

IN THE SUPREME COURT

STATE OF GEORGIA

STATE OF GEORGIA,)	
)	CASE No.: <u>S10A0737</u>
APPELLANT,)	
v.)	
)	ON APPEAL FROM THE
TORREY THOMPSON,)	SUPERIOR COURT OF
)	DEKALB COUNTY CASE
APPELLEE.)	No. <u>08-Cr-3544-8</u>

BRIEF OF THE APPELLEE

TORREY THOMPSON

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TORREY THOMPSON

COMES NOW, Torrey Thompson (“Thompson”), a former DeKalb County police officer charged with Felony Murder, and respectfully submits his Brief of the Appellee, as follows:

STATEMENT OF THE CASE

At approximately 3:45 a.m. on September 12, 2006, Thompson and Ronald Knock (“Knock”), two law enforcement officers employed by the DeKalb County Police Department, discharged their firearms during a confrontation with Lorenzo Matthews, a wanted felon with a history of violence towards ordinary citizens and

law enforcement. Matthews died as a result of gun shot wounds suffered during the incident.¹

The DeKalb County Grand Jury returned a true bill of indictment charging Thompson with Felony Murder; Voluntary Manslaughter; Aggravated Assault; and Violation of Oath by a Public Officer. (R-3). Thompson waived formal arraignment and entered a plea of “not guilty.” (R-49). Thompson filed a Motion To Suppress Statements of the Defendant (hereinafter Garrity Motion) pursuant to *Garrity et al v. New Jersey*, 385 U.S. 493, 500, 87 S.Ct. 616 (1967) and *State v. Aiken*, 282 Ga. 132, 646 S.E.2d 222 (2007). (R-92). Following an evidentiary hearing, the trial court entered an order granting Thompson’s Garrity Motion on November 3, 2009. (R-131).

The State filed a Notice of Appeal on November 5, 2009. (R-1). The Supreme Court docketed the State’s appeal on January 20, 2010. The State filed Appellant’s Brief on February 9, 2010. Thompson now timely submits Appellee’s Brief.²

STATEMENT OF JURISDICTION

¹For purposes of this appeal only, the State has stipulated to Thompson’s rendition of the facts set forth in the companion case, Case No. S10Z0738. See *Brief of the Appellant*, p. 4.

²Pursuant to Supreme Court Rule 50, Thompson has timely requested oral argument by filing a separate letter directed to the Clerk on January 21, 2010.

A. DEKALB COUNTY POLICE DEPARTMENT POLICY

The DeKalb County Police Department (hereinafter “DKPD” or “the Department”) maintains an Employee Manual (hereinafter “SOP”) that sets forth the Department’s standard operating procedures, including the “Use of Force” policy. (T-3-D. Ex. 20). The “Use of Force” policy requires that “[a]ny time an employee discharges a firearm, they will notify or cause to be notified, the Major Felony Unit (“Major Felony” or “CID”) and Internal Affairs. (sic) (“IA”).” (T-III-D. Ex. 20, § 4-6, p. 20). (emphasis added). DKPD’s Use of Force policy does not specify whether Major Felony and Internal Affairs are supposed to conduct independent investigations— one administrative and one criminal -- or work together on a single internal investigation. (T-III-D. Ex. 20, § 4-6, p. 20, see also, § 3-8.8). The Use of Force policy also does not specify the order of the investigations. (T-III-D. Ex. 20, § 4-6, p. 20).⁴

Elsewhere, the SOP gives Internal Affairs responsibility for investigating “[i]ncidents that require the completion of a Use of Force Report, including . . . [incidents involving] [d]eath, hospitalization, or medial treatment of either the

⁴ The SOP specifies just one other instance where the two units may be called upon to investigate the same incident and, in that instance, the SOP specifies that the investigations will be “**independent**” of one another. (T-III-D. Ex. 20, § 3-8.8). That word “independent” is notably absent from every provision of the DKPD SOP relating to officer-involved shootings.

officer of the suspect” and [d]ischarge of any firearm, whether accidental or not.”

