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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Doyet A. Early, Circuit Court Judge
Appellate Case Tracking No. 2014-002434

The State, Respondent,

vs.

Keyon Robinson, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

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STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On December 18, 2011, Officer Hilton was dispatched in the early morning hours to a Waffle House where subjects in the parking lot were arguing with security. When he arrived, he identified the two vehicles described. One vehicle was leaving the scene and the other remained. After parking, Officer Hilton approached on foot and saw Appellant walking towards the remaining vehicle. Officer Hilton heard Appellant using profane language and cursing at security. (T.5; R.5). As Officer Hilton approached Appellant, Appellant dropped a purple bag into the back seat of the vehicle occupied by three other individuals. (T.5-6; 26; R. 5-6; 26). According to Officer Hilton, Appellant smelled of alcohol. (T.6; R.6).

Officer Hilton made contact with Appellant while Appellant was attempting to get into the vehicle, placed him in handcuffs, advised him he was under arrest, and grabbed the bag he dropped in the back seat. He grabbed the bag within seconds of Appellant dropping it into the back of the vehicle. (T.27; R.27). Officer Hilton placed Appellant under arrest for public disorderly conduct based on his use of profanity and his intoxication. (T.11; 26; R. 11; 26). Upon looking into the bag, Officer Hilton immediately recognized narcotics. (T.6; R.6). At the time he was arrested, Appellant stood right beside the vehicle at the rear door of the driver's side. (T.7; R.7). While Officer Hilton did not immediately see the Crown Royal logo on the bag, he identified it as a purple bag used for holding bottles of alcohol. (T.8; R.8).

Appellant was placed in Officer Hilton's vehicle and locked the door. He and another officer were trying to determine any involvement by the three other individuals in the vehicle where Appellant placed the bag. While doing this, Appellant managed to free himself, open a window, and climb out of the police car. (T.30; R.30). Appellant fled on foot and Officer Hilton was eventually able to restrain him again after they crossed six lanes of traffic. (T.30; R.30).

At trial, Appellant moved to suppress the drugs, arguing Officer Hilton violated his Fourth Amendment rights by seizing the bag without a warrant. The trial court allowed the evidence, denying the motion for suppression without stating a ground. Appellant proceeded to a bench trial in which he stipulated to the analysis of the drugs seized. The court found him guilty of trafficking in crack cocaine and resisting arrest. He was sentenced to eight years for trafficking and one year for resisting arrest. Both sentences to run concurrent to the probation revocation he was already serving.

ARGUMENT

I. The trial court did not err in denying Appellant's motion to suppress the drugs found in a purple bag Appellant placed into the rear of an occupied vehicle just prior to being arrested for disorderly conduct.

Appellant contends the trial court erred in failing to suppress drugs found in a purple bag he dropped into the rear of an occupied vehicle as Officer Hilton approached. First, pursuant to Arizona v. Gant, 556 U.S. 332 (2009), Officer Hilton was justified in seizing the bag as it may have contained evidence related to Appellant's initial charges of disorderly conduct, especially evidence related to his intoxication, and because the scene was not entirely secure as in Gant. Additionally, Officer Hilton properly took possession of the bag for officer safety reasons and under exigent circumstances as it was discarded immediately upon Appellant seeing the approaching officer and placed into an occupied vehicle. Finally, Officer Hilton properly took control of the bag upon Appellant's arrest because it was Appellant's personal property and would need to be seized for inventory purposes.

"In criminal cases, the appellate court sits to review errors of law only." State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "When reviewing a Fourth Amendment search and seizure case, an appellate 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). "The appellate court will reverse only when there is clear error." State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (quoting State v. Missouri, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004)).

