



EXPANDING THE SCOPE OF A TRAFFIC STOP WITH REASONABLE SUSPICION

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On September 14, 2017, the Court of Appeals of Georgia decided *Taylor v. State*ⁱ, which serves as an excellent review of the law pertaining to the reasonable suspicion required to expand the scope of a traffic stop beyond the original reason for the stop. The relevant facts of *Taylor* are as follows:

The deputy was a canine handler with the county's uniform patrol division. He testified that he stopped Taylor while driving on Interstate 75 for failure to maintain lane and for having window tint that was too dark. As Taylor was providing the deputy with his license and registration, the deputy observed in Taylor's car numerous air fresheners and packages that were releasing an "overwhelming" odor of air freshener. The deputy also noticed Taylor's hands shaking as he provided his license and registration, a reaction the deputy took as a sign of nervousness on Taylor's part.

Taylor exited his vehicle at the deputy's request, and he stood outside the vehicle as the deputy wrote two traffic warnings for Taylor. The two had a prolonged discussion outside the vehicle in which Taylor answered a number of the deputy's questions, including where he was coming from at the time of the traffic stop. Taylor told the deputy he had been in Atlanta visiting his uncle in the hospital but struggled to identify where he was hospitalized or why he was sick. The deputy also testified that, in the course of their discussion, Taylor gave conflicting statements about where he had stayed the night before, first telling him that he stayed in an apartment and later saying that he had stayed in a hotel.

During a break in this conversation, the deputy stepped away for a moment to call for backup and then returned to speak to Taylor again. The deputy completed the forms for the two warnings and then placed a call to the dispatcher with Taylor's driver's license and tag number. The deputy then asked Taylor for consent to search his vehicle, telling Taylor that he was aware of "a lot of criminal activity going up and down this interstate." Taylor refused the deputy's request for consent to search. At that time, the deputy was still holding Taylor's license and registration along with a written warning for the traffic

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offenses, and the dispatcher had not yet confirmed Taylor's license and registration information.

After Taylor refused to allow the deputy to search the vehicle, the deputy indicated to Taylor that he was going to bring over a K-9 dog with specialized narcotics training to sniff Taylor's vehicle. As the deputy was walking to his patrol car to retrieve the dog, the dispatcher replied to the deputy confirming Taylor's license and registration information. After collecting the dog from his patrol car, the deputy brought the dog to Taylor's car to conduct a sniff of the vehicle. The dog provided a positive response to the sniff, and the deputy proceeded to search Taylor's vehicle, whereupon he found a large suitcase in the trunk containing a significant quantity of marijuana.

Taylor was arrested and charged with trafficking in marijuana.ⁱⁱ

Taylor filed a motion to suppress the marijuana. He argued that the officer impermissibly expanded the scope of the traffic stop without reasonable suspicion when he detained him additional time after the conclusion of the stop to conduct a canine sniff. The trial court denied the motion. Taylor was convicted at a bench trial and ultimately appealed the denial of his motion to suppress to the Court of Appeals of Georgia.

The issue before the court of appeals was whether the officer had sufficient reasonable suspicion to detain Taylor for the canine sniff after the conclusion of the original (traffic) reason for the stop.

The court of appeals first noted the applicable legal principles in this case. The court stated

- **An officer who initiates a lawful traffic stop, however, can shift into a criminal investigation so long as the officer can articulate reasonable suspicion that criminal activity is occurring.** See *Rodriguez v. State*, 295 Ga. 362, 369 (761 SE2d 19) (2014).ⁱⁱⁱ [emphasis added]
- **Absent such reasonable suspicion, the extension of an otherwise completed traffic stop in order to conduct a free-air search of a vehicle using a drug dog violates the Fourth Amendment's protection against unreasonable searches and seizures.** *Rodriguez v. United States*, 135 SCt 1609, 1614 (191 LE2d 492) (2015).^{iv} [emphasis added]

The court then noted that the existence of reasonable suspicion must be based on the "totality of the circumstances" and must be based on facts that an officer can articulate, rather than a hunch. Specifically, the court stated

To satisfy this "reasonable suspicion" standard, the officer's investigation must be justified by specific articulable facts sufficient to give rise to a reasonable suspicion of criminal conduct. Articulate suspicion requires a particularized and objective basis for suspecting that a citizen is involved in criminal activity. Although this suspicion need not meet the higher standard of probable cause, it must be more than a mere caprice or a hunch. *State v. Whitt*, 277 Ga. App. 49, 50 (625 SE2d 418) (2005) (citation and emphasis omitted).

