

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Hon. Letitia H. Verdin, Circuit Court Judge

RECEIVED

MAY 02 2017

SC Court of Appeals

State of South Carolina,.....Respondent,

v.

Steven Levon Williams,.....Appellant,

APPELLATE CASE No.2016-001071

APPELLANT'S Pro-Se ANDERS BRIEF

Steven L. Williams
SCDC# 157166
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

TABLE OF CONTENTS

TABLE OF CONTENTS,i
TABLE OF AUTHORITIES,ii
STATEMENT OF ISSUE PRESENTED,1
STATEMENT OF THE CASE,2
ARGUMENT,3
CONCLUSION,8
CERTIFICATE OF SERVICE,9

TABLE OF AUTHORITIES

CASES

Mapp v. Ohio, 81 S.Ct. 1684 (1949).....5
Segura v. Texas, 826 S.W.2d 178 (Tex.1992),.....6
State v. Austin, 409 S.E.2d 811 (1991).....6
State v. Bowie, 600 S.E.2d 112 (2004),.....6
State v. Douglas, 597 S.E.2d 1 (2004).....7
State v. Easler, 489 S.E.2d 617 (1997),.....6
State v. Flowers, 598 S.E.2d 725 (2004),.....6
Weeks v. United States, 34 S.Ct. 341 (1914).....5

OTHER CONSTITUTIONAL PROVISIONS RELIED ON

Fourth Amend. U.S. Constitution,.....5-7
Article I, §10 South Carolina Constitution,.....5-7

ISSUE PRESENTED

THE TRIAL COURT ERRED IN FAILING TO SUPPRESS THE GUN WHICH WAS OBTAINED IN VIOLATION OF THE FOURTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, §10 OF THE S.C. CONSTITUTION?

STATEMENT OF THE CASE

Appellant was indicted by the Greenville County Grand Jury for armed robbery and possession of a weapon during the commission of a violent crime, and possession of a weapon by a felon. ROA. 423-430.

On May 11-12, 2016, the Appellant proceeded to trial by a jury and the Honorable Letitia H. Verdin. ROA. 1. Appellant was represented by Carlyle Steele and the State was represented by L. Mark Moyer and Walker Miller. The jury convicted Appellant as indicted and Judge Verdin sentenced Appellant to life without parole. ROA. 419, 1.14-p.421, 1.10.

A timely Notice of Appeal was filed and Appellant was appointed John H. Strom of the South Carolina Indigent Defense, Appellate Division. Strom filed a no merit Anders Brief raising one issue and allotting Appellant to file any pro-se filings that he deems may have merit. Appellant's pro-se Ander Brief is as follows:

ARGUMENT

THE TRIAL COURT ERRED IN FAILING TO SUPPRESS THE GUN WHICH WAS OBTAINED IN VIOLATION OF THE FOURTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, §10 OF THE S.C. CONSTITUTION?

Relevant Facts

Prior to trial counsel moved to suppress the gun, ROA.50, L.19-p.51, 1.9.

Appellant was called as a witness during the pretrial hearing.ROA.52. During the hearing Appellant testified that the gun found was "under" the seat out of sight. ROA. 53. Appellant testified that he did not give permission to search his vehicle. ROA.53.

During cross-examination the State asked Appellant to describe where the gun was under the seat. ROA. 54, 1.11-15. Appellant testified the gun was "[under the seat in a compartment]", stating that a Mercedes Benz has compartments [under] the seats and someone had to [open] the compartment in order to find the gun. ROA. 53-54.

The State called Joey Smith as a witness who was a Parker District Fireman, who initially found the gun. ROA.59-67. Smith testified that he arrived at the scene first and so as matter of protocal, since there was a wreck he approached Appellant to provide medical care. ROA. 61, 1.4-10. Smith testified that he didn't notice anything when he first approached the vehicle. ROA. 61, L.11-13. However, Smith testified that [after] Appellant was removed from the vehicle he went back to make sure the vehicle was in park, cut it off, and to make sure the brakes up. ROA. 62.

Smith testified that as he reached inside just to make sure the vehicle was turned off, he notices a pistol, revolver under the seat. ROA.62-63. The State presented pictures of the gun to Smith, ROA 65. Smith agreed that it was a picture of the gun, but the picture showed the gun on the seat and when Smith first saw the gun he said "it was under the seat in a compartment." ROA. 65, 1.17-23. During cross counsel established that the gun was "under the seat. ROA 66-67.

The State presented the testimony of Chris McAlmont of the Greenville Sheriff's Department. McAlmont testified he responded to Old Buncombe and MORris Street on June 6, 2014, in relation to a Mercedes that had an accident with a telephone pole. ROA 69. McAlmont testified he was aware at the time that there were allegations that an armed robbery had been committed in the vicinity. ROA. 69. McAlmont testified that when he arrived at the scene, Appellant was sitting in the Mercedes at a 90 degree angle from the way you would normally sit with his feet on the ground. McAlmont said he called to Appellant at which time Appellant got out of the vehicle. ROA 70-71. McAlmont said he went over to look in the vehicle because "someone' from the fire department said there was a gun inside the car. ROA. 71, 3-7.

McAlmont testified that when he walked over to the vehicle he could see what appeared to be the "handle of a gun sticking out from underneath the seat." ROA 71, L.11-13. Specifically, "most of the gun would have been under the seat. But I could see "part of it sticking out from under it." ROA 71, L.15-17. McAlmont said he did not have to get inside the vehicle to see the gun. ROA. 72.

