

In the Supreme Court of the State of Georgia
Corey Nelson v State Case No. S21A 0773
Oral Argument: August 26 ,2021

AMICUS PRESENTATION OF LAW-LINGUISTICS RESEARCH TEAM
IN SUPPORT OF NEITHER PARTY

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“the application for interlocutory appeal ... is hereby granted”

“The Court is particularly concerned with the following:
when is a search warrant for the contents of an electronic device “executed” under the Fourth Amendment”

Corpus linguistic analysis

- To the extent the Court is interested in how words in a provision were used in the era of enactment
- Linguistic analysis of texts from that era (“corpus”) can provide objective data of ordinary usage
- We offer data and analysis as to the original public meaning of
 - “executed” in the era when GA search warrant statute was enacted (1966)
 - “search” and “seize” in the Founding Era (1760 – 1799)
- More detail on methodology and further research:
Cunningham, Egbert et al, *What does it mean to execute a search warrant for a cell phone? A corpus linguistics investigation*, Georgia State University College of Law, Legal Studies Research Paper (forthcoming), to be posted at the Social Science Research Network (SSRN):
<https://ssrn.com/abstract=3910651>

State's Brief – pp 1-2

“A search warrant is executed for the contents within an electronic device when

- (1) there is a valid search warrant which specifies that the law enforcement officer has probable cause to search for and seize electronic data and
- (2) the law enforcement officer seizes, or already has legal possession of, any electronic device containing the electronic data pursuant to that search warrant.”

Defendant's Brief – p. 16

- “Police only needed to download any digital information found inside the phone to execute the search warrants”
- Also the interpretation given by the trial court below

Corpus of Historical American English: 475 million words

Free at <https://www.english-corpora.org/corpora.asp>

 Corpus of Historical American English

SEARCH FREQUENCY

List Chart Collocates Compare KWIC

executed [POS] ?

Find matching strings

Reset

Sections Texts/Virtual Sort/Limit Options

1 1990 1980 1970 1960 1950 1940 1930

2 --IGNORE-- 2010 2000 1990 1980 1970 1960

SEARCH FREQUENCY CONTEXT

 CONTEXT  TRANSLATE (??)  GOOGLE  IMAGE  PRON/VIDEO  BOOK (HELP)

	ALL	1820	1830	1840	1850	1860	1870	1880	1890	1900	1910	1920	1930	1940	1950	1960	1970	1980
<input type="checkbox"/> EXECUTED	799														290	229	280	

Sample from 1960-1969

were issued scores of contracts by the Syndicate... and the business at hand was **executed** with neatness and finesse. A word from the S
the train from Baltimore. But Lepke's contract for The Bug had already been **executed**. Red Alpert. His trademark. First The Bug, now Alpe
that way. Yes. Now, you testified previously that you also designed and **executed** this. Yes. " Blueprint for Spring. " And it's a real
by the simplest method. If it was discovered in time, the inventor was **executed** summarily, along with anyone else who knew the secret
the chest -- no fingerprints. " The men were tried, convicted, and **executed**. The Chinese government sent us abject apologies. The doub
clearing. There they paused. It was a return to ballet, a gravely **executed** change in the proportions of the tableau. They stood, a droope
however, to alter in the slightest degree her role of hostess, which she **executed** with such grace and charm that the bishop easily exten
He wondered: Am I guilty of pity? " See that my orders are **executed**! " The fierceness of the Colonel's command rocked the sergeant. " A

799 uses of "executed" in COHA (1950s – 1970s)

Examples from a random sample of 188 uses

- planned and executed 7
- conceived and executed 6
- designed and executed 2
- devised and executed 2

- ill conceived and poorly executed 2
- [the play was] called and executed 2

- Decided, formulated, plotted, schemed, set up

Three Meanings

- ~~put to death~~
 - “the men were tried, convicted and executed”
- ~~sign – make a document legally enforceable by signing or affixing a seal~~
 - GA statute uses “issue” to describe signing a warrant
- * carrying out a previously specified course of action *
 - “See that my orders are executed! The fierceness of the Colonel’s command rocked the sergeant.”
 - “the people made the decisions and the Government executed the decisions” Joseph Alsop & Stewart Alsop, *That Washington Security Curtain*, Saturday Evening Post (Feb. 19, 1955)
- See Cunningham, Egbert et al, *What does it mean to execute a search warrant for a cell phone?* <https://ssrn.com/abstract=3910651> for details on how we have corroborated initial hypothesis

Executed = carried out specified course of action

- Colonel to Sergeant: “Do A, then B, then C within 10 days”
- Ten days later, Sergeant has done A and B but not C
- Colonel to Sergeant: Has my order been executed?
- Sergeant to Colonel:
 - ~~Yes~~
 - “I have started to execute your order.”
 - “Your order has been partially executed.”
- Colonel to Sergeant: “So you have not met my deadline?”
- Sergeant to Colonel: “No, I haven’t.”

