GEORGIA SUPREME COURT HOLDS PEACE OFFICERS HAVE NO AUTHORITY TO MAKE TRAFFIC ARRESTS OUTSIDE JURISDICTION

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On June 20th, 2016, the Supreme Court of Georgia decided *Zilke v. State*[i], which reverses the line of Georgia cases that held that *OCGA §17-4-23* gave peace officers the authority to enforce traffic law and make traffic arrests anywhere in the state, even outside of their normal jurisdictional limits. The relevant facts of *Zilke*, taken directly from the case, are as follows:

> Decari Mason is a POST-certified police officer employed at Kennesaw State University ("KSU"). At approximately 1:42 a.m. on May 5, 2013, Mason was returning to KSU after delivering an arrestee to the Cobb County Adult Detention Center. It was dark and raining heavily at the time.
> While traveling down Powder Springs Road in Cobb County, Mason observed [Bajrodin] Zilke driving without activated headlights or taillights and "severely failing to maintain lane." Mason initiated a traffic stop and approached Zilke, who smelled of alcohol, had bloodshot, watery eyes, was unsteady on his feet, and admitted to consuming two beers. At Mason's request, Zilke blew into an Alco-sensor, which registered positive for alcohol. Concluding that Zilke was under the influence of alcohol to the extent he was less safe to drive, Mason arrested him. Zilke submitted to a state-administered chemical breath test on the Intoxilyzer 5000 at 3:16 a.m. which revealed a blood alcohol level of 0.08.
> Zilke was charged with two counts of driving under the influence, failing to maintain lane, and operating a vehicle without headlights.[ii]

Zilke filed a motion to suppress the breath test and argued that KSU Police Officer Mason lacked jurisdiction to arrest him because *OCGA §20-3-72* grants university police officers the power to make arrests on campus and within 500 yards of campus. This arrest was miles from campus. The trial court granted the motion to suppress, and the State appealed to the Court of Appeals of Georgia. The court of appeals reversed the decision of the trial court and held that *OCGA §17-4-23(a),* as interpreted by the court of appeals in *Glazner v. State*[iii] and subsequent cases, gave peace officers statewide authority, even beyond their normal jurisdictional limits, to enforce traffic law and make

traffic arrests. Zilke then petitioned the Supreme Court of Georgia for a writ of certiorari to determine the issue of whether *OCGA §17-4-23(a)* gives a peace officer in Georgia statewide jurisdiction to make traffic arrests. The Supreme Court of Georgia granted the writ.

At the outset, the court noted that Zilke did not contest the validity of the traffic stop itself, but rather the officer's authority to conduct a DUI investigation and make an arrest outside of his statutory jurisdiction. As such, the officer's authority to simply conduct a traffic stop was not at issue in this case; rather, at issue was his jurisdiction to conduct a full investigation and make an arrest. The court also noted that the statutory jurisdiction of a university policy officer under *OCGA §20-3-72* is on campus and within 500 yards of campus property.

The court set out to examine law relevant to this case. First, they examined the officer's authority to make the arrest, particularly *OCGA §17-4-23(a)* and *Glazner* and its progeny that interpret that statute to confer statewide authority to make traffic arrests. The court stated that nothing in *OCGA §17-4-23* conveys extra-jurisdictional authority to peace officers regarding traffic offenses. Particularly, the court stated:

> We agree that Officer Mason had no authority to effect a custodial arrest of appellant outside the jurisdiction conferred by *OCGA §20-3-72*. Contrary to the contentions of the State and the reasoning of the Court of Appeals*, OCGA §17-4-23* cannot reasonably be construed to authorize Officer Mason's arresting appellant. **First, by its plain terms, *OCGA §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 statute does not confer the ability to make a custodial arrest for a motor vehicle violation, unless that person fails to answer the citation by appearing in court and, then, an apprehension of the person must be made pursuant to a warrant*.*** *OCGA § 17-4-23 (b).*
>
> **Indeed, the purpose of OCGA § 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.** See Brock v. State, 196 Ga. App. 605 (1) (396 SE2d 785) (1990) ("For the convenience of the motoring public and the police, [OCGA § 17-4-23 (a)] gives the officer the option of issuing a citation rather than going through the time-consuming ordeal of a custodial arrest."). See also Lopez v. State, 286 Ga. App. 873 (1) (650 SE2d 430) (2007).[iv] [emphasis added]

Second, the court also examined the statutory history of *OCGA §17-4-23* and found no such authority or intent to allow officer to make traffic arrests outside of their legal jurisdiction.

Thus, the court agreed that, under *OCGA §17-4-23*, the officer had no authority to make a traffic arrest outside of his jurisdiction.

