



GPSTC
GEORGIA PUBLIC SAFETY TRAINING CENTER

CRIMINAL PROCEDURE

Student Manual

Georgia Police Academy Division
www.gpstc.org

Criminal Procedure

GPSTC Course Schedule

Monday

0800 – 0900	Registration & Campus Familiarization	Instructor: Steve Barnhart Georgia Police Academy
0900 – 1100	Law Enforcement and the United States Constitution	Steve Barnhart
1100 – 1200	Articulate Reasonable Suspicion and Probable Cause (1)	Steve Barnhart
1200 – 1300	Lunch	
1300 – 1500	Articulate Reasonable Suspicion and Probable Cause (2)	Steve Barnhart
1500 – 1700	Lineups & Pre-Trial Identifications	Steve Barnhart

Tuesday

0800 – 1000	Interviews, Confessions and Miranda Warnings	Steve Barnhart
1000 – 1200	The Exclusionary Rule – An Overview	Steve Barnhart
1200 – 1300	Lunch	
1300 – 1700	Conducting Warrantless Searches & Seizures (1)	Steve Barnhart

Wednesday

0800 – 1200	Conducting Warrantless Searches & Seizures (2)	Steve Barnhart
1200 – 1300	Lunch	
1300 – 1700	Conducting Warrantless Searches & Seizures (3)	Steve Barnhart

Thursday

0800 – 1200	The Official Code of Georgia Title 16 – Crimes and Offenses (1)	Steve Barnhart
1200 – 1300	Lunch	
1300 – 1700	The Official Code of Georgia Title 16 – Crimes and Offenses (2)	Steve Barnhart

Friday

0800 – 1200	The Official Code of Georgia Title 17 – Criminal Procedure (1)	Steve Barnhart
1200 – 1300	Lunch	
1300 – 1600	The Official Code of Georgia Title 17 – Criminal Procedure (2)	Steve Barnhart
1600 – 1700	Final Examination & Graduation	Steve Barnhart

Criminal Procedure

Terminal Performance and Enabling Objectives

Section 1: Law Enforcement and the United States Constitution

Terminal Performance Objective:

When acting in a law enforcement capacity, students will protect and enforce the rights of all persons, in accordance with the United States Constitution, the Bill of Rights, and the Georgia Constitution.

Enabling Objectives:

- Discuss the protections provided by the Bill of Rights
- Identify the specific protections provided by the 4th, 5th, 6th and 8th Amendments to the United States Constitution
- Discuss the protections provided by the 14th Amendment to the United States Constitution and its applicability to the 50 states
- Identify the appellate courts with binding authority on lower courts and Georgia officers

Section 2: Establishing Articulate 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 *articulate 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: Lineups and Pre-Trial Identifications

Terminal Performance Objective:

When required to conduct a photographic lineup, a physical lineup or other form of pre-trial identification, students will follow recommended guidelines in accordance with statutory and case law of Georgia and the United States.

Enabling Objectives:

- Define common terminology related to eyewitness identifications
- Identify methods of pre-trial identification
- Recognize factors leading to misidentification by eyewitnesses
- Describe the recommended technique for conducting a photographic lineup, physical lineup and show-up identifications

Section 4: Interviews, Confessions and Miranda Warnings

Terminal Performance Objective:

When conducting interviews and interrogations, students will comply with *Miranda v. Arizona* and subsequent binding decisions, in accordance with the appellate law of Georgia and the United States.

Enabling Objectives:

- Identify the two discrete inquiries essential to determining if a suspect is in custody
- Recognize factors relevant to determination of custodial status
- Recognize factors relevant to voluntariness of a *Miranda* waiver
- Discuss the history of U.S. Supreme Court decisions leading to *Miranda v. Arizona*
- Review recent federal and state appellate decisions relating to interrogation

Section 5: The Exclusionary Rule – An Overview

Terminal Performance Objective:

When performing the duties of a law enforcement officer, students will operate with an understanding of the principles behind and applicability of the *exclusionary rule* and significant rule exceptions, in accordance with appellate decisions and statutory law of Georgia and the United States.

Enabling Objectives:

- Recognize the principles behind and impact of the *exclusionary rule*
- Describe *fruits of the poisonous tree* doctrine
- Discuss the *good faith* exception and O.C.G.A. § 17-5-30
- Discuss the *independent source* exception
- Discuss the *inevitable discovery* exception
- Discuss the *purged taint* exception

Section 6: 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 7: O.C.G.A. Title 17 – Crimes and Offenses

Terminal Performance Objective:

While acting in a law enforcement capacity, officers will function with an understanding of criminal liability, defenses to prosecution and elements of proof for crimes and offenses, in accordance with Title 16 of the Official Code of Georgia and appellate law.

Enabling Objectives:

- Describe applicability of criminal liability statutes in OCGA § Title 16, Chapter 2
- Identify defenses to criminal prosecutions in OCGA § Title 16, Chapter 3
- Discuss criminal attempt, conspiracy and solicitation statutes in OCGA § Title 16, Chapter 4
- Describe the elements of proof for selected felony and misdemeanor criminal offenses in OCGA § Title 16

Section 8: O.C.G.A. Title 17 – Criminal Procedure

Terminal Performance Objective:

While acting in a law enforcement capacity, officers will abide by established criminal procedures, in accordance with O.C.G.A. Title 17 and appellate decisions of Georgia and the United States.

Enabling Objectives:

- Distinguish between jurisdiction and venue
- Discuss limitations on prosecution and periods of exclusion
- Identify requirements for obtaining an arrest warrant, O.C.G.A. § 17-4-40
- Discuss legal authority of law enforcement officers to make arrests with and without a warrant, O.C.G.A. § 17-4-20

CRIMINAL PROCEDURE

REGISTRATION - ORIENTATION - INTRODUCTION

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Administration

- Student Authorization Forms?
 - 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:

- Law enforcement and the U.S. Constitution
- Establishing legal authority
- Conducting lineups and pre-trial identifications
- Interviewing, confessions and the *Miranda* warnings
- The *exclusionary rule*
- Conducting lawful arrests, searches and seizures
- OCGA Titles 16 and 17
- Recent changes to federal and state case law

Questions?



LAW ENFORCEMENT AND THE UNITED STATES CONSTITUTION

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Terminal Performance Objective:

When acting in a law enforcement capacity, students will protect and enforce the rights of all persons, in accordance with the United States Constitution, the Bill of Rights, and the Georgia Constitution.

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Enabling Objectives

- Discuss the protections provided by the Bill of Rights
- Identify the specific protections provided by the 4th, 5th, 6th and 8th Amendments to the United States Constitution
- Discuss the protections provided by the 14th Amendment to the United States Constitution and its applicability to the 50 states
- Identify the appellate courts with binding authority on lower courts and Georgia officers

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Constitutional Rights

In the last quarter of the 18th Century, there was no country in the world that governed with separate and divided powers providing checks and balances on the exercise of authority by those who governed.

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Bill of Rights

- Declaration of Independence 1776
- Articles of Confederation 1781
- Constitutional Convention 1787
- Constitution ratified 1789
- Bill of Rights authored by the 1st U.S. Congress 1789
- Bill of Rights ratified 1791 – 10 Amendments of 12 actually proposed



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Bill of Rights

All citizens, but especially those of us who are involved in the criminal justice system, should keep in mind that the Bill of Rights guarantees protection from governmental, not private, conduct.

Therefore, if a private person takes an action that seems to violate the privacy of a person who later becomes a criminal defendant, the Bill of Rights offers no protection from this action so long as the government didn't sponsor that a private person act in some way.

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Bill of Rights – First 10 Amendments

- I. Religion, Speech, Press, Assembly, Petition
- II. Right to Bear Arms
- III. Quartering of Troops
- IV. Search and Seizure
- V. Grand Jury, Double Jeopardy, Self-Incrimination, Due Process
- VI. Criminal Prosecutions - Jury Trial, Right to Confront and to Counsel

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Bill of Rights – First 10 Amendments

- VII. Common Law Suits
- VIII. Excess Bail or Fines, Cruel and Unusual Punishment
- IX. Non-Enumerated Rights
- X. Rights Reserved to States or People

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Constitutional Rights

“In place of the absolutism of monarchy, the freedoms flowing from this document created a land of opportunities. Ever since, then discouraged and oppressed people from every part of the world have made a beaten path to our shores. This is the meaning of our Constitution.”

Warren E. Burger
Chief Justice of the United States
1969-1986

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4th Amendment

“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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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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5th Amendment

Trial and Punishment, Compensation for Takings

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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5th Amendment

What are some of the rights a person is afforded by the 5th Amendment? They include:

- The right to be charged by *Grand jury* in felony cases
- *Double jeopardy* - The right not to be charged for the same crime twice
- *Self-Incrimination* - The right not to make statements against self
- *Due Process* - The right to fair trial
- *Just compensation* - Imminent domain

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6th Amendment

Right to Speedy Trial, Confrontation of Witnesses

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

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6th Amendment

What are some of the rights a person is afforded by the 6th Amendment? They include:

- The right to the *assistance of counsel*
 - At all "critical stages" of prosecution
- The right to a *speedy trial*
- The right to *face accusers* and *cross examine* witnesses

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8th Amendment

Bail, Fines, Punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

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8th Amendment

What are some of the rights a person is afforded by the 8th Amendment? They include:

- Excessive bail
- Excessive fines
- Cruel and unusual punishment

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14th Amendment

“No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.”

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Due Process

- Due process refers to “how” and “why” laws are enforced. It applies to all persons, citizen or alien, as well as to corporations.

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14th Amendment

- First established concept of dual citizenship of both country and state
- Authority to tell states they cannot abuse freedoms guaranteed by the U.S. Constitution
- Tested in court 1884 *Hurtado v. California* unsuccessfully – federal rights are not applied automatically to the states

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14th Amendment

- Court applied 2nd Amendment to Federal property/jurisdictions in *District of Columbia v. Heller (2008)*
- Chicago’s 28 year old law overturned by U.S. Supreme Court in *McDonald v. Chicago (2010)*
 - “We hold that the Second Amendment right is fully applicable to the states,” Justice Samuel Alito concluded for the court majority in a 5-4 decision

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14th Amendment

- Q. What are the two due process rights that have yet to be applied to all states?
- A. Indictment by grand jury and excessive bail

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Procedural Due Process

Answers the “how” laws are enforced. For instance; Is a law too vague? Is it applied fairly to all? Does a law presume guilt? A vagrancy law might be declared too vague if the definition of a vagrant is not detailed enough. A law that makes wife beating illegal but permits husband beating might be declared to be an unfair application. A law must be clear, fair, and have a presumption of innocence to comply with procedural due process.

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Substantive Due Process

Answers “why” are laws enforced. Even if an unreasonable law is passed and signed into law legally (procedural due process), substantive due process can make the law unconstitutional.

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Due Process Guarantees

- Right to a fair and public trial conducted in a competent manner
- Right to be present at the trial
- Right to an impartial jury
- Right to be heard in one's own defense
- Laws must be written so that a reasonable person can understand what is criminal behavior
- Taxes may only be taken for public purposes
- Property may be taken by the government only for public purposes
- Owners of taken property must be fairly compensated

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U.S. Constitution: Articles I, II & III

- I. Legislative
- II. Executive
- III. Judiciary

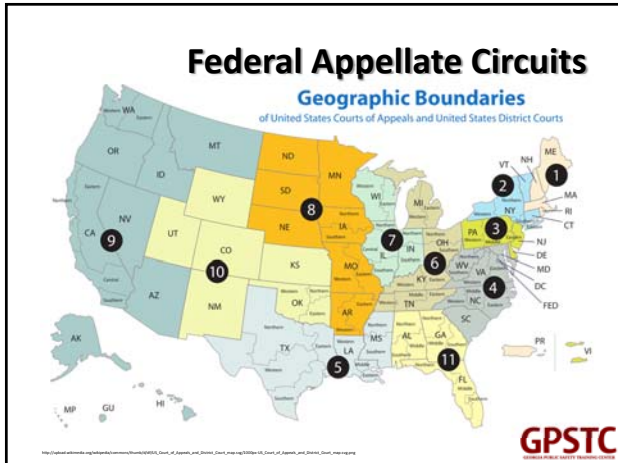



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Courts that Count

- YOUR local courts and Superior Court
- Court of Appeals of Georgia (Atl.)
 - Example: 262 Ga.App. 676
- Supreme Court of Georgia (Atl.)
 - Example: 284 Ga. 181
- U.S. Court of Appeals 11th Circuit (Atl.)
 - Example: 508 F.3d 576
- Supreme Court of the United States (D.C.)
 - Example: 550 U.S. 372

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CP: ARTICULABLE REASONABLE SUSPICION AND 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.



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



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.”



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

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. **Articulate 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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Two Types of Suspicion

The two types of suspicion are:

1. Mere Suspicion
2. Articulate Reasonable Suspicion

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

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ARS Defined

Articulate Reasonable Suspicion:

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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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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ARS Explained

“The detention must be justified by specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that detention, and 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)

“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)

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ARS: Minimum Legal Authority to Search or Seize

- ARS is also the **minimum legal requirement** for law enforcement officers to conduct a search or seizure under the 4th Amendment
 - Stop or detain a suspect for questioning (*seizure*)
 - Frisk a suspect for weapons (*search*)
 - Search a motor vehicle passenger compartment for weapons which may harm officer (*search*)

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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. Indeed, ‘police are authorized to stop an individual based on a ‘be on the lookout’ dispatch or even a radio transmission from another officer who observed facts raising a reasonable suspicion of criminal activity or a traffic violation.”

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

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ARS Explained

In *Illinois v. Wardlow*, “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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ARS Explained

“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. 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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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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Florida v. J.L.

“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.

“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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Probable Cause

Two types of PC:

Probable Cause – To Arrest

Probable Cause – To Search

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Where is PC on the Line?



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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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Defining *PC to Search*

The existence of probable cause is determined by whether, 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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Origin of *PC to Search* Definition

“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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“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

- Verbal Encounter
 - Brief Stop
 - Arrest

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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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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)

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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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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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 - Articulate 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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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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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 necessary 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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Arrest

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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)

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Protective Sweep

For an in-home arrest, a protective sweep may be authorized when officers possess:

“...articulable facts which, taken together with rational inferences from those facts, would warrant a reasonably prudent officer in believing 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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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!

- | | |
|--|---|
| <ul style="list-style-type: none">• Knowledge• Training• Experience• Date• Time of Day• Location• Set of Circumstances | <ul style="list-style-type: none">• 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?





LINEUPS AND PRE-TRIAL IDENTIFICATIONS

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Terminal Performance Objective

When required to conduct a photographic lineup, a physical lineup or other form of pre-trial identification, students will follow recommended guidelines in accordance with statutory and case law of Georgia and the United States.



Enabling Objectives

- Define common terminology related to eyewitness identifications
- Identify methods of pre-trial identification
- Recognize factors leading to misidentification by eyewitnesses
- Describe the recommended technique for conducting a photographic lineup, physical lineup and show-up identifications



Introduction

"[E]yewitness identification by the victim or witnesses is peculiarly riddled with dangers which may prevent a fair trial, and a major cause of miscarriages of justice result from mistaken identification. Despite the dangers which exist in eyewitness identifications, such identification is regarded as essential to most criminal cases.

...

U.S. v. Wade, 388 U.S. 218 (1967)



Introduction

... Yet, every experienced lawyer who tries criminal cases knows how devastating such eyewitness identification testimony frequently is, even when the witness has had very little opportunity to view the person who committed the crime. ...

U.S. v. Wade, 388 U.S. 218 (1967)



Introduction

"Nevertheless, the rule remains that generally, eyewitness testimony is admissible and the jury determines how much weight it should be given."

U.S. v. Wade, 388 U.S. 218 (1967)



HR 1071 – Law Enforcement Agencies; Develop and Implement Written Policies: Urge

- In 2007, the Georgia General Assembly passed House Resolution 1071 urging all law enforcement agencies of this state to develop and implement written policies for conducting show-ups, photographic lineups, and physical lineups setting forth the manner in which these operations shall be conducted, and for other purposes

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Definitions

Definitions of terms is critical to understanding the various types and processes of lineups. Law enforcement officers are encouraged to learn the definitions of terms listed in this block of instruction to ensure complete communication and understanding of this very important investigative procedure when conducting lineups in accordance with established law and without bias.

