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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable Grace Gilchrist Knie, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEITH VINCENT BROWN,

APPELLANT

APPELLATE CASE NO. 2023-000511

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by admitting evidence found pursuant to an improper stop that was not supported by reasonable suspicion?

STATEMENT OF THE CASE

On April 20, 2022, a Spartanburg County grand jury indicted appellant for burglary, first degree and petit larceny. *R. On March 14, 2023, appellant's case was called to trial before the Honorable Grace G. Knie, and a jury. Tr. 1. Beverly Jones represented appellant and Spenser Smith, assistant solicitor, represented the state. Tr. 1.

The jury found appellant guilty as indicted. Tr. 290, ll. 9-15. Judge Knie sentenced appellant to concurrent terms of life without the possibility of parole for burglary, first degree and ten years' imprisonment for petit larceny. Tr. 300, l. 24-301, l. 12.

This appeal follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from a suppression hearing, appellate courts are bound by the circuit court's factual findings if any evidence supports the findings. *State v. Brockman,* 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). In an appeal from a motion to suppress evidence based on Fourth Amendment grounds, an appellate court may conduct its own review of the record to determine whether the evidence supports the circuit court's decision. *See State v. Khingratsaiphon,* 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002) (stating "*Brockman* does not hold the appellate court may not conduct its own review of the record to determine whether the trial judge's decision is supported by the evidence").

The South Carolina Supreme Court clarified its standard of review for cases involving an appeal from a motion to suppress based on Fourth Amendment grounds. *State v. Frasier*, 437 S.C. 625, 879 S.E.2d 762 (2022). The Court explained that due to the "dawn of the technological age, appellate courts are no longer dependent on the trial court" when the appellate court reviews the evidence. *State v. Frasier*, 437 S.C. 625, 632 879 S.E.2d 762, 766 (2022). Accordingly, the Court held that "appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means [the appellate court] review[s] the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion ... is a question of law subject to de novo review." *State v. Frasier*, 437 S.C. 625, 633-34 879 S.E.2d 762, 766 (2022).

ARGUMENT

The trial court erred by admitting evidence found pursuant to an improper stop that was not supported by reasonable suspicion.

Relevant facts

Prior to trial a hearing was held on defense counsel's motion to suppress two pieces of evidence, a television remote and a wallet, any testimony about the evidence, and all statements made by appellant during the stop. Tr. 36, l. 24-37, l. 6. Counsel argued the stop was improper because it was not supported by reasonable suspicion. Tr. 37, ll. 3-6. Jessica Webber and Officer Joshua Chrobak gave testimony at the hearing. Tr. 39-93.

Jessica Webber testified that on the evening of October 5, 2021, on her way home she and her family drove by her sister, Kari Humphries', home and noticed a car there she did not recognize.[1] Tr. 41, ll. 18-24. Webber felt that something was wrong and asked her husband to drive back to the house. When they pulled in the driveway Webber saw inside the house there was "a man coming down the hallway, pants bulging." Tr. 42, ll. 2-6. Webber could not make out any other features of the intruder. She could see only that they were male, and his pants pockets were "bulging, like they were stuffed with things." Tr. 43, l. 23-44, ll. 1. Webber gave a written statement to law enforcement describing the intruder as a black male but admitted she was unable to describe the intruder's clothing because she could not see it. Tr. 47, ll. 20-23; 49, ll. 19-21.

Webber described the car she saw in the driveway as a burgundy sport utility vehicle. Tr. 46, ll. 16-18. She spoke to the woman driving the vehicle. Webber testified the woman told her they were having car trouble and that she did not know why the man was in the home and then

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1 Webber lived next door to Humphries. Tr. 39, ll. 21-23.

pulled away from the house. Tr. 46, ll. 1-14.

Webber called 911. She and her husband stayed at the house until law enforcement arrived believing the man was still inside. Tr. 45, l. 11; 48, ll. 16-23. When law enforcement got there, the intruder was not in the house, but Webber never saw anyone exit the house. Tr. 48, l. 16-49, l. 18.

