RECEIVED
Aug 21 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KYLE MOUZON,

APPELLANT

APPELLATE CASE NO. 2023-001755

INITIAL BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Federal Constitutional Provision

STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in denying Appellant's motion to suppress the drugs found as a result of the warrantless search of Appellant's truck where the statements of Appellant's intoxicated and emotional passenger did not give rise to probable cause sufficient to sustain a warrantless search?

STATEMENT OF THE CASE

Appellant was indicted during the August 2023 term of the Charleston County grand jury for one count of possession with intent to distribute (PWID) methamphetamine, first offense. R. ___(Indictment). The State, represented by Sara Bozarth and Jason Finley, called the case to trial on September 11, 2023, before the Honorable Bentley Price and a jury. Tr. 1-2. Appellant was represented by Karla Martinez and Jason King. Tr. 2-3. Appellant was found guilty as indicted.[1] Tr. 218, ll. 8-15. Judge Price sentenced Appellant to 100 days of incarceration followed by two years of probation with substance abuse counseling. Tr. 221, l. 22-Tr. 222, l. 2; R.___ (Sentencing Sheet)

This appeal follows.

[1] The jury found Appellant guilty of PWID methamphetamine, as well as the lesser included offense of possession of methamphetamine. After the circuit court read the verdict form aloud, counsel for Appellant did not object to the improper verdict or ask for clarification of the verdict, as Appellant should only have been found guilty of a single charge. Appellant was sentenced only on the PWID charge. Since defense counsel did not object or ask for clarification of the verdict, undersigned Counsel believes this issue would be ripe for post-conviction relief should Appellant reach that stage of the appeal process.

STANDARD OF REVIEW

"[W]hile the need for deference remains, particularly in determining issues of credibility, it is no longer necessary for us to defer to the trial court's overall ruling in every case. Hence, "appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review 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, 632-34, 879 S.E.2d 762, 766 (2022).

ARGUMENT

The circuit court erred in denying Appellant's motion to suppress the drugs found as a result of the warrantless search of Appellant's truck where the statements of Appellant's intoxicated and emotional passenger did not give rise to probable cause sufficient so sustain a warrantless search.

Relevant Facts

In the early morning hours of July 15, 2021, Appellant drove from his home in North Charleston to downtown Charleston to pick up his then girlfriend Sonya Herron. Herron had been out drinking with friends and had become upset because she heard that Appellant had been cheating on her for the entirety of their relationship. Herron was angry with Appellant and a loud argument ensued when he arrived to pick her up. The argument continued as Appellant attempted to drive home and he briefly pulled into a gas station to try to calm down Herron. Tr. 179, l. 7-Tr. 181, l. 17. The gas station attendant witnessed the couple arguing and flagged down passing Charleston Police Department (CPD) officer Sean Flaherty. The attendant informed Flaherty of an altercation occurring in a truck that was leaving the parking lot. Flaherty sent out the basic information and truck description – a dark in color Chevy truck – over the radio. Tr. 56, l. 3-Tr. 57, l. 19.

Shortly thereafter, CPD officer Jeremy Bailey encountered a dark in color, older model Chevy truck traveling down Meeting Street. Bailey followed the truck briefly as it was weaving within its lane and ultimately initiated a traffic stop when the truck came to a sudden stop in the middle of the road. Tr. 72, l. 9-Tr. 74, l. 23. As Bailey approached the truck, he could hear the occupants arguing. Herron asked if she could exit the truck and Bailey agreed. Appellant was also asked to step out of his vehicle for the safety of everyone on scene. Tr. 75, l. 25 – Tr. 76, l.

24. While Bailey was speaking with Appellant, back-up CPD officer McCaughley Bryan was speaking with Herron. Tr. 118, ll. 16-Tr. 119, l. 17.

