



A Pedestrian's Gun That Is Seized During A Traffic Stop Is Admissible



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In *United States v. Gibbs*, ___ F.3d ___, 2019 WL 1050844 (11th Cir. Mar. 6, 2019), the United States District Court for the Southern District of Florida denied Defendant Reginald Gibbs' motion to suppress. Thereafter, Gibbs entered a conditional plea to being a felon in possession of a firearm in violation of federal law. Gibbs' conditional plea reserved the right to challenge on appeal the District Court's denial of his motion to suppress. On appeal, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's denial of Gibbs' motion to suppress finding that Gibbs' encounter with the police was part of a lawful traffic stop and that the seizure of the firearm from Gibbs' pocket was lawful. The relevant facts are as follows.

Around 5:40 p.m. on the evening of November 30, 2016, Detective Erick Lopez of the Miami-Dade Police Department was on patrol in the area of 62nd Street and Northwest 17th Avenue in Miami, Florida. According to Lopez, this was a "high crime area" "known to have a high incidence of shootings." Detective Lopez has been a member of the Crime Suppression Team and was assigned to that team for some six years. Lopez recounted that he had investigated two shootings in the area. Along with Detective Jonathan Dweck, Lopez also had investigated an incident in which a person pulled a handgun on several other individuals but ultimately did not shoot anyone.

Detective Lopez was traveling eastbound in his unmarked police car on 62nd Street, which is a two-lane street with one lane going east and one going west. Lopez saw a black Audi sedan that was traveling westbound pull into the on-coming traffic of the eastbound lane and come to a stop. The black Audi was, thus, parked head-on to the oncoming traffic and obstructed the flow of traffic in the eastbound lane. After stopping in the middle of the street, the driver of the Audi exited the vehicle.

Lopez, who was in the eastbound lane, passed the Audi, continued eastbound to the end of the block, made a U-turn, and parked his car behind the Audi. Before turning around, Lopez radioed to see if other officers were in the neighborhood to assist him in stopping the driver of the Audi and issuing a citation for obstructing the flow of traffic. Lopez called for backup because he was concerned that there might be an altercation when he cited the driver and because traffic stops sometimes escalate when people become upset. Detective Jonathan Dweck responded that he was "just a couple of seconds away" and agreed to assist. Dweck, also in an unmarked police car, pulled up and parked in front of the Audi. Both officers were in plain clothes, both wore tactical vests with the word "police" on the front, and both officers activated the lights on their unmarked cars as they pulled up.

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It was undisputed that, when the detectives exited their vehicles, the black Audi's engine was still running, its headlights were on, and it was blocking traffic. No one was in the Audi. JD Jones, the driver of the Audi, was standing just outside between the Audi and another car parked on a gravel shoulder area next to the road. The space between the two cars was just wide enough for two people to stand there. Gibbs was standing next to the driver (Jones), and both men stood right next to the black Audi. Gibbs was never a passenger in the Audi, but he approached Jones just after Jones had stopped his vehicle. Gibbs joined Jones in the space between the two cars. When Officers Lopez and Dweck approached, Jones and Gibbs were basically channeled between the two cars. Lopez approached from the back of the Audi, and Dweck approached from the front. Thus, Jones and Gibbs would not have been able to leave without going through Lopez or Dweck or vaulting over one of the vehicles. Effectively, the Officers had blocked Gibbs from leaving.

Detective Lopez, who had observed the Audi's traffic violation, was aware that Jones was the driver of the Audi and focused his attention on Jones. Dweck did not know which of the two men—Gibbs or Jones—had been the driver of the Audi. Dweck testified that neither of them was free to leave until he determined who was the owner or driver of the Audi and issued a traffic citation. Both detectives testified that they were not investigating Gibbs for anything else when they arrived at the scene.

Dweck approached Gibbs first because Gibbs stood closest to him. As Dweck approached, Gibbs put his hands up over his head. Dweck testified that, when he first pulled up in his vehicle, he noticed that Gibbs was looking around to the left and to the right. Dweck explained that, in his experience, the way that Gibbs was looking around suggested that he might be preparing to flee. Before he was asked anything by the detectives, and almost immediately upon seeing Dweck, Gibbs said: "Officer, I'm going to be honest. I have a gun on me." The District Court found that the entire encounter from the moment that Lopez and Dweck exited their vehicles to the time that Gibbs made his statement took just a matter of seconds.

After Gibbs said that he had a gun, Dweck asked Gibbs whether he had a permit for the firearm. Gibbs responded, "No, I don't." Gibbs informed Dweck that the gun was in his back pocket. Dweck alerted Lopez to the presence of the firearm, handcuffed Gibbs, and directed Lopez to get a camera and gloves. Lopez retrieved those items and photographed the loaded .22 caliber pistol in Gibbs' back pocket. The officers then arrested Gibbs for carrying a concealed weapon without a permit.

