



Legal Update 2009

Presented by:

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HB 71

- SECTION 1.
- Code Section 16-9-4 of the Official Code of Georgia Annotated, relating to manufacturing, selling, or distributing false identification documents, is amended by revising subsection (g) as follows:
- "(g) It shall not be a defense to a violation of this Code section that a false, fictitious, fraudulent, or altered identification document contained words indicating that it is not an identification document unless there appears on the front and back of such document the word 'novelty' which is in a color which is not transparent on the design of the document, is in block letters not less than 40 point type in size, and is indelible ink."



HB 71

- SECTION 2.
- This Act shall become effective on October 1, 2009, and shall apply to offenses committed on or after such date.
- SECTION 3.
- All laws and parts of laws in conflict with this Act are repealed.



Kidnapping

- What is asportation?
- Is it a key element of kidnapping?
- How far is “slight movement”?



Garza v. State

284 Ga. 696, 670 S.E.2d 73, 08 FCDR 3470, 09 FCDR 9

- Appellant Joey Allen Garza was convicted in March 2002 of two counts of kidnapping, four counts of false imprisonment, and one count of aggravated assault. Following affirmance of the convictions by the Court of Appeals, *Garza v. State*, 285 Ga.App. 902, 648 S.E.2d 84 (2007), Garza sought a writ of certiorari. We granted the writ to assess the sufficiency of the evidence as to the asportation element of the crime of kidnapping. Having set forth below a new standard for asportation, we now reverse Garza's kidnapping convictions.



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- “...on the evening of October 16, 2001, Garza gained entry into Angela Mendoza's residence on the pretext that he had left his wallet in her van. Once inside and while Mendoza's three children slept, he locked the door, drew a handgun from his pants, placed the weapon against Mendoza's head, and threatened to shoot her if she failed to follow his instructions. Garza struck Mendoza in the head with the handgun as she attempted to push it aside, causing her to fall to the floor. Garza then bound Mendoza's wrists with electrician's tape, tied her ankles with a torn sheet, and helped her up, made her sit in a chair, and instructed her not to move. Later, Garza allowed Mendoza to move to the floor where she joined her infant daughter and feigned sleep. When Garza fell asleep, [she] and her two-year-old son escaped out of a window, and Mendoza called the police.



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- Upon their arrival, the police forcibly entered the locked residence, removed Mendoza's infant daughter from the premises, and negotiated the release of Mendoza's nine-year-old son, J.M., for a six-pack of beer.... [A]s the police entered the residence, Garza awoke J.M., asked him if he wanted to play cops and robbers, and, while holding his shirt, ordered him to move to the back bedroom of the residence. Once there, Garza continued to restrain J.M. by his shirt while openly holding his handgun. Although Garza did not point the weapon at him, J.M. was “scared” because he believed the weapon had been used to kill his mother.



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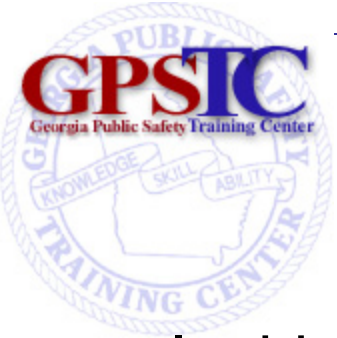
- Garza v. State, supra, 285 Ga.App. at 902-903, 648 S.E.2d 84. The issue presented is whether any of the movements of either Mendoza or J.M. during the course of the incident-Mendoza's falling to the floor from a standing position or being forced from the floor to a chair,^{FN1} or J.M.'s being forced from the room where he slept into an adjacent bedroom-constituted asportation within the meaning of the Georgia kidnapping statute.
- FN1. It was undisputed that Mendoza's subsequent movement from the chair to the floor was at her request; such volitional movement does not constitute asportation. See Briard v. State, 188 Ga.App. 490(1), 373 S.E.2d 239 (1988).



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- “A person commits the offense of kidnapping when he abducts or steals away any person without lawful authority or warrant and holds such person against his will.” OCGA § 16-5-40(a). Under current Georgia jurisprudence, the element of “abduct[ing] or steal[ing] away” the victim, known in legal parlance as “asportation,” may be established by proof of “movement of the victim, however slight... Thus, in addition to the more traditional scenarios involving child abduction or kidnapping for ransom, situations involving some other form of criminal activity have been found to support kidnapping charges even though the movement of the victim was merely a minor incident to the primary offense. See, e.g., Woodson v. State, 273 Ga. 557, 544 S.E.2d 431 (2001) (evidence of asportation sufficient where victim forced from one room to another in course of attempted rape); Scott v. State, 288 Ga.App. 738(1)(b), 655 S.E.2d 326 (2007) (evidence of asportation sufficient where victim dragged ten feet from bus stop to bushes in course of robbery); Phillips v. State, 259 Ga.App. 331(1), 577 S.E.2d 25 (2003) (evidence of asportation sufficient where victim grabbed and forced six to eight feet into store in course of armed robbery). The definition of asportation has evolved to the point where it seems that the only type of movement considered insufficient as evidence of asportation is movement immediately resulting from a physical struggle. See, e.g., Woodson, supra, 273 Ga. at 558, 544 S.E.2d 431 (shoving and pulling victim to floor not sufficient);



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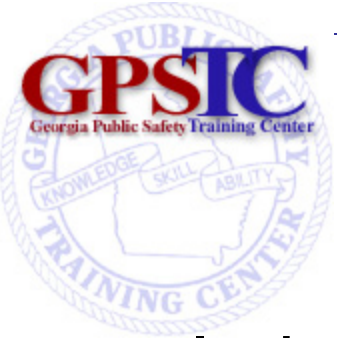
- In this Court's most recent pronouncement on the subject of asportation, we reaffirmed that “[t]he requirement of asportation to prove kidnapping is satisfied if there is movement of the victim, however slight that movement is. [Cit.] The distance that a kidnapper transports the victim is not of legal significance. [Cit.]” *Lyons v. State*, 282 Ga. 588, 591(1), 652 S.E.2d 525 (2007). We went on to state, however, that where the movement involved is minimal, and the alleged kidnapping occurs in furtherance of some other criminal enterprise, in order to constitute “asportation” the movement must be more than a mere positional change of the victim incidental to the other criminal act; it must be movement, even if a positional change, designed to better carry out the criminal activity. [Cits.]



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- From our current vantage point, while the line drawn in Lyons-inconsequential movement versus movement “materially facilitating” another crime-may be analytically satisfying in harmonizing our courts' history of “hair-splitting decisions as to what is sufficient asportation,” see Haynes v. State, 249 Ga. 119, 120(1), 288 S.E.2d 185 (1982), this delineation does nothing to ameliorate the problems resulting from such a broad construction of the concept of asportation.
- In its earliest incarnation, the common law crime of kidnapping required the asportation of the victim out of the country, the rationale being to prevent the victim's removal beyond law enforcement jurisdiction and isolation from the protection of the law.



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- Indeed, the earliest version of the Georgia kidnapping statute required removal of the victim across state or county lines. Over time, however, as legislative attention turned increasingly to the subject in response to an increase in kidnappings correlating to more widespread use of the automobile as well as several high-profile abductions, the concept of asportation was broadened. Following this trend, the Georgia Legislature in 1953 rewrote the kidnapping statute, removing the territorial component from the asportation requirement and thus eliminating therefrom any explicit distance threshold. Ga. L.1953, Nov.-Dec. Sess., p. 99, § 1.

