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Judge grills Arkansas State Police trooper's attorney for justification for 2020 traffic stop and search

State trooper named in suit by LR man over traffic stop by [Dale Ellis](#) | October 26, 2022 at 5:17 a.m.

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A Little Rock man, who sued an Arkansas State Police trooper after a 2020 traffic stop in which he was detained for nearly two hours -- most of that time in handcuffs -- before being released with a warning ticket, was in court Tuesday as a federal judge grilled the trooper's attorney over the reason behind the stop.

In August 2020, Marion Andrew Humphrey Jr., then a third-year law student at the University of Arkansas, was driving a U-Haul truck loaded with furniture and other possessions when he was stopped on Interstate 40 near Russellville at 8 p.m. by Arkansas State Police Trooper Steven Payton on suspicion of careless and prohibited driving. According to the complaint, after calling for a K-9 dog that reportedly alerted to the presence of drugs in the truck, Payton and another officer searched the U-Haul while Humphrey sat in the back of Payton's patrol car, handcuffed, for about 80 minutes.

After the search, Humphrey was released with a warning for careless and prohibited driving because he allegedly drove onto the fog line after signalling to take an exit and then changing his mind. The entire stop took an hour and 50 minutes. He filed a lawsuit against Payton in federal court on March 2021, alleging civil-rights violations pursuant to the 4th and 8th amendments to the U.S. Constitution.

Humphrey, the son of former Pulaski County Circuit Court Judge Marion Humphrey, appeared in court Tuesday accompanied by his attorneys, Connor Eldridge of Rogers and Greta Wiessner of Minneapolis, for a hearing on a motion for summary judgment filed by Payton last July. Payton, represented by Vincent France of the Arkansas attorney general's office, was not present for the hearing.

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At Tuesday's hearing to consider Payton's motion for summary judgement, U.S. District Judge Lee Rudofsky spent about four hours Tuesday questioning both sides as he worked through the constitutional issues presented by Wiessner and the claim of qualified immunity being argued by France.

Wiessner's claims on Humphrey's behalf were that the traffic stop and the search were illegal because no probable cause existed to justify either, and that Humphrey was illegally detained. France argued that Payton is entitled to qualified immunity, which shields government employees from suit for money damages if they are acting within the scope of their duties and their conduct does not "violate clearly established statutory or constitutional rights of which a reasonable person would know."

Rudofsky spent much of the hearing focused on Payton's contention that Humphrey had drifted to the right side of the right-hand lane of Interstate 40, running over the solid white "fog line" twice before he was pulled over. Records also indicated that, as Payton came speeding up behind him, Humphrey signaled that he was pulling off at the exit ramp just outside of Russellville, but before pulling onto the exit ramp, canceled his turn signal and proceeded to continue on the freeway. It was at that point that Payton pulled him over.

Payton can be seen and heard on the dashcam video questioning Humphrey as the two stand on the shoulder of the interstate between Humphrey's U-Haul rental truck and Payton's patrol car. After checking Humphrey's

license and rental papers, Payton continues questioning him, at which point Humphrey asks what the probable cause was to pull him over.

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"You about wrecked your truck back there," Payton says, pointing toward the west. "That's why I stopped you."

A review of the video confirmed that Humphrey signaled to take the exit, then canceled the signal and continued straight, although there was no indication that he nearly "wrecked" the truck and, as Rudofsky noted in court when reviewing the relevant portion of the video, it was difficult to determine that the truck had actually gone over the fog line.

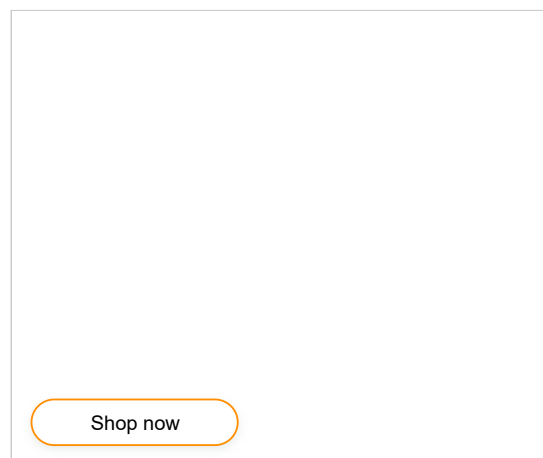
Wiessner told the judge that there was no probable cause to pull Humphrey over other than, "the defendant wanted to pull him over and manufacture a reason to search his U-Haul for narcotics."

