STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHELDON ALONZO WATSON,

APPELLANT

APPELLATE CASE NO 2018-002246

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion to suppress drugs found inside the vehicle he drove when the police initiated the traffic stop based on a "hunch" after seeing a paper tag on the vehicle because the observation of a car paper tag was neither probable cause nor reasonable suspicion upon which to support as valid or to justify the traffic stop in the case.

STATEMENT OF THE CASE

Appellant Sheldon Alonzon Watson was convicted of trafficking in methamphetamine per jury trial held during the December 2018 term of the Greenville County General Sessions Court before Judge Edward W. Miller. Appellant was sentenced to imprisonment for a period of twelve years. Assistant Public Defenders Christopher Grubbs and Teal Johnson represented appellant at trial, and Assistant Solicitor Kimberly Howard appeared on behalf of the state.

Appellant appealed his trial court conviction and sentence. This brief follows.

STANDARD OF REVIEW

In Fourth Amendment search and seizure cases, the standard of review is limited to the following:

> The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling. The appellate court will reverse only when there is clear error.

State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (citations and internal quotation marks omitted). The deference does not bar appellate courts from conducting their own review of the record to determine whether the trial judge's decision is supported by the evidence. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010).

ARGUMENT

The trial judge erred in denying appellant's motion to suppress drugs found inside the vehicle he drove when the police initiated the traffic stop based on a "hunch" after seeing a paper tag on the vehicle because the observation of a car paper tag was neither probable cause nor reasonable suspicion upon which to support as valid or to justify the traffic stop in the case.

Prior to trial, defense counsel moved to suppress the drugs found inside the vehicle in effect on the ground that the search and seizure that occurred at 8:30 pm on April 24, 2017, was the result of a traffic stop that violated the Fourth Amendment. R. 28, lines 20-25. An in-camera hearing followed and Officer Corey Chadwick described the events leading up to the stop as follows:

> 1.) Officer Chadwick stated that on April 24, 2017, he was patrolling the Fairview Road and Highway 418 areas of Greenville County, and specifically the Sphinx gas station at that location due to the fact that "a lot of criminal activity" occurred at that gas station. R. 30, l. 1- 15.
>
> 2.) Officer Chadwick stated that at that time he saw a car sitting in the back (not by a pump) and in the open (middle) of the Sphinx gas station where employees park. R. 30, l. 16-19; R. 44, l. 4-12.
>
> 3.) Officer Chadwick explained that he turned his headlights on the vehicle and observed a black male driver (appellant) and a white male passenger, and a white male leaning over into the passenger's side window. R. 30, l. 20-p. 31, l. 1.
>
> 4.) Chadwick added that the male leaning over into the window then walked away and the driver of the vehicle in question pulled off and started driving. R. 31, l. 1-7.
>
> 5.) Officer Chadwick stated that he believed that there was a narcotics transaction that had been in progress and he believed that narcotics were in the vehicle. R. 31, l. 12-21.
>
> 6.) Chadwick stated that he followed the vehicle and noticed that the car "didn't have a legitimate tag (which he couldn't read) on

there… [because] it had one of the paper, temporary tags… and based on the activity witnessed, he decided to conduct a traffic stop on the vehicle." R. 31, l. 18- p. 32, l. 6)

7.) Chadwick stated that "there was no way to tell the validity of the temporary tag, [or] if the car had been purchased in the past forty-five days or not." R. 35, l. 2-6.

8.) Chadwick stated that he asked the driver (appellant) for his driver's license and proof of insurance and registration and was told that he (appellant) was a mechanic and that he (appellant) was working on the car, which belonged to Jonathan Simmons. The passenger had a valid identification. R. 32, l. 7- p. 35, l. 6.

9.) Chadwick stated that he asked for consent to search and received consent to search and then found what appeared to be a methamphetamine pipe and methamphetamine in the bottom of a coffee cup located in the console. R. 35, l. 7- p. 36, l. 7.

10.) Chadwick stated that the driver and passenger pointed a finger at each other when he asked to whom the methamphetamine belonged so he arrested both the driver and the passenger. R. 36, l. 8- p. 37, l. 21.

11.) Chadwick admitted that it was dark outside and that he was a pretty good distance away from the car and that he neither saw anybody take any package out of the vehicle nor put a package in a vehicle nor did he see anything in the hands of the one who walked away. R. 39, l. 2-25.

12.) Chadwick stated that he just had a "hunch" that there was something going on. R. 40, l. 1-2.

13.) Chadwick admitted that the driver committed no traffic violations and that he was "driving very cautious… exact speed limit, no faster, not under, very straight, [and] used turn signals," but that he initiated the traffic stop nonetheless based solely on the view of the paper tag. R. 41, l. 16-23

14.) Chadwick said it was everything, i.e. his suspicion and the paper tag that led to his decision to stop the car. R. 43, l. 12- 18.

Appellant testified at trial and explained that he was test driving his cousin's vehicle to check for transmission problems before he started working on the repairs on it and denied ownership of anything in his cousin's vehicle. R. 109, l. 1 – p. 119, l. 20.

The trial judge ruled that the search and stop were justified based on reasonable suspicion under the totality of the circumstances. R. 51, l. 10-17.

