

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DONALD MARQUICE ANDERSON,

APPELLANT

Appellate Case No. 2012-212499

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

The State argues that the frisk of Appellant Donald M. Anderson for weapons was appropriate because the officers had reasonable suspicion to conduct a stop pursuant to Terry v. Ohio, 392 U.S. 1 (1968). The State's argument is flawed for two reasons.

First, as set forth in Issue Number One of the Appellant's Brief, the officers did not have reasonable suspicion of criminal activity to justify stopping and detaining Anderson simply because: (1) he was located in a high crime area; (2) a search warrant unconnected to him was being executed at a nearby house; (3) he was seen in the cut area between the home being searched and Sullivan Street, an area not covered by the search warrant; and (4) he changed direction and walked away upon seeing the officers. See Appellant's Brief, pp. 9-13.

Second, the State suggests that whenever an officer has reasonable suspicion justifying an investigatory stop, a subsequent frisk for weapons is always automatically justified. The State cites to an unreported opinion for the proposition that "[o]nce reasonable suspicion exists to justify an investigatory stop, an officer may conduct a limited pat-down for officer safety." United States v. Boone, 2012 WL 874832, at *6 (W.D.N.C. Mar. 8, 2012).

The court in Boone, however, refers to the Fourth Circuit's opinion in United States v. Burton, 228 F.3d 524 (4th Cir. 2000) which sets forth the full standard for when an officer may conduct a limited pat-down for weapons of a detained individual: "Once an officer has a basis to make a lawful investigatory stop, he may protect himself during that stop by conducting a search for weapons *if he has reason to believe that the suspect is armed and dangerous.*" 228 F.3d at 528 (emphasis added) (internal citations omitted).

Therefore, justification for an investigatory stop is not in itself sufficient to support a pat-down frisk of the stopped individual. The officer must have a reasonable belief that the person detained is armed. The court's decision in Terry "does not allow a generalized cursory search for weapons." Ybarra v. Illinois, 444 U.S. 85, 93-94 (1980).

An officer needs to articulate specific facts that led him or her to believe that the detained person was armed and dangerous to justify a pat-down search for weapons. Terry, 392 U.S. at 21, 27; State v. Fowler, 322 S.C. 263, 267, 471 S.E.2d 706, 708 (Ct. App. 1996). A mere general concern for officer safety is not sufficient. Westmoreland v. State, 965 N.E.2d 163, 167 (Ind. Ct. App. 2012) (finding where defendant did not make any furtive movements and was not hostile or belligerent, officers were not justified based on a general concern for their own safety in patting down defendant); Commonwealth v. Preacher, 827 A.2d 1235, 1239-40 (Pa. Super. Ct. 2003).

Other than arguing that reasonable suspicion existed to justify Detective Hyatt's investigatory stop of Anderson, the State points to no specific facts articulated by Detectives Hyatt and Rhinehart as to why Anderson needed to be frisked for weapons or as to why they believed Anderson was armed and dangerous.

The testimony of the officers indicated that Anderson made no movements or gestures indicating he was in possession of a weapon or about to commit an assault or otherwise acted threatening in any way. Instead, Anderson immediately complied with the officer's demands to get on the ground and was thereafter almost instantaneously handcuffed by Detective Rhinehart. Anderson was not wearing bulky clothing which could have concealed a weapon. Rather, he was wearing a shirt and shorts. Detective Hyatt further testified that he did not see anything that looked like a weapon on

Anderson. Detective Hyatt only conducted the pat-down out of a general concern for officer safety. R. 17, ll. 19-21; 18, ll. 8-18; 23, ll. 6-10; 26, ll. 13-18. See Ybarra, 444 U.S. at 93.

Accordingly, the investigatory stop of Anderson, even if valid which Anderson contends it was not, was not enough to support the subsequent frisk of Anderson. Where the officers lacked a reasonable suspicion that Anderson was armed and dangerous, the pat-down search of Anderson was invalid. The Trial Court's denial of Anderson's motion to suppress the cocaine evidence should therefore be reversed.

CONCLUSION

Based upon the arguments set forth in the Appellant's Brief and in this Reply, Anderson's conviction for possession of crack cocaine should be reversed where both the stop and subsequent search of Anderson contravened the requirements of the Fourth Amendment.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of September, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

September 12, 2013



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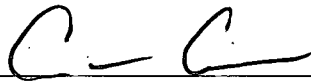
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CERTIFICATE OF SERVICE

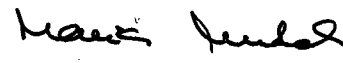
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of September, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of September, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.