Georgia State University Law Review

Volume 7
Issue 1 *Fall 1990*

Article 34

4-4-2012

CRIMINAL PROCEDURE Searches and Seizures: Revise Grounds for Issuance and Execution of Search Warrant

Georgia State University Law Review

Follow this and additional works at: http://digitalarchive.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation
Georgia State University Law Review (1990) "CRIMINAL PROCEDURE Searches and Seizures: Revise Grounds for Issuance and Execution of Search Warrant," *Georgia State University Law Review*: Vol. 7: Iss. 1, Article 34.
Available at: http://digitalarchive.gsu.edu/gsulr/vol7/iss1/34

This Peach Sheet is brought to you for free and open access by the College of Law Publications at Digital Archive @ GSU. It has been accepted for inclusion in Georgia State University Law Review by an authorized administrator of Digital Archive @ GSU. For more information, please contact digitalarchive@gsu.edu.

CRIMINAL PROCEDURE

Searches and Seizures: Revise Grounds for Issuance and Execution of Search Warrant

CODE SECTIONS:	O.C.G.A. §§ 17-5-20, -21(a) (amended), 17-5-21(d) (new)
BILL NUMBER:	SB 641
ACT NUMBER:	1433
SUMMARY:	The Act authorizes the issuance of search warrants to certified university, college, and school peace officers, as well as to state and local criminal law enforcement officers. Further, the Act provides that campus peace officers may execute search warrants off-campus for crimes committed on-campus when accompanied by a certified peace officer of a local law enforcement unit.
EFFECTIVE DATE:	July 1, 1990

History

Interpreting two statutes on the requirements for issuance of a search warrant[1] and the arrest powers of campus police,[2] the Georgia Attorney General in 1969 advised that campus police in the University System of Georgia had the authority to conduct searches and make arrests on or within 500 yards of property under the jurisdiction of the Georgia Board of Regents.[3] The Attorney General clarified this opinion in 1970, defining campus police as state law enforcement officers "authorized to execute the affidavits necessary for the procurement of a search warrant" but limiting the search warrant "to the territorial limits of the campus."[4]

---

1. 1966 Ga. Laws 567 (formerly found at O.C.G.A. § 17-5-20 (1982)) (providing that "[a] search warrant may be issued only upon the application of an *officer of this state or its political subdivisions charged with the duty of enforcing the criminal laws.* A search warrant shall not be issued upon the application of a private citizen ....") (emphasis added).

2. 1966 Ga. Laws 370 (formerly found at O.C.G.A. § 20-3-72 (1987)) (providing that "[t]he campus policemen and other security personnel of the university system ... shall have the power to make arrests for offenses committed upon any property under the jurisdiction of the board of regents and for offenses committed upon any public or private property within 500 yards of any property under the jurisdiction of the board.").

3. 1969 Op. Att'y Gen. 172.

4. 1970 Op. Att'y Gen. 69.

Produced by The Berkeley Electronic Press, 1990
HeinOnline -- 7 Ga. St. U. L. Rev. 261 1990-1991

In a 1973 opinion, the Attorney General emphasized that the definition of campus police as state law enforcement officers applied "only to the University System, not to other schools, colleges, or campuses."[5] In practice, campus police, particularly at the University of Georgia, frequently obtain search warrants for campus related offenses and execute the warrants off-campus.[6]

The Georgia Court of Appeals in *Holstein v. State*[7] restricted the authority of campus police to obtain search warrants. The court required that they be certified pursuant to the Georgia Peace Officer Standards and Training Act to meet the definition of state law enforcement officers.[8] The court found that an uncertified officer is the equivalent of a private citizen, who may not, under O.C.G.A. § 17-5-20, apply for a search warrant.[9]

The Georgia Court of Appeals recently ruled in *Hill v. State*[10] that the authority of university campus police both to apply for and execute search warrants is limited to property under or within 500 yards of the jurisdiction of the Georgia Board of Regents.[11] The *Hill* court conceded that its decision seemed to contradict its previous rulings that implied duly certified campus police were state officers, authorized to apply for and execute search warrants outside their political jurisdictions.[12] The court's rationale was that the Georgia Legislature, under the O.C.G.A. § 20-3-72 limitation of arrest power to the campus jurisdiction, also intended to limit the authority to obtain and execute search warrants to the same jurisdiction.[13]

---

5. 1973 Op. Att'y Gen. 24.

6. Wood, *Appeals Court Stymies UGA Police*, Fulton Co. Daily Rep., Oct. 19, 1989, at 2, col.1 [hereinafter Wood].

7. 183 Ga. App. 610, 359 S.E.2d 360 (1987).

8. Holstein v. State, 183 Ga. App. at 610–11, 359 S.E.2d at 360–61. A campus policeman in the University System of Georgia who applied for and was issued a search warrant found contraband. *Id.* at 610, 359 S.E.2d at 360. The court held that the officer had no authority to apply for a search warrant because he was not certified under O.C.G.A. § 35-8-17(a). *Id.* at 611, 359 S.E.2d at 361.