Herron told Bryan that she had been in a relationship with Appellant for approximately a year and a half. Herron stated it was possible that drugs were in the truck, but she did not know exactly where the drugs were located. Herron told Bryan different areas and containers in the truck where drugs might be found. Tr. 120, ll. 4-Tr. 121, l. 11; Tr. 126, ll. 4-13; Tr. 141, ll. 18-23. Herron, who was admittedly intoxicated, was described by police as emotional, upset, talkative, a little angry, distraught, and tearful. Tr. 119, ll. 4-8; Tr. 131, ll. 13-23; Tr. 139, ll. 1-10; Tr. 150, ll. 3-10.

Officers placed Appellant in investigative detention and based on the statements of Herron conducted a warrantless search of Appellant's truck. Tr. 77, l. 1-Tr. 78, l. 13. In a locked compartment of the center console, police recovered a crystalline substance believed to be methamphetamine, a glass pipe commonly used to ingest methamphetamine, and a digital scale. Tr. 79, l. 8-Tr. 81, l. 16. Appellant stated that he did not have knowledge of drugs in his vehicle. He was described by officers as cool, calm, and collected. Tr. 78, ll. 3-5. After officers discovered the drugs in the truck, Bailey asked Appellant what the crystalline substance was to which he replied, "crystal meth or meth." Tr. 92, ll. 6-14. Appellant stated he believed it was methamphetamine because that was the drug that Herron had used in the past and she had prior convictions for possession. Tr. 182, ll. 6-11. During the traffic stop Bailey learned that Appellant was driving on a suspended license. Tr. 78, ll. 3-5. He was arrested for possession of methamphetamine and driving under suspension. Subsequent chemical testing confirmed the substance was methamphetamine weighing 3.2 grams. Tr. 165, ll. 7-18.

Prior to the start of trial, defense counsel made a motion to suppress the drugs based on lack of probable cause to search Appellant's vehicle. R.____(Motion). Counsel Martinez argued that Herron's statements did not give rise to probable cause for a warrantless search based on the fact that she was intoxicated, upset, and made many statements about where drugs could possibly be located. Counsel Martinez argued that police had reason to doubt the truthfulness of the information Herron was providing. Tr. 42, l. 12-Tr. 43, l. 16. The State argued that Herron's statements gave the police probable cause to prolong the traffic stop and to search the vehicle. In further support of its position, the State argued that the police did in fact find drugs in a place where Herron said drugs might be located. When the State began to argue about the credibility of Herron, the trial judge interrupted and said, "I'm not worried about that. Credibility of the witnesses is – is r [sic] the jury to determine." Tr. 43, l. 18-Tr. 46, l. 5.

Counsel Martinez reiterated that there was nothing outside of the statements of Herron to indicate or give rise to suspicion that Appellant had drugs in the car and that those statements were not enough to support the warrantless search. Tr. 46, ll. 6-19. The trial court denied the motion to suppress without making any factual or legal findings. Tr. 46, ll. 20-23. Each time items from the search were presented for admission into evidence, defense counsel objected based on the pre-trial motion to suppress. Tr. 82, l. 20-Tr. 83, l. 4; Tr. 85, ll. 12-21; Tr. 160, ll. 8-17; Tr. 164, l. 19-Tr. 165, l. 3.

Discussion

While law enforcement may search a vehicle without a warrant, the searching officers must have facts establishing probable cause that would satisfy the warrant requirement had a warrant been sought. Statements by an upset, angry, and intoxicated person that drugs might be located in various places in a vehicle does not establish probable cause. Herron's intoxication

and heightened emotional state, combined with the equivocal nature of her statements and the complete lack of other evidence to support a search, did not create a practical, nontechnical probability that evidence of a crime would be located inside of Appellant's truck.

The basic purpose of the Fourth Amendment, as recognized repeatedly by the United States Supreme Court, is "to safeguard the privacy and security of individuals against arbitrary invasions by government officials." Cady v. Dombrowski, 413 U.S. 433, 453 (1973) (Brennan, J. dissenting). Through its exclusionary rule, the Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const. Amend. IV. When evaluating a search through the framework of the Fourth Amendment, "[t]he ultimate standard set forth...is reasonableness." Dombrowski at 439.

