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Supreme Court of Georgia

APPLICATION OF RULES OF THE ROAD IN PARKING LOTS

On January 10, 2013, a Department of Natural Resources ("DNR") game warden was refueling his DNR vehicle at a gas station in the City of LaFayette. The game warden, who was in uniform and on duty, heard Thornton's car stereo playing music extremely loud in the gas station parking lot. The game warden identified himself as a law enforcement officer and asked Thornton to lower the volume of his car stereo. Thornton refused to comply with the game warden's request, at which point the warden explained that the blaring music was in violation of Georgia law.

Thornton became increasingly agitated and ignored the game warden's directive that Thornton remain outside of his car. The game warden went to his DNR vehicle to get his police radio and, upon returning to Thornton's location, observed Thornton inside his car, from which music was playing at an even louder volume than before. The game warden instructed Thornton to exit his car, explaining that Thornton was being arrested for obstructing the warden's order.

Instead of complying with the game warden's command, Thornton remained in his car. As the game warden reached into the car to seize Thornton's identification card, Thornton began to drive away, briefly causing the game warden to be dragged along. Thompson was arrested and charged with one misdemeanor count of obstruction for refusing to comply with the game warden's order and one felony obstruction count for "offering violence to the game warden."

Thornton appealed his conviction on both counts. The Court of Appeals affirmed his convictions, finding that the game warden was lawfully discharging his official duties when he arrested Thornton. Thornton then petitioned the Supreme Court for a writ of certiorari.

The Georgia Supreme court issued a writ of certiorari to review the Court of Appeals' decision. The Supreme Court directed Thornton and the State to address: (1) whether Georgia law grants DNR game wardens statewide arrest powers to enforce violations of the Uniform Rules of the Road; and (2) whether "the provisions of OCGA § 40-6-1 et seq. (the "Uniform Rules of the Road") apply generally *to privately owned shopping centers, parking lots, or other similar areas that are not customarily used by the public as through streets or connector streets*, see OCGA § 40-6-3 (a) (2)" (Emphasis added.)

OCGA § 40-6-14 (Sound volume limitations from within the motor vehicle) provides, in part:

> It is unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical sound-making device or instrument from within the motor vehicle so that the sound is plainly audible at a distance of 100 feet or more from the motor vehicle.

See OCGA § 40-6-14(a).

OCGA § 40-6-3 (Operation of vehicles on highways; exceptions) states, in part:

> The provisions of this chapter relating to the operation of vehicles refer to the operation of vehicles upon highways except: The provisions of this chapter shall apply to a vehicle operated at shopping centers or parking lots or similar areas which although privately owned are customarily used by the public as through streets or connector streets;

(See OCGA § 40-6-3(a)(2)).

The Supreme Court found that DNR game wardens are authorized "to enforce the Rules of the Road at any location in Georgia where OCGA § 40-13-30 [Authority to make arrests] applies." The statute reads as follows:

> Officers of the Georgia State Patrol and any other officer of this state or of any county or municipality thereof having authority to arrest for a criminal offense of the grade of misdemeanor shall have authority to prefer charges and bring offenders to trial under this article, provided that officers of an incorporated municipality shall have no power to make arrests beyond the corporate limits of such municipality unless such jurisdiction is given by local or other law.

The Supreme Court determined that "a DNR game warden is among the officers identified in the first part of OCGA § 40-13-30" and that "the territorial limitation expressed in the third part of OCGA § 40-13-30—which by its own terms is limited to municipal officers—does not apply to a DNR game warden." DNR game wardens, the Court held, "undoubtedly are 'officers of this state' for purposes of OCGA § 40-13-30."

With respect to whether the Uniform Rules of the Road apply generally to privately owned shopping centers, parking lots, or other similar areas ***that are not customarily used by the public as through streets or connector streets,*** the Court reasoned

> Even though the game warden in this case was authorized to enforce the Rules of the Road pursuant to Article 2 of Chapter 13 of Title 40, **if the Rules of the Road did not apply in the parking lot in which the game warden encountered Thornton, his attempts to enforce OCGA § 40-6-14 against Thornton would not have been in the lawful discharge of his official duties for purposes of an obstruction conviction.**

The State contended that the Rules of the Road apply in *all* "shopping centers [and] parking lots"—including, for instance, the City of LaFayette parking lot in which the DNR game warden and Thornton crossed paths. Further, the State argued, the Rules of the Road *also* apply in privately-owned "similar areas which ... are customarily used by the public as through streets or connector streets."

In contrast, Thornton contended "that OCGA § 40-6-3 (a) (2) applies the Rules of the Road to the locations identified in the statute—'shopping centers or parking lots or similar areas'—only to the extent that those locations are customarily used by the public as through or connector streets." The Supreme Court agreed with Thornton's interpretation of the statute:

> [T]he general provision of OCGA § 40-6-3 (a) with respect to highways effectively extends the Rules of the

> Road to "every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel," and **construed most reasonably, OCGA § 40-6-3 (a) (2) is understood to extend the same Rules of the Road to privately owned property**—whether a "shopping center," a "parking lot," or another "similar area"—**that likewise is customarily used by the public as a "through street" or a "connector street," that is, used as if it were a public way.** (Emphasis added.)

