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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Lexington County
Hon. Clifton Newman, Circuit Court Judge
Appellate Case Tracking No. 2017-002061

The State, Respondent,

v.

Jo Pradubsri, Petitioner.

BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

Procedural History

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

STANDARD OF REVIEW

"On appeal from a motion to suppress on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse only if there is clear error." State v. Alston, 422 S.C. 270, 811 S.E.2d 747, 751 (2018) (citing Robinson v. State, 407 S.C. 169, 180-81, 754 S.E.2d 862, 868 (2014)). "In reviewing a challenge under the Fourth Amendment, the Court must affirm if there is any evidence to support the ruling." State v. Anderson, 415 S.C. 441, 446, 783 S.E.2d 51, 54 (2016). A trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence, and an appellate court may reverse only when there is clear error. State v. Groome, 378 S.C. 615, 618, 664 S.E.2d 460, 461 (2008). "The 'clear error' standard means that an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently." State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016).

ARGUMENT

I. The trial court properly found reasonable suspicion supported the stop of Petitioner's vehicle when the information received was corroborated and originated from a reliable informant.

The trial court properly found reasonable suspicion existed to support the stop of Petitioner because Sergeant Finch received information from a known reliable source, which he was able to corroborate, indicating Petitioner and his co-defendant were driving a vehicle containing crack cocaine and weapons. Sergeant Finch has a clear, particularized, and objective basis to believe Petitioner was involved in criminal activity. Accordingly, the trial court did not err in denying the motion to suppress.

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. The ultimate touchstone of the Fourth Amendment is "reasonableness," and the warrant requirement is subject to certain exceptions. State v. Herring, 387 S.C. 201, 210, 692 S.E.2d 490, 494 (2009). "A warrantless search withstands constitutional scrutiny under the Fourth Amendment if it meets the requirements of one of several exceptions, including the automobile exception." State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007). "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. The police, however, may also stop and briefly detain a vehicle if they have a reasonable suspicion that the occupants are involved in criminal activity." State v. Butler, 343 S.C. 198, 201, 539 S.E.2d 414, 416 (Ct. App. 2000) (internal citations omitted).

"'Reasonable suspicion' requires a 'particularized and objective basis that would lead one to suspect another of criminal activity.'" State v. Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) (quoting United States v. Cortez, 449 U.S. 411, 418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, 629 (1981)). "Reasonableness is measured in objective terms by examining the totality of circumstances. A traffic stop is not unreasonable if conducted with probable cause to believe a traffic violation has occurred, or when the officer has a reasonable suspicion the occupants are involved in criminal activity." State v. Vinson, 400 S.C. 347, 352, 734 S.E.2d 182, 184 (Ct. App. 2012) (internal citations omitted). "Reasonable suspicion is more than a general hunch but less than what is required for probable cause." Willard, 374 S.C. at 134, 647 S.E.2d at 255. As the United States Supreme Court has explained:

> Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

Alabama v. White, 496 U.S. 325, 330 (1990). The United States Supreme Court also articulated: "Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion the standard requires is '**considerably less** than proof of wrongdoing by a preponderance of the evidence,' and '**obviously less**' than is necessary for probable cause." Navarette v. California, 134 S. Ct. 1683, 1687 (2014) (citing *inter alia*, United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989)) (internal citations omitted) (emphasis added). "Probable cause . . . is not a high bar," Kaley v. United States, 134 S. Ct. 1090, 1103 (2014), so reasonable suspicion, which is "obviously less" than probable cause certainly cannot be very high.

An anonymous tip alone lacks sufficient indicia of reliability to support a reasonable suspicion to conduct a stop. See e.g., Florida v. J.L., 529 U.S. 266 (2000). However, where

sufficient indicia of reliability are present, a stop may be properly conducted based on reasonable suspicion. See e.g., State v. Rogers, 368 S.C. 529, 535, 629 S.E.2d 679, 682 (Ct. App. 2006) (finding reasonable suspicion existed where specific information provided by a known informant who could be held accountable and whose reputation could be assessed). In J.L., the United States Supreme Court (USSC) noted the distinction between an anonymous tip and one from a known informant: "Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity." J.L., 529 U.S. at 270.

In Alabama v. White, 496 U.S. 325 (1990), the USSC determined reasonable suspicion existed to stop a vehicle after various facts were confirmed as true prior to stopping the vehicle. The tipster told the police that a woman would drive from a particular apartment building to a particular motel in a brown Plymouth station wagon with a broken right tail light. The tipster further asserted that the woman would be transporting cocaine. Id. at 327. After confirming the innocent details, officers stopped the station wagon as it neared the motel and found cocaine in the vehicle. Id., at 331. The USSC held corroboration of certain details made the anonymous tip sufficiently reliable to create reasonable suspicion of criminal activity. The USSC found "because an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity." Id.

