STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAHEEM JAMAR BONHAM,

APPELLANT

APPELLATE CASE NO. 2013-001364

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion to suppress the drugs seized by police following a vehicle stop and search in the case because the stop was not supported by any reasonable suspicion that criminal activity was afoot.

STATEMENT OF THE CASE

Appellant Raheem Jamar Bonham was convicted of possession of crack cocaine per jury trial held during the June 2013 term of the Lexington County General Sessions Court before Judge William P. Keesley. Appellant was sentenced to imprisonment for a period of one year. Bennett E. Casto represented appellant at trial, and Assistant Solicitors Michael D. Ross and Gill Bell appeared on behalf of the state.

Appellant appealed his conviction and sentence in the case. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motion to suppress the drugs seized by police following a vehicle stop and search in the case because the stop was not supported by any reasonable suspicion that criminal activity was afoot.

Prior to trial, defense counsel moved to suppress the drugs seized in the case because the search and seizure here followed an illegal stop in violation of the Fourteenth Amendment. Tr. 35, l. 8 – p. 36, l. 2. An in camera hearing followed.

During the in camera hearing, Police Officer Nicholas Burt testified that around 9:45 pm on August 10, 2012, he observed a white Kia pull into the driveway of a suspected drug house for two minutes, and that he could see the tail lights of the Kia all the while (during which time no one exited the Kia), and that he then saw the Kia exit the driveway. Officer Burt stated that he pursued the vehicle until it came to a stop in the neighborhood. Tr. 42, 1.1-p. 56, 1.25.

At the close of the in camera hearing, defense counsel argued that the police stop, search, and seizure were illegal acts because the events that occurred in this case were not tantamount to reasonable suspicion that a drug transaction occurred. In other words, seeing the Kia pull into a driveway of a suspected drug house and sit for two minutes while no one exited the car and no one exited the house, and then seeing the Kia back out and exit the driveway did not constitute a scenario giving rise to reasonable suspicion to stop the Kia and detain the occupants inside upon drug transaction suspicions. Tr. 91, 1.6-p. 96, 1.21; Tr. 108, 1.5-p. 109. 1.18. The trial judge court denied the motion to suppress since the Kia allegedly stopped on its own and because appellant's exit from the car after the stop gave rise to reasonable suspicion to detain him and search the vehicle. Tr. 119, 1.15-p. 122, 1.8 .

At trial, the Police Officer Burt explained that neighbors had filed complaints of suspected drug activity emanating from the house in question. Officer Burt explained also how the search of the Kia came about in the case. Apparently, there were three occupants inside the Kia: the female driver, a male front seat passenger, and a female back seat passenger. After the stop, the female driver gave Officer Burt consent to search the Kia. Shortly thereafter, Officer Burt stated that he heard Officer Thomas confirm that crack cocaine was found under the front passenger seat. App. 141, l.1- p.148, l.6. Tr. 220, l.18- p. 221, l.25. Thereafter, Officer Finch detained appellant. Tr. 190, l.15 – p.191, l.10, Tr. 197, l.7 –p. 199, l.22. Officer Finch stated that appellant denied ownership of the crack cocaine initially, but later admitted that he was in possession of the crack cocaine. Tr.200, l. 3-9, Tr. 201, l. 7 – p. 202, l. 21; Tr. 205, ll. 8-21.

During Officer Burt's testimony, he stated the following:

> A. [The Kia] pulled into the driveway and I could see the back third of the car...[and] taillights just up and to the back door.
>
> Q. Okay. Could you see any of the occupants in that vehicle?
>
> A. No
>
> Q. Did the taillights ever turn off?
>
> A. No. They remained lit the entire time
>
> Q. Okay. Could you see anybody come out to the car from where you were positioned?
>
> A. No.
>
> Q. Could you see anybody leave the car from where you were positioned?
>
> A. No.

Q. How long did the car stay there?

A. Just under two minutes. App.43, l. 19 – p. 44, l. 12.

A routine stop violates the Fourth Amendment if there is no purpose justifying the stop. State v. Pichardo, 367 S.C. 84, 623 S.E. 2d 840 (2005). In State v. Taylor, 401, S.C. 104, 736 S.E. 2d 663 (3013), the Court held that an investigative detention is constitutional only if supported by a reasonable suspicion that the person detained is engaged in criminal activity; and further that:

> Courts must look at the cumulative information available to the officer...and not find a stop unjustified based merely on a "piecemeal refutation of each individual fact and inference....just as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion." United States v. Mason, 628 F. 3d 123, 129 (4th Cir. 2010); United States v. Branch, 537 F.3d 328 (4th Cir. 2008).

