STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY MANIGO DAWSON,

APPELLANT

APPELLATE CASE NO 2019-002107

FINAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief 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 CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 3

ARGUMENT

The trial judge erred in denying the pretrial motion to suppress drugs seized after a search of a backpack that belonged to appellant, who was a passenger in a vehicle in this case, because the driver's consent to search was limited in scope and applied not to the search of appellant's backpack that was positioned at appellant's legs and feet as he sat in the passenger's seat in the vehicle, particularly since the driver had no joint possessory interest in or apparent authority over the backpack, and therefore the driver could not consent to the search of appellant's backpack. 5

CONCLUSION 10

TABLE OF AUTHORITIES

Cases

Brown v. State, 789 So. 2d 1021 (Fla Dist. Ct. App. 2001) 9

Florida v. Jimeno, 500 U.S. 252 (1991) 7

Illinois v. Rodriguez, 497 U.S. 177 (1990) 6

Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999) 4

People v. James, 16 3 Ill.2d 302 645 N.E. 2d 101 (1994) 9

State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) 3

State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) 3

State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500-01 (Ct. App. 2003) 4

State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) 6, 8

State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002) 3

State v. McKnight, 352 S.C. 635, 656, 576 S.E.2d 168, 179 (2003) 4

State v. Pichardo, 367 S.C. 84, 105, 623 S.E.2d 840, 851 (Ct. App. 2005) 4

State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) 3

State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001) 3, 4

State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) 3

United States v. Infante-Ruiz, 13 F. 3d 498 (1st Cir. 1994) 9

United States v. Minnoz, 590 F.3d 916118th Cir. 2010) 9

United States v. Welch, F.3 761 (9th Cir. 1993) 9

Constitutional Provisions

Fourth Amendment of United States Constitution 3, 4, 8, 9

Article 1, section 10 of the South Carolina State Constitution 8, 9

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying the pretrial motion to suppress drugs seized after a search of a backpack that belonged to appellant, who was a passenger in a vehicle in this case, because the driver's consent to search was limited in scope and applied not to the search of appellant's backpack that was positioned at appellant's legs and feet as he sat in the passenger's seat in the vehicle, particularly since the driver had no joint possessory interest in or apparent authority over the backpack, and therefore the driver could not consent to the search of appellant's backpack.

STATEMENT OF THE CASE

Appellant Ricky Manigo Dawson was found guilty of trafficking in cocaine, third offense, possession with intent to distribute crack cocaine, third offense, and possession of a weapon during the commission of a violent crime per bench trial held at the December 2019 term of the Berkeley County General Sessions Court before Judge G. Thomas Cooper, who sentenced appellant to an aggregate twenty-five year prison term. A pretrial suppression hearing was held on March 14, 2018, before Judge Deadra L. Jefferson at the Berkeley County General Sessions Court in the case. James W. Smiley represented appellant at the trial and pre-trial hearing; and Assistant Solicitors Bart Jackson Stegall and Tyler Jenkins appeared on behalf of the state at trial. Assistant Solicitor Stegall appeared at the pre-trial suppression hearing held in the case.

Appellant appealed his convictions and sentences. 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.) This 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).

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from a suppression hearing, appellate courts are bound by the circuit court's factual findings if any evidence supports the findings. State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). 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. See State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002) (stating "Brockman does not hold the appellate court may not conduct its own review of the record to determine whether the trial judge's decision is supported by the evidence.")

In criminal cases, an appellate court sits to review errors of law only. Therefore, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The same standard of review

applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). Appellate review in Fourth Amendment search and seizure cases is limited to determining whether any evidence supports the trial court's finding. State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500-01 (Ct. App. 2003).

Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent." Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999) "Undoubtedly, a law enforcement officer may request permission to search at any time. However, when an officer asks for consent to search *after* an unconstitutional detention, the consent procured is per se invalid unless it is both voluntary and not an exploitation of the unlawful detention." State v. Pichardo, 367 S.C. 84, 105, 623 S.E.2d 840, 851 (Ct. App. 2005) (emphasis in original). Whether consent to a search is voluntary is a question of fact to be determined from the totality of the circumstances. State v. McKnight, 352 S.C. 635, 656, 576 S.E.2d 168, 179 (2003).