Recently, in Navarette v. California, 134 S. Ct. 1683 (2014), the USSC determined a 911 call provided sufficient indicia of reliability for reasonable suspicion to stop a vehicle for drunk driving. The Court found "[b]y reporting that she had been run off the road by a specific vehicle—a silver Ford F–150 pickup, license plate 8D94925—the caller necessarily claimed

eyewitness knowledge of the alleged dangerous driving. That basis of knowledge lends significant support to the tip's reliability." Id. at 1689. Additionally, details such as the vehicles location were corroborated by the police prior to the stop. Id. Further, the Court found the 911 system provided a means for identifying the informant and holding her accountable for any false information. Id. at 1689-1690. see also, State v. Pope, 410 S.C. 214, 225, 763 S.E.2d 814, 820 (Ct. App. 2014) ("We find Harris' description of the vehicle, including the color, make, and model; the highway and direction the vehicle would be traveling; the location of the vehicle at a specific time; and that more than one person was in the vehicle, was corroborated by officers observing a vehicle matching the exact description, traveling in the specified direction, located in the stated area, and containing more than one person. Furthermore, Harris was not a confidential informant and exposed himself to criminal liability should the information he supplied to officers prove to be false. Therefore, we find the trial court did not err in denying the motion to suppress the evidence seized during the search of the vehicle because law enforcement had reasonable suspicion to justify the traffic stop.").

In the instant case, the informant was an individual known to Sergeant Finch and the Lexington County Sheriff's Department. The informant provided significant information in the past which lead to multiple arrests. (T.74-77; R.43-46). As the United States Supreme Court has stated: "[A]n informant who is proved to tell the truth about some things is more likely to tell the truth about other things, including the claim that the object of the tip is engaged in criminal activity." Navarette, 134 S. Ct. at 1688. Further, the informant gave specific details about the area of town in which Petitioner dealt drugs; who he would be with; the vehicle they would be driving, including a dent on the vehicle; and the type of drugs and weapons they would have in

their possession. (T.78-82; R.47-51). While the informant had provided information on multiple occasions, Sergeant Finch was unable to follow up on many of these reports. (R.58-59).

On the day of the stop, Sergeant Finch received a call from the informant detailing the information Petitioner and his co-defendant would be transporting and dealing drugs. (R.65). Another Officer spotted the vehicle at Kroger in Irmo and relayed its position to Sergeant Finch. (R.66). Significantly, Sergeant Finch corroborated the details of the car and the area of town it was located in prior to making the stop. (T.83; R.52). He also knew both Petitioner and his co-defendant, and knew that his informant was associated with Petitioner. (T.82; 90; 94; R. 51; 59; 63). As a result, the information provided was corroborated and increased the reliability and likely veracity of the information received.

Finally, because the informant was known to Sergeant Finch, the informant could be held accountable for any false information provided. (T.77; R. 46). Under South Carolina law:

> (A) It is unlawful for a person to knowingly file a false police report.
>
> (B) A person who violates subsection (A) by falsely reporting a felony is guilty of a felony and upon conviction must be imprisoned for not more than five years or fined not more than one thousand dollars, or both.

S.C. Code Ann. § 16-17-722 (Supp. 2016). The United States Supreme Court has indicated the ability to hold the informant accountable is a significant factor in determining the reliability of the information and in determining whether an officer has reasonable suspicion to conduct an investigatory stop. See e.g., Adams v. Williams, 407 U.S. 143, 146–47, 92 S. Ct. 1921, 1923–24, 32 L. Ed. 2d 612 (1972) (finding "Sgt. Connolly acted justifiably in responding to his informant's tip. The informant was known to him personally and had provided him with information in the past. This is a stronger case than obtains in the case of an anonymous

telephone tip. The informant here came forward personally to give information that was immediately verifiable at the scene. Indeed, under Connecticut law, the informant might have been subject to immediate arrest for making a false complaint had Sgt. Connolly's investigation proved the tip incorrect. Thus, while the Court's decisions indicate that this informant's unverified tip may have been insufficient for a narcotics arrest or search warrant, the information carried enough indicia of reliability to justify the officer's forcible stop of Williams."(internal citations and footnote omitted)); Navarette v. California, 134 S. Ct. 1683, 1689 (2014)(finding the caller's use of the 911 emergency system was "[a]nother indicator of veracity" because the tipster could be identified and held accountable).

Accordingly, this case is similar to the cases of White, Navarette, and Rogers and this Court should find Sergeant Finch's stop of Petitioner's vehicle was properly made and supported by reasonable suspicion.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the decision of the trial court denying Petitioner's motion to suppress should be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Brief of Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 14th day of May, 2018.

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