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11th Circuit Court of Appeals

TRAFFIC STOP WAS NOT UNLAWFULLY PROLONGED

On December 2, 2016 Deputy Brandon Holcomb with the Habersham County Sheriff's Office conducted a traffic stop on a car driven by Deontae Thomas. Thomas's failure to maintain his lane and changing lanes without signaling led Deputy Holcomb to wonder if Thomas might be under the influence of alcohol or drugs. Deputy Holcomb approached Thomas's car, requested his driver's license, and told Thomas why he had been pulled over. During this interaction, Deputy Holcomb assessed Thomas for any signs of impairment.

Thomas provided inconsistent responses when the deputy inquired as to where Thomas was headed. At first, Thomas claimed to be driving to Gainesville, even though he was traveling north and was already 25 miles north of Gainesville. Thomas then said "that he was staying in Gainesville and traveling to Wal-Mart but could not provide a reasonable explanation for why he would travel to another city instead of going to a Wal-Mart in Gainesville."

On top of making no sense, Thomas's responses stood in stark contrast to the information on a cellphone app the deputy observed on the dashboard, which showed a destination 52 miles north. Thomas alleged that the phone belonged to his passenger, seemed frustrated by the deputy's inquiries, and avoided making eye contact with Deputy Holcomb. This raised the deputy's suspicion that Thomas might be illegally transporting narcotics.

Thomas repeatedly refused the deputy's request that he exit the car, leading the deputy to tell him he must do so. The deputy requested permission to perform a pat-down search and found \$500 cash in Thomas's pocket. Upon completing the pat-down, Deputy Holcomb asked Thomas to walk to the front of his patrol vehicle, so that the dashcam video could record the field sobriety tests the deputy planned to conduct.

When they were standing in front of the patrol car, Deputy Holcomb asked Thomas if there were illegal narcotics in his car. Thomas said that there were not but would not consent to a search of his vehicle. Deputy Holcomb began to perform field sobriety tests, at which time a second officer walked over and started talking to Thomas. This gave Deputy Holcomb a chance to talk to Thomas's passenger to compare her responses as to their destination with those given by Thomas, and to inquire as to whether Thomas was impaired by drugs or alcohol.

After talking to the passenger and approximately fourteen minutes into the traffic stop, Deputy Holcomb observed "a wrapped, square, cellophane bundle concealed beneath a jacket in the backseat of the vehicle." His training led Deputy Holcomb to suspect that the bundle contained illegal narcotics. Thomas was handcuffed and the deputy contacted a magistrate to obtain a warrant to search the car. The magistrate said that the deputy would need to meet her in person to get the warrant, at which point the deputy told her that he needed to complete the field sobriety tests and would get back in touch if necessary.

Deputy Holcomb then read Thomas the *Miranda* warning, removed Thomas's handcuffs, and

proceeded to administer the field sobriety tests. At the conclusion of the tests, Holcomb arrested Thomas for driving under the influence of alcohol or drugs. Holcomb and other officers then searched Thomas's car, finding "three large packages of narcotics (two of methamphetamine and one of heroin), a pill in Thomas's wallet, additional methamphetamine in the passenger's purse, and a loaded firearm in between a front seat and the center console."

The district court denied Thomas's motion to suppress the evidence obtained during the search of his vehicle. At trial, Thomas was found guilty of possessing heroin with intent to distribute, possessing methamphetamine with intent to distribute, and possessing a firearm in furtherance of a drug-trafficking crime. Thomas then appealed the district court's denial of his motion to suppress, arguing that the deputy violated Thomas's Fourth Amendment rights by unlawfully prolonging the traffic stop.

The Eleventh Circuit Court of Appeals found that the district court did not err in denying Thomas's motion to suppress: "The totality of the circumstances supports Deputy Holcomb's reasonable suspicion that Thomas was involved in criminal activity. Thus, even if the traffic stop was prolonged beyond the time needed to accomplish its original purpose of conducting a DUI investigation, such detention was not unconstitutional."

