Discuss the fifteen exceptions to the search warrant requirement and prerequisite circumstances required for each to apply
- Identify the nine potential justifications applicable to the search of an automobile
- Describe the components of the *2-3-4 Rule*

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4th Amendment

"The essential purpose of the Fourth Amendment is to shield the citizen from unwarranted intrusions by the government upon his privacy."

Cardwell v. Lewis, 417 U.S. 583 (1974)

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Reasonable Expectation of Privacy

"[T]he Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."

Katz v. U.S., 389 U.S. 347 (1967)

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Reasonable Expectation of Privacy

"[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable. We have subsequently applied this principle to hold that a Fourth Amendment search does *not* occur - even when the explicitly protected location of a *house* is concerned—unless "the individual manifested a subjective expectation of privacy in the object of the challenged search," and "society [is] willing to recognize that expectation as reasonable."

Kyllo v. U.S., 533 U.S. 27 (2001)

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Who has REoP?

"In order to claim the protection of the Fourth Amendment against unreasonable search and seizure, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable. …

Smith v. State, 284 Ga. 17 (2008)

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Who has REoP?

… A person has a legitimate expectation of privacy in his or her home and may have a legitimate expectation of privacy in a house in which the person is an overnight guest; however, one who is merely present with the consent of the householder may not claim the protection of the Fourth Amendment."

Smith v. State, 284 Ga. 17 (2008)

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Preference for Warrants

"Thus the most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.' …

Chief Justice Stewart
Coolidge v. New Hampshire, 403 U.S. 453 (1971)

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Preference for Warrants

… The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption that the exigencies of the situation made that course imperative.' '(T)he burden is on those seeking the exemption to show the need for it.'"

Chief Justice Stewart
Coolidge v. New Hampshire, 403 U.S. 453 (1971)

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Warrantless Searches

- **Q:** How many "exceptions" to the warrant requirement are recognized by the U.S. Supreme Court?

15.

- However, not all exceptions are actually searches, or authorized by LEOs, or are violations of 4th Amendment protections

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Warrantless Searches & Seizures

- Search incident to arrest
- Valid stop-and-frisk
- Exigent circumstances
- Valid consent
- Hot pursuit
- Property in plain view
- Abandoned property
- Property in open fields
- Administrative searches
- Probationers parolees and inmates
- Airport searches
- Border searches
- Courthouses and public buildings
- Places of recreation and entertainment & general public events
- Vehicle searches

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Electronic Surveillance

- Wiretapping for call content – Title III **§ 16-11-62**
- Trap & trace for live transactional data
- GPS for phones & trackers
- Audio: "one-party consent" (except Js)
- Video: Public place OK. Private place requires "all-party consent"
  - "It shall be unlawful for: ... (2) Any person, through the use of any device, without the consent of all persons observed, to observe, photograph, or record the activities of another which occur in any private place and out of public view **§ 16-11-62**

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Justifications for Warrantless Search & Seizure

- No "Reasonable expectation of privacy"
- No "search" or "seizure" occurs
- Probable cause (plus exigency)
- Reasonableness balancing
- Administrative, or "special needs"
- Consent

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1.
Search Incident to Arrest

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Search Incident to Arrest

Approval of a warrantless search incident to a lawful arrest seems first to have been articulated by the Court in 1914 in *Weeks v. United States*, in which the Court stated:

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Weeks v. U.S. (1914)

"What then is the present case? Before answering that inquiry specifically, it may be well, by a process of exclusion, to state what it is not. It is not an assertion of the right on the part of the government always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime. This right has been uniformly maintained in many cases."

Weeks v. United States, 232 U.S. 383 (1914)

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Carroll v. U.S. (1924)

Eleven years later, the case of *Carroll v. United States,* brought the following embellishment of the *Weeks* statement:

"When a man is legally arrested for an offense, whatever is found upon his person or in his control which it is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution."

Thus, the *Carroll Doctrine* was established (extending to the search of vehicles incident to arrest)

Carroll v. United States, 267 U.S. 132 (1924)

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Chimel v. California (1969)

FACTS: The U.S. Supreme Court again addressed a search incident to arrest in *Chimel v. California*. On Sept. 13, 1965, two detectives arrested Mr. Chimel as he entered his home on a warrant charging him with the burglary of a coin shop. Chimel refused to consent a search, so the detectives spent 45 to 60 minutes searching the entire three bedroom house, the garage, attic, and a small workshop. The detectives found and seized coins and evidence of the burglary.

Chimel v. California, 395 U.S. 752 (1969)

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Chimel v. California (1969)

USSC: "When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. …

Chimel v. California, 395 U.S. 752 (1969)

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Chimel v. California (1969)

… In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. …

Chimel v. California, 395 U.S. 752 (1969)

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Chimel v. California (1969)

… A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and **the area 'within his immediate control'**—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."

Chimel v. California, 395 U.S. 752 (1969)

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Comments: *Chimel v. California*

The U.S. Supreme Court ruled the *Chimel* search unconstitutional and set guidelines for conducting searches incident to a lawful arrest. Officers may search the person of the suspect arrested and the area within his/her "immediate control" for two purposes:

1. **To protect the officer from attack; and**
2. **To prevent the destruction of evidence.**

Chimel v. California, 395 U.S. 752 (1969)

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OCGA § 17-5-1

OCGA § 17-5-1. Search Without Warrant

(a) When a lawful arrest is effected a peace officer may reasonably search *the person arrested and the* ***area within the person's immediate presence*** for the purpose of:

(1) Protecting the officer from attack;

(2) Preventing the person from escaping;

(3) Discovering or seizing the fruits of the crime for which the person has been arrested; or

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OCGA § 17-5-1

(4) Discovering or seizing any instruments, articles, or things which are being used or which may have been used in the commission of the crime for which the person has been arrested.

(b) When the peace officer is in the process of effecting a lawful search, nothing in this Code section shall be construed to preclude him from discovering or seizing any…various items of contraband.

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Evolution of Search Incident to Arrest for Vehicles

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New York v. Belton (1981)

FACTS: a New York State Trooper stopped Roger Belton and three men in vehicle on the NY Thruway. Detecting the odor of marijuana and observing a drug container on the floorboard, all four suspects were arrested and ordered from the vehicle. The trooper then searched each suspect and then searched the vehicle finding cocaine in Belton's leather jacket.

New York v. Belton, 453 U.S. 454 (1981)

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New York v. Belton (1981)

USSC: "When a policeman has made a lawful custodial arrest of the occupants of an automobile he may, as a contemporaneous incident of that arrest, search the passenger compartment of the vehicle and may also examine the contents of any container found within the passenger compartment and such "container", i. e. is an object capable of holding another object, may be searched whether it is open or closed."

New York v. Belton, 453 U.S. 950 (1981)

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Thornton v. U.S. (2004)

Officer Nichols, Norfolk, VA, PD, who was on patrol driving an unmarked police car, first noticed Marcus Thornton when he slowed down his vehicle so as to avoid driving next to him. Suspicious of Thornton's actions, the officer determined the license plate on Thornton's vehicle did not match. Before the officer could stop Thornton's vehicle, Thornton pulled into a parking lot and exited the vehicle he was driving.

Thornton v. United States, 541 U.S. 615 (2004)

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Thornton v. U.S. (2004)

Officer Nichols stopped Thornton outside his vehicle and conducted a pat down search. Discovering illegal drugs Thornton was arrested. A search of the vehicle resulted in the seizure of a gun.

Thornton v. United States, 541 U.S. 615 (2004)

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Thornton v. U.S. (2004)

COMMENTS: At the time Thornton's vehicle was searched, Thornton was handcuffed and secured in the back seat of the police car. In a 7 – 2 decision upholding the search, Justices voiced concerns that *N.Y. v. Belton* was on a shaky foundation since lower courts treated the search a vehicle incident to arrest as an "entitlement" rather than as an "exception to the search warrant" in context of *Chimel*. Remember, Thornton was handcuffed & in back seat.

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Thornton v. U.S. (2004)

But conducting a *Chimel* search is not the Government's right; it is an exception – justified by necessity – to a rule that would otherwise render the search unlawful. If "sensible police procedures" require that suspects be handcuffed and put in squad cars, then police should handcuff suspects, put them in squad cars, and not conduct the search.

Thornton v. United States, 541 U.S. 615 (2004)

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Thornton v. U.S. (2004)

In that regard, Justice Scalia noted, "a police officer who leaves a suspect unrestrained nearby just to manufacture authority to search, one could argue that the search was unreasonable…by the virtue of the officer to follow sensible procedures."

Thornton v. United States, 541 U.S. 615 (2004)

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Comments: *Thornton v. U.S.*

The majority was split as to the legality of the search of Thornton's vehicle incident to arrest. While most of the Justice's upheld the search as an authorized *Belton* search, Justice Scalia upheld the search as being lawful because the illegal drugs found on Thornton justified the search of Thornton's vehicle.

Thornton v. United States, 541 U.S. 615 (2004)

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Comments: *Thornton v. U.S.*

The Court did confirm that even if a suspect exits his or her vehicle, prior to being arrested, the vehicle may still be subject to a search incident to a lawful arrest because a subject may still be able to attempt to "lunge" for a weapon or to destroy evidence.

Thornton v. United States, 541 U.S. 615 (2004)

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Arizona v. Gant (2009)

On April 21, 2009, the U.S. Supreme Court made a significant ruling which changes the way officers may search vehicles incident to arrest - *Arizona v. Gant*. In the 5 - 4 decision the Court changed a 28 year precedent which allowed police officers to conduct a search of a vehicle incident to the arrest of a driver or occupants who were inside the vehicle or who were a recent occupant of the vehicle.

Arizona v. Gant, 129 S.Ct. 1710 (2009)

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Arizona v. Gant (2009)

On Aug 25, 1999, officers with the Tucson, AZ PD, went to a residence acting on an anonymous tip drugs were being sold there. Gant answered the door and told the police the home's owner would return later. The police departed and conducted a records check. Gant's DL was suspended and he was wanted for driving with a suspended license.

Arizona v. Gant, 129 S.Ct. 1710 (2009)

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Arizona v. Gant (2009)

That same evening, officers returned to the residence and observed Gant drive his vehicle into the driveway. Officers arrested Gant, handcuffed him, and placed him in the back seat of a patrol car. A search of Gant's vehicle incident to arrest resulted in the seizure of a hand gun and a plastic bag containing cocaine.

Arizona v. Gant, 129 S.Ct. 1710 (2009)

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Arizona v. Gant (2009)

Recognizing that many courts interpreted *Belton* to allow a vehicle search incident to the arrest of a recent occupant even if there was no possibility the arrestee could gain access to the vehicle at the time of the search, the *Gant* Court substantially limited the prior *Belton* decision.

Arizona v. Gant, 129 S.Ct. 1710 (2009)

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Arizona v. Gant (2009)

"Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest."

Arizona v. Gant, 129 S.Ct. 1710 (2009)

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Arizona v. Gant (2009)

NOTE: The passenger compartment of a vehicle may only be searched as incident to a lawful arrest of the driver or a recent occupant if:

1. **The arrestee is within reaching distance of the passenger compartment at the time of the search, or:**
2. **It is reasonable to believe the vehicle contains evidence of the offense of arrest**

Arizona v. Gant, 129 S.Ct. 1710 (2009)

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Arizona v. Gant (2009)

NOTE: All law enforcement officers are reminded that searching a suspect incident to a lawful arrest is for two purposes:

1. **To protect the officer from attack; and**
2. **To prevent the destruction of evidence.**

Chimel v. California, 395 U.S. 752 (1969)

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Arizona v. Gant (2009)

Arrestee within reaching distance: The majority opinion in *Arizona v. Gant* has answered that question, holding that prior case law authorizes police to search a vehicle incident to arrest when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.

Arizona v. Gant, 129 S.Ct. 1710 (2009)

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Arizona v. Gant (2009)

"Because officers have many means of ensuring the safe arrest of vehicle occupants, **it will be the rare case** in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee's vehicle remains."

Arizona v. Gant, 129 S.Ct. 1710 (2009)

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Boykins v. State (2011)

FACTS: This possible exception to the *Gant* decision was examined by the Georgia Supreme Court in *Boykins v. State.* Boykins was arrested for an outstanding probation warrant. Boykins was handcuffed and placed "in custody of a second officer on the scene." Boykins and the "wing span within his vehicle" was searched. Cocaine was found.

Boykins v. State, 290 Ga. 71 (2011)

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Boykins v. State (2011)

GASC: "[T]he State failed to make any meaningful showing that this was the "rare" case justifying a warrantless vehicle search because officers were unable to fully effectuate an arrest. Because the State failed to meet its burden of proving the search incident to arrest exception to the warrant requirement, the exception did not apply."

Boykins v. State, 290 Ga. 71 (2011)

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What About Cellphones?

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Riley v. California (2014)

"Riley was stopped for a traffic violation, which eventually led to his arrest on weapons charges. An officer searching Riley incident to the arrest seized a cell phone from Riley's pants pocket. The officer accessed information on the phone and noticed the repeated use of a term associated with a street gang. …

Riley v. California, --- S.Ct. ----, 2014 WL 2864483

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Riley v. California (2014)

At the police station two hours later, a detective specializing in gangs further examined the phone's digital contents. Based in part on photographs and videos that the detective found, the State charged Riley in connection with a shooting that had occurred a few weeks earlier and sought an enhanced sentence based on Riley's gang membership."

Riley v. California, --- S.Ct. ----, 2014 WL 2864483

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Riley v. California (2014)

"Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans "the privacies of life." The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. …

Riley v. California, --- S.Ct. ----, 2014 WL 2864483

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Riley v. California (2014)

Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—**get a warrant**."

Riley v. California, --- S.Ct. ----, 2014 WL 2864483

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Riley v. California (2014)

"[E]ven though the search incident to arrest exception does not apply to cell phones, **other case-specific exceptions may still justify a warrantless search** of a particular phone. "One well-recognized exception applies when ' "the exigencies of the situation" make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.' …

Riley v. California, --- S.Ct. ----, 2014 WL 2864483

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Riley v. California (2014)

… Such exigencies could include the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury."

Riley v. California, --- S.Ct. ----, 2014 WL 2864483

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2.
Valid Stop and Frisk
(AKA The *Terry Stop*)

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Commentary

- Possession of a firearm is generally a *lawful* activity, especially under recent statutes
- Mere possession of a firearm does *not* provide ARS to believe criminal activity is afoot
- Officer may NOT disarm an individual without ARS to believe armed & dangerous
- Verbal encounters are lawful – officer can approach and engage in conversation
- May request license, *not* demand one!

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Terry v. Ohio (1968)

Q. What are the facts of
Terry v. Ohio?

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Stop and Frisk

- ***Stop*** means a temporary lawful detention of an individual short of an arrest
- ***Frisk*** means the lawful pat-down of an individual's outer clothing to determine if he or she is carrying a concealed weapon; a procedure not amounting to a full search

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Stop & Frisk

- A frisk must be justified by ARS that the suspect is armed and dangerous
- If an officer suspects a person is "armed and dangerous," it would be unreasonable to prevent the officer from disarming the suspect
- The sole reason for the frisk is to discover weapons to protect the officer and others
- A frisk can never be justified by the need to seize evidence

Terry v Ohio, 392 U.S. 1 (1968)

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Stop & Frisk

- The frisk must be strictly tied to and justified by the circumstances which initially rendered it permissible
- The frisk must be limited to that which is necessary for the search of weapons which may harm the officer or others
- A frisk is a serious intrusion upon the person being frisked

Terry v Ohio, 392 U.S. 1 (1968)

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Stop & Frisk

- A frisk can never be justified for "officer safety" circumstances without ARS
- The U.S. Supreme Court authorized the *Plain Feel Doctrine* during a valid stop and frisk in *Minnesota v. Dickerson* (1993)
- A frisk can also include the suspects automobile *Michigan v. Long*, (1983)

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ARS Explained

"Terry accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The *Terry* stop is a far more minimal intrusion, simply allowing the officer to briefly investigate further."

