

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

July 17, 2024

Opinion No. 24-011

Validity of Police Department Policy Prohibiting Pretextual Traffic Stops

Question

Does Section 2.3.1 of the Memphis Police Department’s “Arrests General” Policy violate Tenn. Code Ann. § 7-63-301?

Opinion

Yes.

ANALYSIS

Tenn. Code. Ann. § 7-63-301 provides:

A local governmental entity or official shall not adopt or enact a resolution, ordinance, or policy that prohibits or limits the ability of a law enforcement agency to conduct traffic stops based on observation of or reasonable suspicion that the operator or a passenger in a vehicle has violated a local ordinance or state or federal law. A resolution, ordinance, or policy that is adopted in violation of this section is null and void.

The plain text of this provision invalidates any police department policy that “prohibits or limits” law enforcement officers from “conduct[ing] traffic stops based on observation of or reasonable suspicion that the operator or a passenger in a vehicle has violated [the law].” Tenn. Code. Ann. § 7-63-301.

That statutory text applies to the Memphis Police Department’s policies. The Memphis Police Department is an entity authorized by Article 11, section 68 of the Charter of the City of Memphis and established by the Board of City Commissioners of the City of Memphis, the antecedent legislative body to the current Council of the City of Memphis. The Memphis Police Department has codified the policies it has adopted into a manual, its Policy and Procedures Manual. Section 2.3.1 of the Memphis Police Department’s “Arrests General” Policy states that “[m]inor vehicle equipment violations will not be used to stop or detain a suspect because the officer actually suspects the persons [sic] involvement in another more significant crime.” Memphis Police Department Policy Manual, MPD P&P.03-030 Arrests General, § 2.3.1 (effective Aug. 23, 2023).

Memphis police officers enforce traffic laws. *See* Tenn. Code Ann. § 7-63-101. Tennessee law governing vehicle equipment requirements can be found in Title 55 of the Tennessee Code.

See, e.g., Tenn. Code Ann. § 55-9-402 (prohibiting the operation of a vehicle with a non-functioning tail lamp). And the City of Memphis has adopted and incorporated “[a]ny offense made a misdemeanor under the laws of the state” in § 10-4-1 of its Code of Ordinances. MEMPHIS, TN., CODE § 10-4-1 (2023).

It follows that Section 2.3.1 of the Memphis Police Department’s “Arrests General” Policy conflicts with Tenn. Code Ann. § 7-63-301. Memphis’s policy prohibits traffic stops when an officer observes “[m]inor vehicle equipment violations”—i.e. violations of state and local law. Memphis Police Department Policy Manual, MPD P&P.03-030 Arrests General, § 2.3.1 (effective Aug. 23, 2023). And Tenn. Code. Ann. § 7-63-301 says that localities cannot “prohibit[] or limit[] the ability of a law enforcement agency to conduct traffic stops” when an officer “observ[es]” the “violat[ion of] a local ordinance or state . . . law.” Accordingly, under § 7-63-301’s plain text, Section 2.3.1 “is null and void.” Tenn. Code Ann. § 7-63-301; see also *Crawley v. Hamilton County*, 193 S.W.3d 453, 456 (Tenn. 2006) (Birch, J.) (noting that municipal policies or ordinances that conflict with a state law are “universally held to be invalid” (quoting *Southern Ry. Co. v. City of Knoxville*, 442 S.W.2d 619, 621 (Tenn. 1968))).

That Section 2.3.1 only applies to stops made “because the officer actually suspects the persons [sic] involvement in another more significant crime” changes nothing. Tenn. Code. Ann. § 7-63-301 bars any attempt to “limit the ability of a law enforcement agency to conduct traffic stops” when they have reasonable suspicion to do so—whatever the subjective reason for the stop.¹

In short, Tenn. Code. Ann. § 7-63-301 nullifies and voids Section 2.3.1 of the Memphis Police Department’s “Arrest General” Policy because that section prohibits Memphis police officers from conducting traffic stops “based on observation of or reasonable suspicion that the operator or a passenger in a vehicle has violated” the law. Tenn. Code. Ann. § 7-63-301.

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¹ Nor would a “pretextual stop” violate either the Fourth Amendment to the United States Constitution or Article I, Section 7 of the Tennessee Constitution. As a general rule, the stop of an automobile is constitutionally reasonable, under both the state and federal constitutions, if the police have reasonable suspicion to believe that a traffic violation has occurred. See *Navarette v. California*, 572 U.S. 393, 396-97 (2014); *State v. Day*, 263 S.W.3d 891, 902 (Tenn. 2008). And the “constitutional reasonableness of traffic stops” does not depend “on the actual motivations of the individual officers involved.” *Whren v. United States*, 517 U.S. 806, 813 (1996); see also *State v. Donaldson*, 380 S.W.3d 86, 92 (Tenn. 2012) (“[T]here is no absolute prohibition against a pretextual stop so long as the stop has legitimate underpinnings.”).

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