



SUPREME COURT OF GEORGIA
Case No. S24C0824

August 13, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JOHNNY HAMILTON v. THE STATE.

The Supreme Court today denied the petition for certiorari in this case.

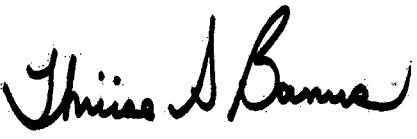
All the Justices concur, except Peterson, P. J., who dissents.

Court of Appeals Case No. A23A1485

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.


Thresa N. Barnes, Clerk

**SECOND DIVISION
MERCIER, C. J.,
MILLER, P. J., and HODGES, J.**

NOTICE: Motions for reconsideration must be physically received in our clerk's office within ten days of the date of decision to be deemed timely filed.
<https://www.gaappeals.us/rules>

January 26, 2024

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

A23A1485. HAMILTON v. THE STATE.

HODGES, Judge.

Johnny Hamilton was charged with two counts of reckless conduct (OCGA § 16-5-60 (b))¹ after he left his toddler twins unattended in a car in a grocery store parking lot, at night, in mid-July 2021. He pled guilty in April 2023, and was sentenced to completing a parenting course. He now appeals pro se, raising the following enumerations of error: (1) his guilty plea was involuntary because he received ineffective assistance of trial counsel; (2) the trial court erred in denying, in part, his

¹ OCGA § 16-5-60 (b) provides that “[a] person who causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his or her act or omission will cause harm or endanger the safety of the other person and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation is guilty of a misdemeanor.”

motion to suppress; and (3) the reckless conduct statute, as applied, was unconstitutionally vague. For the reasons that follow, we affirm.

Viewed in the light most favorable to the verdict,² the evidence in the record shows that on the night of July 21, 2021, after Joshua Katz parked at a Kroger in Canton, he noticed a vehicle with its lights and flashers flashing and its horn honking. In a sworn affidavit, he averred that as he got closer to the vehicle, he saw “a child or children inside. Additionally, the [s]ubject [v]ehicle appeared to have the windows up and the motor was not running.” He told a Kroger employee what he had seen in order to “make sure any child or children in the car were safe.” A Kroger employee called 911.

When a POST-certified officer with the Cherokee County Sheriff’s Office responded, he observed the children in the car and saw Hamilton walking toward the car. Although the officer testified that he did not personally see the children unattended — since Hamilton was walking toward the vehicle — the officer also testified that as soon as he arrived at the scene, he asked Hamilton if he had left the children unattended in the car while he went inside the store to shop. Hamilton said

² *Jackson v. Virginia*, 443 U. S. 307, 319 (III) (B) (99 SCt 2781, 61 LEd2d 560) (1979).

yes. Hamilton admitted to leaving the children alone for about 10 or 15 minutes, but said he left them in the car because he feared they would be exposed to Covid. His son escaped his car seat, however, and was in the front seat honking the horn and flashing the lights. Hamilton told the officer he had not attempted to find care for the children while he went grocery shopping. The officer received Hamilton's permission to check on the children, and he found that they were uninjured and were not hot or sweating.³ The officer issued a citation for reckless conduct and also issued a referral to the Department of Family and Children Services.

1. Hamilton avers that his "guilty plea was involuntary given the totality of the circumstances due to the ineffective assistance of [trial] counsel and should not have been accepted by the [t]rial [c]ourt." We disagree.

³ The officer's bodycam video of the interaction between the officer and Hamilton was admitted into evidence and played without objection. The trial court cites to the video in its findings of fact in its order on Hamilton's motion to suppress. This video, however, is not in the appellate record. "[I]t is the burden of the appealing party to ensure that a complete record is transmitted to this Court on appeal, including the transmission of video or audio recordings." Court of Appeals Rule 18 (b). See generally *Rodriguez v. State*, 295 Ga. 362, 368 (2) (b), n. 11 (761 SE2d 19) (2014) ("[W]e note that a video recording of the traffic stop was tendered in evidence at the hearing below, but it does not appear in the record on appeal. We must assume, therefore, that the recording supports the decision of the trial court.").

Hamilton did not move to withdraw his guilty plea in the trial court,⁴ nor did he argue below that he received ineffective assistance of trial counsel.

As an initial matter, the record before us contains nothing indicating when — or if — Hamilton’s trial counsel withdrew from representation. Our Supreme Court has determined that appellate courts have the discretion to recognize hybrid representation, including the discretion to recognize pro se filings by counseled defendants. See *Johnson v. State*, 315 Ga. 876, 890-891 (4) (885 SE2d 725) (2023) (noting that pro se filings by counseled defendants are not legal nullities per se and that appellate courts may exercise their discretion to recognize such filings in order “to preserve a right of appeal that would otherwise be lost through no fault of the defendant . . . in the furtherance of justice.”) We thus exercise our discretion to recognize Hamilton’s pro se notice of appeal.

Turning to the substance of Hamilton’s contentions, it is well settled that “an ineffectiveness claim must be raised at the earliest practicable moment[, which]

⁴ See, e. g., *White v. State*, 211 Ga. App. 779 (440 SE2d 527) (1994) (noting that a motion to withdraw a guilty plea is not a necessary prerequisite to appeal); see generally *Collier v. State*, 307 Ga. 363, 367 (1) (834 SE2d 769) (2019) (overruling a line of cases that held a criminal defendant’s right to appeal directly from a judgment entered on a guilty plea was limited to those where the issue could be resolved by facts appearing on the face of the record).

requires that that claim be raised before appeal if the opportunity to do so is available. . . [T]he failure to seize that opportunity is a procedural bar to raising the issue at a later time.” (Punctuation omitted; emphasis in original.) *Glover v. State*, 266 Ga. 183, 184 (2) (465 SE2d 659) (1996). Here, Hamilton could have filed a pro se motion to withdraw his guilty plea based on ineffective assistance of counsel in the trial court. He did not. Instead, he filed his notice of appeal less than 20 days following the judgment of conviction and without filing any other post-conviction motions below. As a result, his claims of ineffective assistance were not raised at the earliest practicable moment and are procedurally barred. See, e. g., *Biggs v. State*, 319 Ga. App. 631, 632 (737 SE2d 734) (2013) (failure to raise ineffective assistance claims in the trial court at the earliest practicable moment in a motion to withdraw guilty plea created a procedural bar); see also *Trauth v. State*, 283 Ga. 141, 143-144 (3) (657 SE2d 225) (2008) (finding ineffectiveness claim waived where defendant took over his own case from his trial counsel “and did nothing to raise his ineffective assistance claims, although he could have filed a motion with the trial court at that time. Instead, [he] chose to file a notice of appeal. In doing so, [he] failed to raise his claim of ineffective assistance at the earliest practicable moment.”)

Also, although Hamilton makes factual assertions regarding counsel's alleged ineffectiveness, he provides no relevant citations to the record for the facts he alleges, pointing only to a 16-page series of motions filed by his trial counsel. It is well-settled that “[f]actual assertions contained in a party's brief are not evidence unless supported by the record.” (Citation and punctuation omitted.) *Premier Residential SE, LLC v. Silverstone Residential, LLC*, 368 Ga. App. 142, 153 (5) (889 SE2d 325) (2023). Hamilton further provides only one general citation to legal authority: *Strickland v. Washington*, 466 U. S. 668 (104 SCt 2052, 80 LE2d 674) (1984), a case which discusses ineffective assistance of counsel; he points to no legal authority regarding involuntary guilty pleas and makes no further meaningful argument regarding why his guilty plea was involuntary. See *Colbert v. State*, 264 Ga. App. 519 (591 SE2d 364) (2003) (finding, where defendant asserted that his guilty plea was involuntary because of ineffective assistance of counsel, that his appellate brief was “wholly inadequate due to the absence of proper record citations . . . and any meaningful argument[,]” and that he failed to carry his burden of proving by the record that the trial court erred). Thus, in addition to the procedural bar discussed above, Hamilton's claims of ineffective assistance also are barred because he has abandoned them. Court of

Appeals Rule 25 (d) ("Any enumeration of error that is not supported in the brief by citation of authority or argument may be deemed abandoned.").

Finally, in the guilty plea form Hamilton signed, he averred, *inter alia*, that he understood his rights to counsel, to confront and cross-examine witnesses, and to a jury trial and an appeal, and that he understood his privilege against self-incrimination. See *Boykin v. Alabama*, 395 U.S. 238, 243-244 (89 SCt 1709, 23 LE2d 274) (1969). It is apparent from our review of the guilty plea hearing transcript that "he was cognizant of all the rights he was waiving and the possible consequences of his plea, and that the plea was knowing and voluntary. Based on the record and briefs before us, we find no reversible error." *Id.*

2. Hamilton argues that the trial court erred in partially denying his motion to suppress. However, as we determined in Division 1, Hamilton pled guilty and has not shown that the trial court erred in accepting his plea. "[I]t is axiomatic that a defendant waives any error in the denial of his motion to suppress by pleading guilty. . . . Accordingly, this Court is precluded from reviewing that decision." (Citations and punctuation omitted.) *Maddox v. State*, 359 Ga. App. 314, 315 (857 SE2d 492) (2021); see *id.* at 315, n. 1.

3. Hamilton contends, in a somewhat convoluted argument, that the trial court's application of the reckless conduct statute, OCGA § 16-5-60 (b), was unconstitutionally vague. He argues, variously, that the statute is unconstitutionally vague because he lacked guilty intent, "the 911 call was executed while [Hamilton] was with his children[,] he did not emotionally or physically harm his children; and, given the risk of Covid 19, "it cannot be determined that anyone was in any danger at any time."

"With a few limited exceptions, a plea of guilty generally waives all defenses . . ." (Citation and punctuation omitted.) *Moore v. State*, 285 Ga. 855, 858 (2) (684 SE2d 605) (2009). Those exceptions include the assertion that the plea was not knowing and voluntary, id.,⁵ the contention that the indictment fails to charge a crime, *Smith v. Hardrick*, 266 Ga. 54, 56 (3) (464 SE2d 198) (1995), and illegal sentencing issues. *Nazario v. State*, 293 Ga. 480, 483-490 (2) (746 SE2d 109) (2013). "An exception will only be made if the error goes to the very power of the State to bring the defendant into court." (Citation and punctuation omitted.) *Moody v. State*, 316 Ga. 490, 504-509 (3) (888 SE2d 109) (2023). Hamilton "makes no argument that any

⁵ We already decided this issue adversely to Hamilton in Division 1, *infra*.

exception to the general rule applies here.” *Powell v. State*, 309 Ga. 523, 528 (3) (847 SE2d 338) (2020). See also *Phelps v. State*, 293 Ga. 873, 881 (4) (750 SE2d 340) (2013) (finding that a guilty plea waives “any defense known and unknown”). We find no error.

Judgment affirmed. Mercier, C. J., and Miller, P. J., concur.

REMITTITUR

Court of Appeals of Georgia

Atlanta, January 26, 2024

Case No. A23A1485. JOHNNY HAMILTON v. THE STATE.

Upon consideration of this case, which came before this Court on appeal from the State Court of Cherokee County, this Court rendered the following decision:

Judgment affirmed.

Mercier, C. J., Miller, P. J., and Hodges, J., concur.

LC NUMBERS:
21M1515

Costs paid in the Court of Appeals: \$80



*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, August 28, 2024.*

*I certify that the above is a true extract from the minutes
of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto
affixed the day and year last above written.*

Christina Colley Hart, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, February 08, 2024

The Court of Appeals hereby passes the following order

A23A1485. JOHNNY HAMILTON v. THE STATE.

