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Georgia Court of Appeals

TROOPER HAD REASONABLE SUSPICION OF CRIMINAL ACTIVITY TO JUSTIFY TRAFFIC STOP

A Georgia State Trooper had radio contact with Drug Enforcement Administration (“DEA”) agents who informed him that a solo male driver in a gray Dodge Ram truck had recently obtained narcotics in the vicinity of Dawson Boulevard and Jimmy Carter Boulevard in Gwinnett County. The DEA relayed intelligence to the trooper “that the driver had confirmed he had ‘the product’ in his vehicle”. The DEA agents asked the trooper to initiate a traffic stop.

When driving behind the suspect’s vehicle, the trooper noticed that one of the brake lights was out and watched the vehicle make an improper signal. The DEA agents confirmed that the trooper was following the correct vehicle and the vehicle was stopped shortly thereafter.

The trooper made contact with the driver and immediately noticed that there were three cell phones in the center console. The trooper knew, based on his training and experience, that having three cell phones is common for narcotics traffickers. He asked the driver, later known as Louallen, to produce his driver’s license. Initially Louallen provided his identification card, but later produced his license after the trooper pointed it out.

Louallen mentioned that he was traveling from Augusta, which the trooper knew was false due to the information relayed by the DEA agents. The trooper asked Louallen “if he had been in any trouble before”, and Louallen admitted that he “had been arrested for one or more methamphetamine

offenses in the past and had served a prison sentence.”

The trooper filled out a written warning, ran a check on Louallen’s license, and printed a consent to search form. Louallen consented to a search of his vehicle, both orally and in writing. Louallen confirmed that everything in the vehicle belonged to him prior to the search. Based on the half a kilogram of methamphetamine found in the vehicle, Louallen was arrested and charged with trafficking methamphetamine.

Louallen moved to suppress the drug evidence, contending that there was no legal basis for the traffic stop and that the trooper lacked probable cause to search the vehicle. The trial court denied Louallen’s motion. A jury found Louallen guilty of trafficking methamphetamine, and he filed a motion for new trial. The trial court denied the motion for new trial. Louallen appealed, arguing that: (1) the trial court erred in denying his motion to suppress; and (2) his attorney provided ineffective assistance of counsel.

Louallen conceded that the trooper was authorized to stop his car, based on the brake-light violation. However, Louallen contended that the scope of the stop was unlawfully expanded when the trooper requested permission to search his vehicle. He argued “that the documented mission of the stop was complete when the trooper finished writing the warning for the brake light and signal violations.” The Court of Appeals considered the following precedent when analyzing Louallen’s assertions:

It is well established that “when an officer observes a traffic offense, the resulting traffic stop does not violate the Fourth Amendment of the United States Constitution even if the officer has ulterior motives in initiating the stop, and even if a reasonable officer would not have made the stop under the same circumstances.” However, “a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution.” And, “after the tasks related to the investigation of the traffic violation and processing of the citation have been accomplished, an officer cannot continue to detain an individual without reasonable articulable suspicion.” “[I]mportantly, ‘reasonable articulable suspicion’ requires a particularized and objective basis for suspecting that a citizen is involved in criminal activity.” (Citations omitted).

The Court determined that the trooper had reasonable articulable suspicion, aside from the traffic violations, when he initiated the traffic stop because of the information the DEA agents provided him regarding the narcotics in the vehicle. In its 2019 decision in *Hall v. State*, the Georgia Court of Appeals held that “reasonable articulable suspicion need not be based on an arresting officer’s knowledge alone, but may exist based on the collective knowledge of the police when there is reliable communication between an officer supplying the information and an officer acting on that information.” (Citations omitted.)

The Court considered the DEA’s suspicion that Louallen had participated in a drug transaction “shortly before the traffic stop” as part of the

“collective knowledge” that gave the trooper reasonable articulable suspicion to search the vehicle. Therefore, the Court held, the trooper’s request to search Louallen’s vehicle was justified.

The Court found that the basis for the traffic stop “encompassed both the traffic violation and the suspected drug transaction.” Thus, the Court determined, “the mission of the traffic stop was not complete until, at the earliest, Louallen either gave or denied permission to search the vehicle.” As a result, the Court held that “the trial court did not err in denying Louallen’s motion to suppress the evidence seized from his vehicle.” *Louallen v. State*, No. A21A1418, 2022 WL 482299 (Ga. Ct. App. Feb. 17, 2022).

OFFICER’S “KNOCK AND TALK” ON DEFENDANT’S PROPERTY VIOLATED THE FOURTH AMENDMENT

Law enforcement was called out to a hit and run where a pedestrian was struck and killed on Dawson Forest Road in Dawson County. The only evidence left at the scene was a “passenger-side mirror lying on the pavement beside the victim, which came from a black 2009/2010 Ford Escape, Mercury Mariner, or Mazda Tribute.” An investigator searched dispatch reports to see if any vehicles matching the description had previous contact with law enforcement. A list of 17 possible vehicles was compiled.

