STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Cherokee County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GLEN EDWARD WALDROP,

APPELLANT

APPELLATE CASE NO 2019-000989

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by not quashing the indictments in Appellant's case for lack of jurisdiction and improper venue, where Cherokee County police officers arrested the driver of a car in which Appellant was a passenger, in Spartanburg County, where the officers' jurisdiction was extended by statute for the limited purpose of arresting the driver?

STATEMENT OF THE CASE

On May 24, 2018, a Cherokee County grand jury indicted Appellant on two charges of trafficking methamphetamine. R. __ (Indictments). He proceeded to trial before the Honorable J. Derham Cole and a jury on June 5, 2019.[1] Robin File represented Appellant; Matt Kendall appeared on behalf of the state. Appellant was found guilty as indicted on both counts. Tr. 2 76, ll. 1 – 6. Judge Cole sentenced Appellant to twenty-five years' incarceration on each offense. Tr. 2 80, ll. 10 – 22.

This appeal follows.

[1] Each day of trial was transcribed by a different court reporter. For reference in the Initial Brief of Appellant, the trial transcript from June 5, 2019 will be referred to as Transcript 1. The following day's transcript, dated June 6, 2019, will be referred to as Transcript 2.

STANDARD OF REVIEW

The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support. Id. Accordingly, an appellate court is bound by the trial court's factual findings when the findings are supported by the evidence and not controlled by error of law. Id.

ARGUMENT

The trial court erred by not quashing the indictments in Appellant's case for lack of jurisdiction and improper venue, where Cherokee County police officers arrested the driver of a car in which Appellant was a passenger, in Spartanburg County, where the officers' jurisdiction was extended by statute for the limited purpose of arresting the driver.

Relevant facts

At the outset of trial, Appellant argued four suppression motions: statement made at traffic stop, search and seizure at traffic stop, written statement given to officers, and search and seizure of contraband at Gaffney hotel. Tr. 1 31, ll. 14 – 32, l. 22; R. __ (Motions in limine). In response, the state elicited testimony from Ronnie Painter, an employee of the Cherokee County Sheriff's Office. Tr. 1 34. On March 21, 2018, he began following a red truck after being advised that other officers had surveilled the truck. Tr. 1 34, l. 13 – 35, l. 23.

Painter testified that the driver of the truck failed to use a turn signal when it merged onto Interstate 85. Tr. 1 36, ll. 9 – 24. Painter then attempted to pull the truck over. Id. After approximately seven miles of travel on the interstate, the truck pulled over. Tr. 1 37, ll. 1 – 18. Painter immediately arrested the driver for failure to stop for blue lights. Tr. 1 38, ll. 11 – 17. Appellant was the passenger in the truck. Tr. 1 38, ll. 18 – 24.

Painter claims that he read Appellant his Miranda rights and then began questioning him. Tr. 1 39, ll. 8 – 13. When he asked Appellant if he had anything illegal on him, Appellant answered in the affirmative and advised Painter that he had drugs in his pocket. Tr. 1 39, l. 14 – 40, l. 1. Painter testified that he asked both the driver and Appellant for consent to search truck and that both provided it. Tr. 1 40, ll. 5 – 10. According to Painter, he located a tool bag on the

back of the truck that contained more drugs. Tr. 1 40, ll. 11 – 18. Both the driver and Appellant were arrested and taken to the Cherokee County detention center. Tr. 1 40, ll. 19 – 23.

Painter asked Appellant where he was coming from, and Appellant responded that he was the maintenance man at the Homestead Lodge hotel. Tr. 1 40, l. 24 – 41, l. 17. Another officer obtained a search warrant for Appellant's room at the hotel, and drugs were allegedly located in the freezer. Tr. 1 41 l. 6 – 42, l. 25.

When Painter and another officer met with Appellant the day after the traffic stop, Painter claims he provided a pre-interrogation form to Appellant. Tr. 1 43, l. 7 – 46, l. 15. Painter contended that Appellant waived his rights prior to the interview. Id. Appellant's statement, written by Painter, suggested that the drugs were at least in his possession. Tr 1 70, ll. 9 – 17. Painter testified that Appellant sought to claim ownership of the drugs so the driver would not be charged. Tr. 1 48, ll. 6 – 12.

On cross-examination, Painter suggested that the warrant for Appellant's hotel room was obtained "based on the totality of the circumstances from everything that - - from what we did up and to that point." Tr. 1 55, ll. 1 – 14. Neither Painter nor David Owens, another officer with the Cherokee County Sheriff's Office, observed who was coming in and out of the hotel. Tr. 1 66, ll. 10 – 20.

The driver of the truck, Kolarb Bounlort, requested a translator after being pulled over. Tr. 1 83, ll. 5 – 7. Bounlort did not speak English well. Tr. 1 82, ll. 4 – 18. None of the four witnesses who testified pre-trial indicated that a Cambodian translator was obtained for Bounlort as requested. Counsel for Appellant asked the trial judge to take judicial notice of Bounlort's "command of the English language" since he had recently appeared before the court for a plea earlier in the week. Tr. 1 96, l. 24 – 97, l. 3.

