

IN THE SUPERIOR COURT OF CHATHAM COUNTY  
EASTERN JUDICIAL CIRCUIT  
STATE OF GEORGIA

FILED IN OFFICE  
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DERICK SUPERIOR CT.  
CHATHAM COUNTY, GA.

State of Georgia )  
 )  
v. )  
 )  
Fabian Notto, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Indictment No. CR13-2673-J4

ORDER ON MOTION TO SUPPRESS

Having read and considered defendant's motion to suppress and the State's response, and upon consideration of the evidence and argument presented at the motion hearing, the record and the applicable law, the Court hereby DENIES defendant's motion to suppress.

Defendant seeks to suppress evidence obtained during a traffic stop on October 8, 2013. In particular, defendant argues that the traffic stop was merely pretextual as it occurred as part of an investigative surveillance of defendant's vehicle conducted by multiple law enforcement officers. Defendant contends that there was no probable cause or reasonable suspicion to stop his vehicle or to subsequently search his person.

The Court heard evidence on this matter at hearings held on June 20, 2014 and January 6, 2015. In addition, the State and defendant submitted post-hearing briefs to address the legal and factual issues raised by defendant's motion to suppress.

The Court will first address the issue of whether there was a legal basis for the traffic stop. Officer Glenn Castro testified that he observed defendant switch from a left turn only lane back into the forward lane in a manner that caused a driver in the forward lane to apply the brakes. (1/6/15 Hrg. Tr. at 9-10, 17-18). Co-defendant Wesley Eugene Johnson contradicts this

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account by testifying that he did not see any vehicle to the right of defendant's car. (1/16/15 Hrg. Tr. at 43-44). Upon weighing the credibility of both witnesses, the Court finds that the evidence supports a finding that there was probable cause for the traffic stop.<sup>1</sup> Officer Castro had a good faith basis to determine that defendant made an improper lane change based on his observation that defendant's action impacted a nearby vehicle. In particular, he testified that defendant's car moved from a left turn only lane to the forward lane and as a result "cut[] off the driver that was at the red light waiting for it to turn green." (1/6/15 Hrg. Tr. at 9-10, 17-18). Officer Castro testified that he relayed his observation and continued to follow the car until other officers initiated the stop, at which point Officer Castro did not participate any further in the investigation. (1/16/15 Hrg. Tr. at 10-12).<sup>2</sup> Thus, the evidence shows that Officer Castro had a good faith basis to determine that defendant had violated the traffic law codified in O.C.G.A. § 40-6-48.

The Court further finds that the fact that Officer Castro was participating in a surveillance of defendant's car as part of a larger investigation and was watching for a potential traffic violation to initiate a traffic stop does not invalidate the basis for the stop. "If an officer witnesses a traffic violation, the ensuing stop is never pretextual, regardless of the officer's subjective intentions." *Noble v. State*, 283 Ga. App. 81, 83, 640 S.E.2d 666, 668 (2006) (further noting that "[a] traffic stop may also be justified based on the collective knowledge of all the

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<sup>1</sup> The Court recognizes that these witnesses have opposing interests and potential biases. Officer Castro concedes that he was being watchful to find probable cause for a stop. (1/16/15 Hrg. Tr. at 14-15, 21-22). Mr. Johnson is an alleged co-participant in the charged drug activities. (1/6/15 Hrg. Tr. at 37).

<sup>2</sup> Officer Castro testified that he initially followed defendant's car after he learned there was "vehicle follow" of defendant's silver Toyota Tundra over the talk channel and realized that he was close to the area. (1/6/15 Hrg. Tr. at 8).

police officers engaged in a joint investigation”).

The Court will now address the search of defendant’s person. Officer Kyle Knoop testified that he became aware of the traffic violation based on the radio communications and he responded to the traffic stop after Officer Fikes “called it out.” (6/20/14 Hrg. Tr. at 12, 22). Officer Knoop further testified that his suspicions were raised because the call out sounded as if Officer Fikes was having a difficult time stopping the vehicle. (6/20/14 Hrg. Tr. at 22). Officer Knoop testified that when he arrived on the scene Officer Fikes was in his car running defendant’s information. (6/20/14 Hrg. Tr. at 23). Officer Knoop approached the driver’s side of the vehicle and observed that defendant was nervous – shifting and looking around the truck. (6/20/14 Hrg. Tr. at 14, 16, 28). He also testified that defendant did not respond to his initial request that he turn off the vehicle. (6/20/14 Hrg. Tr. at 15-16). Officer Knoop had concerns that defendant was going to flee the scene. (6/20/14 Hrg. Tr. 16). According to Officer Knoop, he could smell “a really strong odor” of marijuana as if it was coming from defendant’s truck. (6/20/14 Hrg. Tr. at 14). After Officer Knoop opened the door, defendant exited the vehicle and was “compliant.” (6/20/14 Hrg. Tr. at 16). Officer Knoop testified that he asked defendant if he could search him and defendant replied that Officer Knoop could search him. (6/20/14 Hrg. Tr. at 17). Officer Knapp conducted the pat down search with his hands. (6/20/14 Hrg. Tr. at 18-19). Officer Knoop testified that he feared that defendant was hiding a weapon on his person because defendant clenched his thighs and butt during the search, which led Officer Knoop to ask defendant to spread his legs. (6/20/14 Hrg. Tr. at 17-18). According to Officer Knoop’s testimony, a bag containing what appeared to be marijuana and pills then fell to the ground. (6/20/14 Hrg. Tr. at 18).

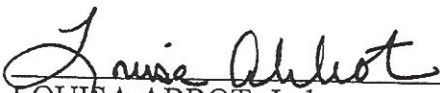
Upon review of the evidence, the Court finds no grounds to suppress the evidence based

on the circumstances of the search. The uncontroverted evidence of record shows that defendant consented to the search of his person.<sup>3</sup> In addition, the evidence indicates that defendant's encounter with Officer Knoop was not an unnecessary or prolonged detention as the events occurred while Officer Fikes was running defendant's information, a routine task during a traffic stop.

Finally, the Court notes that the discrepancy in the record regarding where the traffic stop occurred does not mandate a grant of defendant's motion.<sup>4</sup> The salient legal issue is whether there was a proper legal basis for the stop and the subsequent search. Any apparent discrepancy in the recollection of where the stop occurred does not change this analysis.<sup>5</sup>

Based on the foregoing reasons, the Court hereby DENIES defendant's motion to suppress.

SO ORDERED, this 17<sup>th</sup> day of August, 2015.

  
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LOUISA ABBOT, Judge,  
Chatham County Superior Court,  
EJC, State of Georgia

cc: Austin Roberson, Esq.  
Larry Chisolm, Esq.


<sup>3</sup> The Court notes that Officer Knoop also articulated concerns about safety and the potential presence of weapons as justification for the pat-down. (6/20/14 Hrg. Tr. at 28).

<sup>4</sup> Officer Castro testified that defendant turned east on Liberty Street where Officer Fikes made the traffic stop (1/16/15 Hrg. Tr. at 25); whereas, Officer Knoop testified that the stop occurred on Oglethorpe Street (6/20/14 Hrg. Tr. at 12).

<sup>5</sup> The Court notes that Officer Castro did not participate in the actual stop. The Court also notes that the streets run parallel and are located in proximity to each other.

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This document is a certified copy of the original document placed on record in the office of the Clerk of Superior Court, Chatham County, GA. Given under my hand and seal this 28 day of March 20 18.

  
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Deputy Clerk, S.C.C.C., GA