ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVELL HILL,

APPELLANT

APPELLATE CASE NO. 2010-158046

BRIEF OF APPELLANT

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2. Did the judge err in finding that appellant lacked standing to challenge the unlawful search and seizure of the rental car he was driving?

STATEMENT OF THE CASE

In October of 2008, the Greenville County Grand Jury indicted Hill for trafficking cocaine, indictment #2008-GS-23-6996. On March 30, 2010, Hill proceeded to jury trial before the Honorable G. Edward Welmaker. The jury returned a verdict of guilty and Judge Welmaker sentenced Hill to 27 years. A timely notice of intent to appeal was filed on April 8, 2008. On July 6, 2011, counsel for Hill submitted a final brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). On February 3, 2012, this Court issued an order denying counsel's motion to be relieved and directing counsel to brief the issue of whether the officer's suspicion that Hill was engaged in serious criminal activity reasonable so as to warrant a continued detention after the issuance of a warning for the traffic stop under the Fourth amendment and any other issues counsel believes are preserved and of arguable merit. This brief of appellant follows.

STATEMENT OF FACTS

On February 19, 2008, Trooper Richard S. Chasteen with the South Carolina Highway Patrol stopped a burgundy SUV on I-85 for following too closely and impeding traffic. Appellant Hill was the driver and Tyra Rodgers was the passenger. (Tr. p. 38, lines 1-2; p. 40, lines 8-14). Appellant provided the trooper with a rental agreement for the vehicle and his driver's license. (Tr. p. 38, lines 5-24). Neither Hill nor Rodgers' name appeared on the rental agreement. (Tr. p. 40, lines 1-14). The SUV had been rented in Virginia. (Tr. p. 41, lines 13-14). The trooper later noticed that the rental vehicle was overdue. (Tr. p. 45, lines 1-6). According to the trooper, he called his partner for back-up after receiving the license and rental agreement. (Tr. p. 43, lines 23 – p. 44, lines 1-3). His partner, Trooper Bennie Dowis, arrived with a drug dog. (Tr. p. 44, lines 1 – p. 45, lines 1-8).

The trooper testified that that both Hill and Rodgers were nervous and did not make eye contact during the stop. (Tr. p. 38, lines 13-15). The trooper testified that appellant Hill could not sit still in his seat and was "almost in a state of panic." (Tr. p. 38, lines 15-17). According to the trooper, appellant's hands shook as he handed over the rental agreement. (Tr. p. 38, lines 17-19). (Tr. p. 41, lines 13-14). The trooper noticed fast food wrappers and energy drinks inside the vehicle. (Tr. p. 38, lines 20-22). The trooper did not see any luggage inside the vehicle. (Tr. p. 41, lines 15-19).

Trooper Chasteen asked Hill to step out of the vehicle. (Tr. p. 39, lines 2-7). Hill told the trooper that they had traveled from Chesapeake, Virginia to Atlanta to party and see a good friend. (Tr. p. 43, lines 15-21) The trooper questioned Rodgers as she sat in the

vehicle. Rodgers told the trooper that Hill was her boyfriend and they had traveled to Atlanta to buy shoes and visit family. (Tr. p. 40, lines 17-21).

Trooper Chasteen testified, "Immediately after issuing the warning or explaining and issuing the warning, I asked Mr. Hill for consent to search his vehicle." (Tr. p. 70, lines 12-14). Hill did not consent to the search of the vehicle. (Tr. p. 70, lines 15-16). After Hill did not consent to search, Trooper Chasteen asked Ms. Rodgers to step out of the vehicle. (Tr. p. 71, lines 1-4). Trooper Dowis then ran his drug dog, Chloe, around the car. (Tr. p. 94, lines 19 – p. 95, lines 1-24). Chloe the drug dog alerted on the vehicle. (Tr. p. 96, lines 1-25). Trooper Chasteen then told Hill and Rodgers that their vehicle was going to be searched based on probable cause. (Tr. p. 71, lines 25 – p. 72, line1). Trooper Chasteen searched the vehicle and found a pair of shoes in a bag and, under the carpet on the front passenger side, cocaine. Both Hill and Rodgers were arrested and charged with trafficking cocaine.

ARGUMENTS

1. The officer did not have reasonable suspicion that Hill was engaged in serious criminal activity reasonable so as to warrant a continued detention after the issuance of a warning for the traffic stop under the Fourth amendment.

Prior to trial Hill moved to suppress the drug evidence based on the unlawful search and seizure. (Tr. pp. 5 – 8). The trial judge held a suppression hearing. (Tr. pp. 33-49). After hearing testimony the trial judge denied the motion to suppress stating, "But looking -- weighing the testimony that has been offered and what I have heard, I think there's enough factors that show he did have a reasonable basis for the detention." (Tr. p. 50, lines 21-24). The trial judge erred.

Once a motor vehicle is detained lawfully for a traffic violation, the police may order the driver to exit the vehicle without violating Fourth Amendment proscriptions on unreasonable searches and seizures. Pennsylvania v. Mimms, 434 U.S. 106, 111 n. 6, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). In carrying out the stop, an officer " 'may request a driver's license and vehicle registration, run a computer check, and issue a citation.' " United States v. Sullivan, 138 F.3d 126, 131 (4th Cir.1998) (citation omitted). However, "[a]ny 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." Id. (emphasis added); see Florida v. Royer, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) (plurality opinion) ("[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop."); Ferris v. State, 355 Md. 356, 735 A.2d 491, 499 (1999) ("Once the purpose of [the] stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.").

