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S.C. SUPREME COURT

SC Court of Appeals

Upon information and belief, on or about July 14th, 2023 Officer Dakota Rhoads and R. Herring conducted a traffic stop of Londell Alston for operating a vehicle with an expired License plate, a violation of S.C. Code "56-3-840" under title 56. This violation is considered a hazardous moving violation or operating an improperly equipped vehicle for which a traffic citation or uniform traffic ticket is issued. Neither Officer's Rhoads or Herring issued a citation. In South Carolina, A Law Enforcement officer has the discretion to issue either a written warning or a citation for a traffic offense, depending on the circumstances and nature of the infraction. Section 56-5-6560(A) Laws mandates that officers document the driver's age, gender, and ethnicity when a traffic stop results in neither a citation nor an arrest for the infraction. During this encounter by Ofc. Rhoads and the driver Londell Alston, who was operating a borrowed vehicle, Rhoads requested Alston's License and Registration. Alston provided a valid driver's license and began searching for the registration, Upon opening the glove compartment Alston discovered a concealed firearm. Once discovered Alston looked at ofc. Rhoads and stated "That's not mine", due to ofc. Rhoads lack of acknowledgement Alston continued the search for registration by lifting up the concealed firearm. Alston's statement that was made to ofc. Rhoads was redacted/alterred on the BWC by removing the segment of the discovery and Alston's statement. Due to officer safety concerns, ofc. Rhoads gave Alston commands

to exit the vehicle. Once out of the vehicle, ofc. Rhoads asked Alston did he have any weapons on him, Alston stated "No", ofc. Rhoad asked Alston could he check, Alston stated "You can check me", ofc. Rhoads asked Alston a coercive question of can he search him, Alston again stated "You can check me". Due to ofc. Rhoads second coerced question, he violated Rock Hill City Police Department Policy "Consent Searches 1, 2, 4" No. 3, which states "That the person asked for consent may not be coerced in any manner. Alston's consent extended to a protective search or pat-down for weapons. This conclusion is based on the following, 1) Alston initially consented to a pat-down search, 2) Officer Rhoads then asked to search the driver Alston's person and Alston again said "You can check me" understanding it was a protective search, 3) A protective search is a limited search for weapons to ensure officer safety, 4) A pat-down is specifically designed to find weapons. The presence of the firearm in the glove compartment justified the protective search. The phrase "You can check me" in response to the request to search Alston's persons, along with the context of a protective search, indicates consent for a limited search aimed at finding weapons. Upon searching Alston's person officer Rhoads came across an object that's nature was not incriminating, nor was it immediately apparent as contraband, and ofc. Rhoads couldn't identify the object. In patting down Alston, Rhoads eliminated the possibility of a weapon but did not simultaneously know the identity of the object inside the pocket. Officer Rhoads immediately knew upon patting Alston down

that object in Alston's pocket were not a weapon, Rhoads did not immediately identify it as marijuana until he further manipulated and questioned Alston, Rhoads went beyond the scope of a "Terry" pat-down search. Due to there being no immediate identification upon pat-down, Officer Rhoads committed violations under Dickerson and Terry. Due to the marijuana located on Alston's person at the time he exited the vehicle, Officer Rhoads performed a "probable cause" search of the vehicle. This action was performed due to officer Rhoads search of the vehicle being limited to only the area within Alston immediate control because the firearm was concealed inside the legal disposition which is the glove compartment, console, or trunk, which it was also not discovered in "plain view". The actions of officer Rhoads finding marijuana on Alston's person outside the vehicle would likely serve as the basis for the vehicle search. However, if this initial discovery was not followed by a charge for possession of that marijuana, and there was no other valid reasons as stated by Officer Rhoads for searching the vehicle, the foundation of the vehicle search is flawed. Officer Rhoads vehicle search was conducted without sufficient probable cause (Based on marijuana found on Alston's person, but no related charge was filed) the evidence found inside the vehicle is considered "Fruit of the Poisonous Tree" and must be suppressed by the court. While officer Rhoads manipulating the object is problematic, officers may be entitled to ask questions about an object that isn't a weapon. Officer Rhoads went beyond that permissible scope of the protective search by manipulating