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Defn. *Physical Lineup*

- The live presentation of a number of people (normally the suspect and five fillers) to an eyewitness for the purpose of obtaining an identification. A lineup differs from a field view in that it is conducted in a controlled setting, such as a police station, a known suspect is in the mix, and the participants are aware that an identification procedure is being conducted.

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Defn. *Field of View*

- The exposure of a group of people to an eyewitness in a public place on the theory that the subject may be among the group. A field view differs from a show-up in that it may be conducted well after the commission of the crime, and may be conducted with or without a suspect in the group.

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Defn. *Photographic Lineup*

- A lineup normally consisting of six photographs consisting of a known suspect and five fillers, which are presented to an eyewitness for the purpose of trying to identify the perpetrator of a crime.
- This process may also be presented in a six person photograph array, a physical mug book, a digital mug book or several photographs presented to the eyewitness in a sequential or simultaneous order.

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Defn. *Show-up*

- An eyewitness views a single suspect, in person, when trying to identify the suspect as the perpetrator the crime. A show-up identification should only be used soon after a crime has been committed, typically within two hours, or under exigent circumstances, such as the near death of the only available witness.

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Defn. Voice Lineup

- A test in which a listener hears several voices and tries to tell whether a voice he or she has heard previously is among them, and if so, which voice.



Defn. Voice Print

- A set of measurable characteristics of a human voice that uniquely identifies an individual. These characteristics, which are based on the physical configuration of a speaker's mouth and throat, can be expressed as a mathematical formula. The term applies to a vocal sample recorded for that purpose, the derived mathematical formula, and its graphical representation. Voiceprints are used in voice ID systems for user authentication.



Defn. Suspect

- A person under investigation for participation in the commission of a crime and is subjected to eyewitness identification.



Defn. Administrator

- The peace officer, agent, operative, or officer who directs the show-up, physical lineup, or photographic lineup.



Defn. Blind Administrator

- The person conducting the physical lineup or photographic lineup doesn't know the identity of the suspect in the lineup, also known as a *neutral independent administrator*.



Defn. Simultaneous Identification

- During a physical or photographic lineup, the suspect and fillers of the lineup are shown to the eyewitness all at the same time. This allows the eyewitness to compare all the persons in the lineup simultaneously in one viewing when trying to identify a suspect



Defn. *Sequential Identification*

- During a physical or photographic lineup, the suspect and fillers of the lineup are shown to the eyewitness only one at a time. This allows the eyewitness to view the suspect and fillers individually, one by one, when trying to identify the suspect or perpetrator of the crime.



Defn. *Filler*

- A person or photograph of a person who is not a suspect in the crime under investigation and is made part of a physical lineup or a photographic lineup to be presented to a eyewitness.



Methods of Identification

There are several methods of identification which can and are used during the course of a criminal investigation. Law enforcement and crime lab personnel must ensure that whatever method is used to assist in the identification of a defendant, it must be done in a manner that is lawful and does not unfairly prejudice the defendant at trial.



Methods of Identification

Methods which can be used in criminal investigations include:

- Physical Line-up
- Photographic Line-up
- Video Line-up
- Show-up
- Voice Line-up
- Voice Print
- DNA*
- Blood Samples
- Physical Movements
- Handwriting Analysis
- Fingerprint Analysis

* In June 2013, in *Maryland v. King*, 133 S.Ct. 1958 (2013), the U.S. Supreme Court ruled law enforcement officers may "seize a buccal swab for use in DNA analysis from a "suspect" who has been arrested for a serious offense.



Methods

- Under no circumstances will just the eyewitnesses initial physical description of the suspect, by itself, be legally sufficient at trial as a positive identification of a suspect
- It is imperative that a detailed physical description of the suspect be obtained by the LEO prior to conducting a photographic, physical, or showup identification



How Does the Wrong Person Identified?

- Most LE agencies use the same methods they have used for decades – physical and photo lineups, usually conducted without a blind administrator or proper instructions
- It is stressful for victims and eyewitnesses to identify a perpetrator, and they make mistakes
- Sometimes mistakes are triggered by a memory gap
- The desire to make an identification at all costs
- Subtle cues by police – intentional or not

Innocenceproject.org



Legal Considerations

- The U.S. Supreme Court in *Neil v. Biggers* (1972) ruled that the “totality of circumstances” analysis is required to evaluate the likelihood of misidentification [of the defendant]. The Court cited five (5) factors from cases which include:

Neil v. Biggers, 409 U.S. 188 (1972)

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Legal Considerations

- Opportunity of the witness [or victim] to view the criminal at the time of the crime
- The witness’ [or victim’s] degree of attention at the time of the crime
- The accuracy of the witness’ [or victim’s] prior description of the criminal
- The level of certainty demonstrated by the witness [or victim] at the confrontation
- The length of time between the crime and the confrontation

Neil v. Biggers, 409 U.S. 188 (1972)

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Frequently Raised Legal Objections

- Violation of 4th Amendment search or seizure
- Violation of 5th Amendment self-incrimination
- Violation of 5th and 14th Amendments right to due process
- Violation of 6th Amendment right to counsel

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Witness Procedures and Instructions

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Interviewing the Eyewitness

- It is imperative that a thorough interview be conducted of all eyewitnesses prior to their exposure to any pre-trial lineup procedure. This will include obtaining the eyewitness’ personal data, the specifics of the crime or the incident under investigation, and a detailed description of the suspect. The description should include:

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Physical Descriptors

- Age
- Sex
- Height
- Weight
- Color of hair
- Hair style
- Eye color
- Clothing description
- Facial features
- Jewelry
- Scars/Marks/Tattoos
- Piercings
- Teeth

Make sure you ask the eyewitness – “What else about the suspect can you remember?”

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Witness Instructions

- Advise the witness that he/she does not have to make an identification, and the identification procedure is important whether or not an identification is made
- Advise the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties – the investigation will continue regardless

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Witness Instructions

- Advise the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media
- Confirm that the witness understands the procedure
- If an identification is made, advise the witness to give feedback in their own words regarding level of confidence and document thoroughly

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Degree of Certainty

- It is not necessary for the witness to give a number or percentage – some witnesses will spontaneously include information about certainty (e.g., “That’s him, I KNOW that’s him,” or, “It could be him”)

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Degree of Certainty

- If not volunteered, then the witness can be asked to state certainty in his/her own words
- A question such as, “How do you know this individual?” will often lead the witness to express his/her certainty
- If a statement of certainty is not obtained, then the investigator can follow up with the question, “How certain are you?”

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Conducting a Photographic Lineup

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Constitutional Considerations

- Unlike physical lineups, where legal counsel may be required for a suspect, a suspect has no 6th Amendment right to a lawyer in a photographic lineup

U.S. v. Ash, 413 U.S. 300 (1973)

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Photo Lineup Technique

- At least six photographs - can be more!
- The photographs should be themselves similar in size, type, and color
- The suspect photograph should NOT stand out from the other photographs
- Select images of individuals with similar appearance, clothing, sex, race, and age

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Photo Lineup Technique

- When conducting a photographic lineup be sure to use photographs which are free from official markings such as:
 - Criminal history data
 - Personal information
 - Identification numbers
 - Any suggestive or leading data or indicators

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Photo Lineup Technique

- Place the victim or witness in a location free from distractions
- Give instructions to victim or witness prior to viewing the photographs
- Instruct the victim or witness to view each photograph in the lineup closely
- Inform the victim or witness that they are not required to make an identification

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Photo Lineup Technique

- Give the victim or witness sufficient time to view each photograph in the lineup
- Record the victims or witnesses comments in regards to observing the photographic lineup
- Have the victim or witness put signature, date, and time on the identified photograph
- Ensure photographic lineup can be reproduced exactly as it was shown

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Sample Advisory Statement

“In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. It is just as important to clear innocent persons from suspicion as to identify guilty parties. Whether or not you make an identification, the investigation will continue. Now, keep in mind that hair styles, beards, and mustaches may be easily changed. Also, photographs may not ...

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Sample Advisory Statement

...always depict the true complexion of a person – it may be lighter or darker than shown in the photograph. Pay no attention to any markings or number that may appear on the photographs. When you have looked at all the photographs, tell me whether or not you see the person who committed the crime. You do not have to make an identification and the identification procedure is important to the investigation ...

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Sample Advisory Statement

... whether or not an identification is made. Do not tell other witnesses that you have or have not identified anyone. Do you understand?"

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Conducting a Physical Lineup

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Right to Legal Counsel

There is a general *per se* exclusionary rule (*the Wade – Gilbert rule*) which applies to a pre-trial identification at or after the initiation of adversary judicial criminal proceedings unless the defendant is represented by counsel who is present at the time of the identification

U.S. v. Wade, 388 U.S. 218 (1967)
Gilbert v. California, 388 U.S. 263 (1967)

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Physical Lineup Technique

- Organize the viewing of the suspect by the victim or witness
- Physical line-up contains at least six participants
- Suspect does not have a legal basis to refuse to participate
- Suspect has the right to legal counsel to observe the line-up after the initiation of adversary judicial criminal proceedings

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Physical Lineup Technique

- Never let victim or witness view the suspect prior to conducting the physical lineup
- An advisory statement similar to the one discussed in photographic lineup is utilized
- Each viewing should be photographed and preserved as evidence
- Victims and witnesses should view the physical lineup separately

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Physical Lineup Technique

- Suspect can be required step forward, turn in a certain direction, and speak
- Suspect has a right to an unbiased lineup

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Conducting a Show-up Identification

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Constitutional Considerations

- Unlike physical lineups, a suspect has no 6th Amendment right to a lawyer for a show-up conducted prior to the initiation of judicial criminal proceedings

Kirby v. Illinois, 406 U.S. 682 (1972)

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Purpose for Show-ups

- Conducted for 3 primary reasons:
 1. Allows officers to determine whether or not to look further for the perpetrator
 2. Accuracy and reliability of identification is likely to be greater at that time
 3. Permits the speedy release of an innocent person who is in custody

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Legal Authority for Show-up

- Q. What is the minimum legal authority a law enforcement must have for detaining a suspect to conduct a show-up?
- Any law enforcement officer wanting to conduct a showup identification must have at least an articulable reasonable suspicion (ARS) to lawfully detain a suspect for a show-up. Of course, a law enforcement officer may also obtain valid consent of the suspect to conduct the show-up.

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Legal Considerations

- Creates circumstances for a face-to-face confrontation of suspect prior to an organized physical or photo lineup
- Potential for violence if not performed correctly
- Potential to be inherently suggestive
- Movement and actions of the suspect must be lawful

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Show-up Technique

- Determine and document, prior to the show up, a description of the perpetrator
- Consider transporting the witness to the location of the detained suspect to limit the legal impact of the suspect's detention and avoid later accusation suspect was in custody and therefore unlawfully detained

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Show-up Technique

- When multiple eyewitnesses are involved:
 - Separate eyewitnesses and request that they avoid discussing details of the incident with other witnesses
 - If a positive identification is obtained from one witness, consider using other identification procedures (e.g., physical or photo lineup) for all remaining witnesses



Show-up Technique

- Document specific facts, circumstances, statements, and conduct of the eyewitnesses and suspects
- Document the time and location
- Document positive or negative identification results, including the witness's own words regarding level of certainty
- A complete and accurate record of the outcome can be a critical for further investigation and subsequent court proceedings



Questions?



INTERVIEWS, CONFESSIONS AND MIRANDA WARNINGS

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Terminal Performance Objective

When conducting interviews and interrogations, students will comply with *Miranda v. Arizona* and subsequent binding decisions, in accordance with the appellate law of Georgia and the United States.



Enabling Objectives

- Identify the two discrete inquiries essential to determining if a suspect is in custody
- Recognize factors relevant to determination of custodial status
- Recognize factors relevant to voluntariness of a *Miranda* waiver
- Discuss the history of U.S. Supreme Court decisions leading to *Miranda v. Arizona*
- Review recent federal and state appellate decisions relating to interrogation



When is *Miranda* Required?

“A person is considered to be in custody and *Miranda* warnings are required when a person is (1) formally arrested or (2) restrained to the degree associated with a formal arrest. Unless a reasonable person in the suspect's situation would perceive that he was in custody, *Miranda* warnings are not necessary.”

Sosniak v. State, 287 Ga. 279 (2010)

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What is Custody?

“Whether a suspect is ‘in custody’ for *Miranda* purposes is an objective determination involving two discrete inquiries: ‘first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave.’”

JDB v. North Carolina, 131 S.Ct. 2394 (2011)

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What is Custody?

The police and courts must ‘examine all of the circumstances surrounding the interrogation,’ including those that ‘would have affected how a reasonable person’ in the suspect's position ‘would perceive his or her freedom to leave.’ However, the test involves no consideration of the particular suspect's ‘actual mindset.’”

JDB v. North Carolina, 131 S.Ct. 2394 (2011)

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What is Custody?

- Two discrete inquiries are essential to the *Miranda* custody determination:
 1. What were the circumstances surrounding the interrogation; and
 2. Given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave.

JDB v. North Carolina, 131 S.Ct. 2394 (2011)

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What is Custody?

“A temporary detention, incident to a traffic stop or “general on-the-scene investigation,” does not normally trigger the protections of *Miranda*. Moreover, a custodial situation does not arise even if an officer believes he has probable cause to arrest a defendant, where the officer takes no overt step to communicate that belief: ...

Tune v. State, 286 Ga.App. 32 (2007)

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What is Custody?

... Absent the officer making any statement that would cause a reasonable person to believe that he was under arrest and not temporarily detained during an investigation, the officer's “belief” that probable cause exists to make an arrest does not determine when the arrest is effectuated until the officer overtly acts so that a reasonable person would believe he was under arrest.”

Tune v. State, 286 Ga.App. 32 (2007)

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Interviews, Confessions and Miranda Warnings

The Courts decision in *Miranda* broadened the right against self-incrimination to cover virtually all custodial police interrogations. The court clarified several issues which arose in previous rulings, to include:

Custodial Interrogation:

Means questioning initiated by law enforcement officers after person has been taken into custody or otherwise deprived of his freedom of action in any significant way.



Interviews, Confessions and Miranda Warnings

Focus of Investigation:

The mere fact that the investigation has “focused” on a particular suspect does not make it custodial for Miranda purposes.

Undercover agents:

If the defendant talks to an undercover agent or informant without knowing he is talking to a law enforcement agent, no “custodial interrogation” has taken place. This is true even if the defendant is in jail at the time.



Interviews, Confessions and Miranda Warnings

“Voluntary Statements”

Voluntary statement of any kind are not barred by the 5th Amendment and their admissibility is not effected by the Courts Miranda decision. Some volunteered statements include:

1. Non-Custodial Statements:

Clearly no Miranda Warnings are required when a police officer simply walks up to a suspect on the street or when a suspect voluntarily comes to a police station and makes an incriminating statement.



Interviews, Confessions and Miranda Warnings

2. Traffic Stops:

Stops and questioning of motorists for minor traffic violations will normally not be considered “custodial.”

3. Interviews at Home:

If an interview takes place in a persons home, and he has not been placed under arrest, the person most likely is not in custody for interview purposes.



Interviews, Confessions and Miranda Warnings

4. Voluntary Custodial Statements:

A suspect in custody might, for instance, volunteer a statement without any questions having been asked of him at all. Such statements have been referred to as a *spontaneous exclamation*.

5. Clarifying Questions:

A statement may be volunteered, and not the product of “interrogation,” even though the police ask clarifying questions about a *spontaneous exclamation*.



Interviews, Confessions and Miranda Warnings

6. The Public Safety Exception:

Questions asked by police in “emergency circumstances”, such as when tending or rescuing a victim, or for the police’s own immediate protection, have generally been held to be non-interrogative. The *public safety exception* was established by the U.S. Supreme Court in *New York v. Quarles*, 467 U.S. 649 (1984).



Relevant Factors to Custody

- Location of the questioning
- Duration of the interview
- Statements made during the interview
- Presence or absence of physical restraints
- Release of the interviewee at the end of questioning
- Age of interviewee

Howes v. Fields, 132 S.Ct. 1181 (2012)

J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011)



What is Interrogation?

"[T]he term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."

