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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

APPELLANT,

V.

RICHARD LEROY ANDERSON,

RESPONDENT.

APPELLATE CASE NO. 2024-000732

FINAL BRIEF OF RESPONDENT

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

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

ATTORNEY FOR RESPONDENT

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RESPONDENT'S COUNTER STATEMENT OF THE ISSUEON APPEAL

Evidence supports the trial court's conclusion that detention of respondent after the arrest of the driver was an unconstitutional seizure.

STATEMENT OF THE CASE

The State's recitation of the procedural history of this case is correct.

STANDARD OF REVIEW

"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—in this case whether reasonable suspicion exists—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

Judge Culbertson reached the right result in this case. The pretextual reason for this traffic stop—failure to use a turn signal—was completed upon the arrest of the driver for driving with a suspended license. Despite the arrest, the police continued to detain appellant who was the passenger in this car while they rummaged through the car for drugs. The trial court properly concluded that appellant was illegally seized after the traffic stop's purpose was accomplished and suppressed the drugs.

"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." U.S. Const. amend. IV. "An investigative detention must be temporary and last no 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." State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 848 (Ct. App. 2005), *holding modified by* State v. Frasier, 437 S.C. 625, 879 S.E.2d 762 (2022). "Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention." Id. "[A] law enforcement officer's continued questioning of a vehicle's driver and passenger outside the scope of a valid traffic stop passes muster under the Fourth Amendment either when the officer has a reasonable articulable suspicion of other illegal activity or when the valid traffic stop has become a consensual encounter."

The trial court correctly found that "no reasonable, articulable suspicion existed to support the continued detention of Anderson after the traffic stop." R. 7. The court correctly recognized

that Anderson was not free to leave and his continued detention was coercive and nonconsensual. Id.

The body camera is dispositive. The police arrest the driver at 5:26. Anderson remains seated in the car. Three minutes later, the police put the driver in the back of the police car. The officer gets a form called "Towing Report" from his car and tells the other officer, "We can get him out. I gotta inventory the vehicle." (9:36).

The other officer then asks the elderly Anderson to come out of the car and to the back, between the driver and one of the two police cars then at the scene. He says, "You can come on out. We'll get you out of here in a minute." (9:45). This statement without question tells Anderson he is not free to leave. Therefore he is seized under the Fourth Amendment.

The officer then begins his search of the car. He does not write anything he finds down on the form. As trial counsel adroitly pointed out at the hearing, no inventory sheet was ever produced and its nonexistence was "a red flag" about the nature of this supposed inventory search. R. 97. The officer rummages through the front and the back of the car. By the 16:25 mark, Anderson is visible in handcuffs with three officers standing around him.

The State's sole justification for the continued seizure of Anderson past the arrest of the driver was the officer's claim that he noticed a faint smell of marijuana. The officer makes this comment almost as an aside while running the driver's identification and also notes that it was covered up by cigar smoke. (4:12).

This supposed justification for detaining Anderson was considered by the trial court. The trial court watched the body camera video in the courtroom during the suppression hearing. R. 116. After viewing the video, Judge Culbertson took the matter under advisement. R. 117. Judge Culbertson then issued a written order finding that the totality of the circumstances made the

continued seizure of Anderson past the completion of the traffic stop violated Anderson's constitutional rights. R. 8. Judge Culbertson considered "the faint smell" claimed by the officer and properly concluded that it did not support the continued seizure of Anderson.

The State's reliance on State v. Morris, 411 S.C. 571, 769 S.E.2d 854 (2015) is not persuasive. The officer in Morris claimed to smell marijuana in addition to observing indicators of drug activity in the car. Here, no additional indicators of drug activity were observed until after the officer arrested the driver and began searching the car. Additionally, in Morris, the defendant was the driver. Here, Anderson was the passenger and detaining him because the driver's license was suspended was unlawful.

