STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARLIN HUTLEY,

APPELLANT

Appellate Case No. 2011-201809

ANDERS BRIEF OF APPELLANT

RECEIVED
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SC Court of Appeals

DAYNE C. PHILLIPS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant's motion to suppress by finding Appellant waived his right to challenge the constitutionality of the traffic stop and that the police officer who conducted the traffic stop had probable cause to believe a traffic violation had occurred?

STATEMENT OF THE CASE

On December 14, 2010, Appellant Marlin Hutley was indicted by the Greenville County Grand Jury for trafficking crack-cocaine and possession with the intent to distribute (PWID) cocaine, third offense. R. 81 – 84.

On October 10, 2011, Appellant proceeded to a bench trial before the Honorable Robin B. Stilwell. R. 1. Appellant was represented by Scott Robinson, and the State was represented by Assistant Solicitors Kayce McCall and Howard Steinberg. The trial court found Appellant guilty as charged. R. 65, ll. 5-24. The trial court then sentenced Appellant to twenty-five years imprisonment on the trafficking crack-cocaine conviction and fifteen years imprisonment on the PWID cocaine conviction. R. 72, ll. 1-7. The sentences were to run concurrently for a total of twenty-five years imprisonment. R. 85 – 86.

ARGUMENT

The trial court erred in denying Appellant's motion to suppress by finding Appellant waived his right to challenge the constitutionality of the traffic stop and that the police officer who conducted the traffic stop had probable cause to believe a traffic violation had occurred.

Relevant Facts

On January 25, 2010, Officer Jeffrey Hines conducted a traffic stop on the vehicle Appellant was driving. R. 9, l. 19 – 12, l. 25. The drug evidence in this case was found on Appellant's person during a search incident to arrest. R. 29, ll. 1-12. A suppression hearing was held pre-trial to determine the constitutionality of the traffic stop and the admissibility of the drug evidence. R. 4, l. 12 – 42, l. 23.

During the suppression hearing, the State noted that Appellant pled guilty on March 4, 2010, to a ticket issued during the traffic stop for giving a false name to police. R. 4, l. 15 – 5, l. 7. The State maintained "that [Appellant] waived his right to be heard on [the] constitutionality of the [traffic] stop by pleading guilty to [the] false name [charge]" and cited *State v. Snowdon*, 371 S.C. 331, 638 S.E.2d 91 (Ct. App. 2006) in support of the State's argument. R. 5, ll. 8-12. Specifically, the State argued, "[Appellant] already had a chance to argue the constitutionality of the stop and failed to do so [at his prior guilty plea hearing] . . . ." R. 5, ll. 20-24.

The trial court agreed with the State's argument and found the facts presented in *State v. Snowdon* analogous to the facts in the instant case. R. 6, l. 23 – 7, l. 19. The trial court ultimately found that Appellant had waived his right to challenge the constitutionality of the traffic stop and that Officer Hines had probable cause to search Appellant incident to his arrest when Appellant gave a false name to law enforcement. R. 7, l. 19 – 8, l. 4. The trial court then denied the motion to suppress.

Defense counsel then requested that the trial court hear testimony prior to making his decision to deny the motion to suppress. R. 8, ll. 10-11. Based on defense counsel's request, the trial court agreed to hear testimony during the suppression hearing. R. 9, l. 22 – 10, l. 5.

Officer Jeffrey Hines of the Greenville City Police Department subsequently testified that on January 25, 2010, he conducted a traffic stop because the vehicle did not come to a complete stop "at the stop sign located at the intersection at West Washington and Washington Street Extension." R. 11, ll. 1-21. Officer Hines asserted that the driver of the vehicle, Appellant, indicated that he did not have a driver's license and that his name was Michael Cooper. R. 12, ll. 8-15. Officer Hines also maintained that he "recognized [Appellant] from a prior incident" and that he "knew that [Appellant's] name was not Michael Cooper." R. 12, ll. 16-18. Officer Hines further claimed that he issued a warning ticket for the stop sign violation and placed Appellant under arrest for giving a false name to police and for driving without a valid driver's license. R. 13, l. 16 – 14, l. 17.

