



DPS Legal Review

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APPEAL AFFIRMS THE DISMISSAL OF A HIGH-SPEED RAMMING CASE

Toccoa Police received a report from a convenience store called Bev's Quick Stop ("Bev's") indicating that a suspect had tried to steal beer. The clerk refused to sell the suspect beer because he appeared to already be intoxicated and he had already been in the store several times that day to purchase alcohol. An officer went to Bev's, viewed the video surveillance of the suspect's truck, and, later, noticed a truck matching the description of the suspect's vehicle at a nearby gas station. He watched the truck exit the gas station, run a stop sign, and enter a busy four-lane road with shopping centers, fast food restaurants, Wal-Mart, and an occasional hotel on either side.

The officer followed the suspect, turned on his siren, called the truck's license plate into dispatch, and reported that it was not stopping. The suspect accelerated to 55 miles per hour in a 45 mile per hour zone, wove through traffic, and straddled both southbound lanes at times. At that point, three more officers joined the chase. The suspect swerved to avoid a police roadblock, crossed the center line, and drove into oncoming traffic. He continued to weave through traffic and forced numerous motorists to the side of the road.

When the suspect's lane of travel was blocked by a car stopped at a red light, he drove onto the right shoulder to avoid stopping. As he pulled alongside the car, the cars collided. The suspect turned and accelerated down the road. The suspect then turned onto Georgia Highway 145 (a narrow, winding two-lane country road with homes on both sides). The suspect continued to improperly pass vehicles by crossing the double center line. He also drove on the wrong side of the road and forced motorists to pull to the side of the road.

After several attempts, one of the officers passed the suspect (who then swerved to pass him). The officer, in turn, blocked him by swerving in front of him. The suspect's truck

rammed into the back of the police cruiser. The suspect, who had been heading north, swerved back into southbound traffic, drove off the road, and attempted to pass the officer on the right shoulder. As he came around the front of the police cruiser and tried to return to the road, the front passenger side of the officer's cruiser clipped the rear quarter of the suspect's truck causing it to flip several times. The suspect died on impact, and his estate sued the City, the Chief of Police, and the officers directly involved in the chase. The lawsuit alleged violation of the decedent's Fourth Amendment right to be free from unreasonable seizures. The lower court dismissed the action. The dismissal was affirmed by the appellate court.

HOLDING: Based upon the United States Supreme Court's decision in Scott v. Harris, ___ U.S. ___ (2007) and the facts, the officer whose vehicle clipped the suspect's truck did not violate his Fourth Amendment right to be free from excessive force during a seizure. The Court also held that dismissal of the claims against the other defendants was appropriate since there was no constitutional violation. Once qualified immunity is raised as a defense, the court must begin a two-part analysis. First, it determines whether a constitutional violation occurred. Second, it determines whether the right was clearly established at the time of the violation.

As to the first step, the Court looked to determine whether the officer's actions were objectively reasonable in light of the facts and circumstances. The Court held that the suspect intentionally placed himself and the public in danger by unlawfully engaging in a reckless, high-speed flight. He ignored multiple police cars chasing him with lights and sirens blaring. Thus, under the circumstances, even if the officer used deadly force, such force was reasonable. Thus, there was no need to proceed to the second step of the qualified immunity analysis. Beshers v. Harrison, ___ F.3d ___, 2007 WL 2302012 (11th Cir. 2007).

INVENTORY OF VEHICLE PRIOR TO TOWING AND ARREST

A trooper was traveling Interstate 20 when he observed a car driven by the defendant cross over the lane divider three times. He stopped the car. After discovering that the driver spoke little English, the trooper began to communicate with him in rudimentary Spanish. When asked to produce a driver's license and proof of insurance, the driver handed the trooper a valid driver's license from Mexico but no insurance documentation. The driver could not identify the owner of the car, the person traveling in the vehicle with him, his travel destination, or his own address.

A Georgia Crime Information Center check revealed that the vehicle was insured. The trooper decided to arrest the driver rather than issue traffic citations. He also decided to have the car towed rather than let the passenger operate it (since the passenger's license was from Mexico and he had been in this country for more than three years). The driver was arrested and placed in the rear of the patrol car. Trooper Chambers and another officer performed an inventory of the car before having it towed. While looking in the glove compartment, they detected a musky odor as well as the smell of green marijuana. In the trunk, they discovered two opaque bags containing marijuana. They also found closed plastic containers containing methamphetamine.

The driver was charged with trafficking in marijuana, possession of marijuana with intent to distribute, possession of methamphetamine, failure to maintain lane, and driving without a valid driver's license. The driver challenged the admissibility of the evidence.


HOLDING: The arrest for driving without a valid driver's was improper because the driver had a valid license from Mexico. The trooper acknowledged that he did learn how long the driver had been in the country. Likewise, since the owner or operator of the vehicle was not required to maintain proof of evidence of minimum liability insurance in the vehicle, at the time of the incident, this could not serve as a valid basis for an arrest. However, the defendant was lawfully arrested for weaving. Officers have the discretion to write a citation, but they may also make physical arrests.

Officers are permitted to make warrantless arrests for crimes committed in their presence.

The trooper's decision to impound the vehicle was not unreasonable. His refusal to entrust the car to the passenger was justified since the passenger did not have a valid Georgia's driver's license in violation of O.C.G.A. § 40-2-20(a). Further, due to the language barrier, the trooper and the defendant could not easily discuss alternative arrangements. Thus, the trooper properly exercised his discretion to impound the car.

The search of the bags and the container, as part of the inventory of the vehicle, was authorized. The first purpose of an inventory search is to protect the owner's property while it remains in police custody. The second purpose is to protect the police against claims or disputes over lost or stolen property. Taking inventory of a closed container in the trunk of a vehicle serves both purposes. Thus, the trooper did not exceed the permissible scope of an inventory search. Lopez v. State, __ S.E. 2d __, 2007 WL 2164640 (Ga. App. 2007).

ALS REMINDER

 An **ALS Folder** containing samples of documents that may be needed for a hearing has been created in **Public Folders**. To locate the folder, go to Public Folders, DPS Forms, Field Operations, and ALS is listed as a category under Field Operations. These important documents are included: 1205 Withdrawal Plea Form, OSAH Website Instructions, OSAH Witness Subpoena, PBT GBI Approved List, ALS Hearing Sheet, and a Motion for Continuance Form.

PROVERBIAL WISDOM WORKS

"My mother drew a distinction between achievement and success. She said that 'achievement is the knowledge that you have studied and worked hard and done the best that is in you. Success is being praised by others, and that's nice, too, but not as important or satisfying. Always aim for achievement and forget about success.'"

Helen Hayes

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