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Casenote

Officers without Borders: Georgia Court of Appeals Expands Campus Police Jurisdiction and Authority in *State v. Zilke*

I. INTRODUCTION

The deaths of Black men at the hands of law enforcement officers—or vigilantes, as in the case of George Zimmerman—have received consistent and sustained media attention in the United States in recent years.¹ The primary incidents on which the media focused occurred in several geographic regions, indicating that the problem was not

1. After George Zimmerman was acquitted in July of 2013 for the killing of Trayvon Martin, social media and other mainstream media outlets reported on incidents in which Black men died after encounters with law enforcement officers. *See generally Freddie Gray Death: Protestors Highlight Other Police Deaths*, BBC NEWS (Apr. 28, 2015), <http://www.bbc.com/news/world-us-canada-30341927>. In less than one year after that acquittal, five deaths—those of Eric Garner in Staten Island, New York in July 2014; Michael Brown in Ferguson, Missouri in August 2014; twelve-year-old Tamir Rice in Cleveland, Ohio in November 2014; Walter Scott in North Charleston, South Carolina in April 2015; and Freddie Gray in Baltimore, Maryland in April 2015—received major media coverage and, along with numerous other incidents, focused the nation's attention on the disturbing frequency with which Black men die after interacting with law enforcement officers. *Id.*

concentrated in only one or two “problem” areas.² For the first time since the Rodney King beating in 1991,³ American society-at-large was—at least to some degree—able to see how often Black men are the targets and victims of police brutality, sometimes through firsthand video recordings of the incidents. On July 19, 2015, one such video recording documented a facet to this phenomenon that the nation had not yet collectively witnessed: it broadcast to the viewing public that campus police units present a threat similar to Black men that municipal, county, or state police forces present. In this recording, University of Cincinnati campus police officer, Ray Tensing, shoots and kills Samuel DuBose after what appears to be a routine traffic stop for driving a car without a front license plate.⁴ After extensive media coverage on several news outlets, the public later learned that this traffic stop occurred outside of the territorial limits of the university’s campus.⁵

Eight days before this shooting, in a decision that eerily portended the future, the Georgia Court of Appeals held in *State v. Zilke*⁶ that Peace Officer Standards and Training Council (POST)⁷ certified campus police

2. *National Police Violence*, MAPPING POLICE VIOLENCE, <http://mappingpoliceviolence.org> (last visited Oct. 30, 2015).

3. Joseph Serna, *With Smartphones Everywhere, Police on Notice They Might Be Caught on Camera*, L.A. TIMES (Apr. 21, 2015, 5:30PM), <http://www.latimes.com/local/lanow/la-me-ln-feds-probe-video-phone-in-south-gate-20150421-story.html>.

4. Dan Horn & Hannah Sparling, *UC Report: Sam DuBose Shooting ‘Entirely Preventable’*, CINCINNATI.COM (Sept. 14, 2015, 4:18PM), <http://www.cincinnati.com/story/news/2015/09/11/uc-release-new-dubose-shooting-report/72058718/>.

5. Sarah Dallof, *University of Cincinnati Police Resume Patrols After Killing of Samuel DuBose*, MSNBC (Aug. 19, 2015, 4:42PM), <http://www.msnbc.com/msnbc/university-cincinnati-police-resume-patrols-after-shooting-death-samuel-dubose>.

6. 333 Ga. App. 344, 773 S.E.2d 489 (2015). The Georgia Supreme Court granted certiorari for this case on Nov. 2, 2015. *Zilke v. State*, 2015 Ga. LEXIS 823 (Nov. 2, 2015). Oral arguments were heard on February 22, 2016. SUPREME COURT OF GEORGIA, <http://www.gasupreme.us/granted-denied-petitions/2015-granted> (last visited Feb. 20, 2016). The pertinent issue is: “Did the Court of Appeals err in holding that a campus policeman of the University System of Georgia has jurisdiction to make arrests for a traffic violation committed in his presence, but more than 500 yards off campus?” *Id.*

7. First established in 1970, the Georgia POST is authorized under Title 35 Chapter 8 of the Georgia Code. *About POST*, STATE OF GEORGIA: PEACE OFFICER STANDARDS AND TRAINING COUNCIL, <https://www.gapost.org/about.html> (last visited Feb. 28, 2016); *see also* O.C.G.A. § 35-8-3 (2012 & Supp. 2015). POST’s functions and powers include developing and establishing the curriculum for its certification program and also determining when a candidate has satisfied the requirements for the certification. *About POST, supra*. POST’s stated mission is “to provide the citizens of Georgia with qualified, professionally trained, ethical and competent peace officers and criminal justice professionals.” *Id.*

peace officers⁸ have the authority to make arrests outside of campus territory for moving traffic violations that occur in their presence.⁹ Georgia law enforcement officers who work within a governmental unit—for example, city, county, and state police departments—have statutory authority to arrest people for motor vehicle violations by the issuance of a citation, provided that the officer either actually witnesses the violation or receives information that constitutes a basis for the arrest.¹⁰ When an officer witnesses a moving traffic violation, this authority extends past the territorial limits of his or her particular jurisdiction.¹¹

In *Zilke*, the court of appeals broadly interpreted section 17-4-23(a) of the Official Code of Georgia Annotated (O.C.G.A.),¹² the statute governing law enforcement officers' authorization to make arrests for motor vehicle violations, in conjunction with O.C.G.A. § 20-3-72,¹³ the statute granting authority to “campus policemen and other security personnel . . . to make arrests [on university property and on] public or private property within 500 yards of any property under the jurisdiction of the board.”¹⁴ Through its interpretive analysis, the court determined that the statutes authorize POST-certified campus police officers to make arrests for moving traffic violations committed more than 500 yards from campus, as long as the officers are present when the violations are committed.¹⁵ As such, instead of focusing their efforts on securing the safety of campus employees, students, and visitors within campus boundaries, campus police officers are now permitted to turn their attention to violations committed outside of those limits.

