Prosecuting Attorneys' Council of Georgia

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# *Zilke v. State*

## *The Supreme Court of Georgia Holds that Campus Police Officers Have No Right to Make Custodial Arrests Outside of Their Territorial Jurisdiction*

In *Zilke v. State*, S15G1820 (6/20/16), appellant was arrested for DUI by a campus police officer who was POST-certified. The evidence showed that the arrest took place outside the officer's statutorily-designated territorial jurisdiction. The trial court granted appellant's motion to suppress, but the Court of Appeals reversed. *State v. Zilke*, 333 Ga.App. 344 (2015). Relying on O.C.G.A. § 17-4-23(a) and cases that are the progeny of *Glazner v. State*, 170 Ga.App. 810 (1984), the Court of Appeals held that a POST-certified campus police officer is authorized to make arrests for traffic offenses committed in his presence though outside the territorial limits of the campus at issue. The Supreme Court granted certiorari.

Appellant contended that the officer had no authority to arrest or gather evidence because of O.C.G.A. § 20-3-72 which states that campus police officers "shall have the power to make arrests" only on campus and within 500 yards of campus. The Court agreed. Contrary to the contentions of the State and the reasoning of the Court of Appeals, O.C.G.A. § 17-4-23 cannot reasonably be construed to authorize the officer's arresting appellant. First, by its plain terms, O.C.G.A. § 17-4-23(a), which is a criminal procedure statute, only authorizes an arrest "*by the issuance of a citation*" if a person commits a motor vehicle violation within the law enforcement officer's presence. (Emphasis supplied.). The purpose of O.C.G.A. § 17-4-23 has never been to enlarge the territorial boundaries of the various law enforcement agencies in the state, but rather to give law enforcement officers the discretion to write a citation in lieu of making a custodial arrest for motor vehicle violations. Therefore, the Court disapproved of *Glazner v. State* to the extent that case and its progeny hold O.C.G.A. § 17-4-23(a) authorizes a law enforcement officer, including a campus police officer, to make a custodial arrest outside the jurisdiction of the law enforcement agency by which he or she is employed.

The Court noted that pursuant to O.C.G.A. § 17-4-20(a)(2)(A), a law enforcement officer may make a custodial arrest without a warrant if "[t]he offense is committed in such officer's presence or within such officer's immediate knowledge." But, as with O.C.G.A. § 17-4-23, nothing in O.C.G.A. § 17-4-20 expands the statutorily-imposed jurisdiction of a campus police officer. Moreover, the Court found, an officer's POST-certification has no bearing on the territorial limits of his jurisdiction under O.C.G.A. § 20-3-72. Being POST-certified simply means the officer has met the minimum requirements to be a "peace officer" in this state; such status, however, does not confer extraterritorial jurisdiction.



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Nevertheless, the State argued, the officer was still authorized to arrest appellant as a private person per O.C.G.A. § 17-4-60 (i.e., a citizen's arrest). However, the Court stated, this argument did nothing to preclude the trial court from suppressing the evidence in this case. If the officer had acted as a private person effecting a citizen's arrest, the most he could do would be to deliver appellant to a judicial officer or "deliver [appellant] and all effects removed from [appellant] to a peace officer of this state." O.C.G.A. § 17-4-61(a). As a private person making a citizen's arrest, the officer would not have been authorized per O.C.G.A. § 17-4-61(a) to give any field sobriety test, to demand appellant submit to the Alco-sensor test, to give an implied consent notice, to demand appellant submit to a breathalyzer test, or to otherwise engage in any sort of law enforcement investigation, as the officer did here.

In affirming the trial court's grant of the motion to suppress, however, the Court stated that suppression of evidence is an extreme sanction that is used only sparingly as a remedy for unlawful government conduct. The trial court did not identify the legal ground, constitutional or statutory, on which it was excluding the evidence resulting from appellant's arrest in violation of O.C.G.A. § 20-3-72. Nevertheless, the State did not argue to the trial court that the exclusionary rule does not apply in this context; the State did not enumerate the remedial portion of the trial court's order as error in its appeal to the Court of Appeals; and the Court noted, it did not grant certiorari to address the exclusionary rule issue. Accordingly, that aspect of the trial court's order was not before the Court for review, and the Court expressed no opinion on the exclusionary rule issue. Justice Nahmias, however, wrote a concurring opinion suggesting that the exclusionary rule may not apply for violations of a state statute limiting the territorial jurisdiction of the arresting officer.



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