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May 18, 2012

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S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Clarence Robinson, #335542 v. State of South Carolina
2010-CP-10-1101

Dear Mr. Shearouse:

I am in receipt of the Petition for Writ of Certiorari in the above-captioned case which has been filed pursuant to the procedure set forth in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Please accept this letter in lieu of a formal return. The Respondent takes no position as to whether the Petition should be granted or not.

If a formal return is required, the Respondent requests an opportunity to brief the issues as requested by the Court.

If there are any questions or comments, please feel free to contact me.

Sincerely,

Julie Kate Keeney
Staff Attorney

JKK/erd

cc: Lanelle Cantey Durant, Esquire
Victim Services

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ISSUE PRESENTED

I.

The trial judge properly denied Appellant's suppression motion because the police had reasonable suspicion to make the investigatory stop. Furthermore, the search of the vehicle was proper under the search incident to arrest exception, automobile exception, and inventory exception to the warrant requirement.

STATEMENT OF THE CASE

Respondent substantially agrees with Appellant's Statement of the Case.

STATEMENT OF FACTS

On February 26, 2008, Appellant and three other individuals robbed Benders Bar and Grill (“bar”) at gunpoint. One masked assailant announced he wanted to shoot someone and forced the manager to the ground. (App. 194.) One of the assailants pulled a female victim into the bar, took her money, and grabbed her private parts. (App. 111-115.)

At trial, the manager testified he recognized his assailant’s shoes because he owned the same type. After the robbers left, the manager immediately called the police. (App. 199.) The police arrived within two to three minutes and took the manager to look at the same suspects three to four miles away. The manager testified that the drive from the bar to the location where he identified his assailant’s shoes was approximately ten minutes. (App. 218.)

Another employee partially avoided the armed, masked robbers by escaping through the back door as the robbers entered the bar. (App. 147.) She and a patron got into the patron’s truck and called 911. When the patron went back inside the bar to check on the occupants, the employee heard a vehicle leave. (App. 151-152.)

Officer Jenny Danik responded to the bar at 9:51 p.m. - within 31 seconds of being dispatched and two minutes after the robbery. She learned that the assailants were four black males with firearms, who were approximately 20 years old and wore black clothing. Thereafter, Officer Danik dispatched the description over the police radio. (App. 160.)

Officer John Bonanni, Charleston City P.D., saw a vehicle parked with its lights off against a fence in the area of James Island Christian Church (“church-school”) on 12

Sawgrass Road.¹ (App. 180.) The church-school was unoccupied and the parking lot was dark. Officer Bonanni thought, under the circumstances, he would check out the vehicle. At first, he thought a couple was in the car, but when he drove through the parking lot and put his lights on, he came upon four black males in the vehicle. (App. 180-181.) He parked behind the vehicle. (App. 183.) He called 911 and gave a description of the license plate at 10:06 p.m. (App. 180; 182.) He knew four black males robbed a bar nearby because he heard the broadcast over the police radio. (App. 181.) By his estimate, the church-school was eight to eleven miles from the bar. He requested Appellant's driver's license and called for back-up. (App. 180-182.) Officer Bonanni testified that when he checked Appellant's license for warrants, it came back clean. (App. 186.) However, he kept Appellant's license because he did not want to do anything until his back-up arrived. (App. 186.)

Within two to three minutes of being called, the back-up officers arrived. (App. 182.) Officer Ray, one of the back-up officers, testified he arrived at the church-school at 10:09 p.m., approximately twenty minutes after the robbery. At trial, Officer Ray estimated it was about three miles from the bar to the church-school. (App. 348.) Officer Ray also heard the description of the suspects over the police radio.

In addition, Officer Ray testified that the four men became really nervous and silent when he and his partner approached the vehicle. All four men looked straight forward. Officer Ray removed Appellant, who was in the driver's seat, from the car and patted him down. (App. 235.) Counsel objected to the pat down on the ground that the police lacked articulable suspicion to stop the vehicle. (App. 236.)

In camera, Officer Ray testified that when Appellant's co-defendant David Lee

¹ 12 Sawgrass Road is both a church and a church school.

