

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

DANIEL T. MILLER, III,

Defendant.

CRIMINAL ACTION NO.

1:21-cr-142-TWT-CMS

**NON-FINAL REPORT AND RECOMMENDATION**

This case is before the Court on the Preliminary Omnibus Motion to Suppress (“Motion to Suppress”) filed by Defendant Daniel T. Miller, III. [Doc. 48]. For the reasons that follow, I will recommend that the portion of the Motion to Suppress addressing the validity of the traffic stop be denied and that the remainder of the motion remain pending until briefing is complete.

**I. BACKGROUND**

On April 13, 2021, a Grand Jury sitting in the Northern District of Georgia returned a four-count indictment against Miller, charging him with conspiracy to possess with intent to distribute methamphetamine (Count One), possession with intent to distribute methamphetamine (Count Two), possession of a firearm in furtherance of a drug trafficking crime (Count Three), and possession of a firearm

by a convicted felon (Count Four). [Doc. 1 at 1–3]. The indictment also contained a Prior Conviction Notice. [*Id.* at 3].

Miller filed his Motion to Suppress arguing, among other things, that (1) the Georgia lane-change law that formed the basis for his stop is unconstitutional; (2) even if the statute is constitutional, there was no probable cause to believe that Miller violated it; and (3) the officers unnecessarily prolonged the stop, rendering it unlawful.<sup>1</sup> [Doc. 48 at 4–9]. The parties briefed the legal issue of whether the statute is constitutional [Docs. 51, 56], and I later held an evidentiary hearing to gather facts about the traffic stop itself [Doc. 91]. After the hearing, the parties filed post-hearing briefs. [Docs. 96, 98, 101].

## **II. FACTS PRESENTED AT THE EVIDENTIARY HEARING**

At the May 22, 2025, evidentiary hearing, the Government presented its evidence through the testimony of three witnesses—Homeland Security Investigations Task Force Officer Jared Israel and two Cobb County canine officers, Brint Abernathy and Dustan Dayton. [Doc. 91, Tr. at 3].

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<sup>1</sup> Miller has also challenged the validity of certain warrants. [Doc. 48 at 4–16; Doc. 53]. The briefing is not yet complete on those issues. [Doc. 102]. In the weeks to come, I will file a final Report and Recommendation addressing all remaining issues and certifying the case ready for trial.

TFO Israel testified that on the evening of January 15, 2021, he received a tip about a blue Mazda SUV that had been seen meeting with other vehicles in a way that suggested involvement with drug trafficking. [Tr. at 9–11, 24]. Upon receiving the tip, TFO Israel and another officer traveled to the area—the Bruster’s Ice Cream store on Busbee Parkway in Kennesaw—where they located the blue SUV and began conducting surveillance on it. [*Id.* at 11–12]. The officers observed the blue SUV driving into the Bruster’s Ice Cream parking lot frequently, where it would pull into a space, stay a short time, meet with other cars, and then leave. [*Id.* at 12–13, 29–31]. During the surveillance, the blue SUV stayed in the area of the Bruster’s Ice Cream store, but it also travelled to a nearby motel for a short period of time. [*Id.* at 13–14, 32–33]. TFO Israel, who is an experienced law enforcement officer, suspected that the blue SUV was involved in drug activity, and he began to coordinate with local Cobb County law enforcement for support. [*Id.* at 13, 15].

During the surveillance, TFO Israel observed a Camaro arrive at the Bruster’s Ice Cream parking lot. [Tr. at 15]. As the Camaro arrived, the blue SUV was driving towards it, with the driver talking on a cell phone. [*Id.* at 16]. The blue SUV parked next to the Camaro. [*Id.*]. A female got out of the Camaro and then got into the blue SUV. [*Id.* at 16, 36–37]. Both vehicles then drove in tandem to the nearby Burlington Coat Factory parking lot. [*Id.* at 16–17, 36–39, 41]. Once the vehicles

parked, the same female got out of the SUV and re-entered the Camaro. [*Id.* at 16–17, 39–41]. Based on this activity, TFO Israel believed a drug transaction had occurred. [*Id.* at 17].