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- The removal of the territorial component and failure to substitute any other explicit distance threshold has resulted in “it [being] left to the courts to determine in more specific terms the bases upon which the asportation in the particular case should be judged.” ...And it is thus how our courts have come to expand the concept of kidnapping so drastically from its origins as to encompass movements as “slight” as stepping from one room of an apartment into another. As other courts and commentators have noted, and as this Court has witnessed, this expansive construction of asportation poses a potential danger that
- the definition of kidnapping will sweep within its scope conduct that is decidedly wrongful but that should be punished as some other crime. Thus, for example, the robber who forces his victim to move from one room to another in order to find a cashbox or open a safe technically may commit kidnapping as well as robbery. This reasoning raises the possibility of cumulative penalties or of higher sanctions for kidnapping, even though the “removal” of the victim to another place was part and parcel of the robbery and not an independent wrong.



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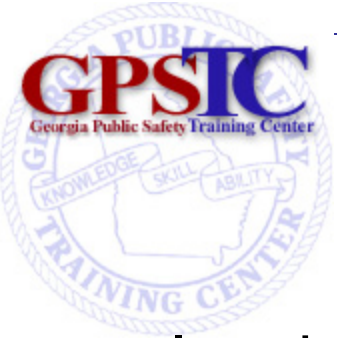
- First, by creating the potential for cumulative punishment under more than one criminal statute for a single course of conduct, such a construction implicates the principle of substantive double jeopardy, which “prevent[s] the sentencing court from prescribing greater punishment than the legislature intended.” ... Thus, using the armed robbery example cited above, is it reasonable to believe that the Legislature intended the mere fact of a victim's movement from one point to another within the situs of the robbery to justify another ten-years-to-life sentence in addition to the ten years to life prescribed for armed robbery?



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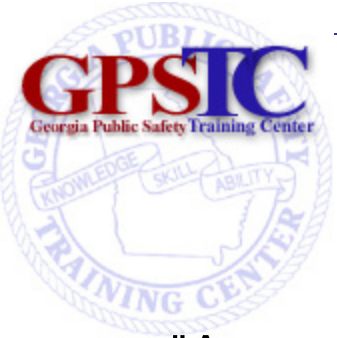
- Second, convicting a person of kidnapping in a situation such as that in the armed robbery example or that presented herein poses a potential procedural due process problem. “[I]t is beyond question that the Due Process Clause requires that the law give a person of ordinary intelligence fair warning that [his] specific contemplated conduct is forbidden.”... Though a person of ordinary intelligence would readily know that confining others against their will or committing armed robbery are acts which the law forbids, we are concerned that the plain language of the kidnapping statute may fail to provide fair warning that forcing the victims to move, however slightly, within the situs of the crime would justify prosecution for kidnapping. The constitutional prohibition on vague laws is grounded not only in the principle of fair notice to the individual but also in the desirability of avoiding arbitrary and selective enforcement of criminal laws...The relevance of the latter rationale in this context is clear: “[e]xperience reveals numerous instances of abusive prosecution under expansive kidnapping statutes for conduct that a rational and mature penal law would have treated as another crime.”



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- In addition to our constitutional concerns, we also note that, as is amply illustrated in the instant case, an expansive construction of asportation also effectively eviscerates the distinction between kidnapping and false imprisonment, the latter of which is treated by our statutory code as a serious crime but one that is far less serious than the crime of kidnapping. See OCGA § 16-5-41(b) (penalties for false imprisonment range from one to ten years imprisonment). Given that “[t]he only difference between the two offenses is asportation,” ...an asportation requirement so easily satisfied fails to justify the dramatic distinction in penalties between the two offenses, and simply cannot represent what the Legislature intended in enacting the current kidnapping statute.



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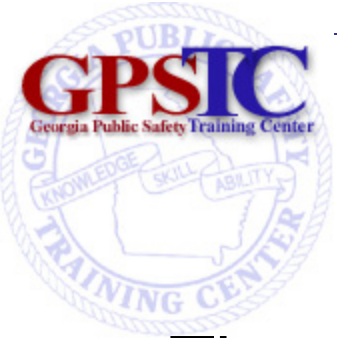
- "Accordingly, we find it necessary to adopt a more cogent standard for determining the sufficiency of evidence of asportation. Having surveyed the approaches of other jurisdictions in determining what movements are more than merely incidental to other criminal activity, we hereby adopt the test first articulated in *Govt. of Virgin Islands v. Berry*, 604 F.2d 221 (3d Cir.1979), and since adopted by various of our sister states FN4 as well as the Eleventh Circuit in its construction of the federal kidnapping statute. ...The *Berry* test, formulated in an effort to synthesize the various standards adopted by those jurisdictions embracing the modern approach with respect to asportation, assesses four factors in determining whether the movement at issue constitutes asportation: (1) the duration of the movement; (2) whether the movement occurred during the commission of a separate offense; (3) whether such movement was an inherent part of that separate offense; and (4) whether the movement itself presented a significant danger to the victim independent of the danger posed by the separate offense.



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- Assessment of these factors will assist Georgia prosecutors and courts alike in determining whether the movement in question is in the nature of the evil the kidnapping statute was originally intended to address-i.e., movement serving to substantially isolate the victim from protection or rescue-or merely a “criminologically insignificant circumstance” attendant to some other crime... To the extent prior case law and, specifically, the “slight movement” standard are inconsistent with this approach, those cases and that standard are hereby overruled.



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- The dissent characterizes our effort to recalibrate the construction of our kidnapping statute as a “judicial usurpation of the legislative function.” Though we acknowledge the Legislature's implicit acquiescence in the “slight movement” standard, we believe this case to be one of those rare occasions in which our interpretative error has become so manifest, and its consequences so potentially serious, that reliance on legislative silence as the justification for perpetuating this error would be gravely misplaced.



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- Applying the *Berry* factors to the evidence in this case, it is clear that neither of the two distinct movements of Mendoza during Garza's false imprisonment of her constitute the necessary asportation to support a kidnapping conviction. Both the act of falling to the floor and the act of rising to sit in the chair where Mendoza was bound were of minimal duration and occurred during the course of and incidental to Garza's false imprisonment of Mendoza and her children. Additionally, the blow that caused Mendoza's fall was an inherent part of the aggravated assault of which Garza was convicted. Moreover, Mendoza's movements did not significantly increase the dangers to her over those she faced as a victim of false imprisonment or aggravated assault. Application of the *Berry* factors thus clearly supports the reversal of Garza's conviction of the kidnapping of Mendoza.

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- The kidnapping charge as to J.M., while involving a slightly greater quantum of movement than that as to Mendoza, nonetheless meets a similar fate under the *Berry* test. The record reflects that, when police attempted to enter the apartment, Garza jumped onto the couch where J.M. had been sleeping, asked if he wanted to play cops and robbers, and grabbed J.M.'s shirt, forcing him into an adjoining bedroom where the two stayed for the next approximately two to three hours while police attempted to negotiate J.M.'s release from outside via cell phone. On one or more occasions when Garza's cell phone battery ran out, Garza forced J.M. to walk with him down the hallway to retrieve replacement cell phones thrown into the front room by police. As with Mendoza, the movements themselves were of short duration and occurred as minor incidents in the course of Garza's false imprisonment of J.M. There was no evidence that the movements served to conceal J.M. from police, who were already aware he was being detained, to thwart in any appreciable way the efforts of police to free J.M., or to enhance significantly the risk J.M. already faced as the victim of false imprisonment. Accordingly, Garza's conviction for the kidnapping of J.M. must also be reversed.