Illinois v. Wardlow, 528 U.S. 119 (2000)

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Stop & Frisk - Plain Feel Doctrine

- The *Plain Feel Doctrine* established by the U.S. Supreme Court in *Minnesota v. Dickerson:*
  1. An officer has ARS to frisk a suspect for weapons
  2. A pat down of the outer clothing is conducted
  3. An object is detected that is immediately recognizable as contraband without manipulation to determine its identity
  4. The officer may seize the item

Minnesota v. Dickerson, 508 U.S. 366 (1993)

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Howard v. State (2002)

GA.APP: "A *Terry* pat-down … is a minimal intrusion reasonably designed to discover guns, knives, clubs, or other weapons that could prove dangerous to a police officer. Under *Terry,* an officer is authorized to pat down a suspect's outer clothing. He may intrude beneath the surface in only two instances: (1) if he comes upon something that feels like a weapon, or (2) if he feels an object whose contour or mass makes its identity as contraband immediately apparent, i.e., the "plain feel" doctrine. …

Howard v. State, 253 Ga.App. 158 (2002)

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Howard v. State (2002)

… This is not to say that an officer must be absolutely positive that an object is a weapon in order to protect himself by looking to make sure. Officer safety is paramount. But, to satisfy the Fourth Amendment when dealing with what may be an unusual weapon, 'an officer must provide specific and articulable facts which reasonably support a suspicion that the particular suspect is armed with an atypical weapon which would feel like the object felt during the pat-down.'"

Howard v. State, 253 Ga.App. 158 (2002)

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Stop & Frisk - Vehicles

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Michigan v. Long (1983)

USSC: "Roadside encounters between police and suspects are especially hazardous, and danger may arise from the possible presence of weapons in the area surrounding a suspect. Thus, the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a …

Michigan v. Long, 463 U.S. 1032 (1983)

GPSTC

Michigan v. Long (1983)

… reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officer to believe that the suspect is dangerous and the suspect may gain immediate control of weapons."

Michigan v. Long, 463 U.S. 1032 (1983)

GPSTC

Stop & Frisk - Vehicles

When during a lawful encounter an officer has ARS that (1.) a suspect inside a vehicle, or (2.) the vehicle itself contains a weapon which may be used to harm the officer, he or she may frisk the suspect and search the vehicle passenger compartment for weapons. ARS that the suspect is *ARMED & DANGEROUS* is required, no different than outside a vehicle. Mere presence of a weapon is lawful under Georgia law and does not justify the intrusion.

GPSTC

2 Questions. 4 Possibilities.

Weapon in view?

Yes or No.

ARS?

Yes or No.

GPSTC

Weapon in view? No. ARS? No.

- Without legal authority (ARS) to believe an individual within the vehicle is armed and dangerous, an officer cannot lawfully frisk an individual or vehicle for weapons
- Maintain vigilance during all police – citizen encounters
- If you order an occupant out, always ask if they are armed (would be violating law if they step out with a concealed F/A w/o license)

GPSTC

State v. Jones (2008)

GA.APP: "Georgia decisions agree that in order to justify a search of a vehicle for weapons, some conduct on the part of the occupants such as furtive movements or other indications of danger to the officer must be shown, and the officer must have an "objectively reasonable" belief that the occupants of a vehicle are "potentially dangerous."

State v. Jones, 289 Ga.App. 176 (2008)

GPSTC

Weapon in view? Yes. ARS? No.

- Without ARS armed & dangerous, NO FRISK w/o consent
- 18 YOA+ not prohibited from possession of handgun/long gun anywhere on person within vehicle or within the vehicle itself
- <18 YOA may have unloaded weapon in vehicle in certain circumstances
- Officer may ***not*** access or remove weapon
- Officer may order the driver and/or passenger(s) from the vehicle

GPSTC

Bell v. State (2009)

"We recently concluded that an officer could not, as a matter of standard practice, seize a rifle in a vehicle to see if it might be stolen, noting that such a policy would improperly 'justif[y] the search of any vehicle occupied by hunters or sport shooters with their firearms, or any pickup truck with a rifle or shotgun on the rear window rack.' …

Bell v. State, 295 Ga.App. 607 (2009)

GPSTC

Bell v. State (2009)

… Similarly, to allow the search of [a suspect's] vehicle merely because a baton was present would arguably allow police to search the vehicle of any speeding motorist whose child left a baseball bat in the back seat."

Bell v. State, 295 Ga.App. 607 (2009)

GPSTC

Weapon in view? No. ARS? Yes.

- If there is an articulable reasonable suspicion of criminal activity and armed & dangerous, use extreme caution
- Use appropriate tactics, to include objectively reasonable force and verbal commands
- Frisk the suspect(s) for weapons
- If suspect(s) not secured, frisk may extend to vehicle for additional weapons

GPSTC

Silva v. State (2004)

FACTS: An officer observed Edward Silva driving 74 in a 45. The officer activated his blue lights in an attempt to stop Silva, but Silva did not pull over immediately. While Silva was still traveling at a high speed, the officer observed him leaning to his right at a severe angle, apparently placing his right hand underneath the passenger seat; Silva continued to drive in that position as he passed a stopped car, braked rapidly, changed lanes, and pulled to the right side of the road. Once Silva stopped, …

Silva v. State, 278 Ga. 506 (2004)

GPSTC

Silva v. State (2004)

… the officer approached from the passenger side, as he was concerned for his safety because of Silva's actions in front of the passenger seat. That window was open, and the officer asked Silva why he was speeding and what he had placed under the seat; Silva responded that he was in a hurry to get to his child, and that he had not placed anything under the seat, but was attempting to retrieve a cellular telephone. The officer had Silva exit the car …

Silva v. State, 278 Ga. 506 (2004)

GPSTC

Silva v. State (2004)

… and "patted him down" to ensure he had no weapons. After finding no weapons on his person, the officer looked underneath the passenger seat expecting to find a "weapon or something of that nature." He smelled unburned marijuana, discovered a brick of marijuana under the seat, and arrested Silva.

Silva v. State, 278 Ga. 506 (2004)

GPSTC

Silva v. State (2004)

GASC: "An officer who has detained an occupant of a motor vehicle may conduct a search founded on the reasonable belief, based on articulable facts and rational inferences, that the occupant may gain immediate control of a weapon. The fact that Silva was outside his car, standing by the officer's vehicle, when the search was conducted does not change the matter; a suspect re-entering his car after an investigative detention will have access to any weapon therein."

Silva v. State, 278 Ga. 506 (2004)

GPSTC

Weapon in view? Yes. ARS? Yes.

- If a suspect is armed, and there is an articulable reasonable suspicion of criminal activity, use extreme caution
- Use appropriate tactics, to include objectively reasonable force and verbal commands
- Disarm the suspect and frisk for additional weapons
- If suspect(s) not secured, frisk may extend to vehicle for additional weapons

GPSTC

Newby v. State (1986)

FACTS: "[O]fficers received a radio call that appellant may have been involved in an armed robbery a few minutes earlier. A car matching the description of the car used in the robbery entered the apartment complex at a fast rate of speed and started backing into a parking space in front of Newby's apartment. The officers blocked the car and ordered the four men in the car to get out. The police observed the butt …

Newby v. State, 178 Ga.App. 891 (1986)

GPSTC

Newby v. State (1986)

… of a gun sticking out of a green bag under the front passenger seat of the car where appellant had been sitting, and seized the bag and weapon. They then searched the passenger compartment of the car and found another pistol further back under the same seat."

Newby v. State, 178 Ga.App. 891 (1986)

GPSTC

State v. Snead (2014)

FACTS: A caller reported that a white pickup truck was parked near an intersection with the door open, and the caller was concerned because the vehicle had not left for some time. Ofc. Hensley located vehicle. He asked occupant, Snead, what he was doing (Snead was lying across the front seat). Snead responded he was visiting a friend. Snead appeared to be intoxicated. Hensley noticed an empty holster tucked above the seat of the truck.

State v. Snead, 2014 WL 1043813 Ga.App.,2014

GPSTC

State v. Snead (2014)

Officer Hensley asked Snead if he had a weapon in the vehicle, but Snead stated that the holster belonged to a friend, and that no weapon was in the vehicle. Ofc. Croyle arrived as backup and observed from the passenger side a silver handgun beside Snead's hand. Snead grabbed the weapon, finger in trigger guard. Both officers drew their weapons and commanded Snead to drop the pistol. He did so. …

State v. Snead, 2014 WL 1043813 Ga.App.,2014

GPSTC

State v. Snead (2014)

… Hensley removed Snead from the vehicle and walked him to the rear, but did not handcuff. Croyle opened the passenger door and secured the weapon, also observing MJ, powder and a spoon. A further search located additional minor contraband. The trial court found that opening the door to secure the weapon was unlawful, and the initial contraband was not in plain view from outside the vehicle.

State v. Snead, 2014 WL 1043813 Ga.App.,2014

GPSTC

State v. Snead (2014)

GA.APP: [Even if] "Officer Hensley had removed Snead to the rear of the vehicle by the time Croyle opened the door and secured the weapon, Officer Croyle was authorized to secure the weapon for both the officers' safety because Snead was not handcuffed at that point according to Officer Hensley. … [T]he entry into the vehicle was authorized to secure the known weapon and conduct a Terry-style protective sweep for others."

State v. Snead, 2014 WL 1043813 Ga.App.,2014

GPSTC

Stop & Frisk – Vehicles Conclusion

GPSTC

Vehicle Frisk Guidelines

1. Consider removal of driver and/or passengers when lawfully possessed weapon is in view. NO ARS means NO frisk, NO access w/o consent.
2. WITH ARS, remove suspect(s) from vehicle
3. Frisk suspect(s) FIRST
4. After disarming suspect(s), officer may then search the passenger compartment, limited to those areas in which a weapon may be placed or hidden if suspect(s) have continued access or will return to vehicle

GPSTC

3. Exigent Circumstances

GPSTC

Exigent Circumstances

USSC: "[W]arrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment."

Mincey v. Arizona, 437 U.S. 385 (1978)

GPSTC

Exigent Circumstances

"An officer may enter a home without a warrant if there are exigent circumstances which require the officer to act immediately."

Minor v. State, 298 Ga.App. 391 (2009)

GPSTC

Exigent Circumstances

Normally associated with four situations:

1. Prevent death or injury
2. Prevent destruction of evidence
3. Prevent immediate escape of a wanted person
4. Protection of property

GPSTC

Prevent Death or Injury

"*Held:* Police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury."

Brigham City v. Stuart, 547 U.S. 398 (2006)

GPSTC

Exigent Circumstances: Contraband Removed or Destroyed

- In U.S. v. Rubin, the 3rd Circuit Court of Appeals identified 5 circumstances which seem relevant to courts in deciding exigent circumstances cases. They are:
  1. The **degree of urgency** involved; and the time it would take to obtain a warrant
  2. Reasonable belief that the **contraband is about to be removed**

United States v. Rubin, 474 F.2d 262 (1973)

GPSTC

Exigent Circumstances: Contraband Removed or Destroyed

3. The possible **danger to police** guarding the site of the contraband while the search warrant is being obtained
4. Information that the **suspects are aware** that the police are on their trail
5. The **ready destructibility of the contraband**; the knowledge to dispose the contraband or to escape are characteristic behaviors of the suspects

United States v. Rubin, 474 F.2d 262 (1973)

GPSTC

Exigent Circumstances: Escape of a Wanted Person

"Exigent circumstances do not necessarily involve "hot pursuit" of a fleeing criminal. Factors which indicate exigent circumstances include:

(1) the **gravity or violent nature** of the offense with which the suspect is to be charged;

(2) a reasonable belief that the suspect is **armed**; …

U.S. v. Standridge, 810 F.2d 1034 C.A.11 (Ga.),1987

GPSTC

Exigent Circumstances: Escape of a Wanted Person

(3) **probable cause** to believe that the suspect committed the crime;

(4) strong **reason to believe** that the **suspect is in the premises** being entered;

(5) a likelihood that **delay could cause** the **escape** of the suspect or the **destruction** of essential **evidence**, or **jeopardize** the **safety** of officers or the public."

U.S. v. Standridge, 810 F.2d 1034 C.A.11 (Ga.),1987

GPSTC

State v. Venzen (2007)

Exigent circumstances existed where … officers properly knocked in order to serve arrest warrant at address named in warrant, defendant obviously knew that officers were present and that officers were aware of marijuana, since defendant opened door to them while holding burning marijuana cigarette, plainly obvious to both sight and smell, and had officers retreated to obtain warrant, neither defendant nor contraband would have been present on their return.

State v. Venzen, 286 Ga.App. 597 (2007)

GPSTC

Exigent Circumstances: Protection of Property

GA.APP: "[W]e note that exigent circumstances can exist even in situations where a dwelling appears to be unoccupied… Such circumstances may be found in emergency situations where the police **reasonably believe their assistance is required to protect property**."

Love v. State, 290 Ga.App. 486 (2008)

GPSTC

Kentucky v. King (2011)

USSC: "When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak. …

Kentucky v. King, 131 S.Ct. 1849 (2011)

GPSTC

Kentucky v. King (2011)

… When the police knock on a door but the occupants choose not to respond or to speak, "the investigation will have reached a conspicuously low point," and the occupants "will have the kind of warning that even the most elaborate security system cannot provide." …

Kentucky v. King, 131 S.Ct. 1849 (2011)

GPSTC

Kentucky v. King (2011)

… And even if an occupant chooses to open the door and speak with the officers, the occupant need not allow the officers to enter the premises and may refuse to answer any questions at any time.

Occupants who choose not to stand on their constitutional rights but instead elect to attempt to destroy evidence **have only themselves to blame** for the warrantless exigent-circumstances search that may ensue."

Kentucky v. King, 131 S.Ct. 1849 (2011)

GPSTC

Kentucky v. King (2011)

"[A] **warrantless entry based on exigent circumstances is reasonable** when the police did not create the exigency by **engaging or threatening to engage in conduct violating the Fourth Amendment**."

Kentucky v. King, 131 S.Ct. 1849 (2011)

GPSTC

4.
Valid Consent

GPSTC

Who Can Give Valid Consent?

1) Lawful **owner**, **possessor** or **custodian** of property
2) A **third party** who possesses common authority over, or other sufficient relationship to, the premises or effects sought to be inspected
   - Only if the third party has **access** to the area searched and has **common authority** over the area, or a **substantial interest** in the area, or **permission to gain access**

GPSTC

Valid Consent

- Merely requesting consent for a search is not a seizure and does not require an articulable suspicion

  Stovall v. State, 251 Ga. App. 7 (2001)

- Once a voluntary consent to search is legally obtained, it continues until it either is revoked or withdrawn

  Brint v. State, 306 Ga. App. 10 (2010)

GPSTC

Valid Consent

- A valid consent eliminates an officer's need for probable cause or a search warrant

  Carter v. State, 319 Ga.App. 624 (2013)

- *However*, consent to search is not consent to seize!
- An officer may only seize items which s/he has probable cause to believe possession is unlawful, (i.e. stolen, embezzled property, contraband, instrumentalities or fruits of the crime) – OR – with consent for lawful items

GPSTC

Illinois v. Rodriguez (1990)

USSC: "[D]etermination of consent to enter must "be judged against an objective standard: would the facts available to the officer at the moment ... 'warrant a man of reasonable caution in the belief' " that the consenting party had authority over the premises? If not, then warrantless entry without further inquiry is unlawful unless authority actually exists. But if so, the search is valid.

Illinois v. Rodriguez, 497 U.S. 177 (1990)

GPSTC

Actual or Apparent Authority

- Possible factors suggested in (non-binding) 7th Circuit decision:
  - Possession of keys to residence
  - Person's admission they live at residence
  - Possession of driver's license listing residence as their address
  - Receiving mail and bills at the residence
  - Keeping clothing at residence
  - Having one's children reside at that address
  - Keeping personal belongings such as a diary or pet at the residence
  - Performing household chores at the residence
  - Being on lease for premises and/or paying rent
  - Being allowed into the home when the owner is not present

U.S. v. Groves, 530 F.3d 506 (7th Cir. 2008)

GPSTC

Schneckloth v. Bustamonte (1973)

USSC: "[T]he 4th and 14th Amendments require that [the state] demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied. **Voluntariness is a question of fact to be determined from all the circumstances**, and while the subject's knowledge of a right to refuse is a factor to be taken into account."