At the suppression hearing, Appellant acknowledged that he pled guilty to giving a false name to police and testified that he came to a complete stop at the stop sign. R. 32, l. 6 – 33, l. 13. Appellant also testified that he never received a warning ticket for failing to stop at the stop sign. R. 33, ll. 17-21. Appellant revealed that Officer Hines had previously arrested him and that Officer Hines informed him that he was the first person to "beat" one of his cases as Appellant left the courthouse in regards to that prior arrest. R. 35, ll. 3-20.

At the conclusion of the suppression hearing, the trial court found that: (1) "the officer's testimony is credible with respect to the reasoning for the initial stop[;]" (2) "the false name that was given to the police . . . was [a] justifiable reason for the arrest[;]" (3)

"there was . . . a legal stop incident to the suspicion of [Appellant] having violated a traffic law[;]" and "in keeping with the Snowden [sic] case, the legality of the stop was waived by and through the initial [guilty] plea to false name to police." R. 42, ll. 11-23.

Discussion

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable." *Wilson v. Arkansas,* 514 U.S. 927, 931 (1995). The Fourth Amendment is applicable to the States through the Due Process Clause of the Fourteenth Amendment. *Mapp v. Ohio,* 367 U.S. 643 (1961).

Traffic stops are reviewed under the standard set forth in *Terry v. Ohio*, 392 U.S. 1 (1968), because a traffic stop is more analogous to an investigative detention than a custodial arrest. *See United States v. Rusher,* 966 F.2d 868, 875 (4th Cir. 1992). Consequently, *Terry* outlines a two-prong test for analyzing the constitutionality of a traffic stop: (1) whether the police officer's action was justified at the inception of the traffic stop; and (2) whether the police officer's subsequent actions were reasonably related in scope and duration to the circumstances that justified the stop. *Rusher,* 966 F.2d at 875.

"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 (1981)). In determining whether reasonable suspicion exists, the court must consider the totality of the circumstances. *State v. Rogers*, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006). Reasonable suspicion is more than a general hunch but less than what is required for probable cause. *Butler*, 343 S.C. at 202, 539 S.E.2d at 416.

The United States Supreme Court created the exclusionary rule to safeguard Fourth Amendment rights. *United States v. Calandra*, 414 U.S. 338 (1974). The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine. *See Wong Sun v. United States*, 371 U.S. 471, 484 (1963); *see also State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999) (finding evidence is not admissible under the "fruit of the poisonous tree" doctrine when the police exploit an unlawful search to seize evidence that would not have otherwise come to light). The Fourteenth Amendment incorporates the rule of excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

"The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'" *United States v. Mendenhall*, 446 U.S. 544, 553–54 (1980) (quoting *United States v. Martinez–Fuerte*, 428 U.S. 543, 554 (1976)). The United States Supreme Court and the Supreme Court of this State have recognized and applied the principle that police officers are not

granted under *Terry*, "a general warrant to rummage and seize at will" and that any evidence seized from an unlawful detention must be excluded as "fruit of the poisonous tree." *State v. Woodruff*, 344 S.C. 537, 549, 544 S.E.2d 290, 296-97, n. 1 (2001) (citing *Texas v. Brown*, 460 U.S. 730, 748 (1983) (Stevens, J., concurring).

In this case, Appellant testified at the suppression hearing, in direct contradiction to Officer Hines' testimony, that he came to a complete stop at the stop sign and that he never received a warning ticket for his alleged failure to stop at the stop sign. R. 32, l. 6 – 33, l. 21. Appellant also revealed that Officer Hines had previously arrested him and that Officer Hines informed him that he was the first person to "beat" one of his cases as Appellant left the courthouse in regards to that prior arrest. R. 35, ll. 3-20. Officer Hines admitted, "I recognized [Appellant] from a prior incident. I knew that [Appellant's] name was not Michael Cooper." R. 12, ll. 16-18.

