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Georgia Court of Appeals

WARRANTLESS VEHICLE SEARCH SUPPORTED BY PROBABLE CAUSE

In July 2019 Officer Jackson Fields with the Athens-Clark County Police Department ran a license plate check on a minivan that Howard Gowen was driving on the premises of an apartment complex. The check indicated that there was a U.S. Marshal's warrant for Gowen's arrest. After seeking more information to confirm the warrant's validity, the officer saw the minivan parked in a public parking lot. Officer Fields saw Gowen walking away from the vehicle, towards a walking trail. Fields and his partner asked to speak with Gowen and detained him while they obtained more details regarding the arrest warrant.

While the officers were awaiting additional information, Gowen asked if he could make a phone call to his sister, an attorney. The officers agreed, at which point Gowen handed Officer Fields the keys to the minivan so that he could remove Gowen's cell phone from the van. Fields smelled "the odor of burnt marijuana" when he opened the minivan.

The officers confirmed that Gowen's arrest warrant was for amphetamines and stemmed from a drug task force investigation. The officers arrested Gowen based on the warrant and then conducted a vehicle search of the minivan. The officers believed "that the odor of marijuana and the fact that the federal warrant was for amphetamines provided probable cause for the search." The search yielded "a small white, yellowish rock that appeared to Fields to be crack cocaine, some 'loose marijuana shakes inside a black box, and some 'smoking devices.'"

Gowen, who was indicted on one count of possession of cocaine, filed a motion to suppress the contraband discovered during the officers' search of the minivan. **Gowen argued that the officers didn't have probable cause to search and cited the Georgia Hemp Farming Act ("Hemp Act") in support of his position.**

The Hemp Act, which took effect on May 10, 2019, "legalized the licensed cultivation of hemp with a specifically defined level of THC, the manufacture of products from that hemp, and the possession of those products." **Gowen argued that**

> **because legal hemp and illegal marijuana have a similar smell, the odor of marijuana cannot provide probable cause for the search of a vehicle because police have no way of knowing if the odor is from marijuana (an illegal substance) or hemp (a legal substance.) He further contended that the leaves police located in his van might have been hemp and might have been the source of the smell Fields detected.**

Officer Fields testified at the trial court's hearing on Gowen's motion to suppress "that he had received training on drug identification and he was familiar with marijuana and the odor of the drug in both its raw and burnt forms." He also testified that he did not know whether burnt hemp and burnt marijuana would smell alike.

The trial court judge denied Gowen's motion to suppress:

> In so doing, the court rejected the idea that the [Hemp Act] meant that a police officer must be able to distinguish the odor of marijuana from that of hemp before relying on the smell of marijuana to justify the search of a vehicle. The court then concluded that taken together, "the odor of burnt marijuana ... [and] the subject matter of the pending warrant" provided police with probable cause to search Gowen's van.

Gowen requested that the trial court certify its order for immediate review. Subsequently, the Georgia Court of Appeals granted Gowen's application for an interlocutory appeal.

The Court of Appeals agreed with the trial court that the officers had probable cause to search Gowen's minivan, based on the smell of burnt marijuana in the van. The Court cited its 2003 decision in *Miller v. State*, 261 Ga. App. 618, for the proposition that "[t]here is no requirement that the officer know with certainty that the item is [contraband] at the time of the seizure, only that there be probable cause to believe that this is the case."

The Court also looked to the trial court record regarding Officer Fields' experience with drug investigations and his drug recognition training. Fields testified at the suppression hearing "that based on his training and experience, which included previous experience with crack cocaine, he believed the item he seized was crack cocaine." The Court found "that Fields had probable cause to suspect the item seized from the van was contraband, and the seizure, therefore, was justified."

For these reasons, the Court of Appeals affirmed the trial court's order denying Gowen's motion to suppress the contraband found during the warrantless search of his minivan. *Gowen v. State,* No. A21A0651, 2021 WL 2621442 (Ga. Ct. App. June 25, 2021).