The Supreme Court concluded that

> **40-6-3(a)(2) is most reasonably understood to extend the Rules of the Road only to those privately owned shopping centers, parking lots, and similar areas that are customarily used by the public as through or connector streets. To the extent the Court of Appeals has previously held the Rules of the Road applicable in a parking lot without regard to its customary use as a through or connector street, those cases are disapproved.**

Despite agreeing with Thornton "that the Rules of the Road apply to the operation of vehicles in a privately owned parking lot only to the extent that the parking lot is customarily used by the public as a through street or connector street," the Court held that the evidence in this case was "sufficient to prove beyond a reasonable doubt that the game warden was in the lawful discharge of his official duties when he attempted to enforce the statutory limitation of sound emitted from a motor vehicle against Thornton in the gas station parking lot."

At trial, the State's evidence "established that the gas station was situated at the intersection of two public roads." Further, when asked whether the parking lot was "[c]ommonly used as a cut through or a way to get from one road to the other?", the game warden responded affirmatively: "Yes, sir, I have seen people do that before." Therefore, the Supreme Court reasoned, the evidence "was sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Thornton was guilty of obstruction."

For these reasons, the Supreme Court affirmed the Court of Appeals' judgement. Thornton v. State, No. S20G0613, 2020 WL 6701355 (Ga. Nov. 16, 2020).

Georgia Court of Appeals

VEHICLE INVENTORY SEARCH WAS LAWFULLY CONDUCTED

DeKalb County Police Officer Sheppard was patrolling on Interstate 285 ("I-285") on May 31, 2019. When he ran Robert Loechinger's tag through national and Georgia crime information databases, Loechinger's vehicle came back registered to a motorist with a suspended license. Officer Sheppard observed that the person in the database photo seemed to match the person driving on I-285. Officer Sheppard initiated a traffic stop and requested Loechinger's driver's license. In response, Loechinger furnished "the Georgia Identification card issued to him after his driver's license had been suspended."

Officer Sheppard arrested Loechinger and placed him in the police cruiser. When Officer Sheppard asked whether someone could come get his car, Loechinger called his wife. Loechinger told the officer that his wife would come get his car; based on the location Loechinger provided, Officer Sheppard calculated that it might take at least an hour for her to arrive. Officer Sheppard then told Loechinger that he was going to have the car towed, as he could not leave it on the side of the interstate.

While conducting an inventory search of Loechinger's car, Officer Sheppard located "a large plastic bag filled with a substance that tested positive for methamphetamine." No other valuables were found in the car.

After Loechinger was indicted on one count of methamphetamine trafficking and one count of driving with a suspended license, he filed a motion to suppress the evidence found in the console. The trial court granted Loechinger's motion, based on its finding that: (1) Officer Sheppard testified that "his intent was to inventory the vehicle," but he only inventoried the contraband; and (2) it did "not credit Officer Sheppard's testimony that an impoundment was reasonably necessary [because it] was not inoperable or in any way obstructing, or making the roadway less safe for someone to pick it up."

The trial court denied the State's motion to reconsider, and the State appealed from the court's denial of this motion.

In its review, the Court of Appeals considered "whether the impoundment of the car in this case was reasonably necessary." The Court of Appeals found that its review of Officer Sheppard's bodycam video (which the trial court reviewed during the suppression hearing) contradicted the trial court's finding that Loechinger's car "was not inoperable or in any way obstructing, or making the roadway less safe for someone to pick it up." In its review of the bodycam video, the Court of Appeals observed that "Loechinger's car was parked on a narrow shoulder of Interstate 285, very close to Exit 39A, during what appears to be dense rush-hour traffic." Additionally, a review of the transcript from the suppression hearing revealed that the trial court admitted that "it seems to be dangerous, of course, looking at the video[.]". Even so, the trial court determined that there was "no testimony that [the] car was obstructing or causing any issues."

The Court of Appeals looked to its 1990 decision in *Pierce v. State*: "It is well established that a police seizure and inventory is not dependent for its validity upon the absolute necessity for the police to take charge of property to preserve it. They are permitted to take charge of property under broader circumstances than that." The Court of Appeals also cited *Pierce's* finding that "[t]he argument that an automobile must be an impediment to traffic before it can be lawfully impounded has been rejected."

The Court of Appeals found, based on its review of the bodycam footage, "that Officer Sheppard's decision to impound the vehicle was reasonably necessary under the circumstances." The Court also noted Sheppard's testimony "that if Loechinger had identified someone who could retrieve the car more quickly, he would have waited with the car until it was retrieved."

