DPS Legal Review

November 2021|Volume 20 No. 11

Georgia Department of Public Safety | Legal Services Office | (404) 624-7423

Georgia Court of Appeals

OFFICER LACKED REASONABLE, ARTICULABLE SUSPICION TO JUSTIFY TRAFFIC STOP

On May 15, 2014, at around 8:00 p.m., Maxime Bien-Aime drove a Chrysler into a restaurant parking lot in Cobb County. A uniformed police officer was patrolling the area in a marked police car due to the large number of vehicle break-ins that had happened in that parking lot since 2011. Many of the break-ins involved suspects driving rental cars. When Bien-Aime entered the parking lot, the officer noticed that the Chrysler was a rental car and that Bien-Aime looked at him with a panicked expression. After noticing the officer, Bien-Aime immediately exited the parking lot and "rapidly accelerated" away.

The officer pursued Bien-Aime and had to exceed the speed limit to catch up with him. The Chrysler turned into the parking lot of a closed business down the road. At that time, the officer turned on his vehicle's blue lights and initiated a traffic stop. A search of Bien-Aime's person and vehicle yielded marijuana, cocaine, and a firearm. Bien-Aime was arrested on multiple charges.

Prior to trial, Bien-Aime filed a motion to suppress the evidence discovered during the search. He argued that the stop violated his Fourth Amendment rights because the officer lacked reasonable, articulable suspicion for the stop. During the hearing the officer testified to his basis for stopping the Chrysler:

> Q: Officer, can you tell this Court all the reasons or all the things you considered prior to making that traffic stop?
>
> A: Well, like I initially said, I was patrolling [one of the restaurants sharing the parking lot] due to the large number of entering autos. We had had approximately ninety-four in that parking lot since 2011, so in about a two and a half, three year time span. Most of the time, those vehicles were rental vehicles. He had observed my presence in the parking lot, appeared to get nervous, began to leave the parking lot. I attempted to follow him, and he rapidly accelerated, resulting in me having to exceed sixty mile[s] per hour to catch back up to his vehicle. Then he quickly – as soon as I got directly behind him, he made that right turn. I felt he was trying to either avoid contact with me, or hope I'd go away. At that point, I went ahead and made contact with him based on reasonable suspicion that a crime was occurring.
>
> Q: Yes, sir. And as far as the rapid acceleration, you didn't write him a ticket for speeding at that time, did you?
>
> A: No, ma'am. Because I could not see his exact acceleration on the roadway. I only knew what it took my patrol car to catch back up to him.

On cross-examination, defense

counsel followed-up with:

> Q: My question was you stopped him based on what. You said the reasonable suspicion that a crime was occurring. My follow-up question was the crime which was occurring occurred where?
>
> A: It would have been the crime of entering auto, which most – most commonly when those are conducted, they will hit one location, move from that location to another location, hit that location, move from there to another location. So I felt that maybe he had been coming into the parking lot to commit entering autos, observed my presence and immediately left.
>
> Q: And had you received any prior information to look out for [Bien-Aime's] vehicle?
>
> A: No, sir.

After hearing all the evidence, the trial court denied the motion to suppress. Bien-Aime was convicted at trial and appealed, arguing that "the evidence collected during the stop was inadmissible." The trial court denied the motion for a new trial and Bien-Aime appealed to the Georgia Court of Appeals, arguing that the officer lacked reasonable, articulable suspicion for the stop.

The Court of Appeals recognized: **"[O]ur Supreme Court and this Court have held that a police officer witnessing a suspect fitting a *pattern* of criminal behavior in a high-crime area is not sufficient to provide a reasonable, articulable suspicion to detain the suspect**." (Emphasis supplied.) As the Court of Appeals held in a 2020 decision, "**A person's mere presence in a high crime area does not give rise to reasonable suspicion of criminal activity, *even if police observe conduct which they believe is consistent with a general pattern of such activity***." (Emphasis in original; punctuation and footnote omitted.)

The Court of Appeals also considered its 2013 decision in *Lewis v. State*:

> [A] brief investigative stop of a vehicle is justified when an officer has a reasonable and articulable suspicion that the driver or vehicle is subject to seizure for violation of the law. In this regard, we have held that reasonable and articulable suspicion must be an ***objective* manifestation** that the person stopped is, or is about to be, engaged in criminal activity, and that this determination can only be made after considering the totality of the circumstances. In viewing the totality of the circumstances, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, provide a particularized and objective basis for suspecting the particular person stopped of criminal activity.

