



Cherokee Sheriff's Office

498 Chattin Drive
Canton, Georgia 30115
(678) 493-4200
Fax (678) 493-4149

"A NATIONALLY ACCREDITED LAW ENFORCEMENT AGENCY"



Roger Garrison, Sheriff

TO: Major Cushing
FROM: Major Martin *DM*
DATE: July 24, 2015
SUBJECT: Final Report of Internal Affairs Investigation

1. On June 15, 2015 Lt. Sims was assigned to investigate an AIC involving a traffic accident which involved D/S Cody Jones. The complainant, Deva Hoffman, stated she was filing the complaint on behalf of her son Anthony Hoffman. In the complaint, Mrs. Hoffman stated on June 8, 2015 her son was involved in an accident on Kellogg Creek Road. She said the deputy who worked the accident, D/S Cody Jones, conducted an illegal search of Anthony's person while he was talking with him. According to Mrs. Hoffman, D/S Jones turned her son around and put his hands in his pockets and removed the contents of his pockets. He placed the items, a knife, wallet, and keys on the hood of the patrol car. Once the investigation was completed, D/S Jones drove off with Hoffman's belongings still on the hood. Mrs. Hoffman stated her son complained to another deputy on scene at which time another deputy arrived at the location and returned his property. According to the complaint, when Anthony opened his wallet forty dollars cash was missing. He told his mother, the complainant, "that the deputies took his money and treated him unprofessionally.
2. Lt. Sims was advised Lt. Grier of the Criminal Investigations Division would be looking into the alleged missing money and Lt. Sims (I.A.) was instructed to look into the unprofessional demeanor and illegal search of Anthony Hoffman.
3. Lt. Sims interviewed reviewed all audio / video recordings regarding this incident. The details of this investigation are outlined in the attached IA Case Report.
4. The findings of the investigation are as follows The investigation confirmed the incident did occur, however, the in car video shows the investigation and interaction with Mr. Hoffman was conducted in a professional manner. He was given the opportunity for medical attention, and searches were all

conducted with consent and for officer and bystander safety. The investigation into the accident appears to be conducted in a professional manner. Therefore, the allegations of an illegal search and unprofessional demeanor against D/S Cody Jones are **Exonerated**.

SHIELDS OF SHAME

Cc: Sheriff Garrison
Chief Perkins

CHEROKEE SHERIFF'S OFFICE
Office of Professional Standards
Internal Affairs Division

On June 15, 2015 I was assigned to investigate an AIC involving a traffic accident which had been investigated by D/S Cody Jones. The complainant, Deva Hoffman, stated she was filing the complaint on behalf of her son Anthony Hoffman.

In the complaint, Mrs. Hoffman stated on June 8, 2015 her son was involved in an accident on Kellogg Creek Road. She said the deputy who worked the accident, D/S Cody Jones, conducted an illegal search of Anthony's person while he was talking with him. According to Mrs. Hoffman, D/S Jones turned her son around and put his hands in his pockets and removed the contents of his pockets. He placed the items, a knife, wallet, and keys on the hood of the patrol car. Once the investigation was completed, D/S Jones drove off with Hoffman's belongings still on the hood. Mrs. Hoffman stated her son complained to another deputy on scene at which time another deputy arrived at the location and returned his property. According to the complaint, when Anthony opened his wallet forty dollars cash was missing. He told his mother, the complainant, "that the deputies took his money and treated him unprofessionally.

I was advised Lt. Grier of the Criminal Investigations Division would be looking into the alleged missing money and I was instructed to look into the unprofessional

demeanor and illegal search of Anthony Hoffman. On June 12, 2015 I received a video disc from Lt. Donley of the Oak Grove Precinct. The video disc contained the in car videos from D/S Jones, Sgt. Brookshire and Corporal C. Prescott. The video from D/S Jones' car was the most revealing since almost the entirety of the incident occurred in front of his car.

Watching the video I was able to view the interaction between D/S Jones and Anthony Hoffman. At no time did I see D/S Jones act in an unprofessional demeanor. To the contrary, D/S Jones was quite professional and displayed very good command presence and control of the scene. He afforded Mr. Hoffman the opportunity to be checked by E.M.T.s on scene to see if he needed any medical assistance, which Mr. Hoffman refused. He observed a large pocket knife on the person of Mr. Hoffman and asked if he could pat him down to which Mr. Hoffman clearly gives consent. D/S Jones takes the knife and a set of keys and places them on the hood of his patrol car along with Mr. Hoffman's wallet which had already been placed there by D/S Jones. At that time D/S Jones proceeds with his investigation into the accident and the possibility Mr. Hoffman was an impaired driver. In the video it is readily visible that Mr. Hoffman's physical mannerisms and inability to effectively communicate were more than enough articulable suspicion for D/S Jones to suspect possible impairment. Through "field sobriety evaluations" D/S Jones obviously felt he did not have enough probable cause for an arrest and eventually let Mr. Hoffman go with citations. Prior to the vehicle being removed, a search of the vehicle was conducted with the consent of the owner Patrick J. Keegan.

The videos from Cpl. Prescott's and Sgt. Brookshire's vehicles revealed no additional information.