"Whether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case." S. Dakota v. Opperman, 428 U.S. 364, 375 (1976). "Generally, a warrantless search is per se unreasonable and thus violative of the Fourth Amendment's prohibition against unreasonable searches and seizures." State v. Bultron, 318 S.C. 323, 331, 457 S.E.2d 616, 621 (Ct. App. 1995). Evidence seized in violation of the Fourth Amendment will be excluded in both state and federal court. See Mapp v. Ohio, 367 U.S. 643 (1961); State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001). "However, a warrantless search will withstand constitutional scrutiny where the search falls within one of a few specifically established and well delineated exceptions to the Fourth Amendment exclusionary rule." Id. at 331-32, 457 S.E.2d at 621. In such cases, the *burden is upon the State to justify a warrantless search.* State v. Bailey, 276 S.C. 32, 35, 274 S.E.2d 913, 915 (1981) (emphasis added).

One such exception to the warrant requirement is the automobile exception. "Pursuant to the automobile exception, *if there is probable cause to search a vehicle*, a warrant is not necessary so long as the search is based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained." State v. Bonilla, 429 S.C. 253, 278, 838 S.E.2d 1, 13-14 (Ct. App. 2019) *citing* State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007) (emphasis added). "The automobile exception to the search warrant requirement is based on: (1) the ready mobility of automobiles and the potential that evidence may be lost or destroyed before a warrant is obtained and (2) the lessened expectation of privacy in motor vehicles [that] are subject to government regulation." Id. "If a vehicle is readily mobile *and probable cause exists to believe it contains contraband*, the Fourth Amendment permits police to search the vehicle without more." Id. (emphasis added). "[T]here is no requirement that the warrantless search of a vehicle occur contemporaneously with its lawful seizure." Id.; *see also* Texas v. White, 423 U.S. 67, 68, 96 S.Ct. 304, 46 L.Ed.2d 209 (1975) ("[P]olice officers with probable cause to search an automobile at the scene where it was stopped [may] constitutionally do so later at the station house without first obtaining a warrant.").

"In determining whether the automobile exception [is] satisfied, the principal components of the determination of probable cause will be whether the events [that] occurred leading up to the search, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." Bonilla, 429 S.C. at 278, 838 S.E.2d at 14 (internal citations omitted). "Probable cause exists where there is a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available ... at the time of the search, that there exists a practical, nontechnical probability that a crime is being committed or has been

committed and incriminating evidence is involved." Id. at 279, 838 S.E.2d at 14 *quoting* State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995).

Appellant was stopped and approach by police due to erratic driving. Officers were aware of a potential argument occurring between the occupants of the truck and could hear an argument as they approached the vehicle. Appellant was described as cool and calm, readily answering questions posed to him by police, and not under the influence. There was nothing incriminating about his behavior. Herron, on the other hand, was intoxicated and highly emotional. Her statements to police were not definitive. She only told officers that there might be drugs in the truck and provided officers with various places within the vehicle to search. It would be difficult to imagine that a magistrate would issue a search warrant on such statements without more evidence of criminal activity or contraband. "Probable cause is a 'commonsense, nontechnical conception [ ] that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" State v. Morris, 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015) *qouting* Ornelas v. United States, 517 U.S. 690, 695 (1996). To find that a reasonable and prudent individual would act on unspecific information from an intoxicated, angry, spurned girlfriend, and nothing more, is perverse.

Appellants case can be easily distinguished from those cases where the appellate courts of this state have found probable cause existed to support a warrantless search. In State v. Bultron, 318 S.C. 323, 457 S.E.2d 616 (Ct. App. 1995), this Court held that law enforcement had probable cause to conduct a warrantless search of a van. Law enforcement had received a tip from a reliable informant that he had seen a quantity of cocaine in a room at a Greenville hotel. The informant had been present when the cocaine was delivered and informed police that a

maroon colored van with Florida tags was associated with the room. Id. at 327, 457 S.E.2d at 619.