Rhode Island v. Innis, 446 U.S. 291 (1980)



Interrogation

- Interviews and interrogations of criminal suspects by law enforcement officers and the use of their subsequent oral or written statements as evidence at trial have been the subject of numerous judicial rulings over the past 78 years.



5th Amendment Self-Incrimination

The 5th Amendment requires that all statements must be voluntary and provides protection when:

1. The government...
2. Compels testimonial evidence...
3. From a person subject to prosecution

Legal Division Handbook. 2013. Homeland Security. FLETC



Voluntary Statements

- Suspect Characteristics
 - Age, level of education/intelligence, known psychological problems, physical condition, level of impairment, familiarity with the CJ system
- Circumstances surrounding the statement
 - Where, how long, breaks given or not, whether suspect was in custody
- Officer's conduct
 - Coercive techniques, i.e. threat or actual violence, promises of leniency, inappropriate trickery or deception

Legal Division Handbook. 2013. Homeland Security. FLETC



Coerced Confessions

The use of "coerced confessions" in federal prosecutions have been barred since the beginning of the 20th Century. However, only since 1936 have such coerced confessions been barred from criminal trials in the individual states.

The first "coerced confession" in a state trial excluded by the U.S. Supreme Court was in *Brown v. Mississippi* (1936).



Brown v. Mississippi (1936)

- Brown was suspected in a murder investigation.
- He was brought to crime scene for questioning.
- When he denied involvement, he was hanged twice from a tree limb and questioned further.
- When he continued to deny involvement, he was tied to the tree and whipped in an attempt to get him to confess.
- He was released at the scene, but arrested two days later.

Brown v. Mississippi, 297 U.S. 278 (1936)



Brown v. Mississippi (1936)

- Two other suspects were picked up and brought to the jail where they were stripped and whipped with a leather strap until they confessed.
- Brown and the two suspects were then threatened that if they recanted their confessions, they would be beaten again.
- Two days later all three were tried, convicted of murder, and sentenced to death.
- The Deputy Sheriff and law enforcement officials NEVER denied beating and whipping the suspects.

Brown v. Mississippi, 297 U.S. 278 (1936)



Brown v. Mississippi (1936)

The U.S. Supreme Court held that some kinds of police brutality are so shocking that they violate the 14th Amendment's right of Due Process, whether or not they violate the 5th Amendment. The Court then applied the fundamental right approach to "coerced confessions" – the right to be free of coercion in police interrogation was so important that it was a fundamental right! As such, protection under the 14th Amendment applied.

Brown v. Mississippi, 297 U.S. 278 (1936)



Custodial Interrogation

After *Brown*, between 1936 and the early 1960's, the U.S. Supreme Court used the "fundamental rights approach" to review the admissibility of confessions in state trials. For this reason, the Court adopted a test which became known as the "Voluntariness Test" with three factors:

1. Reliability
2. Offensive police practices
3. Confessions not the product of "free will"



Escobedo v. Illinois (1964)

The next significant case involving a confession was the case of *Escobedo v. Illinois*.

The facts of the case were:

- Escobedo was arrested without a warrant, taken to the police station, and interrogated as a suspect in a murder investigation.

Escobedo v. Illinois, 378 U.S. 478 (1964)



Escobedo v. Illinois (1964)

- Enroute to the police station he was told that he was named as the murderer and he should admit to committing the murder.
- Escobedo's reply was that he wanted to talk to a lawyer.
- His retained lawyer arrived at the police station and asked to speak to Escobedo. The attorney was repeatedly denied.

Escobedo v. Illinois, 378 U.S. 478 (1964)



Escobedo v. Illinois (1964)

- Escobedo also asked several times to speak with his lawyer, but was told his lawyer did not want to talk to him.
- Escobedo subsequently admitted to “some knowledge” of the murder.
- He was tried and convicted of murder.

Escobedo v. Illinois, 378 U.S. 478 (1964)



Escobedo v. Illinois (1964)

“When police have not effectively advised a suspect of his right to remain silent and denied the suspect access to an attorney in violation of the 6th Amendment (made applicable to all the States under the 14th Amendment), no statement obtained from a suspect during such an interrogation may be used against him at trial.”

Escobedo v. Illinois, 378 U.S. 478 (1964)



Custodial Interrogation

The Court seemed to abandon the “Voluntariness Test” in their opinion in large part to their ruling in *Malloy v. Hogan*, 378 U.S. 1 (1964) in which the Court ruled the 5th Amendment privilege against self-incrimination applied to State trials as well as Federal trials.



Custodial Interrogation

About two years later, following their decision in *Escobedo*, the U.S. Supreme Court ruled in the landmark case *Miranda v. Arizona*, 384 U.S. 436 (1966).

Georgia and federal appellate law require that the admissibility of confessions at trial comply with the U.S. Supreme Court’s *Miranda* ruling.



Miranda v. Arizona (1966)

- Miranda was arrested in his home and transported to the police station for questioning.
- Miranda was 23 years old, poor, and quit school in the 9th grade.
- The police interviewed him for approximately two hours and obtained a written confession.

Miranda v. Arizona, 384 U.S. 436 (1966)



Miranda v. Arizona (1966)

“Unless other fully effective means are adopted to notify accused in custody or otherwise deprived of freedom of his right of silence and to assure that exercise of right will be scrupulously honored, he must be warned before questioning that he has right to remain silent, that anything he says can be used against him in court, and that he has right to presence of attorney and to have attorney appointed before questioning if he cannot afford one; opportunity to exercise these rights must be afforded to him throughout interrogation; ...

Miranda v. Arizona, 384 U.S. 436 (1966)



Miranda v. Arizona (1966)

... after such warnings have been given and opportunity afforded, accused may knowingly and intelligently waive rights and agree to answer questions or make statements, but unless and until such warnings and waiver are demonstrated by prosecution at trial, no evidence obtained as a result of interrogation can be used against him."

Miranda v. Arizona, 384 U.S. 436 (1966)



Miranda v. Arizona (1966)

1. He has the right to remain silent;
2. That any statement he does make may be used as evidence against him
3. That he has a right to consult with an attorney and to have the attorney present during questioning
4. That if he cannot afford an attorney, one will be appointed to represent him prior to questioning

Miranda v. Arizona, 384 U.S. 436 (1966)



The Edwards Rule

"When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to police-initiated interrogation after being again advised of his rights. An accused ... having expressed his desire to deal with the police only through counsel, is not subject to further interrogation until counsel has been made available to him, unless the accused has himself initiated further communication, exchanges, or conversations with the police."

Edwards v. Arizona, 451 U.S. 477 (1981)



Oregon v. Elstad (1985)

"The Self-Incrimination Clause of the Fifth Amendment does not require the suppression of a confession, made after proper Miranda warnings and a valid waiver of rights, solely because the police had obtained an earlier voluntary but unwarned admission from the suspect."

Oregon v. Elstad, 470 U.S. 105 (1985)



§ 24-8-824. Confessions must be voluntary

To make a confession admissible, it shall have been made voluntarily, without being induced by another by the slightest hope of benefit or remotest fear of injury.



Trickery and Deceit

"The law is well established that use of trickery and deceit to obtain a confession does not render it inadmissible, so long as the means employed are not calculated to procure an untrue statement. ... [P]olice "investigative techniques" such as artifice, tricks or deception may be utilized in interrogating individuals only where "the means used to obtain [confessions] [does] not prevent them from being free and voluntary."

State v. Ritter, 268 Ga. 108 (1997)



Taylor v. State (2001)

“It is not improper for the police to encourage a suspect to help herself by telling the truth. It also does not render a statement involuntary for the police to tell a suspect that the trial judge may consider her truthful cooperation with the police.”

Taylor v. State 274 Ga. 269 (2001)



Hope of Benefit

“[T]his Court consistently and for many decades has interpreted the phrase “slightest hope of benefit” as used in OCGA § 24–3–50 [*now 24-8-824] and its predecessor code sections to focus on promises related to reduced criminal punishment—a shorter sentence, lesser charges, or no charges at all.”

Brown v. State, 290 Ga. 865 (2013)



Let’s Review...

“A person is considered to be in custody and *Miranda* warnings are required when a person is (1) formally arrested or (2) restrained to the degree associated with a formal arrest. Unless a reasonable person in the suspect's situation would perceive that he was in custody, *Miranda* warnings are not necessary.”

Sosniak v. State, 287 Ga. 279 (2010)



Recent *Miranda* Decisions



Missouri v. Seibert (2004)

Mrs. Seibert, who feared charges of neglect when her son, who was suffering from cerebral palsy, died in his sleep. In a plan to burn the trailer to hide the evidence of neglect, Mrs. Seibert, her two sons, and two of their friends also decided to let an 18 year old mentally ill living with the family die in the fire to avoid the appearance the child was unattended. Five days later Mrs. Seibert was arrested at 3:00 am and brought to the police station for questioning.

Missouri v. Seibert, 542 U.S. 600 (2004)



Missouri v. Seibert (2004)

At the police station, officers intentionally omitted reading Mrs. Seibert her *Miranda* Warnings with the intent to get her to confess. After she made several incriminating statements to the officers, she was given a 20 minute break and re-interviewed a second time only this time she was advised of her *Miranda* Warnings. Mrs. Seibert again made incriminating statements and later convicted on second degree murder.

Missouri v. Seibert, 542 U.S. 600 (2004)



Missouri v. Seibert (2004)

“[T]he technique used in this case distorts *Miranda’s* meaning and furthers no legitimate countervailing interest. The warning was withheld to obscure both the practical and legal significance of the admonition when finally given. That the interrogating officer relied on respondent’s pre-warning statement to obtain the post-warning one used at trial shows the temptations for abuse inherent in the two-step technique.....as such statements such as these are not admissible in court.”

Missouri v. Seibert, 542 U.S. 600 (2004)



U.S. v. Patane (2004)

Two police officers went to Patane’s home and arrested him for violating a restraining order. Aware that Patane may be in possession of a firearm as a convicted felon, one of the officers began reading Patane his *Miranda* Warnings in preparation for an interview about the weapon. Patane interrupted the officer and stated he knew his rights. The officers then interview Patane and he provided a voluntary statement and a consent to search in which the weapon was seized.

United State v. Patane, 542 U.S. 630 (2004)



U.S. v. Patane (2004)

Patane was indicted for possession of a firearm by a convicted felon and this appeal followed.

Patane argues that the police should have completed the *Miranda* Warnings, and because they didn’t, not only should Patane’s statement be inadmissible at trial, the weapon should also be inadmissible under the “fruit of the poisonous tree” doctrine.

United State v. Patane, 542 U.S. 630 (2004)



U.S. v. Patane (2004)

The U.S. Supreme Court ruled the failure of the police to give (or complete) *Miranda* warnings does not require the suppression of the physical fruits of the suspects unwarned but “voluntary statements.”

United State v. Patane, 542 U.S. 630 (2004)



Robinson v. State (2009)

- October 5, 2009
- Cobb County
- 2 counts malice murder, 2 counts felony murder, 3 counts cruelty to children 1st deg.

Robinson v. State, 286 Ga. 42 (2009)



Robinson v. State (2009)

In order for a suspect to properly invoke his right to counsel during a custodial interrogation, he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.

Robinson v. State, 286 Ga. 42 (2009)



Robinson v. State (2009)

Invocation of the *Miranda* right to counsel requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.

Robinson v. State, 286 Ga. 42 (2009)



Robinson v. State (2009)

If a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel, cessation of questioning is not required.

Robinson v. State, 286 Ga. 42 (2009)



Robinson v. State (2009)

“Uhm, yeah, I would like a lawyer,” was an unequivocal request for counsel; defendant did not use equivocal words such as “might” or “maybe” when referring to his desire for a lawyer, he was also not referring to a need for counsel sometime in the future, and the lack of ambiguity was shown even by detective's supposedly clarifying recitation, in which detective recognized: “You said you would like a lawyer.”

Robinson v. State, 286 Ga. 42 (2009)



Robinson v. State (2009)

Any ambiguity was created solely by the investigator's subsequent questioning. Robinson “did not use equivocal words such as ‘might’ or ‘maybe’ when referring to [his] desire for a lawyer. [He] was also not referring to a need for counsel sometime in the future...”

Robinson v. State, 286 Ga. 42 (2009)



Maryland v. Shatzer (2010)

In 2003, a police detective tried to question respondent Shatzer, who was incarcerated at a Maryland prison pursuant to a prior conviction, about allegations that he had sexually abused his son. Shatzer invoked his *Miranda* right to have counsel present during interrogation, so the detective terminated the interview. Shatzer was released back into the general prison population, and the investigation was closed.

Maryland v. Shatzer, 130 S. Ct. 1213 (2010)



Maryland v. Shatzer (2010)

Another detective reopened the investigation in 2006 and attempted to interrogate Shatzer, who was still incarcerated. Shatzer waived his *Miranda* rights and made inculpatory statements. The trial court refused to suppress those statements, reasoning that *Edwards v. Arizona* did not apply because Shatzer had experienced a break in *Miranda* custody prior to the 2006 interrogation. Shatzer was convicted of sexual child abuse.

Maryland v. Shatzer, 130 S. Ct. 1213 (2010)



Maryland v. Shatzer (2010)

The Court of Appeals of Maryland reversed, holding that the mere passage of time does not end the *Edwards* protections, and that, assuming, *arguendo*, a break-in-custody exception to *Edwards* existed, Shatzer's release back into the general prison population did not constitute such a break.

Maryland v. Shatzer, 130 S. Ct. 1213 (2010)



Maryland v. Shatzer (2010)

HELD: (1) the *Edwards* rule, under which a suspect who has invoked his right to the presence of counsel during custodial interrogation is not subject to further interrogation until either counsel has been made available or the suspect himself further initiates exchanges with the police, does not apply if a break in custody lasting 14 days has occurred, and...

Maryland v. Shatzer, 130 S. Ct. 1213 (2010)



Maryland v. Shatzer (2010)

(2) defendant's return to the general prison population, after he had invoked his right to the presence of counsel during custodial interrogation regarding allegations of criminal conduct separate from the conduct underlying the defendant's convictions, constituted a break in custody.

Maryland v. Shatzer, 130 S. Ct. 1213 (2010)



Maryland v. Shatzer (2010)

Shatzer's release back into the general prison population constitutes a break in *Miranda* custody. Lawful imprisonment imposed upon conviction does not create the coercive pressures produced by investigative custody that justify *Edwards*. When previously incarcerated suspects are released back into the general prison population, they return to their accustomed surroundings and daily routine—they regain the degree of control they had over their lives before the attempted interrogation.

Maryland v. Shatzer, 130 S. Ct. 1213 (2010)



Maryland v. Shatzer (2010)

Their continued detention is relatively disconnected from their prior unwillingness to cooperate in an investigation. The “inherently compelling pressures” of custodial interrogation ended when Shatzer returned to his normal life.

Maryland v. Shatzer, 130 S. Ct. 1213 (2010)



Berghuis v. Thompkins (2010)

After advising respondent Thompkins of his rights, in full compliance with *Miranda v. Arizona*, Detective Helgert and another Michigan officer interrogated him about a shooting in which one victim died. At no point did Thompkins say that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney.

Berghuis v. Thompkins, 560 U.S. 370 (2010)



Berghuis v. Thompkins (2010)

He was largely silent during the 3-hour interrogation, but near the end, he answered “yes” when asked if he prayed to God to forgive him for the shooting. He moved to suppress his statements, claiming that he had invoked his Fifth Amendment right to remain silent, that he had not waived that right, and that his inculpatory statements were involuntary. The trial court denied the motion.

Berghuis v. Thompkins, 130 S.Ct. 2250 (2010)



Berghuis v. Thompkins (2010)

- Fact that defendant was silent during first two hours and 45 minutes of three hour interrogation was insufficient to invoke his right to remain silent under *Miranda*;
- Defendant waived his right to remain silent under *Miranda* by responding to question by interrogating officer;
- Police are not required to obtain a waiver of defendant's right to remain silent under *Miranda* before commencing interrogation

Berghuis v. Thompkins, 130 S.Ct. 2250 (2010)



Florida v. Powell (2010)

After arresting respondent Powell, but before questioning him, Tampa Police read him their standard *Miranda* form, stating, *inter alia*: “You have the right to talk to a lawyer before answering any of our questions” and “[y]ou have the right to use any of these rights at any time you want during this interview.” Powell then admitted he owned a handgun found in a police search. He was charged with possession of a weapon by a convicted felon in violation of Florida law.