Conclusion

The investigation confirmed the incident did occur, however, the in car video clearly shows the investigation and interaction with Mr. Hoffman was conducted in a thoroughly professional manner. He was given the opportunity for medical attention. Searches were all conducted with consent and obviously for officer and bystander safety. The investigation into the accident was professional and Mr. Hoffman was not treated rudely, belittled or talked down to at any time. Therefore, the allegations against D/S Cody Jones are **Exonerated.**

1015-00032

CHEROKEE COUNTY SHERIFF'S OFFICE

DATE: 6/12/2015

ALLEGATION/INQUIRY/COMMENDATION-REPORT FORM

I. Information Source:

Name: Deva Hoffman Race: W Sex: F Age: Date of Birth
Address: City: Zip:
Home Phone: Business Phone:

II. Deputy/Civilian Employee Information:

Name: Cody Jones Rank: Deputy I.D.#:
Division: UPD Unit Number:
Name: Rank: I.D.#:
Division: Unit Number:

III. Location of Incident:

Kellogg Creek Road, Acworth Ga

Date: 05/04/2015 Time: 2106 Case Number: 15-49703

IV. Description of Incident: ☒ Allegation ☐ Inquiry ☐ Commendation

Deva Hoffman called the Internal Affairs Division to make a report for her son Anthony(Andy) Hoffman. She stated that he was involved in accident on Kellogg Creek and the Deputy conducted an illegal search of his person when he was talking to Hoffman he turned him around and put his hands in pockets and remove their contents. He placed the items in his pockets on the hood of the patrol car. Once the investigation was conducted he drove off with Hoffman's personal items (wallet, keys). Deva stated that he complained to another deputy and a deputy arrived at Hoffman's location and returned his personal property. When he opened his wallet the cash (40.00) was missing. Anthony Hoffman told his mother that the deputies took his money and treated him unprofessional. Deva Hoffman stated her son did not get the name of the deputy who returned his items but the deputy whom worked the wreck and conducted an illegal search of his person was Deputy Jones. Deva Hoffman stated that her son received 2 citations from D/S Jones and D/S Jones was very rude and unprofessional toward him. She stated the incident occurred on 06/08/15 in Cherokee County and her son stayed mostly in front of the car to be make sure the incident was recorded on the cars camera.

V. Witness Information:

Name: Anthony Hoffman Address: _____ City: _____
Home Phone: _____ Business Phone: _____

Name: _____ Address: _____ City: _____
Home Phone: _____ Business Phone: _____

VI. Person Taking Report:

Name: B.C. Sims Rank: Lieutenant
Division: IA Shift: _____ Badge Number: 341

VII. Supervisor's Comments/Recommendations:

VIII. Allegation/Inquiry/Commendation Information:

How A/I/C Received: ☒ Telephone ☐ Written Form ☐ Personal Contact

A/I/C Referred to: _____

☐ A/I/C Resolved on Initial Contact ☐ Allegation/Inquiry Withdrawn

IX. Documentation Attached: ☒ Incident Report ☐ Written Statement ☐ Other

X. Division Commanders Review:

(Signature)

(Date)

- ☒ No further Action Required.
☐ Refer to _____ for further investigation.
☐ Recommend Formal Commendation.

Additional Comments:

- ☐ Sustained: The evidence is sufficient to prove the allegations.
☐ Not Sustained: The evidence is insufficient to either prove or disprove the allegations.
☒ Exonerated: The evidence shows that the incident occurred and was lawful or proper.
☐ Unfounded: The evidence shows that the allegation is false or not factual.
☐ Policy Failure: The evidence is sufficient to show that the incident occurred, but was a result of flawed policy or procedures.

XI. Service of Employee

I hereby certify that the allegations have been discussed and described to me. I have received a copy of the Employee Rights Form and acknowledge that I understand these rights.

D/S [Signature] #20

6/5/15

Employee Signature

Witness Signature

[Signature] #269

Date

Date

8/5/15

SHIELDS OF SHAME

XII. Notification of Findings

I understand that the investigating officer has the duty to inform me of the outcome of this investigation (sustained, not sustained, exonerated, unfounded, or policy failure) and I hereby certify and affirm that he / she has done so. I further understand that the investigating officer is merely a finder of fact and will not determine if adverse disciplinary action will be taken.

Employee Signature: [Signature]
Witness Signature: [Signature] #269

Date: 8/5/15
Date: 8/5/15

Distribution: Division Commander
Internal Affairs

SHIELDS OF SHAME

Incident Report						Internal	
						15-49703	
						Reported Date 06/08/2015	
						Phone	
						Fax	
Incident Type 55							
Member # 000783/BRANDON, JOHN C							
Incident Information							
Incident No 15-49703	Zone C	Reported Date 06/08/2015	Reported Time 18:07	CAD Call No 150083978	Status ACCIDENT REPORT		
Incident Type 55	Found As			Receive D/Tm 06/08/2015 18:07:50			
Dispatch D/Tm 06/08/2015 18:07:57	Arrival D/Tm 06/08/2015 18:12:09		Clear D/Tm 06/08/2015 18:51:42		City CHEROKEE		
Area 2101	Beat	Fire Dist	Map Coordinates -84.650065/34.108978				
Offense Location NEW HOPE DR/KELLOGG CREEK RD, CH						Primary Unit C29	
Member # BRANDON, JOHN C			Division ZZZZ	2nd Member #	Division	From Date	From Time
To Date	To Time	Business				MLI	
Busn Location						City	
ZIP Code	Cleared By	Emp No	Agency	Invest?	Final Status CLOS	Final Date	Killed Felony Killed Negligent
Assaulted	Conf Wrk Group	MLI	Type	Key	Case Assignment No	Property? 1521630	Control CADT 4151591851
[CLASS] 0							
Remarks							
Backup Units							
Zone P1	Incident Date 06/08/2015	Incident Type 55	Unit ID C25	Member # JONES, CODY			
Dispatch D/Tm 06/08/2015 18:12:06		Arrival D/Tm 06/08/2015 18:12:10		Clear D/Tm 06/08/2015 18:51:42			
Control CADT 4151591851							
Zone P1	Incident Date 06/08/2015	Incident Type 55	Unit ID 135	Member # NEW, JOHN			
Dispatch D/Tm 06/08/2015 18:10:13		Arrival D/Tm 06/08/2015 18:15:12		Clear D/Tm 06/08/2015 18:15:11			
Control CADT 4151591851							
Zone P1	Incident Date 06/08/2015	Incident Type 55	Unit ID C8	Member # PRESCOTT, COREEN			
Dispatch D/Tm 06/08/2015 18:09:06		Arrival D/Tm 06/08/2015 18:12:09		Clear D/Tm 06/08/2015 18:41:53			
Control CADT 4151591851							

