

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALFRED CLAY JACKSON,

APPELLANT

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUE ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT 5

CONCLUSION 8

PETITION TO BE RELIEVED AS COUNSEL 9

TABLE OF AUTHORITIES

Cases

Arizona v. Johnson, 555 U.S. 323 (2009)..... 6

Florida v. Royer, 460 U.S. 491 (1983) 7

Illinois v. Caballes, 543 U.S. 405 (2005)..... 7

Terry v. Ohio, 392 U.S. 1 (1968)..... 7, 8

Whren v. United States, 517 U.S. 806 (1996) 6

Wilson v. Arkansas, 514 U.S. 927 (1995) 6

Constitutional Provisions

U.S. Const. Amend. IV 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting drugs found on the ground near appellant into evidence when the traffic stop exceeded its permissible duration?

STATEMENT OF THE CASE

On May 6, 2010, Alfred Clay Jackson was indicted for possession of cocaine. R. 145. On February 1 - 2, 2012, appellant was tried in Spartanburg County before the Honorable J. Derham Cole and a jury. R. 1. Richard H. Whelchel represented appellant. R. 1. James E. Hunter and Scott Spivey represented the State. R. 1. The jury found appellant guilty. R. 135, l. 25 – 136, l. 4. Judge Cole sentenced appellant to five years' imprisonment and a fine of \$7,500 suspended upon the service of eighteen months' imprisonment, three years' probation, 100 hours of public service, completion of a substance abuse program, submission to random drug and alcohol testing, and the payment of \$500 for his appointed attorney. R. 141, ll. 9 - 20. On February 8, 2012, appellant filed and served his notice of appeal.

This appeal follows.

ARGUMENT

The trial court erred in admitting drugs found on the ground near appellant into evidence when the traffic stop exceeded its permissible duration.

Appellant took the stand in his own defense. Appellant testified that on November 6, 2009, his moped broke down while he was in traffic in the middle of downtown Spartanburg. R. 84, l. 25 – 85, l. 16. He pulled his moped over to the sidewalk and attempted a repair. R. 85, ll. 14 – 24. When he got back into traffic, the moped still was not working, so he pulled into a parking lot and again attempted to repair it. R. 85, l. 25 – 86, l. 9. While appellant was attempting to repair it, a plain clothes policeman approached him. R. 86, l. 15 – 87, l. 24.

Without appellant's consent, the policeman patted appellant down for weapons. R. 88, l. 10 – 89, l. 10. Appellant gave the policeman his identification and the policeman took it into his car and left appellant standing outside in the cold. R. 90, l. 10 – 92, l. 25. After ten minutes, three other officers arrived. R. 93, ll. 6 – 22. The officers repeatedly asked appellant whether his moped was stolen, which appellant denied (it was not stolen). R. 94, l. 1 – 95, l. 21.

Officer Jonathan Lawson was the plain clothes policeman who initially arrived at the scene. R. 38, l. 9 – 39, l. 8. He testified that he saw appellant driving his moped along the sidewalk, run a red light, cross four lanes of traffic and come to a stop in the parking lot of a business. R. 39, l. 9 – 41, l. 8. Officer Lawson claimed that appellant broke three traffic laws and he decided to approach him. R. 41, ll. 7 – 18. He said that he patted appellant down for weapons because appellant kept putting his hands in his pocket (on a cold

November day). R. 42, l. 12 – 43, l. 3. Officer Lawson did not locate a weapon. R. 42, l. 12 – 43, l. 3.

After entering and exiting his vehicle, Officer Lawson again told appellant to remove his hands from his pockets. R. 44, ll. 7 – 19. Officer Lawson claimed that when appellant removed his hands, a bag of cocaine fell out of appellant's pocket. R. 44, l. 20 – 45, l. 22. Appellant was arrested and searched, and Officer Lawson said he found another bag of cocaine in appellant's coat. R. 45, l. 23 – 46, l. 15. Appellant denied dropping or possessing cocaine. R. 95, l. 25 – 96, l. 10.

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). When a police officer stops a vehicle and detains the occupant briefly, the stop amounts to a seizure within the meaning of the Fourth Amendment. Whren v. United States, 517 U.S. 806, 809–10 (1996). “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.” Whren, 517 U.S. at 810. However, a traffic stop typically ends when the police officer has “no further need to control the scene, and inform[s] the driver and passengers they are free to leave.” Arizona v. Johnson, 555 U.S. 323 (2009).

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. 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.

The second prong requires that the seizure must be limited both in scope and duration. Florida v. Royer, 460 U.S. 491, 500 (1983) (plurality opinion). With regard to the scope component, "the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." Id. With regard to the duration component, a traffic stop may become "unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." Illinois v. Caballes, 543 U.S. 405, 407 (2005); Royer, 460 U.S. at 500 (noting that the scope of a seizure "must be carefully tailored to its underlying justification," and that the government bears the burden to "demonstrate that the seizure it seeks to justify ... was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.").

Officer Lawson's detention of appellant exceeded the lawful duration of a stop under Terry. Officer Lawson had already conducted a pat-down of appellant and found no weapons. He already had an opportunity to check appellant's identification and run it through his system in his vehicle. All that remained to do was to issue appellant a ticket for his traffic violations. Instead, under the pretense of officer safety, Officer Lawson continued to force appellant to remove his hands from his pockets even though it was cold. Even

assuming Officer Lawson's version of the facts is correct, such prolonged detention was unnecessary under Terry and violated appellant's Fourth Amendment rights. Therefore, the trial court should have suppressed any evidence seized as a result of this illegal search and granted a directed verdict for the appellant.

CONCLUSION

For the reasons stated above, the Court should suppress the evidence unlawfully seized from appellant and reverse appellant's conviction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of January, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JAN 14 2013
SC Court of Appeals

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALFRED CLAY JACKSON,

APPELLANT

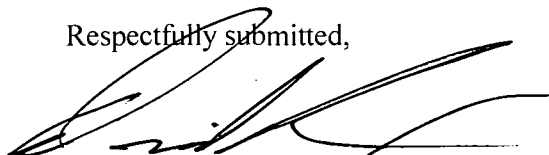
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alfred Clay Jackson 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 J. Derham Cole, which was held on February 2, 2012, 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 Alfred Clay Jackson.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of January, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 14th, 2013

A handwritten signature in black ink, appearing to read "David Alexander", written over a horizontal line.

David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JAN 14 2013
SC COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

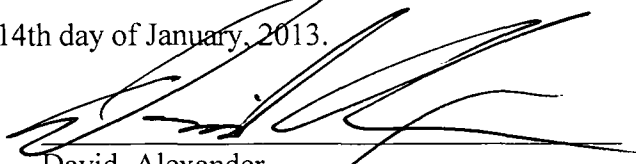
V.

ALFRED CLAY JACKSON,

APPELLANT

CERTIFICATE OF SERVICE

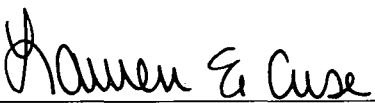
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Record on Appeal have been served on Alfred Clay Jackson, #349568 at Wateree River Correctional Institution, this 14th day of January, 2013.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of January, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014 .