Upon consideration of the APPELLANT'S motion TO SUPPLEMENT THE RECORD in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, February 08, 2024.*

*I certify that the above is a true extract from the minutes
of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto
affixed the day and year last above written.*

Stephen E. Carter, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, March 08, 2024

The Court of Appeals hereby passes the following order

A23A1485. JOHNNY HAMILTON v. THE STATE.

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, March 08, 2024.*

*I certify that the above is a true extract from the minutes
of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto
affixed the day and year last above written.*

Stephen E. Castor, Clerk.

APPENDIX "A"

1. Transcript of Motion to Suppress Hearing

IN THE STATE COURT FOR THE COUNTY OF CHEROKEE
STATE OF GEORGIA

State Court of Cherokee County
E-Filed
21M1515
5/12/2023 8:56 AM MB
Patty Baker, Clerk
Civil Division

STATE OF GEORGIA,)
vs.) CASE NO. 21M1515
JOHNNY HAMILTON,)
Defendant.)

Transcript of motion to suppress proceedings
Before The Honorable Michelle Helhoski
State Court Judge
Thursday, January 19th, 2023

APPEARANCES OF COUNSEL

For the State of Georgia:

SARA GRAINGER, ASSISTANT SOLICITOR GENERAL
100 North Main Street
Canton, GA 30114

For the Defendant:

PRO SE

Felisha Mason, Certified Court Reporter
90 North Street
Suite 185
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BRYANT MOYERS

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Recross-Examination by Mr. Hamilton	35

5

6

EXHIBIT

7

State's

Exhibit No.

1

Description

Video

Identified

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*Felisha Mason, Certified Court Reporter**90 North Street**Suite 185**Canton, Ga 30114**678/493-6486*

2

PROCEEDINGS

2:58 p.m.

3 **THE COURT:** Mr. Hamilton, if you don't want to
4 speak to the two free defense attorney that's fine but
5 I'm going to release them. Once they're released,
6 they'll go back to whatever else they otherwise have
7 planned -- scheduled for the day. You don't want to
8 talk to either one?

9 MR. HAMILTON: I could, but....

10 **THE COURT:** It's up to you. I'm not making you.
11 I'm giving you a chance to talk to free defense
12 attorneys.

13 MR. HAMILTON: Yes, ma'am.

14 | THE COURT: You do?

15 || MR. HAMILTON: That would be fine.

16 **THE COURT:** Okay. The issues was -- Ms. Grainger,
17 do you just want to tell one of the AODs what the
18 request was?

19 || (Whereupon, a short recess was taken.)

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1 filed on November 21st of last year, is that the one
2 you want to go forward on?

3 **MR. HAMILTON:** Yes, your Honor.

4 **THE COURT:** I know the State previously requested
5 a continuance for the transcript. I've denied that.
6 Do you want to make an opening statement, Ms. Grainger?

7 **MS. GRAINGER:** Yes, Judge. It is my understanding
8 that Mr. Hamilton is contesting or asking to suppress
9 the statements based off a lack of Miranda. It's the
10 State's contention he was not under arrest at that
11 point in time.

12 **THE COURT:** Thank you. For -- we jumped the gun a
13 little bit. On the request for a transcript, Ms.
14 Mason, I think probably took that down, but does
15 someone want take down?

16 **MS. GRAINGER:** We've already talked about that. I
17 want take down.

18 **THE COURT:** Sir, that was an opening statement.
19 An opening statement in a motion is where someone tells
20 me what they think the issues are or anything they
21 want -- or what they anticipate the evidence will be.
22 You don't have to make an opening statement. That is
23 her opening. Do you want to make an opening or just
24 have her call witnesses?

25 **MR. HAMILTON:** Yes, ma'am, I'd like to make an

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1 opening statement. In regards to the arrest, it's on
2 the Cherokee County Sheriff's Office incident report
3 under child abuse. It had the time of the arrest, the
4 date of the arrest and the video will show that the
5 officer said that I arrested the guy, and we released
6 him on a citation. I was under arrest and in custody;
7 therefore, that invokes the Fifth Amendment rights of
8 the Miranda.

9 **THE COURT:** All right. Call your first witness.

10 **MS. GRAINGER:** We'll call Deputy Moyers. Raise
11 your right hand.

12 **BRYANT MOYERS,**

13 having been first duly sworn, was
14 examined and testified as follows:

15 **DIRECT EXAMINATION**

16 **BY MS. GRAINGER:**

17 Q And have a seat and introduce yourself to the Court,
18 please.

19 A Yes, I'm Corporal Moyers with the Cherokee County
20 Sheriff's Office.

21 Q Are you a POST certified officer?

22 A I am.

23 Q How long have you been so certified?

24 A Six years.

25 Q And what is your -- where do you work right now?

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1 A I'm employed with the Cherokee County Sheriff's
2 Office under the uniform patrol division. I'm currently a
3 Corporal at the Hickory Flat precinct.

4 Q And when did you start working for the Cherokee
5 County Sheriff's Office?

6 A That would be about eight years.

7 Q But you've only been POST certified for six?

8 A Correct. And I worked at the ADC prior.

9 Q So all of the law enforcement experience is it with
10 Cherokee County Sheriff's Office?

11 A It is.

12 Q When you did your POST certification, did you go down
13 to Forsyth and do it there, or did you do it somewhere else?

14 A I did it at the sheriff's office where we had a
15 school there at the time through -- still through GPSTC.

16 Q But you did it through --

17 A Correct.

18 Q -- located here in Cherokee County?

19 A Correct.

20 Q Did you do the version where it was pretty much full
21 time or did you do classes here and there?

22 A Full-time.

23 Q Full-time. So how long did that last?

24 A About three-and-a-half months I believe.

25 Q Okay. And did you also go through the field training

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1 officer program?

2 A I did.

3 Q How long did you do that?

4 A A little over three months.

5 Q And when you were doing that, you were, correct me if
6 I'm wrong, but you were assigned to another officer?

7 A I was assigned to a different shift. I was a deputy
8 at the time.

9 Q But you had like a supervising officer who would help
10 train you on --

11 A Correct.

12 Q And you completed that program?

13 A I did.

14 Q Is it also a requirement of being a POST certified
15 officer that you have continuing education hours each year?

16 A Correct.

17 Q How does that work?

18 A Required to complete a certain number of hours every
19 year to maintain our certification through the State.

20 Q Okay. And the Sheriff, Frank Reynolds, is he
21 requiring you to have additional hours besides what POST
22 requires you to have?

23 A They prefer it.

24 Q They prefer it?

25 A Yes.

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1 Q So since you became a POST certified officer six
2 years ago, have you maintained in compliance with POST?

3 A I have.

4 Q And have you also maintained your compliance with the
5 Frank Reynolds rules?

6 A I do.

7 Q Are you right now up to date with your hours?

8 A I am.

9 Q This case happened in July 2021; is that correct?

10 A Correct.

11 Q Were you up to date with your hours at that point in
12 time?

13 A I was.

14 Q And were you POST certified at that point in time?

15 A I was.

16 Q You said you were working out of which precinct?

17 A The Hickory Flat precinct.

18 Q Back in July 2021 were you at the same precinct?

19 A I was.

20 Q And what shift were you working?

21 A I was shift four at the time.

22 Q And what are the hours of the shift four?

23 A We work usually between 5:00 p.m. and 6:00 a.m.

24 Q 5:00 p.m. to 6:00 a.m. So over night?

25 A Correct.

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1 Q And so you were you working the same shift back in
2 2021?

3 A Yes.

4 Q Okay. And the same one now?

5 A No, I'm on a different shift. I'm on the opposite
6 rotation.

7 Q You're on a different shift now. Are you on daytime?

8 A No, I'm on the opposite night shift than I was a
9 year-and-a-half ago.

10 Q Okay. What do you mean by "opposite"?

11 A We have four shifts. Two day shifts and two shifts.

12 Q Okay.

13 A Because we only work four days a week, therefore, it
14 flip flops.

15 Q Oh, I see what you're saying. I'm sorry. But you
16 were doing basically the same hours just --

17 A Correct.

18 Q -- a different shift?

19 A Yes.

20 Q But still the same precinct and all of that?

21 A Yes, ma'am.

22 Q And did you have an occasion to come into contact
23 with the defendant, Johnny Hamilton?

24 A Yes.

25 Q Tell me how that came to be.

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1 A Received a 911 call from an individual at Kroger
2 saying that they observed children unattended in a vehicle
3 honking the horn and flashing its lights.

4 Q What Kroger are we talking about?

5 A It would be the one on Hickory Flat Highway. I think
6 it's -- I can't remember the address. At the intersection of
7 Hickory Road and Highway 140.

8 Q Is that located here in Cherokee County?

9 A It is.

10 Q Do you see the person that we're talking about in the
11 courtroom today?

12 A I do.

13 Q Could you please point him out for the record? Just
14 verbally.

15 A Yes, this gentleman here (indicating).

16 Q Describe what he's wearing.

17 A A suit, tie.

18 Q And so did you speak to Mr. Hamilton at that Kroger?

19 A I did.

20 Q What time of day are we talking about?

21 A I believe it was around a little after 9:00.

22 Q 9:00 p.m.?

23 A Correct.

24 Q It was during your normal shift hours?

25 A Yes.

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1 Q What was the weather like?
2 A It was dark, but hot. It was the middle of July.
3 Q Middle of July in Georgia?
4 A Yes.
5 Q Do you remember if it was raining or anything like
6 that?

7 A It was clear.
8 Q Clear. Okay. And so when you got to that Kroger,
9 tell me about the lighting and stuff like that.

10 A Illuminated as any large shopping center is.
11 Q Was it crowded? Was it --
12 A It was slightly crowded, yes. Multiple people going
13 in and out, parking lot pretty full.

14 Q So you get there. What do you see?
15 A I was given a location and a description of the
16 vehicle. When I pulled to the Kroger, I observed the
17 description of the vehicle, pulled in next to it and that's
18 where I made contact with the defendant.

19 Q When you made contact with the defendant, how did you
20 know that's who you were looking for?

21 A Based on the vehicle description, its location, and I
22 could see through front window that there were kids in the car,
23 and I saw him walking back to the vehicle from, I believe,
24 putting the cart up.

25 Q Like at the carousel thing --

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1 A Correct.

2 Q -- in the parking lot?

3 A So when I pulled in to the side of the vehicle in one
4 of the parking spots, he was approaching the vehicle and that's
5 when I talked to him.

6 Q Did you initiate that contact verbally or did
7 Mr. Hamilton initiate it?

8 A I spoke to him, yes, initially.

9 Q What did you guys talk about?

10 A A let him know who I was. I let him know why I was
11 there. I asked him if he had the kids in the car when he went
12 in the store. And he said, yes.

13 Q Did you place him under arrest at that point in time?

14 A No.

15 Q Did you ever place him under arrest?

16 A No.

17 Q Let's just keep walking through all of this. You
18 talked to Mr. Hamilton?

19 A I spoke to Mr. Hamilton very briefly at first. When
20 he said -- I got his information, his ID. I told him the
21 reason I was there. The risk associated with everything. He
22 began to use his phone, things like that, to call, I assume,
23 his niece because she showed up a little bit later, as well as
24 his wife who then showed up a little bit later as well.

