



# DPS LEGAL REVIEW

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

### TRAFFIC STOP – RAPIDLY BLINKING TURN SIGNAL; PROLONGING OF TRAFFIC STOP

In December 2013, Deputy Robert McCannon observed a vehicle with a turn signal blinking at an unusually rapid pace while patrolling I-20 at approximately 9:00 P.M. The deputy pulled the vehicle over and approached the driver, Erickson Campbell. Deputy McCannon explained that he pulled Campbell over in part because of his rapidly blinking turn signal, and further explained that the rapid blinking normally indicated a burned out turn signal bulb somewhere on the vehicle. The deputy inspected the vehicle, however, and found that none of the turn signal bulbs were out. The deputy concluded that the rapid blinking must indicate that one of the bulbs would soon go bad and decided to write McCannon a warning for violation of O.C.G.A. § 40-8-26, which requires in part that turn signals “shall at all times be maintained in good working condition.”

While writing Campbell a warning ticket, Deputy McCannon “engaged Campbell in conversation,” including asking him where he was going, for what purposes, and whether he had ever been arrested. Deputy McCannon was aware based on information he received from his dispatcher that Campbell was a prior felon. McCannon further asked Campbell whether he had a firearm in the vehicle and “if he had any counterfeit CDs or DVDs, illegal alcohol, marijuana, cocaine, methamphetamine, heroin, ecstasy, or dead bodies in his car.” Campbell responded no to each inquiry. McCannon then asked Campbell if he could search his car for any of those items, and Campbell consented. A subsequent search of the vehicle revealed a pistol, which Campbell admitted to possessing.

Campbell was arrested and charged with being a felon in possession of a firearm.

During his prosecution, Campbell moved to suppress the evidence uncovered during the traffic stop on two grounds. First, he argued that Deputy McCannon did not have reasonable, articulable suspicion to initiate a traffic stop on the basis of his rapidly blinking turn signal. Second, he argued that “even if there was reasonable suspicion, his seizure became unreasonable when McCannon prolonged the stop by asking Campbell questions unrelated to the purpose of the stop.” The U.S. District Court for the Middle District of Georgia rejected both arguments, and Campbell later appealed to the Eleventh Circuit.

The Eleventh Circuit first held that Campbell’s rapidly blinking turn signal did, in fact, provide Deputy McCannon with reasonable suspicion to perform a traffic stop of Campbell’s car. The Court explained that, under Georgia law, turn signals must be “maintained in good working condition.... Typically, when a turn signal blinks rapidly, it does so to notify the driver that a bulb is out or is about to go out. It can also mean that there is a problem with the wiring.” **Because “the rapid blinking is an alert that something, be it an expired bulb or faulty wiring, might not be in good working condition... the rapidly blinking turn signal provided McCannon with reasonable suspicion to believe that Campbell’s car was in violation of the traffic code.”**

However, with respect to Deputy McCannon’s questioning of Campbell, the Court explained under the U.S. Supreme Court’s 2015 decision in *Rodriguez v. United States*, Deputy McCannon’s questioning of Campbell unreasonably and unconstitutionally prolonged the traffic stop. The Court explained that, under the rule announced in *Rodriguez*, **“a stop is unlawfully prolonged when an officer, without reasonable suspicion, diverts from the stop’s purpose**

**and adds time to the stop in order to investigate other crimes,” regardless of the amount of time added to the stop. In this case, the Court held that Deputy McCannon’s questions about “Campbell’s travel plans were relevant to the traffic violation” because the length of Campbell’s trip was relevant to whether it was more likely his turn signal would malfunction. Thus, those questions were allowable.**

**However, Deputy McCannon’s questions about contraband unlawfully prolonged the stop because they did not pertain to Campbell’s traffic violations and were not based on reasonable, articulable suspicion.** Nevertheless, the Court held that because *Rodriguez* was decided in 2015 and this traffic stop occurred in 2013, Deputy McCannon acted in objectively reasonable reliance on existing appellate precedent at the time, and therefore the evidence he uncovered during the traffic stop should not be excluded in this case. *United States v. Campbell*, No. 16-10128, 2019 WL 125649 (11th Cir. Jan. 8, 2019).