Notably, the court did not address precisely how far violations may be committed outside of campus limits and still remain within the

8. Campus police peace officers are included in the definition of a “peace officer,” which is defined as the following:

an agent, operative, or officer of [Georgia], a subdivision or municipality thereof, or a railroad who, as an employee for hire or as a volunteer, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public order, the protection of life and property, and the prevention, detection, or investigation of crime.

O.C.G.A. § 35-8-2 (2012 & Supp. 2015).

9. *Zilke*, 333 Ga. App. at 345, 773 S.E.2d at 491.

10. O.C.G.A. § 17-4-23 (2013 & Supp. 2015). Officers make these arrests by issuing a citation. *Id.*

11. *State v. Gehris*, 242 Ga. App. 384, 386, 528 S.E.2d 300, 303 (2000).

12. O.C.G.A. § 17-4-23(a)(2013 & Supp. 2015).

13. O.C.G.A. § 20-3-72 (2012).

14. *Zilke*, 333 Ga. App. at 345, 773 S.E.2d at 491.

15. *Id.*

jurisdiction of the campus police officers.¹⁶ Such broad authority creates the potential for abuse, especially given the existing tensions between law enforcement officials and residents of the communities in which these officers work.¹⁷ Indeed, in its holding, *Zilke* sets the stage for more clashes between campus police and non-student citizens who either live in or who go about their daily lives in the communities in which colleges and universities are located.

II. FACTUAL BACKGROUND

On May 5, 2013 at approximately 1:42 a.m., a POST-certified police officer employed at Kennesaw State University (KSU) was returning to KSU after having delivered an arrestee to the Cobb County Adult Detention Center. While driving within Cobb County (but not on or near KSU's campus), the officer observed the defendant, Bajrodin Zilke, driving without his headlights or taillights on and failing to maintain his lane of travel. The officer initiated a traffic stop, approached Mr. Zilke, and smelled alcohol. The officer also observed that Mr. Zilke had bloodshot, watery eyes and was unsteady on his feet. Mr. Zilke admitted to the officer that he had consumed two beers and, at the officer's request, blew into an Alco-sensor, which registered positive for alcohol. Given this result, the officer concluded that Mr. Zilke was intoxicated to the extent that he was unable to drive safely and arrested Mr. Zilke. The state-administered chemical breath test, which Mr. Zilke took via the

16. Many public universities, including those employed by public universities in Georgia, employ sworn police officers who have completed the same training that police officers who work under a governmental unit have completed, including the POST certification. Brian A. Reaves, *Campus Law Enforcement*, 2011-12, BUREAU OF JUSTICE STATISTICS, Jan. 2015, NCJ 248028. These trained and certified police officers can work alongside people who the universities employ more as security guards, who have not completed formal police and peace officer training. *Id.* The rate of public universities that use sworn police officers is more than double the rate of private universities that use sworn police officers. *Id.*

17. Jeffrey S. Jacobson, *The Model Campus Police Jurisdiction Act: Toward Broader Jurisdiction for University Police*, 29 COLUM. J.L. & SOC. PROBS. 39, 50-51 (1995). The author explains how community residents who are not affiliated with the college or university in that community may not welcome the presence of campus police officers for a number of reasons: (1) the perception that campus police are not as well-trained as municipal and state police; (2) the belief in the likelihood that campus police will tailor their response to an incident based on whether the alleged offender is a student or non-student; (3) the concern that campus police respond more quickly to incidents that involve university-affiliated people as opposed to those that involve non-affiliated people; and (4) the lack (or perceived lack) of ways in which grievances against campus police officers can be addressed by non-university affiliated people, especially given the fact that campus police are not directly accountable to municipal, county, or state elected officials. *Id.*

Intoxilyzer 5000 at 3:16 a.m., indicated that Mr. Zilke's blood alcohol level was 0.08.¹⁸

At trial, Mr. Zilke argued that the police arrested him without authority or jurisdiction since the traffic stop did not occur on or near KSU property. Mr. Zilke moved to suppress the evidence of the breath test, and the trial court granted his motion. In this ruling, the trial court essentially determined that O.C.G.A. § 20-3-72 precluded a POST-certified campus police officer from making an arrest for offenses outside of territorial campus limits.¹⁹ The State appealed, and the Georgia Court of Appeals reversed the trial court, determining, for the first time, that O.C.G.A. § 17-4-23(a) authorizes POST-certified campus police officers to make arrests for offenses committed more than 500 yards from campus.²⁰

III. LEGAL BACKGROUND

A. *Judicial Expansion of Municipal Police Authority*

First enacted during the 1937-38 legislative session, O.C.G.A. § 40-13-30²¹ gives state, county, and municipal police officers the power to make arrests for criminal offenses.²² However, this statute also limits the jurisdiction of municipal officers who work for an incorporated jurisdiction to the corporate boundaries of that municipality, unless local or "other law" gives jurisdiction for these officers to make arrests beyond those limits.²³ In 1964, the Supreme Court of Georgia limited the authority of municipal officers by only permitting these officers to make arrests for misdemeanors and traffic offenses committed within the boundaries of the municipality in which the officers were employed, absent any local or other laws that expanded a municipal officer's jurisdiction.²⁴

18. *Zilke*, 333 Ga. App. at 344, 773 S.E.2d at 490.