Brown got out of the rear passenger seat for a pat down search, the police saw, in plain view, a silver-black .22 caliber revolver with live ammunition on the floorboard. The gun had an obliterated serial number, and in the officer's experience that meant it was stolen. Nobody claimed ownership of the gun. (App. 239-240.) According to Officer Ray, the officers detained the four individuals while he went back to the vehicle and retrieved the gun. At that point, all four individuals were arrested for the unlawful carrying and obliterated serial number. (App. 240.) Thereafter, the police searched the vehicle. (App. 294.) Once they were arrested, they did not have access to the vehicle according to Officer Ray. (App. 299.)

However, Officer Christopher Koegler testified that when he arrived at the church-school, Appellant and the three other individuals were being detained at the rear of the vehicle. (App. 513.) According to Officer Koegler, Appellant's co-defendant Colin Boston was leaning against the back of the vehicle during the search. Boston told the officers that the car belonged to him, but he did not have a key to the trunk. As Officer Koegler's partner searched the interior of the vehicle, Officer Koegler stood back and made sure the four men did not go anywhere.

During the search of the interior of the car, the officers found cocaine in a seat pocket, a pair of black gloves on the rear floorboard, a yellow Nike brand knit hat by the rear driver's seat, and a piece of red cloth tied into a handkerchief in the front console. (App. 243; App. 304.)

Moreover, Officer Koegler testified that every time his partner touched the passenger side backseat, Boston turned his head extremely quickly in order to see what was going on, which made the officers suspicious of that area. (App. 514.) At that point,

the officers noticed a three inch gap in the passenger side backseat. (App. 247). They slightly pulled on the seat and saw three handguns in the trunk area. (App. 243; App. 331.) Officer Ray testified that he could have grabbed the guns, but he did not want to move the guns at that point. (App. 341.) Instead, he called a locksmith to open the trunk. (App. 248.)

In addition, the officers found a black hooded sweatshirt, two pairs of black gloves, a pair of clear latex gloves, a black and white knit hat, a black knit hat, a pair of red and black Nike shoes, and a piece of gray cloth tied into a handkerchief in the trunk of the car. (App. 294.) Eventually, the car was towed. (App. 337.)

ARGUMENT

I.

The trial judge properly denied Appellant's suppression motion because the police had reasonable suspicion to make the investigatory stop. Furthermore, the search of the vehicle was proper under the search incident to arrest exception, automobile exception, and inventory exception to the warrant requirement.

Appellant contends that the trial court should have suppressed the evidence found as a result of the stop because the police did not have reasonable suspicion to detain Appellant and the three other robbers. Furthermore, Appellant argues that the "search incident to arrest exceeded the scope of a search incident to arrest for the automobile exception." (BOA pg. 13.)

However, because the police had reasonable suspicion that criminal activity was afoot, the investigatory detention was justified. Moreover, the police did not need a warrant to search the car because of the following reasons: 1) under the search incident to arrest exception, the police had a reasonable belief that the vehicle contained evidence of the offense of the arrest; 2) under the automobile exception, the police had probable cause to believe the vehicle contained contraband and; 3) under the inventory exception, the police would have inevitably discovered the evidence during an inventory check. Thus, Appellant's conviction and sentence should be affirmed.

Standard of Review

In Fourth Amendment search and seizure cases, the appellate 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)(emphasis added). "[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 than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

General Fourth Amendment Law

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, 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) However, “[t]he purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but ‘to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.’” United States v. Mendenhall, 446 U.S. 544, 553-554 (1980) (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976))

Generally, police must have a warrant in order to conduct a search. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007) However, a warrantless search is proper under the Fourth Amendment if it falls within one of the exceptions to the warrant requirement. State v. Moore, 377 S.C. 299, 308-309, 659 S.E.2d 256, 261 (Ct. App. 2008). “These exceptions include: (1) search incident to a lawful arrest; (2) ‘hot pursuit’; (3) stop and frisk; (4) automobile exception; (5) ‘plain view’ doctrine; (6) consent; and (7) abandonment.” Weaver, 361 S.C. 73, 81, 659 S.E.2d 786, 790 (Ct. App. 2004) Furthermore, if police are following their standard procedures, they can inventory impounded property without obtaining a warrant. State v. Brown, 389 S.C. 473, 483-84, 698 S.E.2d 811, 817 (2010)

A. Reasonable Suspicion

Appellant contends that Officer Bonanni should have released Appellant when Appellant's license and the car tag came back clean because there was no evidence of criminal activity. However, looking at the totality of the circumstances, the investigatory detention was proper because the officer had a reasonable suspicion that criminal activity was afoot. Thus, the back-up officers' pat-down of Appellant and the three other individuals was justified.