Schneckloth v. Bustamonte, 412 U.S. 218 (1973)

GPSTC

Schneckloth v. Bustamonte (1973)

…, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent."

Schneckloth v. Bustamonte, 412 U.S. 218 (1973)

GPSTC

Valid Consent: Circumstances

- The validity of a defendant's consent is determined by the totality of circumstances
  - The absence of proof that the defendant knew he could withhold his consent does not alone prevent the consent from being valid.

    Schneckloth v. Bustamonte, 412 U.S. 218 (1973)
  - The fact that the defendant was in custody at the time consent was given does not alone show that it was coerced.

    Mann v. The State, 196 Ga.App. 730 (1990)

GPSTC

Valid Consent: Circumstances

GA.APP: "When an officer represents to an accused that a warrant to search will be obtained if consent is refused, and does not have probable cause to secure the warrant, then the accused's consent is invalid."

Darby v. The State, 216 Ga.App. 781 (1995)

GPSTC

Valid Consent: Scope

- The **intrusiveness** of a consent search is **limited by the permission granted**, and only that which is reasonably understood from the consent may be undertaken
- The standard for measuring the scope of a suspect's consent is that of objective reasonableness - **what a typical reasonable person would have understood by the exchange** between the police officer and the suspect

State v. Neese, 302 Ga. App. 829 (2010)

GPSTC

Age of Consenter

- Q. Can a minor consent to a search?
- Q. How old must a person be to consent to a search?

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Adkins v. The State (1984)

FACTS: A consent was given by a minor in a case involving a burglary of sewer machinery and hardware from a housing authority building. The search resulted in the recovery of the stolen property and the arrest and conviction of defendant (Adkins). On appeal, Adkins asked the court to rule his brother, 17 YOA, a juvenile, was not authorized to give the police consent to search as a matter of law due to age.

Adkins v. The State, 173 Ga.App. 9 (1984)

GPSTC

Adkins v. The State (1984)

GA.APP developed the "Adkins Factors" as a guide when evaluating consent searches by juveniles. These factors are:

1. Whether the minor **lived on the premises**;
2. Whether the minor had a **right of access** to the premises and the **right to invite others** thereto;

GPSTC

Adkins v. The State (1984)

3. Whether the minor was of an age at which he or she could be expected to exercise at least **minimal discretion**; and
4. Whether **officers acted reasonably** in believing that the minor had sufficient control over the premises to give a valid consent to search

Adkins v. The State, 173 Ga.App. 9 (1984)

GPSTC

Georgia v. Randolph (2006)

In *Georgia v. Randolph*, the U.S. Supreme Court affirmed the judgment of the Supreme Court of Georgia, making clear that the warrantless search of a marital residence, on the basis of consent given to police by defendant's wife, was unreasonable and invalid as to the defendant, who was physically present and expressly refused to consent.

Georgia v. Randolph, 547 U.S. 103 (2006)

GPSTC

Fernandez v. California (2014)

FACTS: During a domestic violence investigation, Fernandez came to door and refused consent to enter for a protective sweep. He was arrested and removed. An hour later, officers returned and obtained consent to search from the co-tenant (victim).

Fernandez v. California, 123 S.Ct. 1126 (2014)

GPSTC

Fernandez v. California (2014)

USSC: Although Fernandez had refused consent, LEOs arrested him and had objectively reasonable grounds to remove him from his home. *Randolph* does not extend to this situation, where co-tenant's consent was provided well after petitioner had been removed from their apartment.

Fernandez v. California, 123 S.Ct. 1126 (2014)

GPSTC

Traffic Stops

There are basically four ways a patrol officer or other law enforcement officer may lawfully request a consent to search of a motor vehicle. They are:

1. **During the conduct of the stop.**

Henderson v. The State, 250 Ga.App 278 (2001)

2. **Initiating a "consensual encounter" at the end of the traffic stop.**

Daniel v. The State, 260 Ga.App 732 (2003)

GPSTC

Traffic Stops

3. **"Immediately" at the end of the traffic stop.**

Anderson v. The State, 265 Ga.App. 146 (2004)

4. **Consent to search can be requested upon development of ARS in addition to the legal authority authorizing the stop of the vehicle.**

Robinson v. The State, 295 Ga.App. 136 (2008)

GPSTC

5.
Hot Pursuit

GPSTC

Warden v. Hayden (1967)

USSC: "The police were informed that an armed robbery had taken place, and that the suspect had entered 2111 Cocoa Lane less than five minutes before they reached it. They acted reasonably when they entered the house and began to search for a man of the description they had been given and for weapons which he had used in the robbery or might use against them. The Fourth Amendment does not require police officers to delay in the …

Warden v. Hayden, 387 U.S. 294 (1967)

GPSTC

Warden v. Hayden (1967)

… course of an investigation if to do so would gravely endanger their lives or the lives of others. Speed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons which could be used against them or to effect an escape."

Warden v. Hayden, 387 U.S. 294 (1967)

GPSTC

Hot Pursuit

- Suspect committed an **arrestable offense** (felony or misdemeanor)

State v. Nichols, 225 Ga.App. 609 (1997)

- Suspect **fled** from the crime **scene and/or law enforcement officers**
- **Defendant is aware** of police pursuit, therefore likely to disappear or destroy evidence

U.S. v. Santana, 427 U.S. 38 (1976)

GPSTC

Hot Pursuit

- In *Darby v. State*, the Georgia Court of Appeals ruled that two critical elements which need to be satisfied in hot pursuit are:
  1. **Continuity of pursuit**
  2. **Immediacy of pursuit**

Darby v. The State, 216 Ga.App. 781 (1995)

GPSTC

Hot Pursuit

GA.APP: "Hot pursuit" permitting an officer to enter a home to arrest a suspect in the absence of a warrant need not involve a high speed chase through public streets… the key to "hot pursuit" is that the defendant is aware he is being pursued by the police, and is therefore likely to disappear or destroy evidence of his wrongdoing if the officer takes the time to get a warrant.

Anderson v. State, 265 Ga.App. 428 (2004)

GPSTC

Hot Pursuit

GA.APP: "A suspect may not defeat an arrest which has been set in motion in a public place by escaping to a private place. Essential to hot pursuit is that "the defendant [be] aware [that] he is being pursued by the police," and that the officer in hot pursuit "reasonably fears the imminent destruction of evidence if entry into the residence is not immediately effected, and where an officer reasonably perceives that a suspect within the dwelling poses a risk of danger to the police or others. "

Ahmed v. State, 322 Ga.App. 154 (2013)

GPSTC

Hot Pursuit

Under the doctrine of hot pursuit the officer is not required to arrest the suspect at the first opportunity, but may, and should, wait to stop and arrest the suspect at the first opportunity which is safe for all concerned, the officer, the suspect, and other motorists.

Margerum v. State, 260 Ga.App. 398 (2003)

GPSTC

6.
Plain View

GPSTC

Plain View

USSC: "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection."

Katz v. United States, 389 U.S. 347 (1967)

GPSTC

Plain View

- The *plain view* exception to the warrant is based on the theory that the discovery of the incriminating evidence was not the result of a search
- The U.S. Supreme Court established *plain view doctrine* as we know it today in *Horton v. California* (1990), requiring three conditions

GPSTC

Plain View

1. The officer **must not violate the 4th Amendment to arrive at the location** where the observation is made
2. It must be **immediately apparent** that the seized item(s) are evidence, fruits of the crime, or contraband
3. The officer must **lawfully access** the item

Horton v. California, 496 U.S. 128 (1990)

GPSTC

Plain View

- In *Horton v. California* (1990), the U.S. Supreme Court held that the inadvertence requirement is not a requirement for *plain view*. This was originally a 4th requirement under the original doctrine established in *Coolidge v. New Hampshire* (1971).

Horton v. California, 496 U.S. 128 (1990)
Coolidge v. New Hampshire, 403 U.S. 443 (1971)

GPSTC

Plain View

GA.APP: "A police officer may seize what is in plain sight if … as here, he is in a place where he is constitutionally entitled to be. And where such a plain-view seizure takes place, there is in effect no search at all. This holds true whether or not the officer expected or suspected that he would discover the object seized. And it holds true whether the object seized is spied with the aid of a flashlight or the naked eye."

Galloway v. State, 178 Ga.App. 31 (1986)

GPSTC

Plain View

- The *plain view doctrine* establishes probable cause – however, it does not provide any additional legal authority to access the object if it is within an area with reasonable expectation of privacy. The officer must already have lawful access, a warrant, consent or exigent circumstances.
- Examples?

GPSTC

Vantage Point

GASC: "The critical issue in this case is the location of the officer when he first saw what he suspected was contraband. … The officer's observation of the contraband from outside the apartment and his recognition of it as contraband, standing alone, did not authorize the officer to make a warrantless entry into the apartment to arrest the occupants and seize the material."

State v. David, 269 Ga. 533 (1998)

GPSTC

Vantage Point

However, this entry "was justified by classic exigent circumstances: the likelihood that the contraband was in danger of immediate destruction, as it was undisputed that the officer saw one of the apartment's occupants attempt to conceal the contraband upon seeing the officer at the open door."

State v. David, 269 Ga. 533 (1998)

GPSTC

Vantage Point

USSC: "[T]here is no constitutional difference between police observations conducted while in a public place and while standing in the open fields."

U.S. v. Dunn, 480 U.S. 294 (1987)

GPSTC

What About *Plain Smell?*

GPSTC

Use of Drug K-9 to Establish PC

"[A] well-trained dog's alert establishes a fair probability—all that is required for probable cause—that either drugs or evidence of a drug crime … will be found."

Florida v. Harris 133 S.Ct. 1050 (2013)

GPSTC

Use of Officer's Senses

In *State v. Folk*, the Georgia Court of Appeals held that a trained police officer's perception of the odor of burning marijuana, provided his ability to identify that odor is place into evidence, constitutes sufficient probable cause to support the warrantless search of a vehicle.

State v. Folk, 238 Ga.App. 206 (1999)

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Use of Officer's Senses

In *King v. State,* a police officer was found qualified to detect odor of unburned marijuana coming from trunk of defendant's car, as basis for search, where the officer had come in contact with large quantities of unburned marijuana, and had formal training in detecting odor of unburned marijuana.

King v. State, 267 Ga.App. 546 (2004)

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Florida v. Jardines (2013)

The customary invitation of homeowners allowing visitors to approach a home and knock on the front door did not constitute an implied license by defendant homeowner for law enforcement officers to physically invade the curtilage of his home in order to conduct a search by using a drug-sniffing dog on the front porch of the home to investigate an unverified tip that marijuana was being grown in the home.

Florida v. Jardines, 133 S.Ct. 1409 (2013)

GPSTC

7.
Abandoned Property

GPSTC

Abandoned Property

Abandoned property may generally be searched without a warrant. Sometimes such a warrantless search is said to be valid because the owner has no standing or expectation of privacy.

GPSTC

Abandoned Property

"Abandonment is primarily **a question of intent**, and intent may be inferred from **words spoken, acts done, and other objective facts**. All relevant circumstances existing at the time of the alleged abandonment should be considered. Police pursuit or the existence of a police investigation does not of itself render abandonment involuntary. …

Keilholtz v. The State, 261 Ga.App. 1 (2003)

GPSTC

Abandoned Property

"The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that **he could no longer retain a reasonable expectation of privacy** with regard to it at the time of the search."

Keilholtz v. The State, 261 Ga.App. 1 (2003)

GPSTC

Abandoned Property

Examples of abandoned property include:

- Abandoning a vehicle following a police chase

  Whitlock v The State, 124 Ga.App. 599 (1971)
- Dropping or throwing contraband away while being followed or approached by the police

  Green v. The State, 127 Ga.App. 713 (1972)
- Denial of ownership while in possession of item or contraband

  Keilholtz v. The State, 261 Ga.App. 1 (2003)

GPSTC

8. Open Fields

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Open Fields

Open Fields have no reasonable expectation of privacy and are therefore not subject to 4th Amendment protection. To understand *Open Fields*, one must also fully understand what is meant by *Curtilage*.

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Oliver v. U.S. (1984)

USSC: "It is clear … that the term "open fields" may include any unoccupied or undeveloped area outside of the curtilage. **An open field need be neither "open" nor a "field"** as those terms are used in common speech."

Oliver v. U.S., 466 U.S. 170 (1984)

GPSTC

Oliver v. U.S. (1984)

"We conclude, from the text of the Fourth Amendment and from the historical and contemporary understanding of its purposes, that **an individual has no legitimate expectation that open fields will remain free from warrantless intrusion by government officers**."

Oliver v. U.S., 466 U.S. 170 (1984)

GPSTC

Oliver v. U.S. (1984)

Thus, "only the curtilage, not the neighboring open fields, warrants the Fourth Amendment protections that attach to the home."

Oliver v. U.S., 466 U.S. 170 (1984)

GPSTC

Phillips v. State (2006)

GA.APP: "The Georgia Supreme Court defined curtilage as "the yards and grounds of a particular address, its gardens, barns, and buildings." The United States Supreme Court held that "the extent of the curtilage is determined by factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself," with "the central component of this inquiry" being "whether the area harbors the intimate activity associated with the 'sanctity of a [person's] home and the privacies of life.' "

Phillips v. State, 279 Ga.App. 243 (2006)

GPSTC

Phillips v. State (2006)

- The **proximity** of the area claimed to be curtilage;
- Whether the area is included within an **enclosure** surrounding the home;
- The **nature of the** uses to which the **area** is put; and
- The **steps taken** by the resident **to protect the area from observation** by people passing by."

Phillips v. State, 279 Ga.App. 243 (2006)

GPSTC

Manley v. The State (1995)

The posting of **no trespassing signs** and **no hunting signs** on defendant's property **did not create a zone of privacy** in which entry by law enforcement officers was forbidden, so as to make a DNR officer's entry onto property during investigation of a hunting site for violation of hunting laws a trespass, nor his return to destroy Marijuana plants (found 1st visit).

Manley v. The State, 217 Ga.App. 556 (1995)

GPSTC

Business & Commercial

"Offices and stores and other business and commercial premises are also entitled to protection against unreasonable searches and seizures, though the nature of these premises is such that much police investigative activity directed at them will not constitute a search. Thus, "as an ordinary matter law enforcement officials may accept a general public invitation to enter commercial premises," which means they may enter those premises at the times they are open to the public and may explore…

Westlaw Criminal Procedure Database 2011

GPSTC

Business & Commercial

… those portions of the premises to which the public has ready access, including the examination of articles available for inspection by potential customers or other visitors. On the other hand, it is a search for police to enter without consent premises to which the public at large does not have access, such as the work area of a factory or a private club open only to members."

Westlaw Criminal Procedure Database 2011

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B&C with Exigent Circumstances

GA.APP: "[W]e hold that officers who find an apparently closed business unlocked during a normal security sweep may conduct a limited intrusion on the business premises for the sole purpose of securing the area and ensuring no intruders are present."

Banks v. State, 229 Ga.App. 414 (1997)

GPSTC

B&C with Exigent Circumstances

"Rather than create a wholesale license for officers to enter unlocked commercial premises after business hours, we hold that such an intrusion will be proper only when it is justified by an officer's **reasonable belief** that (1) the building's **owner** or **rightful occupants would not object** to the intrusion, and (2) circumstances are sufficient to give the officer an "**articulable suspicion**" that **unauthorized persons are presently on the premises**."

Banks v. State, 229 Ga.App. 414 (1997)

GPSTC

Route to Door

GA.APP: "[U]nder the Fourth Amendment, police officers are **prohibited** from entering a person's home or its curtilage without a warrant absent consent or a showing of exigent circumstances." This broad rule is **subject to the exception** that any visitor, including a police officer, may enter the curtilage of a house when that visitor takes "**the same route as would any guest**, deliveryman, postal employee, or other caller."

State v. Gravitt, 289 Ga.App. 868 (2008)

GPSTC

Back Door?

