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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Diane S. Goodstein., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK GERARD BOYD,

APPELLANT.

Appellate Case No.: 2023-000698

INITIAL BRIEF OF APPELLANT

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1. When during polling one of the jurors stated “I can’t agree on one of them charges, I find him not guilty”, did the Trial Court err in refusing to grant a mistrial?
2. Did the Trial Court err in refusing to suppress the drugs obtained after a traffic stop for allegedly failing to stop “at” the stop line when the car Appellant was riding in stopped straddling the stop line?

STATEMENT OF THE CASE

Appellant was indicted by the Dorchester County Grand Jury for Trafficking in cocaine 10 grams or more but less than 28 grams, possession of contraband by a prisoner, and possession with intent to distribute marijuana. (Tr. 8, ll. 1-8). On March 20, 2023, Appellant was called to trial before the Honorable Diane Goodstein and a jury. R*(1). Appellant was represented by Grant Smaldone. (Tr. 1). The State was represented by David Osborne and Shannon Elliott. (Tr. 1).

At the conclusion of the trial, the jury initially came back with a purported verdict of guilty for trafficking in cocaine, guilty for possession with intent to distribute marijuana, and not guilty for possession of contraband, and for trafficking in cocaine. (Tr. 303 ll. 1-4). Appellant requested individual polling of the jurors. (Tr. 305, ll 16.). During the first individual polling, Juror 3 stated "I can't agree on one of them charges." (Tr. 307, ll. 5-10). Appellant moved for a mistrial which was denied and instead the court sent the jury back for additional deliberations. (Tr. 307, l. 18—309, l. 14).

After additional deliberations, the Jury came back with a verdict of guilty for trafficking in cocaine, guilty for possession with intent to distribute marijuana, and not guilty for possession of contraband, and for trafficking in cocaine. (Tr. 311 l. 19—312, l. 8).

Appellant was sentenced to 25 years for trafficking in cocaine and 5 years for possession with intent to distribute marijuana. (Tr. 320, l.23—321, l. 6).

On March 28, 2023, Appellant filed a motion for a new trial which was denied in a written order filed on April 17, 2023. (R (Order)).

This appeal follows.

ARGUMENT

I. When during polling one of the jurors stated " "I can't agree on one of them charges, I find him not guilty", the Trial Court erred in refusing to grant a mistrial.

Relevant Facts

At the conclusion of the trial, the jury initially came back with a verdict of guilty for trafficking in cocaine, guilty for possession with intent to distribute marijuana, and not guilty for possession of contraband, and for trafficking in cocaine. (Tr. 303 ll. 1-4). Appellant requested individual polling of the jurors. (Tr. 305, ll. 16.). During the first individual polling, the following exchange took place:

> THE COURT: Juror 3. Was this your verdict in the jury room?
> JUROR NUMBER 3: I can't agree on one of them charges.
> THE COURT: Can you repeat what you said? I'm sorry.
> JUROR NUMBER 3: I can't agree on one of them charges. I find him not guilty.
> THE COURT: All right. Very well.

(Tr. 307, ll. 5-10). The Court stopped polling the other three jurors and sent the jury back to the jury room. (Tr. 305, l. 19—307, l. 13).

Appellant moved for a mistrial arguing that sending the jury back into the room after Juror 3 indicated that she would "find him not guilty" would be "unduly coercive." (Tr. 307, ll. 5-10; 308, l. 23—309, l. 3).

The Trial Court denied Appellant's request for a mistrial stating the following:

> I would feel differently if they had been deliberating for a very long time. They have not been deliberating for a very long time. And if she feels very strongly, she -- she will continue in that vein, but I am concerned that the duration of the -- of their deliberation has been very short.

(Tr. 309, ll. 8-13).

The Trial Court did not inform Juror # 3 or any other potential holdout that they should not give up any firmly held beliefs. Instead, the Trial Court merely stated the following:

> THE COURT: Ladies and gentlemen, in that it appears from 16 the polling that you have been unable to reach a unanimous verdict and given the relatively short period of time that you all have been deliberating, it is appropriate that I ask that you continue your deliberations.
> Now, Mr. Presiding Juror, I'm going to ask you to caucus your jury again and see do you want -- I'm -- you know, I'm a Jewish mother. I worry about everybody eating. So you've got a couple of options. You can continue to deliberate. I can order dinner. Or if you all wish, I can -- you know, we'd adjourn for the evening, and you all can return in the morning and continue your deliberations. Why don't you caucus your group and send me a note letting me know what you all decide.
> THE FOREMAN: All right.
> THE COURT: Thank you. And please retire to your jury 5 room. I will send fresh verdict forms out in just a moment.
> THE FOREMAN: Okay.
> THE COURT: Thank you.