SHIELDS OF SHAME

SHIELDS OF SHAME



CHEROKEE SHERIFF'S OFFICE
CRIMINAL INVESTIGATION DIVISION

INVESTIGATIVE CASE REPORT

CHEROKEE SHERIFF'S OFFICE GA0280000

CASE NUMBER: 15-51015

INCIDENT DATE: 06082015

INCIDENT: Loss of Property

CATEGORY: _____

VICTIM: Hoffman, Anthony

VICTIM SEEKS PROSECUTION

YES ☐

NO ☒

UNIFORM PATROL TOOK WARRANTS

YES ☐

NO ☒

VICTIM TOOK WARRANTS

YES ☐

NO ☒

DETECTIVE TOOK WARRANTS

YES ☐

NO ☒

WARRANT NUMBER(S): _____

CHARGE(S): _____

IS PERPETRATOR KNOWN?

YES ☐

NO ☐

PERPETRATOR(S) NAME: _____

WAS A CRIME COMMITTED?

YES ☐

NO ☒

WAS FURTHER INVESTIGATION NECESSARY?

YES ☐

NO ☒

WAS THE PERPETRATOR OR PROPERTY

ENTERED ON GCIC/NCIC?

YES ☐

NO ☒

MANHOURS EXPENDED ON CASE: _____

CASE STATUS:

☐ OPEN

☒ UNFOUNDED

☐ CLEARED BY ARREST

☐ OPEN/INACTIVE

☐ EXCEPTIONALLY CLEARED

IF EXCEPTIONALLY CLEARED HOW:

☐ NOT APPLICABLE

☐ DECLINED PROSECUTION

☐ JUVENILE/NO CUSTODY

☐ VICTIM REFUSED TO COOPERATE

☐ DEATH OF OFFENDER

☐ DECLINED EXTRADITION

☐ IN CUSTODY ALREADY

REASON: _____

CASE DETECTIVE: _____

DATE: _____

REVIEWING SERGEANT: _____

DATE: _____

REVIEWING LIEUTENANT: _____

DATE: _____

CHEROKEE SHERIFF'S OFFICE
CRIMINAL INVESTIGATION DIVISION

CASE FILE CHECKLIST
CASE NUMBER 15-51015

ITEM	YES	NO
1. FACE SHEET	☒	☐
2. WITNESS/PARTICIPANT LIST	☒	☐
3. INITIAL INCIDENT REPORT	☒	☐
4. SUPPLEMENTAL REPORT	☒	☐
5. ARREST/BOOK-IN REPORT	☐	☒
6. DETECTIVE REPORT	☒	☐
7. MIRANDA RIGHTS WAVIER	☐	☒
8. CRIMINAL HISTORY	☒	☐
9. ARREST WARRANT	☐	☒
10. SEARCH WARRANT AND AFFIDAVIT	☐	☒
11. CONSENT TO SEARCH	☐	☒
12. EVIDENCE/PROPERTY RECEIPT	☐	☒
13. CRIME LAB REPORT	☐	☒
14. WRITTEN STATEMENT OF DEFENDANT	☐	☒
15. WRITTEN STATEMENT OF VICTIM/WITNESS	☐	☒
16. PHOTOGRAPHS OF SCENE/PARTICIPANT	☐	☒
17. DIAGRAM OF SCENE	☐	☒
18. PHOTOGRAPHIC LINE UP	☐	☒
19. ID DATA ON DEFENDANT	☐	☒
20. ID DATA ON VICTIM	☐	☒
21. ID DATA ON WITNESS	☐	☒
22. TRANSCRIPT OF DEFENDANT STATEMENTS	☐	☒
23. TRANSCRIPT OF VICTIM STATEMENTS	☐	☒
24. TRANSCRIPT OF WITNESS STATEMENTS	☐	☒
25. MEDICAL RECORDS	☐	☒
26. CRIME SCENE LOG	☐	☒
27. RELATED/PREVIOUS INCIDENT REPORTS	☐	☒
28. CONTACT LETTER	☐	☒
29. IMPOUND RECORD	☐	☒
30. MISCELLANEOUS DOCUMENTS	☒	☐

CHEROKEE SHERIFF'S OFFICE
CRIMINAL INVESTIGATION DIVISION**WITNESS/PARTICIPANT LIST**

Victim: **Hoffman, Anthony** DOB: [REDACTED] 1985
Home address: 4315 Moores Mill Lane
Canton, Ga. 30115
[REDACTED]

Responding Officer(s): **Deputy C. Jones**
Cherokee Sheriff's Office

Sgt. J. Brookshire
Cherokee Sheriff's Office

Cpl. C. Prescott
Cherokee Sheriff's Office

Investigator(s): **Lt. Mike Grier**
Cherokee Sheriff's Office
Criminal Investigation Division

CHEROKEE COUNTY SHERIFF'S OFFICE



498 CHATTIN DRIVE
CANTON GA 30115

Phone
(678) 493-4200
Fax

15-51015

Supplement No
ORIG

Reported Date
06/12/2015
Rpt/Incident Typ
THEFT
Member #
GRIER, MIKE

Administrative Information

Agency CHEROKEE COUNTY SHERIFF'S OFFICE				Incident No 15-51015		Supplement No ORIG		Reported Date 06/12/2015		Reported Time 15:30	
CAD Call No 150086250		Status INVESTIGATE		Rpt/Incident Typ THEFT							
Location NEW HOPE DR/KELLOGG CREEK RD, CH										City CANTON	
Area 2101	Zone C	Beat 21	From Date 06/08/2015	From Time 18:12	To Date 06/12/2015	To Time 15:31					
Member # 000015/GRIER, MIKE					Division Criminal Investigation Supervisor						
Entered By 000015		Division Criminal Investigation Supervisor				RMS Transfer Successful		Prop Trans Stat Successful			
Approving Officer 000015			Approval Date 06/12/2015		Approval Time 15:38:27						
# Offenses 1	Offense 16-8-2 (MISD)			Description THEFT BY TAKING (MIS				Complaint Type			

