**ACCUSATIONS IN TRAFFIC CITATIONS - EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am Tain Kell.*

Tain, we have been blessed here at the Good Judge-Ment Podcast with some great episode topic ideas from listeners.

*We really have – it’s been wonderful – I just wish they would do all the research and send along some completed episode notes too!*

Yeah, that would help the time constraint issue. But now we need to ask a little more from our listeners – at least a select group of them

*That’s right. Several listeners have suggested that we record an episode or two dealing with the topic of habeas corpus petitions and hearings.*

We know that many of our judicial circuits across Georgia hear a lot of those cases and have a great deal of experience with them

*Here’s the problem. Cobb County does not have a state prison. So I did not hear many of those cases.*

And while I was in the Augusta Circuit, we had some that were generated by prisoners from ASMP – but we did not have very many.

*In summary, we want someone who is an expert to join us for a recording session and help us better understand habeas corpus petitions. If you want to volunteer and think you would enjoy appearing on the podcast, let us know.*

Send us an e-mail at [goodjudgepod@gmail.com](mailto:goodjudgepod@gmail.com)

*Ok, that’s enough with the Public Service Announcement so let’s tell folks what we are talking about in today’s episode.*

Today, we are going to address a case that lawyers and judges who hear traffic cases may find interesting and important. It’s been a while since we recorded an episode primarily for our friends in traffic courts and who hear cases involving UTC’s (Uniform Traffic Citation)

*Ah yes, I remember those good old days fondly. Speaking with probate judges, FOP Ben Studdard – it seems like only yesterday…*

With all that being said, let’s get into today’s episode.

The case we are primarily going to be discussing today is *Smith v. State*, 366 Ga.App. 399 (2023).

The larger topic is UTC’s, accusations and demurrers

I don’t think the facts of the case are all that important but let’s get them “on the record” just in case

Defendant was charged with improper/erratic lane change (O.C.G.A. § 40-6-123(a)) via a UTC. At the close of evidence, defendant made an oral motion to quash the charge.

Let’s take a pause in the facts and discuss what a “motion to quash” really is – it is another way to reference a general demurrer. Notice it was made orally and at the close of evidence – not a motion “filed at or before arraignment or within 10 days thereof”

In *Smith*, the motion to quash was made and the trial court denied the motion but then certified the order for immediate review. Essentially, the defendant claimed that the UTC that was issued failed to allege the essential elements of the offense and, because it was fatally deficient, it should have been quashed.

Some of you are likely noticing that the timing issue relating to when this motion was made is pretty important. It was a bench trial so jeopardy attached at the time the first witness was sworn and began testifying. Under double jeopardy concerns, if the motion to quash was granted *after the evidence was closed,* this defendant cannot be retried

So this ruling is likely potentially dispositive – and not really on the merits of the case

I know we detour off topic sometimes in this podcast and it is a direct reflection of how Wade and Tain think – very similar to a pinball machine. But let’s go on a quick aside – the facts of the *Smith* case are not too complex

Ga. law and the Uniform Rules of each class of court who hear these sorts of cases all require all motions, “including demurrers” must be filed within 10 days of arraignment.[[1]](#endnote-1) The trial court can allow for additional time but almost everyone understands that motions need to be filed within 10 days of arraignment

But as we have discussed in separate episodes of the podcast, demurrers are treated differently – at least by some appellate courts. Some may be asking, “What is a demurrer? Cool word and all but what does it mean? We are glad you asked

A demurrer can also be referenced as a motion to quash – just as it was in the *Smith* decision. It is a complaint or attack on the formal charging instrument that was brought against the defendant. There are special demurrers and general demurrers

A special demurrer seeks to have the prosecutor “perfect” the formal charging instrument (The UTC, accusation, or indictment). It alleges that the charging instrument lacks sufficient specificity. For example, where the defendant is charged with violating a family violence order – the defendant is entitled to be told (within the accusation/indictment) exactly what family violence order the prosecutor is alleging he/she violated.[[2]](#endnote-2) Or where the defendant is charged with cruelty to animals for neglecting those animals, the defendant is entitled to be informed within the accusation/indictment or what actions are being alleged as neglectful.[[3]](#endnote-3)

So those are special demurrers. The law is clear that a special demurrer must be filed within 10 days of arraignment.[[4]](#endnote-4) By comparison, a general demurrer can be filed at any time during the case.[[5]](#endnote-5)

A general demurrer is a motion that essentially alleges that the defendant could admit that everything alleged in the charging instrument and still would not be guilty of a crime. The charging instrument does not allege a crime and the defendant could admit every fact alleged in the charging instrument and the state still would not have proven that the defendant committed a crime

If a special or general demurrer is granted, the court “quashes” the indictment – another fun legal word. Not “squashes” - “quashes.” Hence the occasional reference to a “motion to quash” as a substitute for a demurrer.

Let’s get back to the *Smith* case after the detour through demurrer-ville

In *Smith*, the Ga. Ct. of Appeals described Georgia’s form UTC and noted

The citation in this case contains a section titled “OFFENSE (Other than above)” and asks the officer to specify the name of the offense and the violated Code section, along with a section for any “REMARKS.” Below these sections, a table sets forth a number of options to check under the headings Weather, Road, Traffic, Lighting, and Commercial Vehicle Information and allows the officer to fill in where the offense occurred. Within the “OFFENSE” section the officer typed in “IMPROPER/ERRATIC LANE CHANGE” and specified that Smith was in violation of “Code Section 40-6-123 (a)” in “CLAYTON” County on “RIVERDALE RD” “at/on (secondary location) E I285 RAMP.”[[6]](#endnote-6)

The Court of Appeals then looked at the language of the relevant statute, O.C.G.A. § 40-6-123(a):

No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Code Section 40-6-120 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or change lanes or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate and timely signal in the manner provided in this Code section.