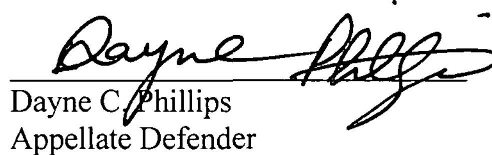
The trial court erroneously found that that Appellant had waived his right to challenge the constitutionality of the traffic stop by pleading guilty to giving a false name to police for two reasons. R. 6, l. 23 – 8, l. 4; R. 42, ll. 20-23. First, the trial court did not inquire as to whether Appellant was represented by counsel at the guilty plea hearing in magistrate's court. *Cf. Alabama v. Shelton*, 535 U.S. 654, 658, 122 S.Ct. 1764, 1767 (2002) (finding the constitutional right to counsel extends to a defendant who receives a "suspended sentence that may 'end up in the actual deprivation of a person's liberty.'") (citing *Argersinger v. Hamlin*, 407 U.S. 25, 40, 92 S.Ct. 2006, 2014 (1972)). Second, the alleged certified conviction for giving a false name to police was never made a court's exhibit.

Furthermore, the trial court erred in finding that Officer Hines' testimony at the suppression hearing was credible and that Officer Hines had probable cause to believe a traffic violation had occurred. R. 42, ll. 11-19; *See Butler*, 343 S.C. at 201, 539 S.E.2d at 416 (finding "[a]s 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."). Accordingly, the trial court erred in denying Appellant's motion to suppress. R. 7, l. 19 – 8, l. 4; R. 42, ll. 11-23.

CONCLUSION

For the foregoing reasons, Appellant Marlin Hutley respectfully requests that this Court reverse his convictions and remand his case to the Greenville County Court of General Sessions for a new trial.

Respectfully submitted,



Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of November, 2012.

STATE OF SOUTH CAROLINA

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Appellate Case No. 2011-201809

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marlin Hutley states:

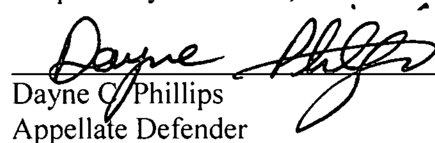
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Robin B. Stilwell, which was held on October 10, 2011, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Marlin Hutley.

Respectfully submitted,



Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of November, 2012.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Pursuant to the new Anders procedure, Appellant included the following in the Record on Appeal:

(1) True–billed indictments;
(2) Entire transcript of proceeding (dated October 10, 2011);
(3) State's exhibit # 1 (traffic ticket);
(4) State's exhibit # 4 (warning record);
(5) State's exhibit # 9 (lab report);
(6) Defendant's exhibit # 1 (DVD);
(7) Defendant's exhibit # 2 (dispatch report);
(8) Defendant's exhibit # 3 (temporary law enforcement commitment).

I certify that this designation contains no matter which is irrelevant to this appeal.

November 26th, 2012

Dayne C. Phillips
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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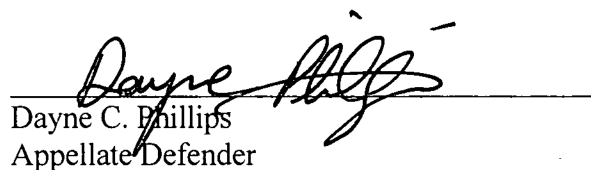
CERTIFICATE OF SERVICE

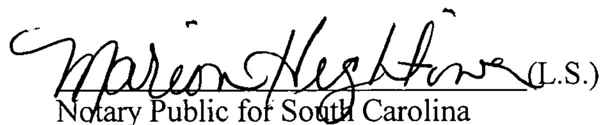
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Columbia, SC 29201; and on Marlin Hutley, #240707 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010
This, 26th day of November, 2012.



Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of November, 2012.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.