### **SUSPICIOUS VEHICLE CALL - CONSENSUAL ENCOUNTER OR NOT?**

On the evening of July 6, 2015, Deputy Katherine McCann responded to a call from a gun store owner in North Fort Meyers, Florida, regarding a suspicious vehicle in the parking lot of the plaza in which his store was located. The owner reported that the vehicle, a red Ford Focus, was occupied by a male and female, “and that the female passenger had injected a needle into her arm.” Deputy McCann later reported that the area was known for narcotics use, prostitution, and burglaries. Upon arrival at the plaza, Deputy McCann located and approached the Ford Focus in her patrol vehicle. She parked her car “in the driving lane of the parking lot, perpendicular to the Focus but not blocking its exit” and without activating her blue lights.

Deputy McCann then exited her car and approached the driver’s side of the Focus. “The windows of the Focus were down and there were three occupants: [Joseph] Debona in the driver’s seat; Shawna Spring in the front passenger seat; and William Santoro in the back seat, sitting next to a flat-screen television.” Deputy McCann identified herself as a law

enforcement officer and explained she was on site because of the call from the gun store owner. She asked Debona if he would step out of the vehicle so they could talk. Debona agreed and stepped out to talk to McCann. McCann did not draw her weapon at any time.

A second deputy, Julian Chala, arrived as Debona was exiting the vehicle. Deputy Chala similarly parked without blocking the Focus and without activating his emergency lights. Deputy Chala walked to Debona and asked “if he would mind coming to the front of Chala’s squad car to talk. Debona complied, leaving McCann with the other two passengers. Chala was armed and in uniform, with his firearm holstered.” Deputy Chala again explained why he was there and that he wanted to talk to Debona. “Chala read Debona his *Miranda* rights, which was Chala’s standard practice even if he was not arresting someone, and he explained that this did not mean Debona was in trouble, under arrest, or going to jail. Debona said he understood.”

Deputy Chala and Debona then had a brief conversation during which “Chala observed that Debona was acting ‘very nervous,’ was ‘sweating a lot,’ and was not making eye contact. Chala also noticed Debona touching his front pockets” and eventually putting his hand inside his pocket. Chala told Debona “please do not put your hands in your pockets. Debona pulled his hand out but then put it back in again. Chala again asked him to please not put his hands in his pockets.”

Based on Debona’s demeanor and actions, Deputy Chala “suspected that Debona might have a weapon” and decided to conduct a pat down. During the pat down, Deputy Chala felt what he suspected to be a pill bottle and asked consent to search Debona’s pockets. Debona provided consent and Deputy Chala discovered “small plastic baggies, around \$1,000 in cash, and a pill bottle with someone else’s name on it.” Deputy Chala also saw a “rectangular-shaped bulge” behind Debona’s front zipper, but Debona fled on foot before Deputy Chala could ascertain what it was. Debona was eventually apprehended and the deputies determined Debona – a felon – was in unlawful possession of a firearm. Debona was charged

accordingly but later filed a motion to suppress. Debona argued first that he was unlawfully seized without reasonable suspicion “from the moment Deputy McCann asked him to step out of his Focus.” Debona further argued that even if that portion of the encounter was consensual, “Deputy Chala seized him without reasonable suspicion when Chala ordered him to keep his hands out of his pockets.” The trial court denied this motion, holding that Debona’s initial encounter with officers was consensual and therefore did not require reasonable suspicion. Debona was then convicted and appealed the Court’s ruling to the Eleventh Circuit.

