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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2013-001140

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SC Court of Appeals

THE STATE,

Respondent,

v.

WREN ROBERSON HINTON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT ON ISSUE OF APPEAL

The trial court did not err in failing to suppress drugs found on Appellant because the police officer had sufficient suspicion to conduct a lawful pat down.

STATEMENT OF THE CASE

Appellant was true bill indicted by the Greenville County Grand Jury for two counts of Possession of a Controlled Substance (20120GS-23-09569, -09570). John V. Crangle, Esquire, represented Appellant. On May 6, 2013, Appellant proceeded to a bench trial before the Honorable Deadra L. Jefferson. Judge Jefferson adjudicated Appellant guilty of both charges and sentenced Appellant to one year concurrent imprisonment for each charge, provided that the sentences be suspended to three years probation. Appellant thereafter filed an appeal. This initial brief follows.

STATEMENT OF THE FACTS

Deputy Justin Lanford testified he has worked for the Greenville County Sheriff's Office for six years. R. p.9, ll. 11-22. Deputy Lanford testified he is part of the direct patrol unit which is a team assigned to high drug areas that "go[es] into areas and saturate[s] them, and mostly look[s] for illegal narcotics [and] weapons." R. p.10, ll. 3-6. Deputy Lanford testified that at that time his unit patrolled the Brandon and the Woodside community in Greenville, South Carolina a good deal of the time. R. p.11, ll. 9-11. Deputy Lanford testified his unit made multiple arrests per week in the area related to drugs, that the area is a lower income and high drug usage area, and, that "typically drug activity goes hand in hand with weapons." R. p.11, ll. 14-19; R. p.11, ll. 9-11, R. p.22, ll. 13-15.

Deputy Lanford testified that one night while patrolling in June of 2012 he passed a vehicle that did not properly use a turn signal and therefore, he conducted a traffic stop. R. p.12, ll. 1-4. Deputy Lanford testified it was 9:19 p.m. R. p.14, l. 2. Appellant was a passenger in the vehicle Deputy Lanford pulled over. R. p.12. Deptuy Lanford also testified "[i]t was dusky. And there's a lot of tree cover in there, so you can't – the lighting is not very good where we had the traffic stop at." R. p.14, ll. 6-8.

Deputy Lanford testified that while conducting the traffic stop he learned Appellant did not have any sort of identification on her and therefore, he asked Appellant to step out of the vehicle in order for him to use a fingerprint reader on her. R. p.12, ll. 7-11. Deputy Lanford testified that as the fingerprint reader was processing he asked Appelant if she was carrying any weapons on her because the area she was coming from and the area she was in was a "very high drug usage and weapons area." R. p.12, ll. 12-

16. Deputy Lanford testified he received Appellant's consent to check for weapons. R. p.12, l. 17.

Deputy Lanford testified "I ran my hand down her waist and her front pocket where I could feel several pills inside that front left pocket." R. p.12, ll. 18-20. Deputy Lanford further testified that from running his hand on Appellant's outer clothing it was immediately apparent what was in Appellant's pocket. R. p.12, l. 25; p.13, ll. 1-3. Deputy Lanford clarified that "[y]ou could tell they were oblong, you know. They were hard pills." R. p.13, ll. 6-8.

Deputy Lanford testified he then asked Appellant what the pills were and Appellant responded "Lortab" and at that point Deputy Lanford took Appellant into investigative detention. R. p.13. Deputy Lanford testified he then continued to search Appellant and found more pills in her back pocket. R. p.13. The pills were identified at the police station to be Hydrocodone and Phendimetrazine. R. p.15, ll. 3-6, R. p.2, ll. 4-7.

ARGUMENT

The trial court did not err in failing to suppress drugs found on Appellant because the police officer had sufficient reasonable suspicion to conduct a lawful pat down.

Appellant contends the trial court erred by failing to suppress the drugs found on her person as evidence. However, Appellant's argument lacks merit as Deputy Lanford properly conducted a lawful frisk of Appellant for weapons and discovered through no manipulation of his own the drugs. Thus, Appellant's conviction and sentence should be affirmed.

In Fourth Amendment search and seizure cases, the appellant court is limited to determining if there is *any* evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725,727 (Ct. App. 2004). "[A]n appellate court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence." State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, an appellate court will not reverse merely because it would have reached a different conclusion that the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

The Fourth Amendment protects "[t]he right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005). "The decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." State v. Banda, 371 S.C. 245, 252, 639 S.E.2d 36, 40 (2006). "Probable cause is defined

as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautions person, under the circumstances, to believe likewise." State v. Blassingame, 338 S.C. 240, 250, 525 S.E.2d 535, 540 (Ct. App. 1999). Further, an officer making a valid automobile stop can order both the driver and passenger out of a vehicle without violating the Fourth Amendment. Maryland v. Wilson, 519 U.S. 408, 415 (1997).

