STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Robert E. Hood, Circuit Court Judge

Opinion No. 5489 (S.C. Ct. App. filed May 31, 2017)
Appellate Case No. 2015-000390

THE STATE,

Petitioner,

vs.

ERIC TERRELL SPEARS,

Respondent.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

STATEMENT OF ISSUE ON APPEAL

The trial court properly denied Respondent's motion to suppress the crack cocaine because law enforcement engaged Respondent in a consensual street encounter when they walked a little faster than Respondent to reach him, politely asked to speak with Respondent, and asked questions in a respectful manner. Law enforcement did not display a weapon. Walking a little faster to catch up to a person to speak with them is not a show of authority that creates a seizure and merely asking incriminating questions does not turn a consensual encounter into a seizure.

STATEMENT OF THE CASE

Respondent Spears was indicted for trafficking between ten and twenty-eight grams of crack cocaine. Spears was convicted as charged by a jury following trial on February 17-18, 2015. Spears did not attend his trial; therefore, the presiding judge, the Honorable Robert E. Hood, placed the sentence under seal. On February 19, 2015, Spears was brought before Judge Hood and the sentence was unsealed. Judge Hood sentenced Spears to thirty years imprisonment for his third offense trafficking cocaine.

Spears appealed his conviction and sentence. Following briefing and oral argument, the Court of Appeals reversed the conviction and sentence in a published opinion on May 31, 2017. State v. Spears, ___ S.C. ___, 802 S.E.2d 803 (Ct. App 2017). Judge Konduros wrote the majority opinion, which Judge Short joined. Judge Williams dissented. The State filed its petition for rehearing on June 15, 2017. The Court of Appeals denied the petition for rehearing on August 18, 2017, with Judge Williams voting to grant the petition for rehearing.

ARGUMENT

The trial court properly denied Respondent's motion to suppress the crack cocaine because law enforcement engaged Respondent in a consensual street encounter when they walked a little faster than Respondent to reach him, politely asked to speak with Respondent, and asked questions in a respectful manner. Law enforcement did not display a weapon. Walking a little faster to catch up to a person to speak with them is not a show of authority that creates a seizure and merely asking incriminating questions does not turn a consensual encounter into a seizure.

Spears relies primarily on two facts to argue a seizure occurred: (1) the officers' weapons were visible and (2) they walked at a brisk pace which allowed them to catch up with Spears and his companion. These facts fail to establish a seizure occurred and the trial court's findings to the contrary are supported by evidence in the record.

In order to determine whether an incident is a seizure or a consensual street encounter, the trial court must determine whether, under the totality of circumstances, "a reasonable person would have believed that he was free to leave." Mendenhall, 446 U.S. 544, 554 (1980). Only when officers, "by means of physical force or show of authority," **restrain** the liberty of a citizen is a voluntary interaction transformed into a Fourth Amendment seizure. Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968). The issue is considered not just from the viewpoint of a reasonable person, but **a reasonable innocent person.** Florida v. Bostick, 501 U.S. 429, 438 (1991) ("[T]he 'reasonable person' test presupposes an *innocent* person") (emphasis in the original). Therefore, the issue is not viewed from Spears' personal vantage point as a drug trafficker, but from the viewpoint of an ordinary, law-abiding citizen who does not traffic illegal narcotics. An ordinary, law-abiding citizen would not have viewed the encounter as a "chase."

Five times, Spears claims incorrectly in his return that the officers "displayed" their weapons. The weapons were visible on two officers, but they did not display them. The record fails to indicate that either officer drew their weapon, brandished their weapon, or even touched their weapon. United States v. Ringold, 335 F.3d 1168, 1172 (10th Cir. 2003) (noting officers were uniformed and armed, but neither officer touched or brandished their weapon). The public is well aware that officers carry weapons. A reasonable innocent person would not interpret that to be a show of force. Bostick, Terry. The fact that an officer is carrying a holstered firearm will not render every encounter the officer has with a member of the public into a seizure.

Spears also attempts to distinguish the present case from Michigan v. Chesternut, 486 U.S. 567, 575 (1988) because Chestnut was running while Spears was walking. See United States v. Weaver, 282 F.3d 302, 311-12 (1st Cir. 2002) (noting Weaver, as a pedestrian, could have walked away from the encounter; pedestrian encounters "are much less restrictive of an individual's movements" than situations occurring during a traffic stop). Of course, the officers in Chestnut would naturally have an easier time over taking a person running while riding in their patrol car than the officers in the present case would overtaking fellow pedestrians. They needed to walk to reach Spears, but walking briskly is not something the reasonable innocent person would interpret as a show of force – if so, law enforcement would be restricted to questioning only those people headed in their direction or standing still, an absurd result.

Spears unnecessarily dedicates much of his return to argue the lack of reasonable suspicion to approach Spears. While officers had a reason to approach Spears and his companion, law enforcement may approach in a non-threatening manner any person for no reason at all, provided the

person remains free to leave. Because the officers merely walked towards Spears, as opposed to running with weapons drawn as in State v. Anderson, 415 S.C. 441, 783 S.E.2d 51(2016), and politely conversed with Spears, this was not a stop. The only question is whether a seizure occurred prior to when a Terry frisk became necessary for officer safety. This Court should reverse the Court of Appeals for the simple reason that until the Terry frisk, this was only a simple street encounter in which officers were polite, did not make a display of authority, and in which Spears was free to leave.

The United States Supreme Court warns against characterizing all street encounters as a seizure because of the danger of making unrealistic restrictions on legitimate law enforcement practices that fail to enhance interests secured by the Fourth Amendment. United States v. Mendenhall, 446 U.S. 544, 554 (1980) ("Moreover, characterizing every street encounter between a citizen and the police as a 'seizure,' while not enhancing any interest secured by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices."). The State has a significant interest in enforcing controlled substance laws within the bounds of the Fourth Amendment. See United States v. Mendenhall, 446 U.S. 544, 561-62 (1980) ("The public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit. Few problems affecting the health and welfare of our population, particularly our young, cause greater concern than the escalating use of controlled substances. . . . And many drugs . . . may be easily concealed. As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement."). In the instant case, law enforcement was merely monitoring a known destination point for contraband peddlers and ensured they followed practices

CONCLUSION

For all of the foregoing reasons, the State respectfully requests this Court to grant the State's petition for writ of certiorari. Should this Court see fit to grant the State's petition, the State respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

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BY: _____
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ATTORNEYS FOR PETITIONER

October 30, 2017

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Reply to Return to Petition for Writ of Certiorari on Respondent by sending two copies of the same addressed to his attorney of record LaNelle C. DuRant, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.
This 30th day of October, 2017.

Anne Mueller

Anne A. Mueller
Legal Assistant
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ALAN WILSON
ATTORNEY GENERAL

October 30, 2017

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Eric Terrell Spears
Appellate Case No: 2015-000390

Dear Mr. Shearouse:

Enclosed please find an original and six (6) copies of the Reply to the Return to the Petition for Writ of Certiorari, including proof of service, in the above-referenced case. By copy of this letter to opposing counsel, I am serving her with a copy of the reply.

Sincerely,

David Spencer
Senior Assistant Attorney General
S.C. Bar No: 68571

DS/aam
Enclosures

cc: LaNelle C. DuRant (with two copies)
The Honorable Jenny A. Kitchings (with one copy)
Ms. Trisha Allen