GA.APP: "[P]olice may approach the side door or the back door of a residence ... under certain circumstances, such as ... where no one answers the front door." **Under other circumstances**, however, an officer's entry into a person's back yard is **not permissible**, such as to secure the property or for the purpose of instigating a search."

State v. Watson, 292 Ga.App. 831 (2008)

GPSTC

9.
Administrative Searches

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Administrative Searches

- Generally, any search which is authorized by someone other than a judge, and which is not based on probable cause, is an administrative search:
  - School searches
  - Government property
  - Vehicle impound inventory
  - Inspections
  - Roadblocks

GPSTC

School Searches

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School Searches

- Searches of students and school property such as desks, lockers, and property controlled by the school based on the authorization of a school administrator, i.e....school principal's search may be lawful even in the absence of probable cause or a search warrant.

The State v. Young, 234 Ga. 488 (1975)

GPSTC

New Jersey v. T.L.O. (1985)

USSC: "Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are **reasonable grounds** for suspecting that the search will turn up **evidence** that the student has violated or is violating either the **law** or the **rules of the school**.

New Jersey v. T.L.O., 469 U.S. 325 (1985)

GPSTC

Who is Searching?

- Searches in the school setting could be conducted by three groups of persons:
  1. Private individuals – **no 4th** protection
  2. Public school officials – **4th** protection, **but no exclusionary rule**
  3. Law enforcement personnel – **4th** protection, **& exclusionary rule** applies
- An SRO is considered a LEO, not a school official

Ortiz v. State, 306 Ga.App. 598 (2010)

GPSTC

The State v. Young (1975)

GASC: "[A]ction by school officials will pass constitutional muster only if those officials are acting in their proper capacity and the search is **free of involvement by law enforcement personnel**."

The State v. Young, 234 Ga. 488, (1975)

GPSTC

Ortiz v. State (2010)

GA.APP: "In Georgia, school officials may search 'subject only to the most minimal restraints necessary to insure that students are not whimsically stripped of personal privacy and subjected to petty tyranny.'"

Ortiz v. State, 306 Ga.App. 598 (2010)

GPSTC

Government Property

Government Property

- A government workplace can often (*not always*) be searched w/o warrant or consent
- "Workplace" includes those areas and items related to work and generally within the employer's control, including offices, desks, filing cabinets, computers & government vehicles
  - Not personal belongings unless the personal property is being used as part of the workplace

O'Connor v. Ortega (1987)

- Prior notice to *E*, such as through use of computer banners, that limit REOP or state that none exists;
- common practices and procedures of the employer;
- openness and accessibility to the area or item
- whether the position of the employee requires a special trust and confidence (e.g., a position that has security requirements);
- whether the *E* has waived any REOP in the workplace, such as through collective bargaining

O'Connor v. Ortega, 480 U.S. 709 (1987)

When REOP Exists:

- Supervisor may search while looking for work-related items
- With reasonable suspicion of work-related misconduct, (whether or not criminal), can search limited to areas where evidence of misconduct could be located
- However, the 4th Amendment applies fully when the search is for evidence of criminal misconduct unrelated to work

O'Connor v. Ortega, 480 U.S. 709 (1987)

Impound Inventory

Impound Inventory

In all cases when an officer decides to impound a vehicle, the officer should refer to his or her agency policy and follow the policy guidelines. Such action eliminates later claims that the officer was working outside the SOP guidelines. Failure to abide by agency impound policy will likely result in suppression of evidence seized.

Impound Inventory

The U.S. Supreme Court and the Georgia Courts have ruled inventory searches reasonable because they serve three legitimate interests: **(1)** protection of the **property** while in custody; **(2)** protection of the **police from potential dangers**; and **(3)** protection of the **police against claims** of lost or stolen property.

South Dakota v. Opperman, 428 U.S. 364 (1976)

*Since 1995, Georgia cases only refer to (1) and (3).

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State v. Carter (2010)

GA.APP: "In the interests of public safety and as part of what the Court has called 'community caretaking functions,' automobiles are frequently taken into police custody. The police may inventory the contents of a vehicle that has been lawfully impounded, but they **may not use an impoundment or inventory as a medium to search for contraband**. The individual's right of privacy is superior to the power of police to impound a vehicle unnecessarily."

State v. Carter, 305 Ga. App. 814 (2010)

GPSTC

Strobhert v. State (1983)

GA.APP: "This court has long held "the view that when a driver is arrested and a reliable friend is present who may be authorized and capable of removing the vehicle, or where the arrestee expresses some preference for a private towing service, the rationale for impoundment does not exist."

Strobhert v. State, 165 Ga. App. 515 (1983)

GPSTC

Impound Inventory

GA.APP: "The test under the Fourth Amendment 'is **whether the impoundment was reasonably necessary** under the circumstances, not whether it was absolutely necessary.'"

Armstrong v. State, 754 S.E.2d 652 (2014)

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Inspections

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Camara v. Municipal Court (1967)

In *Camara v. Municipal Court*, USSC held that government inspectors (health, safety, fire…) could not enter a private premises without a search warrant in absence of consent or exigent circumstances. An *administrative warrant* must be obtained, demonstrating "reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular building."

Camara v. Municipal Court, 387 U.S. 523 (1967)

GPSTC

Michigan v. Clifford (1984)

Beyond extinguishing a fire and initial cause & origin determination, fire investigators must comply with the *administrative warrant* requirement for a return inspection, or a *search warrant* when probable cause exists to search for evidence of a crime when REOP exists, even in a structure damaged by fire.

Michigan v. Clifford, 464 U.S. 287 (1984)

GPSTC

Roadblocks & Checkpoints

GPSTC

Delaware v. Prouse (1979)

A patrolman stopped an automobile occupied by respondent and seized marihuana *(sic)* in plain view. Officer He testified that he made the stop only in order to check the driver's license and the car's registration. The patrolman was not acting pursuant to any standards, guidelines, or procedures. U.S.S.C. held the seizure unlawful, in violation of the 4th Amendment.

Delaware v. Prouse, 440 U.S. 648 (1979)

GPSTC

Delaware v. Prouse (1979)

However, the Court did not preclude the states from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. "Questioning of all oncoming traffic at roadblock-type stops is one possible alternative."

Delaware v. Prouse, 440 U.S. 648 (1979)

GPSTC

U.S. v. Martinez-Fuerte (1976)

Martinez-Fuerte and others were charged with transporting illegal Mexican aliens. They were stopped at a routine fixed checkpoint for brief questioning of the vehicle's occupants on a major highway not far from the Mexican border. U.S.S.C. approved fixed checkpoints as consistent with the 4th Amendment, and the stops and questioning in absence of individualized suspicion that the particular vehicle contains illegal aliens.

U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976)

GPSTC

Michigan v. Sitz (1990)

Michigan's sobriety checkpoint program, under which all vehicles are stopped and their drivers briefly examined for signs of intoxication, did not violate Fourth Amendment. The balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program.

Michigan v. Sitz, 496 U.S. 444 (1990)

GPSTC

Indianapolis v. Edmond (2000)

USSC held that drug interdiction checkpoints were *not* reasonable. "[T]he Court has never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing." Policy must be set at the programmatic level to ensure checkpoints are established for a lawful purpose.

City of Indianapolis v. Edmond, 531 U.S. 32 (2000)

GPSTC

Indianapolis v. Edmond (2000)

However, the 4th Amendment, "would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route."

City of Indianapolis v. Edmond, 531 U.S. 32 (2000)

GPSTC

Illinois v. Lidster (2004)

Police were looking for witnesses to a recent hit-and-run fatality accident on the same highway. All motorists were systematically stopped at a checkpoint where LEOs distributed a flyer and asked for information. The roadblock was held to be reasonable and did not violate the 4th Amendment rights of Lidster who was arrested for DUI. The relative public concern was grave, the stop advanced that concern to a significant degree, and the stop interfered only minimally with liberty of the sort the Fourth Amendment seeks to protect.

Illinois v. Lidster, 540 U.S. 419 (2004)

GPSTC

LaFontaine v. State (1998)

GASC: "A roadblock is satisfactory where the **decision** to implement the roadblock was made by **supervisory personnel** rather than the officers in the field; **all vehicles** are **stopped** as opposed to random vehicle stops; the **delay** to motorists is **minimal**; the roadblock operation is **well identified** as a police **checkpoint**; and the "**screening**" **officer's training** and **experience is sufficient** to qualify him to make an initial determination as to which motorists should be given field tests for intoxication."

Lafontaine v. State, 269 Ga. 251 (1998)

GPSTC

Brown v. State (2013)

A checkpoint does not violate the 4th Amendment solely because the supervisor who authorized the checkpoint later participates to some extent in the checkpoint's operation; however, use caution - it can raise questions about whether the decision to implement the checkpoint was really made by the supervisor in advance rather than as an officer out in the field, particularly where the supervisor did not document when the decision was made.

Brown v. State, 293 Ga. 787 (2013)

GPSTC

Williams v. State (2013)

GASC: "[T]he State failed to prove that the Bibb County Sheriff's Office roadblock *program* had an appropriate primary purpose other than advancing "the general interest in crime control," as required by *City of Indianapolis v. Edmond*."

Williams v. State, 293 Ga. 883 (2013)

GPSTC

10.
Probationers, Parolees & Inmates
(*4th Amendment Waivers*)

GPSTC

Pre-Trial & Convicted Prisoners

- Search of vehicle beyond the prison "guard line" authorized when posted

  Howard v. State, 185 Ga.App. 465 (1988)
- Jail intake procedures may include strip searches of prisoners

  Florence v. Board of Chosen Freeholders of County of Burlington, 132 S.Ct. 1510 (2012)
- Buccal swab approved as reasonable booking procedure for serious offenses

  Maryland v. King, 133 S.Ct. 1958 (2013)

GPSTC

State v. Henderson (1999)

A pre-trial detainee retains a limited but legitimate expectation of privacy that he would be protected from an unreasonable search under the Fourth Amendment, under circumstances where the search of the pre-trial detainee's cell is instigated or conducted by representatives of the prosecution solely for the purpose of uncovering incriminating evidence which could be used at trial, rather than out of concern for any legitimate prison objectives.

State v. Henderson, 271 Ga. 264 (1999)

GPSTC

Probation & Parole

- **Probation officers** may search a **probationer** as a condition of probation
- **Parole officers** may search a **parolee** as a condition of parole
- **LEOs cannot** search a probationer or parolee **unless specifically aware of** authority to conduct such a search, aka "**4th Amendment waiver**," that may exist as a condition their release

GPSTC

4th Amendment Waivers

As a condition of probation, a court may require a defendant to waive 4th amendment rights to search & seizure of their person, vehicle and home.

U.S. v. Knights, 534 U.S. 112 (2001)

GPSTC

Hess v. The State (2009)

GA.APP: "We have held that as a general rule, the police can search a probationer, who is subject to [a waiver of Fourth Amendment rights as] a special condition of probation, at any time, day or night, and with or without a warrant, provided there exists a **reasonable or good-faith suspicion** for search, that is, the police must not merely be acting in bad faith or in an arbitrary and capricious manner (such as searching to harass probationer)."

Hess v. The State, 296 Ga.App. 300 (2009)

GPSTC

11.
Airport & Mass Transit Searches

GPSTC

Airport Searches

- Originated due to hijackings in the 60's & 70's, renewed concern following 9/11 attack
- TSA: Magnetometer, X-ray, K-9 & frisks of passengers, carry-on and checked bags
- Search in an airport gate area or security checkpoint ....does not require probable cause or even reasonable suspicion, but instead 'mere suspicion of possible illegal activity'

United States v. Herzbrun, 723 F.2d 773 (11th Cir. 1984)

GPSTC

Mass Transit

- TSA established VIPR (Visible Intermodal Prevention & Response Teams) to perform random baggage & security checks at passenger train, subway, bus & truck weigh stations
- Thus far, legal challenges to mass transit searches have proven unsuccessful

GPSTC

12.
Border Searches

GPSTC

Border Searches

- A search at a border incident to the entrance of a person into the United States is not protected by the Fourth Amendment; hence, there is no warrant requirement for such searches.

Q. Georgia has international borders a well. What are they?

GPSTC

Border Searches

USSC: "**Searches made at the border**, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, **are reasonable simply by virtue of the fact that they occur at the border**."

U.S. v. Flores-Montano, 541 U.S. 149 (2004)

GPSTC

13.
Courthouses and Public Buildings

GPSTC

Courthouses and Public Buildings

- A trial Judge has the inherent power to preserve order in his/her court and see to it that justice is not obstructed.....
- In *McMorris v. Alioto*, the court in effect approved the requirement that persons entering a courthouse must pass through a metal detector.

McMorris v. Alioto, 567 F.2d 897 (9th Cir.) (1978)

GPSTC

Courthouses and Public Buildings

- In authorizing searches of courthouses and other government buildings, the courts recognized the very real threat to public safety that arose from the "outburst of acts of violence, bombings of federal buildings, and hundreds of bomb threats, resulting in massive evacuations of federal property" throughout the country.

Downing v. Kunzig, 454 F.2d. 1230, 1231 (6th Cir. 1972)

GPSTC

Courthouses and Public Buildings

- Briefcases and articles capable of concealing weapons are also subject to inspection.
- More severe methods of court room and public building security can be, and have been, used depending on the situation, the theory of consent, or of the inherent power of the court to maintain order.

GPSTC

14.
Places of Recreation and Entertainment & General Public Events

GPSTC

Places of Recreation and Entertainment

- Several cases have arisen where spectators were required to submit to a search for drugs, alcohol, or weapons as a prerequisite to the right to enter a stadium or some other such facility
- For the following reasons, such searches have been held to be unconstitutional if the result of government action:

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Places of Recreation and Entertainment

1. There is **no** showing of **public necessity**
2. The **intensity** required of such a search, if it is to be effective, **is intolerable**
3. The searches have been used on a **selective basis**

GPSTC

Johnson v. Tampa Sports Authority (2008)

11TH: A season ticket holder to professional football team voluntarily consented to pat-down searches at entrance of football stadium, and searches thus did not violate his right under Federal and Florida Constitutions to be free of unreasonable searches; the ticket holder was not in custody but presented himself willingly at search point, he was aware of his right …

Johnson v. Tampa Sports Authority, 530 F.3d 1320 (2008)

GPSTC

Johnson v. Tampa Sports Authority (2008)

… not to submit to search, the searches served vital interest of guarding against mass casualties from potential terrorist attack, and, because government had no role in formulating or mandating pat-down policy, **unconstitutional conditions doctrine did not apply**.

Johnson v. Tampa Sports Authority, 530 F.3d 1320 (2008)

GPSTC

General Public Events & Free Speech Concerns

GPSTC

General Public Events

- For a "**special need**," there must be some **definitive basis** for believing that the existence of a **threat**--terrorist or otherwise--**is real and not imagined**.

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Bourgeois v. Peters, (2004)

"The plaintiffs in this case are an organization called "School of the Americas Watch" ("SAW") and several of its members, including SAW's founder, Rev. Roy Bourgeois. The group engages in various forms of nonviolent protest, seeking to pressure the federal government to cut funding to the Western Hemisphere Institute for Security Cooperation, better known as the "School of the Americas" (SOA).

Bourgeois v. Peters, 387 F.3d 1303 C.A.11 (Ga.) (2004)

GPSTC

Bourgeois v. Peters, (2004)

"The SOA is run by the United States Army and housed at Fort Benning, Georgia. It trains military leaders from other countries throughout the Western Hemisphere in combat and various counterinsurgency techniques. … As part of its ongoing efforts to shut down the SOA, the SAW engages in an annual protest each November on property open to the public immediately outside of Fort Benning.

Bourgeois v. Peters, 387 F.3d 1303 C.A.11 (Ga.) (2004)

GPSTC

Bourgeois v. Peters, (2004)

"Approximately 15,000 people attend the demonstration each year. Throughout the thirteen-year history of these protests, no weapons have ever been found at the protest site, and no protestor has ever been arrested for an act of violence. Each year, however, a small number of protestors violate 18 U.S.C. § 1382 by entering onto Fort Benning and attempting to march to the SOA, which is actually located a

Bourgeois v. Peters, 387 F.3d 1303 C.A.11 (Ga.) (2004)

GPSTC

Bourgeois v. Peters, (2004)

"few miles inside the base. In November 2002, a week before that year's protest, the City of Columbus ("the City") instituted a policy requiring everyone wishing to participate in the protest to submit to a magnetometer (essentially, a metal detector) search at a checkpoint "a couple of long city blocks" away from the SAW protest site.