(T-III-D. Ex. 20, § 3-8.8). In that policy, the SOP makes clear that the Internal

Affairs investigation always comes before a criminal investigation. The SOP

states that the criminal investigation only “begins where an employee is either

charged with a criminal offense or there is **strong anticipation of an employee**

being charged with a criminal offense and this Department or any other law

enforcement agency anticipates pursuing the criminal act through the judicial

system.” (T-III-D. Ex. 20, § 3-8.8).

[. . .] During an administrative investigation, if at any time there is a decision to pursue the investigation criminally, at that point the employee is afforded all rights that apply during a criminal investigation.

During any administrative/internal investigation, any statements, test results, or any other type of evidence may be used against the employee in an administrative hearing only, and may not be used against the employee in any criminal hearing. (Garrity v. N.J. 1967).

During any criminal investigation or hearing, any statements, test results, or any other type of evidence obtained may be used in the criminal proceeding but additionally may be used against the employee in an administrative hearing.

(T-III-D. Ex. 20, § 3-8.5) (emphasis added).

An objectively reasonable officer charged with understanding the policies and procedures in the SOP would thus conclude that internal/administrative investigations come before a criminal investigation and, more importantly, that the

officer will be notified before an investigation enters the criminal phase. In the context of an officer-involved shooting, that same objectively reasonable officer would conclude that the immediate, on scene investigations conducted by Major Felony detectives and Internal Affairs investigators form part and parcel of the same internal investigation.

As to “internal investigations,” the SOP states that,

Failure to answer questions, respond to lawful orders, render material and relevant statements in an internal department investigation when such orders, questions and statements are directly related to job responsibilities is prohibited.

(T-III-D. Ex. 20, § 2-2-73). The SOP also provides that, “[f]ailure to fully cooperate with administrative investigation is prohibited.” (T-III-D. Ex. 20, § 2-2-72). Officers are also required to “cooperate” and offer “truthful” statements in “any official document, making reports, or conducting business. . .” (T-III-D. Ex. 20, § 2-2-17). Objectively reasonable officers involved in a line of duty shooting investigation would come to the same conclusion: failure to cooperate with either Major Felony or Internal Affairs investigators at the scene of the shooting will result in disciplinary action, up to and including termination.

That is precisely what Officer Knock believed on September 12th, 2006 when he gave his statements to Major Felony and, later, to Internal Affairs,

A: My understanding of our obligation is I have to -- we have to -- and -- in an incident like this we have to remain at the scene, we have to speak with Major Felony, they take an initial statement from you, and then when Internal Affairs arrives, then they, and, in take your weapon away and give you a new one, and those, those kinds of things.

Q: And what understanding, if any, do you have as to whether you as an officer, have the, the freedom to decline to participate in any of those activities?

A: No, we cannot decline.

Q: What is your understanding of the consequence, if you decline?

A: Well, you, you can be suspended or even up to even terminated for not complying with the internal investigation . . .

(T-1-85).

B. GENERAL CIRCUMSTANCES OF THE INVESTIGATION

Immediately after the deadly force incident, Sergeant Berg came over to Knock and Thompson, spoke briefly with them, and ordered them to sit in their patrol cars until Major Felony and Internal Affairs arrived on the scene. Knock and Thompson were not free to leave the scene until Major Felony and Internal Affairs investigators completed their investigation of the incident. (T-1-176-177).

Sergeant Berg notified his supervisor, Lieutenant J.M. Artime ("Artime") and DKPD's command staff. (T-III-D. Ex. 7, p. 2).⁵ Artime arrived on the scene at

⁵ At 3:49:37, Berg identified himself to the 9-1-1 operator as unite 514M.

03:57:44 and took command.⁶ ((T-III-D. Ex. 7, p. 2). In accordance with DKPD's "Use of Force" policy, Arttime asked the 9-1-1 operator to notify I.A. at 4:05:15 a.m. (T-III-D. Ex. 7, p. 2). Sergeant Love ("Love") and Sergeant Catlin ("Catlin") were dispatched and en route by 4:11:04 and 4:12:23 a.m., respectively. (T-III-D. Ex. 7, p. 2). Meanwhile, Berg requested that the "on call" officer with Major Felony come to the scene at 4:08:16. Major Felony units began arriving on scene shortly thereafter. (T-III-D. Ex. 7, p. 2).⁷ The evidence is consistent with Thompson's recollection that I.A. and Major Felony officers were present and involved in the investigation throughout the morning of September 12, 2006.

