

Search and Seizure in Traffic Cases

- State Court Judges' Spring Conference
- May 17, 2017
- Earl G. Penrod, Senior Judge
- Indiana Office of Court Services



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Learning Objectives

- Analyze under what circumstances the police may lawfully stop a vehicle under the Fourth Amendment and Article I, Sec. I, Par. XIII of Georgia Constitution.
- Determine the circumstances police may lawfully detain and search drivers, passengers and vehicles.



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FOURTH AMENDMENT

- The Right of the people to be secure...against unreasonable *searches and seizures* shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation...



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Georgia Constitution Article I, Sec. I, Par. XIII

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Fourth Amendment Protection

- Not all police-individual interactions implicate Fourth Amendment.
- 4TH Amendment prohibits **unreasonable searches/seizures**.
- Valid warrant makes search or seizure reasonable.
- Exceptions to warrant requirement.



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Police Citizen Encounters

- Three types of police–citizen encounters:
- Verbal communications with no coercion or detention;
- Brief stops/seizures-reasonable suspicion;
- Arrests on probable cause.
- Not consensual when officer blocked vehicle from leaving. *Jones v. State*, 727 S.E.2d 456 (Ga. 2012)



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QUIZ

- The Fourth Amendment to the U.S. Constitution applies to traffic stops. (Is traffic stop a Fourth Amendment seizure?)
- YES _____ NO _____



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YES-Fourth Amendment Seizure

- ...stopping of vehicle constitutes seizure of driver... *Delaware v. Prouse*, 440 U.S. 648 (1979); *U.S. v. Brognoni-Ponce*, 422 U.S. 873 (1975); *Christian v. State*, 764 S.E.2d 573 (Ga. Ct. App. 2014)
- Passenger of stopped vehicle is seized under the Fourth Amendment and may challenge constitutionality of stop. ~~*Brendlin v. California*, 551 U.S. 249 (2007)~~



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Fourth Amendment Seizure vs. Fifth Amendment Custody

- Restraining person's freedom to walk away a Fourth Amendment seizure- *Terry v. Ohio*, 392 U.S. 1 (1968).
- Being unable to leave (drive away) is Fourth Amendment seizure.
- Being restrained from walking or driving away NOT necessarily Fifth Amendment/*Miranda* custody. See *Crider v. State*, 737 S.E.2d 344 (Ga. Ct. App. 2013)



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But we are STATE COURTS...

- Fourth Amendment applicable to states. *Wolf v. Colorado*, 338 U.S. 25 (1949)
- States may grant GREATER protections based on State Constitution-NOT 4TH Amendment; SCOTUS speaks last on 4TH Amendment. *Arkansas v. Sullivan*, 532 U.S. 769 (2001); *Penn. v. Labron*, 518 U.S. 918 (1996); *Cooper v. State*, 587 S.E.2d 605 (Ga. 2003)



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Exclusionary Rule

- When police violate Fourth Amendment, evidence obtained subject to exclusion in state courts. *Mapp v. Ohio*, 367 U.S. 643 (1961); *Wong Son v. U.S.*, 371 U.S. 471 (1963).
- Purpose to deter future improper conduct by POLICE and give meaning to Fourth Amendment.



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Exclusionary Rule Losing Favor?

- Exceptions to Rule:
- Good faith-*Davis v. U.S.*, 131 S.Ct. 2419 (2011); *U.S. v. Leon*, 468 U.S. 897 (1984)
- Attenuation Doctrine: *Utah v. Strieff*, ___ 579 US ___ (136 S.Ct. 2056, 195 L.Ed.2d 400 (2016))



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Georgia Exclusionary Rule

- Exclusionary Rule legislatively mandated O.C.G.A. Sec. 17-5-30.
- ‘*Leon* good faith exception’ not applicable in Georgia.
- *Gary v. State*, 422 S.E.2d 426 (Ga. 1992)
- See also: *Zilke v. State*, 787 S.E.2d 745 (Ga. 2016)



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Drawing a Line

- Shame on our judges who allow criminals to go free because the constable has blundered, or...
- Shame on those who allow our precious constitutional protections to be trivialized as mere technicalities.



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Legitimate Reasons for a stop

- Observation (reasonable suspicion probable cause) of traffic violation.
- Reasonable suspicion criminal activity (non-traffic) may be afoot.
- Probable cause vehicle contains evidence of crime or contraband.
- Administrative; community caretaking.



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Reasonable Suspicion

- “look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing...”



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Reasonable Suspicion (continued)

- “Although an officer’s reliance on a mere ‘hunch’ is insufficient to justify a stop...
- the likelihood of criminal activity need not arise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.” *U.S. v. Arvizu*, 534 U.S. 266 (2002)



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How do we decide if suspicion is reasonable?

- Trial judge is to determine whether there is reasonable suspicion based on “totality of circumstances.”
- Probabilities, NOT certainties.