To determine whether a reasonable articulable suspicion exists, courts must look to the totality of the circumstances. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. *State v. Thompson*, 256 Ga. App. 188, 189-90 (569 SE2d 254) (2002) ^v[emphasis added]

Taylor argued that the *State v. Thompson*^{vi} should control his case, and it requires the suppression of the marijuana. In *Thompson*, an officer stopped the defendant for a traffic violation on Interstate 20. The officer, based on a large number of fragrance dryer sheets and the defendant's nervousness, expanded the scope of the stop to search for drugs. In *Thompson*, the Court of Appeals of Georgia held that

"[a]lthough laundry detergent and dryer sheets can be used to mask the odor of an illegal substance, they are themselves legal substances that can be used for a legal purpose and thus do not justify the officer's further detention of [the defendant] *under the facts of this case.*" *Id.* at 189.

Thus, the evidence in that case was suppressed.

However, the court of appeals distinguished *Thompson* from *Taylor*, the case at hand, by noting that, in *Thompson*, the State did not characterize Interstate 20 as a known drug corridor, as the officer properly characterized Interstate 75 in *Taylor*. Further, in *Taylor*, in addition to nervousness and a large number of air fresheners, the officer also articulated inconsistent answers to questions during the stop. The court distinguished the two cases by stating the following:

In this case, however, the trial court determined that the overwhelming smell of air fresheners, the location of the stop along the interstate, *and* Taylor's inconsistent statements to the deputy were all factors that, in totality, could allow the deputy to form the required suspicion. As this Court's decisions in *Wilson v. State* and *Richbow v. State* indicate, the strong odor of air freshener along with other seemingly innocuous activities may allow an officer to form a reasonable suspicion that criminal activity is taking place. Additionally, an officer may consider conflicting or vague stories presented by a person in the vehicle and the "modes or patterns of operation of certain kinds of lawbreakers" in forming reasonable suspicion of criminal activity. *Thompson*, 256 Ga. at 189 (citations omitted). Though we acknowledge that Interstate 75, like any other public thoroughfare, may be traveled for legitimate purposes, we are not blind to the considerable experience of law enforcement agencies in dealing with those who use major interstate highways to transport illegal substances. We are also cognizant that an experienced and properly trained law enforcement officer may conclude that otherwise lawful activity which takes place on a "known drug route" is actually evidence of ongoing criminal activity. See *Giles v. State*, 284 Ga. App. 1, 1-3 (1) (642 SE2d 921) (2007). Thus, because the facts of this case show that factors in addition to those considered in *Thompson* formed part of the deputy's suspicion, *Thompson* is inapposite to our analysis.^{vii} [internal citations omitted]

The court of appeals then held

[T]hat the totality of the circumstances encountered by the deputy-namely, the smell of air fresheners, the location of the stop along what the officer knew to be a trafficking corridor, and the vague and conflicting stories offered by Taylor-allowed him to form the reasonable suspicion necessary to commence a criminal investigation.^{viii} [emphasis added]

Therefore, the court of appeals affirmed the denial of the motion to suppress.

ⁱ A17A1043 (Ga. App. September 14, 2017)

ⁱⁱ Id.

ⁱⁱⁱ Id.

^{iv} Id.

^v Id.

^{vi} 256 Ga. App. 188, 189 (569 SE2d 254) (2002).

^{vii} Taylor, A17A1043

^{viii} Id.