Also, the Taylor Court cited to two leading Fourth Circuit Court of Appeals cases considered to be instructive on the subject of the constitutionality of investigative detentions: United States v. Lender, 985 F. 2d 151 (4th Cir. (993), and United States v. Sprinkle, 106 f.3d 613 (4th Cir (997). In both Lender and Sprinkle, a key factor considered in analyzing the constitutionality of a stop was the officers' observations indicating the existence of possible drug transactions. For example, in Lender, the police officers observed the defendant huddled with a few other men together in a high crime (drug) area and noticed that the defendant's hands were stuck out for the onlookers to view his palms. The Lender Court held that this observation of the defendant's visible hands supplied reasonable suspicion to make an investigatory stop on drug suspicions in the case. In Sprinkle, the Court did not uphold the investigatory detention after finding no reasonable suspicion for a

stop where the officers saw a male in the driver's seat of a car parked in a high crime drug area huddled up with a male in the passenger seat over the console area of the car because there was no observation of any transaction involving drugs passing through their hands to support suspicions of drug transactions in progress in the case.

Our South Carolina Courts view police officers' observations of possible drug transaction as a key factor also in assessing the constitutionality of investigatory stops in Fourth Amendment cases. For example, the Taylor Court upheld the officers' reasonable suspicion to stop the defendant (bicycle rider) because he was seen on a bike in a drug area huddled up with another male, and the Court added that "unlike the scenario in Sprinkle, the record d[id] not reflect that police were unable to observe [the defendant's] hands" and the resulting assumption suggesting a drug transaction was in progress appeared confirmed. However, to the contrary, compare the case of State v. Fowler, 322 S.C. 263, 471 S.E. 2d 706 (1996), which was similar factually to the case at bar, where the Court reversed and held that there was no reasonable suspicion to stop and detain the defendant simply because he had just came from the yard of a suspected drug house, and was walking suspiciously, and cut through the back of some other houses to get to the road because the officers did not "see a drug transaction" and did not see "the defendant throw anything down," but rather made "broad generalizations" based on the defendant's demeanor and knowledge about his one prior drug conviction.

Likewise, in the case at bar, the officers did not observe any actions from the occupants of the Kia that suggested that a drug transaction was percolating. First off, note that like in Fowler, the house (where the Kia pulled into the driveway) was not a known drug house but a "suspected" drug house. Also, the Kia never parked in the driveway in

question. To the contrary, the taillights stayed on and the Kia sat in the driveway without parking. Moreover, no occupant from inside the Kia exited and went up to the suspected drug house. Furthermore, no one from the suspected drug house went out to the Kia. Additionally, the Kia left the suspected drug house after a quick two minutes. Here, we have no observations by police of anything that rose to a level that suggested that a drug transaction occurred in this case. Hence, no reasonable suspicion existed in support of a stop of the Kia by officers in this case. As in Fowler, the officer here made a broad generalizations that about a car entering and exiting the driveway of a suspected drug house and without more clearly erred in assuming that such actions meant that a possible drug transaction in progress.

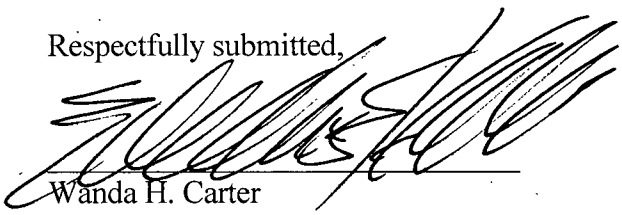
The state referred to the case of State v. Corley, 383 S.C. 232 679 S.E. 2d 187 (2009), in support of the investigative detention in this case; but in Corley the drug house where the car was parked was a "known" drug house, and also in Corley, a man parked his car at the drug house, and actually walked up to the rear of the drug house, and then walked back to his parked car and drove away. These observations in Corely constituted reasonable suspicion that a drug transaction took place. The police observations in the instant case fell woefully below what the officers observed in Corley.

In the instant case, the observations of the Kia witnessed by the police did not rise to reasonable suspicions that criminal activity (a drug transaction) was afoot and thus the stop, search, and seizure carried out by the police were illegal and unconstitutional actions in violation of the Fourth and Fourteenth Amendments. Thus, the trial judge erred in denying appellant's motion to suppress the drugs seized in this case as tainted fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963).

CONCLUSION

Based on the foregoing argument, appellant requests that his case be reversed and remanded to the lower court for a new proceeding.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of September, 2014.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Raheem Jamar Bonham, at 3018 Princeton Road, West Columbia, SC 29170, this 3rd day of September, 2014.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of September, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022 .