TFO Israel then observed the Camaro’s occupants go into the Burlington Coat Factory store. [Tr. at 39–40]. A short time later, they exited the store, got into the Camaro, and left the parking lot, heading in a different direction than the blue SUV had gone. [*Id.* at 17–18].

TFO Israel called Cobb County Police Sergeant Brint Abernathy<sup>2</sup> on the phone and told him that he was conducting a narcotics investigation involving a burgundy or dark-colored Camaro that was engaging in what appeared to be narcotic activity. [Tr. at 18–19, 46]. TFO Israel asked Sergeant Abernathy to try to develop independent probable cause to conduct a traffic stop. [*Id.* at 18–19, 42, 44, 49, 51, 66]. TFO Israel had the Camaro in view and was able to provide Sergeant Abernathy with directions in real time, by phone. [*Id.* at 51].

Sergeant Abernathy testified that based on TFO Israel’s directions, he located the Camaro traveling northbound on George Busbee Parkway approaching Chastain

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<sup>2</sup> By the time we held the evidentiary hearing, Abernathy had been promoted to Lieutenant. [Tr. at 49]. For purposes of this Report and Recommendation, however, I will refer to him by his rank at the time of the events in question—Sergeant.

Road; he was at least five or six cars behind the Camaro by the time they got to the Chastain Road light. [Tr. at 52–53, 70; Gov. Ex. 3 at 0:00–0:25]. It was evening, and traffic was typical. [Tr. at 11, 52; Gov. Ex. 3 at 0:00–0:25]. According to Sergeant Abernathy, the Camaro was in the third lane from the right, in a lane that would have taken the Camaro straight on George Busbee Parkway, across Chastain Road. [Tr. at 53]. The Camaro then abruptly changed lanes, crossing over two lanes of traffic to arrive in the right turn lane, crossing a solid white line as it did so. [*Id.* at 53–55; Gov. Ex. 3 at 0:00–0:25]. Once in the right turn lane, the Camaro turned right onto Chastain Road. [Gov. Ex. 3 at 0:00–0:25]. Sergeant Abernathy testified that based on his training and experience, he believed the Camaro had committed an illegal lane change. [Tr. at 53, 55].

At that point, Sergeant Abernathy turned right onto Chastain Road, pulled behind the Camaro, turned on his lights, and conducted a traffic stop. [Gov. Ex. 3 at 0:30–0:50]. The Camaro complied and pulled over. [*Id.*]. These events were captured on Sergeant Abernathy’s dash cam video, which was admitted into evidence. [Tr. at 54; Gov. Ex. 3].

Cobb County Canine Officer Dustan Dayton and his canine partner, Jax (a German Shepard, Belgium Malinois mix from Hungary), arrived shortly thereafter as backup. [Tr. at 102, 104–05, 114; Gov. Ex. 3 at 1:19]. Both Sergeant Abernathy

and Officer Dayton were wearing body cameras at the time, and the video footage from those cameras was admitted into evidence. [Tr. at 56–57, 106–07; Gov. Ex. 4 (Abernathy); Gov. Ex. 5 (Dayton)].

Sergeant Abernathy exited his vehicle and approached on the passenger side of the Camaro; Miller was the driver, and he had a female passenger. [Tr. at 56, 58]. Meanwhile, Officer Dayton exited his vehicle and stood at the back of the Camaro while Sergeant Abernathy leaned into the passenger window of the Camaro. [Gov. Ex. 3 at 1:19]. Sergeant Abernathy testified that he had heightened concerns for his safety due to the Camaro’s suspected involvement in narcotics dealings. [Tr. at 56].