Thompson followed Sergeant Berg's orders and went to his patrol car. He understood that he was not free to leave the scene. (T-1-176). From that point forward, Thompson's movements were controlled by supervisors and detectives involved in the investigation. (T-1-176-77). Illustrating the restrictions on his movement, Thompson recalled an instance when a television cameraman

⁶ At 3:48:27, Arttime identified himself to the 9-1-1 operator as unite 510M.

⁷ Despite the undisputed evidence in the 9-1-1 log, the State continues to insist that Major Felony officers arrived first and completed their investigation before Internal Affairs arrived and conducted its own investigation. (Appellant's Brief, p. 7-8, n. 6). The record evidence speaks for itself and flatly contradicts Calamese's testimony relied upon by the State. *Compare*, T-1-134 and T-3-D. Ex. 7; T-1-176-179).

approached the car where he was sitting. He got out and tried to walk away. A supervisor with Internal Affairs yelled at him, saying, “hey where are you going?” (T-1-182). As Detective Calamese explained, “[i]f he wanted to get up, he had to use the bathroom, we wasn’t gonna let him use the bathroom on hisself[sic].” (T-1-136).

Before he spoke with Detective Calamese, Internal Affairs investigator Love approached Thompson. She introduced herself and asked him how many rounds he had fired during the incident. Thompson told her that he had checked his firearm and believed he had fired ten rounds. Investigator Love told Thompson that he had violated County policy by checking his firearm. (T-1-177). Thompson also remembered that he did two informal “walk-throughs” of the scene with Internal Affairs investigator Love and the Major Felonies supervisor, Sergeant Stewart. (T-1-178-179). These two informal “walk-throughs” occurred before he spoke with Detective Calamese. These “walk throughs” were different than the video-taped “walk through” introduced into evidence at the hearing. (T-1-179).

C. THOMPSON’S SUBJECTIVE BELIEF: COMPLY OR LOSE YOUR JOB

Thompson was familiar with DKPD’s Employee Manual. (T-1-174). Thompson understood that he was required to “comply with all aspects of the investigation” into his use of deadly force against Matthews. (T-1-175-76).

Thompson was never told that he had to participate in Calamese's interview; he derived his belief from DKPD policies and procedures concerning "internal affairs investigations and also use of force investigations." (T-1-181-82). Thompson reasonably relied on that belief when he responded to Investigator Love's initial questions, walked around the scene with Love and Sergeant Stewart, and gave his statement to Detective Calamese.

Q: When he spoke to Detective Calamese did you understand that you are free to decline to speak to him?

A: No. I was not free to decline, no.

Q: . . . What was your understanding of your obligations, as far as cooperating with Detective Calamese inquiry?

A: Well, my obligations were to comply with the investigation.

Q: And you understood that included answering his questions?

A: Yes.

Q: What was your understanding of the consequence if you failed to comply?

A: Some sort of [Pause] - - it would be some sort of a punitive consequence, possibly termination.

(T-1-179-180).

For his part, Detective Calamese understood that he was on the scene to conduct a criminal investigation of the shooting incident. (T-1-124-25). He was responsible for gathering evidence. That was his purpose in interviewing Thompson. (T-1-123). He understood that his investigation was "part and parcel

of an internal process that the Department goes through whenever there's a use of force incident." (T-1-123).

Calamese reinforced Thompson's subjective belief that he was required to comply with the interview process. Calamese did not tell Thompson that he was free to decline to speak with him. (T-1-130). He did not tell Thompson that he was only required to speak to Internal Affairs. (T-1-131). Most critically, he did not tell Thompson that his job was to conduct a criminal investigation into the incident. (T-1-115-116). Calamese just asked Thompson,

basically, I was going to make sure he was okay. He said he was okay. Did he -- I asked him did he need anything. He said, no, he was fine. And I told him we're basically here just to find out what happened.

(T-1-115).

The State attempted to prove that Thompson understood that Calamese was conducting an independent criminal investigation, separate from the internal investigation. Thompson did agree that the two units were "separate entities" and understood that "in general," they served "different functions." But, in the specific instance of a deadly force incident like this one, he did not waiver. "**Yes, in relation to this case, I had to, I had to speak with them, yes.**" (T-1-198) (emphasis added).