Officers surveilled the motel and van for approximately five hours. Late in the afternoon police observed a man get into the driver's seat of the van while a second man walked down a corridor and waved. Three more men exited the corridor and approached the van. Two men got directly into the van and the third opened the back door of the van before entering. The second man then walked around the parking lot, catwalk, and surrounding area before waving for a second time. Two more men exited the corridor carrying luggage bags that they placed in the rear of the van, closed the rear door and themselves got into the van. Finally, the man that had been waving the others along got into the van and the van left the motel. Id. at 327-328, 457 S.E.2d at 619.

Officers followed the van to a gas station where they observed a pistol on the floor of the van. Officers then conducted a warrantless search of the van and located 9.2 pounds of cocaine and several thousand dollars in a piece of luggage in the rear of the van. Id. In finding the officers had probable cause to conduct a warrantless search this Court held "[t]he law enforcement officers had probable cause to believe the Appellants were transporting contraband in the van pursuant to the tip from the reliable informant and in light of the Appellants' suspicious and highly orchestrated exit from the hotel with bags that could reasonably conceal cocaine. Thus the officers acted within their discretion in searching every part of the vehicle and its contents which may have concealed the contraband." Id. at 333, 457 S.E.2d at 622.

Similarly, in State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2007), our Supreme Court held law enforcement had probable cause to conduct a warrantless search based on the totality of the circumstances. In Weaver, the decedent was shot thirteen times outside a club and died at the

scene. An investigator talked to witnesses and this led him to search for Weaver. The investigator had information Weaver was at the home of his cousin. The investigator and other law enforcement officials arrived at the cousin's house and found the Jeep in question, which Weaver was driving that night, in the back yard. The cousin told law enforcement that Weaver had been at the house, asked for some change, some bleach, and a garbage bag, and left the cousin's house an hour later. Id. at 317, 649 S.E.2d at 481.

The investigator opened the door of the Jeep and found that the inside was wet and it smelled of bleach. The investigators found a "bag of wash" that smelled like bleach on a pump house near the Jeep. The Jeep was impounded and a SLED agent processed the Jeep. Blood was found inside the Jeep in several areas. The blood matched that of the decedent. Id. at 317-318, 649 S.E.2d at 481.

Our Supreme Court held that "[i]n the instant case, there was probable cause to conduct a warrantless search of the Jeep. Investigators knew that petitioner, a suspect in McKnight's murder, had been seen driving the Jeep around the time of the murder. Upon finding the Jeep, it seemed apparent there had been an attempt to destroy evidence given the Jeep's interior was wet and smelled of bleach. Therefore, upon finding the Jeep, the investigators could have conducted a search at that time; however, they chose to impound the vehicle." Our Court therefore found that the facts of Weaver showed a warrantless search met the automobile exception to the Fourth Amendment. Id. at 320-321, 649 S.E.2d at 480.

In both Bultron and Weaver law enforcement had detailed reliable information that informed the basis of their warrantless searches. The same cannot be said of Appellant's case. In the matter *sub judice*, the only information law enforcement had was that Appellant's drunk and angry girlfriend thought it was possible that unspecified drugs could be in various locations

in the truck. Importantly, the fact that some of what Herron told police turned out to be true does not justify the illegal search. As our Supreme Court concluded in State v. Adams, 409 S.C. 641, 654, 763 S.E.2d 341, 348 (2014), "[i]n law, the ends do not justify the means."

While privacy expectations in an automobile are somewhat diminished, "the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away..." Any search, even of an automobile, is a substantial invasion of privacy. Opperman at 387-88 (Marshall, J., Dissenting). Appellant's privacy was substantially and illegally invaded when law enforcement officers searched his vehicle without probable cause. Under the totality of the circumstances, a reasonable individual would not conclude that based on the vague statements of an intoxicated, angry girlfriend, there was a likelihood of discovering contraband in Appellant's vehicle. The circuit court erred in denying Appellant's motion to suppress based upon a violation of his Fourth Amendment rights.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court find police lacked probable cause to search his vehicle, suppress the drug evidence obtained during the illegal search, and reverse his conviction and sentence.

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of August, 2024.