19. *See id.*

20. *Id.* at 345-46, 773 S.E.2d at 491.

21. O.C.G.A. § 40-13-30 (2014).

22. *Id.*

23. *Id.*

24. *Jones v. City of Pembroke*, 220 Ga. 213, 214, 128 S.E.2d 276, 277 (1964) (holding that a municipal police officer killed nineteen miles outside the municipality's limits while pursuing a speeder was acting beyond the scope of his employment, which rendered the city not liable for the officer's widow's workers' compensation claim).

After five years of nationwide social upheaval,²⁵ in 1969, the Georgia General Assembly enacted the predecessor to O.C.G.A. § 17-4-23,²⁶ which allowed municipal officers to make arrests outside of their jurisdiction as long as the offense in question was committed in their presence.²⁷ In its 1984 decision of *Glazner v. State*,²⁸ the court of appeals interpreted the “other law” clause in O.C.G.A. § 40-13-30 to include O.C.G.A. § 17-4-23 as relevant other law, which rendered O.C.G.A. § 17-4-23 an exception to O.C.G.A. § 40-13-30.²⁹ In *Glazner*, the defendant was arrested for and found guilty of driving without a license; driving under the influence; and simple assault against the arresting officer.³⁰ The defendant argued that his arrest under O.C.G.A. § 40-13-30 was illegal, but the court held that the O.C.G.A. § 17-4-23 exception to O.C.G.A. § 40-13-30 rendered the arrest proper.³¹ The special concurrence, however, indicates that one judge disagreed with the interpretation of “other law” to include O.C.G.A. § 17-4-23 as an

25. Of significant note is that this apparent shift in expanding municipal officers' authority happened within a five-year period that saw major social upheaval in cities across the U.S. These events include the assassination of Malcolm X in New York City in 1965; the Watts Riots in Los Angeles, also in 1965; the Atlanta Riots in 1966, which occurred after an Atlanta police officer shot a Black male suspected of stealing a car; the Detroit Riots in 1967; the Chicago Riots in 1968, initiated by the assassination of Martin Luther King, Jr. in Memphis, also in 1968; and the assassination of Robert Kennedy, Jr. in Los Angeles, just over two months after Dr. King's death. See James Coates, *Riots Follow Killing of Martin Luther King Jr.*, CHI. TRIB., <http://www.chicagotribune.com/news/nationworld/politics/chi-chicagodays-kingriots-story-story.html> (last visited Nov. 2, 2015); Matthew Dickinson, *A President's Dilemma: Race, Riots and Midterm Elections*, SITES DOT MIDDLEBURY, <http://sites.middlebury.edu/presidentialpower/2014/08/23/a-presidents-dilemma-race-riots-and-midterm-elections/> (last visited Nov. 2, 2015); Peter Khiss, *Malcolm X Shot to Death at Rally Here*, N.Y. TIMES (Feb. 22, 1965), <https://partners.nytimes.com/library/national/race/022265race-ra.html>; Robyn Meredith, *5 Days in 1967 Still Shake Detroit*, N.Y. TIMES (July 23, 1997), <http://www.nytimes.com/1997/07/23/us/5-days-in-1967-still-shake-detroit.html?pagewanted=all>; Kenneth T. Walsh, *How Robert F. Kennedy's Death Shattered the Nation*, U.S. NEWS & WORLD REP. (June 5, 2015), <http://www.usnews.com/news/articles/2015/06/04/how-robert-f-kennedys-death-shattered-the-nation>; *Watts Riots*, C.R. DIGITAL LIBR., http://crdl.usg.edu/events/watts_riots/?Welcome (last visited Nov. 2, 2015). One can make a reasonable inference that these events strained the resources of state, county, and local police. The timing of the Court of Appeals of Georgia's expansion of municipal authority in 1969 seems to be more than mere coincidence.

26. See Ga. H.R. Bill 572, Reg. Sess., 1969 Ga. Laws 759 (codified at O.C.G.A. § 27-222 (1971)).

27. *Id.*

28. 170 Ga. App. 810, 318 S.E.2d 233 (1984).

29. *Id.* at 810, 318 S.E.2d at 234.

30. *Id.*

31. *Id.*

exception to O.C.G.A. § 40-13-30; nonetheless, the judge ultimately joined the majority's holding on other grounds.³²

B. The Shifting Role of Campus Police Officers During the Student Dissent Era

From the late 1950s through the early 1970s, college and university campuses were the primary loci for civil rights and anti-Vietnam War protests.³³ Campus police were, for the first time on a large scale, required to perform more responsibilities than mere campus maintenance, such as lockouts, safety checks, and unlocking campus facilities for use.³⁴ Prior to that point, campus police officers largely functioned as campus watchmen.³⁵ However, when a more complex set of safety and security issues presented itself,³⁶ many colleges began instituting minimum education requirements for its police personnel.³⁷ In turn, these officers began reporting to high-level college administrators.³⁸ Scholars have referred to this trend as "professionalization," and it marked the shift toward employing campus police officers who were better trained and college educated.³⁹ Accordingly, many states began enacting legislation that outlined campus police authority.⁴⁰

C. Georgia's Expansion of Campus Police Officers' Authority

In 1966, Georgia followed the national trend by passing its first statute delineating campus police authority.⁴¹ O.C.G.A. § 20-3-72 reads as follows:

32. *Id.* at 811, 318 S.E.2d at 235.

