STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from York County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CANDACE MARIE SINICROPE,

APPELLANT

APPELLATE CASE NO 2019-001023

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to suppress evidence located in Appellant's purse during a traffic stop, where the stop was unlawfully extended while officers searched the car without a warrant and found a purse in the back seat, and where the reason for the delay—determining whether Appellant's license was suspended—was not completed until after the search?

STATEMENT OF THE CASE

A York County grand jury indicted Appellant for possession of a controlled substance on March 7, 2019. R. __ (Indictment). Appellant proceeded to trial before the Honorable J. Mark Hayes on June 12, 2019. Tr. 1. Melissa Inzerillo and Amber Holt represented Appellant; Dan Porter and Ryan Newkirk appeared on behalf of the state.

After a two day trial, the jury found Appellant guilty as indicted. Tr. 177, ll. 13 – 17. Judge Hayes sentenced her to twelve months' incarceration suspended upon the service of six months, followed by eighteen months of supervision. Tr. 185, l. 24 – Tr. 186, l. 12.

This appeal follows.

STANDARD OF REVIEW

"The admission of evidence is within the discretion of the [circuit] court and will not be reversed absent an abuse of discretion." State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Johnson, 410 S.C. 10, 17, 763 S.E.2d 36, 40 (Ct. App. 2014) (quoting State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011). "In an appeal from a motion to suppress evidence based on Fourth Amendment grounds, an appellate court may conduct its own review of the record to determine whether the evidence supports the circuit court's decision." State v. Abdullah, 357 S.C. 344, 349–50, 592 S.E.2d 344, 347 (Ct. App. 2004).

ARGUMENT

The trial court erred in failing to suppress evidence located in Appellant's purse during a traffic stop, where the stop was unlawfully extended while officers searched the car without a warrant and found a purse in the back seat, and where the reason for the delay—determining whether Appellant's license was suspended—was not completed until after the search.

Relevant facts

The two officers involved in the traffic stop on July 3, 2018, Antoine Logan and Nathaniel Kunde, testified pre-trial. Kunde pulled Appellant over into a Family Dollar parking lot. Tr. 12, ll. 18 – 24. Appellant was the driver of the car, although the car belonged to the front passenger, James Rawlings. Tr. 14, ll. 1 – 7; Tr. 17, l. 3 – Tr. 19, l. 3. Law enforcement contended that she came to a stop beyond the stop bar at a stop sign. Tr. 16, ll. 11 – 17. Logan arrived shortly after the car was pulled over and spoke with the three people in the car. Tr. 13, ll. 4 – 11. He claimed to have seen "[p]lastic torn baggies, and, like, torn pieces of Brillo pad," although he could not recall at trial how many. Id.; Tr. 17, ll. 1 – 2.

Logan suggested that "[d]rug dealers package drugs into plastic baggies and Brillo pads are used to stuff into crack pipes for people to smoke crack cocaine." Tr. 13, ll. 15 – 18. Logan claimed the plastic bags and Brillo pads were in plain view and that he saw them on both sides of the car. Tr. 13, ll. 22 – 25. Logan told Kunde after he noticed them. Tr. 14, ll. 1 – 3. Logan failed to pull the torn Brillo pads out of the car and maintain them. Tr. 17, ll. 16 – 24. He likewise failed to inspect, preserve, or photograph the torn baggies. Id. None of the Brillo pads were observed to have been burned. Tr. 17, l. 25 – Tr. 18, l. 2. Logan found no glass pipes,

drugs, or any items that could be used to smoke drugs in the car. Tr. 18, ll. 3 – 9. He searched the front passenger and found nothing illegal on him. Tr. 18, ll. 10 – 14.