Bourgeois v. Peters, 387 F.3d 1303 C.A.11 (Ga.) (2004)

GPSTC

Bourgeois v. Peters, (2004)

11TH: The policy violated protestors' 4th Amendment right to be free of unreasonable searches and seizures; the policy did not fall within special needs exception to 4th Amendment's warrant and probable cause requirement; the policy was a burden on free speech and association in violation of the 1st Amendment, given that there were no objective, established standards for the police chief to utilize in making the decision to conduct the searches.

Bourgeois v. Peters, 387 F.3d 1303 C.A.11 (Ga.) (2004)

GPSTC

Bourgeois v. Peters, (2004)

"While the threat of terrorism is omnipresent, we cannot use it as the basis for restricting the scope of the Fourth Amendment's protections in any large gathering of people. In the absence of some reason to believe that international terrorists would target or infiltrate this protest, there is no basis for using September 11 as an excuse for searching the protestors."

Bourgeois v. Peters, 387 F.3d 1303 C.A.11 (Ga.) (2004)

GPSTC

Bourgeois v. Peters, (2004)

"We emphasize that, in establishing such a general policy for determining the specific occasions on which mass searches may be implemented, legislatures or municipal governing bodies must establish specific criteria susceptible to judicial review. They may not simply craft ordinances permitting mass searches 'when public safety so requires' or 'when the Chief shall deem it advisable.'"

Bourgeois v. Peters, 387 F.3d 1303 C.A.11 (Ga.) (2004)

GPSTC

Bourgeois v. Peters, (2004)

"The City may contend that the searches are permissible because they are entirely voluntary. No protestors are compelled to submit to searches; they must do so only if they choose to participate in the protest against the SOA. This is a classic 'unconstitutional condition,' in which the government conditions receipt of a benefit or privilege on the relinquishment of a constitutional right."

Bourgeois v. Peters, 387 F.3d 1303 C.A.11 (Ga.) (2004)

GPSTC

Bourgeois v. Peters, (2004)

"The ability of protestors to avoid the searches by declining to participate in the protest does not alleviate the constitutional infirmity of the City's search policy; indeed, the very purpose of the unconstitutional conditions doctrine is to prevent the Government from subtly pressuring citizens, whether purposely or inadvertently, into surrendering their rights."

Bourgeois v. Peters, 387 F.3d 1303 C.A.11 (Ga.) (2004)

GPSTC

15.
Vehicle Searches
(AKA *The Vehicle or Automobile Exception*)

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Vehicle Searches

In *Carroll v. United States,* (1925), the Supreme Court held that officers could search a stopped automobile without a warrant if there was probable cause to believe that contraband or other evidence of crime was within the vehicle and it was not practicable to secure a warrant. Thus, if there was **probable cause** to believe that it contained evidence **and** there were **exigent circumstances**, an officer could conduct a warrantless search. (AKA - *Carroll Doctrine*).

Carroll v. United States, 267 U.S. 132 (1925)

GPSTC

Vehicle Searches

"'[R]eady mobility' [amounts to] an exigency sufficient to excuse failure to obtain a search warrant. . . . If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more."

Pennsylvania v. Labron, 518 U.S. 938 (1996)

GPSTC

Vehicle Searches

- Under federal law, the **warrantless search of an automobile** under the automobile exception to the warrant requirement of the Fourth Amendment ***does not require exigent circumstances beyond the exigency of the mobility of a functioning vehicle***.

United States v. Watts, 329 F.3d 1282 (11th 2003)

GPSTC

Vehicle Searches

"[T]here are only two questions that must be answered in the affirmative before authorities may conduct a warrantless search of an automobile":

1. The first is whether the automobile is ***readily mobile***. All that is necessary to satisfy this element is that the automobile is operational
2. The second prong of the test, ***probable cause***, is determined under the facts of each case

United States v. Watts, 329 F.3d 1282 (2003)

GPSTC

When is a Search Warrant Still Required?

- Georgia case law is ***more restrictive*** than federal with regard to the vehicle exception search
- A search warrant ***may be required*** to conduct a search at a location associated with the owner's residence or when the vehicle is under complete control of officers

GPSTC

The State v. Lejeune

"There is an automobile exception to the search warrant requirement, not an exemption. Otherwise, the Supreme Court of the United States would have held that the police would not, under any circumstances, need to obtain a search warrant for an automobile, provided they have probable cause for the search."

The State v. Lejeune, 276 Ga. 179 (2003)

GPSTC

The State v. Lejeune

"Instead, the Supreme Court explained how ready mobility and the diminished expectation of privacy in an automobile delineate the circumstances of a permissible warrantless search: When a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes-temporary or otherwise-the two justifications for the vehicle exception come into play."

The State v. Lejeune, 276 Ga. 179 (2003)

GPSTC

The State v. Lejeune

"We conclude that the automobile exception does not apply where, as here, the suspect's car was legally parked in his residential parking space, the suspect and his only alleged cohort were not in the vehicle or near it and did not have access to it, and the police seized the automobile without a warrant, placed it on a wrecker and hauled it away to be searched at a later date."

The State v. Lejeune, 276 Ga. 179 (2003)

GPSTC

When is a Search Warrant Still Required?

- Although no longer required under federal case law, the Georgia Supreme Court continues to recognize the traditional "exigency" requirement
- However, an officer may be able to explain exigency based on the totality of the circumstances they face in a particular situation

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When is a Search Warrant Still Required?

Locations for concern:

1. Residential garage
2. Residential curtilage
3. Parking area associated with a residence
4. Storage units
5. Other private locations in which the vehicle owner has a reasonable expectation of privacy
6. Anywhere the vehicle is under the complete control of law enforcement (impounded)

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Search Warrant Factors

1. What is the ready destructibility of the evidence being sought?
2. Do co-conspirators remain unapprehended?
3. How long will it take to obtain a search warrant?
4. Can the vehicle be adequately secured?
5. Are there officers who can stay with the vehicle until the search warrant is obtained?
6. How many persons have keys to the vehicle?
7. Is the area too dangerous to wait for a search warrant?

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Search Warrant Factors

8. Does the vehicle contain explosives or volatile materials?
9. Is there evidence that other persons have driven the vehicle in the recent past?
10. Electing to impound or remove the vehicle to obtain a search warrant later may still require an impound inventory by department policy.

If any of these factors exist, there *may be* an exigent circumstance justifying a warrantless search of the motor vehicle.

GPSTC

Vehicle Searches: Scope

USSC: "We hold that the scope of the warrantless search authorized by that exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."

United States v. Ross, 456 U.S. 825 (1982)

GPSTC

Review of Legal Authority, Search & Seizure Concerns

GPSTC

Warrantless Searches Review

How many exceptions to the warrant requirement are recognized by the U.S. Supreme Court?

Name them.

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9 Ways to Search a Vehicle

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9 Ways to Search a Vehicle

There are nine potential justifications whereby a vehicle can be lawfully searched by law enforcement officers during the conduct of an investigation:

1. Valid consent to search
2. Frisk (or search) for weapons
3. Search incident to arrest
4. Impound inventory of vehicle

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9 Ways to Search a Vehicle

5. Search of abandoned vehicle
6. Border search
7. Probation search (4th Amendment Waiver)
8. Vehicle exception
9. Search warrant

GPSTC

The 2 – 3 – 4 Rule

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The 2 – 3 – 4 Rule

The Number

2

What are the two types of "Legal Authority" available to a law enforcement officer?

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Legal Authority

The two types of Legal Authority are:

- **Articulable Reasonable Suspicion**
- **Probable Cause**

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The 2 – 3 – 4 Rule

The Number

3

What are the 3 types of
Police – Citizen Encounters?

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3 Types of Police – Citizen Encounters

The 3 types of police-citizen encounters are:

- **Verbal Encounter**
- **Brief Stop**
- **Arrest**

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The 2 – 3 – 4 Rule

The Number

4

What are the 4 legal ways an officer may lawfully enter a dwelling or search the curtilage?

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Entering a Dwelling

The four legal ways to enter a dwelling or search its curtilage are:

1. **Warrant**
2. **Exigent Circumstances**
3. **Consent**
4. **Hot Pursuit**

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Questions?

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SS4LE: OBTAINING A SEARCH WARRANT COURT ORDER

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Terminal Performance Objective:
Obtaining a Search Warrant Court Order

When authoring and obtaining search warrants, students will function with an understanding of the terminology and legal standards related to search warrants, in accordance with statutory and case law of Georgia and the United States.

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Enabling Objectives:
Obtaining a Search Warrant Court Order

- Identify the advantages of securing a search warrant
- Identify the key requirements that define a search warrant
- Identify the two documents that combine to form a complete search warrant and their common names
- Discuss the application process for obtaining a search warrant in accordance with O.C.G.A. 17-5-20, -21 and -21.1

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Enabling Objectives:
Obtaining a Search Warrant Court Order

- Identify the five categories of evidence specified in O.C.G.A. 17-5-21 for which a Judicial Officer may issue a search warrant
- Identify the number of copies of the search warrant command that must be issued according to O.C.G.A. 17-5-24

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Question

Q. When is a Search Warrant Required?

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4th Amendment

The 4th Amendment to the United States Constitution generally prohibits the warrantless entry of a person's home, whether to make an arrest or to search for specific objects.

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Warrant Advantages

- When conducting a search with a search warrant, officers have two key advantages:
  - Presumption of a valid search based on probable cause – "substantial basis" standard
  - Strong defense against accusations of civil rights violations

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Warrant Advantages

"**Doubtful cases** should be **resolved in favor** of upholding the determination that issuance of a warrant was proper, reflecting both a desire to **encourage use of the warrant process** by police officers and a recognition that **once a warrant has been obtained**, **intrusion** upon interests protected by the Fourth Amendment is **less severe** than otherwise may be the case."

Smith v. State, 296 Ga. 731, 2015 WL 1135590 Ga.

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Warrant Advantages

"Although in a particular case it may **not be easy to determine** when an affidavit demonstrates the existence of probable cause, the resolution of **doubtful or marginal cases** in this area should be largely determined by the **preference to be accorded to warrants**."

State v. Palmer, 285 Ga. 75, 2009 WL 424353 Ga.

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Search Warrant Defined

A search warrant is:

1. A court order…
2. Requested by a certified peace officer…
3. Signed by an authorized judge…
4. Based on probable cause…
5. That particularly describes the person, place, or thing to be searched…
6. And the items to be seized.

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Search Warrant = 2 Documents

- A search warrant court order is composed of two distinct documents. They are:
  1. The ***search warrant APPLICATION***

     (*aka the* ***affidavit*** or ***complaint***)

  2. The ***search warrant COMMAND***

     (*aka the* ***search warrant***)

No mandatory wording or pre-printed form is required

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§ 17-5-20. Application for search warrant

(a) A search warrant may be issued only upon the application of an officer of this state or its political subdivisions charged with the duty of enforcing the criminal laws or a **currently certified peace officer** engaged in the course of official duty, whether said officer is employed by a law enforcement unit of:

(1) The state or a political subdivision of the state; or

(2) A university, college, or school.

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§ 17-5-20. Application for search warrant

(b) A search warrant **shall not be issued upon the application of a private citizen** or for his aid in the enforcement of personal, civil, or property rights.

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Comment § 17-5-20

"A peace officer who does not comply with the conditions of certification "is thereby relegated to the status of a private citizen..." While, as a private citizen, a non-complying officer may effect an arrest under certain circumstances, OCGA § 17–5–20 expressly forbids the issuance of a search warrant on the application of a private citizen.

Holstein v. State, 183 Ga.App. 610 (1987)

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§ 17-5-21. Grounds for a search warrant

(a) Upon the written complaint of any certified peace officer of this state or its political subdivisions charged with the duty of enforcing the criminal laws and otherwise as authorized in Code Section 17-5-20 under oath or affirmation, which states facts sufficient to show probable cause that a crime is being committed or has been committed and which particularly …

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§ 17-5-21. Grounds for a search warrant

… describes the place or person, or both, to be searched and things to be seized, any judicial officer authorized to hold a court of inquiry to examine into an arrest of an offender against the penal laws, referred to in this Code section as "judicial officer," may issue a search warrant for the seizure of the following:

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§ 17-5-21. Grounds for a search warrant

(1) Any instruments, articles, or things, including the private papers of any person, which are designed, intended for use, or which have been used in the commission of the offense in connection with which the warrant is issued;

(2) Any person who has been kidnapped in violation of the laws of this state, who has been kidnapped in another jurisdiction and is now concealed within this state, or any human fetus or human corpse;

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§ 17-5-21. Grounds for a search warrant

(3) Stolen or embezzled property;

(4) Any item, substance, object, thing, or matter, the possession of which is unlawful; or

(5) Any instruments, articles or things, any information or data, and anything that is tangible or intangible, corporeal or incorporeal, visible or invisible evidence of the commission of the crime for which probable cause is shown, other than the private papers of any person."

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§ 17-5-21. Grounds for a search warrant

… United States, or another state. **Other personnel**, **sworn or unsworn**, acting under the direction of a peace officer executing a search warrant **may assist** in the execution of such warrant. While in the process of effecting a lawful arrest or lawful search, nothing in this Code section nor in Code Section 16–11–62 shall be construed to preclude the use of any device, as such term is defined in Code Section 16–11–60, by the peace officer executing the search warrant or other personnel assisting in the execution of such warrant."

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What are Private Papers?

" '[P]rivate papers' include 'diaries, personal letters, and similar documents wherein the author's personal thoughts are recorded,' but not mere public records or business or financial documents that do not contain personal thoughts."

Flemister v. The State, 317 Ga.App. 739 (2012)

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§ 17-5-21. Grounds for a search warrant

- Paragraph (d) requires that certified officers of universities, colleges or schools jointly execute search warrants with an officer of the political subdivision (city/county) where the search will be conducted if the location is outside the campus officer's jurisdiction.

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Comment § 17-5-21

- OCGA § 17-5-21(a) identifies the judges permitted to authorize a search warrant.

  "…any judicial officer authorized to hold a court of inquiry to examine into an arrest of an offender against the penal laws, referred to in this Code section as "judicial officer," may issue a search warrant…"

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Comment § 17-5-21

- Superior
- Juvenile
- State
- Magistrate
- Probate
- Municipal / Recorders

In addition, a retired judge or a judge emeritus of a state court may sign search warrants when authorized by an active judge of the court.

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Requirements for Magistrate

"[A]n issuing magistrate must meet two tests. He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search."

Shadwick v. City of Tampa, 407 U.S. 345 (1972)

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17-5-21.1 Search warrant application by video conference

- Georgia law permits issuance of a search warrant by videoconference
- The judge can be located anywhere within GA
- All testimony must be under oath
- Any reasonable means can be used to "sign" the document

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§ 17-5-22. Issuance of search warrant

- Search warrants must bear the time and date of issuance
- SWs "are the warrants of the judicial officer issuing the same and not the warrants of the court in which he is then sitting"
- Returns are to be filed with the signing judge or their clerk of court, regardless of whether executed or not executed
- Judges must keep a docket of warrants issued

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§ 17-5-24. Persons authorized to execute search warrants

The search warrant shall be issued in duplicate and shall be directed for execution to all peace officers of this state. However, the judicial officer may direct the search warrant to be executed by any peace officer named specially therein.

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Comment § 17-5-24

In *State v. Harber,* (1990), the court held that even if an officer was "not authorized to obtain and execute an extra-territorial search warrant, this lack of authority would constitute no more than a mere 'technical' defect" not affecting any substantial rights of the defendant."

State v. Harber, 198 Ga.App. 170 (1990)

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Questions?

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SS4LE: INTRODUCTION TO THE GPSTC SEARCH WARRANT TEMPLATE

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Terminal Performance Objective: Introduction to the GPSTC SW Template

When a search warrant is required, students will utilize computer-based search warrant templates and programs in accordance with the organizational process discussed in class lecture and demonstration.