You will notice a phrase within the statute that is an element of the crime:

“unless and until such movement can be made with reasonable safety”

The UTC did not allege that the lane change committed by the defendant was not done safely or exactly how the lane change was unsafe

The officer did use the word “erratic” but the Ct of Appeals noted that the word “erratic” is not synonymous with “unsafe”

The Court noted that alleging that a lane change was “improper” is a legal conclusion and is not a factual allegation.[[7]](#endnote-7)

Then the Ct of Appeals noted:

Second, while the phrase “erratic lane change” in the citation alleges some facts, it does not allege the facts necessary to establish a violation of OCGA § 40-6-123 because it does not contain an essential element of the offense — that Smith changed lanes without first ascertaining that such movement could be made “with reasonable safety.[[8]](#endnote-8)

The Ct of Appeals noted that the officer did not write anything in the section of the UTC labeled “Remarks.” Had the officer described what it was that that defendant had done that caused the officer to allege the defendant had made an erratic or unsafe lane change, it may have changed their analysis,

One other interesting finding in the *Smith* case – after noting that “erratic” does not equate with “unsafe,” the Ct of Appeals noted that the fact that the defendant testified at the hearing and did not rebut the officer’s testimony is irrelevant to a determination as to whether the UTC was fatally flawed.

A demurrer must not be based upon extrinsic facts (such as the testimony at trial or at a hearing). Instead, it is focused solely on the body of the charging instrument[[9]](#endnote-9)

The Ct of Appeals discussed a similar decision[[10]](#endnote-10) and then concluded:

In this case, that Smith made an erratic lane change does not necessarily mean that such maneuver was not reasonably safe within the meaning of the statute. In conclusion, we find that the citation at issue is substantively defective because it simply alleges that Smith violated a certain statute, which is insufficient to survive a motion to quash. [[11]](#endnote-11)

The decision of the trial judge to deny the motion to quash was reversed.\

When dealing with a motion to quash or general demurrer, understand that while a charging instrument need not truly be “perfect,” it must be “sufficient.” It must include allegations that set out the crime allegedly committed and must include all of the essential elements of the crime.

You may wonder how the prosecutor could have prevented such an outcome.

Remember that the prosecutor may always prefer an accusation over simply moving forward on the UTC. While Georgia law allows prosecutions to proceed with the UTC being the charging instrument, it is probably unrealistic to expect the officer to know all of the nuances of the relevant statute and to include all of that information on the face of the UTC.

That’s all for out episode on *Smith v. State*

*We have additional episodes dealing with demurrers and you can find those outlines on our website, goodjudgepod.com*

Remember that a special demurrer (motion to quash) must be filed within 10 days of arraignment.

*But a general demurrer can be filed at any time before judgment is pronounced – and it need not be a written motion*

Reach out to us with some more ideas for episode topics at [goodjudgepod@gmail.com](mailto:goodjudgepod@gmail.com)

*Music trivia time – you likely are aware of the band known as the Red Hot Chili Peppers. They have an iconic sound and have really produced some great music. They have a bassist that is probably as well known as any other member of the band. He is known by the name Flea. His performance style is pretty unique and is politely referred to as “high energy.” Some might even call it frenetic. Anyway, little known fact about Flea. He is a marathoner. He ran both the 2011 and 2012 Los Angeles Marathons to raised funds for the Silverlake Conservatory of Music. His average time for running those two marathons? 3 hours, 41 minutes. Pretty impressive stuff for Michael Peter Balzary a/k/a Flea. The more you know, the better you are*

1. O.C.G.A. § 17-7-110; UPCR 15.4; U.S.C.R. 31.1 as examples. [↑](#endnote-ref-1)
2. *Newsome v. State*, 296 Ga. App. 490, 491 (2009). [↑](#endnote-ref-2)
3. *Military Circle Pet Center No. 94, Inc. v. State*, 181 Ga. App. 657 (1987), overturned on other grounds in *State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388 (1987). [↑](#endnote-ref-3)
4. *Usher v. State*, 303 Ga. 622, 623 (2018). [↑](#endnote-ref-4)
5. *Abney v. State*, 327 Ga. App. 551, 553 (2014). [↑](#endnote-ref-5)
6. *Smith v. State*, 366 Ga.App. 399, 399-400 (2023). [↑](#endnote-ref-6)
7. *Smith*, at 401, citing  *Strickland*, 349 Ga. App. at 679 (2) (b), 824 S.E.2d 555, citing *Jackson v. State*, 301 Ga. 137, 141 (1), 800 S.E.2d 356 (2017), and *Newsome v. State*, 296 Ga. App. 490, 491-492 (1), 675 S.E.2d 229 (2009). [↑](#endnote-ref-7)
8. *Smith*, at 401. [↑](#endnote-ref-8)
9. *Smith*, at 401. [↑](#endnote-ref-9)
10. *Woods v. State*, 361 Ga.App. 844 (2021). [↑](#endnote-ref-10)
11. *Smith*, at 402. [↑](#endnote-ref-11)