Nonetheless, based upon his experience having attending "several narcotics interdiction classes, interview classes and just basically stuff that's related to narcotics," he suggested torn baggies and Brillo pads were "significant to drug use." Tr. 12, l. 2 – Tr. 13, l. 14. Rawlings, the passenger and owner of the car, did not consent to a search of the car. Tr. 19, ll. 4 – 10. He actually denied consent multiple times. Tr. 26, ll. 8 – 10. Nonetheless, Logan surmised that probable cause existed to search the car because of the Brillo pads and torn plastic bags. Tr. 19, ll. 7 - 10. Kunde relied on that supposition and searched the car and Appellant's purse. Tr. 19, ll. 11 – 13. Logan did not recall asking Appellant for permission to search her purse. Tr. 20, ll. 4 – 13. While Logan was looking around, Kunde was investigating the status of Appellant's driver's license. The encounter lasted approximately twenty minutes. App. 19 ll. 23 – 25.

Kunde testified that Appellant's driver's license was suspended. Tr. 31, ll. 17 – 24. Rather than arresting her for that offense or giving her a ticket for the underlying offense of stopping beyond the stop bar at a stop sign, he searched the front and back of her car and eventually her purse. Tr. 32, l. 23 – Tr. 33, l. 5. At no point did he smell or see burned Brillo. Tr. 46, ll. 5 – 9. Her purse was behind the driver's seat, directly in front of the rear passenger who was seated on the driver's side. Kunde claimed to have found "three dosage units of Xanax" in her purse. Tr. 34, ll. 1 – 5. He also claimed to have found inside her purse a crack pipe, a used syringe, and a small plastic bag with a white powder substance inside it. Tr. 34, ll. 6 – 10. Only after those items were located did Logan arrest Appellant. Tr. 34, ll. 11 – 16. It was not until after the search was completed that the officers realized Appellant's license was suspended. Tr. 48, ll. 11 – 13.

Kunde did not test the substance in the bag located inside Appellant's purse. Tr. 46, ll. 23 – 25. He inexplicably failed to place the bag, the needle, and the pipe into evidence as well. Tr. 47, ll. 3 – 10. None of the items were tested for residue. Id. Kunde admitted he did not see any bags inside the car that had residue on them. Id. His training and experience notwithstanding, Kunde was unable to answer whether an individual would smoke a pill. Tr. 46, ll. 15 – 19. Footage from both officers' body cameras as well as Kunde's dashcam was entered into evidence and played for the jury. State's Exhibits 1, 2, and 5.

Following the officers' pre-trial testimony, counsel for Appellant moved to suppress all of the materials as fruit of the poisonous tree. Tr. 52, l. 2 – Tr. 53, l. 8. In support of the motion, she remarked on all of the reasons why probable cause did not exist to search the car and Appellant's purse:

> As we saw in the video and as the testimony that we heard, the Brillo pad did not contain any burn marks, did not contain any smell. There was no indication other than what the officer says is in his experience that there could be a possibility that there were other drugs in the vehicle related to seeing Brillo present. There were no crack pipes. There were no other paraphernalia that he saw with exception [of] torn baggies, which he also said on the stand that there was no residue in those baggies. And we would contend that pursuant to her Fourth Amendment rights as well as Article 1 Section 10 of the South Carolina Constitution that the evidence seized in violation of the Fourth Amendment rights and Article 1 Section 10 of the Constitution be subject to the exclusionary rule.

Tr. 52, ll. 5 – 18. Appellant further contended that the officers had neither placed her under arrest nor become aware of her suspended license at the time of the search. Tr. 52, l. 19 – Tr. 53, l. 5.

The trial judge found that probable cause existed, or in the alternative, that inevitable discovery would have resulted in the evidence being located. Tr. 66, l. 21 – Tr. 67, l. 9. Counsel renewed her objections throughout trial. Tr. 139, ll. 11 – 13.

Discussion

The officers' search inside Appellant's car and purse violated her rights under the United States Constitution and South Carolina Constitution. The officer who searched Appellant's purse, Kunde, did not see the Brillo, and there were no burn marks or smell of burned steel wool. Further, there was no residue inside the plastic bags viewed in the car. As such, there was no incriminating nature of the evidence visible to the officers, and the evidence should have been suppressed. Additionally, because Appellant would have been allowed to turn her personal property over to one of the other individuals in the car who were allowed to drive away, there was no inevitable discovery.

"Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of [the Fourth Amendment]." Whren v. United States, 517 U.S. 806, 809–10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). Thus, an automobile stop is "subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." Id. at 810, 116 S.Ct. 1769. Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se. Id. See also State v. Williams, 351 S.C. 591, 597–98, 571 S.E.2d 703, 707 (Ct. App. 2002).

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; see State v. Woodruff, 344 S.C. 537, 544 S.E.2d 290 (Ct.App.2001 Thus, the Fourth Amendment protects against unreasonable searches and seizures, including seizures that involve only a brief detention. United States v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980).

The South Carolina Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

S.C. Const. art. I, § 10. By articulating a specific prohibition against unreasonable invasions of privacy, the people of South Carolina have indicated that searches and seizures that do not offend the Federal Constitution may still offend the State Constitution. State v. Weaver, 374 S.C. 313, 649 S.E.2d 469 (2007).

An officer is permitted to make an investigative detention or stop only if supported "by a reasonable and articulable suspicion that the person seized is engaged in criminal activity." Reid v. Georgia, 448 U.S. 438, 440, 100 S.Ct. 2752, 65 L.Ed.2d 890 (1980). "And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Thus, a court must look to the totality of the circumstances in determining whether the officer had a particularized and objective basis for suspecting criminal activity. United States v. Arvizu, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002). "While such a detention does not require probable cause, it does require something more than an "inchoate and unparticularized suspicion or hunch.' " United States v. Sprinkle, 106 F.3d 613, 617 (4th Cir.1997) (quoting Terry, 392 U.S. at 27, 88 S.Ct. 1868).

It is nevertheless clear that a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution. United States v. Jacobsen, 466 U.S. 109, 124, 104 S.Ct. 1652, 80 L.Ed.2d 85

(1984). A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission. Illinois v. Caballes, 543 U.S. 405, 407, 125 S. Ct. 834, 837, 160 L. Ed. 2d 842 (2005).

An officer may stop a car and briefly detain the occupants if he has a reasonable suspicion that the occupants are involved in criminal activity. Knight v. State, 284, S.C. 138, 325 S.E.2d 535 (1985). In Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994), officers stopped Sikes' car because it had paper tags. 323 S.C. 28, 29, 448 S.E.2d 560, 562. After obtaining Sikes' identification, law enforcement officers searched him for weapons and placed him in their patrol car, detaining him for around twenty minutes. Id. at 30, 448 S.E.2d at 562. The South Carolina Supreme Court noted that under Knight, supra, neither of the officers' beliefs—that the car was stolen or that the driver was uninsured—gave the officers the right to seize or question the car's passenger. Id. at 31, 448 S.E.2d at 563. Accordingly, counsel in that case was deficient for failing to object.

"A routine traffic stop is a relatively brief encounter and 'is more analogous to a so-called Terry stop ... than to a formal arrest.' " Knowles v. Iowa, 525 U.S. 113, 117, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998 (quoting Berkemer v. McCarty, 468 U.S. 420, 439, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984)). Illinois v. Caballes, 543 U.S. 405, 420, 125 S. Ct. 834, 844, 160 L. Ed. 2d 842 (2005).

An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop and the scope of the detention must be carefully tailored to its underlying justification. Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). The officer's purpose in an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning.

Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999). Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention. Id.; see also United States v. Jones, 234 F.3d 234, 241 (5th Cir.2000) ("The basis for the stop was essentially completed when the dispatcher notified the officers about the defendants' clean records, three minutes before the officers sought consent to search the vehicle. Accordingly, the officers should have ended the detention and allowed the defendants to leave. And the failure to release the defendants violated the Fourth Amendment."); United States v. Mesa, 62 F.3d 159, 162 (6th Cir.1995) ("Once the purposes of the initial traffic stop were completed, there is no doubt that the officer could not further detain the vehicle or its occupants unless something that occurred during the traffic stop generated the necessary reasonable suspicion to justify a further detention."); United States v. Beck, 140 F.3d 1129, 1136 (8th Cir.1998) ("Because the purposes of [the officer's] initial traffic stop of Beck had been completed ... [the officer] could not subsequently detain Beck unless events that transpired during the traffic stop gave rise to reasonable suspicion to justify [the officer's] renewed detention of Beck."); People v. Redinger, 906 P.2d 81, 85–86 (Colo.1995) ("When, as here, the purpose for which the investigatory stop was instituted has been accomplished and no other reasonable suspicion exists to support further investigation, there is no justification for continued detention and interrogation of citizens."); Davis v State, 947 S.W.2d 240, 243 (Tex.Crim.App.1997) ("[O]nce the reason for the stop has been satisfied, the stop may not be used as a 'fishing expedition for unrelated criminal activity.' ") (citations omitted). State v. Pichardo, 367 S.C. 84, 98–99, 623 S.E.2d 840, 848 (Ct. App. 2005).

A traffic stop supported by reasonable suspicion of a traffic violation remains valid until the purpose of the traffic stop has been completed. Arizona v. Johnson, 555 U.S. 323, 333, 129

S.Ct. 781, 172 L.Ed.2d 694 (2009). The officer may not extend the duration of a traffic stop in order to question the motorist on unrelated matters unless he possesses reasonable suspicion that warrants an additional seizure of the motorist. See United States v. Sullivan, 138 F.3d 126, 131 (4th Cir.1998). The officer cannot avoid this rule by employing dilatory tactics. See United States v. Jones, 234 F.3d 234 (5th Cir.2000) (driver's Fourth Amendment rights violated when, after dispatcher reported no problems and officer had completed warning citation except for obtaining the driver's signature, officer deliberately delayed completing the stop for several more minutes until canine search unit arrived). State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453; 457 (2013).

Like the officer in State v. Jones, Logan and Kunde went on a "fishing expedition" and prolonged the detention for the purpose of performing a search. 364 S.C. 51, 610 S.E.2d 846 (Ct. App. 2005). In Jones, the defendant asserted that "the questioning of the passengers and the extended conversation the officer had with him about where they had been and what they were doing was merely a 'ruse' so he could eventually search the car." Id. at 55, 610 S.E.2d at 848. Jones maintained "anything this officer did with [him] pursuant to this stop after a reasonable period of time had expired for him to issue him the summons ... [was] unreasonable" and was therefore an illegal detention. Id. The traffic stop ceased being lawful when Logan went on a "fishing expedition" and Kunde looked through the car and purse before first determining whether Appellant's license was suspended. The torn Brillo pads and plastic bags in the car did not represent criminal activity; the former had not been burned and the latter contained no residue.

Upon a lawful traffic stop, an officer "may order the driver to exit the vehicle ... [,] request a driver's license and vehicle registration, run a computer check, and issue a citation."

State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct.App.2005) (citations omitted). However, a lawful traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." Illinois v. Caballes, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005); see also Pichardo, at 98, 623 S.E.2d at 848 ("Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."). The extension of a lawful traffic stop is permitted if (1) the encounter becomes consensual or (2) the officer has a reasonable, articulable suspicion of other illegal activity. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. The proper inquiry is not whether an officer "unreasonably" extended the duration of the traffic stop with his off-topic questions but whether he "measurably" extended it. Arizona v. Johnson, 555 U.S. 323, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009). This is a temporal inquiry, not a reasonableness inquiry. State v. Provet, 405 S.C. 101, 111, 747 S.E.2d 453, 458 (2013).

"Any further *detention* for questioning is beyond the scope of the stop and therefore illegal unless the officer has a reasonable suspicion of a serious crime." United States v. Sullivan, 138 F.3d 126, 131 (4th Cir.1998) (emphasis added); see Florida v. Royer, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) (plurality opinion) ("[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop."); Ferris v. State, 355 Md. 356, 735 A.2d 491, 499 (1999) ("Once the purpose of [the] stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."). State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002).