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- By adopting the above mode of analysis, we join in the “modern approach” and construe (a) so as “to prevent gross distortion of lesser crimes into a much more serious crime.’ [Cit.]” In accordance with such mode of analysis, we hereby reverse the judgment below as to Counts 1 and 2. In all other respects, including Garza's convictions on four counts of false imprisonment and one count of aggravated assault, the judgment ... is affirmed.



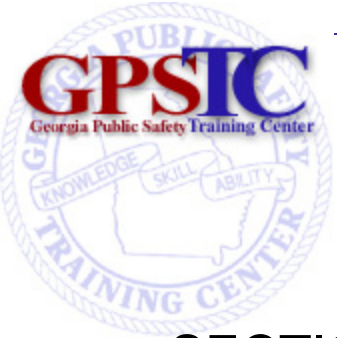
Garza v. State (Dissent written by Carley, Hines and Melton, J.J.)

- I respectfully dissent from all three divisions of the majority opinion. In Division 1, the majority usurps the function of the legislature by abruptly and unnecessarily reinterpreting our kidnapping statute. Based on this improper reinterpretation of well settled law, the majority erroneously concludes in Division 2 that there is insufficient evidence of asportation to support Garza's conviction for kidnapping Ms. Mendoza. In Division 3, the majority abandons its judicial role to take on the role of an advocate by ruling on an issue not raised by the Appellant, and also erroneously concludes that there is insufficient evidence of asportation to support Garza's conviction for kidnapping nine-year-old J.M.



Garza v. State (Dissent written by Carley, Hines and Melton, J.J.)

- In the instant case, the majority's reinterpretation of (a), accomplished through its refusal to adhere to the General Assembly's tacit adoption of the long line of cases holding that slight movement is sufficient and its imposition of a new four-part test for asportation, constitutes a judicial usurpation of the legislative function. If the kidnapping statute is to be so revised to include a new four-part test, the General Assembly, rather than this Court, must take that action. Not only does the majority improperly take on the legislative function, but its reasons for doing so are unfounded. The majority first claims that the well settled construction of the kidnapping statute "implicates the principle of substantive double jeopardy, which 'prevent(s) the sentencing court from prescribing greater punishment than the legislature intended.'" However, there is nothing in the accepted interpretation of the kidnapping statute that would allow a sentencing court to prescribe a greater punishment than the legislature intended. On the contrary, given the legislature's decades-long acquiescence in that interpretation, along with the clear legislative rejection of this Court's prior suggestion that the Code be amended, the only logical conclusion is that the longstanding construction of the kidnapping statute accomplishes precisely what the legislature intended. The statute plainly sets forth punishments for kidnapping and, of course, such punishments cannot be imposed by a court until all the elements of kidnapping, including asportation, have been proved beyond a reasonable doubt. (b) & (c). Nothing in the well settled interpretation of the statute contravenes that legislative intent.



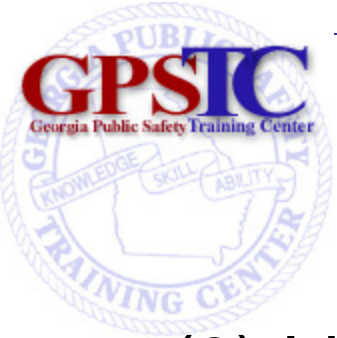
HB 575

- SECTION 1.
- Article 3 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to kidnapping, false imprisonment, and related offenses, is amended by revising Code Section 16-5-40, relating to kidnapping, as follows:
 - "16-5-40.
 - (a) A person commits the offense of kidnapping when he such person abducts or steals away any another person without lawful authority or warrant and holds such other person against his or her will.
 - (b)(1) For the offense of kidnapping to occur, slight movement shall be sufficient; provided, however, that any such slight movement of another person which occurs while in the commission of any other offense shall not constitute the offense of kidnapping if such movement is merely incidental to such other offense.



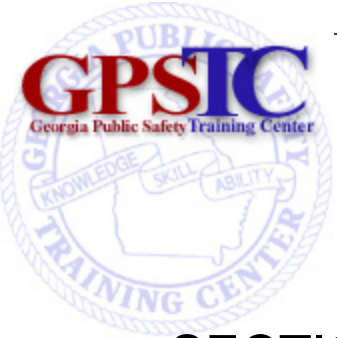
HB 575

- (2) Movement shall not be considered merely incidental to another offense if it:
 - (A) Conceals or isolates the victim;
 - (B) Makes the commission of the other offense substantially easier;
 - (C) Lessens the risk of detection; or
 - (D) Is for the purpose of avoiding apprehension.
- (c) The offense of kidnapping shall be considered a separate offense and shall not merge with any other offense.
- (b)(d) A person convicted of the offense of kidnapping shall be punished by:
 - (1) Imprisonment for not less than ten nor more than 20 years if the kidnapping involved a victim who was 14 years of age or older;
 - (2) 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, if the kidnapping involved a victim who is less than 14 years of age;



HB 575

- (3) Life imprisonment or death if the kidnapping was for ransom; or
- (4) Life imprisonment or death if the person kidnapped received bodily injury.
- (c)(e) Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.
- (f) The offense of kidnapping is declared to be a continuous offense, and venue may be in any county where the accused exercises dominion or control over the person of another."



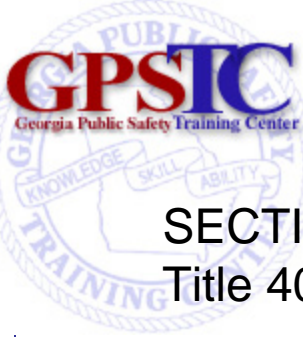
SB 38

- SECTION 1.
- Article 2 of Chapter 16 of Title 45 of the Official Code of Georgia Annotated, relating to death investigations by coroners, is amended in Code Section 45-16-25, relating to duties of a coroner or county medical examiner upon receipt of notice of suspicious or unusual death, authority to embalm a body, identification, inventory and disposition of a deceased's property, and use of a deceased's property for evidence, by adding a new subsection to read as follows:
 - "(d) The Georgia Bureau of Investigation is authorized to perform a post mortem examination and autopsy on a person whose death occurs within a state owned or leased building or on the curtilage of such building. The Georgia Bureau of Investigation shall have jurisdiction relating to the investigation of such a death, and this authority and jurisdiction shall supersede any other authority or jurisdiction provided for by this article relating to a post mortem examination or autopsy."



SB 38

- SECTION 2.
- Said article is further amended by adding a new Code section to read as follows:
- "45-16-50.
- A medical examiner within the state of Georgia is authorized to provide to an approved canine instructor or school certain biological substances such as human blood or bodily fluids for the sole purpose of utilizing such substances for the training and handling of police canines in body recovery of human remains or rescue of persons. Such biological substances shall be contained and transported in accordance with appropriate health and safety standards."



SB-196

SECTION 1.

