

THE PEOPLE v. LEMAR GATHAN MITCHELL
Case No. C098293

A police officer patrolling a residential neighborhood observed defendant Lemar Gathan Mitchell driving a car with mismatched license plates and suspected he might be engaged in criminal activity. The officer turned on the lights and sirens to detain the driver, but Mitchell, who was then stopped in a driveway, reversed the car, and drove away. The officer pursued until Mitchell ultimately stopped in another driveway (colliding with the house) and fled on foot. In a search of the car, the officer found Mitchell's cell phone and a loaded AR-15-style rifle. Along Mitchell's flight path, a loaded handgun was also discovered. When officers found Mitchell weeks later and attempted to arrest him, he fought with a police dog and resisted officers, who eventually did arrest him.

Mitchell was charged with unlawfully transporting an assault weapon, being a felon in possession of a firearm, evading a police officer, failing to stop at the scene of an accident, assaulting a police dog, and resisting a peace officer. Before trial, Mitchell moved to suppress evidence obtained in the search of his vehicle and cell phone. The court denied the motion. He also moved to suppress evidence gathered through use of a tracking device police concealed on the car Mitchell had been driving, which police used to locate Mitchell for purposes of arresting him. The court granted the motion in part but denied Mitchell's request to suppress evidence related to events that occurred during his arrest. During trial, defendant also unsuccessfully moved to dismiss the transport of an assault weapon charge for lack of evidence. During deliberations, the jury asked the trial court for clarification of an instruction regarding the mental state required for unlawfully transporting an assault weapon. The trial court provided a clarifying instruction. Nine minutes later, the jury found defendant guilty of all charges except failing to stop at the scene of an accident. The trial court sentenced him to a prison term of 14 years 8 months.

On appeal, defendant argues:

- (1) The trial court erred in denying his motion to suppress evidence because there was not reasonable suspicion to justify the traffic stop, and he had not abandoned his cell phone so police needed a warrant to search it. He also argues the trial court should have suppressed evidence from the location where police were led by the data obtained from the tracking device when it suppressed the data itself.
- (2) The trial court erred in denying the motion to dismiss the charge for unlawfully transporting an assault weapon because there was not sufficient evidence; and
- (3) The trial court erred in defining "reasonably should have known" concerning the mental state for unlawfully transporting an assault weapon.