In this case, Deputy Lanford conducted a lawful automobile stop, Deputy Lanford observed the vehicle Appellant was travelling and failed to use a turn signal when turning. Thus, Deputy Lanford has sufficient probable cause to pull over the vehicle as this was a traffic violation. Further, once Deputy Lanford pulled over the vehicle, Deputy Lanford validly asked Appellant and the driver to exit the vehicle as established by Maryland v. Wilson. Appellant concedes the automobile stop was proper in this case as well as Deputy Lanford's command to Appellant and the driver to exit the vehicle.

Appellant attacks specifically the lawfulness of Deputy Lanford's pat down that followed. The United States Supreme Court held in Terry v. Ohio that a police officer must have a reasonable suspicion that a person is armed and dangerous before conducting a pat down or frisk. 392 U.S. 1 (1968). Reasonable suspicion is something more than an "inchoate and unparticularized suspicion" or "hunch." Id. at 27. Instead, reasonable suspicion is founded upon "the specific reasonable inferences" the law enforcement officer "is entitled to draw from the facts in light of his experience." Id. To meet the reasonable suspicion standard for a pat-down for weapons an officer must have an objective reasonable belief that the individual is armed and currently dangerous. Minnesota v. Dickerson, 508 U.S. 366 (1993). To determine whether the officer had a reasonable belief that the individual was armed and dangerous, "[t]he issue is whether a

reasonable prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." State v. Blassingame, 338 S.C. 240, 249, 525 S.E.2d 535, 540 (1999) (citing Terry).

When deciding whether reasonable suspicion exists, courts look at the totality of the circumstances. State v. Corley, 383 S.C. 232, 240, 679 S.E.2d 187, 191 (Ct. App. 2009); United States v. Sokolow, 490 U.S. 1, 8 (1989) (recognizing that courts must look at the "whole picture" when determining whether or not reasonable suspicion exists). Furthermore, "[f]actors which alone may be 'susceptible of innocent explanation' can 'form a particularized and objective basis' for a stop when taken together." United States v. Glover, 662 F.3d 694, 698 (4th Cir. 2011). In particular, South Carolina:

> has recognized that because of the 'indisputable nexus between drugs and guns,' where an officer has reasonable suspicion that drugs are present in a vehicle lawfully stopped, there is an appropriate level of suspicion of criminal activity and apprehension of danger to justify a frisk of both the driver and the passenger in the absence of other factors alleviating the officer's safety concerns.

State v. Banda, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006) (citing State v.Butler, 353 S.C. 383, 391, 577 S.E.2d 498, 502 (2003)).

In this case, the trial court found that Deputy Landford had articulated facts supporting his frisk of Appellant, which included the following: 1) the absence of any identification or state driver's license, 2) this was a high crime area, 3) lack of lighting at the location of the stop, and 4) Appellant consented to a pat down for weapons. R. p.36. Also the time of the stop, after 9 p.m., and the fact he was alone adds more factors that lend support to Deputy Lanford's pat down. Further, Deputy Lanford's experience in working as an officer for six years, particularly his experience in working with the direct patrol unit, which deals with drug cases on a regular basis, supports that Deputy Lanford

had reasonable suspicion to pat down Appellant. When looking at the totality of these circumstances, Deputy Lanford had sufficient reasonable suspicion to justify a frisk of appellant for weapons.

Also, even if the above factors fail to provide sufficient reasonable suspicion to justify a Terry pat down, Appellant consented to the pat down. "Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent." State v. Provet, 391 S.C. 494, 507, 706 S.E.2d 513, 520 (Ct. App. 2011). Deputy Lanford questioned Appellant if she had any weapons on her because of the high drug usage area she and the driver were traveling in. Deputy Lanford then asked Appellant if he could check for weapons and Appellant consented. There have been no facts presented casting doubt on the voluntariness of Appellant's consent and Appellant does not dispute the voluntariness of the consent given either in her brief. Therefore, since Appellant voluntarily consented to the search, the Terry frisk was proper.

Furthermore, if in the course of a proper frisk for weapons, an officer feels something that without further manipulation he has probable cause to believe is subject to seizure then the object may be seized. Minnesota v. Dickerson, 508 U.S. 366 (1993) (where contraband was excluded from evidence because the officer had manipulated the object after determining that no weapons were present); see also State v. Smith, 329 S.C. 550, 495 S.E.2d 798 (Ct. App. 1998) (where evidence admitted that was found during a pat-down of individual because it was apparent to officer from touch and feel of bag and from experience that it contained narcotics).

In the case at hand, Deputy Lanford patted down Appellant's outer clothing. In the course of doing this, he discovered what he believed to be contraband. Deputy

Lanford questioned Appellant what the item was and Appellant responded, "Lortab." Since Deputy Lanford did not manipulate the contraband as he discovered it while conducting a lawful pat-down, the trial judge was correct in ruling the evidence as admissible.

In summary, because Lanford had probable cause to stop the vehicle Appellant was travelling in, what he found in the course of a lawful pat-down supported by reasonable suspicion through no manipulation was properly admitted as evidence by the trial judge.

CONCLUSION

For all the foregoing reasons, the State submits that Appellant's conviction and sentence be affirmed.

Respectfully submitted,

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May 6, 2014

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 6th day of May, 2014.

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