STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable J. Cordell Maddox, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DETRICK L. STENHOUSE,

APPELLANT

APPELLATE CASE NO. 2016-000154

INITIAL BRIEF OF APPELLANT

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2 Sikes v. State, 324 S.C. 28, 448 S.E.2d 560 (1994).

STATEMENT OF THE CASE

Appellant Detrick L. Stenhouse was convicted of possession of a pistol by a person convicted of a violent crime per jury trial held during the January 2016 term of the Greenville County General Sessions Court before Judge J. Cordell Maddox, Junior. Appellant was sentenced to imprisonment for a period of four years. William Grove represented appellant at trial, and Assistant Solicitor Barbara Tiffin appeared on behalf of the state.

Appellant appealed his trial court conviction and sentence. This appeal follows.

ARGUMENT

The trial judge erred in denying appellant's motion to suppress the gun seized by police following a search of his vehicle because there was no probable cause for the search and the fishing expedition[3] that followed the traffic stop, which morphed into an extended detention that lasted well beyond the scope and purpose of the stop in violation of the Fourth Amendment.

The case at bar consisted of a total of one witness: Police Officer Ryan Herron. Backup Officer Riley Patterson was dispatched to the scene, but unavailable to testify at trial. Officer Herron testified at the in camera pre-trial hearing per appellant's motion to suppress the gun found in the vehicle on the ground that the police conducted an illegal search and seizure. At the close of this pre-trial hearing, again note that Officer Herron was the sole witness presented on behalf of the state's case in chief at trial. Appellant did not testify at trial. Also, no defense witnesses testified at trial.

During the in camera hearing held per counsel's motion to suppress, Officer Herron described the traffic stop as follows:

> 1.) At 5:00 am on July 24, 2011, Officer Herron was patrolling in Greenville County (City of Mauldin on North Main Street) when he encountered a gold colored vehicle traveling 54 mph in a 40 mph zone and saw the driver of the vehicle turn without a signal into the Pumper parking lot. At that point, Officer Herron Ryan followed and initiated a traffic stop. Tr. 23, l. 7 – Tr. 24, l. 19.
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> 2.) Officer Herron approached the car and asked for a driver's license and registration and after that he saw appellant's left hand reaching down towards floor. Nonetheless, a report was issued verifying that the driver was appellant and that appellant was the registered owner of the vehicle. Tr. 25 lines 12 – 25.

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[3] Sikes v. State, 324 S.C. 28, 448 S.E.2d 560 (1994).

3.) Appellant advised Officer Herron that his turn signal did not work. Tr. 26, lines 7-8.

4.) Officer Herron noticed that appellant was wearing boxers only and that he (appellant) had reached under the floorboard of the vehicle; and as a result, Officer Heron became concerned about that presence of a firearm. Tr. 26, l. 11-16.

5.) Also, Officer Herron noticed that the passenger, who was riding in the front seat, provided identification, but was perspiring and acting nervous. Tr. 26, l. 19 – Tr. 27, l. 11.

6.) Officer Herron then walked to the rear of appellant's vehicle, and saw a bulge in the passenger's right pocket, but he didn't see either of them reach for anything. Tr. 27, l. 17-24.

7.) Officer Herron decided to radio in for back-up. Tr. 27, l. 23-24.

8.) When back-up Officer Riley Patterson arrived, Officer Ryan frisked the passenger for weapons and found none. The "bulge" was a "rag in his pocket." Nonetheless, the passenger was placed under arrest. Tr. 29, lines 4 -11; Tr. 31, l. 15-17.

9.) Meanwhile, Officer Riley ordered appellant to step out of the car and asked appellant if a gun was inside the car, after which time appellant responded that he "did not know." Tr. 30, l. 7 – p. 31, l. 1.

10.) Then Officer Herron "frisked" appellant's vehicle and found a gun in "rear of the driver's seat". Tr. 31, l. 15 – p. 33, l. 24. Appellant was arrested thereafter. Tr. 33, l. 25 – Tr. 34, l. 4.

Defense counsel argued that there was no probable cause to search the vehicle. Tr. 62, l. 13 – p. 63, l. 2. The trial judge denied the motion to suppress. Tr. 61, l. 8 – p. 62, l. 3. Officer Hereron repeated his testimony before the jury and then the state rested its case immediately thereafter. Tr. 109, l. 2 – Tr. 143, l. 8; Tr. 149, l. 3 – p. 150, l. 5.