25 Q Let me interrupt you real quick.

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1 A Sure.

2 Q Did you have a partner or anything like that with
3 you?

4 A Yes. I received a call from one of my supervisors
5 asking me about the -- getting an updated on the situation. I
6 informed him what I had. He said he was going to come to the
7 scene as well. And then he arrived shortly after as well, yes.

8 Q So did you -- while this is all going on, did you
9 continue to talk to Mr. Hamilton?

10 A Yes. I asked him the particular things like where
11 his wife was. Why he left his children in the car initially.
12 I asked him if I could look at the children. And he said, yes,
13 and opened the door for me. I asked him if he made any other
14 attempts to find the children any kind of care while he went to
15 the grocery store. He said, no. Things like that.

16 His niece arrived shortly after. I asked her if he
17 leaves the children with her for babysitting duties. She said,
18 yes. I asked if he reached out to her that day to watch the
19 children while he went grocery shopping. She said, no. When
20 his wife arrived a little bit later, I said the same thing, who
21 was at work at the time. I asked her if he ever brings to
22 children to her work and let's her -- have her watch the kids
23 while he does things. She said, yes. I asked her if he did
24 that this evening, and she said, no. So....

25 Q What was Mr. Hamilton's attitude with you?

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1 A He, I think, he was a little agitated. He didn't
2 understand why we were talking to him.

3 Q He did?

4 A He did not understand why we were talking to him. I
5 pretty much -- after I talked to him initially and my Sergeant
6 got on the scene, I ran through the incident with my Sergeant.
7 And we made a decision to issue him a summons for reckless
8 conduct for leaving the children unattended in the car.

9 Q A citation?

10 A Correct.

11 Q A ticket, basically?

12 A Yes.

13 Q Would it have been the same format if you had cited
14 him for, say, speeding?

15 A It would have been the same process, yes.

16 Q Same process. Okay. So let's back up. At any point
17 in time did you tell Mr. Hamilton that he had to talk to you?

18 A No.

19 Q Did you ever tell him that he couldn't leave the
20 scene?

21 A No.

22 Q Did you ever take his car keys away from him?

23 A No.

24 Q Did you ever prevent him from leaving or doing
25 anything along those lines?

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1 A No.

2 Q Did you ever say or put your patrol car in a position
3 where his vehicle was not able to move?

4 A No. I was parked beside him.

5 Q You were parked like' right next to him?

6 A I actually gave him additional room. I took up two
7 spots next to him, so he had plenty of room to move around.

8 Q Did you ever keep the kids away from him?

9 A No.

10 Q Did you ever threaten him in anyway, shape, form or
11 fashion?

12 A No.

13 Q Did you ever tell him that he was under arrest?

14 A No.

15 Q Deputy, your patrol vehicle, does it have the ability
16 to record incidents?

17 A Yes.

18 Q Tell us how that works.

19 A Anytime we get on to a scene or any call or anything
20 like that, we activate the dash camera and we had a body mike
21 at the time that clips to the deputies' person as they exit, so
22 it takes audio and video that's right directly in front of the
23 patrol car.

24 Q So the video itself is just --

25 A Correct.

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1 Q -- what the patrol car is looking at, but the mike
2 can pick up other things?

3 A Correct.

4 Q Have you had a chance to watch the video?

5 A I have.

6 Q Is it a fair and accurate representation?

7 A It is.

8 Q Did you see any signs of deletions or tampering or
9 anything like that?

10 A No.

11 Q Would you say that it's a fair and accurate
12 representation of what happen that evening with Mr. Hamilton?

13 A I would.

14 Q I would take it out and show it to Mr. Hamilton, but
15 I'm worried that means it won't work. I'll mark it as State's
16 Exhibit 1 and I would go ahead and tender it at this time.

17 **THE COURT:** Any objection she admits the video
18 from the officer's patrol car into evidence?

19 **MR. HAMILTON:** No.

20 **THE COURT:** Admitted without objection.

21 (Whereupon, State's Exhibit No. 1 was admitted
22 into evidence.)

23 **MS. GRAINGER:** I'd ask to go ahead and publish it.
24 I think it's 47 minutes long, but I don't think that we
25 need all of it. Is that okay, Mr. Hamilton?

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1 **MR. HAMILTON:** Well, there is a part where he says
2 I arrested the guy, so I think you need to hear that.

3 **MS. GRAINGER:** Do you know where it is? Do you
4 have a timestamp?

5 **MR. HAMILTON:** No.

6 **MS. GRAINGER:** Well, I'm going to play it, and
7 then when I think I'm good, I'm going to tell you that
8 I'm good; and if you want me to keep playing it, you
9 tell me. Does that work?

10 **MR. HAMILTON:** That works.

11 **MS. GRAINGER:** Okay.

12 **MR. HAMILTON:** I think it's at the end where he
13 talks to Joshua Katz.

14 **MS. GRAINGER:** On the phone?

15 **MR. HAMILTON:** Yes. So you can fast forward it to
16 the end after we see the part you want.

17 (Whereupon, the video was played at 3:38PM)

18 **MS. GRAINGER:** Do you mind if I fast forward a
19 little bit. If I go too far, you tell me okay.

20 (Whereupon, the video was played at 3:56PM)

21 **BY MS. GRAINGER: (Resuming)**

22 Q Deputy Moyers, that last part we were just listening
23 to was Mr. Hamilton around you at any point in time?

24 A No, ma'am.

25 Q You had left him at the Kroger parking lot and did

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1 you see him again until court last week, I guess?

2 A Correct.

3 Q Okay. So until he got this video through discovery,
4 would he have heard that conversation at all?

5 A No.

6 Q Would he have been aware of you telling Mr. Katz
7 anything about the case?

8 A No.

9 Q And you told Mr. Katz that he was arrested?

10 A Yes, it's a classification because it's like a
11 citation for no license.

12 Q You didn't take Mr. Hamilton to jail?

13 A No, he wasn't physically arrested.

14 Q Now, Mr. Hamilton alleges in his motion that you
15 blocked his car and you coerced him into speaking. Are either
16 of those things true?

17 A No.

18 Q Did you tell him he had to talk to you?

19 A No.

20 Q There are a couple of female voices you hear in the
21 video. I think you told us that one was his niece?

22 A Correct.

23 Q She came up to the Kroger; is that right?

24 A Correct.

25 Q Did you call her and ask her to come?

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1 A No.

2 Q How did she -- like do you know how she got there?

3 A I believe Mr. Hamilton just called her and his wife.

4 Q You think Mr. Hamilton called her and -- his niece

5 and his wife?

6 A Correct.

7 Q Did you call them?

8 A No.

9 Q Okay. But you spoke to them on the scene?

10 A Yes.

11 Q At one point in time in the video, and it's kind of

12 in the beginning of it, do you hear somebody continuously say

13 hello, hello, hello? Do you know what I'm talking about?

14 A Yes, he was on his phone at the time and he had bad

15 reception.

16 Q That was Mr. Hamilton talking?

17 A Yes.

18 Q Do you know who he was trying to talk to?

19 A No.

20 Q Did he initiate that phone call?

21 A Yes.

22 Q Did you tell him he had to make it or anything like

23 that?

24 A No.

25 Q Did you at any point in time tell Mr. Hamilton he had

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1 to talk to you?

2 A No.

3 Q I don't think I have anything else.

4 **THE COURT:** Mr. Hamilton, you have a chance to
5 cross-examine this officer, ask him any questions you
6 want to.

7 **CROSS-EXAMINATION**

8 **BY MR. HAMILTON:**

9 Q So I have here on the Cherokee County Sheriff's
10 Office case report that you filled out for July 21, 2021, are
11 you aware that it states that Mr. Hamilton was arrested for
12 child abuse at 09:09 p.m.?

13 A That's how the report is classified. Correct.

14 Q So Mr. Hamilton was arrested?

15 A You were issued a summons and released.

16 Q Released. So after he was released, that meant that
17 he was in your custody?

18 A You were detained, absolutely.

19 Q I was detained.

20 A Uh-huh (affirmative).

21 Q So prior -- prior to detaining Mr. Hamilton, did you
22 read him or inform him of his Miranda rights?

23 A I'm not required to.

24 Q Okay. And you did tell Mr. Katz that Mr. Hamilton
25 was arrested?

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1 A It's a classification, yes.

2 Q You said it several times; is that correct?

3 A Yes. That's how you were classified. The incident

4 was classified by an arrest.

5 Q Did you see any children unattended at any time?

6 A Did I?

7 Q Yes.

8 A No.

9 Q If someone goes into a grocery store, is it possible

10 to leave their kids in the car and have someone else watch the

11 car, is that a child unattended?

12 A In your incident, no. You didn't do any of that,

13 so....

14 Q I didn't ask you that.

15 A You were asking me to this case; right? To the case?

16 Q You have no knowledge of what -- do you have any

17 knowledge of what I did?

18 A You told me what you did.

19 Q Prior -- prior to that?

20 A Prior to?

21 Q Prior to detaining Mr. Hamilton?

22 A You have to ask the question again. I'm sorry.

23 Q Let's move on. You arrived at the scene at

24 9:09 p.m.; is that correct?

25 A I believe so.

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1 Q Approximately nine minutes after the 911 call; is
2 that correct? I mean three minutes after the 911 call?

3 A It looks like that, yes.

4 Q And when you approached Mr. Hamilton, was he doing
5 anything unlawful?

6 A No.

7 Q Was there any probable cause to --

8 **MS. GRAINGER:** Judge, I'm going to object, that's
9 outside the scope of the motion.

10 **THE COURT:** Sustained.

11 **BY MR. HAMILTON: (Resuming)**

12 Q Did you see Mr. Hamilton doing anything unlawful at
13 any time?

14 A I did not witness the action of this case, no.

15 Q Did your witness state that any children were
16 unattended at any time?

17 A He said he observed your children in the car, yes.

18 Q Are you aware that Mr. Joshua Katz --

19 **MS. GRAINGER:** Judge, I'm going to object to that
20 too. Again, it's outside the scope of the motion.

21 **THE COURT:** I think it's far enough to hear what
22 the question is. What question do you want to ask,
23 then entertain her motion.

24 **BY MR. HAMILTON: (Resuming)**

25 Q Are you aware that Mr. Joshua Katz had issued a sworn

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1 affidavit saying that he never told the store owner or anyone
2 else that he saw any children unattended and he had no sight to
3 make such judgment?

4 A I'm aware he gave you something, that's all I'm aware
5 of.

6 Q That's good enough. So at any time do you ever warn
7 anyone of their Miranda rights?

8 A Yes, if you're arrested, yes, you are -- gives you
9 Miranda.

10 Q When you say "arrested", you mean like put handcuffs
11 on; correct?

12 A Correct.

13 Q Your definition --

14 A That's one --

15 Q -- of arrest? What is your definition of arrest?

16 A My definition is if a reasonable, prudent person
17 believes they are under arrest, then they are under arrest. So
18 I guess the real question is if you're arrested that day, you
19 were not. You were not under arrest. You were detained.

20 Q So was the defendant free to leave at any time prior
21 to --

22 A Prior to?

23 Q -- giving him a citation?

24 A No, after speaking to you after the first 10, 15
25 seconds that you left your children unattended --

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1 Q Even before?

