

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) WARRANT NOS.: 2023A2620601180 – 1183

STATE OF SOUTH CAROLINA,)
)
)
v.)
)
RICHARD LEROY ANDERSON,)
)
)
DEFENDANT.)

ORDER GRANTING
DEFENDANT'S MOTION TO SUPPRESS

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SC Court of Appeals

DATE OF HEARING: FEBRUARY 15, 2024
PRESIDING JUDGE: HONORABLE BENJAMIN H. CULBERTSON
ASSISTANT SOLICITOR: KAITLIN COOK
DEFENDANT'S ATTORNEY: MELINDA KNOWLES

This matter comes before the Court on a Motion to Suppress filed by the defendant's attorney, Melinda Knowles, on January 12, 2024. In this motion, defense counsel requests that this Court suppress all drug evidence seized in this case as the defendant asserts that this evidence was illegally obtained during an unlawful detention of the defendant. The defendant further asserts that this evidence should be suppressed as fruit of an illegal search and seizure as it was obtained in violation of the Fourth Amendment of the *United States Constitution* and Article I, Section 10, of the *South Carolina Constitution*.

Based upon the arguments of counsel and evidence presented at this motion hearing, the Court hereby find the following salient facts:

Findings of Fact

On May 6, 2023, the defendant ("Anderson") was a passenger in a vehicle operated by Anthony Shaunta Kerson ("Kerson"). The vehicle was pulled over by Myrtle Beach Police Officer B. Sonko ("Sonko") for allegedly failing to give a turn signal when required. Upon approaching the vehicle, Sonko requested the driver (Kerson) to provide his driver's license, proof of insurance,

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and vehicle registration. Sonko noted in his report that Kerson appeared nervous, was shaking, and provided responses to questions that were not asked.

Kerson provided Sonko with an identification card instead of a valid driver's license, and Sonko returned to his patrol car to request dispatch run Kerson's information. Dispatch soon confirmed that Kerson's driver's license was suspended and Sonko immediately returned to Kerson's vehicle and placed him under arrest for driving under suspension. A search incident to arrest was performed on Kerson with negative results as it revealed nothing illegal in his possession. Kerson was placed in the back of a patrol car to await transport to the jail.

As Kerson awaited transport, Sonko decided to tow Kerson's vehicle. Before Sonko begins his search of the vehicle, Anderson is removed and told to go with other officers to the rear of the vehicle. Anderson immediately complies and is cooperative throughout the entire encounter. At no time did Anderson commit any crimes or exhibit any suspicious behavior.

According to Sonko, an inventory of the vehicle needed to be conducted prior to towing it from the scene. Anderson is never allowed to leave the scene and is told by law enforcement to remain at the scene, despite the purpose of the traffic stop having been fulfilled with the arrest of the driver. After the arrest of Kerson, Anderson is removed from the vehicle and told to wait nearby with other officers. He is assured by law enforcement that they would get him out of there shortly but instead of releasing him, he is subjected to a second detention outside of the vehicle. During this detention, Anderson is questioned and specifically asked if he has anything illegal on him. He admits to being in possession of marijuana. This admission leads to his arrest and a subsequent search of his person reveals a baggie containing marijuana and other drugs. As a result of this search, Anderson is charged with: Possession of Narcotics in Schedule I(b), (c), LSD, & Schedule II – 1st offense, Manufacture/Distribution/ Etc. of Cocaine Base – 1st offense, MDP-

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Narcotics in Schedule I(b) &(c), LSD, and Schedule II – 1st offense, and Possession of Less than 1 Gram of Methamphetamine or Cocaine Base – 1st offense.

Conclusions of Law

The Fourth Amendment to the *Constitution of the United States* declares that “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Further, Article I, Section 10, of the *South Carolina Constitution* states that “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.”

The Fourth Amendment protects against unreasonable searches and seizures, including seizures that involve only a brief detention.¹ Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure within the meaning of the Fourth Amendment.² Because the usual traffic stop is more analogous to an investigative detention than a formal arrest, this Court must evaluate this traffic stop utilizing the framework set forth in *Terry v. Ohio*, 392 U.S. 1 (1968), and its progeny.³ Pursuant to *Terry*, the propriety of a traffic stop is examined on two fronts.⁴ First, the Court must determine whether the officer’s action was justified at its inception, and, secondly, whether the

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¹ *State v. Pichardo*, 367 S.C. 84, 97 (Ct. App. 2005), (citing *U.S. v. Mendenhall*, 446 U.S. (1980)).
² *Id.*, citing *Whren v. U.S.*, 517 U.S. 806 (1996).
³ *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984).
⁴ *United States v. Digiovanni*, 650 F.3d 498, 506 (4th Cir. 2011).

officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop.⁵

Regarding the first inquiry under *Terry*, no one disputes that the traffic stop in this case was justified at its inception. An officer who observes a violation of the law has probable cause to initiate a traffic stop and such a stop comports with the Fourth Amendment.⁶ A lawful traffic stop generally begins when a vehicle is pulled over for investigation of a traffic violation, and the stop normally ends when the officer has no further need to control the scene and informs the driver and passengers, they are free to leave.⁷ All of the vehicle's occupants are effectively seized during a traffic stop for the duration of the traffic stop.⁸ A lawful seizure at inception can violate the Fourth Amendment if its manner of execution unreasonably infringes upon the interests protected by the Constitution.⁹ Based upon the incident report for this case, Officer Sonko observed the driver (Kerson) fail to give a turn signal when it was required by law.¹⁰ Therefore, Officer Sonko was justified in his decision to initiate a traffic stop on this vehicle.

