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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
The Honorable J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2019-001023

THE STATE, Respondent,

v.

CANDACE MARIE SINICROPE Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge correctly denied Appellant's motion to suppress evidence found in Appellant's purse because there was probable cause to search the vehicle and purse without a warrant.

STATEMENT OF THE CASE

A York County Grand Jury indicted Appellant for possession of a controlled substance on March 7, 2019. Appellant proceeded to a jury trial June 12-13, 2019, before the Honorable J. Mark Hayes. The State was represented by Assistant Solicitors Dan Porter and Ryan Newkirk. Melissa Inzerillo, Esquire and Amber Holt, Esquire represented the Appellant. The jury found Appellant guilty as indicted. She was sentenced to twelve months' incarceration, suspended upon the service of six months, followed by eighteen months of supervision. This appeal follows.

STATEMENT OF FACTS

On July 3, 2018, Officer Nathaniel Kunde, an officer with the Rock Hill Police Department, conducted a traffic stop after observing a vehicle stopping past the stop bar at an intersection. (R. 30). Kunde initiated the blue lights and the car pulled into a Family Dollar parking lot. (R. 30). The driver of the car was Appellant, Candace Sinicrope (R. 30). In the car with Appellant were two male passengers, one in the front seat and one in the backseat. (R.121). Kunde approached the vehicle to inform Appellant the purpose of the stop, obtain driver's licenses, registration and insurance. (R. 31). Officer Antoine Logan, an officer with the Rock Hill police department, arrived on scene as backup. (R. 31). Logan approached the vehicle while Kunde ran licenses as is standard procedure. (R. 120). Kunde determined that Appellant's license was suspended. (R. 83). After speaking with Appellant, Logan went to the passenger side of the vehicle where he observed torn plastic baggies and torn pieces of Brillo pad. (R. 121). Logan advised Kunde of the baggies and Brillo pads. (R. 81, 121). Both Logan and Kunde testified that through their experience and training, they believed drugs were possibly in the vehicle. (R. 81, 121). They testified that torn Brillo pads are used to pack a crack pipe and the plastic baggies are used to transport and carry drugs. (R. 81-82, 121). Based on the paraphernalia observed, Logan removed the front seat passenger, who owned the vehicle, and searched his person. (R. 122).

Kunde removed Appellant and the backseat passenger from the vehicle. (R. 82). He then searched the vehicle and came across Appellant's purse between the driver's and passenger's seat. (R. 82). Inside the purse, Kunde found a white pill that he believed to be Xanax. (R. 82). Cynthia Mitchum, an expert in the field of forensic chemistry, later determined the white pill to be Etizolam. (R. 106). After finding the pill, Kunde placed Appellant under arrest and read her Miranda rights to her. (R. 83).

STANDARD OF REVIEW

"In criminal cases, the Appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E. 2d 216, 220 (2006). "On appeals from a motion to suppress based on fourth amendment grounds, this court applies a deferential standard of review and will reverse if there is clear error." State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). "This deference does not bar this court from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence." Id. "If there is any evidence to support the trial judge`s decision, this court will affirm." State v. Spears, 429 S.C. 422, 433 839 S.E.2d 450, 455 (2020) (citing State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000)). "The 'clear error' standard means that an appellate court will not reverse a trial court`s finding of fact simply because it would have decided case differently." State v. Pichardo, 367 S.C. 84, 95, 623 S.E.2d 840, 846 (2005) (citing Easley v. Cromartie, 532 U.S. 234, 121 S. Ct. 1452, 149 L.Ed.2d. 430 (2001)).

ARGUMENT

The trial judge correctly denied Appellant's motion to suppress evidence found in Appellant's purse because there was probable cause to search the vehicle and purse without a warrant.

Appellant argues that the trial judge erred by denying a motion to suppress evidence found in Appellant's purse during a traffic stop because the stop was unlawfully extended and officers searched the car without a warrant. Appellant's argument lacks merit because the traffic stop was not unlawfully extended and the officers had probable cause to search the vehicle without a warrant. The trial judge found that there was probable cause for the stop and search, and even if there was not probable cause, there would have been inevitable discovery of the evidence. (R. 67).

Appellant was charged with possession of a controlled substance found after police performed a traffic stop. The United States Constitution protects people from unreasonable searches and seizures. "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." U.S. Const. amend. IV. The State of South Carolina also provides people with protections against unreasonable searches and seizures. "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.

"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." State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App 2005). "Thus an automobile stop is 'subject to the constitutional imperative that it not be unreasonable under the circumstances.'" Id. (citing Whren v. United States, 517 U.S. 806, 116 S. Ct. 1769, 135 L.Ed.2d 89 (1996)). "Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se. Id. "The police may also stop and briefly detain a vehicle if they have reasonable suspicion that the occupants are involved in criminal activity." Id. Here, Officer Kunde observed a vehicle, which Appellant was driving, stop past the stop bar at an intersection. (R. 30).

"Once a motor vehicle is detained lawfully for a traffic violation, the police may order the driver to exit the vehicle without violating Fourth Amendment proscriptions on unreasonable searches and seizures." State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 708 (Ct. App. 2002). "In carrying out the stop an officer 'may request a driver's license and vehicle registration, run a computer check, and issue a citation.'" Id. (citing United States v. Sullivan, 136 F.3d 126, 131 (4th Cir. 1998). Officer Kunde approached the vehicle to inform Appellant the purpose of the stop, obtain driver's licenses, registration and insurance. (R. 31).