Officer Joshua Chrobak testified he responded to a burglary in progress. Tr. 65, ll. 11-13. While on the way to the scene he heard on the radio that there was a black male wearing all black walking on the road away from the house. Tr. 65, l. 24-66, l. 20. Chrobak said he saw a man, appellant, walking on the road. Chrobak activated his lights, pulled off the road, and got out to speak to appellant. Tr. 67, l. 25-68, l. 6. He testified he stopped appellant because he was told by an officer at the scene that there was someone walking away from the house. Tr. 71, ll. 12-16. Chrobak claimed it was "extremely suspicious" for someone to be walking in that area because it was not "a very high foot traffic area." Tr. 71, l. 20-72, l. 6.

Appellant consented to Chrobak frisking him for weapons. Appellant did not have any weapons on his person. Tr. 72, l. 13-73, l. 16. Chrobak asked appellant for his personal information, and testified he became more suspicious of appellant. Tr. 73, l. 21-74, l. 1-3. He asked appellant to search his person, in his pockets. Appellant did not consent to any further search. Tr. Ll. 4-12.

Chrobak entered appellant's information into NCIC and another system and learned that appellant's address was "nowhere near where [they] were," and appellant was on probation for petit larceny and burglary. Tr. 74, ll. 15-24; 76, l. 14-77, l. 9. Appellant confirmed to Chrobak he was on probation. State's exhibit 6, Chrobak's body worn camera video at 3:15. At that point Chrobak told appellant that because he was on probation, he was going to search his pockets.

State's exhibit 6, Chrobak's body worn camera video at 3:39. Appellant had a remote and a wallet belonging to the family that was burglarized. Tr. 81, ll. 19-22.

Defense counsel asserted any evidence found in the stop should be suppressed because Officer Chrobak did not have reasonable suspicion to stop appellant. Counsel contended Chrobak's testimony that it was unusual to see anyone walking in that area and that he was looking for someone that another officer had described over the radio it was not enough was not enough for reasonable suspicion. Tr. 94, l. 23-95, l. 4. Counsel argued everything that came after the unreasonable stop should be suppressed. Tr. 95, ll. 5-11. The solicitor argued that under the totality of the circumstances the stop was reasonable. Tr. 95, l. 20-96, l. 13.

The trial court denied the motion to suppress stating, "I believe the officer had a reasonable suspicion to make the stop and frisk." Tr. 102, ll. 18-23.

Discussion

"The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. Evidence seized in violation of the Fourth Amendment must be excluded from trial." *State v. Khingratsaiphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002). The Fourth Amendment guarantee "protects against unreasonable searches and seizures, including seizures that involve only a brief detention." *State v. Pichardo*, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing *United States v. Mendenhall*, 446 U.S. 544, 551 (1980)). "This inestimable right of personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs." *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968).

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const.

amend IV; *see State v. Woodruff,* 344 S.C. 537, 544 S.E.2d 290 (Ct.App.2001). Thus, the Fourth Amendment protects against unreasonable searches and seizures, including seizures that involve only a brief detention. *United States v. Mendenhall,* 446 U.S. 544 (1980). An officer is permitted to make an investigative detention or stop only if supported "by a reasonable and articulable suspicion that the person seized is engaged in criminal activity." *Reid v. Georgia*, 448 U.S. 438 (1980). "And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1 (1968). Thus, a court must look to the totality of the circumstances in determining whether the officer had a particularized and objective basis for suspecting criminal activity. *United States v. Arvizu*, 534 U.S. 266 (2002). "While such a detention does not require probable cause, it does require something more than an 'inchoate and unparticularized suspicion or hunch.'" *United States v. Sprinkle*, 106 F.3d 613, 617 (4th Cir.1997) (quoting *Terry*, 392 U.S. at 27 (1968)).

> Reasonable suspicion is something more than an "inchoate and unparticularized suspicion" or hunch. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). Instead, looking at the totality of the circumstances, reasonable suspicion requires there be an objective, specific basis for suspecting the person stopped of criminal activity. *United States v. Cortez*, 449 U.S. 411, 417–18 (1981). The police officer may make reasonable inferences regarding the criminality of a situation in light of his experience, but he must be able to point to articulable facts that, in conjunction with his inferences, "reasonably warrant" the intrusion. *Terry*, 392 U.S. at 21.