The initial traffic stop was legal. Once Trooper Chasteen issued the warning ticket, however, the purpose for the traffic stop was accomplished. The continued detention after the issuance of the warning ticket exceeded the scope of the initial traffic stop and constituted a second seizure. Once Hill elected not to provide consent to search and the drug dog was summoned, Hill was not free to leave. The continued detention is illegal because the trooper lacked a reasonable suspicion of a serious crime.

In State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010), the South Carolina Supreme Court found that the officer's continued questioning exceeded the scope of the initial traffic stop and the officers lacked a reasonable suspicion of a serious crime which might have justified the continued questioning. The Court found that the following four factors asserted by the officers failed to establish reasonable suspicion: 1.). the defendant was driving to Durham to meet his brother; 2.) the defendant was driving a rental car rented the previous day by another individual which was to be returned to Atlanta on the day of the stop; 3.) the defendant did a "felony stretch" on exiting the vehicle; and 4.) the defendant seemed nervous.

In this case, the State presented the following factors in support of the trooper's reasonable suspicion: 1.) Hill was returning to Virginia after a quick trip to Atlanta; 2.) Hill and the passenger, Rodgers, gave the trooper different information about their trip to Atlanta; 3.) Hill was driving a rental car rented by another individual and overdue; and 4.) Hill and the passenger seemed nervous. As in Tindall, these factors do not support reasonable suspicion to justify the continued detention of Hill.

In State v. Rivera, 384 S.C. 356, 682 S.E.2d 307 (Ct.App. 2009), the South Carolina Court of Appeals found that nervousness alone did not create a suspicion of criminal activity, the stories told by driver and passenger were not so inconsistent as to indicate criminal activity and the lack of luggage in the backseat provided no basis for a suspicion of criminal activity. In the present case the information about the trip given to the trooper by Hill and Rodgers was not so inconsistent as to indicate criminal activity and the lack of luggage in the backseat provided no basis for a suspicion of criminal activity. Hill and Rodgers' alleged nervousness, standing alone, did not create a suspicion of criminal activity.

The cocaine found as the result of the illegal detention should have been suppressed. See State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App.2002); State v. Greene, 330 S.C. 551, 559, 499 S.E.2d 817, 821 (Ct.App.1997) ("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 the evidence has been obtained by the exploitation of that illegality, the evidence must be excluded.").

The case is distinguished from State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct.App. 2011) (Cert. granted April 5, 2012) and State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct.App. 2011) (Rehearing denied March 23, 2011; petition for writ of certiorari pending). In Wallace, the Court of Appeals relied on fourteen points that, according to the State, amount to reasonable suspicion of criminal activity. In the present case, the four factors presented by the evidence do not amount to reasonable suspicion to warrant the continued detention. In Provet, the trial court relied on seven points to find reasonable suspicion including a perceived deceptive response when asked from where

Provet was coming. There was no evidence in the present case that Hill's responses were deceptive. Importantly, in Provet the Court of Appeals distinguished the present case from Tindall because the questions asked in the present case were prior to the conclusion of the traffic stop rather than after the purpose of the traffic had been accomplished as in Tindall. Here, the questions were asked **after** the trooper issued the warning. The continued detention in the present case was after the purpose of the traffic stop had been accomplished. The trooper lacked reasonable suspicion that Hill was engaged in serious criminal activity reasonable so as to warrant a continued detention after the issuance of a warning for the traffic stop under the Fourth amendment.

2. The judge erred in finding that appellant lacked standing to challenge the unlawful search and seizure of the rental car he was driving.

During the suppression hearing the State argued that based on United States v. Wellons, 32 F.3d 117 (4th Cir. 1994), Hill lacked standing to challenge the illegal search and seizure because Hill was not a valid driver on the rental agreement. (Tr. p. 7, lines 6-17; p. 49, lines 1-8). The judge agreed stating, "And as far as the State's position of the standing, I find the cases of Sam Wellons [sic] and others, I'm finding that he did not have standing based upon that law, but I do that with reservation because of what our United States Supreme Court has done more recently in the right of standing of folks in residences and somewhat expanded that, whether that would apply to an automobile." (Tr. p. 49, lines 15-22). The judge erred.

First, based on the United States Supreme Court cases of Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978) and Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980) the inquiry in search and seizure cases does not go to standing alone but rather to whether the defendant had a legitimate expectation of privacy in the area searched unlawfully. "The question is whether the challenged search and seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude evidence obtained during it. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect." Rakas, 439 U.S. at 140, 99 S.Ct. at 429.

The South Carolina State Constitution provides greater protection against unreasonable searches and seizures that the Federal Constitution. State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001). "The South Carolina Constitution, with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment." Forrester, 343 S.C. at 645, 541 S.E.2d at 841. Given the heightened expectation of privacy in South Carolina, Hill had a reasonable and legitimate expectation of privacy in the rental car he was driving despite the fact that he was not listed on the rental agreement.

Second, the State failed to prove that Hill was an unauthorized driver of the rental vehicle. The driver in Wellons was an unauthorized driver of the rental car and the Fourth Circuit Court of Appeals found that as an unauthorized driver he had no expectation of privacy in the car. In the present case, the rental agreement provides that,

"No additional operators are authorized or permitted without AVIS prior approval in accordance with the terms and conditions of the rental agreement or applicable state law." State's Exhibit #1, Rental Agreement, R. p. **). The trooper admitted that he did not check with AVIS to determine if Hill was an authorized driver. (Tr. p. 47, lines 3-17). The judge erred in finding that Hill did not have standing to challenge the illegal search and seizure.

CONCLUSION

Based on the above arguments, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of June, 2012.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of June, 2012.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of June, 2012.

(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.