STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-000289

THE STATE, Respondent,

v.

SAVAYEA ANTWAN GLENN, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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The trial judge correctly denied Appellant's motion to suppress evidence seized from Appellant's person because the search was proper as a search incident to arrest.

STATEMENT OF THE CASE

An Anderson County Grand Jury indicted Appellant, Savayea Glenn for trafficking crack cocaine, twenty-eight grams or more, but less than one hundred grams. Appellant proceeded to a jury trial on February 5, 2024, before the Honorable R. Lawton McIntosh. Hadden Lucas and Elizabeth Chambers represented Appellant. Appellant was found guilty as indicted. Appellant was sentenced to a term of twenty-five years' imprisonment and a $50,000 fine. This appeal follows.

STATEMENT OF FACTS

On May 24, 2020, officers were dispatched to Eddie's Minute Mart on Abbeville Highway in Anderson, South Carolina in response to a report an intoxicated male was on scene causing a disturbance in the store and, at one point, had shown a firearm to the store's clerk. (R. 7). Deputy Josh Nesbitt, from Anderson County Sheriff's Office (ACSO) was the first to arrive at the scene. (R. 29). When he arrived, Appellant was standing in the doorway of the mini mart being loud and boisterous. (R. 30). Nesbitt noticed the odor of alcohol emanating from Appellant's person. (R. 31). Nesbitt had also had previous encounters with Appellant and testified his behavior at the time was "not in line with his normal nature." (R. 31).

Deputy Janessa Smith, from ACSO arrived on scene while Nesbitt was talking with Appellant. (R. 8). Smith testified that upon arriving on scene, she immediately noticed a bulge in Appellant's front right waistband area and there was also some type of orange object that could be seen sticking out from his pants and waistband area. (R. 8). She further testified that she detected a strong odor of alcohol coming from Appellant's breath and body and noticed he had slurred speech and glassy eyes. (R. 8). Smith testified that due to the surrounding circumstances and 911 call stating the person had a firearm, she lifted Appellant's shirt to see what was being concealed in his pants. (R. 8-9). Once Appellant's shirt was lifted, a clear plastic bag with a green leafy substance was visible. (R. 10). Appellant was then immediately arrested for public disorderly conduct based off his gross intoxication. (R. 10). The clear plastic bag containing the green leafy substance as well as an orange bag that contained 77.3 grams of crack cocaine and white tablets that were identified as hydrocodone was then seized off Appellant's person. (R. 10).

Prior to trial, Appellant made a motion to suppress the crack cocaine found on his person based on an impermissible search that's outside the scope of a permitted Terry[1] frisk. (R. 3). Appellant conceded that officers had reasonable suspicion to detain and to frisk Appellant, however lifting his shirt exceeded the scope of the Terry frisk. (R. 3). The Solicitor argued that deputies had two substantial legal reasons to search Appellant. First, there was probable cause to arrest Appellant for disorderly conduct and, therefore, the search was proper incident to arrest. (R. 42-43). Second, if there was no probable cause for disorderly conduct, then officers had reasonable suspicion that Appellant might be armed and thus a lift of his shirt was permissible and even less intrusive than a full pat down. (R. 43-44). Appellant continuously argued that the lifting of the shirt was outside the scope of the stop and, while officers may have had reasonable suspicion for the pat down, the lifting of the shirt went too far. (R. 46). Appellant further argued that probable cause to arrest Appellant was not there because the 911 call regarding Appellant's action was a tip that could not be relied upon for probable cause. (R. 47-50).

The trial court succinctly summarized the issue as: "whether or not law enforcement, at that juncture [when Smith lifted Appellant's shirt], had sufficient probable cause to arrest him [Appellant] for public disorderly conduct. Next, given – if they did not have sufficient probable cause to arrest him for public disorderly conduct, whether or not the circumstances were such that his conduct gave them [law enforcement] the right to immediately avoid the pat down because of his actions." (R. 58). At the conclusion of the in-camera hearing, the court found law enforcement had probable cause to arrest Appellant for public disorderly conduct and, thus, were permitted to search Appellant incident to that arrest. (R. 64-65). The court further found that the deputy's act of lifting Appellant's shirt did not violate Terry or the Fourth Amendment. Given

[1] Terry v. Ohio, 392 U.S. 1 (1968).

the totality of the circumstances, the court found that law enforcement was permitted to "skip the pat down and go to a more invasive type of search," which in this case was lifting Appellant's shirt to expose his waistband. (R. 65).