The Court of Appeals considered Deputy Holcomb's actions related to this DUI investigation, among which were his questions about Thomas's travel plans; his request to perform field sobriety tests; and his request to search Thomas's vehicle before administering the field sobriety tests:

In the course of this conduct—all of which was related to a DUI investigation—Deputy Holcomb was able to observe things that justified reasonable suspicion that

some additional wrongdoing might have been afoot. Thomas provided inconsistent and evasive answers to simple questions about his travel plans—answers that were inconsistent with the data visible on the GPS display. Additionally, Thomas was reluctant to exit the vehicle, acted nervously throughout the stop, had bloodshot eyes, was carrying \$500 in cash on his person, and was reluctant to comply with the deputy's instructions. **The totality of these circumstances justified Deputy Holcomb's subsequent questions to Thomas about the presence of drugs in the car and brief questioning of the passenger.**

The Court also considered the deputy's noticing the suspected bundle of narcotics in plain view in the car's backseat, inconsistencies between Thomas's and his passenger's statements regarding their travel, and Thomas's performance on the field sobriety tests administered by Deputy Holcomb. The Court concluded that these factors gave rise to a "particularized and objective basis" upon which the deputy believed that Thomas might have been transporting illegal narcotics.

Therefore, the Court of Appeals affirmed the district court's denying Thomas's motion to suppress. *U.S. v. Thomas*, No. 19-13678, 2020 WL 3790713 (11th Cir., July 7, 2020).

U.S. District Court – Northern District of Georgia

OFFICER'S USE OF TASER WAS EXCESSIVE FORCE UNDER THE CIRCUMSTANCES

Officer Bell responded to Gomez's house on April 13, 2016. Gomez's mother-in-law had called the police, alleging that Gomez "stabbed his wife and children, set their house on fire, and jumped out of a second-story window." The police received another call a few minutes later about a man "talking to himself loudly" in front of a house near Gomez's.

Upon his arrival at the scene, Officer Bell found Gomez covered in blood. Bell walked Gomez over to his patrol car, as Gomez attempted to explain what had occurred. Gomez testified that, although he complied when Bell told him to put his hands behind his back, Bell "shoved [him] onto his police car." Gomez testified further that the shove caused "severe pain in his back and chest."

When Gomez clasped his chest and said, "I think you just broke my bones," Bell immediately tased him in the back. Bell also asked another officer on the scene, D.A. Roman, to tase Gomez. After Roman tased him, Gomez "fell to the ground, and the officers handcuffed him."

Gomez testified that, as Bell escorted him to the patrol car, Bell "grabbed Plaintiff's right hand with enough force that Plaintiff 'cried because of the pain' in his pinkie." Bell then drove Gomez to the Gwinnett County Correctional Facility.

In 2018, Gomez filed a Section 1983 lawsuit alleging that both Bell and Jackson, a Gwinnett County Sheriff, used excessive force against him, in violation of the U.S. Constitution. This summary discusses the excessive force claims against Bell.

Despite Gomez's claim that Bell "broke his chest, spine, and right pinkie during his arrest", the Magistrate Judge determined that Gomez's assertions lacked "any evidentiary support." The Magistrate found:

There is zero evidence that Defendant Bell broke Plaintiff's right pinkie. Plaintiff's post-arrest medical records do mention a laceration to his left thumb but they say nothing about an injury to (much less a fracture of) his right pinkie...It is also true that Plaintiff received medical care for injuries to his back. But medical records suggest he sustained these injuries when he fell (or jumped) from the second story of his home shortly before his arrest.

The Magistrate Judge granted summary judgment on all of Gomez's excessive force claims against Bell. The U.S. District Court for the Northern District of Georgia disagreed with the Magistrate Judge's finding. The District Court said that just because Bell didn't break Gomez's bones doesn't entitle him to summary judgment: "The Court must still consider whether Defendant Bell is entitled to summary judgment based on the qualified immunity doctrine. Defendant Bell says he is, but the Magistrate Judge never reached that argument."

A qualified immunity defense requires the official acting "under the color of state law" to show that he "engaged in a discretionary function when he performed the acts of which the plaintiff complains." The District Court concluded that Bell, a police officer, was engaged in such a discretionary function when he arrested Gomez.

The legal standard for qualified immunity provides that, once a government official shows that he was engaged in discretionary functions "when he performed the acts of which the plaintiff complains", the burden shifts to the plaintiff to prove that the defendant *is not entitled* to such immunity.

Defendant Bell, a police officer, was engaged in a discretionary

function when he arrested and allegedly mistreated Plaintiff. . . The burden thus shifts to Plaintiff to show that Defendant Bell used excessive force in violation of clearly established law. Defendant Bell “seized” Plaintiff when he arrested him . . . So, the only question is whether a jury could find that Defendant Bell used unreasonable force to effectuate that seizure — and, if so, whether “the law clearly barred [him] from applying the force he did.”