(Tr. 309, l. 15—310, l. 7).

Seven minutes later, the Jury came back with a verdict of guilty for trafficking in cocaine, guilty for possession with intent to distribute marijuana, and not guilty for possession of contraband, and for trafficking in cocaine. (Tr. 310 l. 9—312, l. 8).

Argument

The Sixth Amendment right to a jury trial, as incorporated against the States by way of the Fourteenth Amendment, requires a unanimous verdict to convict a defendant of a serious offense. *See Ramos v. Louisiana*, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020). Unanimous verdicts of 12 people are also required for general sessions cases by the South Carolina Constitution. See S.C. Const. Art. V, § 22.

"The trial judge has a duty to urge the jury to reach a verdict but he may not coerce them." *State v. Singleton*, 319 S.C. 312, 316, 460 S.E.2d 573, 575 (1995). The mere fact of being required to deliberate after polling is generally coercive. Requiring deliberation after polling is "is never useful and is generally harmful, is not to be sanctioned." *See Brasfield v. United States*, 272 U.S. 448, 450, 47 S. Ct. 135, 136, 71 L. Ed. 345 (1926) (Prohibiting *sua sponte* polling prior

to a verdict in federal courts).

Additionally, when faced with jurors who are not able reach a consensus, it is appropriate to advise the jury that "every juror has a right to his own opinion and need not give it up merely for the purpose of reaching agreement." *Cf. State v. Hale*, 284 S.C. 348, 355, 326 S.E.2d 418, 422 (Ct. App. 1985) (finding an Allen charge appropriate when such an instruction was given).

In the present case, sending the jurors back to deliberate after Juror # 3 unequivocally stated that she would "find him not guilty" was coercive. There was no attempt by the court to indicate to the juror that she should not give up her firmly held beliefs. Therefore, requiring continued deliberation would have been coercive to Juror# 3 and any other minority jurors. The fact that Juror # 3 felt coerced is evidenced by the fact that it took a mere seven minutes for her to change her mind after being sent for additional deliberations. *Cf. Tucker v. Catoe*, 346 S.C. 483, 492, 552 S.E.2d 712, 716 (2001) (noting that when a jury returns a verdict shortly after the supplemental charge, it "suggests a possibility of coercion").

Based on the unequivocal answer by Juror # 3 the trial court erred in denying the motion for a mistrial.

II. The Trial Court erred in refusing to suppress the drugs obtained after a traffic stop for allegedly failing to stop "at" the stop line when the car Appellant was riding in stopped straddling the stop line.

Relevant Facts

On May 15, 2021, Deputy Ray Holder with the Dorchester County Sheriff's Office was patrolling Harleyville when the car Appellant was in passed him. (Tr. 44, ll. 3-8). Deputy Holder thought that the passenger was trying "to conceal himself behind the b-pillar" 46, ll. 7-8. As the vehicle approached an intersection, Deputy Holder noted that the vehicle's front wheels did not

stop *before* the stop line painted on the road near the intersection. (Tr. 46, ll. 17-21). Deputy Holder was not aware of whether the car stopped before the stop sign but would later claim that the law required the front tires to stop before the stop line. (46, l. 20-- 47, l. 6).

After stopping the vehicle, Deputy Holder smelled marijuana coming from the vehicle. (Tr. 48, ll. 18-20). Deputy Holder located marijuana and scales in the vehicle. Deputy Holder then placed Defendant under arrest and transported him to the Dorchester County Detention Center. (Tr. 51, l., 23—52, l. 2). At the Dorchester County Detention Center, Appellant was strip searched where officers found a bag containing approximately 28 grams of cocaine. (Tr. 54, l. 9—55, l. 8).