(Emphasis added; citations and punctuation omitted.)

Based on the officer's testimony, Bien-Aime was stopped due to him "fitting a pattern" of a person who would likely commit a crime in that area. No other particularized reasons were given as a basis for the stop. **The Court of Appeals found: "[W]e agree with Bien-Aime that the trial court erred in concluding that the underlying stop was supported by reasonable, articulable suspicion." Therefore, the Court held that Bien-Aime's conviction must be reversed.** *Bien-Aime v. State*, No. A21A1014, 2021 WL 4979131 (Ga. Ct. App. October 26, 2021).

OFFICER DID NOT HAVE REASONABLE ARTICULABLE SUSPICION FOR PROLONGING TRAFFIC STOP

A sergeant with the Grantville Police Department was patrolling on I-85 when he noticed a vehicle with a Florida license plate following another vehicle too closely. The sergeant initiated a traffic stop and pulled over the offending vehicle. When he approached the vehicle, he noticed that there were two occupants, a female driver and McNeil, the front seat passenger.

The sergeant requested the driver's identification and asked whether the vehicle belonged to her. The driver presented her Florida driver's license and said that the car was a rental. The sergeant then asked for the rental agreement. As the driver looked for the agreement, the sergeant asked whether there were weapons in the vehicle. Both the driver and McNeil said that there were not. At this point, the sergeant noticed that McNeil appeared to be very nervous.

About four minutes into the traffic stop, the sergeant told the driver that he would be issuing a written warning for the following too closely violation. At the sergeant's request, the driver stepped out of the rental car and walked with him to his police vehicle. When the sergeant asked why she had followed the other vehicle so closely, the driver "explained that she owned an organic soy candle-making company and was tired because she and her boyfriend, McNeil, had driven from Pensacola, Florida to deliver some candles." The sergeant was skeptical of the driver's explanation due to his experience with drug interdiction, through which he learned that people sometimes conceal drugs inside candles.

Once back at his patrol car, the sergeant ran a check on both the driver's and McNeil's licenses, which revealed no active warrants or license issues for either. **At this point, six minutes had elapsed since the sergeant had pulled over the vehicle.** When talking with the driver after running the license checks, the driver did not exhibit any signs of impairment.

The sergeant then got out of his vehicle and told the driver to "pay more attention while driving." He did not return the drivers licenses or the rental agreement to the driver or McNeil at this point. Instead, he "asked the driver how long she and McNeil had been gone that day." The driver said that she and McNeil "had left Pensacola that morning and had been in Atlanta around 5:00 pm." During this conversation with the driver, the sergeant noticed that McNeil, who was still in the driver's vehicle, was "rummaging around inside the sedan."

Approximately seven minutes had passed since the sergeant began the traffic stop. After telling the driver to stand by his police car, the sergeant walked back over to the sedan to question McNeil. When asked where he and the driver were coming from, McNeil replied, "Atlanta." McNeil also told the sergeant that he "was riding with his girlfriend who had a candle business and was selling candles, and that they had left home that afternoon." The sergeant then asked McNeil "if there were any weapons or anything illegal in the sedan, and McNeil said no."

The sergeant continued to question McNeil, asking whether he "had ever been in trouble." McNeil "answered in the affirmative and said that his last offense was for being a 'habitual driver' in Florida, but that he had not been in prison or in trouble for ten years." **At this point, it had been roughly eight minutes since the traffic stop began, but the sergeant had not yet written the warning that--four minutes earlier--he told the driver he would be issuing.**

The sergeant then asked for the driver's permission to see the candle wax, and the driver consented. When the driver opened the rental car trunk, she "showed the sergeant a black plastic bag full of wax." The sergeant continued to question the driver about her travel plans, her business, and whether there was any contraband in the car. The

sergeant then asked for permission to search the car, and the driver consented.

At this time, about ten minutes had gone by since the traffic stop began. Before searching the rental car, the sergeant asked McNeil to exit the vehicle and proceeded to perform a pat down for weapons. The sergeant testified that he did this due to McNeil's "criminal history, his nervousness, his rummaging through the car, and his reaching down to his pants," coupled with his feeling that "the candle business was a cover for drug trafficking." The pat-down revealed a bag of heroin at McNeil's lower back and, later, cocaine was found in his shoe.