In the court's written order, it again found law enforcement had probable cause to arrest Appellant for public disorderly conduct based on his "boisterous behavior." Therefore, officers were permitted to search Appellant incident to that arrest. (R. 198-200). The court further found "based upon a totality of the circumstances, [Appellant's] conduct was such as would allow the responding officers to bypass a pat down search in favor of the more intrusive search of lifting up [Appellant's] shirt." (R. 200). The court "acknowledg[ed] that [Appellant] was not acting in an immediately threatening manner when initially approached by law enforcement." However, the court still found police were permitted to bypass a pat down search given the circumstances. (R. 200). Specifically, the court asserted, "Law enforcement should not have to wait until a suspect becomes an actual threat to their safety nor should law enforcement have to be clairvoyant to determine that a suspect will become an immediate threat to their safety before conducting more intrusive searches for their safety." (R. 200).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "Historically, we have repeatedly noted that appellate courts review and appeal from a motion to suppress based on a violation of the Fourth Amendment under the deferential "any evidence" standard." State v. Frasier, 437 S.C. 625, 632, 879 S.E.2d 762, 765 (2022). "Pursuant to this standard, our appellate courts 'will not reverse a trial court's finding of fact simply because it would have decided the case differently.'" Id. "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 evidentiary support, but the ultimate legal conclusion... is a question of law subject to de novo review." Id. at 633-634, 879 S.E.2d at 766. "This deference does not bar this court from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence." Id.

ARGUMENT

The trial judge correctly denied Appellant's motion to suppress evidence seized from Appellant's person because the search was proper as a search incident to arrest.

Appellant argues the trial court erred by denying Appellant's motion to suppress all evidence seized from Appellant's person and the subsequent search of his vehicle when law enforcement's act of lifting Appellant's shirt to look into his waistband violated the scope of a permissible Terry frisk. Specifically, he contends the act violated his rights pursuant to the Fourth Amendment of the United States Constitution and law enforcement purportedly did not have probable cause to arrest him for public disorderly conduct and, thus, conduct a search incident to arrest. Appellant's argument lacks merit because there was probable cause to arrest Appellant for public disorderly conduct; therefore, the search was proper incident to arrest. Further, even if probable cause did not exist to arrest Appellant for public disorderly conduct, reasonable suspicion existed for officers to conduct a pat down of Appellant and, based off the totality of the circumstances, conduct a more intrusive search.

The Fourth Amendment of the United States Constitution protects "[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. In addition to those protections, the South Carolina Constitution provides its own protections to the state's citizens against unreasonable searches and seizures. State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); see S.C. Const. art. I, § 10 ("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[.]"). Furthermore, primarily in order to guard against invasive technological advancements, the South Carolina Constitution also expressly protects our citizens from "unreasonable invasions of privacy." S.C. Const. art. I, § 10; see Forrester, 343 S.C. at 647, 541

S.E.2d at 842 ("[T]he drafters of our state constitution's right to privacy provision were principally concerned with the emergence of new electronic technologies that increased the government's ability to conduct searches.").

"A warrantless search is unreasonable per se, unless it falls within a recognized exception to the warrant requirement." State v. German, 439 S.C. 449, 461, 887 S.E.2d 912, 918 (2023). "The recognized exceptions to the warrant requirement are search incident to lawful arrest, hot pursuit, stop and frisk, the automobile exception, the plain view doctrine, consent and abandonment." Id. "The prosecution bears the burden of establishing probable cause as well as the existence of circumstances constituting an exception to the general prohibition against unreasonable search and seizures." State v. Gamble, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013). "Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce and ordinarily prudent and cautious person, under the circumstances, to believe likewise." Id.

