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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Lexington County

William P. Keesley, Circuit Court Judge

Opinion No. 2015-UP-417 (S.C. Ct. App. filed August 12, 2015)

13-GS-32-0967

THE STATE,

RESPONDENT,

V.

RAHEEM JAMAR BONHAM,

PETITIONER

APPELLATE CASE NO. 2015-002170

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was filed on August 27, 2015, but denied by the Court of Appeals on September 9, 2015.

QUESTION PRESENTED

The Court of Appeals erred in upholding the trial judge's denial of petitioner's motion to suppress drugs seized during a vehicle stop and search where the vehicle in question entered the driveway of a suspected drug house, remained there for two minutes only without parking, and then backed out of the driveway, and where no one exited the vehicle and no one exited the house, because such a scenario did not constitute reasonable suspicion that criminal activity was afoot.

STATEMENT OF THE CASE

Petitioner 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. Petitioner was sentenced to imprisonment for a period of one year. Bennett E. Casto represented petitioner at trial, and Assistant Solicitors Michael D. Ross and Gill Bell appeared on behalf of the state.

Petitioner appealed his conviction and sentence in the case, and on August 12, 2015, the South Carolina Court of Appeals issued an opinion affirming his conviction and sentence. See State v. Bonham, Unpublished Opinion No. 2015-UP-417 (S.C. Ct. App. August 12, 2015). App. 1-2. A petition for rehearing was filed on August 27, 2015. App. 3-10. On September 9, 2015, the South Carolina Court of Appeals issued an Order denying the petition for rehearing filed in the case. App 11. This petition appealing the South Carolina Court of Appeals' opinion in the case follows.

ARGUMENT

The Court of Appeals erred in upholding the trial judge's denial of petitioner's motion to suppress drugs seized during a vehicle stop and search where the vehicle in question entered the driveway of a suspected drug house, remained there for two minutes only without parking, and then backed out of the driveway, and where no one exited the vehicle and no one exited the house, because such a scenario did not constitute reasonable suspicion that criminal activity was afoot.

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. There were three occupants inside the Kia: the female driver, a male front seat passenger, i.e. petitioner, 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 petitioner. Tr. 190, l.15 – p.191, l.10, Tr. 197, l.7 –p. 199, l.22. Officer Finch stated that petitioner 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.

First, note that per Brendlin v. California, 551 U.S. 249 (2007), petitioner, 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 petitioner 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.

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 touchtone 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).

Here, seeing the Kia pull into the driveway of a what was believed to be a drug house per neighbors' complaints, and seeing the Kia sit for two minutes while seeing no one exit the car and 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 that criminal activity was afoot to justify stopping and searching the Kia and detaining he occupants inside the Kia upon the untenable belief that a drug transaction had occurred.

Our South Carolina Courts view police officers' observations of possible drug transactions as a key factor 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, which

meant that "unlike the scenario in Sprinkle[1], the record d[id] not reflect that the police were unable to observe [the defendant's] hands" and that the resulting assumption suggesting a drug transaction was in progress appeared confirmed. To the contrary, the officer in the instant case, like the officer in Sprinkle, could not see any activity suggesting that a drug transaction was in progress. 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. Note State v. Butler, 353 SC. 383, 577 S.E.2d 498 (2003), where the Court held that the officer lacked reasonable suspicion to conduct a pat down search of the passenger who was ordered out of the van per a traffic stop of the van where he did not see the passenger doing anything inside the van (driver gave a false name and smelled of alcohol), but wanted to investigate regarding the presence of danger therein nonetheless because there was no reasonable suspicion of danger emanating from the passenger that would have justified a pat down search, particularly since the officer admitted that he could "not see what Butler was doing inside the van." Also, compare the case of United States v. Stanfield, 109 F.3d 976 (4th Cir. 2005), where the driver was stopped justifiably for heavily tinted windows; but since the officers could not see

[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.

inside the vehicle, no assumptions were made regarding reasonable suspicion until the officers were able to see inside the vehicle by opening doors of the vehicle and seeing cocaine in plain sight.