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Enabling Objectives:
Introduction to the GPSTC SW Template

- Demonstrate proper utilization of the GPSTC search warrant template
- Describe the fields of the GPSTC search warrant template
- Utilizing the GPSTC search warrant template, prepare a sample search warrant

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Template Demonstration

1. Locate the search warrant files directory on your computer's desktop screen or follow directions given by the instructor to create the directory.
2. Listen carefully and follow directions while the instructor explains how to use the search warrant program.
3. Note: Students may save their files in the created desktop folder on the computer and/or on their personal flash drive for future use.

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Practical Exercise

Using the GPSTC Template, duplicate the sample search warrant provided.

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Questions?

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SS4LE: ESTABLISHING PROBABLE CAUSE FOR A SEARCH WARRANT

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Terminal Performance Objective:
Establishing PC for a SW

When a search warrant is required, students will provide clear and complete information supporting probable cause to the issuing judge, in accordance with statutory and case law of Georgia and the United States.

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Enabling Objectives: Establishing PC for a SW

- Define and discuss the concept of *staleness*
- Explain the *particularity requirement* of the 4th Amendment and the importance of properly describing locations, vehicles, persons and other items to be searched or seized
- Discuss the use of officer knowledge, training and experience to establish and explain probable cause
- Discuss the use of independent investigations to assist in probable cause development

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Probable Cause Issues

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Timeliness

- A fair probability that evidence, contraband or a fugitive to be at the location when the warrant **will be executed**
- Item(s) to be seized are either:
  - **Presently located and will still be** at the location
  - **Will arrive** at the location before the search actually occurs (anticipatory warrants)

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Staleness

- Information leading to probable cause is either sufficiently *fresh*, or it is ***stale***.
- There is no specific rule or official guidance in determining when information becomes stale.
- Information has become stale when, **due to the passage of time**, it **no longer supports a fair probability** that contraband or evidence of a crime will be found in a particular place.

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State v. Luck (1984)

"Time is assuredly an element of the concept of probable cause. However, the precise date of an occurrence is not essential. Rather, the inquiry is as to whether the factual statements within the affidavit are sufficient to create a **reasonable belief that the conditions described in the affidavit might yet prevail at the time of issuance of the search warrant**."

State v. Luck, 252 Ga. 347, 312 S.E.2d 791 (1984)

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Location to be Searched

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Location to be Searched

- The U.S. and GA Constitutions and GA statutes all require that the place to be searched must be particularly described.
- A warrant issued to search a person or *for* a person must particularly describe the individual.
- A warrant lacking sufficient description is a general warrant, subject suppression under the *exclusionary rule*.

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Franks v. State (1999)

"The requirement that a search warrant particularly describe the place to be searched is fulfilled if the warrant contains a description that sufficiently permits a prudent officer executing the warrant to locate the premises, person or property to be searched **definitely and with reasonable certainty, and without depending upon his discretion**."

Franks v. State, Ga.App. 685 (1999)

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Location to be Searched: Premises & Curtilage

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Search of a Premises

- The term *premises* may be defined as "property and the structures that are on that property."

(Webster's New World Law Dictionary, 2010)

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Curtilage

"A warrant which authorizes the search of a particular dwelling extends by implication to areas within the curtilage of the dwelling."

Landers v. State, 250 Ga. 808 (1983)

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Ray v. State (1986)

"An individual is constitutionally guaranteed freedom from unreasonable governmental intrusion into his dwelling place and the area within the curtilage of that dwelling. "[A] search made within the curtilage of the owner without a warrant is unconstitutional and void". The constitutional protection does not extend "to open fields, orchards, or other lands not an immediate part of the dwelling site…"

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Ray v. State (1986)

"…and a warrant is not a necessary prerequisite to a search of such an area. **…[T]here cannot be an illegal extension of a search warrant beyond the curtilage, for beyond the curtilage a search warrant is not needed**."

Ray v. State, 181 Ga.App. 42 (1986)

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Apartments & Duplexes

"If apartments in a multi-unit building share space, such as a foyer or parking lot, the shared space is a common area in which the residents generally have no reasonable expectation of privacy, except when the area is locked and not readily accessible to the public. …

Espinoza v. State, 265 Ga. 171 (1995)

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Apartments & Duplexes

… "In contrast, an apartment resident has a reasonable expectation of privacy in the dwelling's curtilage. Thus, it is confusing to combine the concepts of "common area" and "curtilage" in deciding whether a particular area adjoining an apartment building is entitled to protection under the Georgia Constitution. The test should be the reasonableness of the resident's expectation of privacy and the officer's reasons for being in the yard."

Espinoza v. State, 265 Ga. 171 (1995)

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Describing a Premises

- Buildings and atypical dwelling places can be identified by physical characteristics, images, street address and mapping. Consider the following potential means of identification:
  - Identification of the owners, renters or tenants
  - Intended use for the building
  - Single-family, multi-family, business, garage, storage…
  - Physical characteristics

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Describing a Premises

- A statement identifying the owners or occupants is strongly recommended
- The correct street address
  - Be aware of multiple residences sharing a single address
  - Intentionally mismarked locations
- Driving directions

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Location to be Searched: Vehicles

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Vehicles

A warrant which authorizes the search of a particular dwelling extends by implication to areas within the curtilage of the dwelling.

Landers v. State, 250 Ga. 808, 809, 301 S.E.2d 633 (1983)

Vehicles parked within the curtilage of a dwelling to be searched pursuant to a warrant may also be searched pursuant to that warrant.

Bellamy v. State, 134 Ga.App. 340 (1975)

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Vehicles

The "search of an automobile parked near house named in search warrant did not exceed scope of warrant, where the vehicle was parked within curtilage of the subject premises and there was evidence connecting vehicle with premises."

Clark v. State, 184 Ga.App. 380 (1987)

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Vehicles

- Although a search warrant for a particularly described premises authorizes officers to search vehicles owned by the occupants that are parked on the premises, the recommended action is to properly describe vehicles known to be associated with the residence in the search warrant document.

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Vehicles

- When a search warrant is obtained and the search of a vehicle is the primary objective of the warrant, consideration must be given as to where the vehicle will likely be located (which county?) when the search is to be conducted.

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Reed v. State (1972)

"[A]n adequate description of a car in a search warrant is "sufficient to describe the 'place' to be searched, wherever it might be found, regardless of the fact that it did not specify the location of the automobile."

Reed v. State, 126 Ga.App. 323(1) (1972)

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Vehicles

- However, if the search will take place on or near private property where the owner has an expectation of privacy, the search warrant should specify the location of the vehicle and the affidavit should establish probable cause that the vehicle will be found at this location.

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Describing a Vehicle

- Owner(s) name
- Year, make, model
- VIN and license plate number
- Location of the vehicle
- Photographs
- Paint and trim color
- Alterations, wheels, tires
- Crash damage, scratches and dents

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Location to be Searched: Containers

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Containers

The search of a container can be authorized by search warrant. Anything capable of containing evidence may be searched if it can be described with sufficient particularity.

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Describing Containers

- Backpacks, suitcases, packages sent by mail or private shipper, a simple plastic bag, or any other container should be described with as much detail as possible.
- The present location of the container serves to further identify the object. If the location is a protected privacy area, the warrant must authorize entry to the location

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Location to be Searched: Persons

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Persons

When probable cause exists that one or more of the objects to be seized as described in a warrant may be concealed or found on or within the suspect's person, a search of that person for the evidence may be authorized under the warrant.

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Persons

- A search warrant may be obtained to seize the physical body of a person.
- This is common when an active warrant exists for a suspect's arrest, and the location of the suspect is known to be within the dwelling of a third party.

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Persons

- Without the consent of the third party, hot pursuit or other exigent circumstances, a search warrant is required to enter the dwelling of a third party.
- The affidavit must outline why the suspect is believed to be within the location described.

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Describing Persons

- Name
- Height
- Weight
- Race
- Eye & hair colors
- Scars, marks, tattoos
- Date of birth
- OLN / License No.
- SSN
- Photograph
- Clothing description

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Items to be Seized

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Describing Items to be Seized

- Virtually any object may be subject to seizure as evidence based on probable cause. By describing an object as specifically as its nature allows, the particularity requirement is met.
- When a description is less particularized than might be possible, the seizure can still be lawful when the description allows for an officer to distinguish with reasonable certainty what can and cannot be seized.

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Describing Items to be Seized

- Common name
- Brand name
- Intended use
- Color
- Dimensions
- Model number
- Part number
- Serial number
- Quantity

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Establishing Probable Cause with Affiant KT&E

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KT&E

The knowledge, training and experience (KT&E) of a law enforcement officer can contribute to the existence of probable cause when the officer's expertise enables them to draw conclusions from the existing facts and circumstances that would not be apparent to a person lacking such specialized knowledge. The officer's opinion under these circumstances can provide a significant basis for a finding of probable cause.

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KT&E

- More than just a biography of the affiant
- Should have a relationship to the specific crime investigated
- Explanation of how the specific KT&E relates to the present facts & circumstances

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KT&E

- It is not necessary for the officer to state that a suspect of a particular category of crime will 'nearly always' or 'with certainty' operate in a predicted manner. Rather, it is sufficient to be able to state that suspects 'frequently,' 'commonly,' or 'regularly' act in such a manner.

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KT&E

When probable cause for the issuance of a search warrant is derived from an officer's expert opinion as to the meaning of certain facts and circumstances, the judicial officer must determine:

1. If the officer's expertise has been satisfactorily established for the topic on which the officer's opinion is being offered
2. Whether the information relayed in the affidavit reasonably supports the conclusions drawn by the officer based on their KT&E

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KT&E

"The justification for allowing a search of a person's residence when that person is suspected of criminal activity is the common-sense realization that one tends to conceal fruits and instrumentalities of a crime in a place to which easy access may be had and in which privacy is nevertheless maintained. In normal situations, few places are more convenient than one's residence for use in planning criminal activities and hiding fruits of a crime."

U.S. v. Donaldson, 558 Fed.Appx. 962 (C.A. 11 (GA) 2014)

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KT&E

"Moreover, an allegation that illegal activity occurred at the place to be searched, such as the home, is not necessary, but the affidavit (coupled with the sworn testimony in this case) should link the defendant to the home and connect the home to any criminal activity. Id. In establishing the link to criminal activity, it is not necessary that the home be the "locus" of criminal activity."

U.S. v. Donaldson, 558 Fed.Appx. 962 (C.A. 11 (GA) 2014)

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KT&E

"Evidence that the defendant is in possession of contraband that is of the type that would normally expect to be hidden at their residence will support a search."

United States v. Anton, 546 F.3d 1355, 1358 (C.A. 11 (FL) 2008)

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Defn. *Independent Investigation*

Surveillance and research conducted by law enforcement officers intended to corroborate source intelligence and determine ownership or occupancy for property or a premises.

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Independent Investigations

- The result of electronic or physical surveillance of the suspects or target location
- Criminal histories of co-conspirators or customers
- A discussion of similar transactions or the criminal history of the suspect that indicates ongoing criminal activity
- Verification of occupancy for a residence from government or private utility sources
- Verification of driving directions (to be performed by the affiant whenever possible)

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Questions?

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SS4LE:
SOURCES OF INFORMATION

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Terminal Performance Objective: Sources of Information

When providing information from or describing actions of sources to a judge during a warrant application, students will establish probable cause by providing the totality of the circumstances, in accordance with statutory and case law of Georgia and the United States.

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Enabling Objectives: Sources of Information

- Discuss the role of concerned citizens, confidential informants, and anonymous tipsters in developing probable cause
- Discuss the *two prong test* for evaluation of source information established by *Aguilar v. Texas* and *Spinelli v. United States*

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Enabling Objectives: Sources of Information

- Discuss the *totality of circumstances* test for evaluation of probable cause established by *Illinois v. Gates*
- Identify the three categories of informant relating to protection of source identity and potential requirement to reveal identity for each category

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Reliability Categories

When a person other than a LEO provides information used in an affidavit, they are considered a source of information.

- Sources fall into one of three categories:
  1. Concerned citizen
  2. Anonymous tipster
  3. Confidential informant

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Reliability Categories

- Specific information regarding each source must be provided within the affidavit to allow the judicial officer to determine which category they will assign the source.
- Each source category has a presumption for reliability – either reliable or not reliable. All relevant information known to the affiant regarding the source should be conveyed to the judge to allow for an accurate determination of the source category.

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Concerned Citizens

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Concerned Citizens

- Identity must be known to L.E.
- May be a witness or a victim of crime
- Law abiding persons acting out of civic responsibility
- No personal benefit by providing information
- No apparent motive to falsify information
- No significant criminal history
- Information provided is entitled to a presumption of reliability

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Concerned Citizens

- Calling a source a concerned citizen places the reputation of the affiant on the line
- Some factors contributing to a finding of a concerned citizen:
  - Length of time known to the affiant
  - Employed or professional occupation
  - Good reputation in the community
  - Advanced education
  - Property owner or resident of the community

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Confidential Informants

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Confidential Informants

- Identity must be known to L.E.
- Possible criminal history or pending current charges
- Will likely benefit personally from providing information
- Responsibility of the affiant to determine motivation

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Confidential Informants

- Potential motivations include:
  - To receive assistance with their own pending criminal charges
  - To receive cash payments received when information proves successful
  - Fear of retribution by co-conspirators when arrested or when contraband is seized
  - To eliminate criminal competition
  - For revenge against a spouse or significant other

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Confidential Informants

- Potential motivations, continued:
  - To repent for their own wrong-doing
  - Police wanna-bees seeking involvement with law enforcement
  - To learn law enforcement undercover identities and techniques to further their own criminal activities
  - To distract from actual criminal associations by providing false information

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Anonymous Tipsters

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Anonymous Tipsters

- Identity unknown to L.E.
- No presumption of reliability
- Can establish reliability with
  - A prediction of future behavior
  - Information that would only be known to a person intimately familiar with the suspect and alleged criminal activity
  - Corroboration with information obtained from other sources

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Establishing Informant Reliability

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Establishing Reliability Through Past Performance

- An informant who has provided accurate information to law enforcement in the past may be presumed reliable at the discretion of the judicial officer

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Crown v. State (2004)

"In order for a magistrate to assess the veracity and reliability of an informant, it should consider: "(1) the type of information previously supplied by the informant, (2) the use to which the information was put, and (3) the elapsed time since the information was furnished. And it is not necessary for all three of the factors to be shown as long as the magistrate has sufficient information to make an independent analysis."

Crow v. State 267 Ga.App. 188 (2004)

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Admissions Against Penal Interest

- A statement against penal interest is an admission or confession made by a suspect that can be used in the prosecution of the suspect
- No requirement to protect identity of a suspect who implicates others in their crime

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Tomlinson v. State (2000)

"When a ***named*** informant makes a declaration against penal interest and based on personal observation, that in itself provides a substantial basis for the magistrate to credit that statement."

Tomlinson v. State, 242 Ga.App. 117 (2000)

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U.S. v. Harris (1971)

"When a suspect provides information that is self-incriminating, they are likely to be telling the truth."

United States v. Harris, 403 U.S. 573 (1971)

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State v. Wesson (1999)

"Even if an officer cannot provide information regarding the veracity of an informant or the basis of his knowledge, a tip may be proved reliable if portions of the tip are sufficiently corroborated. (Cits.) For the corroboration to be meaningful, the information corroborated must **include a range of details relating to future actions of third parties not easily predicted, not to easily obtained current facts**."

State v. Wesson, 237 Ga.App. 789 (1999)

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Turner v. State (2001)

"[E]ven if the informant had no known credibility, the controlled buy conducted under the observation of the officer, alone, would have been sufficient to establish probable cause."

Turner v. State, 247 Ga.App. 775 (2001)

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Use of Informant Hearsay to Establish PC

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Evaluating Informant Statements

The modern-day standard of probable cause evaluation involving the use of informants is based on three key U.S. Supreme Court cases:

1. ***Aguilar v. Texas*, (1964)**
2. ***Spinelli v. U.S.*, (1969)**
3. ***Illinois v. Gates*, (1983)**

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Aguilar v. Texas (1964)

In *Aguilar v. Texas*, (1964), the U.S. Supreme Court examined a search warrant obtained by two officers of the Houston, TX police department. The court ultimately held the affidavit lacking in probable cause.