Counsel argued that the testimony is unequivocal from Appellant that the gun was "hidden" in the compartment [under] the seat and not in plain sight. The Fireman testified for the State in one instance that it was "under the seat", although he did not claim to see it. Secondly, McAlmont testified contradictory that when he approached the vehicle he saw the handle of the gun was sticking out from under the seat completely contrary to Smith (Fireman) was the first to allegedly see the gun and therefore the gun should be suppressed. ROA 75, L.17-p.76, 1.4. The Court denied the motion. ROA 76, 1.14-25.

DISCUSSION

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ... U.S. Const. amend. IV. Beginning in the early twentieth century, the U.S. Supreme Court declared that evidence seized in violation of the Fourth Amendment must be excluded in federal criminal proceedings. *Weeks v. U.S.*, 232 U.S. 383, 34 S.Ct. 341 (1914). Later, the Court applied the Fourth Amendment and its exclusionary rule to the individual states as well. See *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684 (1949). Therefore, all citizens enjoy this federal constitutional protection in every criminal proceeding. Id.

In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against

unlawful searches and seizures. See S.C. Const. art.I, §10. The relationship between the two constitutions is significant because "state courts may afford more expansive rights under state constitutional provisions than rights which are conferred by the Federal Constitution." *State v. Easler*, 327 S.C. 121, 131 n.13, 489 S.E.2d 617, 625 .13 (1997); see also *State v. Austin*, 306 S.C. 9, 409 S.E.2d 811 (Ct.App.1991). Therefore, state courts can develop state law to provide their citizens with a second layer of constitutional rights. Id. This relationship is often described as a recognition that the Federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling. See *Segura v. Texas*, 826 S.W.2d 178, 182 (Tex.1992)

The South Carolina Constitution, with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.

A person seeking to have evidence suppressed based upon a Fourth Amendment violation must establish that his own Fourth Amendment rights were violated by the search and seizure. U.S. Const. Amend. 4; *State v. Bowie*, 600 S.E.2d 112 (S.Ct.App.2004); rehearing denied August 18, 2004.

Evidence obtained as a result of an unlawful search constitutes a violation of the Fourth Amendment and is inadmissible at trial. U.S. Const. Amend. 4, *State v. Flowers*, 598 S.E.2d 725 (S.C.Ct.App.2004).

An analysis of whether a private citizen's search and seizure is attributable to the State requires an inquiry into the totality of the circumstances; factors to be considered include: the citizen's motivation for the search or seizure, the degree of governmental involvement, such as advice, encouragement, knowledge about the nature of the citizen's activities, and the legality of the conduct encouraged by the police. U.S. Const. Amend. 4, *State v. Douglas*, 597 S.E.2d 1 (S.C.Ct.2004).

In the instant matter, Appellant testified consistent with the photo's presented by the State; that is there [is] in fact compartments [under] the seat. Appellant testified that the compartment was "closed" and he did not open it nor did he give consent to a search. Smith, the Fireman who was first to arrive at the scene testified he did not see the gun until he went back to the vehicle and had reached in to make sure the vehicle was turned off, and parking brake up and then he said it was only [after] he [leaned inside] the vehicle that he noticed the gun.

Completely contrary to this testimony, Officer McAlmont said when he approached the vehicle he saw the "handle of gun sticking out from under the seat." This testimony is highly in question when compared the Smith's and Appellant's testimony. Clearly if the handle of the gun was "sticking out" as described by McAlmont then surely the first responder Smith would have noticed it. (emphasis supplied and original). The gun should have been suppressed.

CONCLUSION

Based on the foregoing, Appellant respectfully prays this Honorable Court will remand for a new trial.

Respectfully Submitted,

/s/ Steven Williams

Steven L. Williams

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Hon. Letitia H. Verdin, Circuit Court Judge

RECEIVED
MAY 02 2017
SC Court of Appeals

STATE OF SOUTH CAROLINA,.....RESPONDENT,

-vs-

STEVEN L. WILLIAMS,.....APPELLANT,

APPELLATE CASE No.2016-001071

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Pro-Se Anders Brief on the attorney for Respondent, J. Benjamin Aplin, Assistant Attorney General, P.O. Box 11549, Columbia, SC. 29211.

This was done by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this 26 day of April, 2017.

SWORN TO AND SUBSCRIBED BEFORE ME

Respectfully Submitted,

this 26 day of April, 2017

/s/ Steven Williams

Tamara Conwell
NOTARY PUBLIC

Steven L. Williams

MY COMM. EXPIRES My Commission Expires
September 25, 2023

Steven L. Williams
SCDC# 157166
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

RE: Request for Return copy

RECEIVED

MAY 02 2017

SC Court of Appeals

Dear Clerk,

Enclosed for filing please find my pro-se Anders Brief. Due to the fact I am incarcerated serving a life sentence and SCDC does not make copies I was unable to serve the Respondents properly. At this time could you please return a "clock stamped" copy to me for my files and so that I may serve Respondents.

I thank you for your time and consideration in this matter.

Kindest Regards,

Steven L. Williams

Steven L. Williams #157166
Perry Correctional Institution
Q.3A 210
430 Oaklawn Road
Pelzer, S.C. 29669

Jms

RECEIVED

MAY 02 2017
SC Court of Appeals

APR 27 2017
P.C.I. MAILROOM

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
P.O. Box 11629
Columbia, South Carolina

29211