The Eleventh Circuit first reiterated that “[n]ot all interactions between law enforcement officers and citizens... implicate the scrutiny of the Fourth Amendment... We discern the dividing line between a consensual encounter and a seizure by considering whether a ‘reasonable person would feel free to decline the officers’ requests or otherwise terminate the encounter.’” **The Court explained that Deputy McCann’s initial encounter with Debona was consensual and thus did not require reasonable suspicion because numerous factors demonstrated that a reasonable person would have felt free to terminate the encounter: “McCann did not activate her lights or sirens; she approached the Focus on foot; she explained why she was there; she was the only officer present; and she did not ask for or retain Debona’s identification, block his path, brandish a weapon, touch him, or speak to him in an authoritative manner.” Furthermore, she asked and did not order Debona to step out of the car to talk to her.**

The Court also explained that Debona’s initial encounter with Deputy Chala was consensual, including when Deputy Chala asked Debona not to put his hands in his pockets. The Court explained that **“Chala politely asked Debona to walk over to talk and promptly explained his reason for being there. He did not block the Focus, ask for identification, activate his lights or sirens, brandish weapons, or use physical force. While two officers were present on the scene, Debona’s interactions were limited to a single officer at a time. Chala’s questioning was brief and general,**

**simply asking Debona about what he was doing at the... [p]laza. And before questioning Debona, Chala explicitly informed him of his rights, making sure to avoid any misunderstanding by emphasizing that this did not mean Debona was in trouble, under arrest, or going to jail. All of these factors render the encounter consensual.”** The Court further explained that **“Chala’s requests of Debona to ‘please’ not put his hands in his pockets, viewed in the totality of the circumstances,” did not convert the encounter into something non-consensual. As the Court explained, “[t]heir encounter up to that point had been brief and non-coercive, and, significantly, Debona had not, by words or actions, indicated that he wished to terminate the encounter with Chala. Under the totality of the circumstances, Chala’s polite requests relating to officer safety did not transform what was a consensual encounter into a seizure.”** As such, the deputies’ interaction with Debona did not result in an unconstitutional seizure, and Debona’s appeal was denied. *United States v. Debona*, No. 17-14020, 2019 WL 115094 (11th Cir. Jan. 7, 2019).

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

### **UNIFORM TRAFFIC CITATION – REQUIRED LEVEL OF DETAIL**

A Clayton County police officer issued a uniform traffic citation to Antonio Strickland, charging him with a violation of O.C.G.A. § 40-6-49, following too closely. The officer completing the citation wrote in his description of the charge that Strickland was “following too closely in violation of code section 40-6-49.” During a bench trial based upon this charge, Strickland’s attorney moved to quash the citation, and the trial court denied the motion. Strickland then appealed, “contending that the trial court erred in denying his motion to quash the charge because the citation fails to allege the essential elements of the offense.”

The Court of Appeals explained that **“a legally sufficient indictment [or citation] must either ‘(1) recite the language of the statute that sets out all the**

**elements of the offense charged, or (2) allege the facts necessary to establish violation of a criminal statute.”**

The Court concluded that, in this case, **“the citation was substantially defective because it simply alleges that Strickland violated a certain statute, which is insufficient to survive a motion to quash... The citation fails to recite the language of OCGA § 40-6-49 setting out all the elements of the offense” and “fails to allege any facts necessary to establish a violation of OCGA § 40-6-49.”** The Court held that “[t]he fact that the citation includes the verbiage of ‘following too closely’ – the title of the code section – does not remedy the issue.” Furthermore, the Court explained that although the citation contained reference to *some* facts – such as that an accident occurred, and the weather, traffic, and road conditions – it did not include the *required* facts that could establish a violation of O.C.G.A. § 40-6-49. As such, neither the elements of the code section nor facts necessary to establish its violation were included in the citation, and it was not sufficient under Georgia law. The Court held that Strickland’s motion to quash should have been granted and reversed the trial court. *Strickland v. State*, No. A18A1829, 2019 WL 323889 (Ga. Ct. App. Jan. 25, 2019).

#### **ALS REMINDER**

The 1205 form must be **personally** served on the DUI driver. Mailing a copy of the 1205 form to the DUI driver is **not** sufficient for personal service. In order for the 1205 form to be processed by Department of Driver Services, the “Serve Date” must be included on the 1205 Form. The 1205 form includes a line to write the “Serve Date” next to the “Signature of Arresting Officer” under the section of the form titled “Service of Report and Notice of License Suspension.”

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