Fourth Amendment Analysis & Application

DRUG PROSECUTOR TRAINING
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J. David Fowler
Deputy Executive Director
Prosecuting Attorneys' Council of Georgia
404-969-4001

Fourth Amendment Analysis

Constitutional Provisions

- **United States Constitution (Fourth 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.

- **Georgia Constitution (Article I, Section 1, paragraph XIII):**

  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 warrant shall issue except upon probable cause supported by oath or affirmation particularly describing the place or places to be searched and the persons or things to be seized.

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WHAT CONSTITUTES A SEIZURE

WHAT CONSTITUTES A SEIZURE (cont'd)

- Number of officers
- Display of weapons
- Physical contact with suspect
- Language or tone of voice used
- How officers are dressed/identify themselves
- Whether the suspect's property (automobile, driver's license or passport) is returned to suspect or retained by officer.

WHAT CONSTITUTES A SEIZURE (cont'd)

- Blocking the path of the suspect
- Whether the suspect is ordered or asked to do something
- Whether the suspect is told he is a suspect
- Movement of a suspect to different location
- Length of time of the contact between suspect and officer

WHAT IS REASONABLE SUSPICION?

What Is Reasonable Suspicion
(cont'd)

- *Terry v. Ohio*, 392 U.S. 1 (1968)
- *U.S. v. Arvizu*, 534 U.S. 266 (2002)
- See *analysis in Rolfe v. State*, 278 Ga. App. 605 (2006)

POLICE-CITIZEN ENCOUNTERS (cont'd)

- Verbal encounters involving no coercion or detention,
- Brief "stops" or "seizures" which must be accompanied by reasonable suspicion, and
- "Arrests," which must be supported by probable cause.

LIMIT ON LENGTH OF TIME OF ENCOUNTER

SEARCH & SEIZURE

A Search Occurs

When the police intrude into an area in which a person has a reasonable expectation of privacy.

A Seizure Occurs

When there is interference with a person's possessory interest in property.

Court Application of Fourth Amendment Protection

- Whenever a law enforcement officer or agent searches a place or seizes a thing in which a person has a reasonable expectation of privacy.

Areas With Reasonable Expectations of Privacy

- **Person**
  - Clothes
  - Body
  - Bodily Fluids
  - Conversations

Areas With Reasonable Expectations of Privacy (cont.)

- **Dwelling Place**
  - House
  - Apartment
  - Tent
  - Hotel/Motel Room

Areas With Reasonable Expectations of Privacy

"A man's home is his castle. The storm and wind may enter, but the King cannot enter, and all the forces of the Crown cannot cross the threshold of his ruined tenement."

Lord Eldon

Areas With Reasonable Expectations of Privacy (cont'd)

- **Curtilage**
  - Curtilage of a House
  - Curtilage of an Apartment
  - Curtilage of a Tent

Areas With Reasonable Expectations of Privacy (cont'd)

- Automobiles
- Boats and Airplanes
- Place of Business
- Other Structures
- Storage Facility
- Desks
- Telephone Booths
- Lockers
- Containers

Areas With Unreasonable Expectations of Privacy

- Open Fields
- Abandoned Premises or Property
- Areas in which articles can be observed with the naked senses from a place (including airspace) an Officer is entitled to be. (Open view)
- Public Portions of Apartments, Businesses and Commercial Establishments
- Jails and Prisons

Three Ways to Lawfully Search a Protected Area

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FACTORS TO CONSIDER IN DETERMINING WHETHER CONSENT VOLUNTARY (cont'd)

- Age;
- Education;
- I.Q.;
- Constitutional rights given;
- Length of Detention, if any;
- How long questioned;

FACTORS TO CONSIDER IN DETERMINING WHETHER CONSENT VOLUNTARY (cont'd)

- Physical punishment;
- Psychological impact of above;
- Voluntariness of custodial status;
- Extent of cooperation with police;
- Awareness of right to refuse consent;
- Belief no incriminating evidence will be found.

Three Ways to Lawfully Search a Protected Area

- Search Warrant
  - There is a judicial preference for warrants.
- Consent Search
  - Must be free and voluntary.
- Search Based on Exigent Circumstances
  - Search Incident to a Lawful Arrest
  - Vehicle Searches (Carroll Doctrine and Inventories)
  - Hot Pursuit
  - Stop and Frisk
  - Security Search (Airports, Courthouses and Public Buildings)
  - Administrative Searches (Border, Customs, Airport, Parolees or Probationers, Certain Regulated Businesses)
  - Plain View

What is a Search Warrant?

- A search warrant is a COURT order directing any law enforcement officer (never a civilian) to search the place or person particularly described in the warrant and to seize instruments, articles, or things particularly described in the warrant.

Probable Cause

- The validity of a search will be judged on the **probable cause.**

Definition

Probable Cause for a Search

- Facts and circumstances within the police officer's knowledge sufficient to warrant a prudent person in believing that there is a fair probability that evidence of a crime will be found in a particular place.

Warrant Application

- A SW application is composed of two parts: the affidavit (which can be on a separate piece of paper that you attach) and the Command.

- The SW shall be issued in duplicate. One for the court, one for the person or premises to be searched. (Applicant should make an extra copy or two.) OCGA § 17-5-24.

Warrant Preparation

- Affidavit should be drafted, using supporting facts to show probable cause, to search for tangible evidence of crime.
  - Fruits of crime like the stolen goods or merchandise; instruments articles or things used to commit the crime like tools, checks, printing machines; contraband like drugs, forfeitable property, sawed off shotgun; tangible evidence like bloody clothes, DNA samples, fingerprints; human corpse; person kidnaped; private papers; computer equipment and the records they keep.
- Must specifically describe person, place or thing to be searched and evidence to be seized (also in body of Command).