In United States v. Weaver the Fourth Circuit advised the following:

The Supreme Court has recognized three distinct types of police-citizen interactions: (1) arrest, which must be supported by probable cause; (2) brief investigatory stops, which must be supported by reasonable articulable suspicion; and (3) brief encounters between police and citizens, which require no objective justification.

282 F.3d 302, 309 (4th Cir. 2002).

Thus, "[t]here is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked but may refuse to cooperate and go on his way." Terry v. Ohio, 392 U.S. 1, 34 (1968) (White, J., concurring; accord State v. Foster, 269 S.C. 373, 237 S.E.2d 589, 591-92 (1977) (quoting Terry and recognizing when a law enforcement officer asks a citizen on the street questions, the Fourth Amendment is not called into play).

However, a police officer may elevate a "police-citizen encounter" into an investigatory stop or detention if the officer has a "reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." United States v. Sokolow, 490 U.S. 1, 7 (1989) (quoting Terry, 392 U.S. at 30);

see State v. Blassingame, 338 S.C. 240, 525 S.E.2d 535, 539 (Ct. App. 1999) (“A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.”).

Reasonable suspicion is something more than an “inchoate and unparticularized suspicion” or “hunch.” Terry, 392 U.S. 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.; State v. Burton, 349 S.C. 430, 562 S.E.2d 668, 672 (Ct. App. 2002), rev'd on other grounds, 356 S.C. 259, 589 S.E.2d 6 (2003).

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); Sokolow, 490 U.S. at 8 (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 (quoting United States v. Arvizu, 534 U.S. 266, 277–78 (2002))).

Moreover, if the police have a reasonable suspicion that an occupant of a vehicle is involved in criminal activity, the police can stop the vehicle and briefly detain and question the occupant. State v. Lesley, 326 S.C. 641, 643, 486 S.E.2d 276, 277 (1997). Once an officer has detained an individual based on a reasonable articulable suspicion, the officer is permitted to use whatever steps are reasonably necessary to effectuate the detention, ensure officer safety, and maintain the status quo throughout the course of the

detention. See United States v. Hensley, 469 U.S. 221, 235 (1985) (“When the Covington officers stopped Hensley, they were authorized to take such steps as were reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.”); see also Adams v. Williams, 407 U.S. 143, 145-146 (1972) (“The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, [Terry] recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.”) (citations omitted).

Additionally, “[t]he police may also order an occupant out of the vehicle and, if the exercise of reasonable caution so warrants, frisk the occupant for weapons.” 326 S.C. at 644, 486 S.E.2d at 277.

Moreover, it is clear from the facts of Terry and State v Culbreath.² that the reasonable and articulable suspicion was met in this case. See Terry, 392 U.S. at 5-7, 30 (where the plainclothes officer observed wandering mid-afternoon window shoppers who “didn’t look right . . . and when the officer asked the shoppers for their names he got mumbled responses. At that point, the officer did an investigatory stop and patted down the individuals. The Supreme Court held that the officer had a reasonable and articulable suspicion to conduct the pat down); see also Culbreath, 300 S.C. at 233-37, 387 S.E.2d at 256-57 (where the officer investigated an occupied car parked at a residence for a lengthy

² 300 S.C. 232, 387 S.E.2d 255 (1990) (abrogated on other grounds by Horton v. California, 496 U.S. 128, 130 (1990).

amount of time during the nighttime, and the owner of the residence did not know the occupant of the car. When the officer approached the car, the defendant responded aggressively. Our Supreme Court concluded the officer had a reasonable basis to suspect that criminal activity was afoot to justify detention and subsequently seize the cocaine found in plain view).

In the case at hand, Officer Bonanni only needed reasonable suspicion that criminal activity was afoot because it was merely an investigatory stop, not an arrest. See Foster, 269 S.C. at 378, 237 S.E.2d at 591 (“It is recognized that the police may briefly detain and question a person upon a reasonable suspicion, short of probable cause for arrest, that he is involved in criminal activity.”); see also United States v. Elston, 479 F.3d 314, 319 (4th Cir. 2007) (quoting United States v. Leshuk, 65 F.3d 1105, 1109 (4th Cir. 1995); (“We have expressly recognized that ‘the perception that one is not free to leave is insufficient to convert a Terry stop into an arrest. A brief but complete restraint of liberty is valid under Terry.’”).