33. See Christopher Allen Hunt, *Student Movements of the 1960s*, NEW GA. ENCYCLOPEDIA (June 1, 2007), <http://www.georgiaencyclopedia.org/articles/history-archaeology/student-movements-1960s>; *Unforgettable Change: 1960s: 1960s in Vietnam and in Berkeley*, PICTURE THIS: CAL. PERSP. ON AM. HIST., <http://picturethis.museumca.org/timeline/unforgettable-change-1960s/1960s-vietnam-and-berkeley/info> (last visited Nov. 2, 2015).

34. Jacobson, *supra* note 17, at 46.

35. *Id.*

36. Scott Carlson, *Shooting Tests Ties Between a University and Its City*, CHRON. OF HIGHER EDUC., Vol. 61, Issue 42, at A4-5 (Aug. 7, 2015). This article also discusses an additional wave of increased professionalization of campus police forces in the 2000s following the 9/11 terrorist attacks and the Virginia Tech shooting in 2007. See *id.*

37. The U.S. Department of Justice (DOJ) reports that, by 2011-2012, seventy-four percent of sworn campus officers worked for an agency that required a high school diploma, and one in five (or twenty percent) sworn officers worked for an agency that had some type of requirement for college education. Reaves, *supra* note 16, at 18.

38. Jacobson, *supra* note 17, at 46.

39. *Id.*

40. See generally *id.*

41. Ga. S. Bill 97, Reg. Sess., 1966 Ga. Laws 370 (codified at O.C.G.A. § 20-3-72).

The campus policemen and other security personnel of the university system who are regular employees of the system shall have the power to make arrests for offenses committed upon any property under the jurisdiction of the board of regents and *for offenses committed upon any public or private property within 500 yards of any property under the jurisdiction of the board.*⁴²

In 1967, Georgia's Attorney General issued an opinion regarding the powers of security personnel at institutions within the University System of Georgia.⁴³ In his opinion, the Attorney General addresses whether a campus police officer has the authority to arrest someone off campus for violating traffic laws if the arrest is made following a "hot pursuit"⁴⁴ from the campus.⁴⁵ The Attorney General indicates that arrests of non-student traffic violators are permissible if the violation at issue occurred on a campus street subjected to state law or municipal or county ordinances.⁴⁶

Surprisingly, however, the first judicial interpretation of O.C.G.A. § 20-3-72 within the context of adjudication did not occur until 1989 in *Hill v. State*.⁴⁷ In that case, campus police officers, pursuant to a warrant, raided an off-campus apartment occupied by two University of Georgia (UGA) students.⁴⁸ The trial court convicted the students of violating the Controlled Substances Act⁴⁹ of Georgia.⁵⁰ On appeal, the students asserted that the lower court erred by denying their motions to suppress evidence retrieved after the campus police conducted a search, arguing that the campus police did not have the authority to execute an arrest warrant more than 500 yards away from campus.⁵¹ The court of appeals reversed the trial court and narrowly interpreted O.C.G.A. § 20-3-72.⁵² Ultimately, the court held that the legislature intended to "limit

42. O.C.G.A. § 20-3-72 (emphasis added).

43. See Ga. Op. Att'y Gen. No. 67-327 (1967).

44. Georgia courts recognize continuity and immediacy as the elements that characterize the doctrine of "hot pursuit." *Margerum v. State*, 260 Ga. App. 398, 398, 579 S.E.2d 825, 826 (2003). Rather than requiring police officers to arrest suspects at the first available opportunity, pursuing officers may wait to stop suspects at the *safest* opportunity available for all parties involved, including the suspects, other motorists, and bystanders. *State v. Hoover*, 253 Ga. App. 98, 99-100, 558 S.E.2d 71, 71 (2001).

45. Ga. Op. Att'y Gen. No. 67-327 (1967).

46. *Id.*

47. 193 Ga. App. 280, 387 S.E.2d 582 (1989).

48. *Id.* at 280, 387 S.E.2d at 582.

49. O.C.G.A. § 16-13-1 to -114 (2011 & Supp. 2015).

50. *Hill*, 193 Ga. App. at 280, 387 S.E.2d at 582.

51. *Id.*

52. *Id.* at 281, 387 S.E.2d at 583-84.

the law enforcement jurisdiction of [campus police] to offenses committed upon property under the jurisdiction of the Board of Regents or located within 500 yards of such property.”⁵³

The timing of this decision aligned closely with national legislative concerns of the time. Approximately one year after *Hill*, Congress passed the federal Student Right-to-Know and Campus Security Act (Campus Security Act)⁵⁴ in 1990.⁵⁵ This law requires any institution receiving federal funding to provide a three-year statistical report for crimes that occurred on campus to any current or prospective student or employee who requests the information.⁵⁶