SCOPE OF SEARCH

- If the scope of the Search Warrant is exceeded, when it is executed, the Courts will suppress anything found as a result.
  - Scope determined by two things:
    - Description of evidence sought
    - Description of area to be searched
  - Plain View considerations

Sufficient Affidavits

FOUR CORNERS TEST

- The information in the affidavit, which forms the basis of probable cause, may come from various sources.
  - The victim.
  - The affiant's personal observation
  - Another police officer.
  - A reliable informant
  - A defendant
  - A concerned citizen.
  - A tipster.

Reliability Established

- The Courts have recognized that victims of crime, the affiant officer or another police officer need no corroboration to be considered reliable. However, the issuing judge must decide on trustworthiness regardless of the source.

Informant

- Informant has come to mean a person who is himself, to some extent, involved in unlawful activity. He has hope for some special treatment because he has and is helping the police. For probable cause, the informant's veracity, reliability and basis of knowledge are closely intertwined concepts and the reviewing court applies a totality of the circumstances test to determine if probable cause existed to support the affidavit. Georgia courts prefer that all affidavits reflect the maximum indication of reliability whenever and wherever that is feasible.

Reliable Informant

- The affiant shall include a combination of these 3 factors.

- Reliability:
  - The type of information the informant has previously supplied.
  - How the prior information was put to use. (Whether it led to arrests, seizures of drugs, other evidence of crimes, convictions.)
  - The elapsed time since the informant obtained the current info.
- Trustworthiness:
  - Prior conviction, working off pending charge, paid informant, or other negative motivation.
- Basis of knowledge:
  - Personal observation.
  - Told by suspect.

Reliable Informant (cont.)

- If the affiant supplies all three factors, the level of independent police work or corroboration will generally be decreased.
- If an informant's identity is not to be revealed, the affiant must include information in a detailed but protective manner.

Concerned Citizen

A CC in an affidavit enjoys an elevated status

- Based upon:
  - Maturity--Age, employed or student.
  - Lack of Criminal History.
  - Good standing in the community--Home or business owner (stability).
  - Truthful demeanor.
  - Lack of motivation to lie.
  - Positive motivation in coming forward.
  - Nothing to personally gain by supplying info.

More CC

- The Affiant must include his or her BASIS of KNOWLEDGE to swear to these things about the CC as well as the BASIS of the KNOWLEDGE that the CC has to say these things in the first place.

Tipster

Lowest classification of source of info

- A tip must be judged on the veracity and reliability of the information itself.
  - Detailed insider information not generally available to the public (nicknames or street names, number of minor children, specific location drugs are hidden in the house, familiarity with prior criminal history, etc.).
  - Prediction of future behavior.
  - Whether tipster is anonymous or not.
- Must corroborate tip.
  - Address, identity, criminal history, premises description, vehicles driven, etc.

Staleness of Information

- Regardless of the source, the info must not be stale.
  - Critical time is between when source learns facts and officer obtains warrant.
  - Nature of info should determine how quickly you execute warrant.

Neutral and Detached Magistrate

- Any judicial officer authorized to hold a court of inquiry in this state can issue a SW. The judge of any Superior, State, Municipal, Probate, or Magistrate Court.
  - NOTE: Jurisdictional authority of the issuing judge.

    Recommended use Superior Court Judge to issue a warrant to seize property for forfeiture.

APPLICATION to Judicial Officer

- Affiant must be sworn in.
- Then sign the affidavit.
- Give sworn testimony as to the contents of the affidavit.
- Give additional oral testimony if applicable.
- Watch the judge sign the command portion including the date and time. OCGA § 17-5-22.

CAUTION

- Draconian consequences

- Failure to be sworn or failure to have warrant signed will cause the SW to be VOID. Any evidence obtained will be excluded at time of trial.
- An intentional false statement could cause the SW to be VOID.
- Affiant should take notes of any oral testimony. At trial they may be called upon to reproduce their testimony.

Who Executes?

- A SW may be executed by any police officer but it may direct a particular officer, named in the SW.
  - There is no requirement that the executing officer be dressed in uniform. However, they should be safe by being easily identifiable.

Execution of the SW

- A SW may be served at any reasonable time of, day or night, ten days (240 hours) from the time it was issued.
- After giving verbal notice (knock & announce), they may use all necessary and reasonable force to effect entry.
- A No Knock provision must be included in the body of the affidavit and be supported by case specific probable cause. Judge must allow for No Knock in body of Command.

Detaining and Searching People on the Premises

- An officer may reasonably detain and search any person on the premises:
  - To protect himself from attack.
  - To prevent disposal or concealment of any evidence particularly described in the warrant. OCGA § 17-5-28.

Other Persons Clause

- Once they have secured the premises (and patted down all parties who are initially present) they must have an Other Parties Clause in the body of the Warrant (supported by PC in the affidavit) to lawfully search any person arriving at the scene OR some independent probable cause to justify the search of that person.
  - Note: Public vs. Private premises.

Pre SW Planning

- Plan organization prior to executing the search. For example:
  - Which officer is supposed to be cataloguing, photographing or videotaping the evidence prior to its removal?
  - Is each officer responsible for a given area?
  - Is one officer responsible for the evidence sheet(s), maintaining custody of all items that will be turned into the crime lab, of all items that will be forfeited?

RETURN

- The return should be filed with the magistrate immediately after executing the warrant.
- If the warrant was never executed, the original should be returned to the judge marked "Not Executed".