STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2016-002476

THE STATE, ...RESPONDENT,

v.

KENDALL LEAMON,.....APPELLANT.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion to suppress because the evidence was obtained during the course of a routine traffic stop and officers had reasonable suspicion supporting their decision to question Appellant.

STATEMENT OF THE CASE

On July 26, 2016, the Greenville County Grand Jury indicted Appellant for third-degree assault and battery. On September 27, 2016, the Greenville County Grand Jury indicted Appellant for possession of cocaine with the intent to distribute and resisting arrest. On November 17-18, 2016, Appellant proceeded to a jury trial before the Honorable Edward W. Miller. Kenneth C. Gibson, Esquire, represented Appellant; Assistant Solicitor Mathew L. Wallace, Esquire, represented the State. The jury found Appellant guilty of the possession of cocaine with the intent to distribute and resisting arrest charges, but acquitted him of his remaining charge. The trial judge sentenced Appellant to three years' incarceration, suspended upon ninety days in jail, thirty months of probation, substance abuse counseling, and random drug and alcohol testing for the possession of cocaine charge; for the resisting arrest charge, the trial judge sentenced Appellant to a one year sentence suspended upon probation.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On May 7, 2014, Deputy Darrell Kicklighter was on patrol as part of a crime task force when he witnessed a vehicle turn from Traynham Street onto Augusta Road without utilizing a turn signal. Deputy Kicklighter turned on his blue lights and initated a traffic stop, but the vehicle continued several hundred yards, past a vacant lot parking lot, until it pulled into another parking lot at the intersection of "Augusta and Lydia." (Tr.p.28, line 3–Tr.p.30, line 13).

As he approached the car, Deputy Kicklighter noticed it was occupied by a driver, Appellant, and two passengers. As he began questioning Appellant, Deputy Kicklighter observed he was extremely nervous. Deputy Kicklighter requested Appellant provide his driver's license and the registration and insurance information for the vehicle, but Appellant could not find any documentation pertaining to the vehicle. Appellant informed Deputy Kicklighter he was borrowing the vehicle from a woman, but did not know her name. He stated the woman who owned the vehicle was at the Clarion Hotel, a place Deputy Kicklighter knew to be a local den of prostitution, narcotics, and other illegal activities. Appellant found a job application which he believed belonged to the owner of the vehicle, and gave it Deputy Kicklighter. While Deputy Kicklighter questioned Appellant, Deputies Robert Curtis and Mason Hubber arrived as backup and stood around Appellant's vehicle to provide support. (Tr.p.30, line 5–Tr.p.31, line 22; Tr.p.59, line 1–Tr.p.61, line 6; Tr.p.64, line 8–Tr.p.65, line 4).

Deputy Kicklighter returned to his patrol vehicle and ran a check on Appellant, the vehicle, and the passengers. Deputy Kicklighter discovered Appellant had a "prior controlled substance violation" and one of the passengers had a prior narcotics-related conviction. Additionally, Deputy Kicklighter knew the sheriff's office had received numerous complaints of drug activity in the Traynham Street area, particularly in the area around 10 Traynham Street and

12 Traynham Street of the dead-end road. However, Deputy Kicklighter discovered the vehicle was not reported stolen and that the owner of the vehicle matched the name of the woman listed in the job application. At this point, Deputy Kicklighter, with the exception of issuing a citation for the turn signal violation, had completed the traffic stop. However, based on: (1) Appellant's severe nervousness; (2) Appellant's lack of knowledge as to the ownership of the vehicle he was driving; (3) the recent history of drug activity in the Traynham Street; (4) the time of night; and (5) the criminal histories of the occupants of the car, Deputy Kicklighter began to suspect Appellant was engaged in illegal activity. (Tr.p.39, line 5–Tr.p.40, line 10; Tr.p.41, line 13–Tr.p.45, line 4; Tr.p.52, line 4–Tr.p.54, line 7).

