State of South Carolina
in the Court of Appeal

Appeal from Horry County
Honorable Steven H. John, Circuit Court Judge

The State — Respondent

v

Eugene Hardy — Appellant

Appellate Case No. 2017-001934

Pro-Se Brief

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MAR 15 2018
SC Court of Appeals

Eugene Hardy
Lee Corr. Inst. | F3-111C
990 Wisacky Hwy
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Statement of issue on Appeal

Did the judge err in denying Appellant's Motion to Suppress cocaine found as the result of a traffic stop effected to serve outstanding arrest warrants when no traffic violation was committed and no criminal activity was suspected?

Statement of the Case

Eugene Hardy (the Appellant) was indicted by the Horry County Grand Jury on January 19, 2017, for Possession w/ Intent to Distribute Cocaine (PWID). The Appellant's case went to trial before the Honorable Steven John and a jury on September 13-14, 2017. Mr. Eric Fox, Esq. was the Appellant's Attorney, and representing Horry County Solicitor's Office David Caraker along w/ George Henry Martin assisting him. The jury returned a verdict of guilty, and the Honorable Johns then sentenced the Appellant to a term 15 years to the S.C. Dept. of Corrections (due to enhanced for a third offense. The Appellant is Appealing the conviction.

Argument

Ofc. Curry of the Surfside Beach P.D. testified on behalf of the State, statement that was made that, warrants (3) for distribution of crack cocaine was obtained the day of the Appellant's arrest. Base on Ofc. Curry own testimony clearly states that he know were I was employed at that time and he decided to wait outside the business until the Appellant to leave work. Why didn't Ofc. Curry arrest the Appellant at that time. The Court stated that "for public safety reasons and safety of himself, the defendant and the public in general, he had a duly authorized law enforement agent stop the vehicle so as to effect the service of the lawful arrest warrents that they had on the defendant." But the Court didn't take into account that the Appellant was indeed at work, also that the Appellant did not have a history of violance.

According to Ofc. Curry, he requested Dep. Coopor of the Horry County Sheriff's Dept. to conduct a traffic stop once the Appellant left his place of employment. However, if for public safety reasons and the safety of the officier, there was two (2) law enforement officiers present at the time, why didn't the arrest the Appellant at that time?

Furthermore Dep. Cooper was not in court to explain the reasoning for conducting a traffic stop. Furthermore there was not a citation made out for any violation. Clearly on the record, the Appellant did not commit any traffic violation. Furthermore Ofc. Curry inlisted the help for the Sheriff's Department in violating the law by stopping the Appellant. Ofc. Curry could have legally arrest the Appellant before he got into his vehicle or after he got out (Ofc. Curry clearly states that they was following the Appellant. Ofc. Curry's reasoning for the illegal traffic stop was to arrest Appellant for the warrent and to try to further their investigation. In Ofc. Curry's own words, where no one would pay us any attention and we would have an opportunity to talk with him." Why didn't Ofc Curry take the Appellant to the police department to talk to him, "where no one would pay us any attention... Furthermore, the Appellant wasn't arrested after the Appellant and Ofc. Curry went back to his car, but after the talk that did not go the way his was looking for, then arresting the Appellant. Again, there was no traffic violation, but the Appellant was arrest on PWID (Crack Cocaine) along with the warrents. The fruit is prisonous from the prisonous tree.

Appellant's defense counsel argued "stopped without cause under a pretexted basis for a made-up traffic violation that they then used to make a contact and serve these warrents. The State did not present any evidence of or argue that Appellant had committed a traffic violation to justify the stop, relying on service of the warrents as its basis. Furthermore, the State by not justifying Ofc. Curry's reasoning was, "If you walk up to someone based on our protocal, one we do not make traffic stops on the vehicles. They are unmarked, undercover vehicle behind someone, and in past we've had people run from the vehicles, et.cetera. This is the safest way to do it for the public and everyone involved. But had law enforcement made the arrest prior to the Appellant getting in his own vehicles, that was a safety concern, why wasn't done before the Appellant got into his vehicle. As stated by Ofc Curry, he went the Sheriff's Dept to make a traffic stop, even when there wasn't any violation and/or when an officer has reasonable suspicion the occupants are involved in criminal activity. (State v. Burgess, 394 S.C. 407, 412, 714 S.E.2d 917, 919 (Ct. App. 2011).

Even in U.S. v Hassan El, 5 F.3d 726, 729 (4th Cir 1993) had a minor traffic violation was a pretext to stop his vehicle. But in this case there was no kind of traffic stop, minor and/or major. None of any kind. And Tenth Circuit has held that in U.S. v. Botero-Ospina, 71 F.3d 783, 787 (10th Cir. 1995), "a traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation or equipment violation has occurred or is occurring. In that ruling, it was found that irrelevant whether the officer may have had other subjective motives for stopping the vehicle, and stated that their sole inquiry is whether this particular officer had reasonable suspicion that this particular motorist violated a traffic or equipment regulation. Furthermore, evidence obtained by searches and seizures in violation of the U.S. Constitution is inadmissible in state court Mapp v. Ohio, 367 U.S. 643, 655 (1961). Evidence that is obtained or derived as a result of an unlawful search or seizure is excluded as "fruit of the poisonous tree." Wong Sun v. U.S., 371 U.S. 471, 484-85 (1963). The U.S. Supreme Court has consistently held that a search or seizures unlawful at its inception may not be validated by evidence found pursuant to the unlawful search or seizure. Wong Sun v. U.S., 371 U.S. at 484. In Wong Sun, Toy was was unlawfully

arrested and made statements to police about the location of narcotics he was eventually charged with transporting and concealing. The Court found the narcotics were obtained by law enforcement's exploitation of the illegality of Toy's arrest, and as such were fruit of the poisonous tree to be suppressed. Also the Court found Wong Sun, "testimony as to matters observed during an unlawful invasion has been excluded in order to enforce the basic constitutional policies." (citing McGinnis v. U.S. 1Cir., 227 F.2d 598 (1st Cir. 1955)). It's clear by the testimony that the Appellant was leaving his workplace and pulled over to a location that no one would pay attention and to talk to the Appellant so they might try to further their investigation even with out committing a traffic violation. Ofc. Curry clearly instructed Dep. Cooper to commit a traffic stop. The search and seizure of the Appellant at the behest of Ofc Curry so that he might execute arrest warrants issued that morning and conduct additional investigation was an improper pretextual stop prohibited by the 4th Amendment (U.S. Constitution). Any evidence found was found illegally becomes fruit of the poisonous tree that should have been suppressed.

Conclusion

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence, also request that the Appellant new trial.

S/ Eugene Hardy

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Certificate of Service

The undersigned hereby certifies that a true copy of a Pro-Se Brief in the above referenced case to be served upon the following:

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