In considering the qualified immunity issue, the District Court considered the alleged excessive force used by Officer Bell for the following three actions: “Defendant Bell (1) shoved Plaintiff against a police car, (2) tased him, and (3) grabbed his hand while placing him in the car.”

The District Court concluded that Bell was entitled to qualified immunity as to the shove and the hand-grab allegations. The Court considered as an “aggravating feature” the fact that Gomez had just stabbed his family and was potentially violent. The Court also found that there was “no cognizable evidence that the officer’s conduct caused Plaintiff any serious injury.”

As to Officer Bell’s use of a taser on Gomez, however, the District Court determined that Officer Bell was not entitled to qualified immunity: A taser is a weapon and using it against a suspect is not the same as pushing, shoving, or grabbing him. The latter sort of bodily contact is the quintessential example of de minimis force because it is part of “a typical arrest.”

The District Court determined that, based on the facts, Officer Bell used excessive force. Among the facts the Court reviewed were: “Defendant Bell tased Plaintiff after (1) they walked back to the police car together without incident, (2) Plaintiff was no longer armed, (3) Plaintiff was cooperating and

put his hands behind his back at Defendant Bell’s request, and (4) Defendant Bell successfully placed Plaintiff against the car.”

On a motion for summary judgement, the law requires the Court to “. . . resolve all reasonable factual doubts and draw all justifiable inferences in Plaintiff’s favor.” The Court concluded that, assuming these facts, **“no reasonable officer could ever believe that it was appropriate to shoot his taser probes into [Plaintiff] and shock him. This line is not hazy, and [Defendant Bell’s] actions were clearly wrong” . . . Qualified immunity is thus inappropriate.”**

For the foregoing reasons, the Court concluded that Officer Bell was entitled to qualified immunity and summary judgment on the shoving and hand-grab claims. **On Gomez’s excessive force claim based on Bell’s taser use, however, the Court held that Gomez’s claim could proceed and denied Bell’s motion for summary judgment.** Gomez v. Jackson and Bell, 1:18-cv-00963, 2020 WL 4048061 (N.D. Ga., July 20, 2020).

SUPPRESSION OF EVIDENCE FROM PAT-DOWN AND INVENTORY SEARCHES

Defendants, Mitchell, Clark, and other members of the Nine Trey Gangster Bloods were under investigation by federal authorities, which had reason to believe that these defendants were involved in ongoing, broad criminal activity. A Magistrate Judge issued Reports and Recommendations regarding several motions filed by the defendants, including motions to suppress wiretap evidence.

In conjunction with this investigation, the Magistrate Judge heard defendant Tyrone Clark’s motion to suppress evidence obtained during a traffic stop. A state trooper searched Clark’s wallet, performed a pat-down search of Clark, and an inventory search of Clark’s car during the stop. The Magistrate Judge found that the money discovered during the search of Clark’s wallet should be suppressed, but that the wad of cash found

during the pat-down search and the firearm found during an inventory search of Clark’s vehicle should not be suppressed.

Clark appealed the Magistrate Judge’s decision not to suppress the wad of cash and the gun to the federal District Court for the Northern District of Georgia. Clark argued that the trooper could not have believed that the wad of cash in his pocket was a weapon and, therefore, the trooper should not have removed it from Clark’s pocket.

The District Court agreed with the Magistrate Judge that the trooper had reason to think that Clark jeopardized his safety. The District Court also considered the Magistrate Judge’s having found credible “the trooper’s testimony that the wad of cash was so large that the trooper could not tell if Clark had anything else in his pocket.”

With respect to the gun found during the inventory search, Clark argued on appeal “that the trooper should have called Clark’s girlfriend, who was the registered owner of the car, and had her take possession of the car instead of having the car impounded, thereby obviating the need for an inventory search.” In determining that the inventory search of Clark’s car was reasonable, the District Court considered: (1) the fact that the traffic stop was conducted at night; and (2) that there was no guarantee that Clark’s girlfriend would have timely responded—if at all—to pick up the car.

For these reasons, the District Court affirmed that Magistrate Judge’s decision not to suppress the wad of cash and the weapon found during the pat-down and vehicle inventory searches, respectively. U.S. v. Mitchell et al., 1:16-CR-427-AT, 2020 WL 3888121 (N.D. Ga., July 10, 2020).

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ALS REMINDER

If an additional witness is needed for an ALS Hearing, the witness must be subpoenaed. The Court only provides notice to the arresting officer. If you need assistance in subpoenaing an additional witness, contact Dee (dbrophy@gsp.net) or Grace (gmatthews@gsp.net).