Person Summary

Invt COM	Invt No 1	Type I	Name HOFFMAN, DEVA	MNI 241832
Race W	Sex F	DOB 1969		
Invt OFF	Invt No 3	Type I	Name JONES, CODY	MNI 577831
Race W	Sex M	DOB		
Invt VIC	Invt No 2	Type I	Name HOFFMAN, ANTHONY	MNI 577830
Race W	Sex F	DOB 1985		

Summary Narrative

Theft by Taking (M)
\$40.00

CHEROKEE COUNTY SHERIFF'S OFFICE

COMPLAINT 1: HOFFMAN,DEVA

Involvement COMPLAINT	Invl No 1	Type Individual					MNI 241832	Race WHITE	Sex FEMALE
Name HOFFMAN, DEVA									
DOB [REDACTED]	Age 1969	Juvenile? 46	Height No	Weight 5'08"	Hair Color 140#	Eye Color BLONDE/STRAWBERRY	PRN HAZEL	501637	
Type STATE OPERATOR LICENSE	ID No 026452083				OLS GEORGIA				
Type STATE OPERATOR LICENSE	ID No [REDACTED]				OLS GEORGIA				
Type STATE OPERATOR LICENSE	ID No [REDACTED]				OLS GEORGIA				
Phone Type CELL	Phone No (404) 791-6059	Date 06/12/2015							

OFFICER 3: JONES,CODY

Involvement OFFICER	Invl No 3	Type Individual	Name JONES, CODY						
MNI 577831	Race WHITE	Sex MALE	PRN 501638						
Type WORK/BUSINESS	Address 498 CHATTIN DR								
City CANTON	State GEORGIA	Date 06/12/2015							
Phone Type WORK	Phone No (678) 493-4200	Date 06/12/2015							

VICTIM (Person) 2: HOFFMAN,ANTHONY

Involvement VICTIM (Person)	Invl No 2	Type Individual							
Name HOFFMAN, ANTHONY							MNI 577830	Race WHITE	Sex FEMALE
DOB [REDACTED]	Age 1985	Juvenile? 30	PRN No	501639					
Type HOME	Address 4315 MOORES MILL LN								
City CH	State GEORGIA	Date 06/12/2015							
Type STATE OPERATOR LICENSE	ID No 053327539				OLS GEORGIA				
Phone Type CELL	Phone No [REDACTED]	Date 06/12/2015							

Modus Operandi

Theft Type THEFT BY TAKING MISDEMEANOR	Crime Code(s) GRAND AND LARCENY THEFTS
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Narrative

Original Report
Lt. M.J. Grier
06-12-2015

On June 12, 2015, I received information of a possible theft that occurred on June 8, 2015. I called the victim, Anthony Hoffman and explained to him that I have been assigned this case and that I would like to meet with him so I can find out the facts of the case. Mr. Hoffman stated he would call me back and schedule a date and time.

Nothing further.

CHEROKEE SHERIFF'S OFFICE
CRIMINAL INVESTIGATION DIVISION

Investigative Supplemental #1

On June 12, 2015 at 1600 Hours, I was assigned an allegation against Deputy Jones in reference to a possible theft that might have occurred on June 8, 2015 after Anthony Hoffman was involved in a motor vehicle crash at the intersection of New Hope Road and Kellogg Creek Road. The allegation was from Mrs. Deva Hoffman. Mrs. Hoffman contacted the Office of Professional Standards and reported that her son, Anthony had been in a motor vehicle crash and that a Deputy conducted an illegal search of her son and that the deputy put his hands in her sons pockets and removed his property and placed his personal items on the hood of a patrol car and drove off. Mrs. Hoffman stated her son had complained to another Deputy and a Deputy returned with Mr. Hoffman's property. It was alleged that when the property was returned, Mr. Hoffman was missing \$40.00. It was alleged by Mr. Hoffman that a Deputy had taken his money and had treated him unprofessionally. It was also alleged that Deputy Jones conducted an Illegal search of Mr. Hoffman.

Due to an Internal Affairs complaint being filed, I contacted Sgt. T. Hicks who informed me that he would be handling the complainant and that he would contact me so he could follow up with me on the criminal portion/loss portion of this complaint.

On June 12, 2015 at approximately 1610 Hours, I contacted Anthony Hoffman via a telephone call. When Mr. Hoffman answered it sounded to me like I had woken him up from sleeping. I advised him who I was and the reason I was calling him and

requested that schedule a time so could we meet so I could file a report concerning the alleged loss/theft of his money. Mr. Hoffman requested my name and telephone number and said he would call me back to schedule a time that we could meet. Mr. Hoffman has not been called back as of June 17, 2015 at 1330 hours.

On June 15, 2015, I obtained the in-car videos from Lieutenant Donley, Oak Grove Precinct Commander, for Deputy Jones, Corporal Prescott and Sgt. Brookshire. I watched the videos and saw that Deputy Jones was being professional towards Mr. Hoffman. At no time did I see any misconduct. Deputy Jones obtained consent to search the truck from Keegan Johnathan Patrick since the truck was owned by him. Deputy Jones did search Mr. Hoffman after first receiving consent and placed his personal property on the hood of the car and it appears Sgt. Brookshire picked up Mr. Hoffman's personal items from the hood to allow Deputy Jones to re-position his patrol vehicle so Field Sobriety Evaluations could be conducted and the items were returned to the hood of the car as soon as the patrol car comes to a stop. Mr. Hoffman complied with Deputy Jones requests and that there was concerns that Mr. Hoffman could be under the influence of alcohol or drugs. Deputy Jones questioned Mr. Hoffman about these physical manifestations and through the field sobriety evaluations felt that there was not enough probable cause to place him under arrest. During this investigation, Mr. Hoffman did not know where he was at after being asked several times. Mr. Hoffman was offered medical treatment from Cherokee Fire and EMS and refused treatment.