The State should not use "whatever facts are present, no matter how innocent, as indicia of suspicious activity." U.S. v. Foster, 634 F.3d 243, 248 (4th Cir. 2011). Rather, it must "be able to either articulate why a particular behavior is suspicious or logically demonstrate, given

the surrounding circumstances, that the behavior is likely to be indicative of some more sinister activity than may appear at first glance." Id. See Ornelas v. U.S., 517 U.S. 690, 695, 116 S.Ct. 1657 (1996) (defining reasonable suspicion as a "commonsense, nontechnical conception[ ] that deal[s] with 'the factual and practical considerations of everyday life' " (quoting Illinois v. Gates, 462 U.S. 213, 231, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)); United States v. Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)) ("[I]nvestigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.").

There was nothing exceptional about unburned Brillo pads and empty plastic bags, and Logan's interactions with the other occupants of the car failed to add any certainty to his supposedly instinctive concerns. As noted by Logan, the car, which did not belong to Appellant, was "fairly dirty" and had "stuff in the floorboards." Tr. 18, ll. 18 – 20. According to an unredacted video, Logan even went so far as to say that the pill located in Appellant's purse was unreadable; Kunde vacillated as to whether to arrest Appellant as a result. Tr. 47, ll. 17 – 23. There was no testimony that either officer smelled burned steel wool or drugs. The state "cannot rely upon post hoc rationalizations to validate those seizures that happen to turn up contraband." United States v. Martinez-Fuerte, 428 U.S. 543, 565, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976).

Additionally, plain view is inapplicable. "Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence." State v. Wright, 416 S.C. 353, 785 S.E.2d 479 (Ct. App. 2016). The two elements needed to satisfy the plain view exception are (1) the initial intrusion that afforded the authorities

the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities." Id.

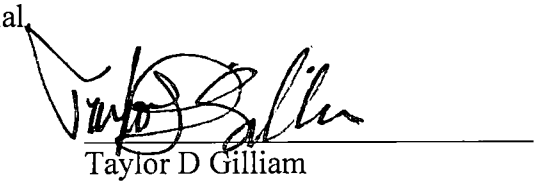
Neither Logan nor Kunde seized the Brillo pads or plastic bags. This is not an instance wherein officers seized evidence in plain view for which suppression was sought; the household products in this case were observed by one officer and then claimed as sufficient to create probable cause for the other officer to search the car and then a purse. As such, there was no exception to the warrantless search performed by Kunde, and the evidence seized from Appellant's purse was fruit of the poisonous tree and should have been suppressed.

The Fourth Amendment was likewise violated when Kunde searched Appellant's purse, because inevitable discovery did not apply. In Florida v. Wells, 495 U.S. 1, 110 S.Ct. 1632, 109 L.Ed.2d 1, the United States Supreme Court held that in the absence of any departmental policy as to opening of closed containers found during an inventory search, an inventory search which involved the opening of a locked suitcase was not sufficiently regulated to satisfy the Fourth Amendment, such that the drugs which were found were subject to suppression.

Nothing in Appellant's purse could have been related to the driving under suspension offense. Had Appellant been arrested for just DUS, the car would not have been subject to an inventory search. According to the officers, Appellant was charged with DUS as well as the possession charge, yet the owner of the car was allowed to drive it away. Accordingly, the contention that the car or anything inside of it would have been subject to an inventory search is disingenuous. The evidence found in Appellant's purse should have been suppressed.

CONCLUSION

Based on the foregoing, Appellant respectfully requests that this Court reverse her conviction and remand her case for a new trial.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of March, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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V.

CANDACE MARIE SINICROPE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Candace Marie Sinicrope, at 410 Partridge Drive, , Princeton, WV 24740, this 19th day of March, 2020.

Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of March, 2020.

Mary Augare (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027