Title 40 of the Official Code of Georgia Annotated, relating to motor

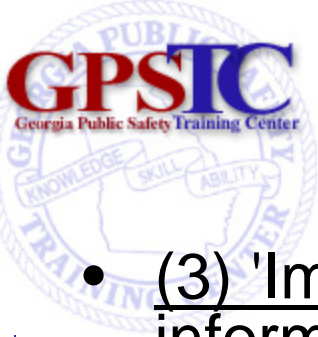
vehicles and traffic, is amended by revising subsection (a) of Code Section 40-5-20, relating to driver's license requirement, as follows:

"(a) No person, except those expressly exempted in this chapter, shall drive any motor vehicle upon a highway in this state unless such person has a valid driver's license under this chapter for the type or class of vehicle being driven. Any person who is a resident of this state for 30 days shall obtain a Georgia driver's license before operating a motor vehicle in this state. Any violation of this subsection shall be punished as provided in Code Section 40-5-121, except the violation of driving with an expired license, or a violation of Code Section 40-5-29 **or if such person produces in court a valid driver's license issued by this state to such person, he or she shall not be guilty of such offenses.** Any court having jurisdiction over traffic offenses in this state shall report to the department the name and other identifying information of any individual convicted of driving without a license."



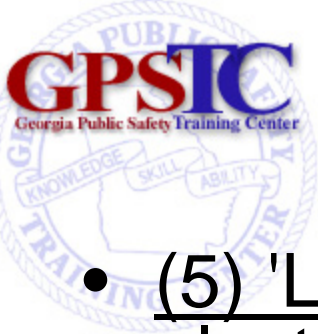
SB 20

- SECTION 1.
- Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general provisions applicable to counties, municipal corporations, and other governmental entities, is amended by adding a new Code section to read as follows:
- "36-80-23.
- (a) As used in this Code section, the term:
- (1) 'Federal officials or law enforcement officers' means any person employed by the United States government for the purpose of enforcing or regulating federal immigration laws and any peace officer certified by the Georgia Peace Officer Standards and Training Council where such federal official or peace officer is acting within the scope of his or her employment for the purpose of enforcing federal immigration laws or preserving homeland security.
- (2) 'Immigration status' means the legality or illegality of an individual's presence in the United States as determined by federal law.



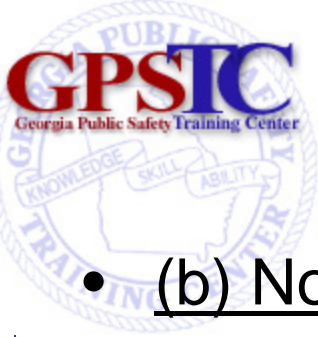
SB 20

- (3) 'Immigration status information' means any information, not including any information required by law to be kept confidential but otherwise including but not limited to any statement, document, computer generated data, recording, or photograph, which is relevant to immigration status or the identity or location of an individual who is reasonably believed to be illegally residing within the United States or who is reasonably believed to be involved in domestic terrorism as that term is defined in Code Section 16-4-10 or a terroristic act as that term is defined by Code Section 35-3-62.
- (4) 'Local governing body' means any political subdivision of this state, including any county, consolidated government, municipality, authority, school district, commission, board, or any other local public body corporate, governmental unit, or political subdivision.



SB 20

- (5) 'Local official or employee' means any elected or appointed official, supervisor or managerial employee, contractor, agent, or certified peace officer acting on behalf of or in conjunction with a local governing body.
- (6) 'Sanctuary policy' means any regulation, rule, policy, or practice adopted by a local governing body which prohibits or restricts local officials or employees from communicating or cooperating with federal officials or law enforcement officers with regard to reporting immigration status information while such local official or employee is acting within the scope of his or her official duties.



SB 20

- (b) No local governing body, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact, adopt, implement, or enforce any sanctuary policy.
- (c) Any local governing body that acts in violation of this Code section shall be subject to the withholding of state funding or state administered federal funding other than funds to provide services specified in subsection (c) of Code Section 50-36-1.
- (d) The Department of Community Affairs, the Department of Transportation, or any other state agency that provides funding to local governing bodies may require certification of compliance with this Code section as a condition of funding."



SB 67

- SECTION 1.
- Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to drivers' licenses, is amended in Code Section 40-5-27, relating to examination of applicants for certain drivers' licenses, by adding a new subsection to read as follows:
- "(e) All written and oral examinations required pursuant to this Code section shall be administered only in the English language; provided, however, that the department may administer examinations to persons eligible for a temporary license pursuant to Code Section 40-5-21.1 in a language other than English."



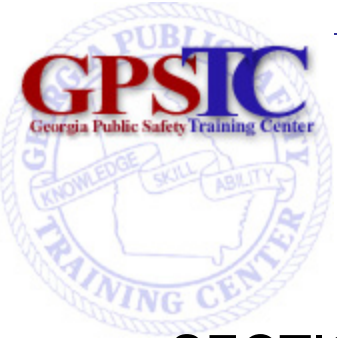
SB 67

- SECTION 2.
- Said chapter is further amended by revising subsection (a) of Code Section 40-5-81, relating to court ordered attendance at driver improvement clinics and programs, as follows:
- "(a) Any driver improvement program at which attendance is required by court order shall conform to the requirements of this article. Courts with jurisdiction over misdemeanor traffic law offenses under any pretrial diversion program shall require the offender to complete, at a minimum, a defensive driving course licensed and approved by the department under the provisions of Code Sections 40-5-82 and 40-5-83. Certificates of completion from unlicensed defensive driving courses shall not be recognized for any purposes under this article."



SB 82

- SECTION 1.
- Article 14 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to secondary metals recyclers, is amended by revising paragraph (5) of Code Section 10-1-350, relating to definitions, as follows:
- "(5) 'Personal identification card' means a current and unexpired driver's license or identification card issued by the Department of Driver Services or a similar card issued by another state, a military identification card, a passport, or an appropriate work authorization issued by the U.S. Citizenship and Immigration Services of the Department of Homeland Security, which shall contain the individual's name, address, and photograph."



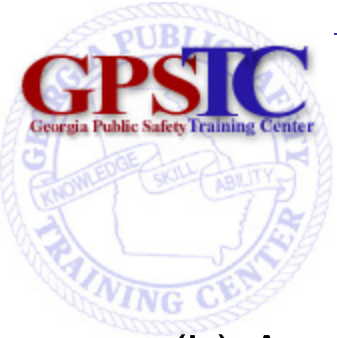
SB 82

- SECTION 2.
- Said article is further amended by revising paragraph (6) of subsection (a) of Code Section 10-1-351, relating to record of transactions, and adding a new subsection (c) to read as follows:
- "(6) The name and address A photocopy of a valid personal identification card of the person delivering the regulated metal property to the secondary metals recycler;"
- "(c) When the metal being purchased is a motor vehicle, the person offering to sell the motor vehicle to a secondary metals recycler shall either provide the title to such motor vehicle or fully execute a cancellation of certificate of title for scrap vehicles form as promulgated by the Department of Revenue, Motor Vehicle Division, designated as MV-1SP, in accordance with Code Section 40-3-36. The secondary metals recycler shall forward the title or MV-1SP form to the Department of Revenue within 72 hours of receipt of the title or form."



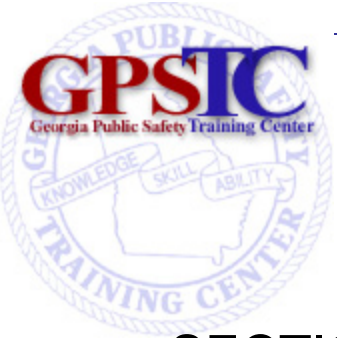
SB 82

- SECTION 3.
- Said article is further amended by adding a new Code section to read as follows:
- "10-1-352.1.
- (a) As used in this Code section, the terms:
- (1) 'Aluminum property' means aluminum forms designed to shape concrete.
- (2) 'Copper property' means any copper wire, copper tubing, copper pipe, or any item composed completely of copper.



