

MOTION TO SUPPRESS

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1. PROCEDURES – OUTLINED IN O.C.G.A. §17-5-30

- a. Motion - must be in writing.
- b. Grounds - must state grounds set out in the statute:
 - i. Search and seizure without a warrant is illegal
 - ii. Search and seizure with a warrant was illegal in one of the three ways:
 1. Warrant was insufficient on its face.
 2. Lack of probable cause for its issuance
 3. Warrant was executed illegally
- c. Motion must state facts which show that the search and seizure was illegal - standard is whether the pleading puts the State on notice of the type of search involved (with/without warrant), which witnesses to bring to the hearing, and legal issues to be resolved at hearing. *State v. Conley*, 273 Ga. App. 855, 855-56 (2005). Facts, not conclusions, control.
- d. Motions must be filed in the court with jurisdiction to try the case, and must be filed at or before the time of arraignment.
- e. The Defendant has the burden of pleading, but the State has the burden of going forward and proving the legality of the search and seizure by a preponderance of the evidence. Once the State has put up its evidence, the Defendant may present its evidence.
- f. The Defendant may testify at the motion to suppress hearing without testimony being used by the State in the case in chief under limited use privilege established in *Culpepper v. State*, 132 Ga. App. 733(3) (1974).
- g. A motion to suppress lies when something was seized and the State is expected to introduce the object at the trial of the case. A search at which nothing is seized presents nothing to suppress, and thus is of no significance.
- h. The Defendant must have standing to bring a motion to suppress, i.e. must claim a possessory interest in the property and have a reasonable expectation of privacy. Abandoned property is not subject to a motion to suppress since the property has been abandoned and the abandoner has waived claim to it by placing it in the public domain.
- i. The rights to be protected are guaranteed by the Fourth Amendment to the U.S. Constitution as applied to the states by the Fourteenth Amendment, and by Article 1, Section 1, Paragraph XIII and Article 1, Section 1, Paragraph I of the Georgia Constitution, which provides for a strong right of privacy. In some situations, the Georgia Constitution provides more protection to individuals than the U.S. Constitution.
- j. The Court's process of decision is to decide what really happened (find the facts), and then to decide how to apply the law to those facts (conclusions of law). The ruling by the Court is either to grant the motion to suppress the evidence, or to deny the motion to suppress the evidence. The Court needs to enter a written order granting or denying the motion.

2. TYPICAL MOTIONS IN NON-WARRANT CASES:

- a. Challenging the State's contention that the Defendant consented to the search & seizure.
 - i. A Defendant may waive his/her rights against unreasonable searches and seizures. Typical issues:
 - 1. Consent was not expressly given, but the police think it was.
 - 2. Consent was given, but the Defendant did not know he/she could refuse and police gave impression that consent was required.
 - 3. Scope of search exceeded consent.
 - 4. Someone else gave consent and may not have had authority to do so.
- b. Challenging the State's contention that there were exigent circumstances, which warranted a search without a warrant.
 - i. Searches and seizures are permitted in a very narrow situation where it is impracticable (not just inconvenient) to get a search warrant. A typical issue includes searching a vehicle or person when there was plenty of opportunity to get a search warrant.
- c. Challenging the State's contention that the property seized was in plain view of the officer.
 - i. Seizure of evidence of a crime or contraband in plain view is a recognized exception to the requirement of a search warrant since there is no expectation of privacy.
 - ii. Typical issues include:
 - 1. Police were not in a place where they had a right to be.
 - 2. Police did not discover the property inadvertently.
 - 3. Police did not have probable cause to believe property was evidence of a crime or was contraband.
- d. Challenging the State's contention that the property was discovered through a lawful "stop and frisk" *Terry v. Ohio* pat down.
 - i. A brief detention and search of a person to determine whether a person is armed is an exception to the requirement of obtaining a search warrant if the officer has a reasonable belief that the person is armed. Cannot be based only on an anonymous tip. *Florida v. J.L.*, 529 U.S. 266 (2000).
 - ii. Typical issues:
 - 1. Police did not immediately realize the object felt was contraband or weapon.
 - 2. The information given was not reliable or not sufficient to create reasonable belief.
- e. Challenging the legality of the detention when a search is incident to an arrest.

- i. Typical issues: four levels of police contact
 1. Police-citizen encounters – not governed by Fourth Amendment. Citizen has the right to walk away or not answer questions....
 2. Police have articulable suspicion to briefly detain a subject, but has to have an articulable reason, not a guess or a subjective hunch, why he/she believes the person is violating the law...
 3. Police make a traffic stop and issue a citation. There is no right to search incident to issuing a citation since there is no arrest...
 4. Police make an arrest. A search of a person incident to that person's arrest is a recognized exception to the requirement of obtaining a search warrant.
- f. Challenging the discovery of evidence or contraband found during a police inventory.
 - i. Police have a duty to inventory vehicles or property over which they become responsible, and evidence of crime or contraband, which is found during such inventory, is admissible, and is not subject to the requirement of a search warrant...

3. TYPICAL MOTIONS IN A SEARCH WARRANT CASE

- a. Mandatory requirements of who can apply for a warrant, who can issue it, and how it is solemnized.
- b. The description of the place or person, or both, to be searched and the things to be seized are not particularly described.
- c. That the totality of the circumstances surrounding the search and seizure of the property did not establish that there was probable cause for the search and seizure. (This focuses on the sufficiency of the affidavit, which must be introduced in original or certified copy).
- d. That the information given to the issuing magistrate was not so fresh as to create a reasonable belief that the conditions described in the affidavit might still prevail at the time of the issuance of the warrant.
- e. The warrant was mis-executed – too late, too broad, full search of person present rather than a frisk for weapons.