Moreover, the trial judge found Officer Bonanni articulated facts supporting his investigation, which included the following: 1) he noticed a suspiciously parked car in a closed, unoccupied, and darkened church-school parking lot; 2) the car was behind a fence with its lights off; 3) the car had no reason to be within the fence considering the fact that the church-school was closed and unoccupied especially at that time of night; 4) the area where the car was parked was not readily open to the public, nor a place that someone would simply have pulled into or parked at with their lights off; 5) the police were looking for four black males in their twenties, who robbed a bar within 20 minutes of the officer’s initial encounter with the vehicle and; 6) the bar was within a close

proximity of the church-school.

Because Officer Bonanni's suspicions were further aroused when he approached the vehicle and realized the occupants matched the description of the robbers, he was entitled to prolong the scope of the detention. See Culbreath, 300 S.C. at 235, 387 S.E.2d at 257 ("If the officer's suspicions are confirmed or are further aroused, the stop may be prolonged and the scope enlarged as required by the circumstances.") (citations omitted). Moreover, it would have been poor police work if Officer Bonanni ignored the situation and failed to investigate further. See Terry, 392 U.S. at 23.

Furthermore, Officer Bonanni justifiably waited for back-up to arrive before he returned Appellant's license.³ See United States v. Boone, 2012 WL 874832 at *6 (W.D.N.C. March 8, 2012) (holding the initial officer properly waited for back-up to arrive before a Terry frisk was conducted because of safety concerns). Here, Officer Bonanni suspected the four individuals were armed and dangerous; therefore, it would be unreasonable to require him to return Appellant's license before back-up arrived. Furthermore, the scope of the detention was not unjustifiably prolonged because the back-up officers arrived within two to three minutes of Officer's Bonanni's initial stop. (App. 182.)

In addition, because reasonable suspicion existed to justify Officer Bonanni's investigative stop, the back-up officers' Terry frisk of Appellant and the three other individuals was justified. See Boone, 2012 WL 874832 at *6 ("Once reasonable suspicion exists to justify an investigative stop, an officer may conduct a limited pat-down for officer safety."). Moreover, in this case, the back-up officers' pat down of the

³At trial, Officer Bonanni testified after he ran Appellant's license for warrants, he did not do anything until his backup arrived. However, Officer Ray testified that Officer Bonanni was talking to Appellant and the other individuals when Officer Ray arrived at the scene.

four robbers was part of the initial investigative stop and did not require a separate basis for reasonable suspicion. See Id. (holding that the back-up officer's Terry frisk of the defendant "was part of the investigative stop and therefore did not constitute a second seizure requiring a separate basis for reasonable suspicion.").

In summary, when one looks at the totality of the circumstances, Officer Bonanni had reasonable suspicion that criminal activity was afoot; therefore, the investigatory detention was justified.

B. Plain View

Because the Terry frisk was justified, the police properly seized the gun they saw in plain view. When the police removed one of the occupants from the car to conduct the Terry frisk, they saw a handgun, in plain view, with no serial number and ammunition on the floorboard of the car. (App. 239.) At that point, the police arrested Appellant and the three other occupants for the unlawfully carrying and the obliterated serial number.

"Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence." State v. Beckham, 334 S.C. 302, 317, 513 S.E.2d 606, 613 (1999). In other words, "[i]n order for evidence to be seized under the plain view exception, three things must be shown: (1) the initial intrusion which afforded the authorities the plain view was lawful; (2) the discovery of the evidence was inadvertent; and (3) the incriminating nature of the evidence was immediately apparent to the seizing authorities." Id.

Because the initial intrusion was lawful, the discovery of the gun was inadvertent, and the incriminating nature of the gun was immediately apparent, the seizure of the

handgun was proper.