That same year, in *State v. Harber*,⁵⁷ the Georgia Court of Appeals overruled *Hill*.⁵⁸ Like the appellee in *Hill*, the appellee in *Harber* had been charged with violating the Controlled Substances Act and filed a pretrial motion to suppress evidence that UGA police retrieved after obtaining and executing a search warrant. The trial court granted the motion, and the State appealed.⁵⁹ The court of appeals determined that this same court, just one year earlier, had wrongly interpreted O.C.G.A. § 20-3-72 as an expression of legislative intent to limit the jurisdiction of campus police officers in ways that the jurisdiction of municipal and county police is not similarly limited.⁶⁰ The court stated:

It would be anomalous to hold that a certified municipal or county police “officer” is authorized to obtain an extra-territorial search warrant notwithstanding any statutory restriction on his authority to make an extra-territorial arrest, but that a certified campus police “officer” is not so authorized because of a comparable statutory restriction on his authority to make an extra-territorial arrest.⁶¹

53. *Id.* at 281, 387 S.E.2d at 583.

54. 20 U.S.C. § 1092(f)(2012 & Supp. II 2014). This statutory provision requires institutions that receive federal funding to disclose crime statistics; make timely reports of crimes that constitute threats to students and other campus employees; maintain daily incident logs; and submit annual reports that include the aforementioned statistics to the Secretary of Education. *Id.*

55. Pub. L. No. 101-542, 104 Stat. 2381 (codified at 20 U.S.C. § 1092 on November 8, 1990).

56. 20 U.S.C. § 1092(f)(1).

57. 198 Ga. App. 170, 401 S.E.2d 57 (1990).

58. *Id.* at 172, 401 S.E.2d at 59.

59. *Id.* at 170, 170-71, 401 S.E.2d at 58.

60. *Id.* at 172, 401 S.E.2d at 59.

61. *Id.* at 171-72, 401 S.E.2d at 58 (emphasis in original).

As such, the court chose not to follow the precedent set by *Hill* in regards to the limitation *Hill* placed on the authority of campus law enforcement officers.⁶²

Fifteen years later the court continued to extend campus police authority by allowing campus police officers to make arrests that did not result from the execution of a warrant. In *State v. Durr*,⁶³ a campus policeman observed the defendant weaving within his lane of traffic on a street that was within the officer's jurisdiction. The campus policeman did not execute the traffic stop until the driver left his jurisdiction, however. Following the traffic stop, the campus policeman arrested the defendant for driving under the influence of alcohol. The defendant moved to suppress the evidence obtained from the traffic stop, and the trial court granted his motion.⁶⁴ The State appealed, and the court of appeals reversed and remanded the case for further determination.⁶⁵ The court specifically indicated that, if the trial court were to find that the campus policeman pulled over the defendant after a hot pursuit, then the court should deem the arrest proper.⁶⁶ As such, the court allowed campus police officers to conduct hot pursuit law-enforcement activity (here, traffic stops and arrests) more than 500 yards outside of campus boundaries.⁶⁷

Six years later, the court faced yet another challenge to its interpretation of O.C.G.A. § 20-3-72. In *Sullivan v. State*,⁶⁸ a POST-certified UGA campus police officer executed a traffic stop after he saw the defendant weaving outside of his travel lane on a street located within the university's campus. The officer, however, did not pull over the defendant until he had driven outside of the campus limits. The defendant cited O.C.G.A. § 20-3-72 in his suppression motion, but the trial court completely rejected the argument based on this statute. Instead, the court based its ruling on two other statutes, O.C.G.A. §§ 17-4-23 and 40-13-30, in order to deem the arrest legitimate.⁶⁹ What is significant to note is that both of these statutes outline the rights of "law enforcement officers," "officers of the Georgia State Patrol," and

62. *Id.* at 173, 401 S.E.2d at 59.

63. 274 Ga. App. 438, 618 S.E.2d 117 (2005).

64. *Id.* at 439, 618 S.E.2d at 118.

65. *Id.* at 443, 618 S.E.2d at 121.

66. *Id.*

67. *Id.*

68. 308 Ga. App. 114, 706 S.E.2d 618 (2011).

69. *Id.* at 114-15, 115, 706 S.E.2d at 619.

“arresting officers” to make arrests.⁷⁰ Construed together, a plain meaning interpretation would suggest that the law enforcement officers covered under the statutes would be municipal, county, state, or federal police. Nevertheless, the court determined that campus police fell within the ambit of both statutes and affirmed the trial court’s decision.⁷¹ With that decision, the court laid the groundwork for *Zilke*, which expands the authority of campus police officers well beyond the previously recognized limit of 500 yards outside of campus boundaries.

IV. COURT’S RATIONALE

The Georgia Court of Appeals issued the ruling for *Zilke* on July 8, 2015.⁷² It denied reconsideration on July 21, 2015,⁷³ which is, notably, just two days after Samuel DuBose was killed by a University of Cincinnati campus police officer, Ray Tensing.⁷⁴ The Supreme Court of Georgia granted a writ of certiorari on November 2, 2015.⁷⁵ In a decision in which Chief Judge Doyle and Presiding Judge Phipps concurred in the judgment only,⁷⁶ Judge Boggs provided the foundation for the ruling.⁷⁷ He explained how police officers generally have the power to arrest only inside the territorial limits of the government unit in which they are employed.⁷⁸ He then noted that O.C.G.A. § 17-4-23(a) includes an exception to that rule: under this statute, “[a] law enforcement officer may arrest a person accused of violating any law or ordinance governing the operation . . . of motor vehicles . . . by the issuance of a citation, provided the offense is committed in his presence.”⁷⁹ He further discussed how the holding in *Sullivan*, which permits POST-certified campus police officers to arrest outside their territorial limits for traffic violations committed in their presence on

70. O.C.G.A. § 17-4-23 grants “law enforcement officer[s]” the authority to arrest people accused of violating laws or ordinances that govern the operation of motor vehicles. O.C.G.A. § 17-4-23(a). This section also provides that “arresting officers” shall issue citations with enumerated charges and information for appearing to answer the charges. *Id.* O.C.G.A. § 40-13-30 grants “officers of the Georgia State Patrol and any other officer of [Georgia] or of any county or municipality thereof” the authority to arrest people for criminal offenses committed within their jurisdiction. O.C.G.A. § 40-13-30.