Florida v. Powell, 559 U.S. 50 (2010)



Florida v. Powell (2010)

The trial court denied Powell's motion to suppress his inculpatory statements, which was based on the contention that the *Miranda* warnings he received did not adequately convey his right to the presence of an attorney during questioning. Powell was convicted of the gun-possession charge, but the intermediate appellate court held that the trial court should have suppressed the statements. The Florida Supreme Court agreed.

Florida v. Powell, 559 U.S. 50 (2010)



Florida v. Powell (2010)

It noted that both *Miranda* and the State Constitution require that a suspect be clearly informed of the right to have a lawyer present during questioning. The advice Powell received was misleading, the court believed, because it suggested that he could consult with an attorney only before the police started to question him and did not convey his entitlement to counsel's presence throughout the interrogation.

Florida v. Powell, 559 U.S. 50 (2010)



Florida v. Powell (2010)

“The warnings Powell received satisfy this standard. By informing Powell that he had “the right to talk to a lawyer before answering any of [their] questions,” the Tampa officers communicated that he could consult with a lawyer before answering any particular question.

Florida v. Powell, 559 U.S. 50 (2010)



Florida v. Powell (2010)

And the statement that Powell had “the right to use any of [his] rights at any time [he] want[ed] during th[e] interview” confirmed that he could exercise his right to an attorney while the interrogation was underway. In combination, the two warnings reasonably conveyed the right to have an attorney present, not only at the outset of interrogation, but at all times.

Florida v. Powell, 559 U.S. 50 (2010)



Florida v. Powell (2010)

...The standard warnings used by the Federal Bureau of Investigation are admirably informative, but the Court declines to declare their precise formulation necessary to meet *Miranda's* requirements. Different words were used in the advice Powell received, but they communicated the same message.

Florida v. Powell, 559 U.S. 50 (2010)



J.D.B. v. North Carolina (2011)

Police stopped and questioned petitioner J.D.B., a 13-year-old, seventh-grade student, upon seeing him near the site of two home break-ins. Five days later, after a digital camera matching one of the stolen items was found at J.D.B.'s school and seen in his possession, Investigator DiCostanzo went to the school. A uniformed police officer on detail to the school took J.D.B. from his classroom to a closed-door conference room, where police and school administrators questioned him for at least 30 minutes.

J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011)



J.D.B. v. North Carolina (2011)

Before beginning, they did not give him *Miranda* warnings or the opportunity to call his grandmother, his legal guardian, nor tell him he was free to leave the room. He first denied his involvement, but later confessed after officials urged him to tell the truth and told him about the prospect of juvenile detention. DiCostanzo only then told him that he could refuse to answer questions and was free to leave.

J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011)



J.D.B. v. North Carolina (2011)

Asked whether he understood, J.D.B. nodded and provided further detail, including the location of the stolen items. He also wrote a statement, at DiCostanzo's request. When the school day ended, he was permitted to leave to catch the bus home. Two juvenile petitions were filed against J.D.B., charging him with breaking and entering and with larceny.

J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011)



J.D.B. v. North Carolina (2011)

...[W]e hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test.

J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011)



J.D.B. v. North Carolina (2011)

...In short, officers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult.

J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011)



J.D.B. v. North Carolina (2011)

...To hold, as the State requests, that a child's age is never relevant to whether a suspect has been taken into custody—and thus to ignore the very real differences between children and adults—would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.

J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011)



Howes v. Fields (2012)

Respondent Fields, a Michigan state prisoner, was escorted from his prison cell by a corrections officer to a conference room where he was questioned by two sheriff's deputies about criminal activity he had allegedly engaged in before coming to prison. At no time was Fields given *Miranda* warnings or advised that he did not have to speak with the deputies. As relevant here: Fields was questioned for between five and seven hours; Fields was told more than ...

Howes v. Fields, 132 S.Ct. 1181 (2012)



Howes v. Fields (2012)

... once that he was free to leave and return to his cell; the deputies were armed, but Fields remained free of restraints; the conference room door was sometimes open and sometimes shut; several times during the interview Fields stated that he no longer wanted to talk to the deputies, but he did not ask to go back to his cell; after Fields confessed and the interview concluded, he had to wait an additional 20 minutes for an escort and returned to his cell well after the hour when he generally retired.

Howes v. Fields, 132 S.Ct. 1181 (2012)



Howes v. Fields (2012)

Additional factors discussed in the case:

- Did not consent to the interview in advance
- One deputy may have used a very sharp tone and profanity
- He was told that if he did not want to cooperate he would have to go back to his cell
- Well-lit, average-sized conference room in which he was not comfortable
- He was offered food and water

Howes v. Fields, 132 S.Ct. 1181 (2012)



Howes v. Fields (2012)

- (1) no categorical rule has been clearly established that questioning of a prisoner is always custodial when the prisoner is removed from the general prison population and questioned about events that occurred outside the prison;
- (2) service of a term of imprisonment is not enough to constitute *Miranda* custody;
- (3) taking a prisoner aside for questioning does not necessarily convert a noncustodial situation to one in which *Miranda* applies;

Howes v. Fields, 132 S.Ct. 1181 (2012)



Howes v. Fields (2012)

(4) questioning a prisoner about criminal activity that occurred outside the prison does not necessarily convert a noncustodial situation to one in which Miranda applies; and

(5) defendant was not taken into custody when he was escorted from his cell and interviewed in conference room within prison.

Howes v. Fields, 132 S.Ct. 1181 (2012)



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Interviews, Confessions and Miranda Warnings

Whenever considering an interview of a subject in custody, or even a suspect, of a serious crime always consider coordinating with your legal advisor prior to the start of the interview.

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Questions?



THE EXCLUSIONARY RULE – AN OVERVIEW

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Terminal Performance Objective

When performing the duties of a law enforcement officer, students will operate with an understanding of the principles behind and applicability of the *exclusionary rule* and significant rule exceptions, in accordance with appellate decisions and statutory law of Georgia and the United States.

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Enabling Objectives

- Recognize the principles behind and impact of the *exclusionary rule*
- Describe *fruits of the poisonous tree* doctrine
- Discuss the *good faith* exception and O.C.G.A. § 17-5-30
- Discuss the *independent source* exception
- Discuss the *inevitable discovery* exception
- Discuss the *purged taint* exception

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4th Amendment Concerns

The requirement of a **search warrant** has been said to be the general rule. where there is a search without a search warrant, the burden is on the government to show the search was lawful and falls within one of the exceptions to the Fourth Amendment search warrant requirement.

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Defn. *Exclusionary Rule*

- Evidence obtained in violation the defendant's constitutional rights may not be introduced by the prosecution at trial, at least for the purpose of providing direct proof of the defendant's guilt.
 - The violation is of the **defendant's** rights – not the rights of some third party

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Exclusionary Rule

- The theory behind the *exclusionary rule* was based on two principles:
 1. Deterrent - Deter constitutional violations such as illegal searches under the 4th Amendment.
 2. Fairness - The integrity of the judicial system requires that the courts not be a part to illegal or unlawful invasions of a persons constitutional rights.

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Exclusionary Rule

- The exclusionary rule only applies to violations of the U.S. Constitution and not to violations of administrative regulations.

U.S. v. Caceres, 440 U.S. 741 (1979)

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Exclusionary Rule

- ***Weeks v. United States (1914)***: Weeks charged with using post office to transport lottery materials. Weeks room searched twice without a SW. Evidence seized papers and articles. Evidence was admitted and Weeks was convicted.

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

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Exclusionary Rule

- Federal exclusionary rule created – evidence unreasonably obtained by federal law enforcement officers no longer admissible in federal court
- The concept of the “*silver platter doctrine*” developed. Evidence illegally seized by state officers could still be admitted in federal court, handed over on a “silver platter”

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Mapp v. Ohio (1961)

- Officers believed Mapp was hiding a bombing suspect and gambling paraphernalia in her home. They were denied entry, only to return 3 hours later with more officers. Entry was forced. Officer presented a fake warrant. Obscene materials discovered.
- The *exclusionary rule* was expanded to cover all states by application of the 14th Amendment.

Mapp v. Ohio, 367 U.S. 643 (1961)



"Fruits of the Poisonous Tree" Doctrine

- The *fruits of the poisonous tree* doctrine provides that any evidence acquired by the police through exploitation of information obtained by means of unlawful conduct is inadmissible in a criminal prosecution



Fruits of the Poisonous Tree Doctrine

The Supreme Court set forth several factors for lower courts to consider in making this determination, including, "the time elapsed between the illegality and the acquisition of the evidence; the presence of intervening circumstances; and the purpose and flagrancy of the official misconduct."

Brown v. Illinois, 422 U.S. 590 (1975)



Good Faith Exception

- The Fourth Amendment exclusionary rule should not be applied so as to bar the use in the prosecution's case in chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be invalid.

U.S. v. Leon, 468 U.S. 897 (1984)



OCGA § 17-5-30. Motion to suppress evidence illegally seized

(a) A defendant aggrieved by an unlawful search and seizure may move the court for the return of property, the possession of which is not otherwise unlawful, and to suppress as evidence anything so obtained on the grounds that:

- (1) The search and seizure without a warrant was illegal; or
- (2) The search and seizure with a warrant was illegal because the warrant is insufficient on its face, there was not probable cause for the issuance of the warrant, or the warrant was illegally executed.



Gary v. State (1992)

"[W]e hold that the good-faith exception to the exclusionary rule enunciated by the U.S. Supreme Court in *Leon*, is not applicable in Georgia in light of our legislatively-mandated exclusionary rule found in [OCGA § 17-5-30](#)..."

Gary v. State, 262 Ga. 573 (1992)



OCGA § 17-5-30 Applied

- Introduction of evidence obtained by officers reasonably relying on warrant issued by detached and neutral magistrate, but ultimately found to be unsupported by probable cause has no application in Georgia jurisprudence due to the statutorily created exclusionary rule providing for no good faith exception.

Boatright v. The State, 225 Ga.App. 181 (1997)



Good Faith Exception - Arrest

- Officer's later discovery that validly issued bench warrant had been recalled four days earlier did not negate probable cause, since existence of probable cause must be measured by current knowledge and not hindsight, and officer had no reason to believe information was incorrect.

Harvey v. The State, 266 Ga. 671 (1996)



Independent Source Exception

- The *independent source* exception to the exclusionary rule allows admission of evidence that was discovered by means wholly independent of any constitutional violation, while the ultimate or “inevitable discovery” exception allows admission of evidence that was discovered as a result of police error or misconduct ...

Teal v. The State, 282 Ga. 319 (2007)



Independent Source Exception

- ... if the State establishes by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, without reference to the police error or misconduct.

Teal v. The State, 282 Ga. 319 (2007)



Independent Source Exception

- Example: After an informant observed cocaine and police then unlawfully entered defendant's motel room after breaking down door, in order to “secure” premises, the cocaine seized during subsequent search pursuant to warrant was not tainted, and was admissible at trial under independent source doctrine.

Johnson v The State, 221 Ga.App. 266 (1996)



Inevitable Discovery Exception

- There must be a reasonable probability that the evidence in question would have been discovered by lawful means, and the prosecution must demonstrate that the lawful means which made discovery inevitable were possessed by the police and were being actively pursued prior to the occurrence of the illegal conduct.

Cunningham v. The State, 284 Ga.App. 739 (2007)



Inevitable Discovery Exception

- In the case which has become known as the “Christian burial speech” case, the U.S. Supreme Court ruled that the body of the victim, and the subsequent evidence found on the body which implicated the defendant, would have been inevitably been found regardless of the unlawful conduct of the detectives.

Nix v. Williams, 467 U.S. 431 (1984)



Inevitable Discovery Exception

In *Cunningham v. The State*, the Georgia Court of Appeals ruled the chemical test evidence supporting the DUI conviction would have been discovered lawfully since the trooper would have had probable cause to request chemical testing from the defendant once he found the prescription pills and steel wool in her purse.

Cunningham v. The State, 284 Ga.App. 739 (2007)



Purged Taint Exception

- When intervening factors are significant enough to “purge the taint” of the original police conduct, suppression is not required under the exclusionary rule.

Wong Sun v. U.S., 371 U.S. 471 (1963)



Purged Taint Exception

“However, ‘evidence is [not] ‘fruit of the poisonous tree’ simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is ‘whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.’”

Ruffin v. State, 201 Ga.App. 792 (1991)



Questions?



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.



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



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)



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)



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



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



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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Carroll v. U.S. (1924)

USSC: “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.”

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 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)



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)



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)



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)



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)



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)



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)



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)



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)



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)



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)



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)



What About Cellphones?

GPSTC

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

GPSTC

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

GPSTC

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

GPSTC

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

GPSTC

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!

GPSTC

Terry v. Ohio (1968)

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

GPSTC

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)

GPSTC

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)

GPSTC

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)

GPSTC

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)

GPSTC

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)



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)



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.



2 Questions. 4 Possibilities.

Weapon in view?

Yes or No.

ARS?

Yes or No.



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)



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)



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



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)



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)



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



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)



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)



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)



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)



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



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)



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)



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



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



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



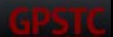
State v. Snead (2014)

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



Stop & Frisk – Vehicles Conclusion



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



3. Exigent Circumstances



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)

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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

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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)

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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)

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4. Valid Consent

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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

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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)

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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

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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)



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)



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)



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.
 - The fact that the defendant was in custody at the time consent was given does not alone show that it was coerced.

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

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



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)



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)



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;

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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

- 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

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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

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. While the officer's observation of the objects within the home ...

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

GPSTC

Vantage Point

... from a vantage point without the home was a lawful "nonsearch plain view situation," it does not follow that the "in-home" seizure of the observed objects or the arrest of these who possess the observed objects is lawful, for the plain view doctrine authorizes seizure of illegal or evidentiary items visible to a police officer only if the officer's access to the object itself has some prior Fourth Amendment justification."

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

GPSTC

Vantage Point

In its ruling, the Georgia Supreme Court held that the warrantless 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 placed into evidence, constitutes sufficient probable cause to support the warrantless search of a vehicle.

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

GPSTC

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)

GPSTC

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)



7. Abandoned Property



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.



Abandoned Property

“Abandonment of property 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.” The Court also stated, “Police pursuit or the existence of a police investigation does not of itself render abandonment of property involuntary.”

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



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)



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)



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)

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Phillips v. State (2006)

GA.APP: "The Supreme Court of Georgia has defined curtilage as "the yards and grounds of a particular address, its gardens, barns, and buildings." The United States Supreme Court has 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)

“Specifically, the factors to be considered in determining whether a particular area or object lies within the curtilage of a home are:

- 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)



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)



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



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



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)



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)



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)



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)



9. Administrative Searches



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



School Searches



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)



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)

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Government Property

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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

GPSTC

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)

GPSTC

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).



Impound is **NOT** for Evidence!

GA.APP: "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)



Strobert 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."

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



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)

GPSTC

Inspections

GPSTC

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)

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Roadblocks & Checkpoints

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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)



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)



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)



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)



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)



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)



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)



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)



10.

Probationers, Parolees & Inmates (4th Amendment Waivers)



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)



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)



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



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 checkpointdoes 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:

GPSTC

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.

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)

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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)

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Vehicle Searches

In *Pennsylvania v. Labron*, (1996), the United States Supreme Court held that a search of an automobile based on probable cause does not require exigent or unforeseen circumstances. “[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)

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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)

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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)

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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.

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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)

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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)

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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)



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



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)



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?



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.



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)



Review of Legal Authority, Search & Seizure Concerns

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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

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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?



O.C.G.A. TITLE 16 – CRIMES AND OFFENSES

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Terminal Performance Objective

While acting in a law enforcement capacity, officers will function with an understanding of criminal liability, defenses to prosecution and elements of proof for crimes and offenses, in accordance with Title 16 of the Official Code of Georgia and appellate law.