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be

searched, and the persons or things to be seized." U.S. Const. amend. IV. The Fourth Amendment requires a warrant for search and seizure. "Therefore, a warrantless search is *per se* unreasonable and violative of the Fourth Amendment unless the search falls within one of several well-recognized exceptions to the warrant requirement." Morris, 411 S.C. at 580, 769 S.E.2d at 859. "[B]ecause the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions." State v. Herring, 387 S.C. 201, 210, 692 S.E.2d 490, 494 (2009) (citing Katz v. United States, 389 U.S. 347, 357 (1967)). Recognized exceptions to the requirement of a warrant include: (1) search incident to a lawful arrest, (2) hot pursuit, (3) stop and frisk, (4) automobile exception, (5) the plain view doctrine, (6) consent, (7) abandonment, and (8) exigent circumstances. See State v. Counts, 413 S.C. 153, 163, 776 S.E.2d 59, 65 (2015).

"In Belton, the Supreme Court, '[i]n order to establish the workable rule this category of cases requires,' held 'that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.'" State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012) (quoting New York v. Belton, 453 U.S. 454, 460 (1981)). In Gant, the United States Supreme Court limited the application of its decision in Belton. The Court enounced: "Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." Gant, 556 U.S. at 351.

Both grounds for a search announced in Gant apply in the instant case. First, Appellant was still within reaching distance of where the bag was taken from the car. While he was handcuffed, he was still right beside the car and its passenger compartment when Officer Hilton

seized the bag. (T.7; R.7). Clearly, Appellant was within distance that one of the occupants of the vehicle could have passed him the bag or its contents. As a result, Officer Hilton was justified in seizing the bag.

Further, Officer Hilton was justified in searching the vehicle passenger compartment and seizing the bag because it was reasonable to believe it contained evidence of the crime for which Appellant was charged—disorderly conduct.[1] One basis for the arrest was Appellant's apparent intoxication. (T.6; 11; R.6; 11). As a result, any evidence supporting Appellant's intoxication would be relevant to the arrest and subject to seizure. Specifically, Officer Hilton described the bag, stating: "It looks like a Crown Royal bag **and it would have alcohol in it usually**. The bottles are sold in it and that's where the bag comes from." (T.8; R.8) (emphasis added). While he admitted he could not see the logo on the bag to know for certain it was a Crown Royal bag, he certainly described it as the type which would generally contain bottles of alcohol. (T.8; 11; R.8; 11). Therefore, the search and the seizure of the bag, which would usually contain bottles of alcohol, was proper as evidence to support the arrest for public disorderly conduct on the basis of Appellant's public gross intoxication. Accordingly, the trial court properly allowed the search pursuant to the restricted searches allowed under Arizona v. Gant.

Additionally, the United States Supreme Court explicitly noted: "Other established exceptions to the warrant requirement authorize a vehicle search under additional circumstances when safety or evidentiary concerns demand." Gant, 556 U.S. 332, 346–47 (citing Michigan v. Long, 463 U.S. 1032 (1983) (permitting an officer to search a vehicle's passenger compartment when he has reasonable suspicion that an individual, whether or not the arrestee, is "dangerous"

[1] Appellant was under arrest for public disorderly conduct, defined as: "Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place . . . ." S.C. Code Ann. § 16-17-530 (Supp. 2015).

and might access the vehicle to "gain immediate control of weapons."); United States v. Ross, 456 U.S. 798 (1982) (authorizing a search of any area of the vehicle in which the evidence might be found when probable cause exists to believe the vehicle contains evidence of criminal activity); Maryland v. Buie, 494 U.S. 325 (1990) (allowing search based on safety of officers or to prevent destruction or compromise of evidence)). "The exigent circumstances doctrine provides an exception to the Fourth Amendment[']s protection against warrantless searches, but only where, from an objective standard, a compelling need for official action and no time to secure a warrant exists." State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004); see State v. Brown, 289 S.C. 581, 587, 347 S.E.2d 882, 886 (1986) (acknowledging the exigent circumstances doctrine as an exception to the warrant requirement); see also, State v. Counts, 413 S.C. 153, 163, 776 S.E.2d 59, 65 (2015) (same). A warrantless search is justified under the exigent circumstances doctrine where there is a risk of danger to police. See Abdullah, 357 S.C. at 351, 592 S.E.2d at 348 (citing Minnesota v. Olson, 495 U.S. 91, 100 (1990).