Thompson's interview with Calamese was broken into two parts. The first interview took place in the front seat of Calamese's patrol unit at the scene of the shooting. The interview began less than three hours after the incident.⁸ The news media was milling around the scene. Crime scene investigators, investigators with the Medical Examiners office and Internal Affairs investigators remained at the scene processing the evidence. (T-1-182; T-III-D. Ex. 7). Calamese wrote out Thompson's statement as he interviewed him. (T-1-117-118; T-3-S. Ex. 4).

After taking Thompson's statement, Calamese brought it to his supervisor, Sergeant Stewart.

I then brought my statement to my supervisor at the time, Sgt. Stewart. He read over it. After he read over it, he said there were a couple points that he wanted to clarify. To which time I went back and spoke to Officer Thompson, a second time, to go over those clarifications.

(T-1-118). Calamese began the second interview at approximately 8:00 a.m. (T-1-118). Sergeant Stewart sent Calamese back to find out "why he shot him." (T-1-135). So Calamese told Thompson, "we just want to know why you shot him." (T-1-135). Thompson's answers to those questions were relevant to just one, critical issue: his guilt or innocence.

⁸ The interview began at 6:35 a.m. and ended at 7:20 a.m. (T-1-114).

Calamese admitted that one of the possible outcomes of his investigation would be a determination that Thompson had fired his service weapon without justification. (T-1-125). He also admitted that the other possible outcome was that Matthews was responsible for the incident, meaning that Thompson's use of force was justified. (T-1-125). He knew that these were the two most likely outcomes of his criminal investigation before he interviewed Thompson. (T-1-125). Yet Calamese (and the State) insisted that Thompson was just a witness being interviewed for the sole purpose of gathering the facts.

A: . . . We're not investigating much of anything. He knows why we're there. At the time he was a witness. And that's how he was treated, as a witness. And that's what we do.

Q: A witness to what?

A: A witness to the incident.

Q: What incident?

A: The shooting. We know he was involved, - -

Q: Who shot?

A: - - Because we treat him as a witness.

Q: Who did the shooting?

A: He did the shooting.

[. . .]

Q: And you had a dead guy?

A: That's correct.

Q: Was there anybody else who was a potential suspect?

A: Officer Knock was there. Officer Knock was interviewed, too. But I didn't do officer Knock's interview.

Q: Okay. And, and so officer Knock and Torrey were the only two possible suspects; - -

A: Correct.

Q: - - Right?

A: No. They were only two possible people. They were witnesses at the time until the investigation led further.

(T-1-129).

Thompson exposed the fallacy behind the State's absurd attempt to compare this investigation to an investigation of criminal conduct by a civilian.

Q: You were asked about the difference, about how when you, you bring witnesses and you keep them at the scene. Have you ever had in a situation where one of your witnesses was also an employee of the DeKalb County Police Department?

A: No.

Q: So none of the witnesses you'd ever had in any of those situations would have been subject to discipline by your agency if they didn't comply with your request that they remain at the scene, right?

A: Yeah, that's correct.

Thompson understood that the circumstances confronting him on September 12th were not at all the same.

Q: Okay. But that was your understanding, that if you disobey an order or fail to comply, there would be consequences?

A: Correct. Yes, there would be.

Q: And you didn't have anything to hide?

A: Right.

Q: But you also didn't feel like you had a choice?

A: No, I didn't have a choice, no.

(T-1-202).

Calamese's investigation was either criminal in nature – in which case Thompson was entitled to his Miranda rights – or it was part of DKPD's internal investigation – in which case Thompson was required to comply or face termination. There is no "middle way," as Calamese ultimately conceded.

Q: ... It was an administrative investigation, right?

A: No. It –

Q: And it wasn't a criminal investigation?

A: It was a criminal investigation, but he was being treated as a witness. He was not being treated as a suspect. See, you're trying to play a trick on words. So I'm being, I'm being direct with you.

Q: So all I'm asking you is this: it was a criminal investigation?

A: And I answered that.

Q: Okay. So he was entitled to his rights?

A: correct.

(T-1-139).