Robinson v. State, 407 S.C. 169, 182, 754 S.E.2d 862, 868–69 (2014).

Officer Chrobak did not have reasonable suspicion to stop appellant merely because he was walking in the area near a home that was recently burglarized. Chrobak's alleged reasons, that he saw a man walking in an area close to the scene of the crime that was not a high foot traffic area, are at best "unparticularized suspicion[s] or hunch." The reasons given by Chrobak

that made appellant appear suspicious after are of no consequence to his initial stop.

In *State v. Taylor*, the South Carolina Supreme Court held officers had reasonable suspicion to conduct an investigatory stop and to pat down Taylor and that the officer's conduct did not exceed the constitutionally permissible scope of a pat-down search. 401 S.C. 104, 736 S.E.2d 663 (2013). In that case officers received an anonymous call that indicated that a black man on a bicycle seemed to be selling drugs in an area that officers knew to be a high crime and drug traffic area. *Id.* at 106, 736 S.E.2d 664. When officers arrived at the area they saw Taylor, a black man, on a bicycle "huddled up" with another man. *Id.* Officers approached Taylor and he and the man "immediately" separated. *Id.* Taylor rode his bicycle in a manner that made officers believe he was trying to flee the area. *Id.* Officers "conducted a takedown" of Taylor and patted him down for weapons ultimately finding drugs. *Id.*

In determining whether the officers had reasonable suspicion to detain Taylor and conduct and investigatory search the Court reasoned, "[c]ourts may not find a stop unjustified based merely on a piecemeal refutation of each individual fact and inference." *Id.* at 112, 736 S.E.2d 667. The Court stated "[g]iven the totality of the circumstances, it was proper for police to conduct a pat down of [Taylor]." *Id.*

This case differs significantly from *Taylor*. Here appellant was not in a high crime or drug traffic area. The area where appellant was walking was a rural area. While it is true there likely was not a great deal of foot traffic in the area, Chrobak did not testify that appellant was not behaving suspiciously in any regard prior to being stopped. Appellant was just walking, nothing more. Additionally, unlike in *Taylor*, Chrobak's testimony and video from his body worn camera reflected appellant did not attempt to avoid Chrobak or flee at the beginning of their encounter or at any time during the stop.

In *State v. Moore*, the South Carolina Supreme Court held the officer had reasonable suspicion to further detain Moore after the initial stop. 415 S.C. 245, 781 S.E.2d 897 (2016). The Court held "[i]n light of the standard of review we reverse" the Court of Appeals' finding the officers did not have reasonable suspicion to detain Moore once the initial purpose of the traffic stop had concluded. *Id.* at 248, 781 S.E.2d 898.

The South Carolina Supreme Court clarified its standard of review for cases involving an appeal from a motion to suppress based on Fourth Amendment grounds. *State v. Frasier*, 437 S.C. 625, 879 S.E.2d 762 (2022). In *Frasier* the Court explained that due to the "dawn of the technological age, appellate courts are no longer dependent on the trial court" when the appellate court reviews the evidence. *State v. Frasier*, 437 S.C. 625, 632 879 S.E.2d 762, 766 (2022). Accordingly, the Court held that "appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means [the appellate court] review[s] the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion ... is a question of law subject to de novo review." *Id.* at 633-34 879 S.E.2d 762, 766.

Here, there are no findings for this Court to review on appeal, the court ruled summarily "I am denying that motion[,] I believe that the officer had a reasonable suspicion to make the stop and frisk." Tr. 102, ll. 18-23. The trial court erred in concluding that reasonable suspicion existed to stop appellant, frisk appellant, detain appellant for investigation, and ultimately search appellant's person. Accordingly, the trial court erred in refusing to suppress the evidence.

CONCLUSION

Based on the foregoing argument appellant's convictions and sentences should be reversed, and the case remanded to Spartanburg County Court of General Sessions for a new trial.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of December, 2023.