In the instant case, clear exigent circumstances existed. Officer Hilton was called to the Waffle House based on a report of a customer in a boisterous argument with security. (T.5; R.5). Officer Hilton could hear Appellant cussing and using vulgar language directed at security. (T.5-6; R.5-6). As the officer approached, Appellant discarded the bag into a vehicle occupied by three other individuals. (T.5-7; R.5-7). Officer Hilton, not knowing if the bag contained evidence of the crime which could be destroyed or compromised, or whether it contained a weapon which was being passed on to others, was reasonable in taking immediate action to secure the bag without first obtaining a warrant. Exigent circumstances—Appellant quickly discarding a bag capable of holding evidence of his crimes or a weapon into an occupied vehicle

upon his realization a law enforcement officer approached—existed justifying Officer Hilton's reasonable search and seizure of the bag without a warrant.

Finally, the bag would have been taken as part of an inventory search upon Appellant's arrest. Inventory searches have also been recognized as "a well-defined exception to the warrant requirement of the Fourth Amendment." Colorado v. Bertine, 479 U.S. 367, 371, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987). The government's objectives of inventory searches are to protect owners' property while it is in police custody, protect law enforcement from lost, stolen, or vandalized property claims and protect police officers from danger. Id. at 372; South Dakota v. Opperman, 428 U.S. 364, 369, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976). "The standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures," and thus "[t]he probable-cause approach is unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions," such as inventory searches. Opperman, 428 U.S. at 370, n. 5. The practice of inventorying property is a reasonable and routine police action. Illinois v. Lafayette, 462 U.S. 640, 646 (1983). When a person is arrested in a place other than his home, the arresting officers may "impound the personal effects that are with him at the time to ensure the safety of those effects or to remove nuisances from the area." Cabbler v. Superintendent, Virginia State Penitentiary, 528 F.2d 1142, 1146 (4th Cir.1975); see also, 5 LaFave, Search and Seizure § 5.5(b), at 537 (5th ed. 2012) (appropriate for arresting officers to take custody of property that the arrested individual may otherwise be unable to retrieve). As Justice Blackmun stated:

> A person arrested in a public place is likely to have various kinds of property with him: items inside his clothing, a briefcase or suitcase, packages, or a vehicle. **In such instances the police cannot very well leave the property on the sidewalk or street while they go to get a warrant.** The items may be stolen by a passer-by **or removed by the suspect's confederates.** Rather than

> requiring the police to "post a guard" over such property, I think it is surely reasonable for the police to take the items along to the station with the arrested person.

United States v. Chadwick, 433 U.S. 1, 19 (1977) (emphasis added), abrogated on other grounds by California v. Acevedo, 500 U.S. 565 (1991). After such an arrest and seizure, an inventory search of the property seized is justified by the government's interests in averting any danger the property might pose, in protecting the property from unauthorized interference, and in protecting itself against claims of theft or negligent treatment of the property. See Colorado v. Bertine, 479 U.S. 367, 373 (1987).

In the instant case, Officer Hilton acted appropriately in obtaining and securing Appellant's personal property upon Appellant's arrest. Officer Hilton witnessed Appellant in clear possession of the purple bag. He saw Appellant drop the bag into the vehicle and where it was placed. There is no indication in the record the bag was in the possession of anyone other than Appellant, and he makes no claim the bag did not belong to him. Therefore, Officer Hilton, upon Appellant's arrest, was justified in seizing the bag and securing it and its contents. Accordingly, the trial court did not err in admitting the drugs into evidence as they would have been discovered during an inventory search of the bag which was properly seized to protect its contents at the time of Appellant's arrest.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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February 6, 2017

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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