C. Search Incident to Arrest

The search of the vehicle was proper under search incident to arrest exception to the warrant requirement because the police had a reasonable belief that the car contained evidence of the offense of the arrest. Appellant contends that the search incident to arrest exceeded the scope of the search incident to arrest exception because Appellant and the three other occupants were out of the car and handcuffed when the officers searched the car after finding the gun. However, because the officers had a reasonable belief that the vehicle contained evidence of the offense of the arrest, the search incident to arrest was proper.

In Arizona v. Gant, the Supreme Court held that the search of the defendant's vehicle was not proper under the search incident to arrest exception. 556 U.S. 332, 351 (2009). The police arrested the defendant for driving with a suspended license and placed the defendant in the back of the patrol car. Id. at 336. Thereafter, the police searched the car and found a gun and a bag of cocaine. Id. The Court determined that the defendant did not have the ability to access the vehicle at the time of the search. Id. at 344. Moreover, because the defendant was arrested for driving with a suspended license, the officers could not have expected to find evidence concerning the offense of the arrest in the vehicle. Id.

In Brown, this Court held that the search incident to arrest exception did not apply. 389 S.C. at 481, 698 S.E.2d at 815. The police officer saw the defendant in a car with what appeared to be a beer can. Id. at 478, 698 S.E.2d at 814. The officer pulled the car over and arrested the defendant for an open container violation. Id. While the

defendant was handcuffed and placed in the patrol car, the officer returned to the car to talk to the driver. Id. He searched a duffel bag and found cocaine inside a Fritos bag. Id. The officer testified that the police do not take beer cans in evidence. Id. Moreover, this Court reiterated the rule in Gant:

Under the search incident to arrest exception, if the arrest is supported by probable cause, police officers may search an arrestee's person and the area within his or her immediate control for weapons and destructible evidence without first obtaining a search warrant. However, this doctrine does not allow law enforcement officers to conduct a warrantless search of an arrestee's automobile after the arrestee has been handcuffed or otherwise prevented from regaining access to the car, unless it is reasonable to believe (1) the arrestee might access the vehicle at the time of the search, **or (2) that the vehicle contains evidence of the offense of the arrest.**

Id. at 480, 698 S.E.2d at 815 (citations omitted) (emphasis added).

Applying the rule set forth in Gant to the facts in Brown, this court reasoned that the first Gant exception did not apply because it was clear that the defendant was handcuffed and securely placed in the patrol car when the officer searched the duffel bag. Id. at 481, 698 S.E.2d at 815. Moreover, this Court reasoned that the second Gant exception did not apply because the officer was not looking for evidence for the offense of the arrest. Id. The defendant told the officer he did not have any more beer in the car. Id. Additionally, the officer testified that they do not normally take beer into evidence for open container violations. Id. Therefore, this Court concluded “[t]here was no evidence presented that Officer Williams had a reasonable belief that the duffel bag or Frito bag held further evidence of the open container violation.” Id.

Although the first Gant exception probably does not apply in this case because the suspects were already handcuffed when the police conducted the search, the second Gant

exception does apply in this case.⁴ The facts in Gant are easily distinguishable from the facts in this case. Unlike the police officers in Gant, the police officers in this case had a reasonable belief that the vehicle contained evidence of the offense of the arrest. Here, the police officers saw, in plain view, a gun without a serial number on the floorboard of the car. Because no one claimed ownership of the gun, the police arrested all four suspects for the unlawful carrying and the obliterated serial number. Furthermore, Officer Ray testified, in his experience, a gun without a serial number usually meant that it was stolen.

Thus, it would not be unreasonable for the police to suspect the car contained more, potentially stolen, guns with obliterated serial numbers. See United States v. Vinton, 594 F.3d 14, 25-26 (D.C.C. 2010) (“Vinton was arrested for the unlawful possession of a weapon, an offense that resembles narcotics-possession offenses far more closely than it resembles a traffic violation. Indeed, it is difficult to imagine a principled basis for distinguishing the possession of narcotics from the possession of an unlawful weapon, where an arrest for the former makes it reasonable to believe additional narcotics remain in the car, but an arrest for the latter does not make it reasonable to believe additional weapons are in the car. In both cases, the defendant has been caught with a type of contraband sufficiently small to be hidden throughout a car and frequently possessed in multiple quantities.); see also United States v. Leak, 2010 WL 1418227 at *5 (W.D.N.C. April 5, 2010).