2 A -- you were detained.

3 Q If the defendant had gotten into his car and not
4 answered your question, could he have left?

5 A If you didn't respond to me and got in your car and
6 drove away?

7 Q Yes. Would he be able to leave?

8 A Would you have been able to leave? No, at that point
9 in time I had enough to stop you.

10 Q So what -- what I'm getting at is you got a call for
11 children unattended, but when you got there, were there any
12 children unattended?

13 A No, that's why I asked you, did you leave them and
14 you said yes.

15 Q So before -- so your interpretation of what I was
16 saying is that I admitted to you that I left my children
17 unattended?

18 A Yes. I asked if you left them --

19 Q So that's just your interpretation?

20 A When you say, yes, I left my children, then, yes, you
21 left your children.

22 Q But, did you ask him -- did you ask the defendant if
23 his wife watched the children before and then went back to the
24 shop?

25 A So you didn't leave your children; is that what

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1 you're saying?

2 **THE COURT:** Sir, you can't ask questions. You
3 just have to answer the question.

4 **MS. GRAINGER:** Can we ask Mr. Hamilton to rephrase
5 the question. I'm a little bit confused by it.

6 **THE COURT:** Please, reask the question so it's
7 clearer.

8 **BY MR. HAMILTON: (Resuming)**

9 Q Okay. So -- so did you inform Mr. Hamilton of what
10 he was being accused of?

11 A At the end, yes, I believe my Sergeant spoke to you
12 momentarily.

13 Q Did you ever mention child abuse or neglect?

14 A No, you were issued a summons for reckless conduct
15 not child abuse.

16 Q Is reckless conduct and child abuse the same thing?

17 A Depends on how you're trying to classify it.

18 Q So did you call DFCS?

19 A Yes.

20 **MS. GRAINGER:** All of this is outside the scope of
21 this motion. It's irrelevant.

22 **THE COURT:** Sustain the objection. It's not
23 relevant to the motion. Today's motion which is to --

24 **BY MR. HAMILTON: (Resuming)**

25 Q You so did admit that Mr. Hamilton was under

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1 detention. Mr. Hamilton was under detention?

2 A Correct, just like any kind of traffic stop.

3 Q Was Mr. Hamilton under detention: "Yes" or "no"?

4 A Yes.

5 Q Was Mr. Hamilton able to leave at any time he wanted
6 to before given a citation: "Yes" or "no"?

7 A After finding out about -- no. No.

8 Q Did you warn Mr. Hamilton in anyway of his Miranda
9 rights?

10 A No.

11 Q So as far as you know there are no witnesses to any
12 children being unattended?

13 **MS. GRAINGER:** Judge, again, it's not relevant for
14 this motion.

15 **THE COURT:** Sustain the objection. This motion is
16 about suppressing statements allegedly made in custody.

17 **BY MR. HAMILTON: (Resuming)**

18 Q So you said that you were -- you were -- you've been
19 a police officer for six years; is that correct?

20 A I've been a sworn deputy for six years; correct.

21 Q And did you go to the police academy?

22 A Yes.

23 Q And in the police academy do they teach you how to
24 make an accurate report?

25 A No, not really. They pretty much just teach you the

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1 basics. And then your reporting system differs by agency.

2 Q What agency is that?

3 A With the Cherokee County Sheriff's Office.

4 Q So the Cherokee Sheriff's Office teaches you how
5 to -- they -- they teach you how to fill out reports correctly?

6 A Correct.

7 Q And would you say that this report is accurate?

8 A Yes.

9 Q That Mr. Hamilton was arrested at 9:09 p.m. prior to
10 questioning?

11 A I think at the time I got on scene -- so I didn't
12 call out your arrest over the radio, so I used the CAD log,
13 which documents everything to my arrival; correct.

14 Q So we can take this report as true; is that correct?

15 A Absolutely.

16 Q In your training do they teach you different types of
17 tactics to elicit statements from suspects?

18 A They teach me to walk up to somebody and ask them
19 what's going on.

20 Q Is there a certain type of technique like making the
21 person feel that it's not that serious?

22 A I always want to put everybody at ease. There's no
23 reason to be rude or unprofessional to anybody.

24 Q So at any time did you, before questioning
25 Mr. Hamilton, inform him that of the -- of any type of child

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1 abuse reported to 911?

2 A I'm sorry. Can you do that one more time.

3 Q Let's start over. So you responded to a 911 call on
4 the date in question --

5 A Yes.

6 Q -- is that correct?

7 A Yes.

8 Q And on that 911 call, it's classified as child abuse;
9 is that correct?

10 A That's just how our reporting system classifies it;
11 correct.

12 Q But you will see that reporting system; is that
13 correct?

14 A You received what?

15 Q You would see that on the reporting system when it
16 comes to you; is that correct?

17 **MS. GRAINGER:** Judge, I'm trying to be very, very
18 lenient and very, very nice to Mr. Hamilton, but this
19 is still outside the scope of the motion. It has
20 nothing to do with any statements he may have given at
21 the scene.

22 **MR. HAMILTON:** I agree. I don't want to be a
23 burden, but also I have -- there are things I just have
24 to do.

25 **THE COURT:** I sustain her objection. Just ask

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1 your questions in reference to the issue on this
2 particular motion.

3 **MR. HAMILTON:** Well, I think -- I think it's been
4 covered very well.

5 **THE COURT:** Do you have any additional questions
6 of the Corporal at this time?

7 **MR. HAMILTON:** No. No.

8 **THE COURT:** Ms. Grainger.

9 **MS. GRAINGER:** Yes, please.

10 **REDIRECT EXAMINATION**

11 **BY MS. GRAINGER:**

12 Q So, Deputy, or, Corporal, I'm sorry. Excuse me.
13 When Mr. Hamilton just asked you a second ago if you ever or
14 anybody ever warned him of his Miranda rights in any form or
15 fashion, you just said no; did I understand that correctly?

16 A Correct.

17 Q If I were to disagree with you, would that be okay?

18 A Sure.

19 Q You were listening to the video just a second ago and
20 you watched it before; right?

21 A Uh-huh (affirmative).

22 Q Do you remember, and if you don't, that's fine, we
23 can see if we can find it. Do you remember, and I think it
24 probably was your supervisor, based off of just the way I'm
25 hearing the voices, do you remember somebody talking about

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1 communication with Mr. Hamilton?

2 A Yes, that was Sergeant Jones.

3 Q That was who?

4 A Sergeant Jones.

5 Q That's your supervisor?

6 A It was.

7 Q He said something about communication being a two-way
8 street.

9 A Uh-huh (affirmative).

10 Q And that Mr. Hamilton did not have to talk to you
11 guys at all; is that correct?

12 A I believe something around that.

13 Q I probably didn't get it word for word, but something
14 along those lines?

15 A Uh-huh (affirmative).

16 Q I need you to say "yes" or "no", if you don't mind.

17 A I'm sorry. I'm sorry. I'm tired. Yes.

18 Q I know we're all getting exhausted. It's been a long
19 day.

20 But would you agree with me that even though that's
21 definitely not Miranda, Mr. Hamilton didn't have to talk to
22 you?

23 A That's correct.

24 Q You also said at some point in time -- and timing is
25 really important in a situation like this; would you agree with

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1 me on that?

2 A Yes.

3 Q That you pull up on the scene and that you talk to
4 Mr. Hamilton and that in the first 10, 15 seconds of you even
5 having a conversation with him is when he makes the most
6 important statement about the children being in the car; is
7 that correct?

8 A Correct.

9 Q At that point in time have you even done anything in
10 this case except for get there?

11 A That's correct.

12 Q Okay. Now, it took me a second to figure out what
13 Mr. Hamilton was talking about on the 9:09 thing. Do you have
14 a copy of your report in front of you?

15 A I do.

16 Q Okay. So if we're looking at what I tend to call the
17 face page, which says at the top page 1 of 4. This page?

18 A Yes.

19 Q This is what I'm talking about right here.

20 A Okay.

21 Q If you look in the middle where it says arrestee
22 information?

23 A Yes.

24 Q This is a preprinted, I don't know what you call it,
25 it's not really a form, but -- like all this information in

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1 bold and stuff that's -- like, you don't change that, that just
2 comes up on every form; right?

3 A The administrative?

4 Q Like where it says administrative and then incident
5 and then location and the arrestee information, like those
6 headers?

7 A Yes, the headers I don't do anything with those.

8 Q They're preset?

9 A Yeah.

10 Q So if you were to make a police report on a
11 too-fast-for-conditions case, it would still have all of that
12 information?

13 A Yes.

14 Q Okay. So where it says arrest type, it says
15 citation; right?

16 A Correct.

17 Q Okay. And then it says -- it does have -- that's
18 where the time, the 9:09 comes in, just below that.

19 A Okay.

20 Q Is that -- am I -- are we on the same page?

21 A I see it, yes.

22 Q So just getting -- but is that where we think
23 Mr. Hamilton is getting that time frame from?

24 A I suppose so, yes.

25 Q And you're saying that that's when you arrived on

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1 scene?

2 A Yes.

3 Q That that's basically how the report works because it
4 of how the CAD works?

5 A Right.

6 Q This report is not generated until later on down the
7 road; is that right?

8 A Yes.

9 Q And Mr. Hamilton would not have seen this report
10 until later on down the road; is that correct?

11 A Correct.

12 Q Would you agree with me that probably we're talking
13 about a situation of this nature, time is very important, like
14 the timeline, but also what the defendant actually knows at
15 that point in time; would you agree with me that that is
16 important?

17 A Yes.

18 Q Just because you know something, as long as the
19 defendant doesn't know it, that can make a big -- that could
20 have an affect on whether or not he's under arrest or detained
21 or something?

22 A Correct.

23 Q You said something that I found very interesting when
24 you were talking to Mr. Hamilton just a minute ago about how
25 detaining somebody and arresting somebody -- This was a

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1 detaining in the sense of like a speeding ticket or something
2 like that?

3 A Correct.

4 Q Just to make sure we're all on the same page, you
5 never told Mr. Hamilton he had to talk to you?

6 A No, I was making a request of him. Can I see your
7 kids? Can I do this? Can you tell me this? I mean, I'm not
8 saying tell me or I'm going to arrest you.

9 Q You asked him?

10 A Yes.

11 Q And quite honestly you could come up to me for no
12 reason and ask me questions and I get to decide if I want to
13 answer them or not; is that correct?

14 A Correct.

15 Q Also would you agree with me that when Sergeant Jones
16 was talking to Mr. Hamilton, Mr. Hamilton was asking questions?

17 A Uh-huh (affirmative). Yes.

18 Q And you guys were answering them?

19 A Yes.

20 Q He said that he was willing to talk to you guys?

21 A Yes.

22 Q Okay. I think that's everything. Thank you.

23 **THE COURT:** Mr. Hamilton, you do have a chance to
24 ask additional questions of this officer but they must
25 be only about the questions Ms. Grainger just asked.

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1 It can't be rehashing of something else.

2 **MR. HAMILTON:** Okay. Let me get my train of
3 thought here. Okay. I want to if you don't mind,
4 Judge, I'm going to bring up a sensitive subject.

5 **RECROSS-EXAMINATION**

6 **BY MR. HAMILTON:**

7 Q Mr. Moyers, are you aware of the relationship between
8 law enforcement and black men of being one of contention?

9 **MS. GRAINGER:** Judge, you know, I'm sorry, but I
10 have a job to do and this is outside all of that scope.
11 And it doesn't go into this.

12 **MR. HAMILTON:** I disagree. If you follow me,
13 trust me.