ARGUMENT

The trial judge erred in denying the pretrial motion to suppress drugs seized after a search of a backpack that belonged to appellant, who was a passenger in a vehicle in this case, because the driver's consent to search was limited in scope and applied not to the search of appellant's backpack that was positioned at appellant's legs and feet as he sat in the passenger's seat in the vehicle, particularly since the driver had no joint possessory interest in or apparent authority over the backpack, and therefore the driver could not consent to the search of appellant's backpack.

At trial, the summary of the case emanated from the testimony of Officer Alexander Erickson. Officer Erickson stopped a vehicle driven by Sam Carr because of a defective headlight. The stop occurred on the night of October 22, 2015 in Goose Creek, South Carolina. Appellant was riding as a passenger on the passenger side of Sam Carr's vehicle on that night. Officer Erickson testified at the pretrial motion to suppress hearing and stated the following:

1.) Officer Erickson approached the driver, Sam Car and saw a plastic baggy in his lap and believed narcotics were in that baggy and maybe the vehicle R. 11, l.3-p.13, l.2
2.) Officer Erickson called for back-up and then removed Mr. Carr from the vehicle and asked the driver (Sam Carr) for consent to search the entire vehicle. R. 14, l.13-24.
3.) Officer Davis had pulled appellant off to the side. Then, Sam Carr gave consent to search. R. 17, l. 22 – p. 19, l.2.
4.) Officer Erickson searched a black backpack on the passenger floorboard from the car and found a white bag containing a white powder and a bag with a yellow like substance. R. 19, l.15-p.22, l.7.
5.) Officer Erickson stated that appellant claimed ownership of the backpack and the drugs and gun found inside. R. 22, l.11-p.23, l.6.

The state's position was that although appellant's backpack was the result a warrantless search; nonetheless, it was a legal search because it was supported by consent from driver Sam Carr. R. 39, l.16-17. However, appellant did not consent to a search of his backpack, which was zipped closed, and note that the backpack did not belong to driver Sam Carr. R. 35, l.1-8; R. 38, l.11-16.

The objection put forth by the defense was that driver Carr's consent to search the car was limited and did not extend to the search of the backpack that belonged to appellant, who was the passenger and had an expectation of privacy in his backpack. R. 48, l.2-14. R. 51, l.17-p.52, l.16. R. 66, l.11-p.20, l.15, R. 72-80. The officer admitted to this based on his answer to a question regarding limited consent as follows:

> Defense Counsel: And he (Carr) is telling you you're welcome to search for the car, but it is yours perceptions he is also telling you that he can't speak for [appellant]...maybe not those words, but that what he's implied.
>
> Officer Erickson: Yeah, I'll give you some on that, but, yeah, he's basically in my perception. R. 59, l.21-p. 60, l.2.

The trial judge denied the motion to suppress by ruling that driver Carr authorized a general consent to search his vehicle. However, the ruling was in error because this was a limited consent to search similar to the limited search found in State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001), and also because driver Carr had no apparent authority to consent to a search of appellant's backpack and no common authority with appellant over the backpack.

LACK OF APPARENT AUTHORITY

In Illinois v. Rodriguez, 497 U.S. 177 (1990), the Supreme Court held that a third party can only give consent if the third party has common authority over the property or if the third party has apparent authority to consent to search the property. Here, the record was devoid of any evidence, i.e. that the driver had shared or common authority with appellant over the backpack, and the record is devoid of any evidence that the driver had apparent authority to give police consent to search it. Appellant's backpack was on the floor on the passenger side of the car where appellant sat as a passenger. Appellant had dominion over that backpack that was within

his space on the passenger floorboard where he sat in the passenger seat of the car. Also, the nature of a backpack in and of itself is such that it is individualized as belonging to one person in that person's possession. Therefore, there was no community or joint possession that the driver shared with appellant's backpack. Moreover, driver Carr gave permission for a search of the car only, rather than specific items inside the vehicle. Additionally, note that the backpack was not found in a common area of the car such as the console or backseat or trunk. Rather, the backpack was at the feet of the passenger (appellant) on the passenger side at appellant's feet and within his dominion and control.