At no time during the review of this case did I see any theft occur.

I spoke with Mrs. Hoffman and advised her that her son was treated fairly and professionally. I advised her that there was no indication of her son's wallet falling off a vehicle and that there was no possibility that anyone took \$40.00. I offered Mrs. Hoffman an opportunity to come to the South Annex and review the videos and she did not want to come in. She stated that she was sorry for wasting our time and the call was ended.

DISPOSITION: Unfounded

 <p style="text-align: center;">Cherokee Sheriff's Office</p>	Policy # 03-01-03	
Chapter: Authority & Handling	Effective Date: November 5, 2010	Pages: 11
Section: Authority	Review Date: November 5, 2010	
Subject: Search and Seizure	Approved By: <i>Roger Garrison</i>	

A. PURPOSE: The purpose of this SOP is to prescribe the policy and procedures for the conduct of searches and seizures of private property.

The provisions of this SOP are applicable to all agency personnel.

B. DISCUSSION:

1. The members of the Cherokee Sheriff's Office place the highest priority on maintaining the Constitutional rights of all individuals. Accordingly, all searches and seizures of private property will be performed in full compliance with applicable federal and state laws.
2. The authority to search and seize property and individuals is a responsibility that must not be taken lightly. In addition to the requirement that Constitutional guarantees be complied with, searches and seizures will also be conducted in a manner that provides for the highest degree of safety for all individuals concerned and in a way that minimizes the level of intrusion experienced by those whose person or property is being searched.

C. POLICY: Whenever possible, the search of an individuals' property will be conducted with a search warrant. Agency personnel are authorized to search without a search warrant in certain circumstances. It must be recognized that the burden for thoroughly justifying these exceptions falls on the individual officer and that any misuse of authority may result in criminal or civil liability and/or the possible contamination of a criminal investigation.

D. DEFINITIONS:

1. **Search:** a law enforcement action which infringes upon a person's reasonable expectation of privacy.
2. **Search warrant:** a judicial command to "search a place or person particularly described in the warrant and to seize the instruments, articles, or things particularly described in the warrant" (OCGA 17-5-23)
3. **Seizure of property:** is a meaningful interference by law enforcement authorities with a person's interest in the item taken.
4. **Motor vehicle:** any vehicle operating or capable of being operated on public streets or highways to include automobiles, trucks, trailers, recreation vehicles, mobile homes, motor homes and any other type of vehicle, whether self propelled or towed.
5. **Probable cause:** exists where the facts and circumstances would cause a person of reasonable caution to believe that the evidence sought is in the place described.

6. **Exigent circumstances:** a search authorized without a search warrant if "the exigencies of the situation" make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.

7. **Stop and frisk:** a brief detention of a person to verify or dispel a reasonable/articulable suspicion of criminal activity and a "pat-down" of the subject's outer garments IF there is a need for officer safety because of a reason to believe weapons are involved.

8. **Administrative search:** is conducted of an arrestee's person incident to a lawful arrest. This search is performed to reveal any weapons, evidence, or contraband and to inventory the arrestee's possessions for safekeeping.

9. **Reasonable suspicion:** is based upon articulable facts and circumstances which, taken together with reasonable inferences in light of an officer's training and experience, that would cause a deputy to conclude that a person has been, is, or is about to be, involved in criminal activity **OR** that a person is armed with a quickly accessible weapon that constitutes a danger to the officer or to others.

E. SEARCH WITH A WARRANT: (GA 8.38)

1. GENERAL:

- a. Only POST certified personnel can obtain a search warrant. (OCGA 17-5-21/24)
- b. Any judicial officer authorized to hold a court of inquiry in Cherokee County can issue a search warrant. These judicial officers are members of the Superior Court, State Court, and Magistrates Office.
- c. All search warrants will be based upon probable cause and will be written affidavit in the format prescribed by the presiding judicial official. If the probable cause is based upon information received from a confidential source, the identity of the informant will not be listed in the affidavit for the warrant.
- d. Only POST certified peace officers can execute a search warrant. (OCGA 17-5-24) (GA 12.14)
- e. At least one uniformed officer/deputy will be present during all searches performed by plain clothed officers.
- f. All non-uniformed personnel shall be clearly identified by wearing appropriate agency clothing that identifies them as law enforcement personnel and they shall be armed.
- g. Search warrants will be executed within ten (10) days from the time of issuance. If the warrant is not executed within the ten day period, it will be void and returned to the court of issue.
 - (1) When the warrant is executed, the duplicate copy shall be left with any person from whom property is seized.
 - (2) If no person is available, a copy of the warrant **AND** inventory of items seized will be left in a conspicuous place on the premises. (OCGA 17-5-25)
- h. A search warrant may be executed at any reasonable time, day or night. (OCGA 17-5-26)

2. **PRE-SEARCH PLANNING:** Prior to performing the actual search, the requesting officer will verify the information in the warrant and will attempt to determine if any circumstances have changed that make executing the warrant unjustifiable or undesirable. Special care will be taken to confirm the actual location of the search site to preclude the possibility of searching the wrong premises. (GA 8.37)

a. In addition, every attempt will be made to determine the existence of children, animals, or other factors that may necessitate special precautions during the search.

b. Prior to the actual execution of the warrant, a pre-entry briefing with all search personnel. This briefing will include a review of the items to be seized, the exterior and interior description of the search site, the boundary lines of the property if known, the tactics to be used if a forced entry is required, and special provisions authorized in the warrant, the availability of all items of equipment required, the specific duties of all personnel, and any special instructions concerning the safety of undercover/informant personnel already on the premises. (GA 8.37)

c. Provisions will be made to ensure that the entire search warrant execution process is documented from the beginning and until the search team personnel leave the premises. A written record will be prepared, supported by photographs and if possible, videotaping of the entire site.

d. All searches will be under the supervision of a supervisor in the grade of sergeant or higher **AND** will be performed with the officer responsible for the investigation.

e. One investigator will be designated by the search supervisor as responsible for collecting, preserving, and documenting all items seized and for the security of these items in accordance with the agency's evidence handling and processing procedures.