⁴ It is not entirely clear from the record where the four suspects were located during the time of the search of the vehicle. Officer Koegler testified that Appellant’s co-defendant Colin Boston was leaning against the back of the vehicle while the officers searched the vehicle. (App. 512-513.) However, Officer Ray testified that the four suspects were handcuffed and did not have access to the car during the time of the search. (App. 295.)

Moreover, the facts in Brown are easily distinguishable from the facts in this case. Unlike the police officer's testimony in Brown, the police officer's testimony in this case clearly stated that the officers were looking for more weapons and narcotics when they conducted the search.⁵ (App. 305.) Furthermore, in contrast to the beer can in Brown, guns without serial numbers are taken into evidence.

Thus, the officer's were justified in searching the area where the gun was found and all other areas within the passengers' control. Moreover, Boston jerked his head back every time the police touched the passenger side backseat, which raised the officers' suspicions. Thereafter, the police noticed a three inch gap in the passenger side back seat, where one of the individuals could have easily hidden a gun. When the police pulled on the seat, they looked down and saw three guns.

In summary, the police had a reasonable belief the car contained evidence of the offense of the arrest and therefore did not need a warrant to search the vehicle under the search incident to arrest exception.

D. Automobile Exception

The search of the vehicle was proper under the automobile exception to the warrant requirement because the police had probable cause to believe the vehicle contained contraband. Furthermore, the trial judge made a finding that the police had probable cause to believe the vehicle contained contraband. (App. 312-313.)

“Pursuant to the automobile exception, if there is probable cause to search a vehicle, a warrant is not necessary so long as the search is based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained.”

⁵ When the officers searched the area where the initial gun was found, they found cocaine in the pocket of the seat. (App. 304-305.)

Weaver, 374 S.C. at 320, 649 S.E.2d at 482. Moreover, “[t]he automobile exception does not contain a separate exigency requirement. If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more.” Id. (internal citations omitted). Furthermore, our Supreme Court advised the following:

[I]t is no answer to say the police could have obtained a search warrant, for the relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. The justification to conduct such a warrantless search does not vanish once the car has been immobilized.

Id. at 321, 649 S.E.2d at 482.

Here, the police had probable cause to believe the vehicle contained contraband. First, the car was suspiciously parked in a closed church-school parking lot. Second, the four occupants of the car matched the general description of the robbers. Third, the robbery occurred within twenty minutes of the initial investigatory stop. Fourth, the robbery occurred within a close proximity of the church-school. Fifth, the police officers saw a gun, in plain view, with an obliterated serial number located on the floorboard. Sixth, Boston defendant jerked his head suspiciously every time the police touched the passenger side back seat. Seventh, the police noticed a three inch gap, where they saw guns located in the trunk. Under these circumstances, the police had probable cause to believe the vehicle contained contraband.

Thus, the search of the vehicle was proper under the automobile exception.

E. Inevitable Discovery/Inventory Exception

The exclusionary rule does not apply because the incriminating evidence found in the trunk would have been inevitably discovered under the inventory exception. See

Brown, 389 S.C. 483, 698 S.E.2d 817 (“[i]f the police are following standard procedures, they may inventory impounded property, including closed containers, to protect an owner’s property while it is in police custody.”) (citation omitted).

In Brown, this Court held the inevitable discovery and inventory exception did not apply. The State failed to prove that the “duffel bag or car would have been taken into police custody after Brown and the driver were arrested.” Id. at 484, 698 S.E.2d at 817. Furthermore, this Court explained that because the police failed to testify regarding the standard procedures used during an inventory search, the inevitable discovery and inventory exception did not apply.

Unlike the testimony in Brown the testimony in this case clearly sets forth the standard procedures for inventory searches. (App. 293, 295, 301-305.) In camera, Officer Ray testified that during normal inventory searches, the police would search anywhere in the interior of the vehicle that was within the reach of the passengers. (App. 302.) In addition, Officer Ray testified that he conducted this search for inventory purposes and to search for further contraband.

In summary, the evidence found in the vehicle would have been inevitably discovered during the inventory search.

CONCLUSION

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

Respectfully submitted,

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May 18, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

CLARENCE ROBINSON,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.


PROOF OF SERVICE

I, Ellen R. DuBois, certify that I served the Brief of Respondent on Appellant by depositing two copies 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 18th day of May, 2012.



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