Prior to trial, Appellant moved to suppress the drugs found as a result of the stop and the subsequent arrest arguing, in part, that the initial traffic stop was not valid because the vehicle that Appellant was in had complied with the law concerning the stop line. Appellant argued that the term "at", as used in S.C. Code § 56-5-2330(b) and S.C. Code § 56-5-2740, means "on." (Tr. 77, ll. 1-4). Appellant also argued that even if the word "at" was ambiguous, the court should apply the rule of lenity. (Tr. 77, l. 22—78, l. 5). Appellant also showed in photos and the video that the car had stopped with its back wheels behind the stop line. (Tr. 77, ll. 8-15, Court's Exhibits, and State's Exhibit 2). Appellant argued the following:

> "It is as much at the stop line as I can possibly think of. It is literally at the stop line. It is straddling it. The front wheels seem to be over it. The back wheels seem to be behind it. Therefore, the car itself, the vehicle, as per the statute, is at the stop line.

(Tr. 77, ll. 16-21).

The Trial Court expressed concern that Deputy Holder had never stated that the car went passed the stop line on the video. (Tr. 68, ll. 1-8). Trial Court also noted that Holder never alleges that they ran a stop sign. (Tr. 85, ll. 18-25).

The Court ultimately denied Defendant's motion to suppress the drugs. The Court found the following:

> [T]he word "at" in order to be consistent with the reasonableness standard of interpretation of statutory provisions, it would be difficult to think that "at" means on. And while I certainly understand the position of the defendant, I don't believe that the -- I don't believe that this was an illegal stop.

(Tr. 111, ll. 1-9).

During the trial, Appellant renewed the pre-trial suppression motion when the state attempted to introduce the cocaine and marijuana. (Tr. 154, ll. 1-6; 246, l.—247, l. 3). The drugs were admitted over Appellant's objections.

Argument

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. An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances. *Whren v. United States*, 517 U.S. 806, 809, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89 (1996).

Evidence obtained as a result of an unreasonable search or seizure is inadmissible. *See State v. Easterling*, 257 S.C. 239, 185 S.E.2d 366 (1971). An officer's decision to stop a vehicle for a traffic violation is unreasonable if he lacks probable cause to believe a traffic violation has occurred. *See State v. Smith*, 329 S.C. 550, 495 S.E.2d 798 (Ct.App.1998). If the initial stop of a defendant is unlawful then any drugs found based on the unlawful stop or stemming from an unlawful arrest after the stop should be suppressed as fruit of the poisonous tree. *See Sikes v. State*, 323 S.C. 28, 32, 448 S.E.2d 560, 563 (1994) ("The detention and arrest of the Petitioner was unlawful; therefore, the evidence of the Petitioner's possession of crack cocaine [found in

the police car] would have been inadmissible as fruit of the poisonous tree.").

S.C. Code § 56-5-2330(b) states the following:

> Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop **at** a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it.

(emphasis added).

Similarly, S.C. Code § 56-5-2740 states the following:

> Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop **at** a clearly marked stop line but, if none, then at the point nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway before entering the intersection except when directed to proceed by a police officer or traffic-control signal.

(emphasis added).

"In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the Legislature." *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 105 (2008). Merriam Webster's online dictionary "at" as "a function word to indicate presence or occurrence in, on, or near." [1] The plain and unambiguous meaning of the term "at" in S.C. Code § 56-5-2330(b) and S.C. Code § 56-5-2740 mean on the line.

However, even if the term "at" does not clearly and unambiguously mean "on", the statute should be interpreted in the favor of the defendant. Penal statutes are to be strictly construed in favor of defendants. The rule of lenity requires that any ambiguity must be resolved in favor of the accused. *Berry v. State*, 381 S.C. 630, 633, 675 S.E.2d 425, 426 (2009). Both S.C.

[1] See Merriam-Webster. (n.d.). At. In Merriam-Webster.com dictionary. Retrieved April 3, 2024, from https://www.merriam-webster.com/dictionary/at

Code § 56-5-2330(b) and S.C. Code § 56-5-2740 are penal in nature. See S.C. Code § 56-5-730 ("It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or to fail to perform any act required in this chapter."). Therefore, even if the term "at" is ambiguous, it must be resolved in favor of the defendant.

Here it is clear that Appellant had stopped "at" the stop bar in compliance with the law. (Tr. 77, ll. 8-15, Court's Exhibits, and State's Exhibit 2). Deputy Holder's alleged justification for the stop was not a violation of the traffic laws. Therefore, the stop of the vehicle was unreasonable and the drugs should have been suppressed.

CONCLUSION

For the foregoing reasons Appellant respectfully requests that this Court reverse his convictions and sentences.

Respectfully submitted,

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This 3rd day of April, 2024.