the object and questioning Alston before recognizing it as contraband, the subsequent discovery of marijuana (Even though Alston identified it) is considered the result of an unlawful search and seizure. This should lead to the evidence (the marijuana) being suppressed under the exclusionary rule, meaning it cannot be used against Alston in court. The vehicle search was initiated based on an illegal or unsupported premise (like the uncharged marijuana possession) the evidence found inside the vehicle (The Fruit) should have been deemed inadmissible in court because it was derived from that illegal action (the poisonous tree). Officer Rhoads initial justification for the vehicle search was based on the discovery of marijuana on Alston's person, but Alston was not charged with a crime related to the marijuana, Officer Rhoads actions should have weakened the states argument for probable cause to search the vehicle. Officer Rhoads had probable cause to believe the vehicle was being operated with an expired registration ("56-3-840"), the traffic stop, even without a written warning or citation, would likely be considered lawful. However, Officer Rhoads abandoned the mission of the traffic stop, which the Fourth Amendment does not tolerate the complete abandonment of a traffic stop, and the absence of a written warning or citation in this appeal is a strong factor due to the stop leading to further charges and action against Alston, as it must be argued that the initial stop lacked the necessary justification for an extended detention or search. The traffic stop was also absent of reasonable suspicion that a crime had been committed, was

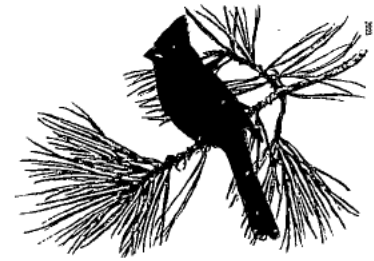
being committed or about to be committed. While officer Rhoads can search the vehicle without a warrant during a traffic stop if they have probable cause, the lack of Officer Rhoads charging Alston for the traffic infraction ("56-3-840") or the marijuana (Possession of Marijuana) this should have disabled the state's argument that probable cause existed for the vehicle search.

During an interview with Investigator Sean Leamy, Leamy was inquiring about Alston's GPS applications on both Alston's iPhones which he asked for Alston consent to search both Phones GPS applications. Alston consented and signed the consent form understanding it was only for the requested searching of both GPS applications. Ofc. Leamy without informing Alston, obtaining a warrant or Alston's consent, invaded Alston's privacy by accessing the Picture, Messages, Call Logs, and Etc, which Leamy never informed Alston he was going to invade the other phone applications without Alston's knowledge or consent. When officer Leamy asked for Alston's consent to search only the GPS applications, but then proceeded to search other applications on Alston's phone, that is generally considered an invasion of privacy and it violated Alston's Fourth Amendment Rights. When Alston gave consent to Leamy's request to search the GPS, Leamy's search was limited to that scope. Searching other apps went beyond what Alston's understanding of the request made by officer Leamy. In essence, a search exceeding the scope of the given consent, is considered an unlawful search because the officer has violated the individual's (Alston) Fourth Amendment right to be free from unreasonable searches and seizures.

Officer Rhoad's testimony that he didn't see the purpose of changing the driver with the traffic infraction on the marijuana is very significant. Officer Rhoad's primary objective wasn't to address a traffic violation but to find evidence of illegal activity. This argument is about the traffic stop being pretextual and therefore illegal. The alleged testimony that he didn't see the purpose of changing the traffic infraction on the weed suggest that he has a flaw in his initial justification for the search. Rhoad's stated reason for probable cause to search the vehicle was the discovery of weed on the driver outside the car. If Alston was never changed with the traffic infraction that initiated the encounter, or the marijuana found on the driver outside the vehicle, it calls into question if the initial stop and subsequent search are lawful. The marijuana found on Alston wasn't a valid basis for probable cause to search the vehicle because Alston wasn't changed with it, the search of the vehicle was illegal and any evidence found during that potentially illegal search is considered Fruit of the poisonous tree and must be excluded from trial.

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Supreme Court of South Carolina

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