ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
OCT 05 2018
SC Court of Appeals

Appeal from Newberry County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRANKLIN DELL HAYES,

APPELLANT

APPELLATE CASE NO 2017-002572

ANDERS BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitution

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying appellant's motion to suppress drugs found at a traffic checkpoint where police officers impermissibly extended the duration of the stop after seeing a disassembled shotgun on the vehicle's floorboard, since a disassembled shotgun was not a threat to officer safety, or illegal?

STATEMENT OF THE CASE

Appellant was indicted by a Newberry County Grand Jury on October 6, 2017, for possession of methamphetamine, third or subsequent offense. R. 200 – 201. He proceeded to trial before the Honorable Eugene C. Griffith and a jury December 6 – 7, 2017. R. 1.

Charles Verner represented appellant; Dale Scott and Taylor Daniel represented the state. R. 1. Appellant was found guilty and sentenced to nine years' imprisonment. R. 202.

This appeal follows.

STANDARD OF REVIEW

"On appeals from a motion to suppress based on Fourth Amendment grounds, [the appellate court] reviews questions of law de novo." *State v. Bash*, 419 S.C. 263, 268, 797 S.E.2d 721, 723–24 (2017). "As to a circuit court's findings of fact, we must affirm if there is any evidence to support it, and may reverse only for clear error." *Id.* (internal quotations omitted) (quoting *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012)).

ARGUMENT

The trial court erred in denying appellant's motion to suppress drugs found at a traffic checkpoint where officers impermissibly extended the duration of the stop after seeing a disassembled shotgun on the vehicle's floorboard, since a disassembled shotgun was not a threat to officer safety, or illegal.

Statement of facts

Appellant was the backseat passenger in an extended-cab truck travelling on Highway 34 July 7, 2017, when the vehicle was stopped by the Newberry County Sheriff's Office at a traffic checkpoint. R. 21, l. 17 - 22, l. 3; R. 23, l. 13 – 24, l. 19. The driver provided a valid license, did not seem intoxicated, and there were no problems with the insurance or registration. R. 48, l. 25 – 49, l. 13.

A disassembled shotgun was on the front passenger floorboard. R. 24, l. 24 – 25, l. 1; R. 25, ll. 10-19. It was undisputed the shotgun was "not in a workable condition" as it was broken down "into several pieces." R. 199; R. 25, ll. 18-19; R. 36, l. 25 – 37, l. 2. The barrel was not connected to the stock and there was no trigger mechanism. R. 98, ll. 4-11; R. 199.

According to Deputy Cook and Sergeant Miller, Deputy Smith saw the shotgun and told Cook, who, as a result, came closer to the truck and allegedly smelled marijuana. R. 26, ll. 6-10. Cook told their supervisor, Miller, that he smelled marijuana and that Smith had seen the shotgun. R. 45, ll. 5-9. Sergeant Miller saw appellant "fidgeting around" in the backseat, and the confluence of these circumstances caused him to order the occupants out of the truck, handcuff appellant, and have officers search the truck "for officer safety reasons." R. 25, ll. 8-9; R. 109, l. 2 – 110, l. 10; R. 26, l. 24 – 27, l. 2; R. 45, ll. 10-21; R. 26, l. 24 – 27, l. 2; R. 45, ll. 2-3.

A substance appearing to be methamphetamine was found in a baggie in appellant's hand, and in a baggie inside a cigarette pack on the back seat. R. 46, ll. 5-9; R. 28, ll. 3-21. After appellant was arrested and searched at the jail, another baggie appearing to contain methamphetamine[1] was located in appellant's underwear. R. 31, l. 25 – 32, l. 10.

Defense counsel moved pretrial to suppress drugs found pursuant to the stop[2] and a hearing was held at which Deputies Cook and Miller testified. R. 2; R. 20, l. 19 – 21, l. 9. Deputy Smith did not testify during pretrial or trial, despite being the person who first saw the disassembled shotgun, but Deputy Cook said Smith "probably" did not realize the shotgun was disassembled. R. 98, ll. 18-20. Sergeant Miller said, "I can't speak for what [Smith] saw." R. 45, ll. 3-4. Sergeant Miller admitted there was nothing illegal about driving with a shotgun in the vehicle. R. 111, ll. 11-14.

Defense counsel moved to suppress the drugs on Fourth Amendment grounds and argued the state exceeded the constitutionality of the traffic stop since the gun was disassembled. R. 50, ll. 8-23. "As the Court can see, there was a shotgun that had been completely disassembled . . . it doesn't even have a trigger . . ." R. 50, ll. 15-18. The trial court denied the motion and found that the shotgun and the smell of marijuana gave officers probable cause to search the truck, and that

---

[1] Officers submitted all three bags to SLED, but SLED only performed a complete drug analysis on one of the bags. R. 134, ll. 7-9; R. 148, l. 24 – 149, l. 4. The substance in one baggie was confirmed to be methamphetamine, the substance in another was "indicative" of methamphetamine in a preliminary test, and the substance in the third baggie was not tested. R. 138, l. 18 – 141, l. 15. It was debatable which baggie was found in appellant's hand, but the state argued it was the baggie with the substance confirmed as methamphetamine. R. 115, ll. 9-12; R. 140, l. 25 – 141, l. 3.

