

## **STRICKLAND v. The STATE.**

§ 40-6-49. Following too closely: What does this mean?

Georgia Court of Appeals, A18A1829; January 25, **2019**



This is a new and very interesting case, that will undoubtedly be cited in most State, Recorders and traffic courts.

Judge Trenton Brown, authored the opinion for the Court of Appeals. Jackie Patterson, Atlanta, Brandon D. Dixon, represented the Appellant, Tasha Mosley, Solicitor General, Clayton County, for Appellee.

The Defendant, Antonio Strickland, was charged by Uniform Traffic Citation with “Following too Closely” in violation of OCGA § 40-6-49. At the close of evidence during his bench trial, the Defendant Strickland made an oral motion to quash the charge, which the trial court denied. The Defendant filed for an appeal, contending that the trial court erred in denying his motion to quash because the charge in the citation failed to allege the essential elements of the offense.

The Court of Appeals agreed with the Defendant and reversed the trial court, holding: “the true test of the sufficiency of an indictment or accusation or citation is not whether it could have been made more definite and certain (or, for that matter, perfect,) but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.” Thomason v. State, 196 Ga. App. 447, 448 (2), 396 S.E.2d 79 (1990).

The Court of Appeals cited the Supreme Court in the Jackson v. State, 301 Ga. 137, 140 (1), 800 S.E.2d 356 (2017) case. In that opinion, the Supreme Court found that a Motion to Quash “requires more than simply alleging the accused violated a certain statute.” Thus, a legally sufficient indictment must either “(1) recite the language of the statute that sets out all the elements of the offense charged, or (2) allege the facts necessary to establish violation of a criminal statute.” Id. at 141 (1), 800 S.E.2d 356. “[I]f the accused can admit all the indictment or accusation or citation charges and still be innocent of having committed any offense, the indictment or accusation or citation is defective.” (Citation and punctuation omitted.) Thomason, 196 Ga. App. at 448 (2), 396 S.E.2d 79.”

OCGA § 40-6-49, Following too closely provides:

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any motor vehicle which is drawing another vehicle when traveling upon a roadway outside of a business or residential district and which is following another motor truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(c) Motor vehicles being driven upon any roadway outside of a business or residential district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This subsection shall not apply to funeral processions, parades, or other groups of vehicles if such groups of vehicles are under the supervision and control of a law enforcement agency.

\*2 (d) Vehicles which approach from the rear any other vehicle or vehicles stopped or slowed to make a lawful turn shall be deemed to be following for purposes of this Code section.

(e) This Code section shall not apply to the operator of any non-leading vehicle traveling in a coordinated platoon. For purposes of this subsection, the term “coordinated platoon” means a group of motor vehicles traveling in the same lane utilizing vehicle-to-vehicle communication technology to automatically coordinate the movement of such vehicles.<sup>1</sup>

The Court of Appeals reversed the trial court, finding that the citation was substantively defective because it simply alleges that the Defendant violated a certain statute, which is insufficient to survive a motion to quash. The citation fails to recite the language of OCGA § 40-

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<sup>1</sup> This code section was considered for amendment in the 2017 General Session: 2017 GA H.B. 248 (NS) by adding a new subsection to read as follows: "(e) The provisions of subsections (a) through (d) of this Code section shall not apply to any automated driving system operated vehicle when the ADS is engaged. When the ADS is engaged, such motor vehicle shall be presumed to be following at an adequate and safe distance provided that it can be demonstrated that the ADS is in working order and in compliance with applicable federal safety standards and requirements."

6-49 setting out all the elements of the offense. The fact that the UTC contained the language: “following too closely”, does not fix the problem; it is just the title of the code section.

Further, the Court found that the citation indicated an accident occurred, however, did not provide any details. The citation did not set forth how the accident occurred, how many vehicles were involved, at what speeds the vehicles were traveling, and the approximate distance between the vehicles; but showed that the weather was “clear,” the road was “dry,” and the traffic was “medium.” The Court of Appeals found that information was insufficient to establish that Strickland violated OCGA § 40-6-49.

“Accordingly, the trial court erred in denying Strickland’s motion to quash the citation, and Strickland’s conviction is reversed. See Spence v. State, 263 Ga. App. 25, 28 (2), 587 S.E.2d 183 (2003); Ross v. State, 235 Ga. App. 7, 508 S.E.2d 424 (1998)”.

Judgment reversed.

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