Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING OCTOBER 17, 2014

THIS WEEK:

Search and Seizure

State v. Cartwright, A14A1392 (9/24/14)

On the morning of June 26, 2013, a patrol officer with the Cobb County police observed that when Cartwright stopped for a red light, the center light located "at the top of the back window under the roof" was not working. Based on this observation, the officer initiated a stop of Cartwright's vehicle, and upon noticing the odor of alcohol on Cartwright's breath and conducting field sobriety tests, subsequently arrested her for DUI. She was also charged with violating O.C.G.A. § 40-8-25(b), which provides, "if a motor vehicle is manufactured with two brake lights, both must be operational."

Cartwright filed a motion to suppress. At the hearing on the motion to suppress, the officer was the sole witness. He testified that he observed Cartwright's car without an operational center brake light. The center light is a rectangular red light in the center of the rear window of the vehicle. He further testified that he observed the "two lights on the rear of the vehicle light up and the center one would not," and that he had stopped Cartwright because the center brake light was not operational.

On cross-examination, the officer agreed that O.C.G.A. § 40-8-25(b) only states that if a vehicle has two brake lights then both must be operational, and that Cartwright's car had two functional brake lights when he pulled her over. On redirect, the officer agreed that he could have charged Cartwright with violating O.C.G.A. § 40-8-26. That statute requires that "every brake light shall be plainly visible and understandable from a distance of 300 feet to the rear both during normal sunlight and at nighttime, and when a vehicle is equipped with a brake light or other signal lights, such light or lights shall at all times be maintained in good working condition." He further testified that he had stopped Cartwright based on his belief that O.C.G.A. § 40-8-25(b) required that if the vehicle was manufactured with three brake lights, then all of the brake lights had to be operational.

The trial court granted Cartwright's motion to suppress. In doing so, the court found as a matter of fact that the light in question was not illuminated when Cartwright was stopped, and also that the officer had acted "in what was his good faith belief" that Georgia law required that the center light be illuminated. But the court ruled that as a matter of law there is no requirement under Georgia law that there be such a light illuminated and working. The trial court found, as a matter of law, that there was no law in Georgia requiring that the center light in question be illuminated, and thus the officer's good faith belief justifying the stop was based on a mistaken belief that something was a violation of law, that was not actually a violation of law.

"It is well settled that police may conduct a brief investigatory stop of a vehicle if they have specific, articulable facts that give rise to a reasonable suspicion of criminal conduct." *Lancaster v. State*, 261 Ga.App. at 350 (1). Moreover, "if the officer acting in good faith believes that an unlawful act

has been committed, his actions are not rendered improper by a later determination that the defendant's actions were not a crime according to a technical legal definition or distinction determined to exist in the penal statute." *State v. Hammang*, 249 Ga.App. 811 (549 S.E.2d 440) (2001). Thus, even if the officer was mistaken in his belief that the light at issue was a brake light and that Georgia law required that all brake lights be illuminated, "the officer's reasonable belief that an offense had been committed, though he may have been mistaken either as to fact or law, was yet a sufficient 'founding suspicion' to enable the trial court to determine the stop was not mere arbitrariness or harassment, which is the real question." *McConnell v. State*, 188 Ga.App. 653, 654 (1) (374 S.E.2d 111) (1988). The trial court erred in concluding that a crime must have been committed for the stop to have been valid." *Dixon v. State*, 271 Ga.App. 199, 201(609 S.E.2d 148) (2005).

Accordingly, because it is undisputed that the light at issue was not functioning when Cartwright was stopped and that the officer had acted with the good faith belief that Cartwright had violated O.C.G.A. § 40-8-25(b), the trial court erred in granting Cartwright's motion to suppress.

Bench Conferences

Bagwell v. State, A14A0897 (9/24/14)

The Court of Appeals affirmed Howard Bagwell's convictions for 22 sexual offenses against his granddaughter, holding that the trial court properly denied Bagwell's motion for new trial since his right to be present was not violated. Bagwell claimed that holding nine bench conferences in his absence violated his constitutional "right to be present, and see and hear, all the proceedings which were had against him on the trial before the court." Two of the nine bench conferences, as Bagwell readily conceded in his brief, "dealt with taking breaks." Conducting such bench conferences in Bagwell's absence did not violate his constitutional right to be present. A third bench conference was not transcribed. Bagwell, consequently, did not show that his right to be present was violated. In three other bench conferences, the trial court heard legal argument concerning whether to hold a Jackson-Denno hearing and whether certain other evidence was admissible. Because these bench conferences involved questions of law and consisted of essentially legal argument about which Bagwell presumably had no knowledge, his right to be present was not violated. The three remaining bench conferences concerned procedural and logistical matters relating to striking a jury. This too did not violate his constitutional right to be present. Furthermore, Appellant's failure to voice any objection to his absence from the bench conferences, either directly or through counsel, constituted acquiescence in his counsel's waiver of his right to be present. The Court of Appeals relied on the Supreme Court's decision in *Heywood v. State*, 292 Ga. 771 (743 S.E.2d 12) (2013), which held that bench conferences, or sidebars, are a common occurrence during jury trials, allowing the attorneys for the parties to discuss matters with the judge without being heard by the jury and without the delays inherent in excusing the jurors from the courtroom and bringing them back in. Most bench conferences involve questions of law and consist of essentially legal argument about which the defendant presumably has no knowledge, and many other bench conferences involve logistical and procedural matters. A defendant's presence at bench conferences dealing with such topics bears no relation, reasonably substantial, to the fullness of his opportunity to defend against the charge, and the constitutional right to be present does not extend to situations where the defendant's presence would be useless, or the benefit but a shadow. Thus, a defendant's right to be present is not violated by his absence from such bench conferences.