Third, the court examined *OCGA §17-4-20(a)* to determine if that code section supports the officer's authority to arrest Zilke outside of his jurisdiction. Regarding this statute, the court stated:

> **[P]ursuant to OCGA § 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." For example, weaving in and out of a roadway lane may justify a warrantless custodial arrest.** See Lopez v. State, supra, 286 Ga. App. at 875. A warrantless custodial arrest for drunk driving may also be justified. See, e.g., Cheatham v. State, 204 Ga. App. 483 (1) (419 SE2d 920) (1992). **Yet, as with OCGA §17-4-23, nothing in OCGA § 17-4-20 expands the statutorily-imposed jurisdiction of a campus police officer**.[v] [emphasis added]

Thus, the court held that this code section does not expand an officer's jurisdictional authority.

Fourth, the court stated that being POST-certified gives an officer arrest powers, but those powers are still limited to the officer's jurisdiction.

Fifth, the court examined whether the arrest was valid as a citizen's arrest under *OCGA §17-4-60* and §*17-4-61*. The court stated that that if the officer would have acted under these statutes, he would have been required to deliver Zilke to a judicial officer or to turn him over to an officer from the appropriate jurisdiction for investigation and arrest. Specifically, the court stated:

> **If Officer Mason 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."** *OCGA § 17-4-61 (a*). As a private person making a citizen's arrest, **Officer Mason would not have been authorized per *OCGA § 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.** The record shows that in this case, the City of Marietta police came to the scene, but then left for reasons unknown. **Had the City of Marietta police stayed, they could have assumed custody of appellant and then they would have been required to take him to a judicial officer who was authorized to receive an affidavit and to issue a warrant.** *OCGA §17-4-61 (b)* ("A peace officer who takes custody of a person arrested by a private person shall immediately proceed in accordance with Code Section 17-4-62."); *OCGA §17-4-62*.[vi] [emphasis added]

The court then reversed the Court of Appeals and held that the university police officer did not have authority to arrest Zilke outside of his statutory jurisdiction.

However, the Supreme Court of Georgia also noted that, despite their holding above, suppression of evidence is an extreme sanction to be taken by the courts. Specifically, the court stated:

> Thus, this Court has held that the exclusionary rule cannot be imposed "as a judicially-created remedy ... absent a violation of a constitutional right." The legislature may also provide for the exclusion of evidence or its fruits as a matter of statutory law, but suppression is not required merely because evidence was obtained in violation of a statute. **Instead, "the exclusionary rule is an appropriate sanction for a statutory violation only where the statute specifically provides for suppression as a remedy**

or the statutory violation implicates underlying constitutional rights such as the right to be free from unreasonable search and seizure." State v. Chulpayev, 296 Ga. 764, 776-777 (770 SE2d 808) (2015) (citations omitted).[vii] [emphasis added]

In this case, the trial court did not state the legal reasoning, whether statutory or constitutional, for suppressing the evidence. However, the State did not appeal the suppression of the evidence specifically, but only argued the case regarding jurisdiction. Therefore, the Supreme Court cannot decide whether it was proper to exclude the evidence. To this end, Justice Nahmias, in a concurring opinion, stated:

> [T]here is a substantial question regarding whether it was proper for the trial court to suppress evidence as a remedy for the violation of OCGA § 20-3-72 that the court correctly found in this case. Because the State has not challenged the remedial aspect of the trial court's order, the Court appropriately does not decide this question today. **But this discussion should highlight the importance of considering the remedial element of motions to suppress evidence in future cases of this sort**.[viii] [emphasis added]

Practice Pointers:

What does this case mean for Georgia peace officers?

- When peace officers witness a dangerous driver outside of their jurisdiction, they can conduct a traffic stop, although it is preferable to follow the violator and let the appropriate jurisdiction make the stop if there is not an unreasonable risk to other motorists and the officer.

- When a peace officer witnesses a violation outside his or her jurisdiction and makes a traffic stop, they must summon the appropriate jurisdiction to the scene to conduct an investigation and issue a citation or make a custodial arrest.

- Officers still have authority under the "hot pursuit doctrine," when they witness a violation in their jurisdiction and then follow a violator outside of their jurisdiction, to make the traffic stop, conduct an investigation and make the arrest (because the offenses were witnessed in the officer's proper jurisdiction and the "hot pursuit" was immediate and continuous).[ix]

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*

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[i] S15G1820 (Ga. Decided June 20, 2016)
[ii] Id.
[iii] 170 Ga. App. 810 (318 SE2d)(1984)
[iv] Zilke v. State (Ga. 2016)
[v] Id.
[vi] Id.
[vii] Id.
[viii] Id.

[ix] Poss v. State, 167 Ga. App. 86 (305 SE2d 884)(1983); State v. Hoover, 253 Ga. App. 98 (558 SE2d 71)(2001)