At the window, Sergeant Abernathy advised Miller that he had crossed three lanes of traffic. Then he instructed Miller to get out and come to the rear of the vehicle, which Miller did. [Gov. Ex. 4 at 0:10–0:35]. Miller denied having any weapons, but Officer Dayton observed a small pocketknife. [Tr. at 58–59, 107; Gov. Ex. 3 at 1:52; Gov. Ex. 4 at 0:35–0:45]. The officers put Miller’s hands behind his back and patted him down; the pocketknife was removed. [Tr. at 58, 78; Gov. Ex. 3 at 1:55–3:05; Gov. Ex. 4 at 1:04]. No other weapons were located, but Sergeant Abernathy felt a bundle of money in Miller’s pockets and asked him about the money. [Tr. at 59, 81; Gov. Ex. 4 at 1:10–1:15].

Sergeant Abernathy asked for Miller's driver's license, and Miller stated that he did not have his driver's license on him, but he had another form of identification. [Tr. at 83; Gov. Ex. 4 at 2:00–2:10]. Sergeant Abernathy told Miller that Miller seemed nervous. [Gov. Ex. 4 at 2:16–2:20]. Then, Sergeant Abernathy said:

You can't shoot across another lane of travel. Right? Like you have to get in a lane, stay in that lane and establish it. Then get in the next. You went from lane, like 1, all the way over to lane 3 and shot across another car right in front of you right there. . . . That's an illegal lane change.

[*Id.* at 2:25–2:50].

At that point, Miller provided his name, his date of birth, and the name of his passenger. [Gov. Ex. 4 at 3:35–3:55]. Sergeant Abernathy then had Miller sit on the bumper of his police vehicle while he brought the passenger out of the car. [Gov. Ex. 3 at 5:25–5:55; Gov. Ex. 4 at 4:23–5:15]. He spoke briefly with the passenger and offered to get her jacket because she was cold. He then asked Miller where he was from and if he owned the car. Miller responded that he did not own the vehicle. [Gov. Ex. 4 at 6:05–6:10]. Miller said he was not from Cobb County, and the passenger said she was from Gwinnett. [*Id.* at 6:28–6:40].

At that point, both Miller and the passenger were sitting on the bumper of Sergeant Abernathy's vehicle, which was parked directly behind the Camaro. [Gov. Ex. 3 at 7:07]. Officer Dayton and his canine partner, Jax, walked past them, heading

toward the Camaro. [*Id.* at 7:49; Gov. Ex. 5 at 6:37–6:45]. Upon seeing the dog, Miller began talking about his dog having surgery and bleeding in the vehicle. [Gov. Ex. 4 at 6:45–7:22].

Officer Dayton had Jax conduct a free-air sniff of the Camaro, and Jax alerted to the odor of narcotics. [Tr. at 77, 108–110, 115–16; Gov. Ex. 3 at 7:57–9:20; Gov. Ex. 5 at 6:55–8:25]. After the free-air sniff was complete, Officer Dayton walked past Sergeant Abernathy and signaled that Jax had alerted. [Tr. at 62].

Sergeant Abernathy then got back in his vehicle and entered information about Miller and the passenger into his computer to verify their identities and to determine whether Miller had a driver's license. [Gov. Ex. 3 at 10:15; Gov. Ex. 4 at 9:00–12:35]. Officer Dayton stayed with Miller and the passenger.

After Sergeant Abernathy finished his computer searches, and about thirteen minutes after the initial stop, he put on gloves. [Gov. Ex. 3 at 14:14; Gov. Ex. 4 at 12:52]. He returned to where Miller and the passenger were seated and asked Miller to turn his pockets inside out. [Gov. Ex. 4 at 13:00–14:58]. Abernathy then told Miller that the dog had alerted on the Camaro, and he asked for the keys to unlock the car. [*Id.* at 15:15–15:20].

Sergeant Abernathy then searched the Camaro while Officer Dayton stayed with Miller and the passenger. The search resulted in, among other things,



approximately five kilograms of methamphetamine and two firearms. [Tr. at 62–63; Gov. Ex. 6 (Doc. 92-2)].

