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MOTOR VEHICLES AND TRAFFIC

Uniform Rules of the Road: Establish Proximate Causation Standards for Pursuing Law Enforcement Officers When Fleeing Suspects Injure Third Parties

CODE SECTIONS: O.C.G.A. §§ 40-6-6, -395 (amended)
BILL NUMBER: HB 409
ACT NUMBER: 395
GEORGIA LAWS: 1995 Ga. Laws 855
SUMMARY: The Act specifies the conditions under which a pursuing law enforcement official can be held liable for causing or contributing to damages, injury, or death caused by a fleeing suspect. The Act establishes that the officer's conduct will not be the proximate cause of such injuries, death, or damage unless the officer has acted with reckless disregard for proper law enforcement procedures. The Act also specifies when a suspect can be charged with a felony offense for fleeing or attempting to elude a police officer.
EFFECTIVE DATE: May 1, 1995

History

HB 409 was a legislative response to the Georgia Supreme Court's decision in *Mixon v. City of Warner Robins*.¹ In the *Mixon* case, the supreme court held that police officers could be held civilly liable for injuries sustained by an innocent third party if the officer's decision to initiate and continue a pursuit was performed without "due regard for the safety of all persons."² This liability could extend to situations in which the injury was actually inflicted by the fleeing suspect.³

1. Interview with Sewell Brumby, Georgia Legislative Counsel, in Atlanta, Georgia (Apr. 10, 1995) [hereinafter Brumby Interview]; *Mixon v. City of Warner Robins*, 444 S.E.2d 761 (Ga. 1994).

2. *Mixon*, 444 S.E.2d at 764.

3. *Id.*

During the summer of 1994, a group comprised of representatives from the Georgia Sheriff's Association, the Georgia Chief's Association, the Georgia Municipal Association, and the Association of County Commissioners met to discuss legislation which would respond to the court's decision in *Mixon*.⁴ This diverse group had two interests in mind: first, to protect from liability officers who are simply doing their jobs;⁵ and second, to protect municipalities, most of which are totally self-insured, from the risk of large civil damage awards.⁶

HB 409

HB 409, as originally proposed, provided that the law enforcement officer's pursuit would not be the proximate cause or the contributing proximate cause of a third party's injury or death as long as the officer's law enforcement agency adopted an acceptable policy governing such pursuits.⁷ The policy had to meet certain requirements as set forth in the bill, including: (1) "procedures for designating the primary pursuit vehicle"⁸ and the total number of vehicles that could become involved in the pursuit; (2) procedures for coordinating pursuits with other jurisdictions; (3) guidelines for determining when a pursuit should be initiated or terminated; and (4) training procedures for officers with respect to the pursuit policy.⁹ Whether or not a particular policy complied with these requirements would have been a question of law.¹⁰ The bill also created a rebuttable presumption that the fleeing suspect was liable for any injury or death resulting from the flight and the subsequent pursuit.¹¹

4. Telephone Interview with Irene Munn, Director of Public Affairs, Georgia Sheriff's Association (Apr. 26, 1995) [hereinafter Munn Interview].

5. *Id.*

6. Telephone Interview with Ed Sumner, Georgia Municipal Association (Apr. 26, 1995) [hereinafter Sumner Interview].

7. HB 409, as introduced, 1995 Ga. Gen. Assem. These requirements were based on policies from Minnesota, California, and other states, as well as the policy of the Georgia State Patrol. Sumner Interview, *supra* note 6. The Act eventually reflected California law. Munn Interview, *supra* note 4.

8. HB 409, as introduced, 1995 Ga. Gen. Assem.

9. *Id.*

10. *Id.*

11. *Id.*

After introduction, the bill was sent to the House Public Safety Committee from which it emerged virtually unchanged.¹² The bill made it through the House Rules Committee and was about to be presented for vote on the House floor when it came to the attention of Representative Ray Holland.¹³ Representative Holland, a former county and city attorney, believed there were some serious drafting problems with the bill and, after speaking with other representatives, suggested two amendments to the bill to cure its defects.¹⁴ Representative Tommy Chambless, Chairman of the House Judiciary Committee, believed the bill still needed considerable revision.¹⁵ Thus, the Speaker of the House, Thomas Murphy, decided to take HB 409 off the calendar.¹⁶

HB 409 was sent back to the Rules Committee, where proponents of HB 457 were trying to convince the committee that HB 457 was the better police pursuit bill.¹⁷ HB 457 also addressed the *Mixon* decision and included provisions to strengthen the penalties against suspects who flee arrest.¹⁸ In response to the debate, Representative Bill Lee, Chairman of the Rules Committee, assigned Representatives Larry Walker, Betty Jo Williams, and Sonny Dixon to a special committee to review both bills and select which bill should survive the Rules Committee.¹⁹ The members of this committee met with Legislative Counsel Sewell Brumby and other interested parties to discuss the appropriate action to take with regard to the two bills.²⁰

The original version of HB 409 encountered problems in this meeting due to concerns over sovereign immunity and insurance subrogation rights.²¹ Additionally, some objected to language

12. Munn Interview, *supra* note 4.

13. Telephone Interview with Rep. Ray Holland, House District No. 157 (Apr. 26, 1995) [hereinafter Holland Interview].

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*; see also Munn Interview, *supra* note 4.