McNeil was charged with trafficking heroin and possession of cocaine. His motion to suppress the drug evidence argued "that the sergeant violated his Fourth Amendment rights by unreasonably prolonging the traffic stop without reasonable suspicion of criminal activity, and that the drugs were seized as the result of his unlawful detention." The trial court denied the motion, reasoning "that the sergeant's 'actions all fit within the reasonable inquiry and investigation authority following a valid traffic stop.'"

On his appeal to the Georgia Court of Appeals, McNeil did not dispute the validity of *the initial traffic stop*. Rather, he challenged the trial court's finding that the sergeant did not "impermissibly prolong" the stop. McNeil argued "that the sergeant unreasonably prolonged the traffic stop beyond the time that was necessary to complete the purpose of the stop without having a reasonable articulable suspicion of other illegal activity."

The Court of Appeals agreed with McNeil, looking to United States Supreme Court precedent from the *Rodriguez* case, 575 U. S. 348 (2015), regarding whether a traffic stop has been unreasonably prolonged. The Supreme Court found that "'the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' – to address the traffic violation that warranted the stop and attend to related safety concerns.'"

In its 2020 decision in *State v. Drake*, the Georgia Court of Appeals stated: "The United States Supreme Court has held unequivocally that the Fourth Amendment does not allow even a de minimis extension of a traffic stop beyond the investigation of the circumstances giving rise to the stop." (Citations omitted.)

In a 2018 decision in *Flores v. State*, the Georgia Court of appeals found that "officers may, without unreasonably prolonging a stop, ask the driver to step out of the vehicle; verify the driver's license, insurance, and registration; complete any paperwork connected with the citation or written warning; and determine if there are any outstanding warrants for the driver or the passengers." (Citations omitted.)

In *Sommese v. State* (2009), the Georgia Court of Appeals determined that "[A]n officer may ask the driver questions wholly unrelated to the traffic stop or otherwise engage in 'small talk' with the driver, *so long as the questioning does not prolong the stop beyond the time reasonably required to complete the purpose of the traffic stop*." (Emphasis added; citation and punctuation omitted.)

In McNeil's case, the Georgia Court of Appeals determined that the sergeant "did not unreasonably prolong the traffic stop" by requesting that the driver exit the vehicle; in asking for both occupants' licenses; in confirming that there were no active warrants or license issues; or in asking for and reviewing the rental agreement. **However, the Court of Appeals further found that—at the point at which the sergeant should have issued the written warning—he instead**

> clearly diverted from the task of issuing a written warning citation and abandoned the traffic investigation to instead pursue further questioning of the driver about her

candle business, a matter entirely unrelated to the traffic stop. Accordingly, the traffic stop was prolonged beyond the time reasonably required to fulfill the mission of issuing the warning ticket for following too closely, and the trial court erred in concluding otherwise.

The Court of Appeals held that the trial court's finding that the sergeant had reasonable articulable suspicion sufficient to justify a "continued detention," was in error because:

1. "'Even when other factors are present, nervous behavior of a person who has been stopped by an armed law enforcement officer is not an unusual response and is not necessarily strong evidence to support ... reasonable suspicion.'"
2. "'The inference that all persons [traveling in] cars with [candles] are drug users or dealers is not ... a rational inference."
3. The inconsistency in the driver's and McNeil's statements regarding what time they left—without more—were not "meaningful" inconsistencies sufficient to "'provide [the sergeant] with a basis for suspecting [that the driver and McNeil] possessed drugs.'"

(Citations omitted.)

The Court of Appeals ruled that the sergeant violated McNeil's Fourth Amendment rights and that the heroin and marijuana evidence were "'therefore inadmissible as the fruit of the poisonous tree.'" The trial court's order was reversed, and McNeil's case was remanded to the trial court "with direction to grant McNeil's motion to suppress." *McNeil v. State*, A21A1600, 2021 WL 5408587 (November 19, 2021).

ALS REMINDER

The OSAH website (www.osah.ga.gov) has a calendar of upcoming court dates and cases that are scheduled for an ALS Hearing. Go to the "Court Calendar" section of the website and under the section titled "Docket #," type in the docket number of the case and click "Search" in order to confirm the date that a case is scheduled. The cases scheduled for a certain date can also be confirmed by going to "Advanced Search Options" on the Court Calendar page of the website. Under "Hearing Date," put the date in the "From" and "To" boxes as well as the Judge's name in the drop-down box titled "Judge," then click "Search." The cases scheduled for that Judge on the selected date can then be viewed. A list of cases scheduled for the arresting officer can also be located by typing in your last name in the box titled "Last Name" and then click "Search."

Published with the approval of
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