14 **THE COURT:** Well, sir, whether it's outside the
15 scope of the whole motion or not, I'm not ruling on.
16 Unless you can tie it up to the particular questions
17 she did on redirect, it's not allowed under the law.
18 Simply because --

19 **MR. HAMILTON:** Yes.

20 **THE COURT:** -- recross can only address questions
21 on redirect.

22 **MR. HAMILTON:** Okay.

23 **BY MR. HAMILTON: (Resuming)**

24 Q You said that the defendant was answering questions
25 voluntarily; is that correct?

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1 A Correct.

2 Q Are you aware that when a black man is asked a
3 question by a police officer, he feels compelled to answer
4 because of the consequences of what might happen if he doesn't?
5 Are you aware of that?

6 A I'm not black, so, no, I'm not aware.

7 Q Are you aware of the George Floyd case?

8 A I've heard about it.

9 **MS. GRAINGER:** Judge, again --

10 **THE COURT:** I think you've made your point, sir.

11 Ask any additional questions or ask your next question.

12 **BY MR. HAMILTON: (Resuming)**

13 Q Are you aware that some people feel when a police
14 officer asks them a question, it's more of an order than an
15 ask; are you aware of that?

16 A I've never experienced it.

17 Q That's fair. So your -- so you really don't
18 understand -- so you're trying to tell me, you're in no
19 position to know if the defendant knew he was able to leave or
20 not? You don't know that? That -- that he was aware that he
21 could leave or answer any questions at any time?

22 A Did you ask to leave or ask any -- did you ask me if
23 you had to answer these questions or not, or ask me to leave?
24 I'm sorry. I answered a question with a question.

25 So what I -- what I mean to say is you never asked me

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1 to do any of these things, so I can't assume anything.

2 Q When Mr. Hamilton -- you mentioned in the video that
3 Mr. Hamilton doesn't understand why we're bothering him. Do
4 you think that's a passive aggressive way of saying, please,
5 leave me alone?

6 A I was referring to the issue at hand, meaning you
7 leaving your children in the car by themselves as you not
8 thinking it's a big deal, that's what I was trying to explain
9 and I was talking to another deputy.

10 Q Thank you. That's all I have.

11 **THE COURT:** Ms. Grainger, any additional
12 questions?

13 **MS. GRAINGER:** No, thank you, Judge.

14 **THE COURT:** Can this witness be excused?

15 **MS. GRAINGER:** Yes, please.

16 **THE COURT:** Thank you very much. State have any
17 additional witnesses?

18 **MS. GRAINGER:** No, Your Honor.

19 **THE COURT:** Mr. Hamilton, do you have any
20 witnesses?

21 **MR. HAMILTON:** No, Your Honor.

22 **THE COURT:** Ms. Grainger, if you want to make a
23 closing argument?

24 **MS. GRAINGER:** I'll reserve.

25 **THE COURT:** That means, sir, she's going to argue

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1 last to me, which is her right. Go ahead and argue to
2 me anything you want me to know. It's not additional
3 testimony. It's just argument based upon the evidence
4 and what you believe the law is. Go ahead.

5 **MR. HAMILTON:** So Mr. Moyers, Officer Moyers
6 admitted to this Court that the defendant was detained,
7 that he was under arrest. He admitted to Mr. Joshua
8 Katz that we arrested the guy and then we released him
9 on a citation. It's on the Cherokee County Sheriff's
10 Office report if you want to see it, the time of arrest
11 prior to questioning. The defendant felt compelled,
12 against his will, to answer questions over the threat
13 of being a victim because of the unrest between law
14 enforcement and black men at the time. He didn't feel
15 that he had any choice, and Mr. Moyers said that the
16 defendant didn't have the right to leave any time he
17 wanted to prior to giving him the citation.

18 The State or Mr. Moyers failed to warn
19 Mr. Hamilton of his Miranda rights prior to
20 questioning. Therefore, anything -- any evidence
21 obtained through unlawful means are fruits of a
22 poisonous tree. Fruits of a poisonous tree cannot be
23 relied upon in a criminal matter. While this motion --
24 the grounds why this motion should be -- why the motion
25 to suppress should be granted is it was following an

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1 illegal arrest. Officer admitted that he arrested
2 Mr. Hamilton without probable cause. There was no
3 probable cause.

4 **MS. GRAINGER:** Judge, I'm going to object to that,
5 that was not part of the testimony and that's not what
6 the evidence is.

7 **THE COURT:** I sustain the objection. Just make --
8 you can make argument as to what you think the evidence
9 was, but ultimately whether there was or wasn't
10 probable cause is for me to decide.

11 **MR. HAMILTON:** On the second ground the statements
12 were involuntary. The defendant was compelled, against
13 his own will, to be a witness against himself under the
14 threat of violence, not by Mr. Moyers himself, but by a
15 system where police training at that time could be a
16 liability.

17 We're still under the involuntary statement. A
18 statement made -- is made involuntary when the
19 circumstances surrounding the statement is sufficient
20 to overbear the suspect's will. Custodial
21 interrogation without the right -- without Miranda
22 warnings renders a statement involuntary and
23 inadmissible. A custodial interrogation happens when
24 one more law enforcement officers questions someone
25 while he or she is being detained. We already got the

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1 detention. This fits that. And interrogation is
2 simply systematic questioning, something designed to
3 compel the individual to render evidence that wouldn't
4 be discovered otherwise naturally.

5 Violation of the Fifth Amendment, the violation of
6 Miranda rights, *Miranda versus Arizona* a legal case in
7 which the U.S. Supreme Court on July 13, 1966,
8 established a code of conduct for police interrogations
9 of criminal suspects held in custody. And custody has
10 already been established. Held Chief Justice Earl
11 Warren writing to a five to four majority held that
12 prosecutors may not use statements made by suspects
13 under questioning in police custody unless certain
14 minimal procedural safeguards were followed.

15 He specified new guidelines to ensure that
16 individuals is afforded his privilege under the Fifth
17 Amendment to the constitution not to be compelled to
18 incriminate himself, known as Miranda warnings. These
19 guidelines included informing arrested persons prior to
20 questioning, 9:09 p.m., that they have the right to
21 remain silent. Anything that can be -- anything that
22 they say can be held against them as evidence. That
23 they have the right to have an attorney. And that if
24 that -- if they are unable to afford an attorney, one
25 would be appointed. Warren also declared that police

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1 may not question or continue questioning a suspect in
2 custody if at any stage of the process, he indicates in
3 any manner that he does not wish to be interrogated.

4 Finally, if evidence that falls within the scope
5 of exclusionary rule, the exclusionary rule of the
6 Fourth Amendment -- the evidence that falls within the
7 scope of the exclusionary rule led law enforcement to
8 other evidence which it would not have otherwise have
9 located, then the exclusionary rule applies to the
10 newly discovered evidence subject to a few exceptions.
11 The secondary excluded evidence is called fruits of a
12 poisonous tree. And we can say that the whole case is
13 fruits of a poisonous tree.

14 The Kroger employee called the police on
15 Mr. Hamilton while he was with his children. Made a
16 false report. Though the rationale behind the
17 exclusionary rule is based on the constitutional
18 rights, it is court created remedy and a deterrent, not
19 an independent constitutional right. The purpose of
20 the rule is to deter law enforcement officers from
21 conducting searches and seizures in violation of the
22 Fourth Amendment and to provide remedies to defendants
23 whose rights have been infringed.

24 And finally, in *Hall versus State*, the Supreme
25 Court of Georgia --

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1 **THE COURT:** Do you have a citation on that?

2 **MR. HAMILTON:** No, I don't have all of the
3 citation to that.

4 **THE COURT:** If you printed it from somewhere, it
5 should be at the top. Also, if you have a separate
6 copy, I can look at it or at least write down the
7 citation.

8 **MR. HAMILTON:** Okay. *Hall versus State*, 485
9 S.E.2d755, 1997.

10 **MS. GRAINGER:** Did you say 755?

11 **MR. HAMILTON:** Yes.

12 **THE COURT:** 1997.

13 **MR. HAMILTON:** Yes.

14 **THE COURT:** Okay.

15 **MR. HAMILTON:** Appellant, Rosalyn Hall sought an
16 interlocutory appeal from the trial court's denial of
17 her motion to quash the accusation against her alleging
18 three separate counts of violating Georgia's reckless
19 conduct statue. We granted Hall's application in order
20 to examine the constitutionality of the statute. As it
21 is applied in this case, we find that the statute -- as
22 it applies in this case, we find that the statute has
23 both, No. 1, failed to provide persons of ordinary
24 intelligence with a notice that it purports to prohibit
25 certain conduct and lacks definite and explicit

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1 standards to guide its enforcement; therefore, making
2 it susceptible to be arbitrary and selected enforcement
3 by police, prosecutors and jurors. For these reasons
4 we find that the statute violates the due process
5 rights guaranteed by the state and federal constitution
6 and we reserve. That's it, Judge.

7 **THE COURT:** Ms. Grainger, anything you want to
8 add?

9 **MS. GRAINGER:** Judge, just that last case that was
10 cited, it doesn't go to this motion. It goes to a
11 separate issue. It's just like we were saying with the
12 deputy, Judge, when looking at a situation like this
13 what matters a lot is timeline. It also matters a lot
14 what the defendant knows or doesn't know.

15 The timeline in this is that the deputy drives up
16 on the scene and Mr. Hamilton says (inaudible) --
17 basically. The deputy has barely introduced himself.
18 Definitely hasn't arrested him, hasn't even cited him.
19 Hasn't done anything at all. Deputy testified that
20 Mr. Hamilton -- his car wasn't blocked in. He didn't
21 have his keys. There was no reason why he couldn't
22 leave. He wasn't preventing him from doing so. Mr.
23 Hamilton is the one that gets all the people here to
24 talk to the deputy. Mr. Hamilton still hasn't been
25 arrested on this charge.

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1 I understand that we're talking about a citation
2 and not a warrant and maybe it means something and
3 maybe it doesn't, but the thing is up until right now
4 he still has not been arrested on this charge. And,
5 your Honor, knows just as well as I do that arrest is
6 when Miranda is kicked in.

7 These statements need to come in. There's nothing
8 wrong with them. There's nothing that would keep them
9 out at any point in time and I would ask that your
10 Honor deny the motion.

11 And I think it's very telling that in the video
12 Corporal Moyers was probably one of the most
13 professional officers we've ever seen. He was very
14 nice to him, went out of his way to explain what was
15 going on and in no way coerced him to talk to him or
16 anything like that. And the test, Judge, is a
17 reasonable person. It's not whether or not
18 Mr. Hamilton himself thought he was detained. It was
19 whether a reasonable person did. And there's no way a
20 reasonable person in this situation would have thought
21 he was under arrest in talking to a deputy. I ask that
22 you deny the motion.

23 **THE COURT:** I'm going to take this under
24 advisement. I'm going to do some research on whether
25 it just applies in arrest or whether Miranda might

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1 apply in custodial interrogations not just physical
2 arrests. But I'm also going leave the video with
3 Ms. Mason since it was admitted in evidence, I'd like
4 to look at the timing of evidence.

5 So what that means, sir, is that I'm not making a
6 decision today. I'm going to review everything very
7 closely. I will do an order at some point. Once I do
8 an order, my judicial assistant will email Ms. Grainger
9 and let her know that an order has been done and filed.
10 She will call you and let you know that as well. And
11 then if anyone wants a copy of the order, they can
12 come.

13 **MS. GRAINGER:** I believe we have Mr. Hamilton's
14 email address.

