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Georgia Court of Appeals

TRAFFIC STOP WAS UNREASONABLY PROLONGED

A police officer made a traffic stop on an SUV driven by William Weaver. Weaver's SUV was towing a trailer full of salvage partial truck bodies. Weaver ended up being arrested on drug-related charges when the officer found "suspected methamphetamine and a glass pipe" during a search of Weaver's car.

The dashcam video recording of the traffic stop was played at the trial court's hearing on Weaver's motion to suppress. The video showed that, upon initiating the stop, the officer told Weaver "that he had a non-functioning trailer light." As Weaver and his passenger gathered their identification for the officer, the officer told Weaver that he would not issue a citation. Rather, the officer said that he wanted Weaver to be aware that the light was out so that he could get it fixed.

The officer called in Weaver and his passenger's information to dispatch at about two and a half minutes after the stop. In the meantime, Weaver got out of the SUV to test the trailer lights. The officer told Weaver, "[I]t's not a big deal" and began asking Weaver about the salvage auto parts he was hauling. Weaver was unable to provide the name of the person from whom he had purchased the salvage materials, but he told the officer that he was transporting the truck parts for a friend who was restoring a vehicle.

At about five minutes and forty seconds into the traffic stop, dispatch confirmed that everything checked out with Weaver's license and registration. Dispatch also conveyed that Weaver's passenger was on probation. Instead of wrapping up the traffic stop at this point, the officer questioned the passenger about the items being hauled. Notably, the officer did not tell Weaver that he was free to leave at this point. Rather, he questioned Weaver again about where he got the salvage materials. By this point, it had been seven minutes since the officer pulled over Weaver—and approximately one minute and twenty seconds since dispatch had confirmed Weaver's information.

After questioning Weaver again about the salvage load, "the officer inquired about a knife Weaver had on his belt, asking whether he had any other weapons, and then requested to pat-down Weaver, who denied having other weapons and consented to the pat-down." The officer told Weaver that scrap metal theft was a problem in his jurisdiction. Almost three and a half minutes after the communication from dispatch, the officer asked Weaver if he was engaged in any criminal activity. Weaver denied any such involvement.

> The officer then asked if Weaver had any drugs on his person or in the truck, questioning Weaver as to his possession of a number of individual illegal substances, all of which Weaver denied possessing. The officer stated that Weaver was "moving around a lot," which made him think that there were drugs involved, at which point the officer requested consent to search the vehicle, which Weaver gave.

After asking Weaver's passenger to exit the vehicle, the officer performed a pat-down search on the passenger. **The officer's subsequent search of Weaver's SUV uncovered a substance believed to be methamphetamine and a glass pipe, resulting in Weaver's arrest. Weaver filed a motion to suppress the evidence found during the vehicle search, which the trial court denied.**

Weaver then filed a petition for interlocutory review* with the Georgia Court of Appeals. Weaver contended "that the trial court erred by denying his motion to suppress after finding that the officer did not improperly prolong the stop thereby rendering his consent to search invalid." The Court of Appeals granted Weaver's application for interlocutory review.**

***An interlocutory application is an appeal from a trial court order that does not end or dispose of the case, i.e., the case remains pending in the trial court while the trial court's ruling on the issue is being appealed. The Court of Appeals will only grant an interlocutory appeal when:

> (1) The issue to be decided appears to be dispositive of (will determine the result of) the case;
> (2) The order appears erroneous (wrong) and will probably cause a substantial error at trial or will adversely affect the rights of the appealing party until entry of final judgment; or
> (3) The establishment of precedent (a rule to be used in future cases) is desirable.