### III. CONSTITUTIONAL CHALLENGE TO THE STATUTE

The Government argues that the traffic stop was based on probable cause that Miller violated O.C.G.A. § 40-6-48, the Georgia statute titled “Driving on roadway laned for traffic.” That statute provides, in relevant part:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, . . . [a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety; . . .

O.C.G.A. § 40-6-48(1).

Miller contends that this statute is void for vagueness. [Doc. 48 at 4–7]. A statute is void for vagueness under the Fifth Amendment’s Due Process Clause where it “fails to give ordinary people fair notice of the conduct it punishes, or [is] so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015) (citing *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983)). The void-for-vagueness doctrine guarantees individuals fair notice of statutorily proscribed conduct and “guards against arbitrary or discriminatory law enforcement.” *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018). Under the void-for-vagueness doctrine, the key inquiry is not “whether a particular fact might be

difficult to prove,” but “whether ‘it is unclear what fact must be proved.’” *United States v. Wilson*, 979 F.3d 889, 907 (11th Cir. 2020) (quoting *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 253 (2012))

Miller argues that under O.C.G.A. § 40-6-48(1), the driver is tasked with deciding whether the lane change can be done safely. But at the same time, regardless of the subjective belief of the driver regarding the safety of his lane change, an officer can initiate a traffic stop for further investigation if, in the officer’s opinion, the lane change was not done safely. Miller argues that this contradiction within the statute makes it unclear what conduct the statute prohibits, thereby improperly authorizing arbitrary and discriminatory enforcement. [Doc. 48 at 5; Doc. 56 at 2–3].

The Government responds that the statute is not void for vagueness, but even if it were, the traffic stop was still lawful because Sergeant Abernathy’s reliance on the statute and belief that it was constitutional was objectively reasonable. [Doc. 51 at 6–10].

As explained below, I conclude that to resolve the pending Motion to Suppress, the Court need not determine whether O.C.G.A. § 40-6-48 is constitutional because the evidence shows that Sergeant Abernathy reasonably relied in good faith on the statute’s validity.

In *Illinois v. Krull* (“*Krull*”), the Supreme Court addressed “whether a good-faith exception to the Fourth Amendment exclusionary rule applies when an officer’s reliance on the constitutionality of a statute is objectively reasonable, but the statute is subsequently declared unconstitutional.” 480 U.S. 340, 346 (1987). The Supreme Court answered the issue in the affirmative, holding that “[u]nless a statute is clearly unconstitutional, an officer cannot be expected to question the judgment of the legislature that passed the law.” *Id.* at 349–50.

In *United States v. Steed*, the Eleventh Circuit relied on *Krull* to affirm the denial of a motion to suppress in the face of a constitutional challenge. 548 F.3d 961 (11th Cir. 2008) (per curiam). The Court declined to address the constitutional issue, instead concluding that even if the statute at issue was not constitutional, the officer’s good-faith reliance on the statute’s validity was objectively reasonable. *Id.* at 968. The Court evaluated the objective reasonableness of the officer’s reliance on the statute under the same “reasonably well-trained officer” standard as courts applied in the context of an officer’s reliance on a defective warrant. *Id.* at 974.

Applying this standard, I easily conclude that it was objectively reasonable for Sergeant Abernathy, a well-trained officer, to rely on the validity of the Georgia driving-on-roadway statute when initiating the traffic stop. *See Krull*, 480 U.S. at 349, 356–60; *Steed*, 548 F.3d at 974–75; *United States v. Constanza*, No. 5:17-cr-49

(MTT), 2018 WL 3015244, at \*3 n.6 (M.D. Ga., June 15, 2018) (rejecting the same argument based on the officer's good-faith reliance on the statute's validity).<sup>3</sup> Section 40-6-48 is not clearly unconstitutional. The Government presented credible evidence to believe that the lane change was done in an unsafe manner, and Sergeant Abernathy testified credibly that he believed that the Camaro had made an illegal lane change. Under these circumstances, Miller's Motion to Suppress based on his challenge to the statute should be denied.