Likewise, in the case at bar, the officers did not see or observe any actions from the occupants of the Kia that suggested that a drug transaction was percolating because they 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 tail lights stayed on and the Kia sat (not parked) in the driveway for two minutes and then 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 activity 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 was in progress.

Again, the officer did not observe any activity inside the Kia or outside the Kia that was tantamount to reasonable suspicion of criminal activity sufficient to justify the ultimate stop and search. By comparison, note the following cases where the question was whether reasonable suspicion existed to justify a vehicle stop and search. For example, in State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (2005), the car driver was stopped justifiably for failure to maintain a lane, but the Court held that there was no reasonable suspicion that criminal activity was afoot to support further detention of the driver and passenger after the officer gave the driver a ticket for driving without a license, bid them both good day, and walked away, because the purpose of the stop had

been conducted and concluded, and because the observation of nervousness, which was the officer's reason to return back to the vehicle again and ask to search the vehicle (therein yielding the presence of a kilo of heroin) did not constitute reasonable suspicion that some other crime was being committed. See also State v. Hewins, 409 S.C. 93, 760 S.E.2d 814 (2014), where the Court held that the continued detention of the occupants of the vehicle exceeded the scope of the stop (violation of making a left turn by using a non-turning lane) and the search that followed was unlawful where the officer who wrote the ticket called for the sniff dogs when the driver seemed nervous and gave quick answers because the purpose of the stop had been completed after the ticket had been written, and the police officer's use the driver's nervousness and quick answers as grounds to call for dog sniffers (crack cocaine was found in the vehicle ultimately) did not constitute reasonable suspicion that criminal activity was afoot. 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 the United States Supreme Court remanded on the issue of the officer's reasonable suspicion to detain the driver for a dog sniff test after the ticket was written when the purpose for the stop was completed because the officer did not articulate a reason for the stop that was "independently supported by individualized suspicion" that criminal activity had been afoot.

The case at bar is different from State v. Provet, 405 S.C. 101, 747 S.E.2d 453 (2006), and State v. Morris, 411 S.C. 571, 789 S.E.2d 854 (2915), where car searches were based on reasonable suspicions that criminal activity existed due to certain observations after the stops such as the smell of marijuana, and the sight of Philles Blunts, and air fresheners inside the vehicles, and inconsistent statements from the drivers. . None of the factors existed in the case at bar.

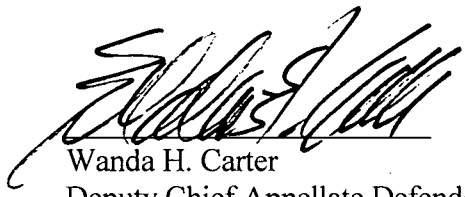
Reasonableness is measured in objective terms by examining the totality of the circumstances; and the test of whether reasonable suspicion exists is an objective assessment of the circumstances and the officer's subjective motivations are irrelevant. Ohio v. Robinette, 519 U.S. 33 (1996). The term "reasonable suspicion" requires a particularized and objective basis that would lead one to suspect another of criminal activity. Pichardo, citing to United States v. Cortez, 449 U.S. 411 (1981). The reasonableness of the evidence presented in support of a car stop is the key in these cases. In Delaware v. Prouse, 440 U.S. 648 (1979), the United States Supreme Court held that stopping a motorist for license/registration checks without anything more was unconstitutional. In United States v. Brignoni-Ponce, 422 U.S. 873 (1975), the United States Supreme Court held that stopping cars believed to contain undocumented persons was unconstitutional.

In the instant case, no traffic violations were reported to have occurred; and clearly, the observations of the Kia witnessed by the police prior to the stop were not tantamount to any reasonable suspicion that criminal activity (i.e. a drug transaction) was afoot; and therefore the stop, search, and seizure carried out by the police were illegal and unconstitutional actions in violation of petitioner's rights under the Fourth and Fourteenth Amendments. Thus, the Court of Appeals erred in upholding the trial judge's denial of petitioner's motion to suppress the drugs seized after the illegal stop and search of the vehicle in question in the case.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow full briefing on the above raised issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 9th day of November, 2015

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PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on 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 the S.C. Court of Appeals this 9th day of November, 2015.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 9th day
of November, 2015.

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