STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WREN ROBERSON HINTON

APPELLANT

APPELLATE CASE NO. 2013-001140

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to suppress drugs taken after a frisk of appellant because the police did not have reasonable suspicion that appellant was armed and dangerous?

STATEMENT OF THE CASE

Appellant was convicted of two (2) counts of possession of a controlled substance after a bench trial held before the Honorable Deadra L Jefferson on May 16, 2013, in Greenville County. She was sentenced to two (2) concurrent terms of one year suspended to three (3) years probation. She was ordered to attend voc rehab for inpatient drug treatment, to successfully complete substance abuse counseling, and to have random drug and alcohol tests. John V. Crangle, Esquire, was trial counsel. Kathryn B. Salisbury, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to suppress drugs taken from appellant after a frisk of her because the police did not have reasonable suspicion that appellant was armed and dangerous.

Deputy Lanford with the Greenville County Sheriff's Office testified at the suppression hearing that he worked in a direct patrol unit. It was a team assigned to high drug areas. They go into the areas and saturate them, and mostly look for illegal narcotics and weapons. He said it is a completely proactive, not a reactive, type of unit. (R. p. 9, line 23 – p. 10, line 6). On June 22, 2012, Deputy Lanford was patrolling in the Brandon and Woodside community in the west side of Greenville. He said they were always over there because it's a lower income and a high drug use area. On June 22, 2012, he was patrolling on Pendleton Street. He passed a vehicle that was turning behind him. It was not using a proper turn signal. He made a traffic stop on Woodside Avenue. Appellant was a passenger in the vehicle. She did not have a South Carolina ID with her. He asked her to get out of the vehicle so he could use his fingerprint reader to positively identify her. He also asked her if she had any weapons on her because she was in a high drug area where there are weapons. He said appellant said that he could check her for weapons.[1] The deputy ran his hands down her waist and her front left pocket where he felt several pills. He asked appellant what they were and she said they were Lortabs. (R. p. 11, line 2 – p. 12, line 24). She said her doctor prescribed them for her for a urinary track infection. When she told him

[1] In State v. Robinson, 306 S.C. 399, 412 S.E.2d 411 (1991), the Court wrote "A consent to search procured during an unlawful stop is invalid unless such consent is both voluntary and not an exploitation of the unlawful stop." (emphasis in original). Citing, Brown v. State, 188 Ga.App. 184, 372 S.E.2d 514 (1988); U.S. v. Miller, 821 F.2d 546 (11th Cir. 1987).

that, he took her into investigative detention. He then continued to search for weapons where he located some more pills in her back pocket. They were a different type pill. (R. p. 13, lines 11 – 21). Deputy Lanford took possession of the pills and placed appellant in his patrol car. (R. p. 14, lines 20 – 21).

On cross-examination, it was revealed that appellant was five feet tall and weighed less than one hundred pounds. She was 46 years old. (R. p. 17, lines 1 – 15). The deputy admitted that nowhere in his report of the incident did it say she consented to a frisk or pat down. (R. p. 19, line 20 – p. 20, line 14). He also said when he patted her down, he did not find any weapons. (R. p. 21, lines 23 – 25). Neither did he see any suspicious drug activity when he was getting ready to pull the car over. (R. p. 22, lines 16 – 21).

On the basis of the above testimony, defense counsel moved to suppress the evidence of the search pursuant to Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968) and its progeny. He noted the Fourth Amendment gave people the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Warrantless searches are per se unreasonable. Counsel acknowledged that Deputy Lanford had probable cause to stop the car for a traffic violation and the authority to ask appellant to get out of the car. What he was challenging was the frisk. A police officer has to have an objective reasonable suspicion that a person subjected to the frisk is armed and dangerous. Counsel cited Arizona v.Johnson, 555 U.S. 323, 129 S.Ct. 781 (2009), but the rule goes all the way back to Terry. It is summed up as follows in Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889 (1968):

> The police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries. Before he places a hand on the person of a citizen in search of anything, he must have constitutionally adequate,

> reasonable grounds for doing so. In the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonable inferred that the individual was armed and dangerous. Terry v. Ohio, supra.

392 U.S. at 64, 88 S.Ct. at 1903.

Deputy Lanford did not point to any particular facts why he reasonably felt appellant, at five feet tall and weighing less than 100 pounds, was armed and dangerous. It was also summer time and appellant was not wearing bulky clothes. What we have here is all a part of the Greenville County Sheriff's Office "proactive" drug unit. They are tying to find drugs. They go into a neighborhood known for drugs. They use traffic violations as a pretext to look for signs of drugs. Then they use the frisk as a pretext to feel for drugs.[2] That should not be allowed.

[2] "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence...." Minnesota v. Dickerson, 508 U.S. 366, 373, 113 S.Ct. 2130, 2136 (1993) quoting Adams v. Williams, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923 (1972).

CONCLUSION

The suppression motion should have been granted and appellant's conviction should be reversed.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of April, 2014.

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."

April 29, 2014

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WREN ROBINSON HINTON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Tracy A. Meyers, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of April, 2014.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of April, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.