

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

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AUG 27 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RAHEEM JAMAR BONHAM,

APPELLANT

APPELLATE CASE NO. 2013-001364

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

Opinion No. 2015-UP-417

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel would petition for rehearing pursuant to this Court's opinion in the above titled case upholding the trial judge's finding that the Fourth Amendment was not violated by the ultimate stop of the vehicle in which appellant was a passenger per the rationale that there was reasonable suspicion proved by articulable facts that criminal activity was afoot in the case, because to the contrary, the stop was unjustifiable as the evidence presented in support of the validity of the stop was lacking per the reasonableness factor. In support of this petition, counsel for appellant would submit the following information.

1.) First, note that per Brendlin v. California, 551 U.S. 249 (2007), appellant, who was a passenger in the car, had standing to challenge the constitutionality of the ultimate car stop in this case. In the case at hand, the list below includes a summary of Police Officer Burt's observations made at 9:45 p.m. on August 10, 2012, before he began following the Kia, wherein appellant was a passenger, and prior to the ultimate stop of the Kia, whereinafter a search yielded the presence of crack cocaine. Officer Burt noticed the following:

- a.) A white Kia pulled into the driveway of a suspected drug house;
- b.) The tail lights of the Kia were visible while it sat in the driveway;
- c.) The white Kia stayed in the driveway for approximately two minutes;
- d.) No one exited the Kia while it sat in the driveway;
- e.) No one exited the house and came to the Kia; and
- f.) The white Kia left the driveway after two minutes. Tr. 43-44.

2.) 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, i.e. appellant, 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, 1.1- p.148, 1.6. Tr. 220, 1.18- p. 221, 1.25. Thereafter, Officer Finch detained appellant. Tr. 190, 1.15 – p.191, 1.10, Tr. 197, 1.7 –p. 199, 1.22. 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.

3.) 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). The touchstone of the Fourth Amendment is reasonableness. Ohio v. Robinette, 519 U.S.33 (1996). 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).

4.) Here, seeing the Kia pull into the driveway of a what was believed to be a drug house per neighbors’ complaints and sit for two minutes while seeing no one exit the car and seeing no one exit the house, and then seeing the Kia back out and exit the driveway did not constitute a scenario giving rise to reasonable suspicion for the Kia to have been stopped and the occupants inside detained upon suspicion that a drug transaction had occurred.

5.) 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 Sprinkle¹, the record d[id] not reflect that police were unable to observe [the defendant’s] hands” and that 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 come 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

¹ United States v. Sprinkle, 106 F.3d 613 (4th Cir 1997). 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.

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 because he could not see inside the Kia. Additionally, note that like in Fowler, the house (where the Kia pulled into the driveway) was not a known drug house, but a “suspected” or “reported” drug house. Also, the Kia never parked in the driveway in question. The Kia’s taillights stayed on and the Kia sat in the driveway for two minutes and backed out. 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. Also, 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 the ultimate stop of the Kia. As in Fowler, the officer here made broad generalizations that about a car entering and exiting the driveway of a suspected drug house and without more, undoubtedly erred in assuming that such actions meant that a possible drug transaction in progress.

Again, the officer did not observe any activity inside the Kia or outside the Kia to justify the ultimate stop. And, note further that in the case at bar, there was no traffic violation that reportedly occurred whereby the ultimate stop of the Kia could be justified. Compare the following list of only a few notable cases where traffic stops were upheld because traffic violations occurred:

- a.) See Rodriguez v. United States, 135 S.Ct. 1609 (2015), where the driver of the vehicle was stopped justifiably because his car veered slowly onto the shoulder of the highway, but held undue delay by police to obtain dog sniffers was unconstitutional.
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- b.) See Whren v. United States, 517 U.S. 806 (1996), where the driver of the vehicle was stopped justifiably because no turn signal was used and the car speeded off after stopping at stop sign.
- c.) See United States v. Stanfield, 109 F.3d 976 (4th Cir. 2005), where the driver was stopped justifiably for heavily tinted windows.
- d.) See State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (2005), where the car driver was stopped justifiably for failure to maintain a lane, but the Court held the stop was unduly prolonged and the motion to suppress granted by the circuit judge was upheld.
- e.) See State v. Provet, 405 S.C. 101, 747 S.E.2d 453 (2006), where the driver of a vehicle was justifiably stopped for following another vehicle too closely.
- f.) See State v. Morris, 395 S.C. 600, 720 S.E.2d 468 (2011), where the driver of a vehicle was justifiably stopped for following a truck too closely.
- g.) See State v. Butler, 353 S.C. 383, 577 S.E.2d 498 (2003), where the driver of a vehicle was justifiably stopped for a broken tail light and
- h.) See State v. Adams, 409 S.C. 641, 763 S.E.2d 341 (2012), where the driver of the vehicle was stopped justifiably for improper lane change.

5.) In the instant case, no traffic violations were reported to have occurred. Clearly, the observations of the Kia witnessed by the police did not rise to any reasonable suspicion 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. There have been cases where our courts have held that the initial traffic stops were illegal stops. For example, in Brendlin v. California, 551 U.S. 249 (2007), and Delaware v. Prouse, 440 U.S. 648 (1979), the Court agreed that stopping a motorist for license/registration checks without anything

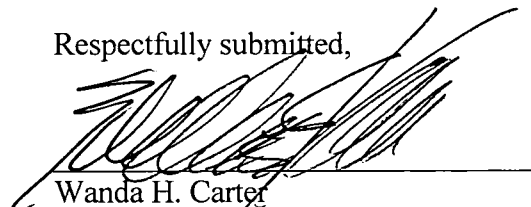
more would be unconstitutional. Compare also United States v. Brignoni-Ponce, 422 U.S. 873 (1975), where the Court held that stopping cars believed to contain undocumented persons would be unconstitutional. The reasonableness of the evidence presented in support of a car stop is the key in these cases.

6.) Here, the ultimate stop was illegal and as a result, this Court erred in upholding the trial judge's denial of appellant's motion to suppress the drugs seized after the illegal stop because there was a lack of reasonable evidence in existence to support any suspicion that criminal activity was afoot in the case.

CONCLUSION

Based on the foregoing points, counsel for appellant would request a rehearing with respect to this Court's decision regarding the legality of the ultimate stop of the Kia vehicle in this case.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

This 27th day of August, 2015.

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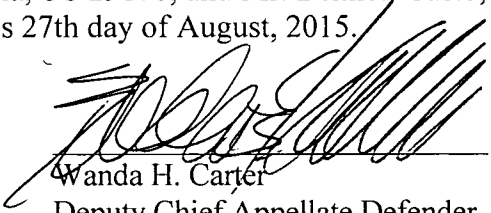
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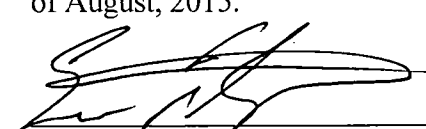
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, 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, and Mr. Bennett Casto, Esquire, at 407 West Main Street, Lexington, SC 29072, this 27th day of August, 2015.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 27th day
of August, 2015.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.