71. *Sullivan*, 308 Ga. App. at 116, 706 S.E.2d at 620.

72. 333 Ga. App. 344, 773 S.E.2d 489.

73. *Id.*

74. Horn & Sparling, *supra* note 4.

75. *Zilke*, 2015 Ga. LEXIS 823.

76. *Zilke*, 333 Ga. App. at 346, 773 S.E.2d at 491.

77. *Id.* at 344, 773 S.E.2d at 490.

78. *Id.*

79. *Id.* at 345, 773 S.E.2d at 490 (alterations in original).

campus, illustrates how POST-certified officers are covered under O.C.G.A. § 17-4-23.⁸⁰

Using Judge Boggs's explanation as its basis, the court recognized that the issue presented in *Zilke* is one of first impression.⁸¹ Instead of only interpreting O.C.G.A. § 20-3-72, as the trial court did, the court of appeals indicated that it would construe that statute in tandem with O.C.G.A. § 17-4-23 because "a basic rule of statutory construction requires that 'statutes relating to the same subject matter [be] construed together and harmonized wherever possible.'"⁸² Since the trial court did not engage in this type of statutory construction, the court of appeals determined that the trial court had erred in granting Mr. Zilke's motion to suppress the evidence of his two breathalyzer tests.⁸³ Such an interpretive process will have deeper effects not only in regards to statutory interpretation, but also in regards to the structure and function of campus police departments.

V. IMPLICATIONS

A. *Creation of a Campus Justice System that Operates Independently from Government Law Enforcement Units*

As university employees, campus police, including those who are POST-certified, work within a typical college administration hierarchy. This structure means that campus law-enforcement officers, including higher-ranking officers, ultimately answer to campus administrators such as a college president or chancellor. Such a system presents problems because its inherent structure "compromises the hallmark principles of American jurisprudence: objectivity, fairness, impartiality, due process, and . . . freedom from political interferences in matters of law enforcement."⁸⁴ There is also the possibility that "some administrators will exercise direct influence over the campus police force, pushing

80. *Id.*

81. *Id.* at 345, 773 S.E.2d at 491.

82. *Id.* (quoting *Gibson v. Casto*, 271 Ga. 667, 668, 523 S.E.2d 564, 565 (1999)).

83. *Id.* After this holding, Georgia courts will likely stop interpreting O.C.G.A. § 20-3-72 by itself when campus police officers conduct policing actions off campus, which essentially weakens the functionality of the statute by nullifying the clause that limits the jurisdiction of campus police to 500 yards outside of campus borders. If O.C.G.A. § 20-3-72 can be construed alongside O.C.G.A. § 17-4-23 under all circumstances in which policing actions of campus police are at issue, then O.C.G.A. § 20-3-72 is rendered superfluous. In other words, courts dealing with issues of campus police action off campus will be able to disregard O.C.G.A. § 20-3-72 and apply O.C.G.A. § 17-4-23 for their analyses.

84. John Paul Wright & Kevin M. Beaver, *For Safety's Sake, Get Rid of Campus Cops*, CHRON. OF HIGHER EDUC., Vol. 61, Issue 7, at 1 (Oct. 14, 2014).

it to make arrests or not to make arrests.”⁸⁵ Toward these ends, unscrupulous administrators “can use other means to exert influence, including threats to reduce budgets or to terminate leaders and offers of rewards such as bonuses, funds to hire more officers, or approval to purchase new equipment.”⁸⁶

As a result of this schema, college administrators can decide what types of matters take precedent over others. Specifically, campus administrators can determine how and on what crimes campus police officers focus their attention. One consequence of this arrangement is that campus police forces are sometimes tasked with enforcing university policies—such as campus codes of conduct—that may be at odds with local, state, or federal laws. An example of this paradox is a University of Cincinnati policy that limited free speech to one area of campus, a policy that a federal court eventually nullified.⁸⁷ Such a system leaves unelected administrators in charge of directing campus police activities that can have effects that reach far beyond campus parameters. Ultimately, such a system leaves the communities in which colleges and universities are located with limited ways, if any, to keep campus police accountable.⁸⁸ If the chain of command for a campus police department ends at upper-level administrators, then the community-at-large is generally left without recourse for any dispute that may arise between it and the campus police force.