SB 82

- (b) A secondary metals recycler may pay by check or by cash for any copper property, catalytic converter, or aluminum property as follows:
- (1) Cash payments shall occur no earlier than 24 hours after the copper property, catalytic converter, or aluminum property is provided to the secondary metals recycler; and
- (2) Checks shall be payable only to the person named who was recorded as delivering the copper property, catalytic converter, or aluminum property to the secondary metals recycler; provided, however, that if such person is delivering the copper property, catalytic converter, or aluminum property on behalf of a governmental entity or a nonprofit or for profit business, the check may be payable to such business or entity and may also be transmitted to such business or entity.
- (c) The provisions of this Code section shall not apply to any transaction between business entities."



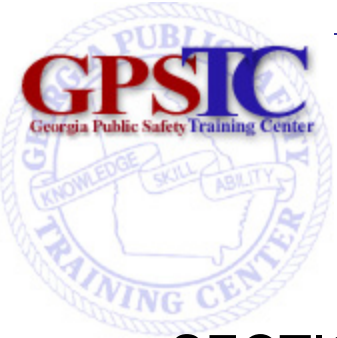
SB 82

- SECTION 4.
- Code Section 16-8-12 of the Official Code of Georgia Annotated, relating to penalties for violation of Code Sections 16-8-2 through 16-8-9, is amended by revising paragraph (9) of subsection (a) as follows:
- "(9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property of the theft was ferrous metals or regulated metal property, as such terms are defined in Code Section 10-1-350, and the sum of the aggregate amount of such property, in its original and undamaged condition, plus any reasonable costs which are or would be incurred in the repair or the attempt to recover any property damaged in the theft or removal of such regulated metal property, exceeds \$500.00, by imprisonment for not less than one nor more than five years, a fine of not more than \$5,000.00, or both."



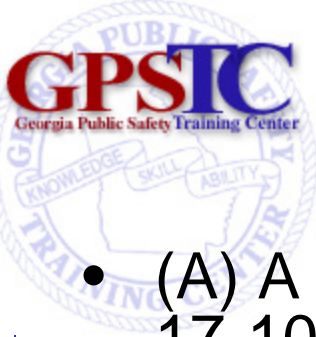
SB 85

- To amend Title 6 of the Official Code of Georgia Annotated, relating to aviation, so as to create the Georgia Aviation Authority; to provide for a short title and definitions; to provide for the membership, governance, operation, powers, duties, and administrative attachment of the authority; to provide that the general purpose of the authority shall be to acquire, operate, maintain, house, and dispose of all state aviation assets; to provide for the transfer of certain employees for administrative purposes only; to provide for other matters related to the authority and its creation; to provide for audits of the authority; to provide for automatic repeal of the authority; to amend Code Section 32-2-2 of the Official Code of Georgia Annotated, relating to powers and duties of the Department of Transportation, so as to remove provisions relative to the authority of that department with respect to state aircraft; to amend Chapter 19 of Title 50 of the Official Code of Georgia Annotated, relating to state government transportation services, so as to repeal Article 2, the "Air Transportation Act," relating to the powers and duties of the Department of Transportation with respect to state air transportation; to provide for other related matters; to repeal conflicting laws; and for other purposes.



SB 246

- SECTION 1.
- Part 5 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to arrest and detention, is amended by adding a new Code section to read as follows:
- "15-11-51.
- (a) As used in this Code section, the term:
- (1) 'Notice' shall have the same meaning as set forth in Code Section 17-17-3.
- (2) 'Victim' shall have the same meaning as set forth in Code Section 17-17-3.
- (3) 'Violent delinquent act' means the commission, attempt to commit, conspiracy to commit, or solicitation of another to commit a delinquent act which if committed by an adult would constitute:



SB 246

- (A) A serious violent felony as defined by Code Section 17-10-6.1;
- (B) A designated felony as defined by Code Section 15-11-63;
- (C) Stalking or aggravated stalking as provided by Article 7 of Chapter 5 of Title 16; or
- (D) Any attempt to commit, conspiracy to commit, or solicitation of another to commit an offense enumerated in subparagraphs (A) through (C) of this paragraph.
- (b) If a child accused of a violent delinquent act is detained pending adjudication as provided by Code Sections 15-11-46.1 and 15-11-47, the juvenile court intake officer shall provide notice to the victim, whenever practicable, that such child is to be released from detention not less than 24 hours prior to such child's release from detention.



SB 246

- (c) Not less than 48 hours prior to the release from detention of a child who has been adjudicated to have committed a violent delinquent act, the juvenile court intake officer shall, whenever practicable, provide notice to the victim of such pending release.
- (d) Notification need not be given unless the victim has expressed a desire for such notification and has provided the juvenile court intake officer with a current address and telephone number. It shall be the duty of the juvenile court intake officer to advise the victim of his or her right to notification and of the requirement of the victim's providing a primary and personal telephone number to which such notification shall be directed."



Arizona v. Gant

- CERTIORARI TO THE SUPREME COURT OF ARIZONA
No. 07–542. Argued October 7, 2008—Decided April 21, 2009

Respondent Gant was arrested for driving on a suspended license, handcuffed, and locked in a patrol car before officers searched his car and found cocaine in a jacket pocket. The Arizona trial court denied his motion to suppress the evidence, and he was convicted of drug offenses. Reversing, the State Supreme Court distinguished *New York v. Belton*, 453 U. S. 454—which held that police may search the passenger compartment of a vehicle and any containers therein as a contemporaneous incident of a recent occupant’s lawful arrest—on the ground that it concerned the scope of a search incident to arrest but did not answer the question whether officers may conduct such a search once the scene has been secured. Because *Chimel v. California*, 395 U. S. 752, requires that a search incident to arrest be justified by either the interest in officer safety or the interest in preserving evidence and the circumstances of Gant’s arrest implicated neither of those interests, the State Supreme Court found the search unreasonable.



Arizona v. Gant

Held: Police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest. Pp. 5–18.

- (a) Warrantless searches “are *per se* unreasonable,” “subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U. S. 347, 357. The exception for a search incident to a lawful arrest applies only to “the area from within which [an arrestee] might gain possession of a weapon or destructible evidence.” *Chimel*, 395 U. S., at 763.



Arizona v. Gant

- This Court applied that exception to the automobile context in *Belton*, the holding of which rested in large part on the assumption that articles inside a vehicle's passenger compartment are "generally . . . within 'the area into which an arrestee might reach.' " 453 U. S., at 460. Pp. 5–8.



Arizona v. Gant

- (b) This Court rejects a broad reading of *Belton* that would permit a vehicle search incident to a recent occupant's arrest even if there were no possibility the arrestee could gain access to the vehicle at the time of the search. The safety and evidentiary justifications underlying *Chimel's* exception authorize a vehicle search only when there is a reasonable possibility of such access. Although it does not follow from *Chimel*, circumstances unique to the automobile context also justify a search incident to a lawful arrest when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle."



Arizona v. Gant

- Neither *Chimel's* reaching-distance rule nor *Thornton's* allowance for evidentiary searches authorized the search in this case. In contrast to *Belton*, which involved a single officer confronted with four unsecured arrestees, five officers handcuffed and secured Gant and the two other suspects in separate patrol cars before the search began. Gant clearly could not have accessed his car at the time of the search.