18. HB 457 (HCS), 1995 Ga. Gen. Assem.

19. Holland Interview, *supra* note 13.

20. Brumby Interview, *supra* note 1; Holland Interview, *supra* note 13.

21. Brumby Interview, *supra* note 1; see also *Lawmakers '95* (GPTV broadcast, Feb. 28, 1995) (videotape available in Georgia State University College of Law Library). During floor debate, Rep. Keith Breedlove, House

that many interpreted as providing absolute immunity for law enforcement officers.²² Finally, the bill engendered considerable debate over the details of the procedural requirements of the pursuit policy.²³

The substitute bill that came out of this committee gained support because it took a more general approach to the reasonableness of the pursuit policy and deleted any reference to specific requirements.²⁴ The Act amends Code section 40-6-6 by providing that the officer or municipality can be held liable only when the officer acts with reckless disregard for proper law enforcement procedures in initiating or continuing the pursuit and this reckless disregard actually causes the damage, injury, or death.²⁵

Several other notable additions were included in the floor substitute version of HB 409, including subsection (d)(3), which states that the Act's provisions only apply to the issues of causation and duty and have no effect on the presence or absence of immunity as otherwise provided by law.²⁶ This provision responds to some of the concerns raised in the special committee about the original bill.²⁷

Another important change is the amendment of Code section 40-6-395, which addresses the offense of fleeing or attempting to

District No. 85, asked Rep. Ray Holland, who sponsored the floor substitute to HB 409, who would pay for an innocent third party's property damage. Rep. Holland responded,

[F]irst, . . . the fleeing criminal's assets [are] subject to liability for the damages to the property of that innocent third party; but also, if a case was brought against the law enforcement official or the city by the innocent third party, the court would make a determination if the [officer] complied with reasonable police procedures in initiating and continuing the pursuit.

Id.

22. Brumby Interview, *supra* note 1.

23. Brumby Interview, *supra* note 1.

24. Holland Interview, *supra* note 13; Munn Interview, *supra* note 4.

25. O.C.G.A. § 40-6-6(d)(2) (Supp. 1995). This differs from the Georgia Supreme Court's holding in *Mixon v. City of Warner Robins*, under which an officer could be held liable if a pursuit was undertaken without due regard for the safety of all persons. 444 S.E.2d 761, 764 (Ga. 1994). Rep. Holland notes that the statute creates a test with two elements: (1) whether the officer acted with reckless disregard for (2) proper police procedures. Holland Interview, *supra* note 13.

26. O.C.G.A. § 40-6-6(d)(3) (Supp. 1995).

27. See Brumby Interview, *supra* note 1.

elude a police officer.²⁸ This section of the Act represents the “marriage” of the two bills, HB 409 and HB 457.²⁹ HB 457 provided for a felony penalty if the fleeing suspect left the state, hit another vehicle, or drove in conditions which put the public at risk.³⁰ The Act as passed by the General Assembly, however, makes it a felony if, while attempting to escape arrest for a felony offense, the suspect commits any of the offenses originally enumerated in HB 457 or drives in excess of thirty miles over the speed limit.³¹ The Act also increases the penalty under the misdemeanor section with respect to monetary fines and length of imprisonment.³²

For the first conviction of a violation of Code section 40-6-395, the violator can be fined between \$500 and \$5000 and imprisoned for not less than ten days nor more than twelve months.³³ For the second conviction within a ten-year period, the violation is punishable by fines between \$1000 and \$5000 and imprisonment for not less than thirty days nor more than twelve months.³⁴ Previous pleas of nolo contendere accepted within the ten-year period constitute convictions.³⁵ Finally, upon the third or subsequent conviction within the ten-year period, the person is subject to fines between \$2500 and \$5000 and imprisonment for not less than ninety days nor more than twelve months.³⁶ Again, pleas of nolo contendere accepted within the ten-year period constitute convictions.³⁷

The Act passed the House with a vote of 106 to 0 on February 28, 1995.³⁸ The Act passed the Senate on March 15,

28. O.C.G.A. § 40-6-395 (Supp. 1995).

29. Brumby Interview, *supra* note 1.

30. HB 457, as introduced, 1995 Ga. Gen. Assem.

31. O.C.G.A. § 40-6-395(b)(5)(A) (Supp. 1995).

32. *Id.* § 40-6-395(b).

33. *Id.* § 40-6-395(b)(1)(A).

34. *Id.* § 40-6-395(b)(1)(B).

35. *Id.*

36. *Id.* § 40-6-395(b)(1)(C).

37. *Id.*

38. Final Composite Status Sheet, Mar. 17, 1995; *Lawmakers '95* (GPTV broadcast, Feb. 28, 1995) (videotape available in Georgia State University College of Law Library).

1995³⁹ and was signed into law on April 19, 1995 by Governor Zell Miller.⁴⁰

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39. Final Composite Status Sheet, Mar. 17, 1995. When the bill reached the Senate, there was support for changing the standard of care back to negligence; however, the lobbyists for the House's final version of the bill convinced members of the Senate to pass the bill with the "reckless disregard" standard intact. Munn Interview, *supra* note 4.

40. Final Composite Status Sheet, Mar. 17, 1995.