

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

v.

ANGELA PRESSLEY GREENE,

APPELLANT

APPELLATE CASE NO 2018-000066

INITIAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting evidence belonging to appellant when she was unlawfully detained without reasonable suspicion and her consent to search was the product of the illegal detention?

STATEMENT OF THE CASE

Appellant was convicted of possession of methamphetamine after a bench trial held before the Honorable Perry Gravely in Greenville County on January 9, 2018. Appellant was sentenced to one year suspended upon time served with probation for nine months. Michael Martinez, Esq. was defense counsel. Hunter Blouin, Esq. was the assistant solicitor.

This appeal follows.

STANDARD OF REVIEW

In Fourth Amendment search and seizure cases, the standard of review is limited to the following:

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling. The appellate court will reverse only when there is clear error.

State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (citations and internal quotation marks omitted). This deference does not bar appellate courts from conducting their own review of the record to determine whether the trial judge's decision is supported by the evidence. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010).

ARGUMENT

The trial court erred in admitting evidence belonging to appellant when she was unlawfully detained without reasonable suspicion and her consent to search was the product of the illegal detention.

Master Deputy Charles Boone with the Greenville County Sheriff's Office testified that he responded to a residence on February 17, 2017, on a suspicious vehicle call. He saw a moped at the residence that turned out to be stolen. (Tr. p. 8, line 11- p. 10, line 1). He saw a woman, appellant, walking toward the house and he asked her what she was doing. She said she was "Going inside." He said they brought her around front and asked her if anybody was inside. She mentioned the name "Bubba." (Tr. p. 10, line 11- p. 11, line 3). Deputy Boone said they put appellant to the front with another deputy and he and a third deputy swept the house but did not find anybody inside. They did, however, find a purse in an upstairs bedroom. (Tr. p. 11, lines 10-19).

Appellant identified the purse as hers. Deputy Boone said he smelled burnt marijuana. He asked appellant if there was anything illegal in the purse. She told him no and that he could look. He found a glass pipe with burnt residue in it and a hand rolled cigarette that smelled like burnt marijuana. The items field tested for methamphetamine and marijuana. Appellant was placed under arrest. (Tr. p. 12, line 9- p. 15, line 21). On cross-examination Deputy Boone said appellant was not free to leave. (Tr. p. 24, lines 5-6).

Defense counsel argued that appellant was detained without reasonable suspicion. Any consent to search was invalid because it was the product of the wrongful detention. The deputy admitted that appellant was not free to leave. She was stopped from where she was going and was told to go to the front of the house. There was another officer at the front of the house along

with a suspect in handcuffs. Appellant could hardly feel free to leave. (Tr. p. 30, line 1- p. 31, line 15). In addition, all three officers at the scene were armed. (Tr. p. 31, lines 16-20).

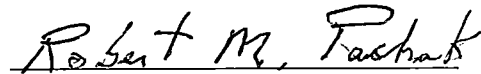
Defense counsel found appellant's case analogous to State v. Spears, 420 S.C. 363, 802 S.E.2d 803 (Ct. App. 2017) where a defendant was "seized" by DEA agents when they stopped and questioned him, and they lacked reasonable suspicion that he was involved in criminal activity. (Tr. p. 32, line 8- p. 33, line 9).

In State v. Anderson, 415 S.C. 441, 783 S.E.2d 51 (2016) the court held that police officers lacked a particularized and objective basis to suspect illegal activity that would justify a Terry stop of the defendant, who was walking on a footpath near a home where a search warrant was being executed. The court also noted that just being in a high crime area by itself did not justify a Terry stop. (Tr. p. 36, line 8- p. 37, line 13)

Defense counsel also cited State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002) for the proposition that a consent to search given by a defendant after an unlawful detention is invalid. (Tr. p. 38, lines 18-24).

CONCLUSION

The fruits of the search in this case should have been suppressed and appellant's conviction should be reversed.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of August, 2018.

STATE OF SOUTH CAROLINA

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Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

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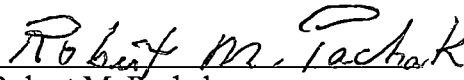
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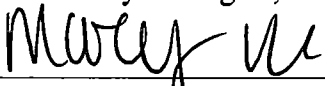
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Angela Pressley Greene, at 3720 Owen Lane, , Easley, SC 29640, this 6th day of August, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of August, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.