The temporary detention of an individual by police during an automobile stop, even if it is only for a brief period and a limited purpose, i.e. an investigative purpose, would constitute a seizure of that person within the meaning of the Fourth Amendment; and as a result, an automobile

stop is subject to the constitutional imperative that it not be unreasonable under the circumstances. McHam v. State, 404 S.C. 465, 746 S.E. 2d 41 (2013), citing to Whren v. United States, 517 U.S. 806 (1996). State v. Butler, 353 S.C. 383, 577 S.E. 2d 498 (2003), citing to Delaware v. Prouse, 440 U.S. 648 (1979). The detainment of an individual after a traffic stop may occur if supported by reasonable suspicion. State v. Butler, supra. In determining whether reasonable suspicion exists, the totality of the circumstances must be considered to assess the validity of an officer's suspicions. State v. Corley, 383 S.C. 232, 679 S.E.2d 187 (Ct. App 2009), aff'd as modified, State v. Corley, 392 S.C. 125, 708 S.E.2d 217 (S.C. 2011). Reasonableness is highly fact specific measured in objective terms by examining the totality of the circumstances. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010), citing to State v. Richards, supra.

Also, note that although the scope of the stop may be enlarged, the scope and duration of the seizure must be strictly tied to and justified by the circumstances which rendered its initial undertaking proper. State v. Morris, 395 S.C. 600, 720 S.E2d 468 (2011); Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994). A lawful traffic stop can become unlawful if it is prolonged beyond the time reasonably required to complete its mission. State v. Adams, 397 S.C.481, 725 S.E.2d 523 (2012), citing to State v. Morris, supra, and Illinois v. Caballes, 543 U.S. 405 (2005). Once the purpose of that stop has been fulfilled, the continued detention of the vehicle and occupants would result in a second detention. State v. Morris, supra, citing to State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (2005). The encounter can only continue if the police have a reasonable suspicion that other criminal activity would be afoot. State v. Adams, supra; State v. Morris, supra, State v. Pichardo, supra.

In Sikes, a vehicle was stopped because the paper tags aroused suspicion of it being stolen, but after receiving the requested identification information from the driver and the passenger;

nonetheless, the passenger was taken from the car while police ran a warrant check on him. The Court reversed in Sikes and held that the officer's further detention of the passenger while going "fishing" for evidence of a crime, i.e., looking for warrants, was unlawful because the scope and duration of the initial seizure must be **tied to and justified by the circumstances which rendered its initiation proper**. In Sikes, the belief that the car was stolen ended upon the receipt of proper identifications. Therefore, there was no reasonable suspicion in existence thereafter to extend the seizure of the passenger by detaining him any further. Also, the Sikes Court cited to State v. Johnson, 805 P.2d 761 (Utah 1991), where the Court held that the leap from asking a passenger's name and date of birth to running warrant checks on the passenger was unlawful as such was an attempt to gather information in support of an unparticularized suspicion or hunch. Compare, State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (2003), where the Court held that since the officer had written the traffic ticket and the traffic stop was complete, it was error for the officer to continue to question the defendant until he (officer) believed the answers were inconsistent as a basis to search the vehicle because there was no prior reasonable suspicion that criminal activity had been afoot.

Going on a "fishing" expedition to find evidence in support an unparticularized hunch of inchoate criminal activity is unlawful because reasonable suspicion is an objective assessment of the circumstances at trial. See State v. Provet, 405 S.C. 101, 747 S.E. 2d 453 (2013), citing to Whren V. United States, supra. Reasonable suspicion is more than an inchoate or unparticularized hunch, but rather it is an objective basis that would lead to a suspicion of criminal activity under the probability of the circumstances. State v. Rogers, 368 S.C. 529, 6219 S.E. 2d 679 (2006) citing to State v. Butler, supra. Moreover, once the purpose of the traffic stop has ended, the officer may not extend the duration of the traffic stop without reasonable suspicion that would justify an additional

or prolonged seizure. State v. Provet, 405 S.C. 101, 747 S.E. 2nd 453 (2013) citing to Pennsylvania v. Morris, 403 U.S. 106 (1977) and Arizona v. Johnson, 555 U.S. 323 (2009).