Job security can also be a factor in determining how and what laws a campus police officer chooses to enforce. In 2014, a UGA police officer was fired for not arresting three people (presumably students) who were involved in two separate emergency incidents concerning alcohol overdoses.⁸⁹ The police officer cited Georgia’s 2014 Medical Amnesty Law⁹⁰ for not arresting the individuals.⁹¹ After responding to the

85. *Id.*

86. *Id.*

87. In *For Safety’s Sake*, John Paul Wright and Kevin M. Beaver discuss a University of Cincinnati administrative rule that restricted free speech to an area on campus that composed less than one percent of the total campus. *Id.* Before being able to exercise their free speech rights, presumably for activities such as protests, people had to get approval from campus administrators. *Id.* Violators of the policy faced arrest until the “policy was eventually nullified in federal court as a result of a lawsuit by a libertarian group.” *Id.*

88. *Id.*

89. Greg Land, *Suit: UGA Cop Fired for Following ‘Amnesty Law’ for Overdose Calls*, DAILY REP. (Sept. 25, 2015), <http://www.dailyreportonline.com/printerfriendly/id=1202738218755>.

90. O.C.G.A. § 16-13-5 (Supp. 2015). This statute states that “[a]ny person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation . . . result[ing] solely from seeking such medical assistance.” *Id.* This exemption also extends

emergency calls and observing the people involved, the officer believed that the people were covered by the law because one was “obviously unwell,” and the other two people were “in desperate need of urgent medical assistance.”⁹² The officer’s departmental captain told the officer that he was misinterpreting the law and ordered the officer to obtain search and arrest warrants for one of the individuals.⁹³ When the officer did not do so, the UGA police chief fired the officer, citing insubordination.⁹⁴

The officer sued the Board of Regents of the University System of Georgia,⁹⁵ the UGA Police Department, and three of his supervising officers;⁹⁶ the parties subsequently reached a settlement agreement.⁹⁷ A reasonable inference can be made that, given the drug and alcohol problems that plague American colleges and universities, campus administrators and campus police, by implication, have a strong interest in controlling and deterring drug and alcohol abuse.⁹⁸ Such a concern, however, might not necessarily be a primary concern for law enforcement officers who work outside of college campuses.

B. Issues of Race May Inform How Campus Police Enforce Laws Outside of Campus Limits

Incidents of racism between campus police and students are well documented. For example, in 2014, campus security officers at Vassar College were accused of racial profiling for confronting two Black students using their dormitory laundromat and for calling the town police on a group of Black children and teenagers, who were noisy in the campus library.⁹⁹ At Wake Forest University, Black students reported that campus police disproportionately asked to see their identification

to any person who seeks medical assistance for him- or herself. *Id.*

91. Land, *supra* note 89.

92. *Id.*

93. *Id.*

94. *Id.*

95. The Board governs, oversees, and manages Georgia’s thirty public universities, including the University of Georgia. *Board of Regents*, Univ. Sys. of Ga., <http://www.usg.edu/regents/> (last visited Oct. 12, 2015).

96. Land, *supra* note 89.

97. Joe Johnson, *Fired UGA Police Officer Settles Whistleblower Lawsuit for \$325K*, ONLINE ATHENS (Oct. 23, 2015, 4:26PM), <http://onlineathens.com/breaking-news/2015-10-23/fired-uga-police-officer-settles-whistleblower-lawsuit-325k>.

98. Denisha A. Champion, Todd F. Lewis & Jane E. Myers, *College Student Alcohol Use and Abuse: Social Norms, Health Beliefs, and Selected Socio-Demographic Variables as Explanatory Factors*, J. OF ALCOHOL & DRUG EDUC., Vol 59, No. 1, at 57-82 (Apr. 2015).

99. Peter Schmidt, *Campus Police Departments Struggle with Issues of Race*, CHRON. OF HIGHER EDUC., Vol. 61, Issue 17, at A16 (Jan. 9, 2015).

(as compared to students of, presumably, other ethnic backgrounds) and disproportionately scrutinized parties held by Black sororities and fraternities.¹⁰⁰

In response to nationwide campus problems like the ones reported by Black students at Wake Forest University, the International Association of Campus Law Enforcement Administrators (IACLEA) has encouraged its members (of about 1200 American colleges) to try to end racial profiling on campus by promoting and adhering to voluntary accreditation standards.¹⁰¹ As of December 2015, however, the association had accredited only forty-three college agencies.¹⁰² Only seven of these accredited agencies are located in a handful of states in the Deep South, including Alabama, North Carolina, South Carolina, Florida, and Georgia, which has only one accredited agency located at Georgia State University in Atlanta.¹⁰³ The apparent lack of influence the association has had with campus police departments could indicate that, unless campus security forces endeavor to end racial profiling themselves, the issue may persist for some time on campuses across the nation.

The racism that influences the actions and behavior of campus police within the confines of the academic institutions that they serve also influences how these officers police the surrounding communities.¹⁰⁴ In Cincinnati, for example, where the shooting of Samuel DuBose occurred, municipal police entered into an agreement with the University of Cincinnati Police Department that permitted campus officers to respond to and make arrests for violations outside of their jurisdiction.¹⁰⁵ Prior to that arrangement, municipal police officers killed several Black men from 2001-2007, killings that resulted in riots that cost the city \$5 million in damages and spurred city police to institute widespread reforms to their policing practices and procedures.¹⁰⁶ City officials, including the mayor, indicated that they would help the University of Cincinnati police force learn from the DuBose killing—a statement that implicitly reveals that the university police did not have the same training as the city police had in regards to community policing.¹⁰⁷ After *Zilke*, campus police officers in Georgia have an expanded

100. *Id.*

101. *Id.*

102. *Accredited Agencies*, THE INT'L ASS'N OF CAMPUS L. ENFORCEMENT ADMIN., <http://www.iaclea.org/visitors/professionaldevelopment/accreditation/accreditationagencies.cfm> (last visited Dec. 30, 2015).

