

FYI: GEORGE v. STATE

The Georgia Supreme Court rejects the “relevant” or “related” standard of review in determining whether the seizure of evidence exceeded the scope of a search warrant, overruling Walsh v. State, 236 Ga. App. 558 (1999), McBee v. State, 228 Ga. App. 16 (1997), and their progeny.

In *George v. State*, S20G0429 (11/2/21), appellant was convicted of two counts of child molestation. The evidence showed that appellant, who was a youth minister at a church, touched the victim's genitals on multiple occasions under the pretext of taking measurements of his body while supervising a physical conditioning program. After a forensic interview of the victim, the lead investigator obtained a search warrant for certain electronic devices in appellant's possession. The warrant specifically described the items "to be searched for and seized" as "[a]ny/all cellphone(s), and electronic equipment/devices including, video recorder(s), camera(s), computer(s), laptop(s), tablet(s), any device that is capable of recording images, and including but not limited to storage media such as, video tape(s), disc(s), such as DVD's & CD's." However, non-electronic items, such as notes, papers, and other materials also were seized during the execution of the search warrant.

Appellant filed a pretrial motion to suppress, arguing that the seizure of the non-electronic items exceeded the scope of the search warrant. The trial court denied the motion. Relying on *Walsh v. State*, 236 Ga. App. 558 (1999), the trial court held that the search was not unlawful just because the officers seized items not listed in the warrant. Instead, the officers were entitled to seize the non-electronic items because it was relevant evidence. In an unpublished opinion, the Court of Appeals agreed with the trial court. Citing *Walsh*, the Court of Appeals essentially concluded that the State need only show that evidence was "relevant" or "related" to the matter under investigation to justify the seizure of evidence outside the scope of a search warrant. See *George v. State*, 357 Ga. App. XXIV (Case No. A20A0993, decided Oct. 23, 2020). The Supreme Court then granted appellant's petition for writ of certiorari.

The Supreme Court held that reliance on *Walsh's* relevancy standard of review was erroneous because the seizure of evidence not subject to any other exception to the warrant requirement must comply with the well-established plain view doctrine. For evidence to be admissible under the plain view doctrine, the officer collecting the evidence must not have violated the Fourth Amendment in arriving at the place from which he or she sees the evidence. Moreover, the incriminating nature of the object must be immediately apparent. This requirement means that the officer must have probable cause to

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believe that the item in question is evidence of a crime or is contraband. Furthermore, for the plain view exception to apply, the item in question must be clearly visible, and the officer may not manipulate or disturb it in order to acquire probable cause to believe the item is evidence of a crime. And as to documentary evidence, the proper standard of review is whether the documents' evidentiary value is immediately apparent upon a mere glance or cursory inspection.

Thus, the Court concluded, *Walsh*, and *McBee v. State*, 228 Ga. App. 16 (1997), upon which *Walsh* relied, were erroneously decided. Therefore, the Court of Appeals erred in considering the relevance of evidence alone as justifying its seizure outside the scope of a search warrant, without considering whether the requirements of the plain view doctrine had been met. In so holding, the Court overruled *McBee*, *Walsh*, and their progeny, to the extent those decisions suggest that relevance alone is a sufficient basis to seize items beyond the scope of a search warrant. And because the trial court relied upon *Walsh*, determining only that the evidence in question was relevant, it too erred.

Accordingly, the Court vacated the Court of Appeals' opinion and remanded the case to that court with instructions for it to remand the case to the trial court. Specifically, the Court stated, because the trial court did not apply the correct legal standard, it should have an opportunity to rule again on appellant's motion to suppress, applying the correct legal standard to the existing record.