Under these facts and circumstances, not only did driver Carr not have any apparent authority or common shared authority over the backpack to give consent to a search of the same, but also under the reasonableness test per the totality of the circumstances, the police officer, himself surely had no grounds to believe that driver Carr possessed any apparent authority to consent to the search of appellant's backpack. In other words, it was unreasonable for the officer to have believed that driver Carr could consent to a search of appellant's backpack. It was unreasonable for the officer to have believed that driver Carr had any common interest in a backpack that belonged to a passenger that sat at the passenger side that clearly was under the dominion and control of the passenger.

LIMITED CONSENT

Finally, since the consent given in this case was not a general consent, then the holding in Florida v. Jimeno, 500 U.S. 252 (1991), did not apply in the case. In Jimeno, the Court held that a general consent to search the car included consent to search containers in the car. However, the facts of this case did not line up with Jimeno because driver Carr did not give a general consent. Rather, Carr's search was limited to the car itself and not containers therein. The context of the

dialogue between the Officer and Carr established this as driver Carr stated that "I'm consenting to you...in my area...I'm not going to put [my passenger] in a situation," i.e. no consent was given to search appellant's belongings.

An example of this limited consent was highlighted in State v. Forrester, 343 S.C. 637, 541, S.E.2d 837 (2001). In Forrester, the defendant only opened her purse just a little for the officer to peek inside, but the officer grabbed the purse and reached inside the purse after opening it fully and found crack cocaine inside. The Forrester Court held that the Fourth Amendment[1] was violated because the defendant in Forrester merely offered the police officer a visual inspection of the purse under a restricted manner, and thus limited the scope of the consent to search rather than surrendering the purse per a full consent to search of the entire purse. Note that the South Carolina State Constitution under article 1, 10 provides an express protection of the right to privacy.[2]

Similarly, in the case at bar, the driver gave a limited search of his car only and not a general search to include appellant's backpack as a passenger in the car. Again, driver Carr's comments confirmed this limited consent as follows:

> Carr: No, listen you can check where I was sitting...I am consenting to you, you asked to do a personal checks of my area...my passenger like I am saying I am not going to put him in a situation like that is what I'm saying
>
> Officer: So if I pull [appellant] out would consent to having me looking throughout the whole car?
> Carr: Yes
>
> Officer: And whatever is on [appellant] in on [appellant].

---

[1] The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures shall not be violated.

[2] The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and against unreasonable invasions of privacy shall not be violated.

> Carr: No, I've already...
>
> Carr: I am talking about my car. That's the only thing I can account for is my car. See page 9 of Order Denying Motion to Suppress.

Clearly, Carr's consent to search the vehicle was not a general search to include passenger appellant's belongings in the car, but rather a limited search of the car and what belonged to him.

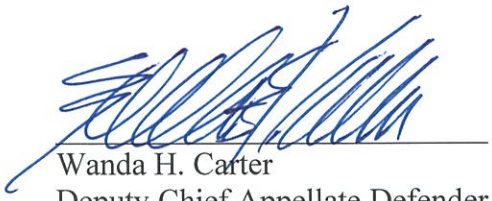
OTHER JURISDICTIONS

People v. James, 16 3 Ill.2d 302 645 N.E. 2d 101 (1994), and United States v. Welch, F.3 761 (9th Cir. 1993), were cases where the Courts noted how untenable it was to reasonably believe that a driver could consent to the search of a woman's purse. In Brown v. State, 789 So. 2d 1021 (Fla Dist. Ct. App. 2001), the Court held that a driver could not consent to the search of a passenger's fanny pack where the passenger who was sitting in the car had the fanny pack on her lap. In United States v. Infante-Ruiz, 13 F. 3d 498 (1st Cir. 1994), the Court held that a driver could not consent to search a passenger's brief case in the trunk of the car. In United States v. Minnoz, 590 F.3d 916118th Cir. 2010), the Court held that a driver could not consent to the search of the passenger's backpack without determining who owned the backpack (that being the driver or the passenger).

Here, the trial judge erred in denying appellant's motion to suppress the drugs found per the search and seizure of appellant's backpack in violation of the Fourth Amendment and Article 1, section 10 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, counsel would request that this Court vacate appellant's convictions and sentences per a grant of appellant's motion to suppress.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of June, 2021.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

June 1, 2021

Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589