**IV. WHETHER THERE WAS PROBABLE CAUSE TO BELIEVE THAT MILLER COMMITTED A TRAFFIC VIOLATION**

The Supreme Court has held that “[t]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Whren v. United States*, 517 U.S. 806, 810 (1996). Probable cause must be supported by more than mere suspicion but does not require the same “standard of conclusiveness and probability as the facts necessary to support a

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<sup>3</sup> In its brief, the Government cites the *Constanza* case, describing it as an Eleventh Circuit opinion. [Doc. 51 at 8–9]. That is wrong. It is an order from a district judge in the Middle District of Georgia. In any event, I find its reasoning to be persuasive.

conviction.” *Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002) (internal quotation marks and citation omitted).

Miller argues that Sergeant Abernathy did not have probable cause to believe that Miller had committed a traffic violation when he activated his blue lights. [Doc. 96 at 8]. As discussed above, Georgia’s traffic laws allow movement between lanes where the driver has ascertained that the movement can be made with safety. [*Id.* at 9]. Miller argues that the Government presented no evidence that his lane changes endangered the safety of anyone or were otherwise unsafe. [*Id.* at 7–8 (citing Doc. 56 at 3–4)]. Miller contends that any belief that Miller had violated a traffic law was unreasonable under the circumstances. [*Id.* at 6].

This argument is not supported by the evidence. Both the testimony and the dash cam video showed that Miller made a quick lane change across two lanes of traffic, crossing a solid white line when he moved into the far-right lane, and he did so in the dark during a time of with evening traffic with other cars around him. Moreover, on the dash cam, Sergeant Abernathy advised Miller that the Camaro “shot across another car right in front of you right there.” [Gov. Ex. 4 at 2:25–2:50].

Miller’s argument that he did not violate the statute because his lane changes were safe is merely his articulation of a defense; it does not mean Sergeant Abernathy lacked probable cause to believe that a violation had occurred. “The

propriety of the traffic stop [] does not depend on whether the defendant is actually guilty of committing a traffic offense.” *United States v. Sicairos-Sicairos*, No. 4:10-cr-54-HLM, 2011 WL 2710031, at \*5 (N.D. Ga. July 11, 2011) (citation omitted). “Instead, the relevant question is whether it was reasonable for the officer to believe that a traffic offense had been committed.” *Id.* (citation omitted). Here, the evidence supports the Government’s position that Sergeant Abernathy had probable cause to believe that a traffic violation occurred.<sup>4</sup>

#### **V. CHALLENGE TO THE MANNER AND LENGTH OF THE STOP**

Finally, Miller complains that “the whole aim of the stop was to extend it long enough to get Dayton’s dog to make an alert on the vehicle.” [Doc. 96 at 10]. According to Miller, “[t]he stop was unlawfully prolonged when Abernathy diverted from the stop’s purpose and added time to the stop in order to investigate a suspected drug crime without any reasonable suspicion.” [*Id.* at 11]. Miller argues that the officers treated the stop as a narcotics investigation, rather than as an ordinary traffic

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<sup>4</sup> In his reply brief, Miller complains that the Government did not provide evidence of exactly what traffic law Miller might have violated, noting that no citation was issued. [Doc. 101 at 3–4]. This argument fails. The body camera video shows that at the time of the stop, Sergeant Abernathy told Miller that he stopped him because of the lane change. [Gov. Ex. 4 at 2:25–2:50]. And Sergeant Abernathy testified that he stopped the Camaro because of the improper lane change. [Tr. at 53]. That is ample evidence of what Sergeant Abernathy thought was illegal, and there is no requirement that an officer must issue a citation every time he stops a car.

stop. [*Id.* at 10–11]. He also points to the timeline, i.e., that the free-air sniff did not begin until seven minutes into the stop and that he was not informed about the alert until more than thirteen minutes into the stop. [Doc. 101 at 6].