"A search may be conducted incident to arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest." State v. Freiburger, 366 S.C. 125, 132, 620 S.E.2d 737, 740 (2005). "There are situations in a warrantless search which immediately precedes an arrest is held lawful, in cases where the police officer is held to have probable cause from the outset." Id. "The fact that an arresting officer improperly based a search of an individual on a Terry stop rationale does not prevent the State from otherwise justifying the search by proving probable cause to make a warrantless arrest of the individual existed prior to the search." State v. Moultrie, 316 S.C. 547, 551, 451 S.E.2d 34, 37 (Ct. App. 1994). A search may precede a formal arrest if the officer has probable cause to arrest at the time of the search and the fruits of the search were not necessary to support probable cause to arrest. Rawlings v.

Kentucky, 448 U.S. 98, 111, 100 S.Ct. 2556, 2564 (1980). In State v. Freiburger, a taxi driver was murdered by a passenger in his cab with a gunshot wound to the head. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005). About a month later Freiburger was stopped by a Tennessee Highway Patrolman for hitch hiking. Id. The Patrolman questioned him and then patted him down, discovering a gun. Id. The gun was confiscated and Freiburger was ultimately arrested for carrying arms. Id. Our South Carolina Supreme Court held that "the fact that Freiburger was not ultimately arrested for hitchhiking is not dispositive. As recently stated by the United State Supreme Court, an officer's 'subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause...the fact that the officer did not have state of mind which is hypothecated by the reasons which provide the legal justification for the officer's actions does not invalidate the action taken as long as the circumstances, **viewed objectively**, justify that action.'" Id. at 133, 620 S.E.2d at 741 (emphasis added).

In this case, there was a 911 call that Appellant was intoxicated at a minute mart, getting in customer's personal space, was making sexual comments to the clerk as well as showing a firearm to the clerk. (R. 7). When officers arrived on scene, Appellant was loud and boisterous, with an odor of alcohol emanating from his person as well as slurred speech and glassy eyes. (R. 8, 11, 30-31). Based on Appellant's conduct observed by officers as well as information given through the 911 call, there was probable cause to arrest Appellant for public disorderly conduct and he was in fact arrested for that. Further, even if probable cause did not exist to arrest him for public disorderly conduct, the lifting of Appellant's shirt was not overly intrusive.

In U.S. v. Hill, there was a reported bank robbery where the perpetrator told a bank teller that he had a gun, demanded money and lifted his shirt displaying to the teller what appeared to be a gun. U.S. v. Hill, 545 F.2d 1191 (9th Cir. Ct. App. 1976). Roughly 500 feet away from the

bank an officer observed Appellant and stopped him to inquire whether he had seen anyone running through the area that matched the robber's description. Id. In conversing with Appellant, the officer noticed a large bulge at Appellant's waistband which he suspected of being caused by a weapon. Id. The officer raised Appellant's shirt, thus, exposing his waistband and revealing four to six rolls of currency stuffed therein. Id. Appellant argued that the lifting of his shirt was overly intrusive, and the court held that it was not under the circumstances because Terry confines a self-protective search for weapons to an intrusion reasonably designed to discover instruments of assault. It further held that because the officer's investigation was wholly confined to the area of the bulge in question that it did not transcend the permissible bounds established by Terry. Id. at 1193. Similarly, Smith testified that based on the surrounding circumstances that an intoxicated male had shown a firearm to the store's clerk, and the bulge she observed in Appellant's waistband, she was under the impression that the bulge in his waist band was a weapon. Further, she too simply lifted the shirt where she observed the bulge. Therefore, the lifting of the shirt was necessary and not overly intrusive. Based on the probable cause to search Appellant based on a search incident to arrest and the fact that the search did not exceed the boundaries set forth in Terry, the trial judge did not err in denying Appellant's motion to suppress evidence seized from Appellant's person.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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May 30, 2025

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Lara M. Caudy, counsel of record for the Appellant by sending one copy by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 30th day of May, 2025.

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