Deputy Kicklighter, determined to investigate the suspicious situation, decided to ask Appellant a few additional questions before issuing the ticket and releasing Appellant. Notably, he planned on asking Appellant questions to determine whether he would be "truthful about what's going on" and eventually request permission to search the vehicle. After returning to Appellant's car, Deputy Kicklighter asked him to step outside the vehicle to answer additional questions. Appellant, more nervous than before, exited the vehicle without shifting it into park, and as a result it started rolling slightly. Deputy Kicklighter instructed Appellant to reenter the automobile and shift it into park. As Appellant exited the vehicle a second time, Deputy Kicklighter noticed he was holding a wallet in one hand but was unable to see his second hand. Cautious, Deputy Kicklighter took a step back to put a little more distance between him and Appellant and asked him to walk to the rear of the vehicle. Deputy Curtis noticed Appellant was holding something in his other hand, and informed Deputy Kicklighter of such. Deputy Kicklighter informed Appellant he was going to have to detain him for the deputies' safety and to "figure out what's going on." At this point, Appellant shoved Deputy Curtis out of his way

and started running. Deputy Kicklighter saw Appellant drop a pill bottle during his pursuit. Eventually, Deputies Kicklighter and Curtis apprehended Appellant. (Tr.p.31, line 22–Tr.p.33, line 17; Tr.p.39, line 13–Tr.p.41, line 12; Tr.p.45, line 20–Tr.p.46, line 14; Tr.p.55, lines 7–15; Tr.p.61, line 22–Tr.p.63, line 7).

After returning to the vehicles, Deputy Kicklighter directed Deputy Hubbard to search the area where he witnessed Appellant drop the pill bottle. Deputy Hubbard found the bottle and field tested the substance within, the results of which indicated the bottle contained cocaine. (Tr.p.34, lines 9–13).

During the pretrial hearing, Deputy Kicklighter testified the period between him activating his blue lights and ending with the moment Appellant began his escape lasted only "several minutes," which he estimated to be less than ten minutes. (Tr.p.51, line 16–Tr.p.52, line 2).

Deputies Curtis and Hubber recalled similar versions of the events of the stop. The two men arrived simultaneously and positioned themselves around Appellant's vehicle. A couple minutes into the stop, Deputy Kicklighter requested Appellant exit the car for questioning. Deputy Curtis recalled seeing the vehicle's brake lights on as he approached and recalled the vehicle moving because of Appellant's failure to place it in park. When he exited the vehicle, Appellant appeared as if he was ready to run or fight. Deputy Curtis observed the orange pill bottle in Appellant's hand and informed Deputy Kicklighter. Deputy Hubber, who could not hear the conversation among Deptuy Kicklighter, Deputy Curtis, and Appellant outside the vehicle heard a scuffle, which included physical contact with the car, and saw Appellant take off on foot. (Tr.p.59, line 25–Tr.p.63, line 20; Tr.p.64, line 8–Tr.p.67, line 16).

Appellant's pretrial testimony was consistent with Deputy Kicklighter's in several regards. Appellant conceded he told the deputies he had been at the Clarion Hotel and did not know the name of the vehicle's owner at the time of the stop and was unable to locate her registration and proof of insurance. He confirmed he was extremely nervous throughout the stop, neglected to shift the car into park when he exited it, and that he fled from deputies when they attempted to place him in handcuffs. However, Appellant claimed Deputy Kicklighter requested to search his vehicle before he exited it and that he consented. (Tr.p.68, line 24– Tr.p.79, line 25).

ARGUMENT

The trial judge properly denied Appellant's motion to suppress because the evidence was obtained during the course of a routine traffic stop and officers had reasonable suspicion supporting their decision to question Appellant.

Appellant fails to dispute Deputy Kicklighter had probable cause to initiate a traffic stop for his failure to utilize his turn signal.[1] Instead, he argues the traffic stop was unreasonably extended because Deputy Kicklighter did not have sufficient indicia of criminal activity to justify his extension of the stop and thus the trial judge erred in failing to grant his motion to suppress evidence. Appellant contends each individual factor used by Deputy Kicklighter to justify his questioning either possesses an innocent explanation or was not suspicious enough to justify an extension of the traffic stop. The State disagrees with Appellant's allegation of error. Initially, the State notes Deputy Kicklighter was permitted, by law, to question Appellant about matters unrelated to the traffic stop provided such questioning did not "measurably extend" the purpose of the stop. Here, Deputy Kicklighter was not required to possess reasonable suspicion of criminal activity because he initiated his "unrelated" questioning of Appellant within the relatively brief period of the initial stop. Additionally, Deputy Kicklighter's observations, while individually insufficient to create reasonable suspicion, are evidence of criminal behavior when considered in totality. Finally, even if the trial judge did not find the deputies' testimonies credible, Appellant testified he gave Deputy Kicklighter permission to perform a search before he exited the vehicle, justifying the latter's actions thereafter.