[2] Defense counsel did not challenge the legality of the traffic checkpoint, although Deputy Cook admitted one of their objectives was to look into vehicles—seemingly a fishing expedition. R. 22, ll. 24-25; R. 93, ll. 9-15. Deputy Miller testified of appellant, "I've known him for many years." R. 119, ll. 6-8.

officers were permitted to look in appellant's hand because he was handcuffed. R. 50, l. 24 – 51, l. 17. The drugs were later admitted. R. 141, l. 17 – 142, l. 12.

Discussion

The Fourth Amendment protects against unreasonable searches and seizures. U.S. CONST. amend. IV; *Katz v. United States*, 389 U.S. 347, 351 (1967). "It is well established that a vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment." *City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000). When a police officer makes a traffic stop, a passenger of the car is seized within the meaning of the Fourth Amendment. *Brendlin v. California*, 551 U.S. 249, 251 (2007).

When an "officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others . . ." the officer may "take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Terry v. Ohio*, 392 U.S. 1, 24 (1968). The crux of the case in *Terry* was the "immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him." *Id.* at 23.

In *Michigan v. Long*, 463 U.S. 1032, 1049 (1983), the United States Supreme Court addressed the extension of *Terry* frisks for officer safety to the passenger compartment of a vehicle.

> [T]he search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer **possesses a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.**

(emphasis added).

An officer may, for safety reasons, undertake a limited search for weapons pursuant to *Terry v. Ohio* and *Michigan v. Long* when the person's suspicious behavior gives rise to a reasonable belief based on specific and articulable facts the suspect is dangerous and may gain immediate control of weapons. Here, a disassembled shotgun, not within appellant's reach, was in pieces and had no trigger—these facts do not give rise to a reasonable, articulable suspicion appellant was armed and dangerous.

"A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). "An officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, **so long as those inquiries do not measurably extend the duration of the stop.**" *Id* (emphasis added).

The presence of the shotgun in the truck was not illegal. S.C. Code Ann. § 50-11-760 provides that a person **may lawfully possess a centerfire rifle or shotgun in a vehicle** while traveling on a public road. § 50-11-760(B)(1)(b)(ii) provides the shotgun may be loaded, provided it is loaded with shot size larger than number four. A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed. U.S. CONST. amend. II.

Police officers unlawfully seized appellant when they measurably extended the duration of the traffic checkpoint. The driver had provided a valid license and his registration was in order. Viewing a weapon lawfully carried in a vehicle did not justify extending the duration of the stop. Because the weapon was disassembled and did not even have a trigger mechanism,

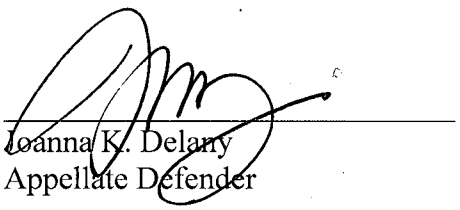
extending the stop for officer safety was unreasonable—this was not a "weapon that could unexpectedly and fatally be used against him." *Terry*, 392 U.S. at 23.

United States Supreme Court "cases generally have held that one whose Fourth Amendment rights are violated may successfully suppress evidence obtained in the course of an illegal search and seizure . . ." *Rakas v. Illinois*, 439 U.S. 128, 137-38 (1978). "The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion." *Wong Sun v. United States*, 371 U.S. 471, 485 (1963). Evidence that derives from an unlawful search and seizure is considered a "fruit" of official illegality. *Id.*

Had the officers not impermissibly extended the duration of the stop, they would not have smelled the marijuana that resulted in the search the that turned up the drugs. Because the search and seizure of the vehicle and of appellant was unlawful, the trial court erred in failing to grant defense counsel's motion to suppress the drugs, as they were fruits of the poisonous tree.

CONCLUSION

Based on the foregoing argument, appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of October, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRANKLIN DELL HAYES,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Franklin Dell Hayes states:

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

2. She has reviewed the record of appellant's trial before Judge Eugene C. Griffith, which was held on December 6 - 7, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She 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, She asks the Court to relieve her as counsel for Franklin Dell Hayes.

Respectfully Submitted,

Joanna K. Delany
Appellate Defender
ATTORNEY FOR APPELLANT

This 5th day of October, 2018.

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 5, 2018.

Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRANKLIN DELL HAYES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned 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 J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Franklin Dell Hayes, 315053, at Manning Correctional Institution, 502 Beckman Drive, Columbia, SC 29203, this 5th day of October, 2018.

Joanna K. Delany
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of October, 2018.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028