3. EXECUTING A SEARCH WARRANT:

a. **FORCED ENTRY:** Officers are authorized to use all reasonable and necessary force to enter a building, vehicle, or other area to execute a search warrant if verbal notice is first given and entry is: (OCGA 17-5-27)

(1) Refused;

(2) Denied because individuals within fail to acknowledge and answer the verbal notice; **OR**

(3) Performed at a location not occupied.

b. **VERBAL NOTICE:** Unless a "no-knock" provision is in the warrant, officers are required to give oral notice to the person(s) inside of the identity of the officer **AND** of the fact that a search warrant has been issued authorizing the search of the premises. (OCGA 17-5-27)

c. **"NO-KNOCK:"** Officers are not required to give verbal notice prior to entering a dwelling/building when they have reasonable grounds to believe that such a warning would place their safety in jeopardy or lead to the immediate destruction of evidence. However, such authorization for the "no-knock" provision must be first given on the warrant by the judicial official granting the search.

d. **OFFICER SAFETY:** For the protection of agency personnel and to prevent the destruction or concealment of evidence, any individual located on the premises being searched **OR** who arrives after the search has been initiated, may be detained during the search. (OCGA 17-5-28)

(1) Such individuals at the scene will be "frisked" for weapons and placed in an area where no weapons are present and under the supervision of other law enforcement personnel.

(2) Only persons named or described in the search warrant shall be given a thorough pat-down search for weapons, contraband, and evidence of the crime under investigation.

e. **SECURITY SWEEP:** When conducting the search, agency personnel will first perform a security sweep for other individuals located or hiding within the entire search site. After the site has been secured, items specifically identified in the warrant shall be seized.

f. **LOCATIONS/PERSONS TO BE SEARCHED:** Agency personnel shall limit their search to the location; for the individual(s) named/described; **AND/OR** for the items particularly described in the warrant. Deputies executing a valid warrant must limit their search areas where the object sought might be located.

g. **SEIZING ITEMS NOT LISTED IN SEARCH WARRANT:** Other items may also be seized if there is a reason to believe they are stolen or embezzled, contraband or evidence of another crime **AND** they are located unexpectedly while serving the original warrant. (OCGA 17-5-1(b))

h. **CURTILAGE:** In the execution of the search warrant, personnel may search the curtilage, including the yards, grounds, garden, barns, driveway, garage, and other storage sheds located at a particular address or in more rural settings, areas not immediately part of the dwelling site.

(1) Motor vehicles parked on the curtilage may also be searched.

(2) Motor vehicles and trailers belonging to those other than the occupant of the dwelling being searched are also subject to search if it can reasonably be determined that the owner of the vehicle is in some way connected with the illegal activity taking place or subject of the warrant.

(3) However, no area or property which is beyond the property lines of the location specified in the warrant may be searched. The identification of property lines becomes particularly important when conducting searches in residential areas where motor vehicles may be parked in adjacent public places or on adjacent private property.

i. **INVENTORY:** It is the responsibility of the requesting officer to prepare an inventory of the items seized. Copies of the inventory will be given to the individual arrested, to the judicial officer before whom the arrestee is taken, and prepared for the case file. If the arrested person is released without a charge being preferred, all property will be immediately returned except for contraband items or stolen property. (OCGA 17-5-2)

j. **OTHER PROPERTY NOT SEIZED:** All other property not seized shall be left in an orderly fashion (or as found).

k. **AFTER THE SEARCH:** Following the execution of the search warrant, agency personnel will complete the "Return of Service" portion of the warrant **AND** attach the inventory listing all instruments, articles, or things seized and immediately return it to the judicial officer who issued the warrant. (OCGA 17-5-29)

l. **DAMAGE TO PROPERTY:** If any damage occurs as a result of the entry to the premises or during the course of a search, a separate report will be prepared by the on-scene supervisor that identifies the actions that caused the damage and a detailed description of the nature and extent of the damage.

(1) All damaged property will be photographed.

(2) The report will be submitted to the Division Commander within 24 hours following the search. (GA 8.37)

F. SEARCHES WITHOUT A WARRANT: (CALEA 1.2.4 5th. ed)

1. **GENERAL:** It must be emphasized that searches of private property without the prior approval of a judge or magistrate, are considered unreasonable under the Fourth Amendment. Some of the exceptions to this rule are: (OCGA 17-5-1) (GA 12.4)

a. Protecting the officer from attack;

b. Preventing the person from escaping;

c. Discovering or seizing the fruits of the crime for which the person has been arrested; **OR**

d. Discovering or seizing any instruments, articles, or things which are being used or may have been used, in the commission of the crime for which the person has been arrested.

2. SEARCH BY CONSENT: (CALEA 1.2.4a 5th ed.) Individuals can waive their right against an unreasonable search and seizure as long as the consent is given voluntarily, without threat or coercion **AND** as long as the individual has the authority to give the consent.

a. The burden of proof in court that the consent was voluntarily given rests with the officer obtaining the consent and will be based upon the totality of circumstances surrounding the encounter. Therefore, it is imperative that all facts and circumstances concerning the consent be fully documented in the Incident Report **AND** that a signed waiver is obtained from the individual authorizing the search.

b. The consent can be withdrawn by the consenting party at anytime following the initiation of the search. When this occurs, the search will immediately stop.

c. The consenting party may give restrictions as to the areas to be searched. If no restrictions are given, it can be assumed that all areas can be searched, to include locked containers, as long as the consenting party has common authority over the locked container.

d. There is no necessity to give Miranda warnings before requesting consent **NOR** to advise the person that she/he has the right to refuse consent.

e. If performing in an undercover role, officers do not have to inform the individual of his or her true identity.

f. Anyone who reasonably appears to have the right to be in a location **AND** authority over the premises can confer the consent.

g. When two or more individuals jointly occupy the premises or area to be searched, any one of the persons has the right to permit the inspection, without first obtaining the permission of the other parties. Such consent by one individual is not valid in the face of the refusal of another *physically present* occupant.

h. The following are **FACTORS OF A VALID CONSENT SEARCH** if the consenting party:

(1) Was not under arrest or in custody when the consent was given.