The second inquiry under *Terry*, pertains to the investigative detention and requires that it must be limited in scope to its underlying justification and last no longer than is necessary to effectuate the purpose of the stop, i.e. the seizure must be limited both in scope and duration.¹¹ For the scope of investigation detention, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.¹² As to the duration of the detention, police may stop and briefly detain a vehicle for a traffic

⁵ *Terry v. Ohio*, 392 U.S. 1 at 20 (1968).

⁶ *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977).

⁷ *Arizona v. Johnson*, 555 U.S. 323, (2009).

⁸ *Brendlin v. California*, 551 U.S. 249, 255 (2007).

⁹ *Illinois v. Caballes*, 543 U.S. 405 407 (2005)

¹⁰ S.C. Code Ann §56-5-2150.

¹¹ *State v. Pichardo*, 367 S.C. 84,99 (Ct. App. 2005), citing *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed. 2d 229 (1983).

¹² *Florida v. Royer*, 460 U.S. at 500.

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violation and once the vehicle is stopped, the police may order the driver to exit the vehicle.¹³ In carrying out the stop, an officer may request a driver's license and vehicle registration, run a computer check, and issue a citation.¹⁴ Any further detention for questioning is beyond the scope of the stop and therefore illegal unless the officer has a reasonable suspicion of a serious crime.¹⁵

An investigative detention must be temporary and not last longer than is necessary to effectuate the purpose of the stop and the scope of the detention must be carefully tailored to its underlying justification.¹⁶ The police may lengthen detention of an individual for further questioning beyond that related to the initial stop but only in two circumstances: 1) if the officer has an objectively reasonable and articulable suspicion of criminal activity; or 2) if the initial detention has become a consensual encounter.¹⁷

In the case at hand, no reasonable, articulable suspicion existed to support the continued detention of Anderson after completion of the traffic stop.¹⁸ The search of Anderson's person was an exploitation of the original stop and by prolonging Anderson's detention beyond its proper scope, the officer rendered the ensuing encounter more coercive than consensual. The circumstances were sufficiently intimidating such that Anderson could have reasonably believed that he was not free to go about his business and disregard the police presence.¹⁹ As a passenger in the vehicle, Anderson can assert a Fourth Amendment claim based upon his unreasonable detention²⁰ and the absence of "reasonable suspicion" to prolong his detention or search his person.

¹³ *Id.*, citing *Pennsylvania v. Mimms*, 434 U.S. 106 (1977).

¹⁴ *Id.*, citing *U.S. v. Sullivan*, 138 F.3d 126 (4th Cir. 1998).

¹⁵ *State v. Williams*, 351 S.C. 591 (Ct. App. 2002).

¹⁶ *State v. Pichardo*, 367 S.C. 84,99 (Ct. App. 2005), citing *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed2d 229 (1983).

¹⁷ *Id.*, at 99.

¹⁸ *State v. Williams*, 351 S.C. 591, 598 (Ct. App. 2002).

¹⁹ *State v. Pichardo*, 367 S.C. 84, (S.C. Ct. App. 2005), 623 S.E. 2d 840.

²⁰ *Sikes v. State*, 323 S.C. 28, 448 S.E. 2d 560 (S.C. 1994).

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Therefore the discovery of the illegal narcotics found on the defendant was the product of an illegal search and seizure.²¹

After carefully evaluating the totality of circumstances in this case, this Court finds and concludes as a matter of law that the detention, questioning, and warrantless search of Anderson violated his Fourth Amendment right against unlawful search and seizure. In reaching this conclusion, I find that Officer Sonko unjustifiably extended the length of Anderson's detention beyond the time reasonably necessary to effectuate the initial purpose of the stop. The initial purpose of the stop was achieved when the driver was arrested as the crime that triggered this traffic stop was the driver's alleged failure to use a turn signal. Anderson, a mere passenger in the vehicle, should have been permitted to leave the scene when the decision to arrest the driver was made as law enforcement had no reasonable articulable suspicion to support his continued detention. Because law enforcement lacked reasonable suspicion to prolong Anderson's detention and search Anderson's person, the discovery of illegal narcotics on Anderson are a product of an illegal seizure and therefore should not be allowed to be used as evidence against this Defendant.

The "fruit of the poisonous tree" doctrine holds that where evidence would not have come to light but for the illegal actions of the police, and such evidence is obtained by the exploitation of that illegality, then such evidence must be excluded.²²

CONCLUSION

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED that the defendant's Motion to Suppress is GRANTED, further

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²¹ *State v. Frasier*, 437 S.C. 625, 879 S.E. 2d 762 (S.C. Sup Ct. 2022).

²² *State v. Greene*, 330 S.C. 551, 559, 499 S.E.2d 817, 821 (Ct. App. 1997)

ORDERED, that the drug evidence seized from this Defendant is suppressed and inadmissible at the trial of this case.

AND IT IS SO ORDERED.

Dated: March 5, 2024

Benjamin H. Culbertson

Honorable Benjamin H. Culbertson
Presiding Judge
Fifteenth Judicial Circuit

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