

IN THE STATE COURT OF ATHENS-CLARKE COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA

v.

Case No.: ST25CR0470

JOHN CHOE,  
Defendant.

ORDER ON MOTION TO SUPPRESS

On July 22, 2025, this matter came before the Court for a hearing on Defendant's Motion to Suppress. Defendant has been charged by accusation with one count of Obstruction. On February 16, 2025, in Clarke County, Officer John LaValley of the Athens-Clarke County Police Department (ACCPD) responded to a 911 call from a clerk at the Murphy USA gas station on Lexington Rd. The clerk reported that a vehicle was parked at the gas station for a prolonged period of time and that she wanted an officer to check on its occupant(s). After making contact with the Defendant, Officer LaValley requested the Defendant provide his identification, which the Defendant eventually declined to provide. The Defendant was thereafter arrested on the obstruction charge and transported to the Clarke County Jail. At the hearing, the Court heard testimony from Officer LaValley and a copy of Officer LaValley's body camera footage of the incident was admitted into evidence. Furthermore, the State offered into evidence the 911 call made by the clerk.

As the basis for his *Motion*, Defendant seeks to suppress evidence allegedly obtained in violation of his Fourth and Fourteenth Amendment rights. Specifically, Defendant challenges reasonable articulable suspicion for the stop.

After consideration of the record, applicable law, argument of counsel, and for the reasons set forth on the record at the hearing, the Court finds and orders as follows:

Reasonable Suspicion

A brief investigative stop "must be justified by specific, articulable facts sufficient to give rise to a reasonable suspicion of criminal conduct.... This suspicion need not meet the standard of probable cause, but must be more than mere caprice or a hunch or an inclination." *State v. Goodman*, 220 Ga. App. 169, 171 (1996), citing *State v. Jones*, 214 Ga. App. 593, 594 (1994).

During the initial 911 call from the clerk at the Murphy USA gas station on Lexington Rd, the clerk states that a "car has been sitting in the parking lot for over an hour" and that she does not want to approach the vehicle. After giving the 911 operator a description of the car, the clerk states "I don't know if they are handicapped, or if they fell asleep or if they are okay...I don't know what they are doing..." After the operator asks the clerk if she wants the car to leave, the clerk initially agrees but then clarifies, "I guess I'm rather trying to make sure they're okay, there's too much going on in the world now, they haven't came in and said anything about needing to sit there for a while, so I don't know why they're there."

After independently evaluating the initial 911 call, the Court finds that that the call was made primarily out of concern for the safety and wellbeing of the occupant(s) in the vehicle, not for the purpose of reporting suspected criminal activity occurring on the property. The clerk indicated that she wanted an officer to check on the individual(s) in the vehicle because they had been parked there for some time. Even if the 911 call could be construed as a report of suspected criminal activity, for the reasons discussed in more detail below, this 911 call fails to provide articulable facts that give rise to suspicion of any specific criminal conduct. Certainly, Defendant's mere presence in his car at the gas station parking lot, even if for an extended period of time, is insufficient standing alone to suspect criminal behavior.

Officer LaValley was dispatched to the gas station in response to the 911 call and arrived on scene, in his marked patrol vehicle, armed, and in uniform. Officer LaValley proceeded to park directly next to Defendant's vehicle and very quickly made contact with the Defendant, who was alone, seated in the rear-passenger side of the vehicle. The Defendant told the officer he was stopped there waiting for the storm overhead to pass. In reviewing the AXON video, Officer LaValley can be seen explaining that he had been dispatched to the gas station because "those people are concerned" and "want to make sure you are okay" as the Defendant had been there for a couple of hours (LaValley at 00:37). Officer LaValley immediately follows up to ask if the Defendant has ID on him. The Defendant thereafter offers to move his car. Officer LaValley replies that Defendant does not have to move, and further, says to the Defendant "I am not accusing you of anything, they just want us to check on you." (LaValley at 00:47).

After Defendant states that he is merely passing through, and asks if he has committed a crime, Officer LaValley's demeanor and tone of voice change. This portion of the encounter starts when Officer LaValley tells Defendant that he "needs your ID" (LaValley at 00:52). Defendant then asks if he has committed a crime, and Officer LaValley responds with, "You are loitering." (LaValley at 00:55). Defendant begins to ask a question regarding trespassing and is cut off when Officer LaValley interjects to say, "Yes, you are because you have been here for hours. I need your ID sir." (LaValley at 00:59) Defendant asks again if he has committed a crime and Officer LaValley responds, "Yes, it's called trespassing and loitering. That's a crime." (LaValley at 01:18) After some further back and forth, Officer LaValley tells the Defendant that he needs the ID because he "has been here for hours and that is not normal behavior." (LaValley at 1:46).