(See Page 19 of "A Citizen's Guide to Filing Appeals in the Court of Appeals of Georgia; December 2019)

In its review of Weaver's application, the Court of Appeals considered whether the State met its burden of proving that the officer's search of Weaver's SUV was legal. To meet this burden, "the State must show that it was lawful to detain [Weaver after dispatch returned information about his license and registration until the time Weaver gave his consent to search]." In analyzing this issue, the Court of Appeals looked to its prior decisions

> as here where the officer allegedly extended the stop beyond the conclusion of the investigation that warranted the detention in the first place, i.e., whether the officer prolonged the stop after concluding his investigation of the traffic violation. **In such cases, courts have generally concluded that even a short prolongation is unreasonable unless good cause has appeared in the meantime to justify a continuation of the detention to pursue a different investigation.**

The precedent reviewed by the Court held that an officer must have "a reasonable, articulable suspicion that the driver was engaged in other illegal activity" in order to justify the continued detention of a driver upon completing his investigation of the traffic violation (in this case, the non-functioning trailer light). The Court found that the officer lacked the requisite articulable suspicion to continue detaining Weaver, as evidenced by the officer's continued inquiries "about multiple subjects unrelated to the purpose of the stop even after receiving an answer from dispatch regarding the legality of Weaver's license and registration."

The Court was similarly unconvinced by the officer's testimony that Weaver seemed nervous during the stop. "[A]s this Court has explained, mere nervousness is not sufficient to support a reasonable articulable suspicion to extend a stop after completion of the original mission. The officer did not provide, nor did the trial court find, any other facts to support a reasonable articulable suspicion."

The Court of Appeals determined that the officer lacked any basis to prolong the stop beyond the time needed to investigate the non-working trailer light. Therefore, the Court held, the officer's search of Weaver's SUV "resulted from an illegal detention." For the foregoing reasons, the Court of Appeals remanded the case to the trial court and directed the trial court to grant Weaver's motion to suppress. *Weaver v. State*, No. A20A1046, 2020 WL 6375422 (Ga. Ct. App. Oct. 30, 2020).

U.S. District Court – Middle District of Georgia

SHERIFF'S DEPUTY NOT ENTITLED TO QUALIFIED IMMUNITY

In May 2020, Farrell Demita Johnson was driving his truck westbound on Highway 72 in Madison County, Georgia. Mr. Johnson was driving his 1996 Ford pickup truck on this sunny May day, and his truck's lights were off. Madison County deputy sheriff Gibson was driving her police cruiser eastbound on Highway 72. Deputy Gibson made a U-turn and proceeded to pull over Mr. Johnson. Gibson gave a "blown taillight" as the reason for the traffic stop.

Mr. Johnson provided his driver's license to Deputy Gibson and told her that she could not have observed a blown taillight, since his truck's lights were not on. Gibson then walked over to her patrol car with Mr. Johnson's license. She subsequently gave Johnson his license back. Although she did not write Johnson a citation, she told him to replace the taillight.

Johnson checked his truck's taillights when he arrived at his destination and confirmed that neither light was out. He then contacted the Madison County Sheriff's Office to recount the details of Gibson's traffic stop on Highway 72. Johnson told the field sergeant he spoke to that the lights on his 1996 truck do not illuminate automatically, and that the lights were off when Gibson stopped him. Therefore, Johnson asserted, there was no way that Gibson could have observed a non-working taillight when she stopped him. The field sergeant told Johnson that he would review the footage from Deputy Gibson's body cam and that he would "contact Johnson if he found a violation." After the field sergeant failed to get back in touch with him, Johnson filed a citizen grievance against Gibson.

Major Jeffrey Vaughn was assigned the grievance. When contacted by Johnson, "Vaughn said that he watched the video and that Gibson was professional and not rude. Johnson explained that his grievance was not that Gibson was rude but that the 'traffic stop was illegal.'" Among others, Johnson brought 42 U.S.C. § 1983 claims against Deputy Gibson, the field sergeant he spoke to, Major Vaughn, and Lieutenant Jason Luke, training supervisor of the Madison County Sheriff's Office.

All defendants filed motions to dismiss Johnson's claims against them. The Federal Rules of Civil Procedure require that, "[t]o survive a motion to dismiss…a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Put another way, the complaint's factual allegations must "raise a reasonable expectation that discovery will reveal evidence of" the plaintiff's claims. The following summary discusses the District Court's consideration of Johnson's claims against Deputy Gibson, the field sergeant, Major Vaughn, and Lieutenant Luke.

Mr. Johnson sued Deputy Gibson in her individual capacity, arguing that the May 2020 traffic stop violated the Fourth Amendment to the U.S. Constitution. Gibson contended "that she is entitled to qualified immunity, which protects governmental officials acting in their discretionary authority from liability under § 1983 unless the plaintiff establishes that the officials violated his clearly established rights." The District Court concluded that "there is no dispute that Gibson was acting in her discretionary authority when she stopped Johnson." Therefore, the Court turned its attention to whether

Johnson proved that "his clearly established Fourth Amendment rights" were violated by the stop.