An investigator traveled to the Cumming, Georgia, address at which one of the 17 vehicles (a 2009 Ford Escape) was believed to be located. The house was in a rural and heavily wooded area with a lengthy driveway. The investigator intended to go to the house to speak with the owner of the Ford Escape.

Upon arriving at the house, the investigator noticed a black Ford Escape jutting out from an area to the left of the home. The investigator drove past the front of the house and parked behind the Ford Escape so that it could not leave the premises. When the investigator saw that the Escape’s passenger-

side mirror was missing, he notified dispatch and requested assistance. (“The investigator later referred to the vehicle’s location on the driveway as a ‘parking area’ just past the front of the house, ‘after you pass the front door.’”)

Jennings’s husband approached the investigator and asked why he was there. The investigator stated “[Y]ou know what I’m doing here,” and then asked why the Ford Escape was damaged. The husband stated that his wife hit a deer. The investigator asked the husband to call Jennings and have her come home to be questioned.

While waiting for Jennings to get home, her husband showed the investigator the repairs that he was performing on the vehicle. The husband explained that he attempted to fix the broken headlight, to push out a dent that was located at the front of the vehicle and mentioned that he washed the vehicle. He also showed the investigator the missing pieces for the headlight assembly. In this area, the investigator also saw an opened book regarding “courtroom procedure.”

Once Jennings arrived home, the investigator asked her if “she wanted to tell him anything.” She stated that she “thought she hit a deer on Dawson Forest Road.” Shortly after, several officers arrived at the scene to secure the vehicle and arrest Jennings. The vehicle was seized. Law enforcement secured a search warrant for the vehicle two days later. Jennings was indicted on charges of first-degree vehicular homicide, hit and run, failure to report an accident, and failure to maintain lane.

Prior to trial, Jennings filed a motion to suppress the vehicle and other evidence found at her home and to exclude statements she made to law enforcement. The court granted her motion to suppress the vehicle and other evidence, since a search of the property was not supported by a warrant, consent, or exigent circumstances. The trial court found that “the intrusion onto the curtilage of her property and subsequent seizure of evidence violated her rights under the Fourth

Amendment to the United States Constitution.” As to Jennings’s motion to suppress her statements to the police, however, “the trial court denied the motion to exclude after concluding that those statements were made voluntarily and not while in custody.”

The State appealed the seizure issue, arguing that the investigator lawfully entered onto the property to conduct a “knock and talk.” The State also maintained that “the investigator was authorized to move closer to the vehicle because he had reasonable, articulable suspicion” and that probable cause justified “a warrantless seizure of the vehicle and other instrumentalities of the crime.”

The trial court had determined that:

[E]ven if the investigator had been in a lawful position from which to view the vehicle after passing the front of the house (and thus the front door), there were no exigent circumstances or consent by which the officer could search the remainder of the curtilage or seize the vehicle without first obtaining a warrant. Indeed, not only must an officer be ‘lawfully located in a place from which the object can be plainly seen,’ he or she must also have ‘a lawful right of *access* to the object itself.’ This is true even when items of contraband are visible within an officer’s plain view. And an officer gains lawful access to an item in plain view by ‘obtaining a search warrant, obtaining consent to search, or the existence of exigent circumstances.’ This, the officers did not do.

The Court of Appeals “agree[d] with the trial court that the investigator exceeded the scope of a permissible knock and talk after his initial entry onto

the property in violation of the Fourth Amendment.” However, since the trial court record was unclear regarding whether the judge had ruled on the issues of reasonable, articulable suspicion and probable cause, the Court remanded these issues to the trial court so the court could make explicit rulings regarding such.

In a cross-appeal by Jennings, she argued that “her statements to investigators should be excluded because they (1) were derivative of an unlawful search and (2) in the alternative, were made while in custody without having been read her *Miranda* rights.” The Court of Appeals noted that the trial court did not explicitly rule “on whether Jennings’s statements to law enforcement were also subject to exclusion on the basis that they were derivative of what it determined was an unlawful search of the property[.]” Consequently, the Court of Appeals also remanded this issue to the trial court for a ruling.

With respect to Jennings’ *Miranda* argument, the Court stated:

When an accused is neither in custody nor so restrained as to ‘equate to a formal arrest, any statements made to an investigating officer are made under noncustodial circumstances and *Miranda* warnings are not required.’ Indeed, *Miranda* protections adhere when an individual is ‘(1) formally arrested or (2) restrained to the degree associated with a formal arrest.’ The second prong must be evaluated objectively—*i.e.*, ‘an individual is in custody if a reasonable person in the place of the defendant would feel so restrained as to equate to a formal arrest.’

Based on its review of the evidence, the Court of Appeals concluded that the record, including video recording, supported the trial court’s

conclusion “that Jennings made her statements while outside on her own property, without threats by law enforcement, while she was not handcuffed, and while she was not otherwise restrained.” Therefore, the Court of Appeals affirmed the trial court’s ruling on this issue. *State v. Jennings*, Nos. A21A1355, A21A1396, 2022 WL 366323 (Ga. Ct. App. Feb. 8, 2022).

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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