At the conclusion of the evidence, the parties stipulated that Thompson's statement to Detective Calamese was included as part of the final internal affairs

report submitted and reviewed by the DKPD Review Board. (T-II-259). The interview was part and parcel of DKPD's internal investigative procedure. Thompson was required to comply with that procedure or face disciplinary action.

ARGUMENT AND CITATION OF AUTHORITY

I. STANDARD OF REVIEW

In reviewing a trial court's determination as to whether a statement is voluntary, this Court applies a *clearly erroneous* standard of review to the trial court's findings of fact, and applies a *de novo* standard of review to the trial court's application of the law to undisputed facts. *State v. Aiken*, 282 Ga. 132, 136, n. 21 646 S.E.2d 222 (2007), *citing* *State v. Ray*, 272 Ga. 450, 531 S.E.2d 705 (2000).

II. THE TRIAL COURT PROPERLY CONCLUDED THAT THOMPSON'S STATEMENT TO DETECTIVE CALAMESE WAS INADMISSIBLE

In *Garrity et al v. New Jersey*, 385 U.S. 493, 500, 87 S.Ct. 616 (1967), the Supreme Court held that "the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that extends to all, whether they are policemen or other members of our body politic."

The Court explained that “**the option to lose their means to livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent.**” *Id.* at 497. (emphasis added).

Garrity involved statements made under *express threats* of termination, however, this Court has since extended *Garrity*'s reach to circumstances where a government employee was subject to an *implied threat* of job loss for refusing to participate in an administrative investigation. *Aiken v. State*, 282 Ga. 132, 135, 646 S.E.2d 222 (2007). The Court adopted a “totality of the circumstances” test for “determining whether the statements that a public employee makes during an investigation into his activities are voluntary.” *Id.*

As it is undisputed that no overt threat of job loss was made to Thompson prior to his interview with Detective Calamese, the Court should apply the three part test set forth in *Aiken* for evaluating the admissibility of Thompson's statement. First, the Court should consider “whether a statute, rule or ordinance known to the defendant provided that the defendant could lose his job for failing to cooperate.” *Id.* Second, the Court should consider whether Thompson “subjectively believed that he could lose his job for failing to cooperate.” *Id.*

Third, whether Thompson's subjective belief was "objectively reasonable given the state action involved." *Id.*⁹

DKPD's SOP is admittedly vague concerning the respective roles of Major Felony and Internal Affairs investigators charged with investigating an officer-involved shooting incident. Nevertheless, Thompson was aware of specific provisions in the SOP that he reasonably construed to require his participation in each and every phase of the investigation.

The SOP states prohibits "failure to answer questions . . . [and requires] render[ing] material and relevant statements in an internal department investigation." (T-III-D. Ex. 20, § 2-2-73). The SOP also states that "[f]ailure to fully cooperate with administrative investigation is prohibited." (T-III-D. Ex. 20, § 2-2-72). Finally, DKPD's SOP generally requires that all officers must "cooperate" and offer "truthful" statements in "any official document, making reports, or conducting business . . ." (T-III-D. Ex. 20, § 2-2-17). An officer may

⁹ *Aiken* is the only decision by this Court directly addressing *Garrity* and its progeny. The Court of Appeals has issued several decisions applying *Garrity*; none arose from an officer-involved shooting. *See e.g. Georgia POST v. Anderson*, 290 Ga. App. 91, 658 S.E.2d 840 (2008); *State v. Stanfield*, 290 Ga. App. 62, 658 S.E. 2d 837 (2008); *State v. Stinson*, 244 Ga. App. 622, 536 S.E. 2d 293 (2000).

be punished for failing to abide by these policies with various sanctions, up to and including termination. (T-III-D. Ex. 20, § 2-2-17; 72; 73).

The State's contrived effort to exempt Detective Calamese's criminal investigation from these provisions, as well as the constitutional requirements of *Miranda*, cannot possibly withstand scrutiny. Thompson was either a suspect entitled to his *Miranda* rights or a police officer subject to an internal investigation. (T-III-D. Ex. 20, § 3-8.5). Thompson did not believe he was a suspect; he reasonably believed he was an officer under a duty to comply with the Department's internal investigation into a deadly force incident under an implied threat of termination.