Enabling Objectives

- Describe applicability of criminal liability statutes in OCGA § Title 16, Chapter 2
- Identify defenses to criminal prosecutions in OCGA § Title 16, Chapter 3
- Discuss criminal attempt, conspiracy and solicitation statutes in OCGA § Title 16, Chapter 4
- Describe the elements of proof for selected felony and misdemeanor criminal offenses in OCGA § Title 16



Enabling Objectives

- Describe applicability of criminal liability statutes in OCGA § Title 16, Chapter 2
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§ 16-2-1. Definition of crime

(a) A “crime” is a violation of a statute of this state in which there is a joint operation of an act or omission to act and intention or criminal negligence.

(b) Criminal negligence is an act or failure to act which demonstrates a willful, wanton, or reckless disregard for the safety of others who might reasonably be expected to be injured thereby.



§ 16-2-2. Misfortune or accident not a crime

A person shall not be found guilty of any crime committed by misfortune or accident where it satisfactorily appears there was no criminal scheme or undertaking, intention, or criminal negligence.

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§ 16-2-3. Presumption of sound mind and discretion

Every person is presumed to be of sound mind and discretion but the presumption may be rebutted.

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§ 16-2-4. Acts presumed to be wilful

The acts of a person of sound mind and discretion are presumed to be the product of the person's will but the presumption may be rebutted.

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§ 16-2-5. Consequences presumed intended

A person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts but the presumption may be rebutted.

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§ 16-2-6. Intention a question of fact

A person will not be presumed to act with criminal intention but the trier of facts may find such intention upon consideration of the words, conduct, demeanor, motive, and all other circumstances connected with the act for which the accused is prosecuted.

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§ 16-2-20. Parties to crime; punishment

- (a) Every person concerned in the commission of a crime is a party thereto and may be charged with and convicted of commission of the crime.
- (b) A person is concerned in the commission of a crime only if he:
 - (1) Directly commits the crime;
 - (2) Intentionally causes some other person to commit the crime under such circumstances that the other person is not guilty of any crime either in fact or because of legal incapacity;
 - (3) Intentionally aids or abets in the commission of the crime; or
 - (4) Intentionally advises, encourages, hires, counsels, or procures another to commit the crime.

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§ 16-2-21. Trial and conviction of parties who did not directly commit the crime

Any party to a crime who did not directly commit the crime may be indicted, tried, convicted, and punished for commission of the crime upon proof that the crime was committed and that he was a party thereto, although the person claimed to have directly committed the crime has not been prosecuted or convicted, has been convicted of a different crime or degree of crime, or is not amenable to justice or has been acquitted.



§ 16-3-1. Minimum age

A person shall not be considered or found guilty of a crime unless he has attained the age of 13 years at the time of the act, omission, or negligence constituting the crime.



§ 16-3-2. Mental capacity; insanity

A person shall not be found guilty of a crime if, at the time of the act, omission, or negligence constituting the crime, the person did not have mental capacity to distinguish between right and wrong in relation to such act, omission, or negligence.



§ 16-3-3. Delusional compulsion

A person shall not be found guilty of a crime when, at the time of the act, omission, or negligence constituting the crime, the person, because of mental disease, injury, or congenital deficiency, acted as he did because of a delusional compulsion as to such act which overmastered his will to resist committing the crime.



§ 16-3-4. Intoxication

- (a) A person shall not be found guilty of a crime when, at the time of the act, omission, or negligence constituting the crime, the person, because of involuntary intoxication, did not have sufficient mental capacity to distinguish between right and wrong in relation to such act.
- (b) Involuntary intoxication means intoxication caused by:
 - (1) Consumption of a substance through excusable ignorance; or
 - (2) The coercion, fraud, artifice, or contrivance of another person.
- (c) Voluntary intoxication shall not be an excuse for any criminal act or omission.



§ 16-3-5. Mistake of fact

A person shall not be found guilty of a crime if the act or omission to act constituting the crime was induced by a misapprehension of fact which, if true, would have justified the act or omission.



§ 16-3-6. Sexual servitude; coercion or deception

(a) **Skipped – definitions.**

(b) A person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed under coercion or deception while the accused was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46.

(c) A defense based upon any of the provisions of this Code section shall be an affirmative defense.

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§ 16-3-28. Affirmative defenses

A defense based upon any of the provisions of this article is an affirmative defense.

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§ 16-3-20. Justification as a defense

The fact that a person's conduct is justified is a defense to prosecution for any crime based on that conduct. The defense of justification can be claimed:

(1) When the person's conduct is justified under Code Section 16-3-21, 16-3-23, 16-3-24, 16-3-25, or 16-3-26;

(2) When the person's conduct is in reasonable fulfillment of his duties as a government officer or employee;

(3) When the person's conduct is the reasonable discipline of a minor by his parent or a person in loco parentis;

GPSTC

§ 16-3-20. Justification as a defense

(4) When the person's conduct is reasonable and is performed in the course of making a lawful arrest;

(5) When the person's conduct is justified for any other reason under the laws of this state; or

(6) In all other instances which stand upon the same footing of reason and justice as those enumerated in this article.

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§ 16-3-21. Use of force in defense of self or others...

(a) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; ...

GPSTC

§ 16-3-21. Use of force in defense of self or others...

... however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.

GPSTC

§ 16-3-21. Use of force in defense of self or others...

(b) A person is not justified in using force under the circumstances specified in subsection (a) of this Code section if he:

- (1) Initially provokes the use of force against himself with the intent to use such force as an excuse to inflict bodily harm upon the assailant;
- (2) Is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or ...



§ 16-3-21. Use of force in defense of self or others...

(3) Was the aggressor or was engaged in a combat by agreement unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force. ...



§ 16-3-21. Use of force in defense of self or others...

(c) Any rule, regulation, or policy of any agency of the state or any ordinance, resolution, rule, regulation, or policy of any county, municipality, or other political subdivision of the state which is in conflict with this Code section shall be null, void, and of no force and effect.

...



§ 16-3-22. Persons rendering assistance to law enforcement officers

a) Any person who renders assistance reasonably and in good faith to any law enforcement officer who is being hindered in the performance of his official duties or whose life is being endangered by the conduct of any other person or persons while performing his official duties shall be immune to the same extent as the law enforcement officer from any criminal liability that might otherwise be incurred or imposed as a result of rendering assistance to the law enforcement officer.



§ 16-3-24.1. "Habitation" and "personal property" defined

As used in [Code Sections 16-3-23](#) and [16-3-24](#), the term "habitation" means any dwelling, motor vehicle, or place of business, and "personal property" means personal property other than a motor vehicle.



OCGA § 16-3-23. Use of force in defense of habitation

A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to prevent or terminate such other's unlawful entry into or attack upon a habitation; however, such person is justified in the use of force which is intended or likely to cause death or great bodily harm only if:



OCGA § 16-3-23. Use of force in defense of habitation

- 1) The entry is made or attempted in a violent and tumultuous manner and he or she reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person dwelling or being therein and that such force is necessary to prevent the assault or offer of personal violence;



OCGA § 16-3-23. Use of force in defense of habitation

- 2) That force is used against another person who is not a member of the family or household and who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence and the person using such force knew or had reason to believe that an unlawful and forcible entry occurred; or



OCGA § 16-3-23. Use of force in defense of habitation

- 3) The person using such force reasonably believes that the entry is made or attempted for the purpose of committing a felony therein and that such force is necessary to prevent the commission of the felony.



§ 16-3-23.1. Use of force in defense of habitation, property, self, or others; no duty to retreat

A person who uses threats or force in accordance with [Code Section 16-3-21](#), relating to the use of force in defense of self or others, [Code Section 16-3-23](#), relating to the use of force in defense of a habitation, or [Code Section 16-3-24](#), relating to the use of force in defense of property other than a habitation, has no duty to retreat and has the right to stand his or her ground and use force as provided in said Code sections, including deadly force.



§ 16-3-24. Use of force in defense of property

(a) A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such threat or force is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with real property other than a habitation or personal property:

- (1) Lawfully in his possession;
- (2) Lawfully in the possession of a member of his immediate family; or ...



§ 16-3-24. Use of force in defense of property

(3) Belonging to a person whose property he has a legal duty to protect.

(b) The use of force which is intended or likely to cause death or great bodily harm to prevent trespass on or other tortious or criminal interference with real property other than a habitation or personal property is not justified unless the person using such force reasonably believes that it is necessary to prevent the commission of a forcible felony.



§ 16-3-24.2. Immunity from criminal prosecution where use of threats or force is justified

A person who uses threats or force in accordance with [Code Section 16-3-21](#), [16-3-23](#), [16-3-23.1](#), or [16-3-24](#) shall be immune from criminal prosecution therefor unless in the use of deadly force, such person utilizes a weapon the carrying or possession of which is unlawful by such person under Part 2 or 3 of Article 4 of Chapter 11 of this title.



§ 16-3-25. Entrapment as a defense

A person is not guilty of a crime if, by entrapment, his conduct is induced or solicited by a government officer or employee, or agent of either, for the purpose of obtaining evidence to be used in prosecuting the person for commission of the crime. ...



§ 16-3-25. Entrapment as a defense

... Entrapment exists where the idea and intention of the commission of the crime originated with a government officer or employee, or with an agent of either, and he, by undue persuasion, incitement, or deceitful means, induced the accused to commit the act which the accused would not have committed except for the conduct of such officer.



§ 16-3-26. Coercion as a defense

A person is not guilty of a crime, except murder, if the act upon which the supposed criminal liability is based is performed under such coercion that the person reasonably believes that performing the act is the only way to prevent his imminent death or great bodily injury.



§ 16-3-40. Alibi as a defense

The defense of alibi involves the impossibility of the accused's presence at the scene of the offense at the time of its commission. The range of the evidence in respect to time and place must be such as reasonably to exclude the possibility of presence.



§ 16-4-1. Criminal attempt

A person commits the offense of criminal attempt when, with intent to commit a specific crime, he performs any act which constitutes a substantial step toward the commission of that crime.



§ 16-4-2. Criminal attempt conviction lawful though crime was committed

A person may be convicted of the offense of criminal attempt if the crime attempted was actually committed in pursuance of the attempt but may not be convicted of both the criminal attempt and the completed crime.



§ 16-4-3. Charge of crime includes criminal attempt

A person charged with commission of a crime may be convicted of the offense of criminal attempt as to that crime without being specifically charged with the criminal attempt in the accusation, indictment, or presentment.



§ 16-4-4. Impossibility no defense

It is no defense to a charge of criminal attempt that the crime the accused is charged with attempting was, under the attendant circumstances, factually or legally impossible of commission if such crime could have been committed had the attendant circumstances been as the accused believed them to be.



§ 16-4-5. Abandonment of effort as defense

(a) When a person's conduct would otherwise constitute an attempt to commit a crime under Code Section 16-4-1, it is an affirmative defense that he abandoned his effort to commit the crime or in any other manner prevented its commission under circumstances manifesting a voluntary and complete renunciation of his criminal purpose. ...



§ 16-4-5. Abandonment of effort as defense

- (b) A renunciation of criminal purpose is not voluntary and complete if it results from:
- (1) A belief that circumstances exist which increase the probability of detection or apprehension of the person or which render more difficult the accomplishment of the criminal purpose; or
 - (2) A decision to postpone the criminal conduct until another time.



§ 16-4-6. Punishment

(a) A person convicted of the offense of criminal attempt to commit a crime punishable by death or by life imprisonment shall be punished by imprisonment for not less than one year nor more than 30 years.

...



§ 16-4-6. Punishment

(b) A person convicted of the offense of criminal attempt to commit a felony, other than a felony punishable by death or life imprisonment, shall be punished by imprisonment for not less than one year nor more than one-half the maximum period of time for which he or she could have been sentenced if he or she had been convicted of the crime attempted, by one-half the maximum fine to which he or she could have been subjected if he or she had been convicted of the crime attempted, or both. ...



§ 16-4-6. Punishment

(c) A person convicted of the offense of criminal attempt to commit a misdemeanor shall be punished as for a misdemeanor.



OCGA § 16-4-7. Criminal solicitation

(a) A person commits the offense of criminal solicitation when, with intent that another person engage in conduct constituting a felony, he solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in such conduct. ...



OCGA § 16-4-7. Criminal solicitation

(b) A person convicted of the offense of criminal solicitation to commit a felony shall be punished by imprisonment for not less than one nor more than three years. A person convicted of the offense of criminal solicitation to commit a crime punishable by death or by life imprisonment shall be punished by imprisonment for not less than one nor more than five years. ...



OCGA § 16-4-7. Criminal solicitation

(c) It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime solicited.
(d) The provisions of subsections (a) through (c) of this Code section are cumulative and shall not supersede any other penal law of this state.



OCGA § 16-4-8. Conspiracy to commit a crime

A person commits the offense of conspiracy to commit a crime when he together with one or more persons conspires to commit any crime and any one or more of such persons does any overt act to effect the object of the conspiracy. A person convicted of the offense of criminal conspiracy to commit a felony shall be punished by imprisonment for not less than one year nor more than one-half the maximum period of time for which he could have been sentenced if he had been convicted the ...



OCGA § 16-4-8. Conspiracy to commit a crime

... maximum fine to which he could have been subjected if he had been convicted of such crime, or both. A person convicted of the offense of criminal conspiracy to commit a misdemeanor shall be punished as for a misdemeanor. A person convicted of the offense of criminal conspiracy to commit a crime punishable by death or by life imprisonment shall be punished by imprisonment for not less than one year nor more than ten years.

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§ 16-4-8.1. Conviction of conspiracy to commit a crime where crime actually committed

A person may be convicted of the offense of conspiracy to commit a crime, as defined in Code Section 16-4-8, even if the crime which was the objective of the conspiracy was actually committed or completed in pursuance of the conspiracy, but such person may not be convicted of both conspiracy to commit a crime and the completed crime.

GPSTC

§ 16-4-9. Withdrawal of co-conspirator

A coconspirator may be relieved from the effects of Code Section 16-4-8 if he can show that before the overt act occurred he withdrew his agreement to commit a crime.

GPSTC

§ 16-4-10. Domestic terrorism

(a) As used in this Code section, “domestic terrorism” means any violation of, or attempt to violate, the laws of this state or of the United States which:

(1) Is intended or reasonably likely to injure or kill not less than ten individuals as part of a single unlawful act or a series of unlawful acts which are interrelated by distinguishing characteristics; and ...

GPSTC

§ 16-4-10. Domestic terrorism

(2)(A) Is intended to intimidate the civilian population of this state, any of its political subdivisions, or of the United States;
(B) Is intended to alter, change, or coerce the policy of the government of this state or any of its political subdivisions by intimidation or coercion; or
(C) Is intended to affect the conduct of the government of this state or any of its political subdivisions by use of destructive devices, assassination, or kidnapping.

GPSTC

§ 16-4-10. Domestic terrorism

(b) Notwithstanding any other provision of law, any person who commits, attempts to commit, conspires to commit, or solicits, coerces, or intimidates another to commit a violation of the laws of this state or of the United States for the purpose of domestic terrorism shall, except in cases for which the death penalty may be imposed and the state has served notice of its intention to seek the death penalty, be sentenced to the maximum term of imprisonment and a fine not to exceed the amount prescribed by Code Section 17-10-8, which penalty shall not be suspended, stayed, probated, or withheld.

GPSTC

§ 16-4-10. Domestic terrorism

(c) In addition to any other provision of law, evidence that a person committed an offense for which the death penalty may be imposed under the laws of this state for the purpose of domestic terrorism shall be admissible during the sentencing phase as a statutory aggravating circumstance. It shall be the duty of the judge to consider, or to instruct the jury to consider, in addition to the statutory aggravating circumstances provided in Code Section 17-10-30, that the offense was committed for the purpose of domestic terrorism.

GPSTC

OCGA § 16-5-1. Murder (2014)

(a) A person commits the offense of murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being.

(b) Express malice is that deliberate intention unlawfully to take the life of another human being which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart.

...

GPSTC

OCGA § 16-5-1. Murder (2014)

(c) A person also commits the offense of murder when, in the commission of a felony, he or she causes the death of another human being irrespective of malice.

(d) A person commits the offense of murder in the second degree when, in the commission of cruelty to children in the second degree, he or she causes the death of another human being irrespective of malice.

GPSTC

OCGA § 16-5-1. Murder (2014)

(e)(1) A person convicted of the offense of murder shall be punished by death, by imprisonment for life without parole, or by imprisonment for life.