[1] See, e.g., Whren v. United States, 517 U.S. 806, 810 (1996) ("An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general mater, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.").

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). 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); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing 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, the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) ("[A]ppellate courts must affirm if there is any evidence to support the trial court's ruling."); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) ("'When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.' "(citation omitted)). The 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); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 ("In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge's ultimate determination de novo but, rather, would apply a deferential standard of review.").

Pursuant to the Fourth Amendment, "[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." State v. Blassingame,

338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see United States v. Sokolow, 490 U.S. 1, 7 (1989) ("[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." (citation omitted)); State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) ("To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity."). "Reasonable suspicion" requires a particularized and objective basis leading one to suspect another of criminal activity. See State v. Moore, 415 S.C. 245, 252, 781 S.E.2d 897, 900 (2016). The reasonable suspicion standard is less demanding than probable cause, and requires a showing considerably less than preponderance of the evidence. Illinois v. Wardlow, 528 U.S 119, 123 (2000).

A lawful traffic stop begins at the point an officer stops a vehicle to investigate a traffic violation and "ordinarily continues, and remains reasonable, for the duration of the stop." Arizona v. Johnson, 555 U.S. 323, 333 (2009). Once a lawful traffic stop is initiated, an officer may order the driver and any passengers out of the vehicle pending completion of the stop and "may request a driver's license and vehicle registration, run a computer check, and issue a citation." State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); see Maryland v. Wilson, 519 U.S. 408, 415 (1997) ("[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop."). "Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave." Johnson, 555 U.S. at 333.

During the course of the stop, an officer can inquire into matters unrelated to the initial justification for the stop without converting the stop into something other than a lawful seizure so long as the unrelated questioning does not measurably extend the duration of the stop. Id.; see Rodriguez v. United States, 135 S. Ct. 1609, 1614 (2015) ("An officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop."); see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation). Such an investigatory traffic stop must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848; see Rodriguez, 135 S. Ct. at 1614 ("Authority for the seizure . . . ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.); see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) ("The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.").

Even if a traffic stop is initially lawful, the detention "can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." Illinois v. Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 ("Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, continued questioning beyond the duration of an initial traffic stop is lawful and permissible where: (1) the officer has a reasonable articulable suspicion of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Id.

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 104, 623 S.E.2d at 85. In reviewing the totality of the circumstances, the individual factors of the traffic stop must not be considered piecemeal or in isolation. Branch, 537 F.3d at 337 ("Courts must look at the 'cumulative information available' to the officer . . . and not find a stop unjustified based merely on a 'piecemeal refutation of each individual' fact and inference[.]" (citations omitted)). Instead, all of the circumstances of the stop, including the officer's own experience and specialized training, must be considered as a whole to determine whether the officer's actions were reasonable in light of all of the information available to him at the time. See United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[W]e have said repeatedly that [reviewing courts] must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. The process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" (citations omitted)); United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) ("[J]ust as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion."). "In applying the concept of reasonable suspicion to the various facts of a case, '[i]t is the entire mosaic that counts, not single tiles.'" State v. Wallace, 392 S.C. 47, 52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)). Thus, the presence of several factors seemingly consistent with innocent travel can establish reasonable suspicion when viewed together in totality. Sokolow, 490 U.S. at 9.

