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March 18, 2016

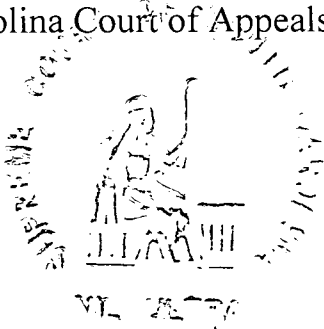
The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Donald M. Anderson
Lower Court Case No. 2011-GS-23-09939
Appellate Case No. 2014-001968

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.



Very truly yours,

CLERK

cc: Carmen Vaughn Ganjehsani, Esquire
Alan McCrory Wilson, Esquire
Laura Ruth Baer, Esquire

Susannah Rawl Cole, Esquire
Mary Williams Leddon, Esquire
William Walter Wilkins, III, Esquire

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Donald Marquice Anderson, Petitioner.

Appellate Case No. 2014-001968

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Greenville County
The Honorable G. Edward Welmaker, Circuit Court
Judge

Opinion No. 27609
Heard October 7, 2015 – Filed March 2, 2016

REVERSED

Carmen V. Ganjehsani, of Richardson, Plowden & Robinson, PA, and Appellate Defender Laura Ruth Baer, both of Columbia, for Petitioner.

Attorney General Alan M. Wilson, Assistant Attorney General Mary W. Leddon, and Assistant Attorney General Susannah Rawl Cole, all of Columbia, and W. Walter Wilkins, III, of Greenville, all for Respondent.

JUSTICE HEARN: Donald Marquice Anderson was walking in the vicinity of a drug raid when police officers located in the periphery of the search ordered him to the ground. Upon searching him, officers found crack cocaine, and Anderson was thereafter indicted for possession with intent to distribute crack cocaine. He moved to suppress the drugs, arguing the detention and subsequent pat-down were unlawful under the Fourth Amendment. The trial court denied his motion to suppress and, following a bench trial, found Anderson guilty as charged. The court of appeals affirmed in an unpublished opinion, finding the police had both reasonable suspicion to detain him and reasonable belief he was armed and dangerous to justify the pat-down. *State v. Anderson*, Op. No. 2014-UP-282 (S.C. Ct. App. filed July 9, 2014). We reverse.

FACTUAL/PROCEDURAL BACKGROUND

Detective Keith Cothran of the Greenville Police Department obtained a no-knock search warrant for a house on Dobbs Street (the Dobbs house). The warrant was founded on surveillance and observations by officers of drug activity in the home and in the surrounding area, including a successful purchase of crack cocaine by a confidential informant. During surveillance, officers learned that runners used a footpath to ferry drugs from the Dobbs house to interested buyers on Sullivan Street. Nevertheless, the search warrant included only the Dobbs house and its curtilage; the warrant did not include the footpath.

As a part of the effort in executing the search warrant, Detective Cothran instructed officers in the vice and narcotics unit of the Greenville SWAT team, including Detectives Kevin Hyatt and Gary Rhinehart, to secure and detain any person found on the footpath because the police department knew the footpath was being used to transport drugs.¹ The two detectives were located near the Dobbs house portion of the footpath and others were stationed at the end of the footpath by Sullivan Street.

During the execution of the search warrant, Detective Hyatt observed Anderson and a woman halfway down the footpath walking toward Sullivan Street away from Dobbs Street. Detective Hyatt and Detective Rhinehart were stationed behind Anderson and began walking towards him. When Anderson saw the officers at the Sullivan end of the footpath, he turned around and observed the other two detectives. Anderson and the woman then "veered to the right in a quick

¹ Because of safety concerns, Greenville Police SWAT used a distraction device at the time they executed the warrant.

manner" off the footpath.

Detective Hyatt drew his weapon and ran towards Anderson advising him to stop and get on the ground. Anderson immediately complied and was handcuffed. When Anderson stood up again, Detective Hyatt completed a pat-down of Anderson's outer clothing for safety reasons. In Anderson's front right pocket, Detective Hyatt felt a plastic bag and hard objects, which later tested positive for crack cocaine.

Anderson moved to suppress the crack cocaine found in his pocket on two grounds. First, he alleged the drugs were not found as part of a *Terry*² stop, but pursuant to a warrant executed for Dobbs Street and its curtilage. Therefore, Anderson was outside the bounds of the warrant. Second, even if it was a *Terry* stop, it was improper because there was no reasonable suspicion to stop him and there was no reasonable suspicion that he was armed. Detectives Cothran, Hyatt, Rhinehart, Brown, and Gault testified at the hearing. The trial court denied the motion, relying on *State v. Taylor*, 401 S.C. 104, 113, 736 S.E.2d 663, 667 (2013), finding this was a *Terry* stop and articulable reasons were elicited from testimony to show there was reasonable suspicion to stop and complete a pat-down pursuant to *Minnesota v. Dickerson*, 508 U.S. 366 (1993).³ During the trial, Anderson renewed his objection to the introduction of the crack cocaine. The State adduced no evidence connecting Anderson or the drugs found on him to the house on Dobbs Street.