(2) A person convicted of the offense of murder in the second degree shall be punished by imprisonment for not less than ten nor more than 30 years."

GPSTC

OCGA § 16-5-2. Voluntary manslaughter

a) A person commits the offense of voluntary manslaughter when he causes the death of another human being under circumstances which would otherwise be murder and if he acts solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person; however, if there should have been an interval between the provocation and the killing sufficient for the voice of reason and humanity to be heard, of which the jury in all cases shall be the judge, the killing shall be attributed to deliberate revenge and be punished as murder.

GPSTC

OCGA § 16-5-2. Voluntary manslaughter

a) A person who commits the offense of voluntary manslaughter, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years.

GPSTC

OCGA § 16-5-3. Involuntary manslaughter

a) A person commits the offense of involuntary manslaughter in the commission of an unlawful act when he causes the death of another human being without any intention to do so by the commission of an unlawful act other than a felony. A person who commits the offense of involuntary manslaughter in the commission of an unlawful act, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.



OCGA § 16-10-21.1. False liens and encumbrances (2014)

(a) As used in this Code section, the term 'document' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form and shall include, but shall not be limited to, liens, encumbrances, documents of title, instruments relating to a security interest in or title to real or personal property, or other records, statements, or representations of fact, law, right, or opinion.



OCGA § 16-10-21.1. False liens and encumbrances (2014)

(b) Notwithstanding Code Sections 16-10-20 and 16-10-71, it shall be unlawful for any person to:

(1) Knowingly file, enter, or record any document in a public record or court of this state or of the United States knowing or having reason to know that such lien or encumbrance document is false or contains a materially false, fictitious, or fraudulent statement or representation; or



OCGA § 16-10-21.1. False liens and encumbrances (2014)

(2) Knowingly alter, conceal, cover up, or create a document and file, enter, or record it in a public record or court of this state or of the United States knowing or having reason to know that such document has been altered or contains a materially false, fictitious, or fraudulent statement or representation.



OCGA § 16-10-21.1. False liens and encumbrances (2014)

(c) Any person who violates subsection (b) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than ten years, a fine not to exceed \$10,000.00, or both.

(d) This Code section shall not apply to a court clerk, registrar of deeds, or any other government employee who is acting in the course of his or her official duties."



16-5-21. Aggravated Assault (2014)

(a) As used in this Code section, the term 'strangulation' means impeding the normal breathing or circulation of blood of another person by applying pressure to the throat or neck of such person or by obstructing the nose and mouth of such person.

(b) A person commits the offense of aggravated assault when he or she assaults:

(1) With intent to murder, to rape, or to rob;



16-5-21. Aggravated Assault (2014)

(2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; or

(3) With any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in strangulation; or

(4) A person or persons without legal justification by discharging a firearm from within a motor vehicle toward a person or persons.

...

GPSTC

OCGA § 16-6-1. Rape

a) A person commits the offense of rape when he has carnal knowledge of:

- 1) A female forcibly and against her will; or
- 2) A female who is less than ten years of age.

b) Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.

GPSTC

Comments: OCGA § 16-6-1. Rape

- There are cases in which the victim of an alleged rape consented to sexual intercourse, but because of they were rendered in capable of knowingly giving consent to the offense of rape occurred.
- The Georgia Court of Appeals has ruled on several occasions that if the victim is rendered insensible at the time of the attack by sleep, intoxication, or *mental incompetence*, she is incapable of consent and its absence need not be shown. Indeed, there is nothing in §16-6-1 which precludes a finding of rape if the victim is not alive at the moment of penetration.

GPSTC

Comments: OCGA § 16-6-1. Rape

Defendant Irving Baise's girlfriend came to visit him at the hotel where he was living. She brought her 17 year old mentally retarded daughter with her. Prior to entering the hotel the 17 year old daughter "indicated" to her mother that she wanted to have sex with Baise. Evidence at trial indicated that Baise told the mother to go into the bathroom and stay there and then he had intercourse with the 17 year old girl. The 17 year old mentally retarded girl was determined to have an IQ of 41 and adaptive behavior skills of a six year old. Baise was subsequently tried and convicted of forcible rape.

GPSTC

Comments: OCGA § 16-6-1. Rape

On appeal, the Georgia Court of Appeals ruled: The evidence was also sufficient for the jury to conclude that because of the victim's mental condition, she was not capable of giving Baise consent to sexual intercourse. Under this view of the evidence, the rule is that carnal knowledge of a female who because of mental retardation is incapable of giving an intelligent assent or dissent or of exercising judgment in the matter constitutes rape.

Baise v. The State, 232 Ga.App. 556 (1998)

GPSTC

Comments: OCGA § 16-6-1. Rape

- **Mild or Educable Mentally Retarded Persons**
 - Generally, persons with an I.Q. (Intelligence Quotient) score between 50 and 70 are considered mild or educable mentally retarded and have the adaptive behavior skills in the of children 8 to 10 years old.
 - Such persons make up approximately 80% of mentally retarded persons.
 - In the *Baise* case, an expert at trial testified that the victim had an overall I.Q. score of 41 and adaptive behavior skills in the six-year-old range.

GPSTC

OCGA § 16-6-2. Sodomy; aggravated sodomy

(a)(1) A person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another.

...

GPSTC

OCGA § 16-6-2. Sodomy; aggravated sodomy

(2) A person commits the offense of aggravated sodomy when he or she commits sodomy with force and against the will of the other person or when he or she commits sodomy with a person who is less than ten years of age. The fact that the person allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated sodomy.

...

GPSTC

OCGA § 16-6-2. Sodomy; aggravated sodomy

(b)(1) Except as provided in subsection (d) of this Code section, a person convicted of the offense of sodomy shall be punished by imprisonment for not less than one nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2. ...

GPSTC

OCGA § 16-6-2. Sodomy; aggravated sodomy

(2) A person convicted of the offense of aggravated sodomy shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section of the offense of aggravated sodomy shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7. ...

GPSTC

OCGA § 16-6-2. Sodomy; aggravated sodomy

(d) If the victim is at least 13 but less than 16 years of age and the person convicted of sodomy is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

GPSTC

Powell v. The State (1998)

GASC: “[T]he only possible purpose for the statute is to regulate the private conduct of consenting adults, the public gains no benefit, and the individual is unduly oppressed by the invasion of the right to privacy. Consequently, we must conclude that the legislation exceeds the permissible bounds of the police power.”

Powell v. The State, 270 Ga. 327 (1998)

GPSTC

OCGA § 16-6-8. Public indecency

(a) A person commits the offense of public indecency when he or she performs any of the following acts in a public place:

- (1) An act of sexual intercourse;
- (2) A lewd exposure of the sexual organs;
- (3) A lewd appearance in a state of partial or complete nudity; or
- (4) A lewd caress or indecent fondling of the body of another person.



OCGA § 16-6-8. Public indecency

(b) A person convicted of the offense of public indecency as provided in subsection (a) of this Code section shall be punished as for a misdemeanor except as provided in subsection (c) of this Code section.

(c) Upon a third or subsequent conviction ... a person shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years.



§ 16-6-18. Fornication

An unmarried person commits the offense of fornication when he voluntarily has sexual intercourse with another person and, upon conviction thereof, shall be punished as for a misdemeanor.



In Re. J.M. (2003)

GASC: "State's constitutional right to privacy encompassed defendant's sexual liaison with his 16-year-old girlfriend."

In Re. J.M., 276 Ga. 88 (2003)



OCGA § 16-7-5. Home invasion. (2014)

(b) A person commits the offense of home invasion in the first degree when, without authority and with intent to commit a forcible felony therein and while in possession of a deadly weapon or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury, he or she enters the dwelling house of another while such dwelling house is occupied by any person with authority to be present therein.



OCGA § 16-7-5. Home invasion. (2014)

(c) A person commits the offense of home invasion in the second degree when, without authority and with intent to commit a forcible misdemeanor therein and while in possession of a deadly weapon or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury, he or she enters the dwelling house of another while such dwelling house is occupied by any person with authority to be present therein.



OCGA § 16-7-5. Home invasion. (2014)

(d) A person convicted of the offense of home invasion in the first degree shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for life or imprisonment for not less than ten nor more than 20 years and by a fine of not more than \$100,000.00. A person convicted of the offense of home invasion in the second degree shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than \$100,000.00.

...



OCGA § 16-7-22. Criminal damage to property in the first degree

a) A person commits the offense of criminal damage to property in the first degree when he:
(1) Knowingly and without authority interferes with any property in a manner so as to endanger human life; or
(2) Knowingly and without authority and by force or violence interferes with the operation of any system of public communication, public ...



OCGA § 16-7-22. Criminal damage to property in the first degree

... transportation, sewerage, drainage, water supply, gas, power, or other public utility service or with any constituent property thereof.

(b) A person convicted of the offense of criminal damage to property in the first degree shall be punished by imprisonment for not less than one nor more than ten years.



§ 16-7-23. Criminal damage to property in the second degree

(a) A person commits the offense of criminal damage to property in the second degree when he:

(1) Intentionally damages any property of another person without his consent and the damage thereto exceeds \$500.00; or



§ 16-7-23. Criminal damage to property in the second degree

(2) Recklessly or intentionally, by means of fire or explosive, damages property of another person.

(b) A person convicted of the offense of criminal damage to property in the second degree shall be punished by imprisonment for not less than one nor more than five years.



OCGA § 16-7-24. Criminal interference with government property

(a) A person commits the offense of interference with government property when he destroys, damages, or defaces government property and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(b) A person commits the offense of interference with government property when he forcibly interferes with or obstructs the passage into or from government property and, upon conviction thereof, shall be punished as for a misdemeanor.



About Arson

- Requires that the suspect “knowingly damage by fire or explosive”
- Also include parties to the crime (knowingly causes, aids, abets, advises, encourages, hires, counsels, or procures another to damage

GPSTC

§ 16-7-60. Arson in the first degree

- Knowingly, by fire or explosive, damages:
 - Dwelling houses and buildings, vehicles, RR cars, watercraft or other structures designed for use as a dwelling (i.e. campers, RVs, bedroom area...)
 - Without consent of security interest holder; or
 - Without consent of insurer; or
 - Without consent of co-owner/spouse
 - Any building, vehicle, RR car, watercraft, aircraft when reasonably foreseeable human life might be endangered
 - Anything listed during commission of a felony

GPSTC

§ 16-7-61. Arson in the second degree

- Knowingly, by fire or explosive, damages:
 - any building, vehicle, railroad car, watercraft, aircraft, or other structure not used as a dwelling, not insured or spouse/co-owner without consent, no life endangerment, and either:
 - 1) Not theirs
 - 2) Theirs but another with security interest does not consent
 - 3) When in commission of a felony
- Example: uninsured shed or doghouse

GPSTC

§ 16-7-62. Arson in the third degree

- Knowingly, by fire or explosive, damages:
 - Any personal property w/o consent of owner or security interest holder
 - Any personal property w/o consent when insured if \$25 or more
 - Any personal property if to defraud spouse/co-owner when \$25 or more
 - Any personal property listed above when in commission of a felony

GPSTC

OCGA § 16-8-14.1. Refund Fraud (2014)

(a)(1) It shall be unlawful for a person to give a false or fictitious name or address or to give the name or address of another person without that person's approval or permission for the purpose of obtaining a refund from a store or retail establishment for merchandise.

GPSTC

OCGA § 16-8-14.1. Refund Fraud (2014)

(2) It shall be unlawful for a person to obtain a refund in the form of cash, check, credit on a credit or debit card, a merchant gift card, or credit in any other form from a store or retail establishment using a driver's license not issued to such person, a driver's license containing false information, an identification card containing false information, an altered identification card, or an identification card not issued to such person.

GPSTC

**OCGA § 16-8-14.1. Refund Fraud
(2014)**

(b) A person who violates subsection (a) of this Code section shall be guilty of refund fraud and, upon conviction, except as provided in subsection (c) of this Code section, shall:

(1) When the property which was the subject of the fraud is \$500.00 or less in value, be punished as for a misdemeanor;

(2) When the property which was the subject of the fraud exceeds \$500.00 in value, be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years;



**OCGA § 16-8-14.1. Refund Fraud
(2014)**

- Can combine 3 or more transactions in same county within 7 days or less to total \$500 or more = felony 1 - 10Y
- Single store within 180 days for \$500 or more for felony
- 2nd, 3rd and 4th offense provisions



OCGA § 16-8-18. Entering automobile

If any person shall enter any automobile or other motor vehicle with the intent to commit a theft or a felony, he shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years, or, in the discretion of the trial judge, as for a misdemeanor.



OCGA § 16-8-22. Cargo Theft (2014)

(a) For purposes of this Code section, the term 'vehicle' includes, without limitation, any railcar.

(b) Notwithstanding any provision of this article to the contrary, a person commits the offense of cargo theft when he or she unlawfully takes or, being in lawful possession thereof, unlawfully appropriates:



OCGA § 16-8-22. Cargo Theft (2014)

(1) Any vehicle engaged in commercial transportation of cargo or any appurtenance thereto, including, without limitation, any trailer, semitrailer, container, or other associated equipment, or the cargo being transported therein or thereon, which is the property of another with the intention of depriving such other person of the property, regardless of the manner in which the property is taken or appropriated; or



OCGA § 16-8-22. Cargo Theft (2014)

(c) The value of a vehicle engaged in commercial transportation of cargo and any appurtenance thereto and the cargo being transported which is taken or unlawfully appropriated shall be based on the fair market value of such vehicle, appurtenances, and cargo taken or unlawfully appropriated.



OCGA § 16-8-22. Cargo Theft (2014)

- Value >=\$1500: Misdemeanor
- Value \$1500 - >10K: 1-10Y / 10K-100K fine
- Value 10K - >1M: 5-20Y / 50K-1M fine
- Value 1M+: 10-20Y / 100K – 1M fine
- CtrlSubstance >10K: 1-10Y / 10-100K fine
- CtrlSubstance 10K - >1M: 5-25Y / 50K-1M fine
- CtrlSubstance 1M+: 10-30Y / 100K-1M fine
- LE decoy always 1-10Y / 10K-100K fine

GPSTC

OCGA § 16-8-23. Unlawful Possession or use of a fifth wheel (2014)

(a) For the purposes of this Code section, the term ‘fifth wheel’ means a device mounted on a truck tractor or similar towing vehicle, including, but not limited to, a converter dolly, which interfaces with and couples to the upper coupler assembly of a semitrailer.

GPSTC

OCGA § 16-8-23. Unlawful Possession or use of a fifth wheel (2014)

(b) It shall be unlawful for any person to modify, alter, attempt to alter, and, if altered, sell, possess, offer for sale, move, or cause to be moved on the highways of this state a device known as a fifth wheel or the antitheft locking device attached to the fifth wheel with the intent to use the fifth wheel to commit or attempt to commit cargo theft as defined in Code Section 16–8–22.

- 1 – 10Y / 10K – 100K fine

GPSTC

§ 16-8-40. Robbery

(a) A person commits the offense of robbery when, with intent to commit theft, he takes property of another from the person or the immediate presence of another:

- (1) By use of force;
- (2) By intimidation, by the use of threat or coercion, or by placing such person in fear of immediate serious bodily injury to himself or to another; or
- (3) By sudden snatching. ...

GPSTC

§ 16-8-40. Robbery

(b) A person convicted of the offense of robbery shall be punished by imprisonment for not less than one nor more than 20 years.

(c) Notwithstanding any other provision of this Code section, any person who commits the offense of robbery against a person who is 65 years of age or older shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

GPSTC

OCGA § 16-8-2. Theft by taking

A person commits the offense of theft by taking when he unlawfully takes or, being in lawful possession thereof, unlawfully appropriates any property of another with the intention of depriving him of the property, regardless of the manner in which the property is taken or appropriated.

GPSTC

Robbery by Sudden Snatching vs. Victim Unaware of Theft

This theory of “force” is satisfied where the victim is relieved of some possession so quickly that he does not have time to react, even though he is aware of the taking.

If the victim is aware of the taking of property from his immediate presence before the taking is complete, the offense committed is robbery by sudden snatching. If the victim is not aware of the taking until it is complete, the offense committed is not robbery by sudden snatching but rather theft by taking. ...