Deputy Kicklighter's Questions were a Permissible Extension of the Traffic Stop

Initially the State notes Deputy Kicklighter's questioning of Appellant, regardless of his reasonable suspicion of criminal activity, was a permissible extension of the stop under the law. Law enforcement officers can inquire into matters unrelated to the initial purpose(s) of a traffic stop provided those questions do not measurably extend the traffic stop. See Johnson, 555 U.S. at 333. Deputy Kicklighter asked Appellant to step outside of the vehicle for such questioning. However before he could do so, Deputy Curtis observed the pill bottle in Appellant's hand. When confronted with the observation, Appellant lied. Deputy Kicklighter, confronted with a suspicious individual who denied holding and continued to obscure an item in his hand, justifiably decided to handcuff Appellant and search him as a matter of safety. See Muehler, 544 U.S. at 100 (approving the use of handcuffs while detaining individuals during a search because they "minimize[] the risk of harm to both officers and occupants" in "inherently dangerous" situations). Subsequently, Appellant's assault of Deputy Curtis and flight from Deputy Kicklighter's attempt to restrain him were probable cause for his arrest, or at the very least further evidence to support Deputy Kicklighter's reasonable suspicion that Appellant was engaged in criminal activity. See, e.g., Virginia v. Moore, 553 U.S. 164, 178 (2008) ("When officers have probable cause to believe that a person has committed a crime in their presence, the Fourth Amendment permits them to make an arrest . . ."). Thus, Appellant's actions during Deputy Kicklighter's permissible, brief extension of the stop created an independent basis for his arrest and search.

Reasonable Suspicion

However, even if this Court finds Deputy Kicklighter required reasonable suspicion of criminal activity to continue his questioning of Appellant, the evidence in the record supports such a finding. Appellant argues reasonable suspicion did not exist by claiming each individual

factor relied upon by Deputy Kicklighter was, at a minimum, inconclusive evidence of criminal activity. However, such a piecemeal analysis is not the standard for reviewing reasonable suspicion. See Branch, 537 F.3d at 337 ("Courts must look at the 'cumulative information available' to the officer . . . and not find a stop unjustified based merely on a 'piecemeal refutation of each individual' fact and inference[.]" (citations omitted)). When viewed in tandem, Deputy Kicklighter's observations support his reasonable suspicion that Appellant was engaged in criminal activity. Importantly, Deputy Kicklighter observed: (1) Appellant leaving a dead-end street associated with repeated "narcotics transactions"; (2) Appellant failed to immediately yield for the traffic stop; (3) Appellant exhibited extreme nervousness throughout the stop so severe he neglected to shift the car into park throughout the stop and even failed to do so before exiting the vehicle; (4) Appellant did not possess the registration and proof of insurance for the vehicle he was driving; (5) Appellant and at least one of the passengers had prior drug violations; and (6) Appellant claimed he had been attending a party at a nearby hotel closely associated with narcotics crimes and prostitution. Yet the most suspicious fact discovered by Deputy Kicklighter was Appellant's inability to identify the owner of the vehicle he was driving, an issue Appellant wholly ignores in his brief. Viewed in tandem, these facts indicate Appellant was engaged in some type of criminal behavior and more than justified Deputy Kicklighter's decision to ask Appellant additional questions. See Arvizu, 534 U.S. at 273 (stating the totality of the circumstances of a situation, viewed through the lens of an officer's training, are what allow an officer to determine reasonable suspicion of criminal activity).

Appellant's Consent to the Search

Finally, the trial judge could not have erred in denying the motion to suppress because Appellant testified the traffic stop was extended only after he agreed to allow Deputy Kicklighter

to perform a search. Because he agreed to extend the duration and scope of the traffic stop, the continued questioning was permissible regardless Deputy Kicklighter's suspicions. See Pichardo, 367 S.C. at 99, 623 S.E.2d at 848 (stating continued questioning beyond the duration of an initial traffic stop is lawful and permissible where: (1) the officer has a reasonable articulable suspicion of other illegal activity; or (2) the traffic stop becomes a consensual encounter).

Accordingly, the trial judge did not err in denying Appellant's motion to suppress evidence.

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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January 31, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2016-002476

THE STATE, ...RESPONDENT,

v.

KENDALL LEAMON,.....APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Kenneth Gibson, Esquire
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I further certify that all parties required by Rule to be served have been served this 31st day of January, 2018.

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ATTORNEY GENERAL

January 31, 2018

Kenneth Gibson, Esquire
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RE: State v. Kendall Leamon – Appellate Case No. 2016-002476

Dear Mr. Gibson:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

William F. Schumacher, IV
Assistant Attorney General
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Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Advocacy Division