Anderson testified in his own defense. He stated he was at his aunt's house hanging out on top of her car when he heard a "big boom," and believing it was a shooting, he thought he needed to get away. As he was reacting from the "big boom," he saw the police and believed he was safe. He further testified he continued to move once he saw the police because there was a kerosene tank in his

² *Terry v. Ohio*, 392 U.S. 1 (1968).

³ There is conflicting evidence regarding whether the detectives believed the footpath was included in the warrant. Detective Hyatt testified Detective Cothran advised him the footpath leading to Sullivan Street was part of the search warrant and told him to detain any subjects he encountered there. However, Detective Cothran testified the warrant did not include the footpath. We express concern with the inference that the officers detained Anderson under the mistaken belief it was within their authority pursuant to the warrant, and only afterwards attempted to claim it was a valid *Terry* stop; nevertheless, Anderson did not argue this issue on appeal and therefore it is not properly before us.

aunt's backyard and he worried if shots hit it, the tank might explode. He testified "I did not step foot in the [footpath], but I kind of moved towards the front, the front yard, so I can, you know what I'm saying, be clear of that gas jar."

The trial court ultimately found Anderson guilty as charged, and sentenced him to imprisonment for five years, suspended upon the service of ninety days with probation for forty months. Anderson appealed and the court of appeals affirmed in an unpublished opinion. *State v. Anderson*, Op. No. 2014-UP-282 (S.C. Ct. App. filed July 9, 2014). We granted certiorari.

ISSUE PRESENTED

Is there evidence in the record to support the trial court's finding that Detective Hyatt had reasonable suspicion to make an investigatory stop?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Wilson*, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001). In reviewing a challenge under the Fourth Amendment, the Court must affirm if there is any evidence to support the ruling. *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011). Accordingly, this Court reviews the trial court for clear error and will affirm if there is any evidence to support the ruling. *State v. Brockman*, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000).

LAW/ANALYSIS

Anderson argues the trial court erred in failing to suppress the evidence obtained because the officer did not have reasonable suspicion that Anderson was involved in criminal activity to justify an investigatory stop. We agree.

The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const. amend. IV. Evidence obtained in violation of the Fourth Amendment must be excluded from trial. *Mapp v. Ohio*, 367 U.S. 643, 648 (1961). The Fourth Amendment applies to all seizures of a person, including only a brief detention. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). Pursuant to *Terry*, a police officer with a reasonable suspicion based on articulable facts that a person is involved in criminal activity may stop, briefly detain, and question that person for investigative purposes, without treading upon his Fourth Amendment rights. *State v. Khingratsaphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002). Reasonable

suspicion requires a particularized and objective basis that would lead a person to suspect another of criminal activity. *United States v. Cortez*, 449 U.S. 411, 418 (1981). In determining whether reasonable suspicion exists, the totality of the circumstances must be considered. *Khingratsaiphon*, 352 S.C. at 69, 572 S.E.2d at 459. "While such a detention does not require probable cause, it does require something more than an 'inchoate and unparticularized suspicion or 'hunch.'" *United States v. Sprinkle*, 106 F.3d 613, 617 (4th Cir. 1997) (quoting *Terry*, 392 U.S. at 27). Therefore, in reviewing reasonable suspicion determinations, a court must look to the totality of the circumstances "to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2002).

We find the trial court's finding of reasonable suspicion is not borne out by the record. The State offers us no more than Anderson's proximity to criminal activity and his allegedly evasive behavior. Although never dispositive, we acknowledge that being in a high crime area can be a consideration in our analysis of the totality of the circumstances. *See Sprinkle*, 106 F.3d at 617 ("Although being seen in a high crime district carries no weight standing alone, an area's disposition toward criminal activity is an articulable fact.") (internal citations omitted); *but see United States v. Perrin*, 45 F.3d 869, 873 (4th Cir. 1995) ("Were we to treat the dangerousness of the neighborhood as an independent corroborating factor, we would be, in effect, holding a suspect accountable for factors wholly outside of his control."). We likewise appreciate that evasive conduct can become a factor in adjudging reasonable suspicion. *See Taylor*, 401 S.C. at 112, 736 S.E.2d at 667 (holding evasive conduct may be considered in the totality of the circumstances analysis for reasonable suspicion because an attempted evasion may inform an officer's appraisal of an encounter).