Arizona v. Gant

- An evidentiary basis for the search was also lacking. Belton and Thornton were both arrested for drug offenses, but Gant was arrested for driving with a suspended license—an offense for which police could not reasonably expect to find evidence in Gant’s car. Cf. *Knowles v. Iowa*, 525 U. S. 113, 118. The search in this case was therefore unreasonable. Pp. 8–11.



Arizona v. Gant

- (c) This Court is unpersuaded by the State's argument that its expansive reading of *Belton* correctly balances law enforcement interests with an arrestee's limited privacy interest in his vehicle. The State seriously undervalues the privacy interests at stake, and it exaggerates both the clarity provided by a broad reading of *Belton* and its importance to law enforcement interests.



Arizona v. Gant

- A narrow reading of *Belton* and *Thornton*, together with this Court's other Fourth Amendment decisions, *e.g.*, *Michigan v. Long*, 463 U. S. 103, and *United States v. Ross*, 456 U. S. 798, permit an officer to search a vehicle when safety or evidentiary concerns demand. Pp. 11–14.



Arizona v. Gant

- (d) *Stare decisis* does not require adherence to a broad reading of *Belton*. The experience of the 28 years since *Belton* has shown that the generalization underpinning the broad reading of that decision is unfounded, and blind adherence to its faulty assumption would authorize myriad unconstitutional searches. Pp. 15–18.
- 216 Ariz. 1, 162 P. 3d 640, affirmed.



Arizona v. Gant

- STEVENS, J., delivered the opinion of the Court, in which SCALIA, SOUTER, THOMAS, and GINSBURG, JJ., joined. SCALIA, J., filed a concurring opinion. BREYER, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and KENNEDY, J., joined, and in which BREYER, J., joined except as to Part II–E.

- We do not agree with the contention in JUSTICE ALITO's dissent (hereinafter dissent) that consideration of police reliance interests requires a different result. Although it appears that the State's reading of *Belton* has been widely taught in police academies and that law enforcement officers have relied on the rule in conducting vehicle searches during the past 28 years, many of these searches were not justified by the reasons underlying the *Chimel* exception. Countless individuals guilty of nothing more serious than a traffic violation have had their constitutional right to the security of their private effects violated as a result.

- The fact that the law enforcement community may view the State’s version of the *Belton* rule as an entitlement does not establish the sort of reliance interest that could outweigh the countervailing interest that all individuals share in having their constitutional rights fully protected. If it is clear that a practice is unlawful, individuals’ interest in its discontinuance clearly outweighs any law enforcement “entitlement” to its persistence.

- (“[T]he mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment”). The dissent’s reference in this regard to the reliance interests cited in *Dickerson v. United States*, 530 U. S. 428 (2000), is misplaced... In observing that “*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture,” ...the Court was referring not to police reliance on a rule requiring them to provide warnings but to the broader societal reliance on that individual right.

- 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. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable *unless police obtain a warrant or show that another exception to the warrant requirement applies.*



“show that another exception to the warrant requirement applies.”

- So, what are the cases that give us some guidance into the thinking of what the Court means by stating that “another exception to the warrant requirements applies”?
- *Carroll v. United States*, 267 U. S.132, 153 (1925)



“show that another exception to the
warrant requirement applies.”

- “It is well-settled that a valid search of a vehicle moving on a public highway may be had without a warrant, if probable cause for the search exists, i.e., facts sufficient to warrant a man of reasonable caution in the belief that an offense is being committed.”... This exception was first established by the Supreme Court in the 1925 case of *Carroll v. United States*, and provides that, if a law enforcement officer has probable cause to believe that a vehicle has evidence of a crime or contraband located in it, a search of the vehicle may be conducted without first obtaining a warrant.



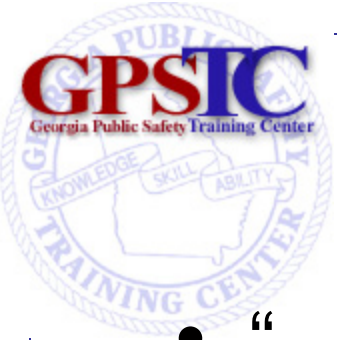
“show that another exception to the warrant requirement applies.”

- There are two (2) separate and distinct rationales underlying this exception. First, the inherent mobility of vehicles typically makes it impracticable to require a warrant to search, in that “the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.” As the Supreme Court has consistently observed, the inherent mobility of vehicles “creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible.”



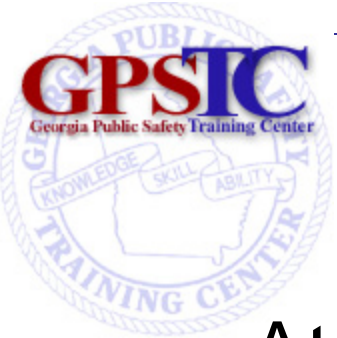
“show that another exception to the warrant requirement applies.”

- For this reason, “searches of cars that are constantly movable may make the search of a car without a warrant a reasonable one although the result might be the opposite in a search of a home, a store, or other fixed piece of property.” Second, an individual’s reduced expectation of privacy in a vehicle supports allowing a warrantless search based on probable cause.



“show that another exception to the
warrant requirement applies.”

- “...Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspections stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order...” *South Dakota v. Opperman*, 428 U.S. 364 (1976), 428 U.S. at 368



“show that another exception to the warrant requirement applies.”

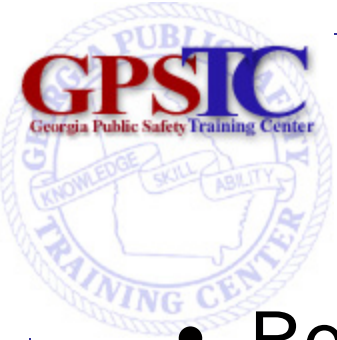
- At 11 a.m. on the morning of July 2, 1996, a St. Mary’s County (Maryland) Sheriff ’s Deputy received a tip from a reliable confidential informant that respondent had gone to New York to buy drugs, and would be returning to Maryland in a rented red Toyota, license number DDY 787, later that day with a large quantity of cocaine.

•Maryland v. Dyson, No. 98–1062. Decided June 21, 1999



“show that another exception to the warrant requirement applies.”

- The Deputy investigated the tip and found that the license number given to him by the informant belonged to a red Toyota Corolla that had been rented to respondent, who was a known drug dealer in St. Mary’s County. When respondent returned to St. Mary’s County in the rented car at 1 a.m. on July 3, the deputies stopped and searched the vehicle, finding 23 grams of crack cocaine in a duffel bag in the trunk.
- Maryland v. Dyson, No. 98–1062. Decided June 21, 1999



“show that another exception to the warrant requirement applies.”

- Respondent was arrested, tried, and convicted of conspiracy to possess cocaine with intent to distribute. He appealed, arguing that the trial court had erroneously denied his motion to suppress the cocaine on the alternative grounds that the police lacked probable cause, or that even if there was probable cause, the warrantless search violated the Fourth Amendment because there was sufficient time after the informant’s tip to obtain a warrant.