Here, the officer's "hunch" from his gas station observation and the car paper tag did not satisfy any reasonable suspicion to initiate a traffic stop in this case. Note that the trial just stated that the evidence of reasonable suspicion was "very slim." R. 51, lines 10-11.

Reasonable suspicion is more than an inchoate or unparticularized hunch, but rather it is an objective basis that would lead to a suspicion of criminal activity under the probability of the circumstances. State v. Rogers, 368 S.C. 529, 6219 S.E. 2d 679 (2006) citing to State v. Butler, 343 S.C. 198, 539 S.E.2d 414 (2010); See also State v. Provet, 405 S.C. 101, 747 S.E. 2d 453 (2013), citing to Whren v. United States, supra. Reasonable suspicion requires "a particularized and objective basis that would lead one to suspect another of criminal activity." United States v. Cortez, 449 U.S. 411, 417 (1981); State v. Lesley, 486 S.E.2d 276 (Ct. App. 1997). A court must consider "the totality of the circumstances – the whole picture" when determining whether reasonable suspicion exists. Cortez, 449 U.S. at 417; See also State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001) ("reasonable suspicion requires a particularized and objective basis that would lead one to suspect another of criminal activity. . . the whole picture must be considered."). See also State v. Corley, 383 S.C. 232, 679 S.E.2d 187 (Ct. App 2009), aff'd as modified, State v. Corley, 392 S.C. 125, 708 S.E.2d 217 (S.C. 2011). Reasonable suspicion "entails. . . something more than an inchoate and unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause" Butler, 343 S.C. at 202, 539 S.E.2d at 416.

In the case at bar, this "hunch" based on what happened at the gas station and seeing a car paper tag did not amount to reasonable suspicion or probable cause. Note the holding in State v. Butler, 388 S.C. 101, 539 S.E.2d 414 (2010), where the Court held that the mere presence of a

temporary tag on the back of a car without more would not provide a reasonable suspicion that the driver was involved in criminal activity. Another car paper tag case was Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994). In Sikes, a vehicle was stopped because the paper tags aroused suspicion of it being stolen, but after receiving the requested identification information from the driver and the passenger; nonetheless, the passenger was taken from the car while police ran a warrant check on him. The Court reversed in Sikes and held that the officer's further detention of the passenger while going "fishing" for evidence of a crime, i.e., looking for warrants, was unlawful because the scope and duration of the initial seizure must be **tied to and justified by the circumstances which rendered its initiation proper**. The detainment of an individual after a traffic stop may occur if supported by reasonable suspicion.

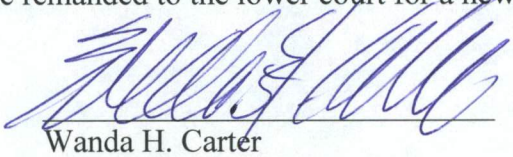
Here, in the instant case, there was neither probable cause nor reasonable suspicion to suspect that criminal activity was afoot, and that this lacking as a basis coupled with the paper tag reason did not constitute the totality of the circumstances to justify the traffic stop initiated in this case. For example, there were insufficient facts that failed to give rise to reasonable suspicion, and there was not proof of an inchoate and/or unparticularized suspicion or hunch. The time was not late night or anywhere near midnight and Chadwick admitted he never saw any hand to hand transaction, (R. 31, l. 14-16; R. 38, l. 21- p. 39, l. 9), and the officer was a good distance away from the vehicle in question. Also, there were no traffic violations committed, and the paper tag observation did not amount to reasonable suspicion that the occupants were involved in criminal activity as there were no other articulable and specific facts taken together suggest criminal activity. See State v. Butler supra. See also Delaware v. Prouse supra. In addition, the fact that a male was leaned in on the passenger side presumably talking, and that the

fact that the male walked away, and the fact that the area was one of the criminal activity did not constitute facts that would create reasonable suspicions under the totality of the circumstances.

The Fourth Amendment to the United States Constitution ensures "the right of the people to be secure. . . [from] unreasonable searches and seizures." U.S. Const. amend. IV. Clearly, the traffic stop in this case that occurred sans probable case or reasonable suspicion led to an illegal detention of appellant and the illegal search of his vehicle. This violated the Fourth Amendment to the United States Constitution and article 1 §10 of the South Carolina State Constitution, and as a result, all seized should have been suppressed as tainted fruit. Wong Sun v. United States, 371 U.S. 471 (1963).

CONCLUSION

Based on the forgoing argument, counsel for appellant would request that appellant's conviction and sentence be reversed and his case remanded to the lower court for a new trial.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of May, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sheldon Alonzo Watson states that:

1. She is Deputy Chief 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 Edward W. Miller, which was held on December 11 - 12, 2018, 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 Sheldon Alonzo Watson.

Respectfully Submitted,

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 1st day of May, 2019.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment(s):
(2) Entire trial transcript dated December 11-12, 2018

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

May 1, 2019

Wanda H. Carter
Deputy Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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."

May 1, 2019.

Wanda H. Carter
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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 Sheldon Alonzo Watson, 378551, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 1st day of May, 2019.

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of May, 2019.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.