



GEORGIA COURT SUPPRESSES EVIDENCE WHEN SUSPECT FLED A CONSENSUAL ENCOUNTER

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On October 24, 2017, the Court of Appeals of Georgia decided *Johnson v. State*ⁱ, which is instructive regarding how the Georgia court considers flight from a consensual encounter. The relevant facts of *Johnson*, taken directly from the case, are as follows:

[O]n April 27, 2016, Officer Jalany Rogers of the Clayton County Police Department was on a routine foot patrol in an area of the county known for a high rate of crime and drug use. Part of this patrol included a walk-through of property on which the Southside Inn is located. As they patrolled the hotel property, Rogers and his partner climbed an outdoor stairway and rounded a corner, where they saw a group of five men standing in the breezeway. Rogers made eye contact with Johnson, who then looked away and pulled up his pants. According to Rogers, the fact that Johnson pulled up his pants indicated that he was about to run from police. Upon seeing Johnson pull up his pants, therefore, Rogers yelled to him, "Don't do it," which Rogers believed communicated to Johnson that he was not free to leave. Johnson, however, ignored that command and fled on foot. Rogers then pursued Johnson while ordering him to stop, which Johnson declined to do. The chase took the men across the street, over three fences, and through a trailer park, cemetery, and creek before Rogers was able to apprehend Johnson. As soon as Rogers made physical contact with Johnson, he subdued him with a Taser and placed him under arrest for obstruction of an officer. During a search of Johnson incident to his arrest, police found marijuana in his pants pocket.

Following his arrest, Johnson was charged with possession of less than one ounce of marijuana, obstruction of an officer, and loitering or prowling.ⁱⁱ

Johnson filed a motion to suppress and argued that the evidence was obtained from an illegal arrest. The trial court denied the motion, and Johnson was convicted at a bench trial of obstruction and

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possession of marijuana (the State dropped the loitering and prowling charge). He then appealed his conviction and the denial of the motion to suppress.

The trial court relied on the Supreme Court case of *U.S. v. Wardlow*ⁱⁱⁱ in which the Court held that unprovoked flight at the sight of police, while in a high crime area, provided officers with reasonable suspicion to conduct an investigative detention to investigate whether the suspect is involved in criminal activity. In Johnson's case, the trial court noted that he was in a high crime area, he engaged in unprovoked flight which provided the officer reasonable suspicion to detain him, and his refusal to stop after being ordered to stop constituted a violation of the obstruction statute under state law. The marijuana was discovered in a search incident to arrest for obstruction.

However, on appeal, the court of appeals noted that under Georgia precedent, it is not illegal for a person to **flee** a consensual, or first tier, encounter. The court stated

Our law is clear, however, "that a citizen's ability to walk away from or otherwise avoid a police officer is the touchstone of a first-tier encounter," *In the Interest of J. B.*, 314 Ga. App. at 681 (1) (citation and punctuation omitted), **and "[e]ven running from police during a first-tier encounter is wholly permissible."** *Black v. State*, 281 Ga. App. 40, 44 (1) (635 SE2d 568) (2006). **Thus, an individual who leaves (or even flees) a first-tier encounter with police is not guilty of obstruction.** *In the Interest of J. B.*, 314 Ga. App. at 681 (1); *Black*, 281 Ga. App. at 44 (1); *Dukes*, 279 Ga. App. at 249.^{iv}

In light of the rules above, the court of appeals reversed Johnson's conviction, and the denial of the motion to suppress. The court explained

[B]ecause [Johnson] had the right to leave the first-tier encounter, his exercise of that right, even if accomplished by running, cannot constitute obstruction. That is to say, even though the officer was lawfully discharging his duties at the time [Johnson] fled, those official duties during the first-tier encounter did not include detaining [Johnson] or preventing him from leaving. . . . Therefore, by exercising his right to leave a first-tier encounter, as a matter of law, [Johnson] did not hinder or obstruct the officer's lawful discharge of his duties, and accordingly, the officer had no probable cause to arrest for obstruction by flight when the flight was from a first-tier encounter that [Johnson] had every right to terminate. Accordingly, the officer's attempt to arrest [Johnson] for obstruction was unlawful because the officer lacked the requisite probable cause that [Johnson] committed that offense.^v

Thus, the denial of the motion to suppress was reversed.

ⁱ A17A0733 (Ga. App. 2017)

ⁱⁱ *Id.*

ⁱⁱⁱ 528 U.S. 119 (2000)

^{iv} *Id.*

^v *Id.*