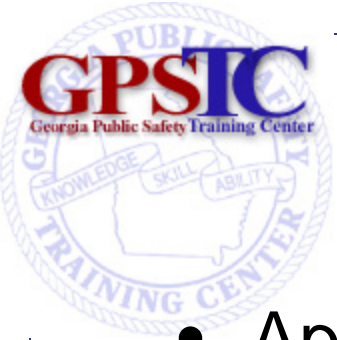
- Maryland v. Dyson, No. 98–1062. Decided June 21, 1999



“show that another exception to the warrant requirement applies.”

- The Maryland Court of Special Appeals reversed, ...holding that in order for the automobile exception to the warrant requirement to apply, there must not only be probable cause to believe that evidence of a crime is contained in the automobile, but also a separate finding of exigency precluding the police from obtaining a warrant...

•Maryland v. Dyson, No. 98–1062. Decided June 21, 1999



“show that another exception to the
warrant requirement applies.”

- Applying this rule to the facts of the case, the Court of Special Appeals concluded that although there was “abundant probable cause,” the search violated the Fourth Amendment because there was no exigency that prevented or even made it significantly difficult for the police to obtain a search warrant. *Id.*, at 426, 712 A. 2d, at 579. The Maryland Court of Appeals denied certiorari. 351 Md. 287, 718 A. 2d 235 (1998). We grant certiorari and now reverse.

- Maryland v. Dyson, No. 98–1062. Decided June 21, 1999



“show that another exception to the warrant requirement applies.”

- The Fourth Amendment generally requires police to secure a warrant before conducting a search. *California v. Carney*, 471 U. S. 386, 390–391 (1985). As we recognized nearly 75 years ago in *Carroll v. United States*, 267 U. S. 132, 153 (1925), there is an exception to this requirement for searches of vehicles. And under our established precedent, the “automobile exception” has no separate exigency requirement...
- *Maryland v. Dyson*, No. 98–1062. Decided June 21, 1999



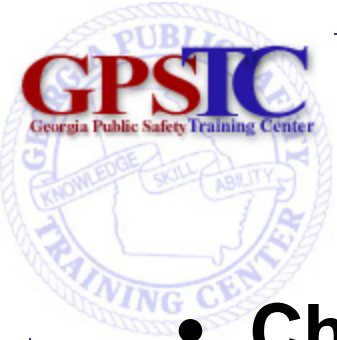
“show that another exception to the
warrant requirement applies.”

- We made this clear in *United States v. Ross*, 456 U. S. 798, 809 (1982), when we said that in cases where there was probable cause to search a vehicle “a search is not unreasonable if based on facts that would justify the issuance of a warrant, *even though a warrant has not been actually obtained.*” ... In a case with virtually identical facts to this one (even down to the bag of cocaine in the trunk of the car), *Pennsylvania v. Labron*, 518 U. S. 938 (1996) (*per curiam*), we repeated that the automobile exception does not have a separate exigency requirement: “If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more.” *Id.*, at 940.
- Maryland v. Dyson, No. 98–1062. Decided June 21, 1999



“show that another exception to the
warrant requirement applies.”

- In this case, the Court of Special Appeals found that there was “abundant probable cause” that the car contained contraband. This finding alone satisfies the automobile exception to the Fourth Amendment’s warrant requirement, a conclusion correctly reached by the trial court when it denied respondent’s motion to suppress. The holding of the Court of Special Appeals that the “automobile exception” requires a separate finding of exigency in addition to a finding of probable cause is squarely contrary to our holdings in *Ross* and *Labron*. We therefore grant the petition for writ of certiorari and reverse the judgment of the Court of Special Appeals.
- Maryland v. Dyson, No. 98–1062. Decided June 21, 1999



“show that another exception to the warrant requirement applies.”

- **Charleston Floyd moved to suppress evidence uncovered during a traffic stop, and after the trial court denied the motion, it found him guilty in a stipulated bench trial of felony marijuana possession. He appeals, arguing that insufficient evidence justified the stop and that the trial court erred in believing part of the arresting officer's testimony when another part of his testimony was demonstrably false. For the reasons that follow, we affirm the conviction.**

• FLOYD v. The STATE. ____ Ga.App____, No. A09A0210. May 8, 2009.

“show that another exception to the warrant requirement applies.”

- **The arresting officer was surveying Interstate 75 southbound when Floyd drove past him. The officer thought Floyd was not wearing a safety belt, so he pulled out to follow Floyd's car and investigate further. As the officer drove up behind him, Floyd drifted ten to twelve inches into the emergency lane, recovered, then again drifted in his lane a little just before the officer activated his lights. Floyd pulled over and the officer stepped to the passenger window and asked Floyd for his insurance and license. As Floyd opened the car door, the officer smelled the odor of raw marijuana and asked for consent to search, which Floyd gave. The officer found a marijuana joint in the car's center console and two vacuum sealed plastic bags wrapped in tissue paper in the spare tire compartment of the trunk, and charged Floyd with possessing more than one ounce of marijuana.**

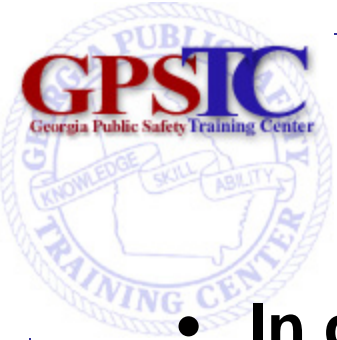
• FLOYD v. The STATE. ___ Ga.App ___, No. A09A0210. May 8, 2009.



“show that another exception to the warrant requirement applies.”

- **At the hearing on Floyd's motion to suppress, the State played a recording of the traffic stop. The arresting officer testified that he determined Floyd was wearing his seat belt as he drove up beside him but stopped the car because Floyd twice failed to maintain his lane. The first infraction, which was not taped, was “more obvious” because the wheels went all the way out of the travel lane into the emergency lane, the officer said. In the second infraction, which was recorded, Floyd just brushed up against the line. The officer also testified that Floyd admitted failing to maintain his lane, explaining he did so because he had been watching the officer drive up behind him. Floyd testified he had not been weaving and denied admitting he had done so.**

• FLOYD v. The STATE. ____ Ga.App____, No. A09A0210. May 8, 2009.



“show that another exception to the warrant requirement applies.”

- In denying the motion to suppress, the trial court found that the second incident, in which Floyd's car did not actually travel outside his lane, was not a traffic violation. It also found that the first incident, in which Floyd's car traveled a foot outside his lane, was a violation and the court had “no reason to doubt” the officer's version of the incident. Accordingly, it held that the traffic violation justified the stop. Floyd did not dispute that he gave consent to search. Because this was not a search incident to Floyd's arrest, the United State Supreme Court decision in [Arizona v. Gant, - --U.S. ----, 129 S.Ct. 1710, --- L.Ed.2d ----, \(2009\)](#), is not implicated.

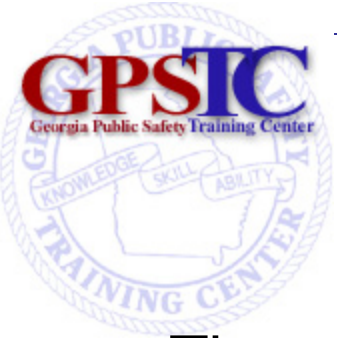
•FLOYD v. The STATE. ____ Ga.App____, No. A09A0210. May 8, 2009.



