

Introduction to Drug Prosecution

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Search and Seizure Issues

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FOURTH AMENDMENT ANALYSIS

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CONSTITUTIONAL PROVISIONS

1. 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.

2. 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.

DEFINITION OF ARREST

1. **GEORGIA COURTS HAVE GENERALLY FOLLOWED THE COMMON LAW IN**

THEIR APPROACH TO ARREST:

"... A PERSON IS UNDER ARREST WHENEVER HIS LIBERTY TO COME AND GO AS HE PLEASES IS RESTRAINED NO MATTER HOW SLIGHT SUCH RESTRAINT MAY BE."

COLLIER V. STATE, 244 GA. 553, 561 (1979).

2. **O.C.G.A. § 17-4-1 DEFINES WHAT ACTIONS CONSTITUTE AN ARREST:**

"AN ACTUAL TOUCHING OF A PERSON WITH A HAND IS NOT ESSENTIAL TO CONSTITUTE A VALID ARREST. IF THE PERSON VOLUNTARILY SUBMITS TO BEING CONSIDERED UNDER ARREST OR YIELDS ON CONDITION OF BEING ALLOWED HIS FREEDOM OF LOCOMOTION, UNDER THE DISCRETION OF THE OFFICER, THE ARREST IS COMPLETE. (ORIG. CODE 1863 § 4609; CODE 1968, § 4631; CODE 1873, § 4728; CODE 1882, § 4728; PENAL CODE 1895, § 893; PENAL CODE 1910, § 914; CODE 1933, § 27-201.)

3. **POLICE/CITIZEN ENCOUNTERS**

- A. VERBAL ENCOUNTERS INVOLVING NO COERCION OR DETENTION,
- B. BRIEF "STOPS" OR "SEIZURES" WHICH MUST BE ACCOMPANIED BY REASONABLE SUSPICION, AND
- C. "ARRESTS," WHICH MUST BE SUPPORTED BY PROBABLE CAUSE.

MIRANDA V. STATE, 189 GA.APP. 218, 219 (1988).

AREAS WITH REASONABLE EXPECTATIONS OF PRIVACY

1. **DWELLING PLACE** - MAXWELL V. STATE, 127 GA.APP. 168 (1972).
 - A. **HOUSE** - HOGAN V. STATE, 140 GA.APP. 716 (1976).
 - B. **APARTMENT** - BUNN V. STATE, 153 GA.APP. 270 (1980).
 - C. **TENT** - KELLEY V. STATE, 146 GA.APP. 179 (1978).
 - D. **HOTEL/MOTEL ROOM** - GARNER V. STATE, 124 GA.APP. 33 (1971) SEE ALSO U.S. V. JEFFERS, 342 U.S. 48 (72 S.CT. 93, 96 L.ED. 59) (1951).
2. **CURTIAGE** - FOR GENERAL DISCUSSION OF CURTIAGE SEE WRIGHT ET AL. V. STATE, 12 GA.APP. 514 (1913).
 - A. **CURTIAGE OF A HOUSE** - NORMAN V. STATE, 134 GA.APP. 767 (1975).
 - B. **CURTIAGE OF AN APARTMENT** - BUNN, SUPRA.
 - C. **CURTIAGE OF A TENT** - KELLEY, SUPRA.
3. **AUTOMOBILES** - CARROLL V. U.S., 267 U.S. 132 (69 L.ED. 543, 45 S.CT. 280) (1925).
4. **BOATS AND AIRPLANES** - CARROLL, SUPRA.
5. **OFFICES** - GO-BART IMPORTING CO. V. U.S., 282 U.S. 344 (75 L.ED. 374, 51 S.CT. 153) (1931).
6. **DESKS** - U.S. V. LEFKOWITZ, 285 U.S. 452 (76 L.ED. 877, 52 S.CT. 2120) (1932).
7. **TELEPHONE BOOTHS** - KATZ V. U.S., 389 U.S. 347 (19 L.ED.2D 576, 88 S.CT. 507) (1967).
8. **CONTAINERS** - U.S. V. CHADWICK, 433 U.S. 1 (53 L.ED.2D 538, 97 S.CT. 2476) (1977).

9. **PERSON - 4TH AMENDMENT TO U. S. CONSTITUTION.**
 - A. **CLOTHES - SIBRON V. NEW YORK, 392 U.S. 40 (88 S.Ct. 1889, 20 L.Ed.2d 917)**
 - B. **BODY - SKINNER V. RAILWAY LABOR EXECUTIVES' ASSN., 489 U.S. 602 (103 L.Ed.2d 639, 109 S.Ct. 1402) (1989).**
 - C. **BODILY FLUIDS - NATIONAL TREASURY EMPLOYEES UNION V. VON RAAB, 816 F.2d 170 (1987).**
 - D. **CONVERSATIONS - KATZ, SUPRA; U.S. V. JACKSON, 588 F.2d 1046 (1970).**
10. **LOCKERS - U.S. V. SPEIGHTS, 557 F.2d 362 (1977).**

AREAS WITH UNREASONABLE EXPECTATIONS OF PRIVACY

1. **OPEN FIELDS** - HESTER V. U.S., 265 U.S. 57 (44 S.Ct. 445, 68 L.Ed. 898) (1924).
2. **ABANDONED PREMISES OR PROPERTY** - SIMMONS V. STATE, 164 GA.App. 643 (1982); BLOODWORTH V. STATE, 233 GA. 589 (1975).
3. **AREAS IN WHICH ARTICLES CAN BE OBSERVED WITH THE NAKED SENSES FROM A PLACE (INCLUDING AIRSPACE) AN OFFICER IS ENTITLED TO BE. (OPEN VIEW)** - MERRIMAN V. STATE, 201 GA.App. 817 (1991); FLORIDA V. RILEY, 488 U.S. 445 (109 S.Ct. 393, 102 L.Ed.2D 835) (1986). (IMPORTANT - STILL NEED WARRANT, CONSENT OR EXIGENT CIRCUMSTANCES TO MAKE SEIZURE IN CONSTITUTIONALLY PROTECTED AREA. GATES V. STATE, 229 GA.App. 766 (1997)).
4. **PUBLIC PORTIONS OF APARTMENTS, BUSINESSES AND COMMERCIAL ESTABLISHMENTS** - COX V. STATE, 160 GA.App. 199 (1981); SPEIGHT V. STATE, 159 GA.App. 5 (1981).
5. **JAILS AND PRISONS** - HOWARD V. STATE, 185 GA.App. 465 (1988); HUDSON V. PALMER, 468 U.S. 517 (104 S.Ct. 3194, 82 L.Ed.2D 393) (1984).

EXCEPTIONS TO WARRANT REQUIREMENT:

- 1. CONSENT SEARCH.**
- 2. SEARCH BASED ON EXIGENT CIRCUMSTANCES**
 - A. SEARCH INCIDENT TO A LAWFUL ARREST.**
 - B. VEHICLE SEARCHES (CARROLL DOCTRINE AND INVENTORIES).**
 - C. STOP AND FRISK.**
 - D. SECURITY SEARCH (AIRPORTS, COURTHOUSES AND PUBLIC BUILDINGS).**
 - E. ADMINISTRATIVE SEARCHES (BORDER, CUSTOMS, AIRPORT, PAROLEES OR PROBATIONERS, CERTAIN REGULATED BUSINESSES).**
 - F. PLAIN VIEW. *****