15 **THE COURT:** If we have an email for you, she'll
16 include you on the email. Okay. We won't give you a
17 copy. You can get a copy of from clerk. Okay.

18 **MR. HAMILTON:** Okay.

19 **THE COURT:** Anything else we need to take up on
20 case today?

21 **MS. GRAINGER:** Well, I guess just timeline, Judge.
22 It's on the trial calendar.

23 **THE COURT:** It is. I'll try to have an order as
24 soon as I can, but if it's not done, Mr. Hamilton, by
25 the -- there are statutory requirements on timeline.

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1 But the timeline doesn't expire until after the trial
2 week. If it's not done before trial week, obviously,
3 this case can't be tried. Depending on my ruling, it
4 might be -- depending on which way I rule, there might
5 be a decision not to have a trial. I don't know. If
6 you need to appear on February 6th, we will let you
7 know, but I'm otherwise telling you today do not come
8 on February 6th unless my office tells you different.

9 **MR. HAMILTON:** Yes, ma'am.

10 **THE COURT:** Okay. Anything else?

11 (Proceedings concluded at 4:47 p.m.)

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C E R T I F I C A T E

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G E O R G I A)
COUNTY OF CHEROKEE)

3

4

I hereby certify that the foregoing proceeding
was taken down by me as stated in the caption,
and the questions and answers thereto were
reduced to print under my direction and
supervision; that the foregoing pages 1 through
47 represent a true, correct, and complete
transcript of the testimony given on January
19, 2023; to the best of my ability.

5

I further certify that I am not a relative or
employee or attorney or counsel of any of the
parties, nor am I a relative or employee of
such attorney or counsel, nor am I financially
interested in the action. All rates charged
are usual and customary.

6

This certification is expressly withdrawn and
denied upon the disassembly or photocopying of
the foregoing transcript of proceedings or any
part thereof, including exhibits, unless said
disassembly or photocopying is done by the
undersigned Certified Court Reporter and the
original signature and seal is attached
thereto.

7

8

This the 9th day of May, 2023.

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FELISHA BOONE MASON,
Certified Court Reporter
Certificate No. B-1451

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APPENDIX "B"

1. Order Partially Granting Defendant's Motion to Suppress
2. Guilty Plea and Sentence

IN THE STATE COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

FILED IN OFFICE
CLERK OF STATE COURT
CHEROKEE COUNTY, GA.

2023 FEB -6 PM 3:05

STATE OF GEORGIA

PATTY BAKER, CLERK

vs.

CASE NO. 21M1515

JOHNNY HAMILTON,
Defendant

Order Partially Granting Defendant's Motion to Suppress

WHEREAS the Defendant filed various Motions and a Motion was held on January 19, 2023 where the Court heard evidence, testimony, and argument on the Defendant's Motion to Suppress certain statements, the Court finds and rules as follows:

Factual Findings

The hearing on January 19, 2023 was on the sole issue of whether the investigating officer was required to read the Defendant certain *Miranda* warnings before questioning him and if the failure to do so should result in the Court suppressing the statements the Defendant made. It was clear that the Defendant was never read any *Miranda* warnings. At issue, though, was whether such was required. The Defendant argued that he was arrested and that due to the lack of the warnings being read that all of his statements should be suppressed. The State argued that the Defendant was never arrested, only issued an arrest citation/summons and thus *Miranda* was not required. At the hearing, Deputy Sheriff Moyers testified and a copy of his patrol video was submitted into evidence and portions played for the Court. This Court took the Motion under advisement and instructed the parties that a ruling would be made after further review of the video and research by the Court. The Court making the following findings of fact:

Deputy Sheriff Moyers, a POST certified law enforcement officer with the Cherokee County Sheriff's Office, received a report from dispatch that there was a vehicle in a Kroger parking lot that had unattended children in it, and the horn was honking and lights flashing. He testified that the call was about 9 p.m. at night on July 21, 2021 and it was hot outside, a slightly crowded parking lot, and the lighting conditions good. When he arrived on scene, he first encountered whom was later identified as the Defendant walking the shopping cart to the return. The Defendant was then walking back to his own vehicle. The Officer approached the Defendant, whom confirmed that he had left his twin 3-year-old children in the car alone when he went into the Kroger store for some brief shopping. The Officer asked and was granted permission to check on the children, whom appeared fine and were not hot. The Officer then began conversing further with the Defendant as to how long he was in the store, why he didn't take the children with him, etc. After about three minutes, the Officer called his supervisor to apprise him of the situation, and the Supervisor arrived on scene as well. The Supervisor did NOT testify at the hearing.

Deputy Sheriff Moyers also testified that the Defendant said he did not ask anyone to watch his children, and he did not want to bring the children into the store and risk them contracting COVID. The Defendant was somewhat agitated, but he was never handcuffed. The Defendant used his on phone while standing in the Kroger parking lot to call both his niece and his wife, both of whom arrived on scene shortly. The Officer testified that he never told the Defendant that he could not leave, never told the Defendant that he had to speak with him, did not block the Defendant's vehicle, never threatened the Defendant, and never said he was under arrest. After further discussion with his supervisor, the Defendant was issued an "arrest" citation summons for the offense of Reckless Conduct.

On cross-examination, Deputy Sheriff Moyers testified that although his report indicated that he arrested the Defendant, it was not a physical arrest, as he only detained the Defendant. He testified then that he believed he was not required to read any *Miranda* warnings. He admitted that he himself never saw the children unattended, and he himself never witnessed the Defendant doing anything unlawful. Upon questioning by the Defendant, he acknowledged that an arrest is where a reasonable prudent person believes they are under arrest, and that IF the Defendant had gotten in his vehicle and left the scene, he would have stopped the vehicle as he believed he had enough probable cause to stop the vehicle. He testified that the Defendant was under detention just like any other traffic stop and that the Defendant was NOT free to leave before getting the citation. The Officer was asked if he was aware that African-American males (the Defendant's ethnicity) feel compelled to speak to law enforcement officers out of fear. The Officer responded that he was not, since that his not his ethnicity, but he acknowledged understanding of the George Floyd case. At the hearing, the State admitted and played portions of the Officer's video, the same video that the Court thereafter reviewed again. The Defendant did not offer any testimony or evidence at the hearing.

On re-direct, the Officer specifically acknowledged that he never read the Defendant any *Miranda* warnings. He also testified that his Supervisor attempted to communicate with the Defendant and told the Defendant that communication goes both ways and that the Defendant doesn't have to talk to them. He surmised that the first 10-15 seconds of the video is the most important statement of the entire case against the Defendant. He further testified that during the encounter, the Defendant was also asking the Officer questions and receiving responses.

At the hearing, the Defendant argued that he was in fact arrested, despite no physical arrest occurring. He argued that the Defendant felt compelled to speak to the officers because of social unrest between African American Men and law enforcement. He argued that since the Officer testified that he was not free to leave, *Miranda* warning where required and his statements should be suppressed as fruits of the poisonous tree. The Defendant argued that the Defendant's statements were involuntary as well as he felt compelled to be witness against himself, not necessarily by Deputy Sheriff Moyers but by the entire system itself. The State argued that the Defendant was not arrested, not blocked in, and that a reasonable person would have not believed they were under arrest and thus *Miranda* warnings are not required.

A review of the video (both in Court and after the hearing), show the following portions relevant to the Motion at hand: The Defendant is first seen on the patrol vehicle 44 seconds after

the video begins. By one minute, the Deputy has parked his patrol vehicle. Six seconds later, the Defendant is seen walking in front of the patrol vehicle, and at time stamp 1:14, the Defendant admits he went into the store without the children. Over the next minute, the Defendant explains that: he left the twin 3-year-old children in the car alone with the air conditioning on; the boy, who is a trickster, got out of his seat it appears and went into the front seat; he was in the store for no more than 15 minutes; and he didn't take the children into the store with him for fear of them getting COVID. The Defendant grants the Deputy permission to check on the children and at 2:26 you can hear the Deputy talking to the children and the Deputy audibly saying that the children are not hot or sweating. At 2:58, the Deputy returns to his patrol vehicle and contacts dispatch to start running the Defendant's car tag and driver's license for verification. At 3:26, the Defendant is heard in the background, off scene of the video, talking on his cell phone and telling the caller that the police was there and they have my driver's license. At 3:58, the Deputy calls his Supervisor on his cell phone while standing in front of the patrol vehicle, where you can see that he is physically holding the Defendant's driver's license. At 5:09, the Deputy tells the Defendant that other officers will be arriving shortly. Before the second officer arrives on scene at 7:50, the first Deputy continues talking to the Defendant and they are freely conversing about whether you can leave kids in the car, the CVOID virus variant, etc. In fact, at 7:26, the Defendant is heard asking the Deputy what is going on, acknowledging again that he went into the store alone and states that he gone about 10 minutes. At 7:46, the Deputy tells the Defendant to "hang tight one second". Deputy Sheriff Moyers then discusses the situation with the second officer, who arrived on scene at 7:50.

The two officers continue to discuss amongst themselves the situation, possible charges, what to do, and the Deputy Sheriff Moyers tells the second officer that he tried to question the Defendant "100 times". By 10:22, it is clear from the audio that the Defendant's niece is on scene now and the officers are explaining the situation to her. The second officers asked the niece at 11:35 if she "wanted to talk to him, help him understand". The niece is told that the plan they are considering is the charge of Reckless Conduct and to follow up with DFACS to help the family establish a better plan in the future and that the charge will be on a summons, not a physical arrest. During at least part of this time, the Defendant is also heard speaking in the background.

At 13:30, the second officer is heard asking the Defendant which was a greater risk – COVID or something happening to the children while in the car alone. The communication between the second officer and the Defendant is only somewhat audible and appears strained, and the second officer is hearing telling the Defendant that "communication goes both ways" and continues questioning the Defendant. At 15:30, the first officer is hearing speaking with the Defendant's wife, whom is now on scene. He explains the same thing to her as the niece was told – citation for Reckless Conduct, not a physical arrest, DFACS referral, and at 19:42, he tells the wife that she is welcome to check on her kids. In the background, you can still somewhat hear the second officer talking to the Defendant: specifically, at 23:18 the second officer says "it's not Cruelty"; 24:53 – "if in November or December, but it's July in Georgia". At 31:33, the first officer returns to speak to the Defendant and both women, explaining that this is a crappy situation. At 31:48, the Defendant asks if he can be given a warning. At 32:00, the Defendant is informed that the charge is Reckless Conduct and given a summons. At 33:06, the Defendant asks the Deputy if this is a fineable offense. At 33:48, the children are heard in the background.

At 34:05, the first officer says “here’s your license and your copy (of the summons). Thereafter, the Defendant thanks the officer for his help and asks him if he will re-consider a warning. The interaction between the Defendant and law enforcement ends at 35:06.

Legal Analysis

The issue before the Court is mixed question of law and fact. Wright v. State, 362 Ga. App. 867, 870 S.E.2d 484 (2022); Harper v. State, 243 Ga. App. 705, 534 S.E.2d 157 (2000). Although the State argued that since the Defendant was not in custody *Miranda* warnings were not required, that is not the most accurate statement of the law. *Miranda* warnings can be required in more than one type of situation. “An individual *must* be advised of his *Miranda* rights, including his right against self-incrimination, only after being taken into custody *or otherwise deprived of his freedom of action in any significant way.*” State v. Padidham, 310 Ga. App. 839, 840 714 S.E.2d 657, 658-659 (2011) (citing Waters v. State, 306 Ga. App. 114, 701 S.E.2d 550 (2010)) (emphasis added). Not every deprivation of freedom triggers *Miranda*. Instead, the test is whether “a reasonable person in the suspect’s position would have thought the detention would not be temporary”. Id. A delay without giving *Miranda* warnings is allowed, so long as “a reasonable person in [the Defendant’s] position would conclude that his freedom was only temporarily curtailed and that a final determination of his status was simply delayed.” Id.

