



DPS Legal Review

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EXCEPTION TO WAIVER OF SOVEREIGN IMMUNITY INAPPLICABLE

Under the Georgia Tort Claims Act ("GTCA"), the State waives its sovereign immunity for the torts of state employees acting within the scope of their employment, subject to certain exceptions. One of the exceptions is that the State is not liable for losses resulting from the failure to provide, or the method of providing, law enforcement, police, or fire protection. In a recent decision, the Georgia Court of Appeals held that the exception for providing law enforcement did not apply in a case where a rural mail carrier was injured when her truck was struck by a Trooper's patrol car.

Under the facts, the Plaintiff's mail truck was rear-ended by the Trooper's patrol car while the Trooper was running radar to catch speeders. The Trooper had been using the mail truck as a cover to check oncoming traffic, a technique known as "blocking." A flashing strobe light was on top of the mail truck and it was stopped. The Trooper did not notice the truck slow down, and by the time he realized the truck had stopped, he was unable to avoid hitting it at 50 to 60 miles per hour. The Plaintiff sued to recover for personal injuries. The Department of Public Safety moved to have the case dismissed asserting sovereign immunity under the law enforcement exception of the GTCA.

HOLDING: The Court held that sovereign immunity did not apply. The GTCA authorizes the application of sovereign immunity to the making of policy decisions and their implementation. The implementation of policy decisions are a form of "second-tier" decisions made by state employees and officers in response to a need for the immediate provision of police, law enforcement, or fire protection services. These decisions set out the procedure or process for providing the necessary services – the mode, plan, design, or system to be used to provide the service.

Second-tier decisions, based on professional standards, expertise, and training, set forth methods of providing the police, law enforcement, or fire protection services in response to immediate needs and receive sovereign immunity. While the negligent acts of employees acting pursuant to policy are subject to sovereign immunity, the negligent acts of employees acting contrary to policy are not subject to sovereign immunity.

The Court held that sovereign immunity was waived since the record contained evidence that the State Patrol Crash Review Board found that the accident was preventable, and that the Trooper did not operate his car in a manner consistent with policy and training. He followed too closely and failed to pay attention. Under the facts, the Trooper's conduct was "simple, preventable negligence," not a policy decision. Department of Public Safety v. Davis, __ S.E.2d __ (2007), 2007 WL 4357754 (Ga. App.).¹

ROADBLOCK REMINDERS

- ⊗ Factors that Courts consider in assessing the validity of a roadblock include whether:
- 1) the decision to implement the roadblock is made by supervisory personnel rather than officers in the field;
 - 2) the supervisory officer making the decision has a valid primary purpose for the roadblock (other than merely seeking to uncover evidence of ordinary criminal wrongdoing);
 - 3) the delay to motorists is minimal;
 - 4) all vehicles are stopped as opposed to random stops;
 - 5) the roadblock operation is well identified as a police checkpoint; and
 - 6) the screening officer's training and experience are sufficient to qualify him to

¹ The Attorney General's Office intends to file a discretionary appeal of this decision because of its implications.

initially determine which motorists should be given field tests for intoxication.

⊗ Evidence of the primary purpose of a roadblock may be either testimonial or written in Court, but the evidence must establish that the supervisory officer:

- 1) decided to implement the roadblock,
- 2) decided when and where to implement it, and
- 3) had a valid primary purpose for it.

⊗ Examples of valid primary purposes for roadblocks include checking drivers' licenses, checking insurance, checking seatbelt usage, and checking for impaired drivers.

SEIZURE OF CONTRABAND DURING FRISK OF PASSENGER PERMISSIBLE

A uniformed officer saw a vehicle make a U-turn (in front of a recently robbed bank), travel slowly, pull over to the shoulder of the road onto the grass, and then stop. Concerned about the driver and suspicious of the behavior, the officer gestured unsuccessfully to gain the attention of the driver. The officer parked his patrol car near the vehicle and initiated a traffic stop by activating his blue lights and approaching the vehicle.

He asked the driver why he stopped. The driver appeared to be nervous and gave conflicting reasons for stopping. The officer asked for his license. The license check revealed that it was suspended. The officer arrested the driver and asked his passenger to exit the vehicle so that it could be searched incident to the arrest. The passenger exited the vehicle and admitted that he had a knife in his right pocket (when he was asked about whether he had any weapons). But, he refused to remove his hand from his pocket. When the officer attempted to remove it (to pat him down and retrieve the knife), he fled. The officer told the passenger to halt, but he continued to flee.

After being chased, the passenger was arrested for obstruction. A search, incident to the arrest, revealed eight bags of cocaine and marijuana on his person. The knife was found on the ground next to the vehicle. He was convicted. He appealed his conviction arguing that the contraband found incident to his arrest should have been suppressed.

HOLDING: The officers had the right to pat-down the passenger of the vehicle and search him for weapons since they had reason to believe he was armed. The passenger

expressly admitted having a knife, and he refused to remove his hand from the pocket he stated contained the knife (despite repeated police requests for him to do so). Under Terry v. Ohio, 392 U.S.1 (1968), a law enforcement officer, for his own protection and safety, may conduct a pat-down to find weapons that he reasonably believes or suspects are in the possession of the person he has accosted. Johnson v. State, ___ S.E.2d ___, 2007 WL 4357410 (Ga. App.).

RANDOM TAG CHECK

As part of her patrol duties, a Gwinnett County Police Department officer ran a random check of the Defendant's tag. The check revealed that the vehicle was registered to a different vehicle. She stopped the Defendant's vehicle and asked for his identification. The Defendant stated that he did not have any identification. The officer asked the Defendant to step out of the vehicle. She frisked him for weapons and then arrested him for driving without a license.

While searching the vehicle incident to the arrest, the officer found a plastic bag containing pills. She also found a marijuana joint in the Defendant's pocket. The Defendant moved to suppress the evidence seized from his person. He argued that the stop was illegal because the officer was not permitted to stop him solely based upon the improper tag.

HOLDING: The motion to suppress the evidence was denied. A traffic stop is reasonable where the police have probable cause to believe that a traffic violation has occurred. The officer was authorized to stop the Defendant for the traffic violation, and the stop was valid. Thompson v. State, ___ S.E.2d ___, 2007 WL 4374024 (Ga. App.).

QUOTABLE WISDOM WORKS

"I wanted to see what real courage is, instead of getting the idea that courage is a man with a gun in his hand. It's when you know you're licked before you begin but you begin anyway and you see it through no matter what."

To Kill a Mocking Bird, (1960) Harper Lee

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