Aguilar v. Texas, 378 U.S. 108 (1964)

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Aguilar v. Texas (1964)

'Affiants have received reliable information from a credible person and do believe that heroin, marijuana, barbiturates and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purpose of sale and use contrary to the provisions of the law.'

Aguilar v. Texas, 378 U.S. 108 (1964)

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Spinelli v. U.S. (1969)

In *Spinelli v. U.S.* (1969), the U.S. Supreme Court examined a search warrant obtained by FBI agents investigating suspect William Spinelli of commercial gambling across state lines. The Court held the affidavit lacking in probable cause.

Spinelli v. United States, 393 U.S. 410 (1969)

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Spinelli v. U.S. (1969)

- A statement that Spinelli was known to be a bookmaker to law enforcement officers was useless, as there was no information provided to support that opinion.
- Information provided by the confidential informant was lacking a basis of knowledge.
- The information provided by the informant that was corroborated by the police provided no support for a probable cause finding.

GPSTC

The Two-Pronged Test

The cases of *Aguilar* and *Spinelli* formed the basis of what became known as the *Aguilar – Spinelli* rule, a two-pronged test requiring that an affidavit include information

(1) revealing the informant's 'basis of knowledge' and

(2) providing sufficient facts to establish either 'veracity' or 'reliability'. (Credibility)

GPSTC

Basis of Knowledge

- How the informant became aware of this information
- Who is involved in the criminal activity
- What criminal activity is taking place
- When the criminal activity occurred (staleness of the information)

Legal Division Handbook. 2013. Homeland Security. FLETC

GPSTC

Credibility

- Established track record
- Statements against penal interest
- Corroboration
- First-hand information
- Face-to-face meetings with informant
- Consistency between independent informants
- Degree of detail provided

Legal Division Handbook. 2013. Homeland Security. FLETC

GPSTC

Illinois v. Gates (1983)

Illinois v. Gates removed the two-prong test of *Aguilar – Spinelli* as an absolute requirement for use of information provided by a source. In its place, the *totality of the circumstances* test was established as the new (and current) standard for probable cause determination when evaluating a search warrant affidavit.

GPSTC

Illinois v. Gates (1983)

"On May 3, 1978, the Police Department of Bloomingdale, Ill., received an anonymous letter [that read]:

> 'This letter is to inform you that you have a couple in your town who strictly make their living on selling drugs. They are Sue and Lance Gates, they live on Greenway, off Bloomingdale Rd. in the condominiums.

Illinois v. Gates, 462 U.S. 213 (1983)

GPSTC

Illinois v. Gates (1983)

"Most of their buys are done in Florida. Sue his wife drives their car to Florida, where she leaves it to be loaded up with drugs, then Lance flys down and drives it back. Sue flys back after she drops the car off in Florida. May 3 she is driving down there again and Lance will be flying down in a few days to drive it back.

Illinois v. Gates, 462 U.S. 213 (1983)

GPSTC

Illinois v. Gates (1983)

"At the time Lance drives the car back he has the trunk loaded with over $100,000.00 in drugs. Presently they have over $100,000.00 worth of drugs in their basement.

They brag about the fact they never have to work, and make their entire living on pushers.

I guarantee if you watch them carefully you will make a big catch. They are friends with some big drugs dealers, who visit their house often."

Illinois v. Gates, 462 U.S. 213 (1983)

GPSTC

Illinois v. Gates (1983)

"The rigid "two-pronged test" under *Aguilar* and *Spinelli* for determining whether an informant's tip establishes probable cause for issuance of a warrant is abandoned, and the "totality of the circumstances" approach that traditionally has informed probable-cause determinations is substituted in its place.

Illinois v. Gates, 462 U.S. 213 (1983)

GPSTC

Illinois v. Gates (1983)

"The elements under the "two-pronged test" concerning the informant's "veracity," "reliability," and "basis of knowledge" should be understood simply as closely intertwined issues that may usefully illuminate the common-sense, practical question whether there is "probable cause" to believe that contraband or evidence is located in a particular place.

Illinois v. Gates, 462 U.S. 213 (1983)

GPSTC

Totality of the Circumstances: General

- Address timeliness concerns
- Officer KT&E that supports P/C
- Investigative activity conducted to corroborate information from source(s)
- If a P/C buy is utilized, explain all necessary steps (search, follow, search again)
- Remember – P/C for one officer is P/C for all, but "information" from another officer is not automatically P/C!

GPSTC

Totality of the Circumstances: Sources

- Provide for each non-LEO source to the extent possible based on your investigation:
  - Best analysis of source category and **WHY**
  - Veracity & reliability – positive **and** negative
    - Summary of any results from prior information provided or services performed on behalf of L.E.
    - Apparent motivation
  - Basis of knowledge
    - How do they ***know*** what they say they know?
  - If identity not provided, why anonymous?

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Protecting Source Identity

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Explanation of Source Confidentiality

When the identity of a source is kept confidential and not provided to the affidavit, it is appropriate to provide an explanation of why it is necessary to omit this information.

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Explanation of Source Confidentiality

- Two primary justifications to withhold the name of a source:
  - A concern that the suspect will retaliate against the property or person of the source if their identity becomes known.
  - A desire on the part of the police to conceal the source's identity so that they can continue to provide information in the future

GPSTC

3 Levels of Source Involvement

- Tipsters
  - Absolutely privileged
- Witnesses
  - Protected by law – revealed only at order of judge
- Participants (AKA decoys)
  - Generally not protected

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Revealing Identity

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Questions?

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GEORGIA PUBLIC SAFETY TRAINING CENTER

SS4LE: CONDUCTING INDEPENDENT INVESTIGATIONS

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Terminal Performance Objective: Independent Investigations

When conducting independent investigations, students will establish a pattern of ongoing criminal activity for suspects and verify location and occupancy of targeted premises, in accordance with the GPSTC Search & Seizure for Law Enforcement program materials.

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Enabling Objectives: Independent Investigations

- Define the term ***independent investigation*** as it relates to probable cause for a search warrant
- Discuss the use of surveillance to assist in probable cause development
- Discuss the use of suspect criminal history and similar transactions to show a pattern of ongoing criminal behavior
- Discuss the use of utility records to establish residency
- Discuss the addition of driving directions to the location to be searched by a search warrant

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Defn. *Independent Investigation*

Surveillance and research conducted by law enforcement officers intended to corroborate source intelligence and determine ownership or occupancy for property or a premises.

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Independent Investigations

- The result of electronic or physical surveillance of the suspects or target location
- Criminal histories of co-conspirators or customers
- A discussion of similar transactions or the criminal history of the suspect that indicates ongoing criminal activity
- Verification of occupancy for a residence from government or private utility sources
- Verification of driving directions (to be performed by the affiant whenever possible)

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Surveillance

- The use of video surveillance or personal observations of a suspect or target location can be used to confirm reports by sources of information or to assist in establishing probable cause when no source is involved.

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Criminal Histories

- The criminal histories of persons suspected as co-conspirators or customers demonstrate possible criminal associations of the primary suspects with other offenders.
- Suspects believed to be co-conspirators of the suspects targeted by the warrant should be identified to the greatest extent possible and included as persons to be searched (if PC)

GPSTC

Similar Transactions

- When a suspect is a repeat offender, familiar to the investigating officer(s), previous information obtained regarding the suspect can certainly be used to help establish probable cause.
  - Targeted previously by search warrants
  - Insufficient standing alone, but strengthens the current PC

GPSTC

Government & Private Utilities

- Identifying the occupants of a dwelling can be accomplished through a variety of resources, including:
  - Property tax records (establishing ownership)
  - Electric, water, gas, phone, cable and other utilities
  - Agency arrest and incident report records
  - DMV driver's license records
  - GCIC vehicle registrations
  - Mail cover

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Verification of Driving Directions

- Although not required by law, driving directions are often expected to be included in the location section (Field D) of a warrant by the reviewing judge. Whenever possible, the driving directions should be personally confirmed by the affiant officer.

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Questions?

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SS4LE: CREATING A SEARCH WARRANT AFFIDAVIT & COMMAND (PERFORMANCE EXAMINATION)

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Terminal Performance Objective: Creating a SW Affidavit & Command

When authoring a search warrant, students will utilize computer-based search warrant templates and programs in accordance with the organizational process discussed in class lecture and demonstration.

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Enabling Objectives: Creating a SW Affidavit & Command

- Complete a search warrant affidavit and command based on a scenario provided by your instructor that meets legal standards and requirements
- Discuss results of performance examination and identify any common issues with student projects

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Questions?

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SS4LE: EXECUTION AND RETURN OF SEARCH WARRANTS

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Terminal Performance Objective: Execution and Return of SWs

When serving a search warrant, students will comply with requirements for proper execution and return of the warrant, in accordance with statutory and case law of Georgia and the United States.

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Enabling Objectives: Execution and Return of SWs

- Discuss the execution of a search warrant according to O.C.G.A. 17-5-25, 17-5-26, and 17-5-27
- Discuss the detention and search of persons found on the premises during the execution of the search warrant in accordance with O.C.G.A. 17-5-28
- Discuss the *knock and announce* requirement while executing a search warrant
- Describe the areas to be searched and seizable items in relation to the *scope of the search*
- Discuss the procedures for filing a *search warrant return* as annotated in O.C.G.A. 17-5-29

GPSTC

Disposition

- A search warrant can be executed by all peace officers of the state
- Once the warrant has been signed, there are two possible options:
  1. Execute the warrant (and file a return)
  2. Do not execute the warrant (and file a return)

GPSTC

Copy of Command

- OCGA § 17-5-25 requires that a duplicate copy of the search warrant command (not the affidavit) be left with "any person" from whom items are seized. Or, if no person is available, the duplicate copy must be left in a conspicuous place at the location searched.

GPSTC

Search Warrant Expiration

- OCGA § 17-5-25 provides that from the time and date a search warrant is signed, the warrant will remain valid for ten calendar days (240 hours).
- At the end of this time period, the warrant is expired and cannot be served.

GPSTC

Search Warrant Expiration

Analysis of computer hard drive seized during execution of valid search warrant for defendant's residence did not require second search warrant, and was not required to be conducted during 10-day period of validity of original search warrant.

Mastrogiovanni v. State, 2013, 2013 WL 6038176.

GPSTC

Time of Warrant Execution

- OCGA § 17-5-26 provides that a search warrant may be executed at any reasonable time.
- According to the Georgia Supreme Court in *Fair v. State* (2008), "the reasonableness of the time of a warrant's execution must be determined on a case-by-case basis looking at the totality of circumstances."

GPSTC

OCGA 17-5-27

OCGA § 17-5-27. Use of force in execution of search warrant

All **necessary and reasonable** force may be used to effect an entry into any building or property or part thereof to execute a search warrant if, after verbal notice or an attempt in good faith to give verbal notice by the officer directed to execute the same of his authority and purpose:

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OCGA 17-5-27

(1) He is refused admittance;

(2) The person or persons within the building or property or part thereof refuse to acknowledge and answer the verbal notice or the presence of the person or persons therein is unknown to the officer; or

(3) The building or property or part thereof is not then occupied by any person.

GPSTC

Use of Force Against Persons

- No special provisions are made within the law regarding the use of force against a person while a search warrant is executed.
- Officers must comply with OCGA § 17-4-20, Arrest without warrant, and the federal standard (objectively reasonable) as in all police-citizen encounters.

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Hudson v. Michigan (2006)

- No specific period of time has ever been provided. It is determined based on the "totality of circumstances" found for each entry

"When the knock-and-announce rule does apply, it is not easy to determine precisely what officers must do. How many seconds' wait are too few? Our "reasonable wait time" standard, is necessarily vague."

Hudson v. Michigan, 547 U.S. 586 (2006)

GPSTC

Knock & Announce

Two exceptions exist that can be used to justify a failure to abide by OCGA 17-5-27.

1. A ***no-knock clause*** is included in the affidavit or oral testimony is given to the authorizing judge and the ***no-knock provision*** is approved and signed
2. Exigent circumstances are encountered at the time the warrant is executed

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Exigent Circumstances Provided in the Affidavit

•When circumstances justifying a waiver of the knock and announce requirement are known at the time the affidavit is prepared, a no-knock provision may be requested with a ***no-knock clause***

•A no-knock provision will permit officers to breach a structure without giving verbal notice

•Verbal notice should be given immediately upon entry

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Exigent Circumstances Encountered at Warrant Execution

- A reviewing court may find that officers are justified in disregarding OCGA § 17-5-27 knock-and-announce requirements if exigent circumstances are found to exist at the time officers are actually executing the search warrant. Such cases are analyzed under the "reasonableness" standard.

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Detention of Named Persons

"If the evidence that a citizen's residence is harboring contraband is sufficient to persuade a judicial officer that an invasion of the citizen's privacy is justified, it is constitutionally reasonable to require that citizen to remain while officers of the law execute a valid warrant to search his home."

Michigan v. Summers, 452 U.S. 692 (1981)

GPSTC

Detention of Unnamed Persons

- Detention of persons present at a location when a search warrant is executed who are not named in the warrant *may* be authorized
- Compliance with OCGA § 17–5–28 is required
- The detention may not exceed a reasonable period of time
  - Risk of the detention becoming custody

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Stop of Vehicle Leaving Residence Prior to Warrant Execution

- Officer had no ARS to stop the defendants' vehicle after it allegedly left residence where a search warrant was about to be executed, absent specific information about the vehicle or its occupants, who did not live at residence where drug activity was suspected, where officer's sole basis for stopping vehicle was to see who was inside.

State v. Mallard, 246 Ga.App. 357 (2000)

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Search of Unnamed Persons with the Search Warrant

- Officers are under the mistaken impression (as it is still a common practice) that they should include an *all parties* or *other persons clause* in a search warrant affidavit. The inclusion of such language has been repeatedly held by Georgia appellate courts to give no further authority to search persons other than outlined in OCGA § 17–5–28.

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Search of Unnamed Persons with the Search Warrant

- The appropriate tactic is to describe EACH PERSON for whom probable exists to search based on their connection to the suspected criminal activity in the "place to be searched." If a name is unknown, describe them with all known detail. Explain the PC to search them for the items you are seeking with the search warrant in the affidavit probable cause narrative.

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State v. Holmes (1999)

"[W]hen executing a search warrant, it is illegal to search a person not named in the warrant but found on the premises to be searched, without independent justification for a personal search. The only justifications for such a search include: (1) protecting the executing officer from attack; or (2) preventing the disposal or concealment of items described in the search warrant.

State v. Holmes, 240 Ga.App. 332 (1999)

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State v. Holmes (1999)

The inclusion of language in the warrant authorizing the search of "any persons present" on the premises does not broaden the powers of the searching authorities beyond the limited terms of OCGA § 17–5–28."

State v. Holmes, 240 Ga.App. 332 (1999)

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OCGA 17-5-28

OCGA § 17-5-28. Detention and Search of Persons on Premises.

In the execution of the search warrant the officer executing the same may reasonably detain or search any person in the place at the time:

(1) To protect himself from attack; or

(2) To prevent the disposal or concealment of any instruments, articles, or things particularly described in the search warrant.

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Summary: Search of Unnamed Persons with the Search Warrant

- In order to comply with Georgia appellate law, a search of a person not described in a search warrant can only be conducted under the authority of the warrant when justified by for OCGA § 17-5-28(1) or § 17-5-28(2).

GPSTC

Summary: Search of Unnamed Persons with the Search Warrant

- § 17-5-28(1) applies when the officer can articulate specific facts that would support a reasonable belief or suspicion that the person to be searched was armed and dangerous.

…also known as ARS…

GPSTC

Summary: Search of Unnamed Persons with the Search Warrant

- § 17-5-28(2) applies when the unnamed person was found to be in a position to assist in the disposal or concealment of evidence sought by the warrant, or if the unnamed person attempts to flee from inside the house subject to the warrant and requires a ***nexus*** of probable cause between the person to be searched and the evidence to be seized.