After hearing testimony and reviewing exhibits in support of Appellant's motions, the trial judge denied the suppression motions. Tr. 1 95, l. 20 – 97, l. 13; Tr. 1 103, l. 25 – 104, l. 6. Appellant also moved to dismiss the indictments based on lack of jurisdiction—the traffic stop occurred in Spartanburg County, not Cherokee County—but the trial judge denied that motion as well. Tr. 1 106, ll. 3 – 10. In opposition to the motion, the state cited S.C. Code Ann. § 17-13-40 for the notion that "when police authorities of a county are in pursuit of an offender for a violation of a county ordinance or statute of this state committed within the county, the authorities may arrest the offender with or without a warrant at a place within the county or a place within the adjacent county." Tr. 1 97, ll. 16 – 24. Focusing solely on the proximity of Cherokee and Spartanburg counties, the solicitor argued that officers "started a failure to stop here in Cherokee County." After traveling into Spartanburg County, the state argued, "it was appropriate for them to effectuate that arrest at that time." Tr. 1 97, l. 25 – 98, l. 6.

In denying the motion to dismiss based on lack of jurisdiction, the trial judge found that the state had not proven that Appellant possessed the drugs in Cherokee County but the evidence "tends to" indicate such. Tr. 1 106, ll. 3 – 16.

Discussion

This case serves as another example of unchecked power, imprudently wielded by law enforcement officers. None of the undercover law enforcement cars have video cameras. Tr. 1 49, ll. 16 – 18. The officers did not have body cameras at the time, either. Tr. 1 50, ll. 5 – 8. Notably, Painter has "never recorded an interview in the nineteen years [he has] been in law enforcement." Tr. 1 57, ll. 8 – 11. At the time, however, Waldrop believed his interview was being recorded. Tr. 2 21, l. 19 – 22, l. 7. Without video camera evidence, a motion to suppress an alleged statement made car-side by Appellant, supposedly post-Miranda, will almost always

fail. Unfortunately in this matter, there was no contemporaneous, neutral record of the traffic stop or subsequent interview. Nonetheless, Appellant's convictions should be reversed for lack of jurisdiction.

"Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005); Pierce v. State, 338 S.C. 139, 150, 526 S.E.2d 222, 227 (2000); Dove v. Gold Kist, Inc., 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994); see also S.C. Const. art. V, § 11 (providing circuit court "shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law").

According to S.C. Code Ann. § 17-13-40(B):

> When the police authorities of a county are in pursuit of an offender for a violation of a county ordinance or statute of this State committed within the county, the authorities may arrest the offender, with or without a warrant, at a place within the county, or at a place within an adjacent county.

S.C. Code Ann. § 17-13-40

Although over a century old, Town of Blacksburg v. Beam contains similar facts but with whisky instead of methamphetamine. 104 S.C. 146, 88 S.E. 441 (1916). In that case, the Supreme Court of South Carolina affirmed the lower court's acquittal on the charge of transporting alcoholic liquors:

> Some things are to be more deplored than the unlawful transportation of whisky; one is the loss of liberty. Common as the event may be, it is a serious thing to arrest a citizen, and it is a more serious thing to search his person; and he who accomplishes it, must do so in conformity to the laws of the land. There are two reasons for this; one to avoid bloodshed, and the other to preserve the liberty of the citizen. Obedience to law is the bond of society, and the officers set to enforce the law are not exempt from its mandates.

> In the instant case the possession of the liquor was the body of the offense; that fact was proven by a forcible and unlawful search of the defendant's person to secure the veritable key to the offense. It is fundamental that a citizen may not be arrested and have his person searched by force and without process in order to secure testimony against him. The act of 1908 (25 St. at Large, p. 1089) has no application to the case. There was no flight by the defendant, and therefore no pursuit by the officer, and that act gives no power to search the person. It is better that the guilty shall escape, rather than another offense shall be committed in the proof of guilt.

Town of Blacksburg v. Beam, 104 S.C. 146, 88 S.E. 441, 441 (1916)

Much like in the matter at hand, drugs were located following an unlawful search by Cherokee County officers in Spartanburg County. The questioning and search were used to secure evidence against him. There was no flight by Appellant; as the passenger, he was not in control of the car.

After Bounlort was arrested for failure to stop for a blue light, the factual predicate for the exercise of extraterritorial jurisdiction ceased to exist. Perhaps officers could have levied additional charges against Bounlort, since it was his conduct that initiated both the pursuit and stop in Spartanburg County, but the Cherokee County officers were acting outside of their jurisdiction by questioning Appellant. Further, the warrant obtained as a result of the questioning as well as the statement he gave at the detention center are fruit of the poisonous tree and should also be excluded.

"Generally, evidence derived from an illegal search or arrest is deemed fruit of the poisonous tree and is inadmissible." United States v. Najjar, 300 F.3d 466, 477 (4th Cir.2002) (citing Wong Sun v. United States, 371 U.S. 471, 484–85, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)). "

Painter and Owens exceed their lawful jurisdiction in order to follow a truck whose driver failed to use a turn signal. When he would not pull over, they followed him into a neighboring

county. After he pulled over and they arrested him for failure to stop for blue lights, their extraterritorial jurisdiction ended. The questioning of Appellant, search of his person, interrogation at the detention center, and search of his room at the hotel were all improper and exceeded the bounds of their jurisdiction. The indictments should have been quashed.

CONCLUSION

Based on the foregoing, Appellant respectfully requests that this Court reverse his convictions and hold that the indictments should have been quashed.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2020.

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter has been served upon opposing counsel this 27th day of July, 2020 by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS); and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Glen Edward Waldrop, #352135, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT