



# DPS LEGAL REVIEW

August 2018 | Volume 17 No. 8

Georgia Department of Public Safety | Legal Services Office | (404) 624-7423

## ATTORNEY GENERAL'S OPINION

### PASSING SCHOOL BUS ON OPPOSITE SIDE OF CENTER TURN LANE

On July 1, 2018, Georgia's HB 978 went into effect. One of the changes to state law under HB 978 was to O.C.G.A. § 40-6-163(b), which relates to the duty of drivers to stop in response to the visual signals of a school bus. The prior version of O.C.G.A. § 40-6-163(b) stated that "[t]he driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway." The Georgia Attorney General's office previously interpreted this to mean that "vehicles approaching from the opposite side of a highway separated by a grass strip or other physical division were not required to stop for a school bus, but all vehicles approaching a stopped school bus from either direction were required to stop if the lanes were separated only by painted stripes such as a flush median or left-turn lane."

The new language of O.C.G.A. § 40-6-163(b) states that "[t]he driver of a vehicle upon a highway with separate roadways **or a divided highway, including, but not limited to, a highway divided by a turn lane,** need not stop upon meeting or passing a school bus which is on a different roadway **or on another half of a divided highway**" (emphasis added). The Prosecuting Attorney's Council of Georgia asked the Georgia Attorney General's office for an opinion explaining whether a driver travelling in the opposite direction of a stopped school bus utilizing visual signals is required to stop on a highway divided *only* by a center turn lane, and no other physical dividing median.

On August 20, 2018, the Georgia Attorney General's office issued its Unofficial Opinion U2018-2, in which the office reasons that "[f]rom the addition

of words, it may be presumed that the legislature intended some change in the existing law." In accordance with that and other maxims of statutory interpretation, the Attorney General's office concluded that the statute as amended "expanded the scope of vehicles that are not required to stop for a school bus to include those travelling on the other side of a highway 'divided by a center turn lane.'" As such, the Attorney General's Office has concluded that, **"Georgia law does not require a vehicle travelling on a three or five lane road divided by a center turn lane to stop for a school bus that is stopped on the opposite side of the road with its visual signals engaged."** 2018 Op. Att'y Gen. No. U2018-2.

## 11<sup>TH</sup> CIRCUIT COURT OF APPEALS

### USE OF DEADLY FORCE - INTOXICATED / UNSTABLE SUSPECT WITH STICK

On July 21, 2015, Bartow County Deputy Sheriffs Anthony Parker and Nick Thompson responded to a call from a resident who reported "that it sounded like two men were fighting in the woods behind [his] house." The deputies searched the woods using the "contact and cover" method. Deputy Thompson served as the contact officer and had his taser drawn, while Deputy Parker served as the cover officer and had his firearm drawn. Eventually, Deputy Thompson encountered a man later identified as Darren Wilson, "a 47 year-old man with a history of bipolar disorder, paranoid schizophrenia, and methamphetamine abuse." Wilson "was dressed in nothing but his underwear, was sitting on the ground with his back to the deputies, and [was] screaming at someone or something that was not there." Deputy Parker did not initially see Wilson when Deputy Thompson made initial contact with him.

Deputy Thompson ordered Wilson to show his hands, but Wilson did not comply, instead standing and approaching Thompson. Deputy Parker saw Wilson as he approached Deputy Thompson. The deputies stated that “Wilson charged Thompson in ‘an aggressive state,’” while holding a large stick (later determined to be approximately 5.5 feet long) and “yelling at the top of his lungs.” Deputy Thompson continued to order Wilson to show his hands, which he did not do. Instead, he continued to charge at Deputy Thompson, though he did not raise the stick or point it at Thompson. “Thompson backed away from Wilson as Wilson came toward him, but Wilson moved faster than Thompson could back up.” Deputy Thompson yelled Deputy Parker’s name, seeking his assistance.

Deputy Parker, in response, fired five times at Wilson, and struck him three times. “Wilson fell approximately eight to ten feet from Thompson” and died as a result of his injuries. Approximately “eleven seconds passed between Thompson’s first command and Parker’s first shot.” It was later determined that Wilson was “‘acutely intoxicated by methamphetamine’ at the time of his death.”

Walker’s estate later sued the responding deputies in federal court, alleging among other things that Deputy Parker’s use of deadly force was excessive under the Fourth Amendment. Deputy Parker moved for summary judgment, arguing that he was entitled to qualified immunity, and his motion was granted. Wilson’s estate then appealed the ruling to the Eleventh Circuit Court of Appeals.

The Eleventh Circuit stated that “the decisive fact here is the threat of physical harm that Wilson posed to Thompson at the time Parker shot him... If a reasonable officer could have believed under the circumstances that Wilson ‘posed a threat of inflicting serious injury or death’ to Thompson, then ‘the shooting was objectively reasonable regardless of whether Wilson had already committed a crime or was resisting or attempting to evade arrest.’” The Court further explained that, under the circumstances, “Wilson’s appearance and conduct made it apparent that something was wrong and that his behavior might be unpredictable and dangerous... Law enforcement

officers approaching suspects in such circumstances should use special caution, both to protect themselves and the suspect.”

The Court went on to hold that **“Parker had probable cause to believe Wilson posed a threat of serious physical harm to Thompson... Although Wilson did not point the stick at Thompson or raise it to swing it, ‘the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.’” Furthermore, Wilson had refused to comply with orders to show his hands and was acting erratically. The Court also explained that under the circumstances, it was not feasible for Parker to give a warning about his use of deadly force. As such, the Court held that Parker’s use of deadly force was justified and he was entitled to summary judgment.** *Wilson v. Parker*, No. 17-15294, 2018 WL 3954222 (11th Cir., Aug. 17, 2018).

## ***GEORGIA COURT OF APPEALS***

### **TRAFFIC STOP – DELAY FOR SPANISH-SPEAKING OFFICER NOT UNREASONABLE**

On April 11, 2013, a law enforcement officer stopped a vehicle on the interstate for a suspected window-tint violation. The vehicle was occupied by Jose Vazquez, who was driving, and Hortencia Flores, who was a passenger and the car’s owner. After stopping the vehicle, the officer “briefly spoke with Vazquez, then tested the window tint and determined that it was too dark. The officer took Vazquez’s driver[’]s license and asked him to step out of the vehicle.” Vazquez and the officer then had an approximately two-minute conversation during which the officer explained the window tint violation. Because the vehicle had an out of state license plate, the officer asked where Vazquez and Flores had been. During this interaction, the officer noted that “Vazquez’s hands were shaking, he was breathing rapidly, and he did not make eye contact.”

The officer then “returned to the vehicle to retrieve identification from and speak with Flores.” Flores confirmed that she owned the vehicle. However, she

“gave the officer a reason for their trip to Georgia that differed from what Vazquez had told him.” The officer attempted to explain the window tint violation to Flores, but Flores’ primary language was Spanish and the officer was not sure if she understood him. As such, he requested that a Spanish-speaking officer respond to the scene.

The officer then returned to his vehicle to check Vazquez and Flores’s identification and to issue a traffic citation. “Approximately 19 minutes into the traffic stop, the Spanish speaking officer arrived and began speaking with Flores about the nature of the citation. During their conversation, Flores volunteered – without being asked – that the officers could search the vehicle.” Six minutes later, “the first officer handed Vazquez the citation and his drivers license and Flores got out of the vehicle. Around that time, the first officer asked Vazquez for consent to search the vehicle, and Vazquez agreed.” Officers subsequently searched the vehicle and found methamphetamine.

Flores and Vazquez were subsequently prosecuted for trafficking in methamphetamine. During the prosecution, they moved to exclude the methamphetamine found in the car, “arguing that their consent was invalid because the traffic stop was unreasonably prolonged” by the first officer’s request for a Spanish-speaking officer. The trial court denied the motion, and the pair were subsequently convicted. They appealed the conviction to the Georgia Court of Appeals, arguing that their motion to suppress should have been granted.

The Court of Appeals explained that “a ‘seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.’ Thus, ‘the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop, and attend to related safety concerns.’” The Court first explained that **“officers may, without unreasonably prolonging a stop, ask the driver to step out of the vehicle; verify the driver’s license, insurance, and registration; complete any paperwork connected with the citation or written**

**warning; and determine if there are any outstanding warrants for the driver or the passengers... Moreover, officers may ask questions unrelated to the purpose of the stop, so long as they do not prolong the stop beyond the time reasonably required to fulfill the stop’s purpose.”** Additionally, the Court found that the officer’s request for a Spanish-speaking colleague to respond was reasonable and did not unnecessarily prolong the stop. The Court held that **the need to explain to the vehicle owner that her vehicle did not comply with Georgia law could reasonably be considered as within the mission of the traffic stop to ensure “that vehicles on the road are operated safely and responsibly.”** The Court further found that “[t]he evidence supported the trial court’s finding that the officer who initiated the stop was unable to explain the nature of the violation to the vehicle’s owner, Flores, due to a ‘language barrier.’ The Spanish-speaking officer arrived less than 20 minutes after the stop began, and shortly thereafter both Flores and Vazquez consented to the search.” **Under the circumstances, the duration of the stop was not unreasonable or unnecessarily prolonged,** and thus the motion to suppress should be denied. *Flores v. State*, No. A18A1331, 2018 WL 3751015 (Ga. Ct. App., Aug. 8, 2018).

#### ALS REMINDER

On Intoxilyzer 9000 cases, a copy of your permit to operate the Intoxilyzer 9000 and the original test results are required for the ALS Hearing. The copy of your permit and the original test results must be provided to the Court at the ALS Hearing.

When testifying at the ALS Hearing, the implied consent notice that was read to the DUI defendant must be read into the record at the hearing.

Published with the approval of  
Colonel Mark W. McDonough.

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