In the case at bar, Officer Herron found no reasonable suspicion of criminal activity after obtaining the proper identification information from the driver and the occupants and had already walked to his patrol car where he should have written the ticket for the traffic violations, i.e, inoperative turn signal and speeding. Thus, the initial undertaking regarding the traffic stop (non-operating turn signal/speeding) was complete in purpose and Officer Herron had no new suspicion of criminal activity. At this point, appellant's detention via the traffic stop should have ended.

Clearly, the fishing expedition that occurred in the case sans probable case or reasonable suspicion led to an illegal detention of appellant and the illegal search of his vehicle based on an extended detention beyond the scope of the stop, which lasted anywhere from 9 to11 minutes. This violated the Fourth Amendment to the United States Constitution and article 1 §10 of the South Carolina State Constitution and as a result the gun seized from the vehicle should have been suppressed as tainted fruit. Wong Sun v. United States, 371 U.S. 471 (1963). When Officer Heron received appellant's license and insurance and obtained appellant's name and learned that the vehicle belonged to him, then the scope of the stop was satisfied. All that was needed at this point was the written ticket. There was no weapon in plain view on appellant because he was naked except for his boxers so it was plain (view) to see he had no weapon. To the contrary, however, Officer Herron decided to begin the fishing expedition and manifest or create a probable cause/reasonable suspicion to extend the detention. After the passenger was searched, it was determined that he was not in possession of a gun as a rag located in his pocket created the bulge seen in his pants. The fishing expedition extended even though a frisk of appellant by the backup officer revealed that no weapon was on him. Office Herron ignored the purpose of the

stop and moved forward to create probable cause to search appellant's car until he found a gun under the seat.

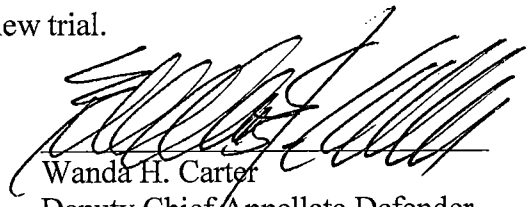
In Tindall, supra, the Court reversed and held that the officer lacked reasonable suspicion of a crime to continue detaining the defendant beyond the scope of the traffic stop where the officer stopped the defendant for speeding, obtained his license and registration and proof of insurance, did a "felony stretch," and pulled the defendant out and ordered him to sit in the patrol car, and continued to question him for 6 to 7 minutes, despite the fact that the report returned that there were no problems with the license or vehicle, and extended the process until backup arrived for a dog sniff due to his (defendant's) nervousness because "the purpose of the traffic stop was accomplished" after the report returned confirming all was well with the defendant's license and insurance, which meant the ticket should have been issued rather than engage in the continued detention of the defendant since this exceeded the scope of the traffic stop and constituted a seizure in violation of the Fourth Amendment.

Compare State v. Rivera, 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009), where the Court upheld the trial judge's ruling that the defendant was unlawfully detained on a continued detention when the defendant was stopped for following too closely and asked to exit the car and asked a series of questions even though there was no evidence of criminal activity, and when the defendant was told he would receive a ticket, because this fishing expedition went on until back-up police arrived. Lengthening the detention for further questioning beyond that related to the initial stop is acceptable only if the officer has an objectivity reasonable and articulable suspicion that illegal activity has occurred. State v. Provet citing to State v. Pichardo, supra. In State v. Rodiriguez, 323 S.C. 484, 476 S.E.ed 161 (1997). Here, continuing to question appellant and the passenger after the scope of the traffic stop ended exceeded the scope of the stop and resulted in

a fishing expedition used to create probable cause until back-up arrived. The subsequent search, which uncovered a gun constituted an illegal seizure and the gun should have been suppressed as illegal fruit. Wong Sun v. U.S., 371 U.S. 471 (1963). The error in appellant's case violated the Fourth Amendment and article 1 §10 of the South Carolina State Constitution

CONCLUSION

Based on the foregoing argument, appellant's conviction and sentence should be reversed and his case remanded to the lower court for a new trial.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of October, 2016.

STATE OF SOUTH CAROLINA

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Detrick L. Stenhouse, #268899, at Darlington County Prison, 200 Camp Road, Darlington, SC 29532, this 19th day of October, 2016.

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of October, 2016.

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