The Court reasoned that "[i]t has long been clearly established that an officer may not make an investigatory traffic stop unless she has a 'reasonable, articulable suspicion' to justify the stop." In support of her qualified immunity defense, Gibson argued "*that the Court should only consider the reason she gave for the stop: one blown taillight*." (Emphasis added.) Based on United States Supreme Court precedent, however, the Court was

> required to take Johnson's allegations as true and draw all reasonable inferences in his favor. [citation omitted.] In his Complaint, Johnson alleges that his taillights were fully operational when Gibson stopped him. He also alleges that because his truck's lights were off and not illuminated, it would have been impossible for Gibson to conclude that one of the taillights was blown. Under this version of the facts, Gibson had no justifiable reason for making the stop. **Every reasonable officer would have known that stopping a motorist under these circumstances clearly violates the Fourth Amendment. Accordingly, Gibson is not entitled to qualified immunity at this time.**

Turning its attention to Mr. Johnson's §1983 claims against the unidentified field sergeant, Major Vaughn, and Lieutenant Luke, the District Court looked to the Eleventh Circuit Court of Appeals' 2014 decision in *Keith v. DeKalb County*. **The *Keith* case concluded that "to hold a supervisor liable a plaintiff must show that the supervisor either directly participated in the unconstitutional conduct or that a causal connection exists between the supervisor's actions and the alleged constitutional violation."**

In Johnson's lawsuit, he did not allege that any of the Madison County Sheriff's Office supervisors "directly participated in Gibson's traffic stop." Rather, Johnson argued that his complaint was not investigated by Major Vaughn and the field sergeant. With respect to Lieutenant Luke, the training supervisor, Johnson seemed to suggest a failure to train Deputy Gibson, "and he summarily contends that the Madison County Sheriff had a 'custom of making traffic stops by any means necessary.'"

The Eleventh Circuit's decision in the *Keith* case found that a supervisor may be held liable for a subordinate's unconstitutional acts "[i]f a supervisor's policy or custom results in 'deliberate indifference to constitutional rights or when facts support an inference that the supervisor directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so.'" In Johnson's case, the U.S. District Court noted that Johnson

> does not allege that any of the supervisors directed Gibson to stop him without probable cause. He also does not allege any facts to suggest that any of the supervisors knew that Gibson would act unlawfully but failed to stop her from doing so. And, he does not allege any facts to suggest that the Madison County Sheriff had a custom or policy of making traffic stops without probable cause or reasonable suspicion. **Thus, Johnson did not allege facts to establish supervisor liability based on an unlawful policy or custom.**

However, the District Court also took note of United States Supreme Court precedent regarding

"limited circumstances" in which a supervisor's failure to train might result in liability under § 1983:

> [A] plaintiff alleging a constitutional violation premised on a failure to train must demonstrate that the supervisor had 'actual or constructive notice that a particular omission in their training program causes [his or her] employees to violate citizens' constitutional rights,' and that armed with that knowledge the supervisor chose to retain that training program.

With respect to Mr. Johnson's §1983 action against the sheriff's department supervisors, however, the District Court concluded that Johnson "[did] not allege that there was a pattern of similar constitutional violations by untrained employees." Therefore, the Court dismissed Johnson's claims against the Madison County Sheriff's Office supervisors. *Johnson v. Gibson et al.*, No. 3:20-CV-64 (CDL), 2020 WL 7390329 (M.D. Ga., December 16, 2020).

ALS REMINDER

1205-S Form – When a DUI defendant submits to a state administered blood test pursuant to a request under the implied consent law, complete the 1205-S form when the results are received from the crime lab if the results meet the per se statutory requirements for alcohol (0.08 grams or more if 21 years of age or over; 0.02 grams or more for a person under 21 years of age; 0.04 grams or more if operating a commercial motor vehicle). Send the completed 1205-S form to the Department of Driver Services (DDS) and DDS will notify the DUI driver regarding the license suspension form.

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