(2) Was told what the officers were searching for prior to the search.

(3) Signed a consent to search form prior to the search.

(4) Admitted guilt before the search.

(5) Assisted in the search.

(6) Used his/her own key to assist in the search.

(7) Did not withdraw his/her consent at any time during the search.

(8) Was in no way restrained during the search.

(9) Appeared educated, intelligent, and not under the influence of alcohol or any illegal substance.

3. CONSENT BY JUVENILES: A search will not be performed based upon the consent of a juvenile **UNLESS** it is necessary to proceed with the search prior to the arrival of an adult. When a juvenile is

confronted, the following consent factors should be considered to determine the validity of the search:

- a. Whether the minor lives on the premises;
- b. Whether the minor has right of access and the right to invite others into the premises;
- c. Whether the minor is of an age at which she/he could be expected to exercise at least minimal discretion; **AND**
- d. Whether the officer reasonably believes the minor has sufficient control over the premises to give a valid consent to search.

4. SEARCH OF A MOTOR VEHICLE: (CALEA 1.2.4c 5th ed.)

- a. To be valid, the search must be:
 - (1) Based upon probable cause that evidence of a crime is in the vehicle, **UNLESS** a valid consent to search is given;
 - (2) Of an apparently movable ship, boat, wagon, airplane, automobile, or other motor vehicle located in a public area; **AND**
 - (3) At a location where it is not practical to secure a warrant because the object may quickly be moved.
- b. The search can then be performed in all areas of the vehicle where the item(s) can be reasonably found, even within locked containers, wrapped packages, or compartments.
- c. Motor-homes may be searched if located in places not regularly used for residential purposes. If parked in a space designated for such vehicles and not readily moveable, the "home" is protected and cannot be searched without first obtaining a warrant.
- d. In *Wyoming v Houghton*, the Supreme Court concluded that passengers, no less than drivers, possess a reduced expectation of privacy with regard to the property that they transport in cars, which travel public thoroughfares, therefore:
 - (1) If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may contain the object of the search.
 - (2) When Deputies have probable cause to search a vehicle, they may also inspect passengers' belongings found in the vehicle, provided that the belongings being searched are capable of concealing the type of object for which they have probable cause to search the vehicle.
 - (3) When probable cause exists to search a vehicle, Deputies shall evaluate the urgency of the situation to determine if time and circumstances allow for a search warrant to be obtained. If the situation allows, Deputies will obtain a search warrant prior to searching the vehicle.

5. CRIME SCENE SEARCH: (CALEA 1.2.4d 5th ed.)

- a. The search of a crime scene requires probable cause and a search warrant **UNLESS** there are one of the following factors that would permit a legally recognized exception to this requirement:
 - (1) **Exigent circumstances:** whereby law enforcement officers enter a crime scene area under an emergency situation, especially in those circumstances involving injury or death

and it may become necessary to provide immediate aid to a victim **OR** it becomes necessary to prevent the loss or destruction of evidence;

(2) **Consent:** whereby entry to a crime scene is freely granted by one or more individuals who have authority over the property **AND** are in some way affiliated with the crime scene;

(3) **Plain view:** whereby evidence or contraband is seized that is in plain view of officers during their initial entry of the crime scene; **OR**

(4) **Abandoned property:** whereby officers enter a crime scene area that is located in an apparent abandoned building or location.

b. Unless there is consent or the premises have been abandoned, a search warrant must be obtained to further process the crime scene once the exigent circumstances no longer exist and the initial entry period has terminated.

(1) Deputies will maintain control over the crime scene area, once the emergency is over, until a search warrant is obtained **AND**

(2) No unauthorized individuals will be allowed entry or be permitted to remove any item without the approval of the case investigator.

6. EXIGENT CIRCUMSTANCES: (CALEA 1.2.4e 5th ed.) A warrantless search can be conducted if the exigencies of the situation make the needs of law enforcement so compelling to be objectively reasonable under the Fourth Amendment. Such circumstances allowing a search without a warrant are:

a. The existence of a **GRAVE EMERGENCY** where the lives or physical safety of others are in immediate danger.

(1) The search must end as soon as the emergency is over.

(2) Only items of contraband and evidence in plain view may be seized.

b. **HOT PURSUIT** situations when four elements are present:

(1) The arrest process has already begun;

(2) The offender knows she/he is being placed under arrest;

(3) The offender takes action to avoid the arrest by going into a private place; **AND**

(4) There is no significant break in contact between the subject and the pursuing officer.

c. In circumstances involving the possible **DESTRUCTION/REMOVAL** of evidence, the following should be considered:

(1) The amount of time necessary to obtain a warrant.

(2) Reasonable belief that evidence/contraband is about to be destroyed or removed.

(3) The possibility of danger to law enforcement personnel guarding the site while a search warrant is obtained.

(4) Information that the possessors of the contraband are aware that agency personnel are in pursuit.

(5) The ready destructibility of the contraband and the knowledge that efforts to dispose of evidence and to escape are characteristic behavior of persons engaged in the illegal activity.