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QUIZ

- Computer check on plates of car stopped at light; registered owner suspended drivers license.
- Officer has observed no violation doesn't know who is driving, stops vehicle; OWI arrest results.
- Fourth Amendment violation?



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No direct answer from U.S. Supreme Court NOR Georgia Courts, YET...

- *State v. Vance*, 796 N.W.2d 775 (Iowa, 2010);
State v. Hicks, 300 P.3d 1183 (N.M. App. 2013);
Armfield v. State, 918 N.E.2d 316 (Ind. 2009);
State v. Tozier, 905 A.2d 836 (Me. 2006); *Comm. v. Deramo*, 762 N.E.2d 815 (Mass. 2002); *People v. Jones*, 678 N.W.2d 627 (Mich. Ct. App. 2004)



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But see: *Rodriguez v. State*, 761 S.E.2d19
(Ga. 2014)

- Automatic license plate recognition system.
- Alert that individual known to drive vehicle had outstanding warrant.
- Vehicle stopped, driver advises warrant for son who is in prison.
- Whether sufficient basis for stop NOT properly raised.



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Limitations on Reasonable Suspicion Stop

- Police limited to purpose of stop.
- Once officer's suspicion satisfied, stop must end unless additional factors justify further interaction.



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Subjective Intent of Officer

- Officer may make traffic stop for minor violation even though officer is actually looking for other criminal activity so long as minor violation actually occurs. *Whren v. U.S.* 517 U.S. 806 (1996); *Arkansas v. Sullivan*, 532 U.S. 769 (2001); *State v. Mathis*, 789 S.E.2d 336 (Ga. Ct. App. 2016)



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Computer Mistakes

- If errors made by clerical personnel, evidence NOT suppressed.
- If errors by POLICE, evidence suppressed.
- IF conduct is deliberate, reckless, grossly negligent, or circumstances indicate recurrent or systemic negligence. *Herring v. U.S.* 555 U.S. 135 (2009); *Arizona v. Evans*, 514 U.S. 1 (1995)



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Mistakes of Law?

- If officer stops driver for violation that is not violation (mistake of law) NO 4th Amendment violation if mistake objectively reasonable.
- Objectively reasonable for officer to think law required two instead of just one stop lamp. *Heien v. North Carolina*, 135 S.Ct. 530 (2014); *St. v. Hammang*, 549 S.E.2d 440 (Ga.Ct.App. 2001)



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Tips, Informants and Concerned Citizens

- Motor vehicle may be stopped based on anonymous tip IF information credible (totality of circumstances). *Alabama v. White*, 496 U.S. 325 (1990)
- Credibility based on police confirming predicted future behavior not easily known. *Florida v. J.L.*, 529 U.S. 266 (2000)



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9-1-1 CALL

- Reasonable suspicion may be based on 9-1-1 call IF caller gives sufficient indicia of reliability (totality of circumstances.)
- Contemporaneous, eyewitness knowledge of dangerous driving; vehicle description and location; 9-1-1 caller more reliable. *Navarette v. California*, 134 S.Ct. 1683 (2014)



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Blanks v. State, 778 S.E.2d 261 (Ga. Ct. App. 2015)

- 9-1-1 call contained sufficient indicia of reliability to stop driver.
- Whether there is reasonable suspicion based on knowledge of both officer and dispatcher.
- Officer also had probable cause to arrest for impaired driving.
- TOTALITY OF CIRCUMSTANCES.



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Automobile Exception: PROBABLE CAUSE!

Automobile exception to the warrant requirement (*Carroll v. U.S.*, 267 U.S. 132 (1925): if police have probable cause to believe vehicle contains contraband or evidence of crime, police may stop and search the vehicle for those items.



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Automobile Exception: Two Requirements (ONLY TWO!)

1. vehicle mobile or capable of being driven,
 2. probable cause vehicle contains contraband or evidence of crime.
- NO additional exigent circumstances required; exception applies even if police could get warrant. *Maryland v. Dyson*, 527 U.S. 465 (1999); *Penn. v. Labron*, 518 U.S. 918 (1996)



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Upon making the traffic stop

- Police may require driver to exit vehicle. *Penn. V. Mimms, 434 U.S. 106 (1977).*
- Police may order passengers out of vehicle. *Maryland v. Wilson, 519 U.S. 408 (1997).*
- Police may require passengers to stay at scene. *Brendlin v. California, 551 U.S. 249 (2007)*



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Activities and Length of Stop

- Police may inquire about identity of ALL occupants and do warrants check. *Rodriguez v. State, 761 S.E.2d 19 (Ga. 2014)*
- Obtaining identity/warrants check is part of officer safety, unlike dog sniff, and is permissible if officer acts with reasonable diligence. *State v. Allen, 779 S.E.2d 248 (Ga. 2015)*



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Traffic Stop in Georgia

- Officer may identify occupants;
- inquire about weapons and contraband;
- verify identity and do warrants check;
- inquiry about unrelated matters ok if stop not prolonged. *Rodriguez v. State*, 761 S.E.2d 19 (Ga. 2014)