Wiessner said the question of whether Humphrey actually committed a traffic violation was a disputed question and one for a jury to decide.

"There's no such thing as an arguable traffic violation," she said. "It's a jury question as to whether he did or did not cross the fog line."

France, while maintaining that Humphrey did touch the fog line, argued that probable cause to make the stop didn't require proof that Humphrey did actually cross the fog line but only Payton's belief that he had.

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"It's very important to know what Trooper Payton thought he saw," Rudofsky said.

"He was crossing over to take the exit," France said. "He decides he wasn't certain if it was, so he pulls back onto the interstate."

Rudofsky asked if the state's defense hinged on Payton seeing Humphrey start to take the exit and then change his mind, what traffic law would the state cite to justify the stop.

"Improper lane change," France said. "It's one of the parts under careless and prohibited..."

"Why is that an improper lane change?" Rudofsky cut in.

"Because he's attempting and starts to take an exit and then changes his mind," France said. "That creates a traffic hazard because ... he's got his blinker on, cars behind him are anticipating that this U-Haul is going to go to the right as indicated by his blinker and then decides not to after he's already made a movement to take the exit."

Rudofsky continued to press France on the issue, noting that what Payton was alleged to have seen from his patrol car was not apparent on the video from his dashcam. Rudofsky continued to question whether Payton could actually see Humphrey touch the fog line from the distance he was behind him when the violation was to have occurred. He also questioned if state law governing lane changes would be applicable to "taking or not taking an exit."

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France said because an exit ramp would be considered a lane of travel, the statute regarding failure to maintain control would apply.

"You don't have to lose control to be in violation of that," he said, prompting more questions from Rudofsky.

"He didn't seem out of control," the judge said. "That's really hard to make out."

Rudofsky said he had reviewed the video numerous times and had not been able to make out "this alleged shimmying of the truck we're talking about," to which France said the violation was based upon Payton's perception from his vantage point.

"Yes," Rudofsky said, skeptically, "but we all saw the video. Is there something that wasn't on the video ... some sort of extra point on your side for out-of-control driving or failure to maintain control?"

France argued that Payton's perspective from behind the steering wheel would be different from that of the dash-mounted camera.

"It's pretty close," Rudofsky said.

Wiessner argued that Humphrey should have been free to proceed after a check of his license and rental papers confirmed the information he gave at the beginning of the encounter. Barring that, she said, after the search of the truck concluded and it was clear Humphrey would not be arrested, he should not have been left handcuffed in the back of Payton's patrol car for an additional nine minutes while Payton wrote out a warning ticket. Those actions, she said, violated the 4th Amendment -- prohibition of unlawful search and seizure -- and the 8th

Amendment -- prohibition of cruel and unusual punishment.

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She argued that questions regarding Payton's suspicions over Humphrey's travel plans and his display of nervousness over being stopped were issues of fact for a jury to decide, to which Rudofsky said it was his call to make regarding whether Humphrey's inconsistent answers were sufficient to raise reasonable suspicion.

"Assuming that you get to make that determination and not a jury," Wiessner said, "it's still not enough."

She cited an 8th Circuit case in which the court ruled that one or two factors, "with one being nervousness, are not enough to raise reasonable suspicion."

After four hours of questioning and several reviews of the video where the alleged offense occurred, Rudofsky told the attorneys that he would take the matter under advisement.

"This is a very serious case," he said. "I would not expect a decision for a couple of months."

He said also that even when he does rule, his decision would likely be appealed and that a number of issues could wind up before the 8th Circuit on appeal well in advance of a trial date being set.

"I don't want you all to think we're going to get to trial quickly," Rudofsky said. "These are very serious and weighty issues."

Print Headline: Judge queries sides in claim against Arkansas State Police trooper

Topics

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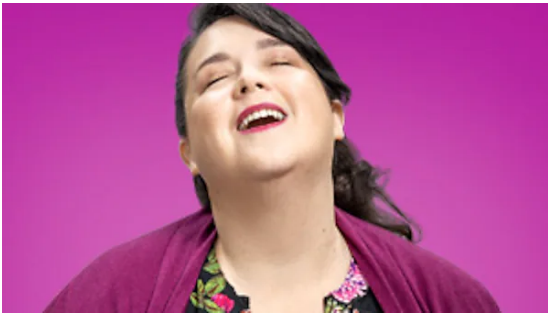
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