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Definition *Nexus*

So what is a *nexus*?

"There must be a connection between that person and the activity which logically leads to a belief that the person is in possession of a targeted item."

Steward v. State, 237 Ga.App. 672 (1999)

GPSTC

Search of Unnamed Persons Summary

Persons not named in the warrant may also be searched when:

- Valid consent is obtained
- Probable cause for a warrantless search exists *Ledford v. State, 233 Ga.App. 445 (1998)*
- The person is arrested and a search incident to arrest is performed OCGA § 17-5-1

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Seizing Evidence

- While executing the warrant, officers can:
  - Seize the items specifically described in the search warrant
  - Conduct a search incident to arrest of each person arrested and the area within their immediate presence
  - Seize items recognized as contraband, evidence of a crime or stolen property under the *plain view doctrine*

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Scope

- An officer executing a search warrant has the authority to search any location where a particular item to be seized could be found. This is commonly referred to as the *scope of the search*.

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Property of a Visitor

The personal property of a visitor, including vehicles, luggage, or packages, is not included within the scope of the search unless authorized under OCGA § 17-5-28.

"Officers executing a search warrant in a home are not allowed to search the person or personal belongings of visitors who just happen to be present at the time the warrant is executed. See (Cits.) However, " 'without notice of some sort of the ownership of a belonging, the police are entitled to assume that all objects…

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Property of a Visitor

…within premises lawfully subject to search under a warrant are part of those premises for the purpose of executing the warrant.' [Cits.]" Whether the police had notice (i.e., knew or should have known) that an object belonged to a visitor must be determined by the trial court on the facts of each case, and the trial court's determination will be upheld if there is any evidence to support it."

Wright v. State, 221 Ga.App. 559 (1996)

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Search Warrant Return

- Once the search warrant is executed, or not executed, a return shall be filed with the judge who issued the search warrant **without unnecessary delay** in order to comply with OCGA § 17-5-29.
- Attach inventory of items seized
  - Copy of all property receipts, or:
  - Separately prepared inventory document

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Questions?

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SS4LE:
THE NO-KNOCK CLAUSE

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Terminal Performance Objective:
The No-Knock Clause

When requesting a no-knock provision, students will comply with the reasonable suspicion standard for futility or destruction of evidence, in accordance with statutory and case law of Georgia and the United States.

GPSTC

Enabling Objectives: The No-Knock Clause

- Discuss the arguments against a *no-knock provision*
- Identify the minimum legal standard that must be articulated in a *no-knock clause* to obtain a *no-knock provision*
- Identify common exigencies that may justify a *no-knock provision*

GPSTC

Hudson v. Michigan (2006)

"The interests protected by the knock-and-announce rule include human life and limb (because an unannounced entry may provoke violence from a surprised resident), property (because citizens presumably would open the door upon an announcement, whereas a forcible entry may destroy it), and privacy and dignity of the sort that can be offended by a sudden entrance."

Hudson v. Michigan, 547 U.S. 586 (2006)

GPSTC

Richards v. Wisconsin (1997)

"In order to justify a "no-knock" entry, the police must have a **reasonable suspicion** that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. …

Richards v. Wisconsin, 520 U.S. 385 (1997)

GPSTC

Common Exigencies for No-Knock

- Specific information that suspect is armed & dangerous
- Suspect history of escape or flight
- Suspect has taken steps to destroy evidence
- Safety of an occupant is at risk
- Video cameras or alarms are present
- Guard dogs
- Doors and windows are barricaded

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Questions?

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SS4LE: CIVIL LIABILITY FOR SEARCH & SEIZURE

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Terminal Performance Objective:
Civil Liability and Search Warrants

When authoring, obtaining and executing search warrants, students will function with an awareness of civil liability in accordance with federal and state statutory and appellate law.

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Enabling Objectives:
Civil Liability and Search Warrants

- Define *official immunity*
- Define *qualified immunity*
- Discuss significant and recent appellate decisions relating to clearly established law and qualified or official immunity
- Identify common issues relating to search warrants with potential to result in violations of constitutional rights

GPSTC

Discussion

- LEOs are exposed to risk every day, including the risk of civil suit. While acting in the scope of their employment, federal, state, and local officers can be sued for intentionally violating a person's constitutional rights in federal court or state court.

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Official Immunity

- Officers sued civilly in Georgia courts are entitled to official immunity, "which protects Georgia state officers and employees from liability. However, the Georgia Constitution permits state officers and employees to be held liable for damages 'if they act with actual malice or with actual intent to cause injury in the performance of their official functions.'

Gordon v. Chattooga County, 479 Fed.Appx. 281, C.A.11 (Ga.),2012

GPSTC

Official Immunity

"Georgia case law defines 'actual malice' as 'express malice, i.e., a deliberate intention to do wrong, and does not include implied malice, i.e., the reckless disregard for the rights or safety of others.' A deliberate intention to do wrong is 'the intent to cause the harm suffered by the plaintiffs.'

Gordon v. Chattooga County, 479 Fed.Appx. 281, C.A.11 (Ga.),2012

GPSTC

Qualified Immunity

- Officers sued under Title 42, U.S. Code, Section 1983 may be entitled to qualified immunity
- Qualified immunity protects an officer so long as the conduct did not violate any "clearly established" law that should be known to a reasonable officer

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Qualified Immunity

"Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law."

Anderson v. Creighton, 483 U.S. 635,640 (1987)

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Qualified Immunity

"In resolving questions of qualified immunity, courts are required to resolve a "threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry." (Cit.) If, and only if, the court finds a violation of a constitutional right, "the next, sequential step is to ask whether the right was clearly established ... in light of the specific context of the case." (Cit.)

Scott v. Harris, 550 U.S. 372 (2007)

GPSTC

Qualified Immunity

"If the law at the time did not clearly establish that the officer's conduct would violate the constitution, the officer should not be subject to liability, or indeed, even the burdens of litigation."

Brosseau v. Haugen, 543 U.S. 194 (2004)

GPSTC

Groh v. Ramirez (2004)

"In February 1997, a concerned citizen informed petitioner that on a number of visits to respondents' ranch the visitor had seen a large stock of weaponry, including an automatic rifle, grenades, a grenade launcher, and a rocket launcher. Based on that information, petitioner prepared and signed an application for a warrant to search the ranch. The application stated that the search was for "any automatic firearms or parts to automatic weapons, destructive devices …

GPSTC

Groh v. Ramirez (2004)

"to include but not limited to grenades, grenade launchers, rocket launchers, and any and all receipts pertaining to the purchase or manufacture of automatic weapons or explosive devices or launchers.". Petitioner supported the application with a detailed affidavit, which he also prepared and executed, that set forth the basis for his belief that the listed items were concealed on the ranch. Petitioner then presented these documents to a Magistrate, along with a warrant form that …

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Groh v. Ramirez (2004)

"petitioner also had completed. The Magistrate signed the warrant form.

Although the application particularly described the place to be searched and the contraband petitioner expected to find, the warrant itself was less specific; it failed to identify any of the items that petitioner intended to seize. In the portion of the form that called for a description of the "person or property" to be seized, petitioner typed a description of respondents' two-story blue house rather than …

GPSTC

Groh v. Ramirez (2004)

"the alleged stockpile of firearms. The warrant did not incorporate by reference the itemized list contained in the application. …

The day after the Magistrate issued the warrant, petitioner led a team of law enforcement officers, including both federal agents and members of the local sheriff's department, in the search of respondents' premises. …

GPSTC

Groh v. Ramirez (2004)

"[T]he officers' search uncovered no illegal weapons or explosives. When the officers left, petitioner gave Mrs. Ramirez a copy of the search warrant, but not a copy of the application, which had been sealed. The following day, in response to a request from respondents' attorney, petitioner faxed the attorney a copy of the page of the application that listed the items to be seized. No charges were filed against the Ramirezes."

GPSTC

Groh v. Ramirez (2004)

HELD: "The warrant was plainly invalid. The Fourth Amendment states unambiguously that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and *particularly describing* the place to be searched, and *the persons or things to be seized.*" (Emphasis added.) The warrant in this case complied with the first three of these requirements: It was based on probable cause …

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Groh v. Ramirez (2004)

"and supported by a sworn affidavit, and it described particularly the place of the search. On the fourth requirement, however, the warrant failed altogether." …

"The fact that the *application* adequately described the "things to be seized" does not save the *warrant* from its facial invalidity. The Fourth Amendment by its terms requires particularity in the warrant, not in the supporting documents." …

GPSTC

Groh v. Ramirez (2004)

"This warrant did not simply omit a few items from a list of many to be seized, or misdescribe a few of several items. Nor did it make what fairly could be characterized as a mere technical mistake or typographical error. Rather, in the space set aside for a description of the items to be seized, the warrant stated that the items consisted of a "single dwelling residence ... blue in color." In other words, the warrant did not describe the items to be seized at all.

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Groh v. Ramirez (2004)

"In this respect the warrant was so obviously deficient that we must regard the search as "warrantless" within the meaning of our case law." …

"Given that the particularity requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that requirement was valid. Moreover, because …

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Groh v. Ramirez (2004)

"petitioner himself prepared the invalid warrant, he may not argue that he reasonably relied on the Magistrate's assurance that the warrant contained an adequate description of the things to be seized and was therefore valid." …

"No reasonable officer could claim to be unaware of the basic rule, well established by our cases, that, absent consent or exigency, a warrantless search of the home is presumptively unconstitutional. …

GPSTC

Groh v. Ramirez (2004)

"Petitioner contends that the search in this case was the product, at worst, of a lack of due care, and that our case law requires more than negligent behavior before depriving an official of qualified immunity. But as we observed … [that] "a warrant may be so facially deficient— *i.e.,* in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid." …

GPSTC

Groh v. Ramirez (2004)

"This is not the situation, therefore, in which we have recognized that 'officers in the dangerous and difficult process of making arrests and executing search warrants' require 'some latitude.'"

- As a result of the Supreme Court decision, the Bureau of Alcohol, Tobacco and Firearms (BATF) agent who had prepared and executed warrant was not entitled to qualified immunity from liability.

GPSTC

Gordon v. Chattooga Co. (2012)

Plaintiffs … filed suit under 42 U.S.C. § 1983 against Defendants, Sheriff John Everett and Officer Kandy Dodd, in their individual and official capacities alleging that Defendants violated their Fourth and Fourteenth Amendment rights and the Georgia Constitution and conspired to interfere with their civil rights by illegally obtaining and executing a search warrant for Plaintiffs' home.

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Gordon v. Chattooga Co. (2012)

"In January 2011, Dodd was investigating several burglaries in Chattooga County, Georgia. Dodd received information that two high school students were involved in the burglaries. The students eventually confessed and stated that they sold some of the stolen items to the Gordons at their pawn shop, Fleetwood's Pawn.

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Gordon v. Chattooga Co. (2012)

"Relying on this information, Dodd informed Everett that she would seek a search warrant for the Gordons' pawn shop and home. Officer Shannon Goins gave Dodd a search warrant that had previously been used to search the Gordons' pawn shop. Using this warrant as a template, Dodd prepared a sworn affidavit in support of a search warrant and presented this information to Magistrate Judge Maddux. The affidavit and the search warrant, as given to Judge Maddux, …

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Gordon v. Chattooga Co. (2012)

"included no information regarding the Gordons' home. When Judge Maddux was approving the original search warrant, he mentioned to Dodd that her investigation could lead her to search the Gordons' home and that she should talk to another officer who investigated a similar situation.

After receiving the search warrant, Dodd returned to the Sheriff's Office and Dodd, Everett, and two other officers left in Dodd's vehicle to execute the warrant. In the vehicle, Everett began to read over …

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… the search warrant and noticed that it still contained Shannon Goins's name. Dodd then took the search warrant from Everett, went back to her office, deleted Goins's name, added her own name, and took the modified search warrant to Judge Maddux for approval.

After receiving Judge Maddux's signature on the first amended search warrant, Dodd returned to her car where the other officers were waiting for her. Everett began looking over the search warrant …

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… again, and noticed that the Gordons' home address was not included. Everett asked Dodd if she intended to also search the Gordons' home; Dodd answered in the affirmative and stated she would fix the warrant. All of the officers then left the vehicle while Dodd corrected the warrant for the second time.

Dodd returned to her office with another officer. That officer added the Gordons' home address to the warrant and printed out the new page. Dodd …

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"then removed and shredded the page from the first amended search warrant and attached the altered page with the Gordons' home address to the page with Judge Maddux's signature. The second amended search warrant was never presented to or approved by Judge Maddux. The testimony differs as to the amount of time it took Dodd to alter the search warrant, but reflects that it took between five and thirty minutes. During this time, Everett was in his office. …

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Gordon v. Chattooga Co. (2012)

"Dodd then gathered the officers again and told them she had added the address to the search warrant. That group then executed the second amended search warrant—first searching Fleetwood's Pawn, then, several hours later, the Gordons' home.

Judge Maddux later learned that Defendants searched the Gordons' home. When Judge Maddux asked whether Defendants had added anything to the …

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Gordon v. Chattooga Co. (2012)

"search warrant, Everett replied, "We added his address." Judge Maddux then informed Defendants that there was no information in the affidavit or search warrant to permit the search of the residence and that everything seized pursuant to the second amended search warrant had to be returned.

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Gordon v. Chattooga Co. Decision

"It is clearly established constitutional and federal law that a law enforcement officer may not search a home, absent exigent circumstances, unless he has a warrant that has been fully approved by a neutral and detached judicial officer. *See, e.g., Groh v. Ramirez (2004),* ("No reasonable officer could claim to be unaware of the basic rule, well established by our cases, that, absent consent or exigency, a warrantless search of the home is presumptively unconstitutional."); *Payton v. New York (1980), …*

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Gordon v. Chattooga Co. Decision

(finding warrantless searches of homes "presumptively unreasonable"); *Johnson v. United States* (1948), ("When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent."); *O'Rourke v. Hayes* (11th Cir.2004), (finding that a warrantless search without exigency violates clearly established rights, even in the absence of case law with factually similar circumstances).

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Gordon v. Chattooga Co. Decision

- Defendants lost on all motions for qualified immunity, official immunity and summary judgment.
- The case was settled out of court. The county insurer (Association of County Commissioners) agreed to pay $300,000 to the Gordons in January, 2013.

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Other Potential Tort Violations

- Warrant lacked (arguable) probable cause
- Excessive force used during entry or search
- Illegal entry (failure to knock & announce or wait a reasonable time)
- Scope of search exceeded
- Unlawful detention

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Questions?

?

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SS4LE: CONCLUSION

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Conclusion

- Probable cause = "**a fair probability**"
- *Aguilar – Spinelli* rule: "two pronged test" of (1) revealing the informant's "**basis of knowledge**" and (2) providing sufficient facts to establish either the informant's "**veracity**" or the "**reliability**" of the informant's report
- PC standard replaced by *Illinois v. Gates* with "**totality of the circumstances**"

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Conclusion

- Issued for authorized objects only: evidence, fruits of the crime, contraband
- Facts and details of P.C. must be presented to **neutral and detached** magistrate who can hold a **court of inquiry**
- Affidavit presented **under oath or affirmation**

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Conclusion

- **The particularity requirement**: Person(s), Place(s) and Thing(s) must be particularly described
- Executing officer can locate **definitely and with reasonable certainty**, and **without depending upon his discretion**
- Within the limited time period (**10 days**)

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Conclusion

- A warrant can be served at **any reasonable time**; verbal notice given (refused entry, unoccupied location, refuses to acknowledge or answer)
- No-knock justified with **reasonable suspicion** that notice would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence
- Force against property: **reasonable and necessary**

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Conclusion

- If executed, leave copy of warrant will be left with any person from whom any items were seized **or in a conspicuous location**
- If not executed, shall be **void in 10 days** and shall be returned to issuing authority as "not executed"
- File your return and inventory under oath/affirmation and "**without unnecessary delay**."

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Conclusion

Remember – general warrants are not legal

BE CAREFUL WITH COPY – PASTE!!!

Be specific and accurate for your warrant to survive any challenge in a motion to suppress hearing and appellate courts

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Questions?