While awaiting a final determination of one’s status, even roadside, routine questioning and detentions do not always require *Miranda* warnings. Furthermore, “[a] detained individual is not under arrest simply because, by leaving, he could be arrested for violating state law. Nor is he under arrest because an officer has discovered the commission of a traffic offense for which he could be arrested. The safeguards prescribed by *Miranda* become applicable only after a detainee’s freedom of action is curtailed to a degree associated with formal arrest.” Evans v. State, 267 Ga. App. 706, 707, 600 S.E.2d 671, 673 (2004). Evans goes onto to explain that “a reasonable person has been defined as one ‘neither guilty of criminal conduct and thus overly apprehensive nor insensitive to the seriousness of the circumstances.’” Id. (citing Turner v. State, 233 Ga. App. 413, 504 S.E.2d 229 (1998)). Officers are allowed to arrive on scene where criminal activity is suspected, conduct a general investigation, detain individuals, and conduct questioning “pursuant to a developing crime scene investigation” without triggering *Miranda*. Lewis v. State, 268 Ga. App. 547, 551, 602 S.D.2d 278, 281 (2004).

“As a general rule, one who is the subject of a general on-the-scene investigation is not in custody though he may not be free to leave during the investigation.” Wright v. State, 362 Ga. App. 867, 871, 870 S.E.2d 484, 491 (2022). Simply put, “officer may make inquiries ‘solely to determine whether there currently is any danger to them or other persons’ and ‘may even temporarily detain anyone who tries to leave before the preliminary investigation is completed.’” Id. (quoting State v. Wintker, 223 Ga. App. 65, 476 S.E.2d 835 (1996)). The detention and inquiries, though, can trigger *Miranda* if ““the questioning is aimed at obtaining information to establish a suspect’s guilt.”” Id. (citing multiple cases). Stated another way, “*Miranda* warnings are not required where a defendant who is not in custody ‘responds to an officer’s initial inquiry at an on-the-scene investigation that had not become accusatory.’” Id. (citing Taylor v. State, 235 Ga. App. 323, 509 S.E.2d 388 (1998)). The turning point, however, of when a on-the-scene

investigation and temporary detention becomes a custodial interrogation may be where “officers confront a temporarily detained person with evidence that, on its face, would lead a reasonable person to believe that his detention no longer would be temporary.” *Id.* at 873, 493. In particular, in Wright, the Court highlights the fact that that Defendant was not “expressly confronted with contraband or any other objectively obvious wrongdoing”. *Id.* at 874, 493.

In applying the above analysis to the case before this Court, this Court finds that there are portions of the encounter between the Defendant and the officers where *Miranda* warnings were not required and portions where they were required. Since no *Miranda* warnings were ever given, all statements made by the Defendant after the point that *Miranda* was required, shall NOT be used against the Defendant at trial. All statements prior to this point can be admitted for use at trial against the Defendant.

When the first Officer appears on scene, the Defendant is not in custody. The Defendant is freely walking about the Kroger parking lot and the initial interaction between the Defendant and the Officer is consensual. The initial conversations with the Defendant were aimed at general investigation. At that point, the Officer was investigating a potentially developing crime scene. The fact that the Officer later testified that he would have stopped the Defendant had he attempted to leave does not trigger the need for *Miranda* warnings. See e.g. Wright, above.

The question for this Court is when the encounter changes, as long as a person’s freedom was only “temporarily curtailed” and final status delayed, *Miranda* is not triggered. However, at the point that questioning of the Defendant turns into questioning “aimed at obtaining information to establish a suspect’s guilt”, is accusatory, or the Defendant is “expressly confronted” with wrongdoing, *Miranda* is triggered. See Wright, above.

This Court finds questioning of the Defendant after 11:35 on the video triggered the necessity of *Miranda* warnings. The first three minutes of the video are where the first Officer initiates consensual conversation with the Defendant, checks on the health of the children, and does some general initial questions. The Officer then communicates with dispatch and asks them to run a status of the Defendant’s driver’s license and tag. All of these actions are reasonable and do not objectively communicate to reasonable person that the detention would be anything but temporary. Thereafter, the Officer has a conversation with a second officer to discuss the situation, and then he returns to the Defendant and there is some back and forth between the Defendant and the Officer about the situation further. At 7:46, in fact, the Officer told the Defendant to “hang tight one second”. This statement would lead an objective, reasonable individual to conclude that the continued detention would be temporary and the final status simply delayed. The second Officer arrives on scene shortly thereafter, and both Officers converse among themselves. At no time is the Defendant handcuffed nor in a police car. He is not personally restrained – he is heard walking around and speaking to someone on his own cell phone. By 10:22, the Defendant’s niece has arrived on scene and the Officers are talking to her. At 11:35, though, the second Officer asked the niece if she “wanted to talk to him, help him understand”. The niece is then told the “plan” – that the Defendant will be charged with Reckless Conduct and DFACS referral will be made. Thereafter, the second Officer and the Defendant’s niece goes to talk to the Defendant, where the second officer is clearly heard speaking to the Defendant – explaining things and telling the Defendant that communication goes both ways.

This Court finds that the on-scene investigation of the incident was complete by the Officers at 11:35, the point that they communicated their decision to the niece. After this, the continued questioning of the Defendant was “aimed at obtaining information to establish a suspect’s guilt”, was accusatory in nature, and was an express confrontation with what the Officers believed was obvious wrongdoing. At this point, the continued questioning of the Defendant was not aimed at continued investigation – as the charging decision had already been made. They were not aimed at further investigation. Although it is possible that the Officers *may* have just wanted to help the Defendant understand their point of view, the continued questioning did trigger the need for *Miranda* warnings. Although the Defendant’s statements after 11:35 may not be much different than any statements he made prior to the point, all statements by the Defendant after the 11:35 time stamp on the video cannot be used against the Defendant at trial.

Therefore, as outlined above, the Defendant’s motion is partially granted and partially denied.

SO ORDERED this 6th day of February, 2023.¹

Michelle Leigh Helhosky
Michelle Leigh Helhosky, Judge
Cherokee County State Court

¹ The State and the Defendant appeared today in Court, where the Court orally announced that it had a rough draft order completed, where the draft only needed reviewing for grammatical and spelling errors. The rough draft was given to the State and the Defendant for review. The Court told both sides that the order would be finalized today, and that the case was being called for trial starting February 7, 2022. The parties can again review this order prior to proceeding to trial, to confirm that the rulings in the final order are the same as in the rough draft.

STATE OF GEORGIA

APR 19 2023

mf

Patty Baker, Clerk of Courts
Superior, State & Magistrate

Case No. 2 M 1515

STATE OF GEORGIA

* * * *

vs.

Johnny Hamilton
Defendant

Guilty { Ct. 1 - Reckless Conduct
Ct. 2 - Reckless Conduct

SENTENCE

Upon a plea or verdict of guilty/nolo, IT IS CONSIDERED, ORDERED AND

ADJUDGED by the Court that the Defendant pay a fine of

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, and is

sentenced to incarceration in the Cherokee County Jail or such other place as the County or State authorities may employ for and during the term of 9 months to be computed according to law.

Completed Parenting Course - Done already

So Ordered this 19th day of April, 2023.

Nicelle Keey Kelkosh
Judge, State Court of Cherokee County

Judge, State Court of Cherokee County

APPENDIX "C"

1. Order in Court of Appeals
2. Judgement Affirmed
3. Motion to Supplement the Record Denied
4. Motion for Reconsideration Denied in Court of Appeals
5. Petition for Writ of Certiorari Denied in The Supreme Court of Georgia, *Peterson P.J. Dissents.*

APPENDIX "D"

SUPPORTING EVIDENCE OF INEFFECTIVE ASSISTANCE OF COUNSEL:

- 1. TEXTS BETWWEN HAMILTON AND ATTORNEY**
- 2. TEXTS BETWEEN HAMILTON AND OFFICE CLERK**
- 3. EMAILS BETWEEN HAMILTON AND FIRM OWNER**

**TEXT MESSAGES BETWEEN HAMILTON AND ATTORNEY
STRESSING URGENCY OF ACTION**



Johnny Hamilton <johnnly.hamilton@gmail.com>

Sharing from Textra

1 message

Johnny Hamilton <johnnly.hamilton@gmail.com>
To: Johnny Hamilton <johnnly.hamilton@gmail.com>

Wed, Sep 11, 2024 at 8:56 PM

Chat with Attorney Kalil Eaddy (+16785626854)

[2/6/23 2:28 PM] Attorney Kalil Eaddy: Khalil Eaddy

[2/6/23 2:28 PM] Me: Ok got it

[2/6/23 5:55 PM] Me: Omw about 20mn

[2/6/23 6:10 PM] Attorney Kalil Eaddy: Ok

[2/6/23 6:49 PM] Attorney Kalil Eaddy: Coming down

[2/7/23 9:30 AM] Me: The Solicitor and I are waiting for the judge to make a decision on whether or not we allow me to get counsel at this point, the Solicitor is willing but it's up to the judge

[2/7/23 9:31 AM] Attorney Kalil Eaddy: Program ask

[2/7/23 9:31 AM] Me: As soon as I know something I will let you know, if it's a go I will send you the required funds

[2/7/23 9:32 AM] Me: No I didn't

[2/7/23 9:32 AM] Me: Not yet

[2/7/23 9:33 AM] Me: I don't mind you representing me in a trial to be fully aquitted

[2/7/23 10:11 AM] Me: Look like it's a go

[2/7/23 1:43 PM] Attorney Kalil Eaddy: WhTs the update

[2/7/23 1:50 PM] Me: They rescheduled the trial for March 15th

[2/7/23 1:50 PM] Me: Can you talk briefly?

[2/8/23 1:15 PM] Me: Have your secretary call me to sign agreement..should move quickly on this

[2/8/23 2:46 PM] Me: Ok I got the invoice it's 6186.00

[2/8/23 2:46 PM] Me: As any amount refundable if we don't go to court?

[3/15/23 7:40 AM] Attorney Kalil Eaddy: I have one court right before you .. but be there and I'll be there right after you

[3/15/23 7:47 AM] Me: Ok

[3/15/23 9:14 AM] Attorney Kalil Eaddy: In route when they call your name let them know I'm in route

[3/15/23 9:15 AM] Me: Ok

[3/15/23 10:20 AM] Me: Eta?

[3/15/23 10:25 AM] Attorney Kalil Eaddy: 20 minutes

[3/15/23 10:27 AM] Me: Ok

Just told the judge you are on the way

9/11/24, 8:57 PM

Gmail - Sharing from Textra

Thanks

[3/15/23 10:55 AM] Attorney Kalil Eaddy: Walking in

[3/15/23 10:55 AM] Attorney Kalil Eaddy: What courtroom number

[3/15/23 10:56 AM] Me: 1c

[3/17/23 4:12 PM] Me: Did you hear anything from the cherokee county solicitor?