Thompson testified that to his subjective belief that he could lose his job if he did not speak with Detective Calamese. (T-1-179-180). Yet the State contends that he did not possess that belief at the time that he gave his statement. The State's attempt to attack Thompson's credibility finds no support in the record. (See Brief of the Appellant, p. 13).

Q: . . . At that point, [prior to Calamese' interview] you didn't think you were gonna get charged with anything; did you? You though you were a witness in this case; right?

- A: No, sir, I didn't believe I was gonna be charged.¹⁰
- Q: You thought you were just a witness, just like every other witness, that, you know, you, as a uniform officer; an incident gets resolved in, in your [pause] – when you were a DeKalb officer, you'd do that with witnesses, too; wouldn't you, say - -
- A: Well, ---
- Q: -- Stay here, let me talk to you; right?
- A: Well, let me hear it. **I would think that this situation would be different from that.**
- Q: Okay. You can explain later, but that's what you do as a, as an officer when you come upon a situation, you have witnesses stand in place until you talk to them; right?
- A: That'd be correct, yes, sir.
- Q: Okay. And at night you, in fact, felt like a witness? You didn't feel coerced to tell anybody anything. You were, you were ready to tell them; weren't you?
- A: **It depends on what you mean by "coerced."**
- Q: Weren't you ready to tell them what happened?
- A: Yes, sir.
- Q: Okay. You wanted them to know you did the right thing; didn't you? Just like that video showed. You were, you were -- --
- A: I wanted, I wanted to give the facts of the -- -- what happened, sir.

¹⁰ The State attaches much significance to this statement. In the State's view, this proves Thompson saw himself as a witness giving a voluntarily statement. The State's interpretation ignores the most obvious explanation: Thompson's believed then, as he does now, that the shooting was justified under the totality of the circumstances. The statement says nothing at all about whether Thompson believed he was required to give a statement to Calamese.

Q: OK. All right. So you didn't feel like[pause] -- -- it wasn't that this -- -- they, they didn't force you to say anything. They didn't put you between a rock and a hard place at all; did they, officer? You want to tell them. You wanted them to know; right?

A: **I wanted to comply, yes.**

Q: **No.** But you wanted them to know what you did and what happened and why you fired those shots; didn't you? You wanted to -- -- start to finish, you wanted them to know?

A: Yes sir, as it is relative to [Pause] - -or was relative to the case, yes, sir.

[...]

Q: So you felt like it was, it was in your interest. I well Also, to tell them the truth and to get it, so they'd understand you did the right thing in chasing this man in firing the shots?

A: **It was in my interest to tell the truth, yes, sir.**

(T-1-196-197). Thompson was not chomping at the bit to tell his story; he gave a statement to Calamese because he believed that he was required to do so or risk losing his job.

The *Aiken* court set identified additional factors relevant to determining whether an officer's subjective belief was objectively reasonable, including: (a) the defendant's awareness of policies requiring cooperation, subject to a general disciplinary action; (b) whether an implicit threat of job loss or discipline was made; (c) whether the defendant was told that he was free to leave at any time or had a right to have an attorney present. *Id.*

Thompson has established that he was aware of policies requiring cooperation, subject to a general disciplinary action.” Although Thompson concedes that Calamese made no “implicit threat of job loss or discipline,” the undisputed evidence demonstrates that Thompson was not “told that he was free to leave at any time or had a right to have an attorney present.” Calamese did not tell Thompson that he was only required to speak to Internal Affairs. (T-1-131). Most critically, Calamese did not tell Thompson that he was on the scene to conduct a criminal investigation into Thompson’s conduct. (T-1-115-116).

Furthermore, the evidence showed that Thompson was not free to leave the scene at all. His movements were controlled by supervisory officers on the scene. Thompson could not leave until Major Felony and Internal Affairs completed their investigation. (T-1-182; T-1-136). Thompson was duty bound to remain on the scene and cooperate with all aspects of the investigation or face disciplinary action up to and including termination.