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Roadside Canine Sniff



- Properly trained drug detection dog may be used even if no reason to suspect presence of drugs, IF ...
- stop lawful and occurs prior to when purpose of stop ends. *Illinois v. Caballes*, 543 U.S. 405 (2005); *State v. Allen*, 779 S.E.2d 248 (Ga. 2015)
- Improper to extend stop to conduct canine sniff; once ticket given, stop must end. *Rodriguez v. U.S.* 135 S.Ct. 1609 (2015)



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Georgia Drug Dog Cases

- Drug sniff did not prolong stop: conducted while checking passenger identification. *State v. Allen*, 779 S.E.2d 248 (Ga. 2015)
- Four minute delay waiting on drug dog unconstitutional, if no reasonable suspicion of drug activity. *Watts v. State*, 780 S.E.2d 431 (Ga. Ct. App. 2015)



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Warrant Exception: Consent

- Police may search person/vehicle with consent IF voluntary-totality of circumstances. *Ohio v. Robinette*, 519 U.S. 33 (1996)
- Not required to advise free to go, *Ohio v. Robinette*, 519 U.S. 33 (1996), not required to advise right to refuse, *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), but both are factors to consider. See: *St v. Poppell*, 592 S.E.2d 838 (Ga. 2004)



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Search Incident to Arrest

- Upon custodial arrest of vehicle occupant, may search person of arrestee (weapons-evidence);
- Search of vehicle ONLY if person unsecured and within reaching distance of passenger compartment, OR
- Reasonable belief evidence of crime of arrest may be found in vehicle. *Arizona v. Gant*, 556 U.S. 332 (2009); *Riley v. California*, 134 U.S. 2473 (2014); *Kennebrew v. State*, 792 S.E.2d 695 (Ga. 2016)



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Search Incident vs. Inventory Search

- In interests of public safety/community caretaking function, police may impound vehicle if reasonably necessary under circumstances.
- police may conduct inventory search pursuant to standard operating procedures,
- to protect property while vehicle impounded, AND protect police from claims of lost or stolen property. *Askew v. State*, 755 S.E.2d 283 (Ga. Ct. App. 2014)



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Breath and Blood Tests

- Blood tests and breath tests are Fourth Amendment searches. *Skinner v. Railway Labor Executives Assn.*, 489 U.S. 602 (1989)
- States may require testing as condition of driving (implied consent) and may penalize those who refuse tests. *South Dakota v. Neville*, 459 U.S. 553 (1983)



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Tests for Intoxication and Fourth Amendment

- Blood/breath tests for intoxication are Fourth Amendment searches;
- State must have valid WARRANT OR
- Applicable warrant exception.
- See: *Cooper v. St.*, 587 S.E.2d 605 (Ga. 2003); *Williams v. St.*, 771 S.E.2d 373 (Ga. 2015)



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Warrant Exception: Exigent Circumstances

- Natural dissipation of alcohol alone does not constitute exigency to justify warrantless blood draw.
- Whether warrantless blood draw is reasonable decided case by case: totality of circumstances: no per se rule. *Missouri v. McNeely*, 133 S.Ct. 1552 (2013); *Williams v. State*, 771 S.E.2d 373 (Ga. 2015)



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Warrant Exception: Consent

- Compliance with Implied Consent does not prove actual consent, which must be freely and voluntarily given: totality of circumstances. *Cooper v. State*, 587 S.E.2d 605 (Ga. 2003); *Williams v. State*, 771 S.E.2d 373 (Ga. 2015)
- 'Implied Consent' of unconscious person insufficient to satisfy Fourth Amendment. *Bailey v. State*, 790 S.E.2d 98 (Ga. 2016); See also *St. v. Brogan*, 2017 Ga. App. LEXIS 45 (February 15, 2017)



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Warrant Exception: Search Incident to Arrest

- Whether State may make it a crime to refuse to submit to a chemical test for present of alcohol when police do not have warrant.
- *Birchfield v. North Dakota*, ___ US___ (136 S.Ct. 2160) (2016)



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Birchfield v. North Dakota, ___ US___ (136 S.Ct. 2160) (2016)

- Warrantless breath test upheld as search incident to arrest.
- Blood test requires warrant.
- Specific holding: states may NOT criminalize refusal to submit to blood test by suspected drunk driver.



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“NO TEST SHALL BE GIVEN”

- O.C.G.A. Sec. 40-5-55
- O.C.G.A. Sec. Sec. 40-5-67.1 (d.1)
- *McAllister v. State*, 754 S.E.2d 376 (Ga. Ct. App. 2014)



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Final QUIZ: This presentation:

- A. has given meaning to my life.
- B. gave me chills down my spine.
- C. was an unintelligible abomination.
- D. IS OVER.



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D. Is over....

- Thanks for your attention
- Earl G. Penrod, Senior Judge
- Indiana Office of Court Services
- penrod26d01@msn.com



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