[3/18/23 12:39 AM] Attorney Kalil Eaddy: Not yet

[3/18/23 8:03 AM] Me: Ok, I think we just prepare for trial

[3/18/23 8:16 AM] Me: They will not play fair, this is how they have been doing....then pretend that they are just doing their job

[3/26/23 11:18 AM] Me: What do we need to do to get prepared for trial, there is a calender date for 04/10/23 but I think they will pick the jury and have trial the same day

[3/26/23 11:18 AM] Attorney Kalil Eaddy: Free Msg: Unable to send message - Message Blocking is active.

[3/27/23 9:11 AM] Me: What do we need to do to get prepared for trial, there is a calender date for 04/10/23 but I think they will pick the jury and have trial the same day

[3/27/23 9:11 AM] Attorney Kalil Eaddy: Free Msg: Unable to send message - Message Blocking is active.

[3/27/23 6:33 PM] Me: What do we need to do to get prepared for trial, there is a calender date for 04/10/23 but I think they will pick the jury and have trial the same day

[3/28/23 11:12 AM] Me: What is the plan?

Can you subpoena witnesses

Subpoena dfcs report

Maybe an expert covid witness

[4/13/23 8:31 AM] Me: Good morning, maybe we can just go to court and plead instead of waiting for them to call us since we are not going to trial

[4/13/23 8:37 AM] Attorney Kalil Eaddy: They set it for Monday Zoom

[4/13/23 8:38 AM] Attorney Kalil Eaddy: I'll get the information when they give it to me

[4/13/23 8:39 AM] Me: Ok

[4/13/23 8:42 AM] Me: Maybe you can ask the solicitor for more since the children were in excellent health and the police arrived while I was with my children and the only evidence is the video

[4/13/23 8:43 AM] Me: Of me unknowingly self incriminating

[4/13/23 8:46 AM] Attorney Kalil Eaddy: Sending to her now.

[4/13/23 1:49 PM] Me: Can you cc or forward all conversations with solicitor?

[4/14/23 9:41 AM] Me: If there is conservative bias in cherokee county is it too late to change venue?

[4/17/23 9:24 AM] Attorney Kalil Eaddy: Hey Johnny imma call you in a few

[4/17/23 9:24 AM] Attorney Kalil Eaddy: In court

[4/17/23 9:26 AM] Me:

Ok

What about the zoom at 9:30?

[4/17/23 9:43 AM] Attorney Kalil Eaddy: I never received the zoom link still awaiting it

[4/17/23 9:44 AM] Me: I think you just go to the website for cherokee county state court

[4/17/23 9:50 AM] Me: Do they have to send me a link?

[4/17/23 10:11 AM] Attorney Kalil Eaddy: They sending it to me now

[4/17/23 10:11 AM] Me: Okay

[4/17/23 10:13 AM] Attorney Kalil Eaddy: <https://us06web.zoom.us/j/84156422400?pwd=TXE5MjQ4L25WNUFuM1lpOGdabTJoZz09>

[4/17/23 10:13 AM] Attorney Kalil Eaddy: Password 035941

[4/17/23 12:17 PM] Attorney Kalil Eaddy: Log back in . And the Da said if you don't accept the offer this week she will withdraw the offer.

[4/17/23 12:24 PM] Me: Log in now

[4/17/23 12:24 PM] Attorney Kalil Eaddy: Okay

[4/17/23 12:24 PM] Me: ?

[4/17/23 12:26 PM] Me: I need to be added to list, not allowing me to log in

[4/17/23 12:38 PM] Attorney Kalil Eaddy: Waiting on you now we all in

[4/17/23 12:39 PM] Me: Got to go to another device I can't get in on my phone

[4/17/23 12:43 PM] Attorney Kalil Eaddy: What is your status?

[4/17/23 12:44 PM] Me: Going to use my wife phone

[4/19/23 8:52 AM] Attorney Kalil Eaddy: Leaving the other court now

[4/19/23 9:12 AM] Me: Ok I'm here

[4/19/23 9:25 AM] Me: ETA?

[4/19/23 9:28 AM] Attorney Kalil Eaddy: 15 minutes

[4/19/23 9:29 AM] Me: Ok I'm sitting in the courtroom so they can see I'm here

[4/19/23 9:49 AM] Attorney Kalil Eaddy: Parking

[4/19/23 9:56 AM] Me: Ok Judge just started announcing cases

[4/19/23 9:56 AM] Me: 1C

**TEXT MESSAGES BETWEEN HAMILTON AND OFFICE CLERK
STRESSING URGENCY OF ACTION**



Johnny Hamilton <johnny.l.hamilton@gmail.com>

Sharing from Textra

1 message

Johnny Hamilton <johnny.l.hamilton@gmail.com>
To: Johnny Hamilton <johnny.l.hamilton@gmail.com>

Wed, Sep 11, 2024 at 8:52 PM

Chat with Shakia Law Robert James (+14043830239)

[2/8/23 2:06 PM] Shakia Law Robert James: Hello, Mr. Hamilton. I saw a message that you will text Atty. Eaddy. Please let me know if there is something I can answer. Do you have a question about your invoice? Shakia/ Robert James Trial Attorneys, LLC.

[2/8/23 2:24 PM] Me: Yes. Can you talk?

[2/15/23 11:32 AM] Shakia Law Robert James: Good morning. Your Case number is 21M1515 and there is a calendar call on March 15, 2023 at 9:30am. Courtroom 1C with Judge Helhoski. 90 North Street, Canton, GA 30114. Thank you, Shakia/ Robert James Trial Attorneys, LLC.

[2/15/23 12:22 PM] Me: Ok thanks

[2/15/23 12:23 PM] Me: Have they filed into the case as my representation?

[2/15/23 12:57 PM] Shakia Law Robert James: Yes. Entry of Appearance and Discovery have been filed. Shakia/ Robert James Trial Attorneys, LLC

[2/16/23 12:33 PM] Me: Great thanks for the update

[2/24/23 12:02 PM] Me: Can you ask Mr Eaddy if I should get character witnesses and maybe a progress report from my kids school?

[3/29/23 2:54 PM] Me: Please let Mr. Eaddy know that I'm very concerned about getting prepared for trial and filing subpoenas, we have only 2 weeks to prepare, I'm not sure if he has all the details, or any discovery

[3/29/23 2:55 PM] Me: We need to get to work, if he can't handle the situation
Please let me know now?

[9/8/24 7:08 PM] Me: Hello, Mr. Hamilton. I saw a message that you will text Atty. Eaddy. Please let me know if there is something I can answer. Do you have a question about your invoice? Shakia/ Robert James Trial Attorneys, LLC.

**EMAIL MESSAGES BETWEEN HAMILTON AND FIRM OWNER
STRESSING URGENCY OF ACTION AND DISSATISFACTION**



Johnny Hamilton <johnny.l.hamilton@gmail.com>

Johnny Hamilton/ reckless conduct charges/ 21m1515

5 messages

Johnny Hamilton <johnny.l.hamilton@gmail.com>
 To: "robert@attorneyrobertjames.com" <robert@attorneyrobertjames.com>

Tue, Apr 11, 2023 at 2:14 PM

Mr James, hope all is well, as for my case i would like to go to trial and attack the reasonable person and conscious disregard part of the reckless conduct statute, by claiming duress of circumstances in fear of death to my children, i know it sounds like a stretch now but 2 yrs ago no one could predict how many people would die via covid 19 also file 3 subpoenas

1 joshua katz

2 dianne kroger employee

3 cherokee county dfcs report

the officer did not file the mandatory report to dfcs

the witnesses never saw any child unattended

dianne saw me and my children together prior to calling 911

i want to say that i'm extremely disappointed in Mr Eaddy handling my case, if i didnt supply him with discovery papers he would not have

them, he showed up over 1 hour late for court when i told him that

they were difficult to deal with in cherokee county, he filed 1 motion

for discovery and didnt follow up, he hasnt done anything to make my

situation any better, i told him that i wanted to go to trial but he

hasnt made any preparations, he hasnt reviewed all of the evidence i

sent him, i hired him so i wouldnt have to do he research, at this

point i cant see him putting on a good faith defense although its

risky, there are 100 more defenses possible if you actually review the

evidence, i realize this is a difficult situation but i expected some

effort other than what i could do myself, i stepped back to allow mr

eaddy to do his job without me being in the way but this was a mistake

because he says that he was waiting on me and the solicitor

Robert James <robert@attorneyrobertjames.com>
 To: Johnny Hamilton <johnny.l.hamilton@gmail.com>, Khalil Eaddy <khalil@attorneyrobertjames.com>

Tue, Apr 11, 2023 at 4:22 PM

Mr. Hamilton I am unfamiliar with the facts of your case. Mr. Eaddy is your attorney. At this point Mr. Eaddy is the most experienced associate at our firm. I am not able to reassign your case to another attorney.

At Your Service,

Robert James
 Attorney



404.891.0977

AttorneyRobertJames.com
 233 Peachtree St., Suite 1200
 Atlanta, GA 30303

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9/9/24, 7:43 PM

Gmail - Johnny Hamilton/ reckless conduct charges/ 21m1515

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[Quoted text hidden]

Johnny Hamilton <johnnly.hamilton@gmail.com>
To: Robert James <robert@attorneyrobertjames.com>

Tue, Apr 11, 2023 at 7:37 PM

Mr James at this point many ships have sailed and the trial will be in a couple of days, there is no way possible to build a sufficient defense and I have to take a different route than anticipated, if I had known a month ago that there would be no effort on my behalf I would have been more prepared now, in good faith I would like a discount in your service fee, my wife is extremely upset with me making this decision and being so trusting , and again the 6400 dollars was a flat rate to resolve the case but no effort was made in preparation for trial, there is almost no way to win especially if we are not on the same page , regardless of circumstances, preparation is essential in winning any case, Mr.Eaddy had from early February to prepare with nothing to show, other than an unanswered motion, if I didn't furnish Mr eaddy with discovery he would have nothing, all he had to do was ask for copies at the court house

[Quoted text hidden]

Johnny Hamilton <johnnly.hamilton@gmail.com>
To: Robert James <robert@attorneyrobertjames.com>

Fri, Apr 14, 2023 at 10:01 AM

Morning Mr James, I understand that you and your staff are very busy, don't want to waste your time as time is our greatest asset.

Can we consider a change of venue since I'm in a county that voted for Trump, Kemp and hershel walker in a high percentage and the cherokee county sheriff said that the killer of 8 people in the spa shooting was having a bad day, the judge has shown biased support for the sheriff office and I'm told by multiple people that in this county it's a high risk to go trial because the jury most likely will be conservative and white, in order to win the effort would require more attention to detail, I don't feel supported enough to go to trial out here

[Quoted text hidden]

Johnny Hamilton <johnnly.hamilton@gmail.com>
To: Robert James <robert@attorneyrobertjames.com>

Fri, May 12, 2023 at 11:36 AM

Greetings Mr. James, i am reaching out to you since the criminal matter has been settled with a guilty plea from myself, i paid a total of 6186.00 to your firm for legal services, i dont want to go into detail but i dont think i received the amount of service i paid for, i thought there was a possibility of going to trial... i am asking for a \$2000 refund inconsideration of the circumstances, my wife was in a car accident and her car was totaled but she is fine, i have to buy her another car, i think you are a man of integrity and will understand, if not that's fine too, poverty is a state of mind, im not asking for a hand out just simple fairness, thanks

[Quoted text hidden]