The Court then examined whether Officer Sheppard's inventory search was performed in accordance with DeKalb County Police Department policy. At the suppression hearing, Officer Sheppard testified that the policy required valuables such as money, jewelry, and electronics to be inventoried, so that a vehicle owner might not later complain that some valuable item discovered during the vehicle inventory had gone missing. Officer Sheppard testified further "that he did not observe any such valuable items in the car during his inventory search."

The Court of Appeals concluded that the inventory search of Loechinger's car was lawfully conducted in good faith pursuant to department procedure "for a valid inventory purpose." Therefore, the Court found that the trial court erred when it granted Loechinger's motion to suppress. For this reason, the Court of Appeals reversed the trial court's grant of Loechinger's motion to suppress. *State v. Loechinger,* No. A20A1638, 2020 WL 6882911 (Ga. Ct. App. Nov. 24, 2020).

OFFICERS LACKED PROBABLE CAUSE FOR DISORDERLY CONDUCT ARREST

On June 2, 2019, two police officers outside an Athens bar saw bar employees "pulling Trammell down stairs and escorting him out of the bar. Trammell was pulling away from the staff and yelling profanities." When the officers approached and "…put their hands on him, [Trammell] told them not to touch him and to 'walk away down the street.'" The officers arrested Trammell for disorderly conduct. During a pat down of Trammell incident to the arrest, the officers found a false identification.

Trammell moved to suppress the identification confiscated by the officers during the search incident to his arrest. The trial court denied Trammell's motion. The Court of Appeals determined that "the trial court erred in finding that the officers had probable cause to arrest Trammell for disorderly conduct."

The State contended that the officers had probable cause to arrest Trammell based on the "fighting words" provision of Georgia's disorderly conduct statute. The statute reads:

> [a] person commits the offense of disorderly conduct when such person ... [w]ithout provocation, uses to or of another person in such other person's presence, opprobrious or abusive words which by their very utterance tend to incite to an immediate breach of the peace, that is to say, words which as a matter of common knowledge and under ordinary circumstances will, when used to or of another person in such other person's presence, naturally tend to provoke violent resentment, that is, words commonly called "fighting words[.]"
>
> (OCGA § 16-11-39(a)(3)).

The Court of Appeals considered "whether Trammell directed fighting words toward the officers that gave them probable cause to arrest him for disorderly conduct." At the suppression hearing one of the officers testified that

> he did not arrest Trammell because he had been escorted out of the bar, but because of his actions when the officers made contact with him. The officer testified that Trammell did not make any threats to him, but that he decided to arrest Trammell for disorderly conduct when he pulled away from the other officer and said something to the effect of "[expletive omitted] you; don't touch me." The officer acknowledged that the arrest of Trammell for disorderly conduct occurred within ten seconds of the officers first making contact with him.

The Court of Appeals held that, although Trammell's comments to the officer were "rude and disrespectful", his actions did not "rise to the level of criminal conduct that would constitute 'fighting words' under OCGA § 16-11-39 (a) (3)." The Court cited its 2004 holding in *Delaney v. State* for the proposition that "[t]o ensure no abridgment of constitutional rights, the application of OCGA § 16-11-39 (a) (3)'s proscription on fighting words must necessarily be narrow and limited." In its 2017 holding in *Knowles v. State*, the Georgia Court of Appeals reasoned that

> the fighting-words exception to constitutionally protected speech requires a narrower application in cases involving words addressed to a police officer. This is because a properly trained officer may reasonably be expected to exercise a

> higher degree of restraint than the average citizen, and thus be less likely to respond belligerently to fighting words. Additionally, as the [United States] Supreme Court has further explained, the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers. Indeed, the freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.

Given its conclusion that the officers lacked probable cause to arrest Trammell for disorderly conduct on the basis of fighting words, the Court held that "the search incident to that unlawful warrantless arrest was not valid." For this reason, the Court of Appeals reversed the trial court's denial of Trammell's motion to suppress. *Trammell v. State*, No. A20A1942, 2020 WL 6867205 (Ga. Ct. App. Nov. 20, 2020).

ALS REMINDER

The OSAH website (www.osah.ga.gov) maintains a calendar of upcoming court dates and cases that are scheduled for an ALS Hearing. Select the "Court Calendar" link on the home page to search by "Docket #" to confirm the hearing date.

You can also confirm a hearing date using the "Advanced Search Options" section of the Court Calendar page. Under "Hearing Date," select **the same date** in both the "From" and "To" boxes. Then choose the Judge's name from the "Judge" drop-down list and click "Search." This will generate a list of the Judge's cases on the selected date.

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Colonel Christopher C. Wright.

Legal Services
Joan Crumpler, Director
Clare McGuire, Deputy Director
Dee Brophy, ALS Attorney

Send questions/comments to cmcguire@gsp.net