9. *Id. See supra* note 1 and accompanying text. *See also* Rottenberg v. State, 184 Ga. App. 330, 361 S.E.2d 533 (1987). Rottenberg and Holstein were co-defendants, tried separately, whose contraband was seized by the campus policeman under the same search warrant. *Id.* The court followed *Holstein* in finding that the policeman lacked authority to apply for a search warrant. *Id.*

10. 193 Ga. App. 280, 387 S.E.2d 582 (1989). Certified campus police officers obtained a search warrant and searched students' off-campus apartment, seizing contraband that led to the conviction of the students for drug possession. The court of appeals held that campus police lacked the authority to obtain and execute search warrants outside the campus jurisdiction.

11. *Id.*

12. *Id.*

13. *Id.* The court stated:

[W]e do not believe that the legislature intended to give to University of

The *Hill* decision elicited broad concern among campus police forces in Georgia.[14] The concern, echoed in the office of the district attorney of the Western Judicial Circuit, is that this decision will jeopardize convictions in fifteen to twenty unrelated cases and will "hamper the ability of ... [campus] police force[s] ... to fight campus crime."[15]

SB 641 was prompted by the concern stirred by the *Hill* decision.[16] The General Assembly wanted to clarify the powers of campus police to apply for search warrants involving offenses committed on-campus and to execute them off-campus.[17]

SB 641

The Act strikes Code section 17-5-20 and replaces it with an amended version.[18] It provides that certified university, college, and school peace officers engaged in their official duty, as well as law enforcement officers of the state or political subdivisions, may apply for search warrants.[19]

As originally introduced, the bill would have included, among those to whom search warrants could be issued, railroad, public transit, ports, housing, and building authorities and other authorities charged with enforcing Georgia's criminal laws.[20] The Senate Committee on Special Judiciary amended the original bill by limiting the application and issuance of search warrants to officers of the state and its political subdivisions, and officers of universities, colleges, and schools.[21]

The Act also strikes Code section 17-5-21(a), replacing it with an amended version.[22] As amended, the Act allows judicial officers to issue

---

> Georgia campus police and security personnel carte blanche authority to obtain and execute search warrants directed to residences or businesses located outside the immediate vicinity of university property. Rather, we read O.C.G.A. § 20-3-72 ... as expressing a legislative intention to limit the law enforcement jurisdiction of such personnel to offenses committed upon property under the jurisdiction of the Board of Regents or located within 500 yards of such property.

Id.

14. Wood, *supra* note 6.

15. *Id.*

16. Telephone interview with Jeanie Thomas, Senior Policy Analyst, Senate Research Office (Mar. 23, 1990) [hereinafter Thomas Interview].

17. *Law Makers '90* (WGTV television broadcast, Feb. 28, 1990) (videotape available at Georgia State University College of Law Library) [hereinafter *Law Makers '90*]. Representative Charles Thomas, Chairman of the House Judiciary Committee, explained the significance of the *Hill* decision and the need to allow campus police to obtain and execute search warrants for campus related offenses. *Id.*

18. 1966 Ga. Laws 567 (formerly found at O.C.G.A. § 17-5-20 (1982)).

19. O.C.G.A. § 17-5-20(a) (Supp. 1990).

20. SB 641, as introduced, 1990 Ga. Gen. Assem.

21. SB 641 (SCS), 1990 Ga. Gen. Assem.

22. 1966 Ga. Laws 567 (formerly found at O.C.G.A. § 17-5-21(a) (Supp. 1989)).

HeinOnline -- 7 Ga. St. U. L. Rev. 263 1990-1991

search warrants to certified campus police, as well as to peace officers of the state and its subdivisions.[23]

As originally proposed and later amended by the Senate Committee on Special Judiciary, the bill did not address the procedure campus police might use to execute off-campus search warrants.[24] Some uneasiness over the broad powers of search and seizure which might be imputed to campus police[25] resulted in a House floor amendment,[26] adding new Code section 17-5-21(d).[27] The Act now provides that certified university, college, or school peace officers may execute search warrants outside their arrest jurisdictions[28] if the search is executed jointly with a certified peace officer of the law enforcement unit of the local political subdivision.[29]

C. Adkison

23. O.C.G.A. § 17-5-21(a) (Supp. 1990).

24. SB 641, as introduced, 1990 Ga. Gen. Assem.; SB 641 (SCA), 1990 Ga. Gen. Assem.

25. Thomas Interview, *supra* note 16.

26. Final Composite Status Sheet, Mar. 9, 1990.

27. O.C.G.A. § 17-5-21(d) (Supp. 1990). Representative Lawton Stephens introduced the amendment. *Law Makers '90*, *supra* note 17.

28. The arrest jurisdiction is defined by 1966 Ga. Laws 370 (formerly found at O.C.G.A. § 20-3-72 (1987)). *See supra* note 2 and accompanying text.

29. O.C.G.A. § 17-5-21(d) (Supp. 1990).

HeinOnline -- 7 Ga. St. U. L. Rev. 264 1990-1991