



# DPS Legal Review

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## Georgia Court of Appeals

### OFFICER HAD REASONABLE SUSPICION TO DETAIN ROBBERY SUSPECT

On November 3, 2017, an armed robbery occurred at a GameStop store in Norcross. Video surveillance showed the robber brandishing a weapon, pointing it at a customer, and ordering a GameStop employee to empty two cash registers. A tracker in a wad of cash the robber absconded with was activated when he fled the scene.

Local police received information about the robbery suspect in real time, since the tracker in the stolen bundle of cash transmitted GPS information. The police broadcast a “be on the lookout” alert for the robber, which included a description of his age, race, and clothing. The robber was described as “a young man dressed in gray sweatpants, a gray jacket, and a black face covering.” Police officers responded to the intersection of Medlock Bridge Road and Peachtree Industrial Boulevard, based on a slowing of the movement of the tracker device at this location.

One of the policemen radioed “that he observed an individual who fit the suspect’s description walking behind the restaurant toward the hotel.” Officer Marcus Sales with the Norcross Police Department, who heard this broadcast, drove to the back side of the hotel. Upon arriving at the rear of the hotel, Officer Sales saw only one vehicle in motion—a Toyota backing out of a parking spot. Sales stopped the Toyota, which was driven by Romaine. Romaine’s clothing and general description matched that of the robbery suspect.

Romaine consented to Officer Sales’ request to search the Toyota. The search uncovered “a gray sweatshirt, a black mask, a black semiautomatic pistol, cash, a bill that had something – possibly a tracker – cutout of it, and a GameStop bag.” Romaine was arrested and made incriminating statements during a subsequent police interview. Before trial, Romaine filed a motion to suppress the evidence found during the vehicle search. The trial court denied the motion.

Romaine was convicted of armed robbery, two counts of aggravated assault, and possession of a firearm during the commission of a felony. Following his conviction, Romaine appealed the denial of his motion to suppress, arguing that Officer Sales lacked reasonable suspicion to stop Romaine’s car. In support of this contention, Romaine relied on the Georgia Court of Appeals’ 2007 decision in *State v. Dias*. In *Dias*, the Court of Appeals “affirm[ed] [the] trial court’s grant of defendant’s motion to suppress when police had only [a] general description of [the] automobile and [the] suspect and there was no indication of the size of the area in which [the] offender could be found.”

The Court was unpersuaded by Romaine’s argument, distinguishing the facts of his case from those in *Dias*.

[T]he GPS tracker taken during the robbery led police to a particular corner where three businesses were located. Police had a general description of the robber, as well as a description of his clothing, and an officer saw a person matching that

description walking from the restaurant toward the hotel and broadcast this information over the radio. Based on this broadcast, Officer Sales drove around to the hotel parking lot where he saw one vehicle attempting [to] leave. Thus, the collective knowledge of the officers established that the suspect was in the vicinity, a person matching the suspect's description was headed toward the hotel, and a single vehicle was attempting to leave the hotel parking lot [citation omitted]. This totality of circumstances gave police specific and articulable facts to believe that the driver of the vehicle may have been the suspect, thus providing reasonable suspicion for the traffic stop.

For these reasons, the Court of Appeals affirmed the trial court's denial of Romaine's motion to suppress. *Romaine v. State*, No. A20A2002, 2021 WL 222257 (Ga. Ct. App. Jan. 21, 2021).

### ***U.S. District Court – Northern District of Georgia***

#### **OFFICER HAD REASONABLE SUSPICION TO DETAIN DRIVER OF STOLEN TRUCK**

Defendant Gates objected to both findings of fact and legal conclusions included in a federal Magistrate Judge's report and recommendation ("R&R"). Federal law provides that, after reviewing an R&R, a district court judge "may accept, reject, or modify' the magistrate judge's findings and recommendations." Additionally, the district court judge "may also receive further evidence or recommit the matter to the magistrate judge with instructions." The following summary focuses on

the Magistrate Judge's legal conclusions with respect to Gates' detention and subsequent arrest.

At the suppression hearing held before the Magistrate Judge, Officer Repetto testified that Gates' "suspicious demeanor" led him to run a Georgia Crime Information Center ("GCIC") check of Gates' license plate. The GCIC check indicated that the truck driven by Gates was stolen. Officer Repetto followed the truck to a gas station. Upon Repetto's arrival the truck was unoccupied, prompting him to enter the gas station store "to identify where the driver was."

Gates argued that Officer Repetto did not have reasonable suspicion of criminal activity to stop him. Rather, Gates contended, Repetto was acting on "a hunch or bare suspicion." In support of this assertion, Gates argued that:

- (1) when Officer Repetto returned to the store, Gates was not in or near the truck;
- (2) Gates repeatedly denied involvement with the truck;
- (3) there were no traffic violations or impairments on the truck that might have otherwise justified a stop of the vehicle;
- (4) Officer Repetto never saw Gates park the truck and enter the store; and
- (5) no evidence was presented that Gates's DNA was found in or on the truck.

Consistent with the Magistrate Judge's R&R, the district court judge denied Gates' motion to suppress evidence of a firearm found during a search of Gates' truck. The district court concluded that, although Officer Repetto did not observe any traffic or equipment violations, he possessed the requisite "reasonable suspicion of criminal activity to stop Gates." Based on the totality of the circumstances, the district court determined, "Gates's behavior created enough suspicion of criminal wrongdoing to justify a brief, investigatory

stop.” Among the factors the court considered in reaching this conclusion were:

Officer Repetto learned that the truck had been reported stolen, which prompted him to return to the store and investigate further. Gates’s refusal to produce identification, his statement to Officer Repetto that he “wasn’t putting that truck on him,” his evasive conduct and subsequent flight, and the other evidence connecting Gates to the truck[.]

The district court also rejected Gates’ argument that the Magistrate Judge’s finding regarding probable cause to arrest was in error. Gates asserted that, lacking probable cause to arrest him, the evidence seized by Repetto in a search incident to Gates’ arrest must be suppressed. Rather, the district court held, Officer Repetto “developed probable cause to arrest Gates for obstruction of a law enforcement officer” when Gates physically resisted.

Regarding the charge against Gates for theft by receiving stolen property (i.e., the truck Gates was driving), the district court found that Officer Repetto had probable cause to arrest on this count. In support of this finding, the district court pointed to Officer Repetto’s having seen Gates driving the truck; his identifying Gates at the gas station; Gates’ statements; Gates’ fleeing from the officer; and his resisting arrest. The court held: “Because Officer Repetto had probable cause to arrest Gates, the search of Gates’s person leading to the discovery of the firearm was a lawful search of his person incident to arrest.”

Based on the district court’s conclusions, it adopted as its order the Magistrate Judge’s R&R and denied Gates’ motion to suppress. *United States v. Gates*, No. 3:19-cr-12-TCB, 2021 WL 100245 (N.D. Ga. Jan. 12, 2021).

#### ALS REMINDER

If you are unavailable for an ALS Hearing, a **written** continuance motion must be filed. The ALS Court does **not** accept continuance requests by telephone or in the body of an email. The continuance request must be in writing and emailed to the Court as an email attachment or faxed to the Court. If you need assistance with a continuance motion, please email **both** Dee (dbrophy@gsp.net) and Grace (gmatthews@gsp.net). Provide the court date, location, and case name in your email. Continuance motions must be filed with the Court at least ten days prior to the ALS Hearing date, so please notify us **before** the ten-day deadline to allow sufficient time for the motion to be filed.

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