In addition to the *Aiken* factors, the Court should consider other factors relevant to the totality of the circumstances in officer-involved shootings. In an article accompanying the International Association of Chiefs of Police (“IACP”) National Law Enforcement Center’s model policy for investigating officer-involved shootings, the authors explained that,

The seriousness of officer-involved shootings cannot be overstated. The reputation and often the career of involved officers often depends upon whether a full and accurate determination can be made of the circumstances that precipitated the event and the manner in which it unfolded.

[. . .]

“[i]mmediately following hostile-shooting incidents, many officers are emotionally and physically disoriented. . . . Officers who have been involved in shootings often experience a number of immediate and involuntary physical and emotional reactions that may interfere with their ability to react effectively.

[. . .]

A variety of traumatic reactions caused by a shooting incident may interfere with an officer’s ability to cope and react effectively and appropriately.

Investigation of Officer-Involved Shootings, IACP National Law Enforcement Policy Center (August, 1999). The Georgia Association of Chiefs of Police (“GACP”) Sample Law Enforcement Operations Manual echoes the concerns expressed by the IACP authors. In the model policy addressing officer-involved shootings, the GACP cautions that,

There is serious controversy as to when a law enforcement officer must complete a shooting report and or respond to internal questions and whether the officer should be counseled beforehand by a psychologist and/or legal advisor.

GACP Sample Law Enforcement Operations Manual, Chap. 11 – Use of Force, p.

6.

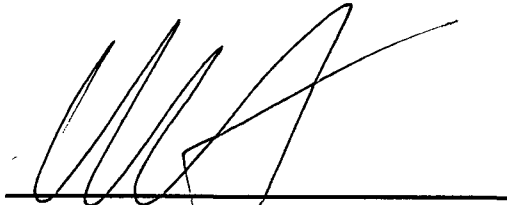
The Court should consider the uniquely stressful circumstances confronting officers like Thompson in the immediate aftermath of an officer-involved shooting. That is particularly true where, as here, the interrogation at issue takes place at the scene of the incident and without hours of the shooting. Conditions such as these are “likely to exert such pressure upon an individual so as to disable him from making a free and rational choice.” *Garrity*, 385 U.S. at 497.

The Court should also consider the fact that Calamese’s second interview of Thompson was designed to elicit statements relevant only to Thompson’s actual guilt or innocence. Calamese consulted with his supervisor and returned for the sole purpose of asking Thompson “why he fired at Matthews.” If Thompson was ever a witness to anything other than his own conduct (and thus his guilt or innocence), at the point where the only questions concern his justification for firing his weapon, he is no longer “just a witness.”

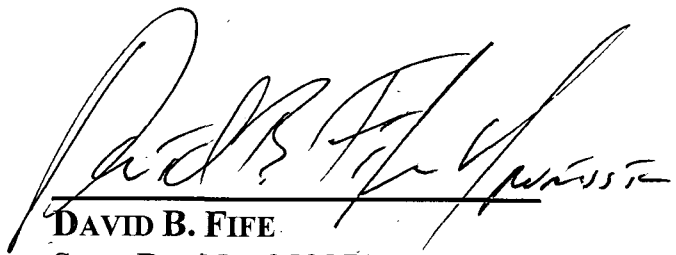
CONCLUSION

For the within and forgoing reasons, Thompson respectfully request that the Court affirm the decision of the trial court.

Respectfully submitted,



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IN THE SUPREME COURT

STATE OF GEORGIA

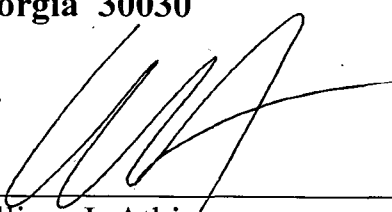
TORREY THOMPSON,)	
)	CASE No.: <u>S10X0738</u>
APPELLANT,)	
V.)	
)	ON APPEAL FROM THE
STATE OF GEORGIA,)	SUPERIOR COURT OF
)	DEKALB COUNTY CASE
APPELLEE.)	No. <u>08-Cr-3544-8</u>

CERTIFICATE OF SERVICE

I do certify that a true and correct copy of this pleading has been furnished by hand-delivery and/or United States Mail to counsel representing the State of Georgia, addressed as follows:

Lee Grant, Esq.
Deputy Chief Assistant District Attorney
DeKalb County District Attorney's Office
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This 1st day of March, 2010.



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