GPSTC

Robbery by Sudden Snatching vs. Victim Unaware of Theft

It is not necessary to show that the defendant employed violence and that the victim resisted in order to prove robbery by sudden snatching. However, if such evidence is adduced at trial, it would not amount to a fatal variance between the allegations and proof that would preclude the defendant's conviction for robbery by sudden snatching.

GPSTC

OCGA § 16-11-90. (2014)

(a) As used in this Code section, the term:

(1) ‘Harassment’ means engaging in conduct directed at a depicted person that is intended to cause substantial emotional harm to the depicted person.

(2) ‘Nudity’ means:

(A) The showing of the human male or female genitals, pubic area, or buttocks without any covering or with less than a full opaque covering;

GPSTC

OCGA § 16-11-90. (2014)

(B) The showing of the female breasts without any covering or with less than a full opaque covering; or

(C) The depiction of covered male genitals in a discernibly turgid state.

(3) “Sexually explicit conduct” shall have the same meaning as set forth in Code Section 16-12-100.

GPSTC

OCGA § 16-11-90. (2014)

(b) A person violates this Code section if he or she, knowing the content of a transmission or post, knowingly and without the consent of the depicted person:

(1) Electronically transmits or posts, in one or more transmissions or posts, a photograph or video which depicts nudity or sexually explicit conduct of an adult when the transmission or post is harassment or causes financial loss to the depicted person and serves no legitimate purpose to the depicted person; or

GPSTC

OCGA § 16-11-90. (2014)

(2) Causes the electronic transmission or posting, in one or more transmissions or posts, of a photograph or video which depicts nudity or sexually explicit conduct of an adult when the transmission or post is harassment or causes financial loss to the depicted person and serves no legitimate purpose to the depicted person.

GPSTC

OCGA § 16-11-90. (2014)

(c) Any person who violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature; provided, however, that upon a second or subsequent violation of this Code section, he or she shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than five years, a fine of not more than \$100,000.00, or both.



OCGA § 16-11-90. (2014)

(d) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1 for any conduct made unlawful by this Code section which the person engages in while:

- (1) Either within or outside of this state if, by such conduct, the person commits a violation of this Code section which involves an individual who resides in this state; or
- (2) Within this state if, by such conduct, the person commits a violation of this Code section which involves an individual who resides within or outside this state.



OCGA § 16-11-90. (2014)

(e) The provisions of subsection (b) of this Code section shall not apply to:

- (1) The activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses;
- (2) Legitimate medical, scientific, or educational activities;
- (3) Any person who transmits or posts a photograph or video depicting only himself or herself engaged in nudity or sexually explicit conduct;



OCGA § 16-11-90. (2014)

(4) The transmission or posting of a photograph or video that was originally made for commercial purposes; or

- (5) Any person who transmits or posts a photograph or video depicting a person voluntarily engaged in nudity or sexually explicit conduct in a public setting; or
- (6) The transmission is made pursuant to or in anticipation of a civil action.

...



Georgia Firearms Law 2014 Update



Georgia Firearms Law Update (2014)

- Government buildings
 - Cities can only prohibit firearms or any other weapon in govt. buildings if city restricts or screens entrance into the govt. building with security personnel
 - “Security personnel” does not necessarily mean a certified peace officer
 - If license holder carrying weapon attempts to enter govt. building that is restricted or screened by security, must first be given opportunity to exit before further action is taken



Georgia Firearms Law Update (2014)

- If govt. wishes to charge any license holder with a misdemeanor for entering, at least one member of the security needs to be a certified officer and they must first be given opportunity to depart
- If not screened, license holders are allowed in the building with F/A. Non-license holders prohibited at all times, whether screened or not. Non-license holder commits misdemeanor



Georgia Firearms Law Update (2014)

- Courts and Judges
 - Any building occupied by judicial courts, including municipal, and containing rooms in which judicial proceedings are held are off-limits for licensed and non-licensed persons
 - Full, permanent part-time, former (24 mo. minimum service) and retired judges may carry in any govt. building (state, federal, probate, juvenile, magistrate, municipal & city)



Georgia Firearms Law Update (2014)

- Commercial service airports
 - No person shall enter the restricted access area knowingly having under his or her control a weapon or long gun
 - Cities are preempted from any ordinance, resolution, regulation, or policy that would control firearms in unrestricted areas and how persons may be treated at security checkpoint
 - License holder attempting to bring weapon past checkpoint must be afforded opportunity to leave
 - Non-license holder commits misdemeanor



Georgia Firearms Law Update (2014)

- Public housing
 - Cities are prohibited from regulating lawful possession of firearms in public housing
- Schools
 - Local BOE allowed to designate authorized personnel to carry weapons within school safety zones, school functions & school bus
 - Personnel must be licensed and undergo training
 - BOE not required to share information with LE
 - Not open records



Georgia Firearms Law Update (2014)

- Schools, continued
 - Misdemeanor for license holder to carry on property of any elementary, secondary, technical school, college university or other post-secondary institution
 - Exception to persons given written permission to carry on school property, school functions, buses and other transportation
 - License holders may keep in locked vehicle compartment in parked vehicle or while in transit through school safety zone (N/A for students)



Georgia Firearms Law Update (2014)

- Checking for weapon carry license
 - License holders must have license in his/her immediate possession
 - Exempt under 16-11-127.1 must have proof of exemption
 - Persons carrying any weapon cannot be detained solely for checking of license
 - Requirement of ARS person is committing some other crime
 - LEOs are prohibited from randomly stopping drivers of automobiles to determine license status (*Delaware v. Prouse*) – this same theory applies to persons with weapons!



Georgia Firearms Law Update (2014)

- Special Note
 - Controversy exists as to whether a person can be checked in an area prohibited for non-license holders
 - GA Municipal Association suggests that checking of persons in govt. buildings and commercial service airports may be unlawful
 - Regardless, verbal/consensual encounters are not prohibited!



Georgia Firearms Law Update (2014)

- Regulations of weapons through zoning and ordinances
 - Cities cannot regulate possession, ownership, transport, carrying, transfer, sale, purchase, licensing or registration of any weapon
- Regulation of city employees
 - City can regulate transport, carrying or possession of F/A by employees except those supervised by police chief, sheriff, district attorney, solicitor, LE unit commander



Georgia Firearms Law Update (2014)

- No state or political subdivision official or employee, or National Guard member or other person under color of state law will during a declared state of emergency:
 - Temporarily or permanently seize or authorize seizure of any F/A or ammunition
 - Prohibit possession of any F/A or ammunition
 - Prohibit any license holder from carrying weapon or promote rule, regulation or order prohibiting
 - Require registration of any F/A



Georgia Firearms Law Update (2014)

- Places of worship
 - Weapons are prohibited unless the governing body of the place of worship permits carrying of long guns or weapons or long guns – then only by license holders
 - Law is silent as to any notifications (LE or church membership) that carrying is permitted



Georgia Firearms Law Update (2014)

- Bars
 - Weapons allowed in bars, unless the private property owner / lessor excludes or ejects individual after giving notice to depart
 - Only owner/rightful occupant can provide notice to depart



Georgia Firearms Law Update (2014)

- Exceptions to restrictions on hunting with suppressors
 - Silencers and suppressors are prohibited in general for hunting with exceptions:
 - On private property of person using the suppressor
 - On private property for which the owner has provided verifiable permission to hunt with silencer / suppressor
 - On public lands designated by DNR
 - Prohibits use of subsonic ammunition for hunting (misdemeanor of high & aggravated nature)
 - 1-3Y, up to 25K fine. Hunting license forfeited 3Y



Questions?



O.C.G.A. TITLE 17 – CRIMINAL PROCEDURE

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Terminal Performance Objective

While acting in a law enforcement capacity, officers will abide by established criminal procedures, in accordance with O.C.G.A. Title 17 and appellate decisions of Georgia and the United States.



Enabling Objectives

- Distinguish between jurisdiction and venue
- Discuss limitations on prosecution and periods of exclusion
- Identify requirements for obtaining an arrest warrant, O.C.G.A. § 17-4-40
- Discuss legal authority of law enforcement officers to make arrests with and without a warrant, O.C.G.A. § 17-4-20



Enabling Objectives

- Discuss Georgia's statutory requirements for verification of immigration status, O.C.G.A. § 17-5-100
- Determine legal authority to enter a dwelling to make an arrest with and without an arrest warrant



OCGA § 17-2-1. Jurisdiction

- a) It is the policy of this state to exercise its jurisdiction over crime and persons charged with the commission of crime to the fullest extent allowable under, and consistent with, the Constitution of this state and the Constitution of the United States.
- **Q: How does jurisdiction play a role in Criminal Procedure in Georgia?**



OCGA § 17-2-2. Venue

(a) *In general.* Criminal actions shall be tried in the county where the crime was committed, except as otherwise provided by law.

(b) *Crime committed on boundary line of two counties.* If a crime is committed on, or immediately adjacent to, the boundary line between two counties, the crime shall be considered as having been committed in either county.



OCGA § 17-2-2. Venue

(c) *Criminal homicide.* Criminal homicide shall be considered as having been committed in the county in which the cause of death was inflicted. If it cannot be determined in which county the cause of death was inflicted, it shall be considered that it was inflicted in the county in which the death occurred. If a dead body is discovered in this state and it cannot be readily determined in what county the cause of death was inflicted, it shall be considered that the cause of death was inflicted in the county in which the dead body was discovered.



OCGA § 17-2-2. Venue

(d) *Crime commenced outside the state.* If the commission of a crime under the laws of this state commenced outside the state is consummated within this state, the crime shall be considered as having been committed in the county where it is consummated.



OCGA § 17-2-2. Venue

(e) *Crime committed while in transit.* If a crime is committed upon any railroad car, vehicle, watercraft, or aircraft traveling within this state and it cannot readily be determined in which county the crime was committed, the crime shall be considered as having been committed in any county in which the crime could have been committed through which the railroad car, vehicle, watercraft, or aircraft has traveled.



OCGA § 17-2-2. Venue

(f) *Crime committed on water boundaries of two counties.* Whenever a stream or body of water is the boundary between two counties, the jurisdiction of each county shall extend to the center of the main channel of the stream or the center of the body of water; and, if a crime is committed on the stream or body of water and it cannot be readily determined in which county the crime was committed, the crime shall be considered as having been committed in either county.



OCGA § 17-2-2. Venue

(g) *Crime committed on water boundaries of two states.* Whenever a crime is committed on any river or body of water which forms a boundary between this state and another state, the accused shall be tried in the county of this state which is situated opposite the point where the crime is committed. If it cannot be readily determined on which side of the line a crime was committed between two counties which border the river or body of water, the crime shall be considered as having been committed in either county.



OCGA § 17-2-2. Venue

(h) *Crime in more than one county.* If in any case it cannot be determined in what county a crime was committed, it shall be considered to have been committed in any county in which the evidence shows beyond a reasonable doubt that it might have been committed.

(i) *Cumulative effect of Code section.* This Code section is cumulative and shall not supersede venue provisions found in other parts of this Code.

 GPSTC

OCGA § 17-3-1. Limitation of prosecutions

(a) A prosecution for murder may be commenced at any time.

(b) Except as otherwise provided in [Code Section 17-3-2.1](#), prosecution for other crimes punishable by death or life imprisonment shall be commenced within seven years after the commission of the crime except as provided by subsection (d) of this Code section; provided, however, that prosecution for the crime of forcible rape shall be commenced within 15 years after the commission of the crime.

 GPSTC

OCGA § 17-3-1. Limitation of prosecutions

(c) Except as otherwise provided in Code Section 17-3-2.1, prosecution for felonies other than those specified in subsections (a), (b), and (d) of this Code section shall be commenced within four years after the commission of the crime, provided that prosecution for felonies committed against victims who are at the time of the commission of the offense under the age of 18 years shall be commenced within seven years after the commission of the crime.

 GPSTC

OCGA § 17-3-1. Limitation of prosecutions

(d) A prosecution for the following offenses may be commenced at any time when deoxyribonucleic acid (DNA) evidence is used to establish the identity of the accused:

- (1) Armed robbery, as defined in [Code Section 16-8-41](#);
- (2) Kidnapping, as defined in [Code Section 16-5-40](#);
- (3) Rape, as defined in [Code Section 16-6-1](#);
- (4) Aggravated child molestation, as defined in [Code Section 16-6-4](#);

 GPSTC

OCGA § 17-3-1. Limitation of prosecutions

(5) Aggravated sodomy, as defined in [Code Section 16-6-2](#); or

(6) Aggravated sexual battery, as defined in [Code Section 16-6-22.2](#);

provided, however, that a sufficient portion of the physical evidence tested for DNA is preserved and available for testing by the accused and provided, further, that if the DNA evidence does not establish the identity of the accused, the limitation on ...

 GPSTC

OCGA § 17-3-1. Limitation of prosecutions

... prosecution shall be as provided in subsections (b) and (c) of this Code section.

(e) Prosecution for misdemeanors shall be commenced within two years after the commission of the crime.

 GPSTC

§ 17-3-2. Periods excluded from limitation

The period within which a prosecution must be commenced under [Code Section 17-3-1](#) or other applicable statute does not include any period in which:

- (1) The accused is not usually and publicly a resident within this state;
- (2) The person committing the crime is unknown or the crime is unknown;
- (3) The accused is a government officer or employee and the crime charged is theft by conversion of public property while such an officer or employee; or
- (4) The accused is a guardian or trustee and the crime charged is theft by conversion of property of the ward or beneficiary.



§ 17-3-2.1. Periods excluded from limitation of prosecution for certain offenses

(a) For crimes committed during the period beginning on July 1, 1992, and ending on June 30, 2012, if the victim of a violation of:

- (1) Cruelty to children, as defined in [Code Section 16-5-70](#);
- (2) Rape, as defined in [Code Section 16-6-1](#);
- (3) Sodomy or aggravated sodomy, as defined in [Code Section 16-6-2](#);
- (4) Statutory rape, as defined in [Code Section 16-6-3](#);
- (5) Child molestation or aggravated child molestation, as defined in [Code Section 16-6-4](#);
- (6) Enticing a child for indecent purposes, as defined in [Code Section 16-6-5](#); or
- (7) Incest, as defined in [Code Section 16-6-22](#), ...



§ 17-3-2.1. Periods excluded from limitation of prosecution for certain offenses

... is under 16 years of age on the date of the violation, the applicable period within which a prosecution shall be commenced under [Code Section 17-3-1](#) or other applicable statute shall not begin to run until the victim has reached the age of 16 or the violation is reported to a law enforcement agency, prosecuting attorney, or other governmental agency, whichever occurs earlier. Such law enforcement agency or other governmental agency shall promptly report such allegation to the appropriate prosecuting attorney.



§ 17-3-2.1. Periods excluded from limitation of prosecution for certain offenses

(b) For crimes committed on and after July 1, 2012, if the victim of a violation of:

- (1) Trafficking a person for sexual servitude, as defined in [Code Section 16-5-46](#);
- (2) Cruelty to children in the first degree, as defined in [Code Section 16-5-70](#);
- (3) Rape, as defined in [Code Section 16-6-1](#);
- (4) Aggravated sodomy, as defined in [Code Section 16-6-2](#);
- (5) Child molestation or aggravated child molestation, as defined in [Code Section 16-6-4](#);
- (6) Enticing a child for indecent purposes, as defined in [Code Section 16-6-5](#); or
- (7) Incest, as defined in [Code Section 16-6-22](#), ...



§ 17-3-2.1. Periods excluded from limitation of prosecution for certain offenses

... is under 16 years of age on the date of the violation and the violation is not subject to punishment as provided in paragraph (2) of subsection (b) of [Code Section 16-6-4](#), paragraph (2) of subsection (d) of [Code Section 16-6-4](#), or subsection (c) of [Code Section 16-6-5](#), a prosecution may be commenced at any time.



§ 17-3-2.2. Periods excluded from limitation of prosecution where victim is 65 years of age or older

In addition to any periods excluded pursuant to [Code Section 17-3-2](#), if the victim is a person who is 65 years of age or older, the applicable period within which a prosecution must be commenced under [Code Section 17-3-1](#) or other applicable statute shall not begin to run until the violation is reported to or discovered by a law enforcement agency, prosecuting attorney, or other governmental agency, whichever occurs earlier. Such law enforcement agency or other governmental agency shall promptly report such allegation to the appropriate prosecuting attorney. Except for prosecutions for crimes for which the law provides a statute of limitations longer than 15 years, prosecution shall not commence more than 15 years after the commission of the crime.