In light of the facts set forth above, the Court finds that Officer LaValley elevated the encounter into a second-tier detention at the time he accused Defendant of loitering and trespassing (less than a minute from Officer LaValley's arrival at the scene and less than 30 seconds into his recorded conversation with the Defendant). Based on the totality of the circumstances at that point, including the fact that the Officer stated to Defendant twice that he had committed crimes (loitering and/or criminal trespass), no reasonable person in Defendant's position would have felt free to terminate the encounter. This clearly had elevated to a seizure that required a particularized and objective basis for suspecting that Defendant was or was about to be involved in criminal activity.

However, at this point in the encounter, a second-tier detention could not be justified based on the 911 call or Officer LaValley's limited personal observations at the scene. While Georgia appellate courts have held that 911 calls can form the basis underlying reasonable suspicion for a second-tier investigatory stop,<sup>1</sup> here, based on this particular 911 call, Officer LaValley did not have reasonable articulable suspicion that Defendant was committing any criminal offense.

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<sup>1</sup> See *In the Interest of A. P.*, 348 Ga. App. 638, 641 (2019)

Georgia's loitering or prowling statute, O.C.G.A. §16-11-36, provides in part:

(a) A person commits the offense of loitering or prowling when he is in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

Applying the statute to the fact scenario here, Officer LaValley approached the Defendant in his vehicle, the Defendant opened the door, at which point Officer LaValley asked if he was okay, to which the Defendant replied that he was. At the time this incident occurred, it was visibly raining in the area, and immediately upon contact with Officer LaValley the Defendant explained that he was waiting for the storm to pass overhead and that he was "resting." That explanation is sufficient to explain Defendant's presence and dispel any reasonable alarm. Applying the standard for reasonable suspicion above, there is nothing that would indicate a reasonable suspicion of criminal conduct that could questionably fall within the parameters of the statute. Officer LaValley repeatedly tells the Defendant his behavior is not "normal behavior" (specifically for an individual to be parked at a gas station for such a long period of time). However, "not normal" is not the standard and does not in and of itself equate to "criminal." At the point Officer LaValley first told Defendant he was committing the crime of loitering, the Officer had only been at the gas station for less than a minute, and had only been speaking with Defendant for less than 30 seconds. Neither the 911 call nor Officer LaValley's observations at the scene warranted "a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity." As the Court of Appeals noted in *Lewis v. State*, 323 Ga. App. 709 (2013), "an officer's feeling that a person is acting in a suspicious way does not amount to a particularized and objective basis for suspecting him of criminal activity." *Id.* at 712, citing *Ewumi v. State*, 315 Ga. App. 656, 661 (2012).

It appears Officer LaValley was operating off some hunch or inclination that the Defendant was loitering based on the length of time he had been parked at the gas station. While the Court does not necessarily agree with Officer LaValley in his assessment that such action is "not usual for law-abiding individuals," even if it were,

Officer LaValley had no affirmative evidence that any of Defendant's actions warranted a justifiable and reasonable alarm or created concern for the safety of persons or property in the vicinity. After review of the evidence and testimony presented, the Court does not find that Officer LaValley's second-tier encounter with the Defendant was justified by reasonable articulable suspicion.

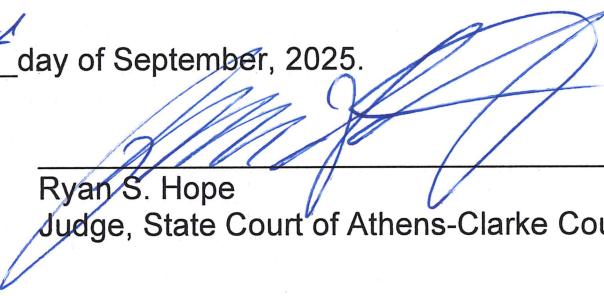
While later conversations between Officer LaValley and the clerk may have supported some inference that Defendant was loitering or trespassing on the property, Officer LaValley had already elevated the encounter to a second-tier detention prior to gathering such information. If Officer LaValley had developed this information during a voluntary first-tier encounter, the outcome would likely have been different. All interactions between the Officers and Defendant that occurred as a result of the unlawful second-tier detention (starting when Defendant is accused of the crime of "loitering" (LaValley at 00:55)) are excluded.

For the reasons set forth above, Defendant's Motion to Suppress is GRANTED.

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Copies of this order have been served on Counsel for the State and Counsel for the Defendant.

SO ORDERED, this 3<sup>rd</sup> day of September, 2025.

  
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Ryan S. Hope  
Judge, State Court of Athens-Clarke County