7. ADMINISTRATIVE INVENTORIES: (CALEA 1.2.4f 5th ed.) When the driver/owner of a motor vehicle is arrested **AND** if the vehicle can be lawfully impounded, a thorough inventory of the entire vehicle will be conducted and all items will be documented on the inventory form.

a. **PURPOSE:** The reasons for impounding a motor vehicle are to:

- (1) Protect the owner's property while it remains in police custody;
- (2) Protect law enforcement personnel and the public from the potential danger caused by any hazardous substances in the vehicle; **AND**
- (3) Protect the agency and personnel against false claims of stolen, lost, or damaged property.

b. **ALTERNATIVES TO IMPOUNDMENT:** The investigating officer should make a reasonable attempt to properly dispose of the vehicle without having to resort to impoundment IF there is another vehicle occupant present **AND** she/he can be trusted with the vehicle **AND** is capable of lawfully driving the vehicle.

c. **AGENCY PERSONNEL WILL IMPOUND A MOTOR VEHICLE** when the owner/driver has been arrested **AND**

- (1) There is no one present who is authorized and capable of removing the vehicle;
- (2) The vehicle is not located on the subject's property; **OR**
- (3) The vehicle is considered evidence or reported stolen.

d. **INVENTORY PROCEDURES:**

- (1) Impounded motor vehicles will be transported by a local wrecker service and brought to its facility for safekeeping.
- (2) All personal property and vehicle accessories such as radios, tape players, etc. shall be listed on the inventory form.
- (3) All containers will be unlocked, opened, and inspected to include the glove compartment, the trunk, the console, under seats and floor mats, packages, luggage, and any other location in which it may reasonably be expected that items of personal property may be located. All items will be itemized and the condition of each will be described on the form.
- (4) All inventories will be conducted and witnessed by at least one other party, such as the wrecker operator.
- (5) The original copy of the vehicle inventory form will be attached to the Incident Report. The duplicate copy will be provided to the wrecker service operator.
- (6) During the course of the inventory, all suspected contraband, stolen property, or other fruits of a crime may be seized. When such a seizure is made, normal evidence handling procedures will be followed. Following the seizure, the inventory will be resumed and completed.

e. **RELEASE OF VEHICLE:** Impounded motor vehicles will not be released unless authorized by the impounding officer **AND** the requesting individual can produce proof of ownership and insurance.

8. SEARCH INCIDENT TO AN ARREST: (CALEA 1.2.4g 5th ed.) When agency personnel make an arrest, they will search the person and the area within the person's immediate control or within his/her lunging area, for the purpose of self protection and the protection of others from attack, preventing the escape of the arrestee, discovering/seizing the fruits of the crime for which the person is arrested, or discovering/seizing any instruments, articles, or items which were used in the commission of the crime for which the arrestee is charged. (OCGA 17-5-1)

a. If the individual is arrested within a building or dwelling, the area where the arrest occurs may be automatically swept to check for persons. This sweep is to protect the enforcement personnel from any individuals who may be hiding. However, this is not a full search, but only a visual inspection of immediately adjoining areas, such as closets and other rooms, where individuals may be hiding.

b. Other areas in the building, such as the basement, may also be swept for the presence of individuals if there is reasonable suspicion that a person is in hiding.

c. If the arrest occurs outside a building, then no search may be conducted in the building unless a search warrant or consent is obtained or exigent circumstances are present.

d. A deputy 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.

e. **ALL SEARCHES INCIDENT TO AN ARREST MUST BE CONDUCTED IMMEDIATELY.** Searches that are not contemporaneous are illegal unless performed with a search warrant.

9. PLAIN VIEW: (CALEA 1.2.4g 5th ed.) If evidence or contraband is in plain view, a seizure can be made as long as: law enforcement personnel have a right to be where the observation is made; the object is inadvertently discovered; and it is immediately apparent that the item is contraband, evidence, or other fruits of a crime.

10. OPEN FIELDS: (CALEA 1.2.4g 5th ed.) The protection from unreasonable searches does not apply to open fields or to areas outside the curtilage of a house. In order to help define the area of the curtilage, the following factors need to be considered:

a. The proximity of the area claimed to be curtilage to the home.

b. Whether the area is included within an enclosure surrounding the home.

c. How the area is used.

d. The steps taken by the resident/owner to protect the area from observation by people passing by.

11. ABANDONED PROPERTY: (CALEA 1.2.4g 5th ed.) Once an individual abandons any piece of property, they also abandon any constitutional protection from its seizure.

12. SCHOOL SEARCHES: (CALEA 1.2.4g 5th ed.)

a. **GENERAL:**

(1) When entering school property, deputies are subject to the full range of Fourth Amendment requirements applicable to searches of adults and/or within other private areas.

(2) **CONSENT:** To be valid, the child's permission to search must be knowingly and intelligently given, not the result of trick or fraud, **AND** must be given by a competent student (the younger the child, the less likely the consent will be held valid).

b. SEARCHES BY SCHOOL OFFICIALS:

(1) With the active participation of law enforcement personnel **OR** at the behest of police authorities, require: probable cause, a search warrant, **OR** a legal exception justifying a warrantless search.

OR

(2) When acting alone, without law enforcement personnel, school officials may conduct a search based upon "reasonable suspicion," taking into consideration the child's age, history, record in school, the prevalence and seriousness of the problem to which the search is directed, **AND** the exigency to perform the search without delay.

c. SEARCHES WITH CANINES: The use of K-9's to conduct a random search for drugs, firearms, or explosives is considered valid as long as the search is of "things," such as vehicles, lockers, and other public areas and not of an individual(s) student or faculty member.

G. RIDE-ALONGS AND SEARCH AND SEIZURE: It has been determined by the Supreme Court that the Fourth Amendment rights of citizens are violated by the police when they bring members of the media or other third parties onto private property during the course of official duties when the presence of the third parties has no relationship to the law enforcement objective.

1. No unauthorized person(s) will ride with any Sheriff's office unit during the course of official duties unless approval has been received by the Division Commander of that unit.
2. Division Commanders will only authorize those people whose presence is a necessity for the purposes of the law enforcement objective. Such individuals may include State or Federal Law enforcement officers, Parole or Probation officers, emergency medical personnel, or members of the prosecutor's office.
3. At no time will a member of the media, video or print, be allowed to ride with any Sheriff's Office Unit during the course of official duties unless approved by the Sheriff.