§ OCGA 17-4-40

Issuance of Arrest Warrants

GPSTC

§ 17-4-40. Who may issue warrants for arrest

(a) Any judge of a superior, city, state, or magistrate court or any municipal officer clothed by law with the powers of a magistrate may issue a warrant for the arrest of any offender against the penal laws, based on probable cause either on the judge's or officer's own knowledge or on the information of others given to the judge or officer under oath. Any retired judge or judge emeritus of a state court may likewise issue arrest warrants if authorized in writing to do so by an active judge of the state court of the county wherein the warrants are to be issued. ...

GPSTC

§ 17-4-40. Who may issue warrants for arrest

(c) Any warrant for the arrest of a peace officer, law enforcement officer, teacher, or school administrator for any offense alleged to have been committed while in the performance of his or her duties may be issued only by a judge of a superior court, a judge of a state court, or a judge of a probate court.

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§ 17-4-41. What affidavit and warrant for arrest must state

(a) An affidavit made or warrant issued for the arrest of a person who is accused of violating the penal laws of this state shall include, as nearly as practicable, the following facts:

- (1) The offense, including the time, date, place of occurrence, against whom the offense was committed, and a statement describing the offense; and
- (2) The county in which the offense was committed.

GPSTC

§ 17-4-41. What affidavit and warrant for arrest must state

(b) When the offense charged is theft, the affidavit made or warrant issued shall state, in addition to the requirements of subsection (a) of this Code section, the following facts:

- (1) Name of the property alleged to have been stolen, with a description thereof, including its value; and
- (2) Name of the owner of the property and the person from whose possession such property was taken.

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§ 17-4-41. What affidavit and warrant for arrest must state

(c) It is the intent of these requirements that the accused person shall be informed of the specific charge against him and of all basic pertinent particulars pertaining thereto.

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§ 17-4-44. Warrant for arrest issued in any county and executed without backing

A warrant for arrest may be issued in any county, though the crime was committed in another county. A warrant, once issued, may be executed in any county without being backed or endorsed by a judicial officer in the county where the warrant is executed.



§ OCGA 17-4-20
Arrest & Use of Force



OCGA § 17-4-20. Arrests with or without warrants; When use of deadly force is warranted.

(a) An arrest for a crime may be made by a law enforcement officer:

- (1) Under a warrant; or
- (2) Without a warrant if:

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

(B) The offender is endeavoring to escape;



§ OCGA 17-4-20

(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

(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.



§ 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.



§ 19-13-1. “Family violence” defined

As used in this article, the term “family violence” means the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household: ...



§ 19-13-1. “Family violence” defined

- (1) Any felony; or
- (2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

The term “family violence” shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.



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)



§ OCGA 17-4-20

b) Sheriffs and peace officers who are appointed or employed in conformity with Chapter 8 of Title 35 may use deadly force to apprehend a suspected felon only when the officer reasonably believes that the suspect possesses a deadly weapon or any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; when the officer reasonably believes that the suspect poses...



§ OCGA 17-4-20

...an immediate threat of physical violence to the officer or others; or when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm. Nothing in this Code section shall be construed so as to restrict such sheriffs or peace officers from the use of such reasonable nondeadly force as may be necessary to apprehend and arrest a suspected felon or misdemeanor.



§ OCGA 17-4-20

- c) Nothing in this Code section shall be construed so as to restrict the use of deadly force by employees of state and county correctional institutions, jails, and other places of lawful confinement or by peace officers of any agency in the State of Georgia when reasonably necessary to prevent escapes or apprehend escapees from such institutions.

GPSTC

§ OCGA 17-4-20

- d) No law enforcement agency of this state or of any political subdivision of this state shall adopt or promulgate any rule, regulation, or policy which prohibits a peace officer from using that degree of force to apprehend a suspected felon which is allowed by the statutory and case law of this state.

GPSTC

§ OCGA 17-4-20

- e) Each peace officer shall be provided with a copy of this Code section. Training regarding elder abuse, abuse of vulnerable adults, and the requirements of this Code section should be offered as part of at least one in-service training program each year conducted by or on behalf of each law enforcement department and agency in this state.

GPSTC

§ OCGA 17-4-20 Comments

OCGA 17-4-20 codifies the authority of an employed or appointed certified peace officer to arrest and use force when making an arrest. The statute does not restrict the use of nondeadly force that is reasonable and necessary to apprehend and arrest an offender. However, deadly force may be employed against a **suspected felon** only when one (or more) of three conditions is met:

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§ OCGA 17-4-20 Comments

1. The officer reasonably believes a suspected felon **possesses a deadly weapon** (or similar device) that is likely to or actually does result in serious bodily injury
2. The officer reasonably believes a suspected felon **poses an immediate threat of physical violence** to the officer or others
3. There is probable cause to believe that a suspected felon **has committed a crime involving the infliction or threatened infliction of serious physical harm**

GPSTC

Graham v. Connor

The U.S. Supreme Court held that, "...claims that law enforcement officials have used excessive force in course of arrest, investigatory stop or other 'seizure' of a person are properly analyzed under the 4th Amendment's '**objective reasonableness**' standard."

Graham v. Connor, 490 U.S. 386 (1989)

GPSTC

Graham v. Connor

“The Fourth Amendment ‘reasonableness’ inquiry is whether the officer’s actions are “**objectively reasonable**” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene...



Graham v. Connor

...and its calculus must (allow) for the fact that police officers are often forced to make split-second judgments, in circumstances that are tense, uncertain and rapidly evolving, about the amount of force that is necessary in a particular situation.”

Graham v. Connor, 490 U.S. 386 (1989)



§ 17-4-21. Taking arrested person before judicial officer

The arresting officer shall take the arrested person before the most convenient and accessible judicial officer authorized to hear the case unless the arrested person requests otherwise, in which case, if there is no suspicion of improper motive, the arresting officer shall take him before some other judicial officer. An arrested person has no right to select the judicial officer before whom he shall be tried.



§ 17-4-23. Arrests for motor vehicle violations may be made by citation

(a) A law enforcement officer may arrest a person accused of violating any law or ordinance governing the operation, licensing, registration, maintenance, or inspection of motor vehicles by the issuance of a citation, provided the offense is committed in his presence or information constituting a basis for arrest concerning the operation of a motor vehicle was received by the arresting officer from a law enforcement officer observing the offense being committed, ...



§ 17-4-23. Arrests for motor vehicle violations may be made by citation

except that, where the offense results in an accident, an investigating officer may issue citations regardless of whether the offense occurred in the presence of a law enforcement officer. The arresting officer shall issue to such person a citation which shall enumerate the specific charges against the person and the date upon which the person is to appear and answer the charges.



§ 17-4-25. Officer may make arrest in any county. Duty to carry prisoner to county in which offense committed

(a) Under a warrant issued by a judicial officer, an arresting officer may, in any county without regard to the residence of the arresting officer, arrest any person charged with a crime. It is the duty of the arresting officer to take the accused, with the warrant under which he was arrested, to the county in which the offense is alleged to have been committed, for examination before any judicial officer of that county.



GA CONST Art. 9, § 2, ¶ III

(b) Unless otherwise provided by law,
(1) No county may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein inside the boundaries of any municipality or any other county except by contract with the municipality or county affected; and
(2) No municipality may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein outside its own boundaries except by contract with the county or municipality affected.



§ 17-4-26. Arresting officer must bring person before judicial officer within 72 hours of arrest

Every law enforcement officer arresting under a warrant shall exercise reasonable diligence in bringing the person arrested before the judicial officer authorized to examine, commit, or receive bail and in any event to present the person arrested before a committing judicial officer within 72 hours after arrest. The accused shall be notified as to when and where the commitment hearing is to be held. An arrested person who is not notified before the hearing of the time and place of the commitment hearing shall be released.



§ 17-4-28. Arresting officer advising dismissal of warrant

Any arresting officer who advises or encourages the dismissal or settlement of any criminal warrant placed in his hands for execution, either before or after an arrest is made on the warrant, or who procures or encourages the dismissal or settlement of such warrants by threats, duress, intimidation, promises, or any other artifice or means shall be guilty of a misdemeanor.



§ 17-4-30. Arrest of hearing impaired person

In the event a hearing impaired person is arrested for any alleged violation of a criminal law of this state, the arresting officer shall comply with the provisions of Article 3 of Chapter 6 of Title 24.



§ 17-5-100. Verification of immigration status

- OCGA § 17-5-100 allows a peace officer who stops an individual based on probable cause that the individual has committed a crime (including a state traffic offense) to verify that the person is lawfully in the United States. Although this provision is new to the Georgia Code, the United States Supreme Court has held that state and local officers may verify the immigration status of individuals who are lawfully detained.

Muehler v. Mena, 544 U.S. 93, 100-101 (2005).



OCGA § 17-5-100

- OCGA § 17-5-100 specifies when an officer may check the immigration status of a lawfully stopped person.



OCGA § 17-5-100

- OCGA § 17-5-100(b) applies only in cases where the officer has probable cause to believe that the person has committed a **“violation of state or federal law;”** a violation of a city or county ordinance does not qualify. *Id.*, (a)(1). Second, the officer is only authorized to run an immigration check if the person **does not** have certain specified documents, one of which is a valid foreign driver's license under OCGA § 40-5-21(a)(2).



OCGA § 17-5-100

- Other documents include: (a) valid identification card or driver's license from Georgia or other states that require verification of lawful presence prior to issuing a driver's license or identification card (currently only Washington, New Mexico, Illinois and possibly Utah do not verify lawful presence prior to issuing licenses or ID cards); valid federal identification documents; or any “secure and verifiable document” under OCGA § 50-36-2 (see below).



OCGA § 17-5-100

- The officer cannot run an immigration check if the officer obtains “[o]ther information as to the suspect's identity that is sufficient to allow the peace officer to independently identify the suspect.” *Id.*, (b)(6). It does not authorize detention of a person until an immigration check is completed (unlike the Arizona statute).

(United States v. Arizona, 703 F. Supp. 2d at 987)



OCGA § 17-5-100

- The race, color or national origin of the suspect cannot be considered, “except to the extent permitted by the Constitutions of Georgia and of the United States.”

OCGA § 17-5-100(d)



OCGA § 17-5-100

- Only if the conditions specified above are met and the officer “receives verification that such suspect is an illegal alien,” then the officer can detain the person or transport the person to “any authorized state or federal detention facility.”

OCGA § 17-5-100(e)



OCGA § 17-5-100

- Under state law, a person arrested on state charges is either given a citation, if the offense is a traffic offense or similar charge, and released or is taken to a county or municipal jail to post bond or to await appearance before a magistrate.

OCGA § 17-4-23(a)



OCGA § 17-5-100

- There is no federal law that authorizes state or local officers to take individuals arrested on federal charges directly to a federal facility without the approval of the U.S. Attorney or a Federal judge.

See Fed. R. Crim. Proc. 41(d)(2)(A)

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OCGA § 17-5-100 Summary

- Gives police the option to investigate the immigration status of suspects they have probable cause to believe have committed state or federal crimes and who cannot provide identification such as a passport or state issued driver's license or other information that could help police identify them.

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OCGA § 17-5-100 Summary

- Authorizes police to attempt to determine the immigration status of suspects through "any reasonable means available" or by contacting federal authorities and using federal identification databases and electronic fingerprint readers.
- Empowers police to detain people determined to be in the country illegally, contact federal immigration authorities about them and take them to federal or state detention centers.

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OCGA § 17-5-100 Summary

- Bars authorities from investigating the immigration status of people who contact state or local police or prosecutors to report crimes or seek help as crime victims.
- Provides legal immunity from damages and liability to police, prosecutors and other government officials who act "in good faith" to carry out provisions of the law.

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Arrest by Private Person

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§ 17-4-60. Arrest by private person

A private person may arrest an offender if the offense is committed in his presence or within his immediate knowledge. If the offense is a felony and the offender is escaping or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion.

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§ 17-4-61. Procedures subsequent to arrest by private person

(a) A private person who makes an arrest pursuant to Code Section 17-4-60 shall, without any unnecessary delay, take the person arrested before a judicial officer, as provided in Code Section 17-4-62, or deliver the person and all effects removed from him to a peace officer of this state.

(b) A peace officer who takes custody of a person arrested by a private person shall immediately proceed in accordance with Code Section 17-4-62.



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§ 17-4-61. Procedures subsequent to arrest by private person

(c) A peace officer who in good faith and within the scope of his authority takes custody of a person arrested by a private person pursuant to this Code section shall not be liable at law for false arrest or false imprisonment arising out of the arrest.



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§ 17-4-62. Duty of person arresting without warrant

In every case of an arrest without a warrant, the person arresting shall, without delay, convey the offender before the most convenient judicial officer authorized to receive an affidavit and issue a warrant as provided for in Code Section 17-4-40. No such imprisonment shall be legal beyond a reasonable time allowed for this purpose; and any person who is not brought before such judicial officer within 48 hours of arrest shall be released.

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Arrest with a Warrant: Suspect's Dwelling

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§ 17-4-3. Breaking open doors

In order to arrest under a warrant charging a crime, the officer may break open the door of any house where the offender is concealed.

***Not constitutional on its face.
Discussion follows.***

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Payton v. New York (1980)

“[A]n arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.”

Payton v. New York, 445 U.S. 573 (1980)

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With a Warrant

“We find that this limited authority includes the right to enter the back yard of the home to prevent any attempted escape through the rear.”

Carter v. State, 308 Ga.App. 686 (2011)

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Arrest without a Warrant: Suspect’s Dwelling

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Exigent Circumstances - Examples

- To enter a dwelling or search curtilage, exigent circumstances are required without a warrant, consent or hot pursuit
- **Q.** What factors should an officer consider when determining authority to enter based on exigent circumstances?

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U.S. v. Standridge (1987)

“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

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U.S. v. Standridge (1987)

- (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

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Arrest with a Warrant: Third Party Dwelling

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With a Warrant

“Even when armed with an arrest warrant, police must have either a search warrant, exigent circumstances or consent to lawfully enter a third person's home to arrest someone who does not reside there.”

Brown v. State, 1240 Ga.App. 321 (1999)

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With a Warrant

“Certainly, it cannot be argued that the mere presence of the address on the information sheet which accompanied [suspect's] arrest warrant furnished probable cause to believe that [suspect] was at the address at the time of entry.”

Harris v. State, 155 Ga.App. 278 (1980)

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Steagald v. U.S. (1981)

- Absent exigent circumstances or consent, a law enforcement officer cannot legally search for subject of arrest warrant in the home of third party, without first obtaining search warrant.
- In this situation, a search warrant must be obtained, providing the probable cause to believe the suspect is within the dwelling

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Steagald v. U.S. (1981)

In *Steagald*, the U.S. Supreme Court held that “a search warrant requirement under the circumstances of this case will not significantly impede effective law enforcement efforts. An arrest warrant alone suffices to enter a suspect's own residence, and, if probable cause exists, no warrant is required to apprehend a suspected felon in a public place. ...

Steagald v. U.S., 451 U.S. 204 (1981)

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Steagald v. U.S. (1981)

“Moreover, the exigent-circumstances doctrine significantly limits the situations in which a search warrant is needed. And in those situations in which a search warrant is necessary, the inconvenience incurred by the police is generally insignificant.

Steagald v. U.S., 451 U.S. 204 (1981)

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Steagald v. U.S. (1981)

“In any event, whatever practical problems there are in requiring a search warrant in cases such as this, they cannot outweigh the constitutional interest at stake in protecting the right of presumptively innocent people to be secure in their homes from unjustified, forcible intrusions by the government.”

Steagald v. U.S., 451 U.S. 204 (1981)

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Steagald v. U.S. (1981)

“The additional burden imposed on the police by a warrant requirement is minimal. In contrast, the right protected—that of presumptively innocent people to be secure in their homes from unjustified, forcible intrusions by the Government—is weighty.”

Steagald v. U.S., 451 U.S. 204 (1981)



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Questions?