Witnesses Javari Irving and Markedia Johnson, both relatives of Gibbs, testified at the suppression hearing that the officers exited their vehicles with their weapons drawn. Irving and Johnson were standing a short distance away from the Audi, outside a nearby apartment complex where they both lived. Irving was standing between the apartment's dumpster and a wooded area, talking to a friend, and Johnson was located just outside her front door watching her children play. Irving said that he saw an officer approaching Gibbs with his gun drawn. Johnson added that she saw two officers approach Gibbs with their weapons drawn and yell "get down." Lopez and Dweck denied drawing their weapons when they exited their vehicles or at any time during the entire encounter. Both detectives testified that they did not fear for their safety during the encounter. Dweck also testified that he did not give Jones and Gibbs any commands as he approached.

Thereafter, Gibbs was indicted for being a felon in possession of a firearm in violation of federal law. Gibbs pled not guilty and moved to suppress the firearm evidence and the statements that he had made to the police during the encounter—specifically, that he had a gun but that he did not have a concealed carry permit. Gibbs argued that the police did not have reasonable suspicion to detain him, that his statements were not spontaneous admissions, and that the police violated his Miranda rights.

The District Court conducted a suppression hearing on Gibbs' motion at which Lopez, Dweck, Irving, and Johnson all testified. Following the hearing, the District Court denied, in part, and granted, in part, Gibbs' motion to suppress. The District Court credited (1) Irving and Johnson's testimony that the officers approached

with their weapons drawn and issued commands, but also credited (2) Detective Dweck's testimony that Gibbs had raised his hands and spontaneously exclaimed that he possessed a gun. The District Court added that, under the circumstances of this case (namely the evening hour and the number of people present in a high crime area), the officers did not violate the Constitution by drawing their weapons for their own safety. The District Court made a factual finding that the officers had legitimate concerns for their own safety given the "evening hour, [and] the number of people in a high crime area." The District Court explained that, once the firearm was seized, Gibbs was in custody, but prior to that, his detention was brief and wholly consistent with *Terry v. Ohio*, 392 U.S. 1 (1968), and with the Fourth Amendment. Accordingly, the District Court denied Gibbs' motion to suppress his statement that he had a loaded .22 caliber firearm in his back pocket, but the District Court suppressed Gibbs' statement that he did not have a permit.

The Eleventh Circuit began its opinion by explaining that, under the Fourth Amendment, a police officer generally may lawfully detain an individual without a warrant if (1) there is probable cause to believe that a traffic violation has occurred (a traffic stop), or (2) there is reasonable suspicion to believe the individual has engaged or is about to engage in criminal activity (an investigative or Terry stop). While there are obvious differences between a traffic stop and a Terry stop, the United States Supreme Court has recognized that the two are analogous both in their duration and atmosphere. Of course, a traffic stop supported by probable cause may exceed the bounds set by the Fourth Amendment.

In evaluating both traffic and Terry stops, the Eleventh Circuit said that it examines (1) whether the officer's action was justified at its inception—that is, whether the officer had probable cause or reasonable suspicion to initiate the stop and (2) whether the stop was reasonably related in scope to the circumstances that justified it in the first place. In a traffic-stop setting, the first of these conditions—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. Therefore, police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.

The Supreme Court has held that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop. The Supreme Court has explained that traffic stops may be dangerous encounters due to the risk that evidence of a more serious crime might be uncovered during the stop, prompting the occupants of the vehicle to employ violence to prevent apprehension of such a crime. Indeed, this risk may be every bit as great from a passenger as from a driver and, thus, ordering a passenger to exit the vehicle reduces this risk by denying him access to any possible weapon that might be concealed in the interior of the passenger compartment.

Finally, during a lawful traffic stop, officers also may take steps that are reasonably necessary to protect their personal safety including requiring the driver and passengers to exit the vehicle as a matter of course. And in some circumstances, a police officer conducting a traffic stop may properly direct passengers to walk a reasonable distance away from the officer.

In this case, the Eleventh Circuit agreed with the District Court that Gibbs was detained for Fourth Amendment purposes. However, the Eleventh Circuit disagreed with the District Court that this was a Terry stop. Instead, the Eleventh Circuit said that the stop was more appropriately characterized as a traffic stop. The Eleventh Circuit then said that it had no difficulty finding that the traffic stop was justified based upon the black Audi's traffic violations. And given Gibbs' proximity to the Audi and to its driver, the Eleventh Circuit found that the brief detention of Gibbs was justified under the circumstances.

In short, the Eleventh Circuit opined: As we see it, the lawfulness of the encounter and the brief seizure of Jones and Gibbs turn on the validity of the stop. The traffic stop was lawful, and the District Court properly denied the motion to suppress the loaded .22 caliber firearm found in Gibbs' pocket only seconds after the

detectives came onto the scene. Accordingly, the Eleventh Circuit affirmed the District Court's denial of Gibbs' motion to suppress and Gibbs' conviction.

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