United States District Court, Northern District of Georgia

SPLIT DECISION: DEFENDANT'S MOTION TO SUPPRESS EVIDENCE DENIED; DEFENDANT'S MOTION TO SUPPRESS STATEMENTS GRANTED

In November 2018 Drug Enforcement Administration ("DEA") agents were conducting surveillance on a suspected "stash house" located on Old White Mill Road in Fairburn, Georgia. By using wiretaps to monitor communications regarding activity at the house, the DEA agents intercepted a communication discussing a drug deal expected to occur at the house on November 14, 2018. On November 14th the agents saw a car arrive at the stash house; the car departed the premises 35 minutes later. The DEA alerted Georgia State Patrol ("GSP") troopers that the vehicle had left the premises. During a traffic stop of the vehicle, GSP troopers discovered four kilograms of methamphetamine in the car.

The DEA continued its investigation on the stash house and again contacted GSP regarding another suspected drug transaction. The DEA learned of this suspected deal by intercepting text communications between defendant Edwards and two others. Agents suspected that Edwards was arranging a deal involving eight kilograms of methamphetamine, five kilograms of which would be paid for with $32,000 cash, with the remaining three kilograms to be on credit. One of the individuals involved in the deal texted Edwards the address of the Old White Mill Road stash house.

The DEA contacted GSP and the Atlanta Police Department ("APD") to inform them of this upcoming drug deal, expected to take place at the stash house on November 29. At approximately 6:30 PM on this date, the DEA agents surveilling the house saw a gray Toyota Camry drive up. The agents intercepted a communication in which Edwards told another of the defendants that he had arrived at the house. The Camry departed the premises twenty minutes later. DEA agents then intercepted a phone call between two of Edwards' codefendants, in which one relayed to the other "that 'the one for 8 pantalonas had left.' Agents understood "pantalona" to refer to a kilogram of methamphetamine."

DEA agents contacted GSP to advise them that the Camry had left the stash house and gave GSP the license plate number. GSP Corporal Richard Youngblood, who was communicating with the DEA agents, tracked the Camry from his patrol car. Cpl. Youngblood conducted a traffic stop on the Camry after noticing that its license plate was partially obscured. GSP Trooper Doug Allen and GSP K-9 dog, Nico, were with Cpl. Youngblood at the scene.

As Cpl. Youngblood approached the Camry, he saw Linda Young in the driver's seat and defendant Edwards in the passenger seat. At Cpl. Youngblood's request, Ms. Young exited the Camry. When Cpl. Youngblood inquired as to Ms. Young's plans, "Ms. Young stated she was on her way to South Carolina from her sister's house in Georgia and was traveling with her boyfriend." Cpl. Youngblood engaged Ms. Young in conversation as he filled out a warning form regarding the partially obscured tag. **Young told Cpl. Youngblood that she didn't know the vehicle year of the Camry, prompting Youngblood to direct questions regarding the vehicle to defendant Edwards:**

> Corporal Youngblood observed Defendant avoiding eye contact and looking in various directions, and on that basis believed Defendant was nervous. Defendant told Corporal Youngblood he and Ms. Young were traveling from Alabama—a statement inconsistent with what Ms. Young had just said. After obtaining the relevant information from Defendant, Corporal Youngblood returned to Ms. Young to complete the warning. When asked why she and Defendant gave discordant explanations of their itineraries, Ms. Young replied that she did not know. After completing the warning and running Ms. Young's information, Corporal Youngblood asked for consent to search the vehicle. Ms. Young refused, stating the vehicle was not hers.

At this point Cpl. Youngblood asked Edwards to exit the vehicle and patted him down. Youngblood then told Ms. Young and Edwards that he, Trooper Allen and K-9 Nico were going to walk around the perimeter of the Camry. Nico alerted on "the presence of drugs." **GSP's search of the vehicle uncovered two bags of methamphetamine, containing three and five kilograms, respectively. At this point, Edwards and Ms. Young were handcuffed. Edwards was then placed in the back of the patrol car of an APD officer who had responded to the scene.**

The APD officer read the *Miranda* warnings to Edwards, then asked whether Edwards understood his rights and if he "wished to speak with police without an attorney present. [Edwards] answered affirmatively." The APD officer let DEA Special Agent Gray, who had also responded to the traffic stop, know that Edwards had been Mirandized. Agent Gray and Edwards spoke for "several minutes" until Edwards told Gray that he would not continue to talk unless the police released Ms.

Young. Once Edwards said this, "Special Agent Gray ceased his questioning and walked away."