A Georgia search warrant is a command to be executed

OCGA § 17-5-23

“The search warrant shall

- **command** the officer directed to **execute** the same
- to search the place or person particularly described in the warrant
- and to seize the instruments, articles, or things particularly described in the search warrant.”

Warrant issued January 18, 2018

“search for and seize evidence of criminal activity”

The list of certain property, items, articles, instruments to be searched for and seized are located in Cobb County, Georgia and are specifically described as follows:

Apple iPhone documented on PCR284756 for evidence of the criminal activity outlined herein, felony murder and aggravated assault, to include text messages, phone call logs, IP logs, Wi-Fi logs, photographs of victim and accused, video of victim and accused, marketing business documents, communication with other people leading up to and the day of the incident, any information about firearms and firearm accoutrements, maps, driving directions, and online chats and any other information related to this incident.

How does the Cobb Police Dept Search a cell phone?

- 1) Detective sends request for analysis to Hi-Tech Crimes Unit (HTCU)
- 2) HTCU downloads raw data from phone – “imaging” or “extracting”
- 3) HTCU produces “readable report” from raw data
- 4) Detective and/or HTCU reviews data looking for evidence specified in warrant
- Det. Mason, HTCU: “We get the devices, and depending on what the individual investigator asks us about that device, it may range from I just want all the information on the device, you give it to me and I’ll look through it, or some of them will be looking for something specific on that device that they will want us to kind of comb through the information for and see if we can find it.”
 - 1st Motion Hearing, p. 83

Actual Request Form Submitted by Det. Stoddard on Jan 18, 2018(Ex 6, 1st Motion Hearing)

COBB COUNTY POLICE DEPARTMENT

SUBMISSION REQUEST FORM

HIGH TECH CRIME SQUAD

Request

What do you already know?

Accused is in jail with no bond. Instagram messages between suspect, screen name prince_oliva, and the victim, screen name the_trilla, place the suspect at the crime scene at the time of the murder. There was talk on Instagram about a marketing business they were involved with.

What do you want to know or need? Please do not paste your search warrant text here.

I am looking for any conversations or any communication between accused and victim. Also any information relating to firearms.

Three search warrants in this case

- 1) Search 400 Fairburn Road for cellphones used by Corey Nelson
 - Issued Oct 15, 2017
 - Two cellphones found and seized Oct 15, 2017
- 2) Search iPhone “for evidence of criminal activity”
 - Issued Jan 18, 2018
 - Det. Mason imaged iPhone Feb 6, 2019
 - iPhone data analyzed when?
 - Warrant held to be void, m/suppress granted Feb 4, 2020
- 3) Search iPhone for “evidence obtained during the course of the investigation”
 - Issued Feb 7, 2020
 - Det. Mason “began imaging” iPhone Feb 11, 2020
 - iPhone data analyzed when? After 10 days?
 - Motion to suppress denied Nov 4, 2020

Distribution of the meanings of *execute*

	<u>COHA</u>	<u>GA Code</u>	<u>Article 2</u>
Signed	27/635 (4%)	265/359 (74%)	0/24 (0%)
Carried out	608/635 (96%)	94/359 (26%)	24/24 (100%)

Other examples of “execute” in Title 17, Chapter 5, Article 2 (“Searches with Warrants”)

§ 17-5-25. Execution of Search Warrants

“... If the warrant is **executed**, the duplicate copy shall be left with any person from whom any instruments, articles, or things are seized; or, if no person is available, the copy shall be left in a conspicuous place on the premises from which the instruments, articles, or things were seized. ...”

§ 17-5-29. Return to court of things seized

“A written return of all instruments, articles, or things seized shall be made without unnecessary delay before the judicial officer named in the warrant or before any court of competent jurisdiction. An inventory of any instruments, articles, or things seized shall be filed with the return and signed under oath **by the officer executing the warrant.**”

OCGA 17-5-2(d)

“with respect to the execution of a search warrant by a certified peace officer employed by a university, college, or school, which search warrant will be executed beyond the arrest jurisdiction of a campus policeman pursuant to Code Section 20-3-72, the execution of such search warrant shall be made jointly by the certified peace officer employed by a university, college, or school and a certified peace officer of a law enforcement unit of the political subdivision **wherein the search will be conducted.**”

For more information...

Cunningham, Egbert et al, *What does it mean to execute a search warrant for a cell phone? A corpus linguistics investigation*, Georgia State University College of Law, Legal Studies Research Paper (forthcoming), to be posted at the Social Science Research Network (SSRN):
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