"The officer's observations while conducting the traffic stop may create reasonable suspicion to justify further search or seizure." State v. Provet, 405 S.C. 101, 109, 747 S.E.2d 453, 457 (2013). While Kunde was running licenses, his backup, Officer Logan, approached the vehicle. (R. 120). While speaking with the passengers, Logan observed plastic baggies and torn pieces of Brillo pad. (R. 121). Both Logan and Kunde testified that based on their experience and training, they believed that drugs were possibly in the vehicle. (R. 81, 121). They testified that

torn Brillo pads are used to pack a crack pipe and the plastic baggies are used to transport and carry drugs. (R. 81-82, 121). These observations occurred while Officer Kunde was running the licenses and waiting to receive the information; therefore it was not an extension to the traffic stop. Illinois v. Caballes, 543 U.S. 405 (2005) (recognizing no constitutional violation or unreasonable extension resulted from a simultaneous dog sniff search conducted while another officer was completing the initial purpose of the stop).

Appellant raises the issue of extension of the stop, however that issue was not raised at trial, and (1) there was no extension to the stop and (2) any hypothetical extension was supported by reasonable suspicion based on the observations of the officers.

The searches of the vehicle and Appellant's purse were proper. Generally, a warrantless search is per se unreasonable and violates the Fourth Amendment prohibition against unreasonable search and seizures. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007) (citing State v. Freiburger, 366 S.C. 125, 620 S.E.2d 787 (2005)). However, a warrantless search will withstand constitutional scrutiny where the search falls within one of the several well-recognized exceptions to the warrant requirement. Id. "These exceptions include: (1) Search incident to lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception (5) plain view doctrine; (6) consent; and (7) abandonment." State v. Moore, 377 S.C. 299, 309, 659 S.E.2d 256, 261 (2008). The two bases for the automobile exception are (1) the ready mobility of automobiles and the potential that evidence may be lost before a warrant is obtained and (2) the lessened expectation of privacy in motor vehicles which are subject to governmental regulation. Id. at 310, 262.

"Pursuant to the automobile exception, if there is probable cause to search a vehicle, a warrant is not necessary so long as the search is based on facts that would justify the issuance of

a warrant even though a warrant has not been actually obtained." State v. Weaver, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007). "The burden of establishing probable cause as well as the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures is upon the prosecution." State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (1995) (citation omitted).

> The standard for probable cause to conduct a warrantless search is the same as that for a search with a warrant. That is, a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search, that there exists a practical, nontechnical probability that a crime is being committed or has been committed and incriminating evidence is involved.

Id. (citations omitted).

Here, Logan observed plastic baggies and torn pieces of Brillo pad. (R. 121).[1] Both Logan and Kunde testified that torn Brillo pads are used to pack a crack pipe and the plastic baggies are used to transport and carry drugs. (R. 81-82, 121). They also testified that through their experience and training, they believed there was a possibility that drugs were in the vehicle. (R. 81, 121). Therefore, just as the trial judge found, there was probable cause to conduct a warrantless search of the vehicle.

However, just as the trial judge found, even if there is no probable cause, the evidence would have been found based on the inevitable discovery doctrine.[2] The inevitable discovery doctrine provides that illegally obtained information may nevertheless be admissible if the prosecution can establish by a preponderance of the evidence that the information would have

[1] Appellant states that plain view doctrine doesn't apply. We agree and are not using plain view doctrine, but are relying on the evidence for probable cause of the search of the vehicle.

[2] "The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light, but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. However, the challenged evidence is admissible if it was obtained from a lawful source independent of the illegal conduct. State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996).

ultimately been discovered by lawful means. State v. Cardwell, 425 S.C. 595, 601, 824 S.E.2d 451, 454 (2019) (citing Nix v. Williams, 467 U.S. 431, 444, 104 S. Ct. 2501, 81 L.Ed.2d 377 (1984)). A preponderance of the evidence establishes that the evidence found in Appellant's purse would have ultimately been discovered by lawful means. Kunde testified that driving under a suspended license is an offense for which a person can be arrested, and that he would have arrested Appellant for that offense. (R. 38). Officer Kunde also testified that based on policy, "If [an arrested person has] any personal property in the vehicle, we take it with them and it goes with them back into the jail to be placed in their personal property. During that time we conduct an inventory of all of their property to make sure there's no contraband or weapons that get back into the jail." (R. 38). Appellant stated that the purse in the car was hers. (R. 40). Therefore the purse would have been searched and the drugs would have ultimately been found. Since Appellant would have been arrested for driving with a suspended license, the evidence in her purse would have inevitably been found.

In conclusion, the trial judge's finding was legally correct and is supported by evidence. Therefore, the ruling should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Final Brief of Respondent on counsel of record for the Appellant by electronic mail to the address listed for counsel in AIS, and followed by depositing one copy of the same in the United States mail, postage prepaid, addressed to Taylor D. Gilliam, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.
This 21st day of July, 2020.

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Sinicrope Candace - Final Brief of Respondent (02330935xD2C78).pdf

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Dear Mr. Gilliam,

Attached to this email our cover letter addressed to you and the Final Brief of Respondent. The Final Brief will be filed with the Court via AIS One Drive later today.

Please confirm by return email that you have received both this email and the attachments.

Thank you.

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