The State cites a long list of cases holding that the smell of marijuana alone provides probable cause, but that analysis is outdated because of the legality of hemp products. See State v. Oliver, 214 N.E.3d 624 (Ohio Ct. App. 2023). The Oliver court recognized that in Ohio, prior precedent during a period when all marijuana was illegal allowed that the smell provided probable cause. But the court found that after Ohio's legalization of medical marijuana and hemp, the odor of marijuana alone did not indicate its illegality. "An officer's detection of the odor of marijuana in a car does not, alone, establish probable cause sufficient to search an occupant of that car without a warrant. Id., 214 N.E.3d at 647. "It is well-established that probable cause for a search of a person must be 'particularized with respect to that person." Id. quoting Ybarra v. Illinois, 444 U.S. 85, 91 (1979).

While marijuana in all its forms remains illegal in South Carolina, products derived from hemp are legal. See State v. Crumpton, 444 S.C. 16, 905 S.E.2d 448 (Ct. App. 2024) discussing The Hemp Farming Act, S.C. Code Ann. § 46-55-10, et seq. Crumpton recognized that products derived from hemp that meet federal guidelines for THC concentrations derived from Delta 9 are

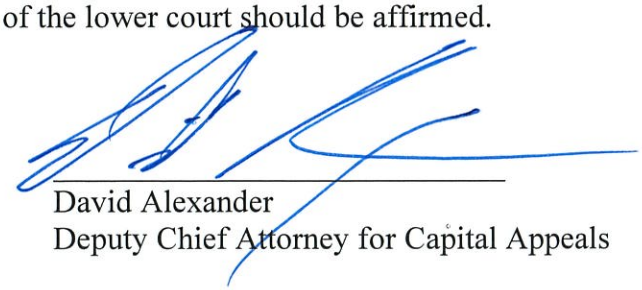
legal in South Carolina. "'Marijuana' has the same meaning as in Section 44-53-110 and does not include tetrahydrocannabinol in hemp or hemp products as derived therein." S.C. Code Ann. § 46-55-10(11).

In Crumpton, an officer performed chemical testing of a substance that the State claimed was marijauna. The trial court admitted the officer's testing as expert evidence. But the Court reversed in Crumpton because the testing methods was deemed unreliable because it could not differentiate between legal THC derived from hemp and illegal THC derived from marijuana.

The officer in Anderson's case's claim of a "faint odor of marijuana" is a far cry from a chemical test held unreliable in Crumpton. As recognized in Oliver and in our courts in Crumpton, the legalization of some forms of THC undercuts the old reasoning that any smell of marijuana indicates illegal activity and automatically amounts to probable cause. The trial judge properly found that the smell of marijuana here, as part of the totality of the circumstances did not provide an excuse to detain Anderson and go on a fishing expedition for drugs—especially with respect to a passenger for whom the officers had no particularized suspicion. The drugs were suppressed as the result of an illegal seizure of Anderson and this Court should affirm.

CONCLUSION

For the foregoing reasons, the judgment of the lower court should be affirmed.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR RESPONDENT

This 18th day of March, 2025.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this final brief of respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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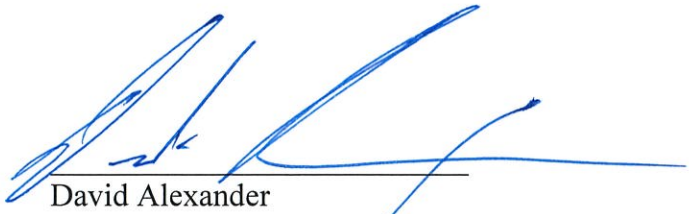
APPELLATE CASE NO. 2024-000732

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Final Brief of Respondent in the above-referenced case have been served upon J. Benjamin Aplin, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 18th day of March, 2025.



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Deputy Chief Attorney for Capital Appeals

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Division of Appellate Defense
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Columbia, SC 29211-1589
(803) 734-1330

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From: Stock, Chris
To: Ben Aplin; susanspencer@scag.gov
Cc: Alexander, David
Subject: 2024-000732 The State v. Richard Leroy Anderson - Final Brief of Respondent
Date: Tuesday, March 18, 2025 10:00:00 AM
Attachments: 2024-000732 The State v. Richard Leroy Anderson - Final Brief of Respondent.pdf

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Mr. Aplin,

Please find attached for service the Final Brief of Respondent for Richard Leroy Anderson's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris Stock
Administrative Coordinator
Commission on Indigent Defense
Appellate Division
(803) 734-1330