Examining these facts within the context of Anderson's seizure, we cannot agree the evidence supports the conclusion that the officers had a particularized and objective basis to suspect illegal activity that would justify the detention. It is undisputed Anderson was in a high crime area and near the home where a search warrant was being executed. This fact carries little weight here. The police were in the area for the express purpose of executing a search warrant on a discrete property—which did not include the footpath where the officers encountered Anderson. Officers did not see Anderson flee the property involved and did not recognize him as a suspect related to those crimes. Certainly being in a high crime area does not provide police officers carte blanche to stop any person they meet on the street. We acknowledge we are dealing with the totality of the circumstances. Nevertheless, even considering the situs with the fact that Anderson stepped off the

footpath after seeing the police, we find the circumstances here fail to support the finding of reasonable suspicion.

We remain ever mindful of the difficult and often dangerous situations officers encounter daily and acknowledge that we give great deference to their experience and expertise. Here, however, the facts amount to no more than baseless conjecture that a person in a high crime area must be engaged in illicit activity. A person's proximity to criminal activity, without more, cannot establish reasonable suspicion to detain that individual. Taken to its logical conclusion, the erosion of an individual's Fourth Amendment right would necessarily accompany his or her misfortune of living in an area plagued by crime. We decline to accept such a result.

CONCLUSION

Based on the foregoing, we reverse the court of appeals and hold the trial court erred in failing to suppress the evidence found as a result of Anderson's unconstitutional seizure.⁴

PLEICONES, C.J., BEATTY, KITTREDGE, JJ., and Acting Justice Jean H. Toal, concur.

⁴ Anderson also challenges the trial court's finding that Detective Hyatt had a reasonable belief that Anderson was armed and dangerous to justify a pat-down. Because we hold that the initial seizure was unconstitutional, we need not address the subsequent search.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Donald Marquice Anderson, Appellant.

Appellate Case No. 2012-212499

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2014-UP-282
Heard June 17, 2014 – Filed July 9, 2014

AFFIRMED

Appellate Defender Carmen Vaughn Ganjehsani,
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mary Shannon Williams, both of
Columbia, for Respondent.

PER CURIAM: The State indicted Donald Marquice Anderson for possession with intent to distribute cocaine base. Anderson moved to suppress the cocaine, arguing the detention and subsequent pat-down was unlawful under the Fourth Amendment. The trial court denied his motion after a pretrial hearing, and

following his bench trial, found him guilty as charged. On appeal, Anderson raises two issues to this court: (1) the police lacked reasonable suspicion to detain him and (2) the police did not have a reasonable belief that he was armed and dangerous to justify the pat-down. As to these two issues, we affirm.

Detective Keith Cothran of the Greenville Police Department obtained a search warrant for a house on 106 Dobbs Street based on its connection with drug transactions. At the suppression hearing, Det. Cothran testified drug "runners" used a footpath¹ near the house to sell drugs that came from 106 Dobbs. Based on his belief that the footpath was "associated with [the drug activity at] 106 Dobbs," Det. Cothran ordered officers "to secure and detain any persons located . . . [on] the [footpath]" while the search warrant was being executed.

Detectives Kevin Hyatt and Gary Rhinehart with the Greenville Police Department testified they were stationed at the footpath during the search and were ordered "to take control of any persons on the [footpath]" during the search of the house. According to Det. Hyatt, he saw Anderson and a woman "approximately half-way up the [footpath]" during the search. He claimed that when Anderson noticed the police stationed on the footpath, he "immediately veered to the right in a quick manner." Det. Rhinehart confirmed this, stating when Anderson noticed the officers, "he made an obvious gesture to divert his path from the way he was walking." Det. Hyatt ordered Anderson "to stop and get on the ground," and Det. Rhinehart handcuffed him. Det. Hyatt then performed a pat-down and found a plastic bag in Anderson's pocket containing crack cocaine.

Anderson asserted two grounds for suppressing the evidence at the pre-trial hearing. First, he argued Det. Cothran's order to Det's. Hyatt and Rhinehart that they seize any person on the footpath, apparently without suspicion of criminal activity, constituted "a warrantless search that required probable cause" because it "simply was not a *Terry*² stop." The trial court denied the motion on this ground, explicitly finding "that this was a *Terry* stop." We are unable to address the merits of the trial court's ruling on this argument, however, because it was not presented to this court on appeal. See Rule 208(b)(1)(B), SCACR ("[N]o point will be considered which is not set forth in the statement of the issues on appeal."); S.C.

¹ Det. Cothran, as well as the officers who testified at the hearing, referred to the footpath as "the cut."

² *Terry v. Ohio*, 392 U.S. 1 (1968).

Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct. App. 2008) ("[E]ven if an issue is preserved at the trial court level, it must still be properly raised and argued to the appellate court."). Instead, we are confined to addressing the issues appealed by Anderson: (1) whether the police had reasonable suspicion to detain him and (2) whether the police had a reasonable belief that he was armed and dangerous to justify the pat-down.

We find there is evidence to support the trial court's finding that Det. Hyatt had reasonable suspicion to justify the stop. *See State v. Taylor*, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) (stating "[a] trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence"); *State v. Corley*, 383 S.C. 232, 240, 679 S.E.2d 187, 191 (Ct. App. 2009), *aff'd as modified*, 392 S.C. 125, 708 S.E.2d 217 (2011) (stating an officer may detain a person "when [he] has a reasonable suspicion supported by articulable facts . . . that the person is involved in criminal activity"). Det. Hyatt possessed personal knowledge of the high-crime area in which Anderson was detained and its association with drug traffic. *See United States v. Lender*, 985 F.2d 151, 154 (4th Cir. 1993) (stating "an area's propensity toward criminal activity is something an officer may consider" in determining the existence of reasonable suspicion, which includes personal knowledge that an area "ha[s] a large amount of drug traffic"). Specifically, he knew the footpath served as a thoroughfare for drug "runners" and was associated with the known drug activity at 106 Dobbs. *See Corley*, 383 S.C. at 242, 679 S.E.2d at 192 (relying on defendant being at a "known drug house where several cases had been made and search warrants executed" to find reasonable suspicion existed). Additionally, Det. Rhinehart testified Anderson was "coming from the area of the search warrant," and when he noticed the officers, he made a suspicious movement "to divert his path." *See Taylor*, 401 S.C. at 110, 736 S.E.2d at 666 ("Evasive conduct, although stopping short of headlong flight, may inform an officer's appraisal of a street corner encounter." (quoting *Lender*, 985 F.2d at 154)). Considering this evidence in combination, we find the evidence supports the trial court's finding that reasonable suspicion existed to detain Anderson. *See State v. Khingratsaiphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) ("In determining whether reasonable suspicion exists, 'the totality of the circumstances—the whole picture—'must be considered." (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695 (1981))).

Anderson cites *Bailey v. United States*, 133 S. Ct. 1031 (2013), to argue his detention was unlawful because the footpath was outside the scope of the search warrant. We find *Bailey* inapplicable. In that case, the Supreme Court considered the constitutionality of a detention incident to the execution of a search warrant and

explicitly declined to address whether the detention was justified by the existence of reasonable suspicion under *Terry*. See 133 S. Ct. at 1043 (stating the Court "expresses no view" as to whether "stopping [the defendant] was lawful under *Terry*").

We also find evidence to support the trial court's finding that Det. Hyatt had a reasonable belief that Anderson was armed and dangerous to justify the pat-down. See *Khingratsaiphon*, 352 S.C. at 69, 572 S.E.2d at 459 (stating an officer may conduct a pat-down for weapons when "the officer has reason to believe the person is armed and dangerous"). Our supreme court has recognized that because of the "indisputable nexus between drugs and guns," when an officer has reasonable suspicion that drugs are present, "there is an appropriate level of suspicion of criminal activity and apprehension of danger" to justify a pat-down of an individual. *State v. Banda*, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006). Given (1) "the frequent association between drugs and guns," 371 S.C. at 254, 639 S.E.2d at 41, (2) the fact that the search warrant was being executed when the pat-down occurred, and (3) the officers' belief that the occupants of 106 Dobbs possessed weapons, we find it was reasonable for Det. Hyatt to conduct the pat-down. Additionally, we rely on Det. Hyatt's testimony that he performed the pat-down in search of weapons, not "narcotics or anything [else]."

Anderson asserts the pat-down was unlawful because at the hearing, Det. Hyatt agreed that he "didn't see anything that looked like a weapon on [Anderson]" when he ordered him to the ground. As expressed by our supreme court, "[i]n assessing whether a suspect is armed and dangerous, [t]he officer need not be absolutely certain that the individual is armed." *Khingratsaiphon*, 352 S.C. at 69-70, 572 S.E.2d at 459 (quoting *Terry*, 392 U.S. at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909). Instead, the test is whether an officer can "point to specific and articulable facts which, taken together with rational inferences from those facts," create a reasonable "belief that his safety or that of others was in danger." *Id.* Based on our above analysis, we find the pat-down was justified by "specific and articulable facts" implicating Det. Hyatt's safety, as well as the safety of the other officers. *Id.*

AFFIRMED.

FEW, C.J., and SHORT and GEATHERS, JJ., concur.