Pearson v. Callahan

07-751—January 21, 2009

- After the Utah Court of Appeals vacated respondent's conviction for possession and distribution of drugs, which he sold to an undercover informant he had voluntarily admitted into his house, he brought this 42 U. S. C. §1983 damages action in federal court, alleging that petitioners, the officers who supervised and conducted the warrantless search of the premises that led to his arrest after the sale, had violated the Fourth Amendment. The District Court granted summary judgment in favor of the officers. Noting that other courts had adopted the "consent-once-removed" doctrine—which permits a warrantless police entry into a home when consent to enter has already been granted to an undercover officer who has observed contraband in plain view—the court concluded that the officers were entitled to qualified immunity because they could reasonably have believed that the doctrine authorized their conduct. Following the procedure mandated in *Saucier v. Katz*, 533 U. S. 194, the Tenth Circuit held that petitioners were not entitled to qualified immunity.



Pearson v. Callahan

07-751—January 21, 2009

- The court disapproved broadening the consent-once-removed doctrine to situations in which the person granted initial consent was not an undercover officer, but merely an informant. It further held that the Fourth Amendment right to be free in one's home from unreasonable searches and arrests was clearly established at the time of respondent's arrest, and determined that, under this Court's clearly established precedents, warrantless entries into a home are *per se* unreasonable unless they satisfy one of the two established exceptions for consent and exigent circumstances. The court concluded that petitioners could not reasonably have believed that their conduct was lawful because they knew that (1) they had no warrant; (2) respondent had not consented to their entry; and (3) his consent to the entry.



Pearson v. Callahan

07-751—January 21, 2009

- *Held:*
- 1. The *Saucier* procedure should not be regarded as an inflexible requirement. Pp. 5–19.
- (a) *Saucier* mandated, see 533 U. S., at 194, a two-step sequence for resolving government officials' qualified immunity claims: A court must decide (1) whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right, and (2) if so, whether that right was “clearly established” at the time of the defendant's alleged misconduct, *id.*, at 201. Qualified immunity applies unless the official's conduct violated such a right. *Anderson v. Creighton*, 483



Pearson v. Callahan

07-751—January 21, 2009

- (b) *Stare decisis* does not prevent this Court from determining whether the *Saucier* procedure should be modified or abandoned. Revisiting precedent is particularly appropriate where, as here, a departure would not upset settled expectations, see, *e.g.*, *United States v. Gaudin*, 515 U. S. 506, 521;



Pearson v. Callahan

07-751—January 21, 2009

- the precedent consists of a rule that is judge-made and adopted to improve court operations, not a statute promulgated by Congress, see, *e.g.*, *State Oil Co. v. Khan*, 522 U. S. 3, 20; and the precedent has “been questioned by Members of th[is] Court in later decisions, and [has] defied consistent application by the lower courts,” *Payne v. Tennessee*, 501 U. S. 808, 829–830. Respondent’s argument that *Saucier* should not be reconsidered unless the Court concludes that it was “badly reasoned” or that its rule has proved “unworkable,” see *Payne, supra*, at 827, is rejected. Those standards are out of place in the present context, where a considerable body of new experience supports a determination that a mandatory, two-step rule for resolving all qualified immunity claims should not be retained.



Pearson v. Callahan

07-751—January 21, 2009

- (c) Reconsideration of the *Saucier* procedure demonstrates that, while the sequence set forth therein is often appropriate, it should no longer be regarded as mandatory in all cases.
- (i) The Court continues to recognize that the *Saucier* protocol is often beneficial. In some cases, a discussion of why the relevant facts do not violate clearly established law may make it apparent that in fact the relevant facts do not make out a constitutional violation at all. And *Saucier* was correct in noting that the two-step procedure promotes the development of constitutional precedent and is especially valuable for questions that do not frequently arise in cases in which a qualified immunity defense is unavailable.
- ALITO, J., delivered the opinion for a unanimous Court.



Video Poker Decision

June 25, 2009

In the Court of Appeals of Georgia

A07A1015. STATE OF GEORGIA v. DAMANI et al.	JE-050
A07A1016. ULTRA TELECOM, INC. v. STATE OF GEORGIA.	JE-051
A07A1017. ALLSTAR, INC. et al. v. STATE OF GEORGIA.	JE-052
A07A1018. JACKSON v. STATE OF GEORGIA.	JE-053



Video Poker Decision

June 25, 2009

ELLINGTON, Judge.

The Supreme Court of Georgia vacated our original decision¹ in this case so that the appellees in Case No. A07A1015, and the cross-appellants in Case Nos. A07A1016, A07A1017, and A07A1018 could supplement the record with “exhibits necessary to assessing the true and complete facts as they occurred in the trial court[.]” *Damani v. State of Georgia*, 284 Ga. 372, 374 (667 SE2d 372) (2008). Upon remand, we ordered the parties to supplement the appellate record and to submit supplemental briefs addressing that record evidence, and we granted the parties’ request for oral argument.



Video Poker Decision

June 25, 2009

We have reviewed⁶ the evidence adduced with respect to the seven machines at issue, including the supplemented record, and the record reveals that the State carried its burden of showing by a preponderance of the evidence that each of the seven machines was capable of rewarding a player with cash or noncash merchandise



Video Poker Decision

June 25, 2009

in excess of \$5 for a single play of the game or device. The supplemental evidence presented by the owners of the game machines does not change our analysis. The owners' expert opinion that the machines at issue comply with the redemption law is premised upon an erroneous assumption that the law allows the machines to offer payouts exceeding \$5 for a single play of the game or device. As discussed above, the redemption provisions cannot be so construed. For these reasons, we conclude that the trial court erred in finding that these machines do not violate the rewards provisions of OCGA § 16-12-35 (d), qualify as machines for bona fide amusement purposes only, and are not subject to condemnation. Consequently, we must reverse the trial court's order with respect to these seven machines.



Video Poker Decision

June 25, 2009

(c) The State also contends the superior court erred in construing “[a]ny slot machine or any simulation or variation thereof,” pursuant to OCGA § 16-12-20 (2) (B), and in concluding that five of the seven machines at issue were not subject to condemnation under this Code section. However, given our ruling in Division 1 (a), we decline to address this issue because it is moot.



Video Poker Decision

June 25, 2009

Case Nos. A07A1016, A07A1017, A07A1018.

2. In the cross-appeals, the game owners present identical issues. Specifically, they argue that the court erred in finding that the four condemned machines were gambling devices. The owners contend the four machines were designed and manufactured for bona fide amusement purposes only and do not violate the rewards provisions of OCGA § 16-12-35 (d). For the reasons discussed in Division 1 (b), supra, we conclude the evidence adduced with respect to the four machines reveals that the State carried its burden of showing by a preponderance of the evidence that each of the four machines was capable of rewarding a player with cash or noncash merchandise in excess of \$5 for a single play of the game or device. The superior court properly held that the machines were subject to condemnation. See Division 1, supra. The superior court's final order and judgment with respect to these four machines is, therefore, affirmed.



Video Poker Decision

June 25, 2009

Judgment affirmed in part and reversed in part. Andrews, P. J., concurs and Adams, J., specially concurs.

I disagree with the majority's definition of "a single play of the game or device." The definition would necessarily exclude free replays, which are plainly allowed under the statute. See OCGA §§ 16-12-35 (b) & (d) (1). The majority opinion also appears to limit how many game points or "dollars" can be awarded on the game screen. Points awarded on the screen are not regulated by the statute; the limitation in the statute is on the value of rewards issued by the machine per play of the game. Finally, requiring a player to cash out every time they have accumulated a \$5.00 voucher is not required under the statute.



Questions?



Legal Update 2009

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