Edwards and Young were taken to an APD precinct, where they were handcuffed to a bench. The APD officer who read Edwards his *Miranda* rights was sitting in a room next door. When the officer heard Edwards "grinding his teeth", he walked over to Edwards "to ask why [he] was stressed and whether he would like to talk." The following conversation ensued:

> Defendant [Edwards] replied, "I can't." [The officer] responded, "You cannot?" and Defendant again said, "I can't, I can't." [The officer] continued to pose questions to Defendant and Ms. Young for three minutes, at times receiving no response and at times receiving only a response from Ms. Young. Finally, [the officer] told Defendant "You need to take a deep breath and talk to me." Defendant did not immediately respond, but eventually provided [the officer] his phone's passcode and gave brief answers to some of [the officer's] questions. (Citations omitted.)

Edwards was indicted for possessing methamphetamine with intent to distribute, among other charges which were supported by the DEA's ongoing investigation. Edwards moved to suppress both the evidence discovered during the November 29th traffic stop and his statements to the APD officer. **The Magistrate Judge recommended that Edwards' motion to suppress the evidence be denied and that his motion to suppress his statements to the APD officer be granted.** Both defendant Edwards and the prosecution filed objections to the Magistrate's recommendations.

Regarding Edwards' motion to suppress the evidence seized during the traffic stop, the U.S. District Court determined: "When Corporal Youngblood initiated the traffic stop, information collectively known by law enforcement created an objectively reasonable suspicion that the Camry contained methamphetamine. That justified Corporal Youngblood's conduct without regard to the justification for the stop he provided to Ms. Young."

In reaching this conclusion, the Court considered Cpl. Youngblood's testimony "that DEA agents informed him prior to the stop that subjects of an investigation might be entering a certain area to purchase illegal drugs." Therefore, the Court reasoned, Cpl. Youngblood "knew the DEA suspected the presence of contraband in the gray Camry before he initiated the stop."

The Court determined that Cpl. Youngblood's traffic stop of the Camry "had two objectively reasonable missions": (1) issuing a traffic citation for the partially obscured tag; and (2) "investigating the presence of contraband in the vehicle" based upon the information the DEA conveyed to him *before* the traffic stop. The Court concluded:

> When the GSP's K-9 indicated the presence of drugs, officers acquired probable cause to search the vehicle under the well-established "automobile exception" to the warrant requirement . . . The methamphetamine and other contraband that officers recovered during their subsequent search was constitutionally obtained, and Defendant's Motion to Suppress that evidence is **DENIED**.

The Court then turned its attention to the Magistrate Judge's recommendation that Edwards' motion to suppress his statements to the APD officer be granted:

> [T]he Magistrate Judge found that: (i) During the traffic stop, Defendant unambiguously invoked his right to remain silent when he informed Special Agent Gray that he no longer wished to speak if agents "weren't going to let the girl go"; (ii) [The APD officer] did not scrupulously honor that invocation when he later interrogated Defendant at the APD precinct; and (iii) Defendant again unambiguously asserted his right to silence during that second interrogation.

The District Court found "no clear error [which is the standard of review] in the Magistrate Judge's conclusion that Defendant's statement to Special Agent Gray constituted an unambiguous Miranda invocation." The Court also found that Edwards' invocation of his right to remain silent was not "scrupulously honored." The Court held that, at the outset of Edwards' second interrogation by the APD officer at the precinct (as opposed to the first interrogation at the scene of the traffic stop by DEA Agent Gray) Edwards

> heard confusing information about his Miranda rights and multiple explicit admonitions to speak. The interrogation concerned the same offense about which he was questioned at the traffic stop and was conducted by the officer who Mirandized him the first time. **Considering this evidence as a whole, the Court agrees with the Magistrate Judge that officers did not scrupulously honor Defendant's invocation of his right to remain silent. Consequently, Defendant's statements to [the APD officer] at the APD precinct must be suppressed.**

U.S. v. Edwards, Criminal Action No. 1:19-cr-00076-LMM-CCB-13, 2021 WL 2947865 (U.S.D.C., N.D. Ga., July 14, 2021).

ALS REMINDER

If you are unavailable for an ALS Hearing, a **written** continuance motion must be filed with the Court at least **ten days** prior to the ALS Hearing date. 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. If you need assistance with an ALS continuance motion, email **both** Dee (dbrophy@gsp.net) and Grace (gmatthews@gsp.net) and provide the court date, location, and case name in your email. Please notify us **before** the ten-day deadline to allow sufficient time for the motion to be filed.

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