This argument fails because the evidence shows that nothing Sergeant Abernathy did actually prolonged the stop. The video evidence shows that during the first two minutes, Sergeant Abernathy spoke with Miller about the improper lane change, removed Miller from the vehicle, and patted him down. [Gov. Ex. 4 at 00:00–2:00]. The next two minutes were spent discussing whether Miller had a driver’s license and debating whether the lane change was legal; when Miller could not produce a driver’s license, he provided his name and date of birth. [*Id.* at 2:00–4:18]. Approximately four and half minutes into the stop, Miller was placed on the bumper of the patrol vehicle, and the passenger was removed from the car. Sergeant Abernathy spent a couple of minutes speaking with the passenger, getting her name and date of birth, and talking about whether she needed a jacket. [*Id.* at 4:18–5:52]. Six minutes into the stop, Sergeant Abernathy placed the passenger on the bumper of the patrol vehicle, asked about the ownership of the Camaro, and asked where Miller and the passenger were from. [*Id.* at 5:52–6:30]. During this conversation, i.e., while Sergeant Abernathy was still gathering information about the traffic offense, Officer Dayton and Jax walked past them and began the open-air sniff. [*Id.*

at 6:30–6:40]. As discussed above, the open-air sniff resulted in a positive alert for the odor of narcotics. [Tr. at 77, 108–110, 115–16; Gov. Ex. 3 at 7:57–9:20; Gov. Ex. 5 at 6:55–8:25].

The evidence is clear that Sergeant Abernathy worked diligently to effectuate the purpose of the stop, and the canine alert—which gave the officers probable cause to search the car—occurred while Sergeant Abernathy was still conducting the traffic investigation. In the absence of evidence showing that any unnecessary time was added to the stop, I conclude that the traffic stop was not unlawfully prolonged. *See United States v. Albriza*, No. 21-14057, 2022 WL 17101253, at \*3 (11th Cir. Nov. 22, 2022) (per curiam) (“Questions [the officer] asked about [defendant’s] destination and about the car’s ownership were questions related reasonably to the purpose of the traffic stop.”); *United States v. Jackson*, 723 F. Supp. 3d 1347, 1354 (M.D. Ga. 2024) (concluding that a stop was not unlawfully prolonged when an officer’s “reasonable suspicion of criminal activity surfaced before [the officer] departed from the mission of the stop.”).

## VI. CONCLUSION

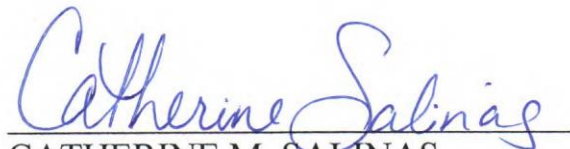
These conclusions require that the Motion to Suppress based on the traffic stop be denied. Because Sergeant Abernathy was authorized to stop the Camaro and the stop was not unnecessarily prolonged, the open-air sniff was also lawful. And



because Jax gave a positive alert to the Camaro, Sergeant Abernathy had probable cause to search the car. *United States v. Tamari*, 454 F.3d 1259, 1264–65 (11th Cir. 2006) (“[T]he automobile exception permits warrantless vehicle searches if the vehicle is operational and agents have probable cause to believe the vehicle contains evidence of a crime . . . .We have long recognized that probable cause arises when a drug-trained canine alerts to drugs.”) (internal quotation marks and citation omitted).

For these reasons, I **RECOMMEND** that the portion of Miller’s Motion to Suppress [Doc. 48] directed at the traffic stop be **DENIED**. The portion of his Motion to Suppress directed at the warrants will **REMAIN PENDING**.

**SO REPORTED AND RECOMMENDED**, this 7th day of October, 2025.

  
CATHERINE M. SALINAS  
UNITED STATES MAGISTRATE JUDGE