103. *Id.*

104. See generally Schmidt, *supra* note 99.

105. Carlson, *supra* note 36.

106. *Id.*

107. *Id.*

jurisdiction that coincides with municipal, county, and state jurisdictions, without requiring these units to work in conjunction with the campus police forces. Such a gaping omission renders unavailable to the campus police the governmental police units' standards of practice and procedure—including ways in which these police units engage the communities in which they work. Furthermore, such an omission increases the chances that a campus policing action and a government policing action will clash if and when issues arise from having a system of overlapping jurisdictions.

Another factor that further exacerbates the problem of racial profiling on college campuses and beyond is that campus police forces demonstrate a high level of job dissatisfaction regarding their campus police duties.¹⁰⁸ In *Making Work Matter: Satisfied Detectives and Dissatisfied Campus Police*, researchers of a study compared campus police and traditional police detectives.¹⁰⁹ The researchers explain how campus police are unable to develop and maintain identities around their roles as police, specifically because they see themselves as "acting out a series of devalued situational roles: janitor, mechanic, and nurse-maid."¹¹⁰ The researchers state, "Without a valued identity within which to reframe [menial] tasks as acceptable or mask their negative situation identities, the campus police viewed themselves entirely as 'dirty workers.'"¹¹¹

For campus police officers who have training and certification, including POST certification, that qualify them to perform more complicated work, the identity crisis caused by job dissatisfaction can have far-reaching effects.¹¹² Many campus police officers report feeling like the scapegoat for an emotional public.¹¹³ According to the researchers, campus police perceived that "[s]tudents, faculty, and staff usually saw them performing menial tasks, and hence viewed officers as (literally) public servants, not crime-fighters or authority figures . . . even when they answered so-called 'police calls' (e.g., burglaries, larcenies), victims expected them to act like janitors, not policemen."¹¹⁴ The researchers determined that one main effect of these perceptions

108. Janet M. Heinsler, Sherryl Kleinman & Barbara Stenross, *Making Work Matter: Satisfied Detectives and Dissatisfied Campus Police*, *QUALITATIVE SOCIOLOGY*, Vol. 13, No. 3, at 235-50 (1990).

109. *Id.*

110. *Id.* at 238, 240.

111. *Id.* at 240.

112. *See id.* at 242.

113. *Id.*

114. *Id.* at 244.

was a tendency to use joking and parody to relieve boredom.¹¹⁵ Even though humor can sometimes promote solidarity, in this context, poking fun at each other actually eroded comradery among campus police officers.¹¹⁶ Essentially, then, dissatisfied campus police officers were unhappy with not only the public they served, but also with the fellow officers with whom they served. This level of dissatisfaction left few options for finding meaning and fulfillment in what they perceive to be an unrewarding and thankless job.¹¹⁷ With the *Zilke* ruling, any police officer who is bored or dissatisfied with the types of matters he is assigned on campus can augment these job responsibilities with active patrolling of the streets outside of campus if he thinks he can find more "action" there.

Taken together, racial profiling on campus and job dissatisfaction among campus police provide a ripe environment in which police misconduct and questionable policing action can cross into communities that surround colleges and universities. As a consequence, residents in communities in which colleges and universities are located might not welcome the presence of campus police, either because these residents think that campus police are less well-trained or because of a belief that campus police will treat them differently than they treat university affiliates (such as students, faculty, and staff).¹¹⁸ Whether these perceptions are accurate does not matter: if there is already distrust and adversity between campus police and community residents, then campus police will likely have intractable difficulties in trying to police these communities effectively.

Furthermore, if campus police are dissatisfied with the type of police work they are tasked to do on campus, then they might actively seek more complex or exciting police work beyond campus boundaries. In addition to redirecting resources that colleges and universities need to combat and deter on-campus crimes, a preoccupation with finding more exciting work may lead to campus police finding violations of law where none exist or escalating minor infractions into bigger problems than they actually are. In the University of Cincinnati case, Samuel DuBose was killed by a campus police officer after being pulled over for driving without a front license plate. It is hard to say what made the police

115. *Id.* at 247.

116. *Id.*

117. Researchers distinguish campus police from traditional police, primarily because of the differences in their daily responsibilities and the ability for traditional police to create positive work identities, which the researchers call "valued core identities," around these responsibilities. *Id.* at 242.

118. Jacobson, *supra* note 17, at 50-51.

officer react the way he did, but problems with racial profiling and job dissatisfaction may have contributed to his reaction. This tragic outcome is, of course, an outlier: every routine traffic stop obviously does not end with the violator being killed. However, unleashing a tense and dissatisfied police force upon the public-at-large may, and likely will, result in similar incidents happening more frequently.

The killing of Samuel DuBose, just eight days after the Georgia Court of Appeals' ruling in *Zilke*, provides a timely illustration of the inherent danger in the court's ruling. The court of appeals may have believed that broadly interpreting O.C.G.A. § 17-4-23 in conjunction with O.C.G.A. § 20-3-72 would encourage safer communities and less financial and staffing strain on municipal and state police forces and resources. However, what the *Zilke* holding has likely done is precisely the opposite: some individuals in communities adjacent to college campuses will probably be less safe as the result of racial profiling, and government police resources may need to be utilized more frequently to investigate incidents of campus police misconduct.

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