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

BRIEF OF APPELLANT

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[2] 106 F.3d 613 (4th Cir. 1997).

STATEMENT OF THE CASE

Appellant Sheldon Alonzo 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 after a police stop as there was no traffic violation that occurred to justify the stop, and because there was no reasonable suspicion of criminal activity being afoot where three people were merely talking in and around the vehicle, and where the issue of people talking in such a manner has been held in U.S. v. Sprinkle[3] to be behavior not constituting reasonable suspicion that crimes were being committed therein.

The facts of the case of United States v. Sprinkle, 106 F.3rd 613 (4th Cir. 1997), where the Court held that the police had no reasonable articulable suspicion to justify a stop of a vehicle, are similar to the factual scenario in the instant case. In Sprinkle, the pertinent facts follow:

1.) Officer Riccio noticed Victor Poindexter sitting in the driver's seat of a parked Mercury Cougar in a known drug area.

2.) Office Riccio knew that Poindexter had served time previously for narcotics violations, and that he had just been released recently from prison.

3.) Then, Officer Riccio saw Sprinkle walk over to Poindexter's vehicle and get inside.

4.) Officer Riccio later saw Sprinkle huddling and talking to Poindexter with their hands close.

5.) Officer Riccio became suspicious via his perception that Sprinkle was passing something or about to pass something.

6.) Officer Riccio walked by the vehicle the two were in and saw nothing incriminating.

7.) Nonetheless, Officer Riccio stopped Poindexter's vehicle after he drove off and searched it.

8.) A weapon belonging to Sprinkle was found.

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[3] 106 F.3d 613 (4th Cir. 1997).

The Sprinkle Court held that under the totality of the circumstances, no suspicion of illegal activity could be assigned to the officer's observations regardless of the high crime area, and found that stop to be unconstitutional. Note that there were intervening actions by Sprinkle subsequent to the stop that led to his convictions in that case to be upheld. In the instant case, there were similar circumstances where an officer, who like the officer in Sprinkle, became suspicious based on a perception that two or more people talking inside or near a vehicle in a high crime area automatically raised a suspicion that criminal activity was afoot.

In the case at bar, as in Sprinkle, men were merely talking in and around a vehicle, and the officer here in this case became suspicious that a drug transaction was occurring in the same way that Officer Riccio became suspicious that a drug transaction was in the making in the Sprinkle case; but clearly, neither scenario could reasonably justify suspicion that a crime or crimes abounded.

Prior to trial in the case at bar, defense counsel moved to suppress the drugs found inside the vehicle petitioner drove 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.
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> 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.
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> 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.

Illegal Stop For Non-Existent Traffic Offense

The Fourth Amendment requires an officer making an automobile stop to have probable cause to believe that a traffic violation has occurred or an objectively reasonable suspicion that illegal activity has occurred. Milledge v. State, 422 S.C. 366, 811 S.E.2d 796 (2018); State v. Alston, 422 S.C. 270, 811 S.E.2d 747 (2018). An objective assessment of the totality of the circumstances is the test of the officer's gage of whether criminal activity is suspected after a traffic stop. State v. Alston, supra. Also, reasonable suspicion is more than an "inchoate and unparticularized suspicion or a hunch." State v. Robinson 407 S.C. 169, 754 S.E.2d 862 (2014); State v. Burgess, 394 S.C. 407, 714 S.E.2d 912 (Ct. App. 2011). Here, the officer illegally pulled appellant over for having a paper tag on the vehicle he was driving. Having a paper tag on a vehicle is not a traffic violation. Although as of November 19, 2019, traceable temporary tags must be placed on newly purchased vehicles; nonetheless, previously, in 2017 when this case occurred, S.C. Code Ann. 56-3-210 (2012) allowed vehicles to have paper tags for 45 days. As a matter of fact, the officer here in this case admitted that no traffic violation occurred in this case and that appellant drove cautiously, within the speed limits, and while using turn signals properly. Hence, no traffic

violation justified the stop in this case. See the case of State v. Sisler, 2017 WL 6032659 (2020), although unreported and unpublished, where the court found no reason for the stop where an officer admitted he did not stop the vehicle for a traffic violation, but because the driver missed a turn he advised her to take, and thus that stop was deemed illegal. Likewise the stop in this case was illegal.

No Evidence of Reasonable Suspicion of Criminal Activity

Clearly, the initial traffic stop in the case at bar was illegal. Now, the question becomes whether the officer's hunch in the present case supported an objective basis of reasonable articulable suspicion under the circumstances that criminality was afoot in order to justify the stop. For example, this officer made the huge leap from witnessing a conversation between one black male driver and one white male passenger in the same car and a white male leaning in talking to the two occupants inside the vehicle as suspicion that a drug deal was in the making or that drugs were seen being exchanged at the time.

In this case, the officer's "hunch" from his gas station observation of men talking in and around a vehicle, and the car paper tag did not satisfy any reasonable suspicion to initiate a traffic stop in this case because under the objective assessment test of criminal activity, no evidence supported such a conclusion. What was left was the fact that three men were talking inside and around a vehicle, which is not a crime, and even the trial just stated that the evidence of reasonable suspicion was "very slim." R. 51, lines 10-11.

Again, 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); 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 involving a conversation between three people in and around a vehicle did not amount to or constitute 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**

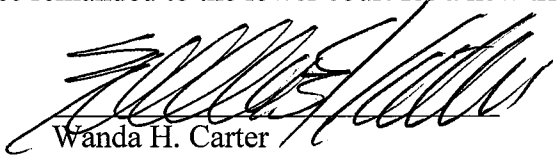
its initiation proper. The detainment of an individual after a traffic stop may occur if supported by reasonable suspicion.

In the instant case, there was neither probable cause nor reasonable suspicion to suspect that criminal activity was afoot, and this lacking of a basis to suspect a crime coupled with an illegal traffic stop for a paper tag did not constitute under the totality of the circumstances articulable reasonable suspicion to justify the traffic stop of the vehicle appellant drive. Note that Chadwick admitted he never actually saw any hand-to-hand transaction, (R. 31, l. 14-16; R. 38, l. 21- p. 39, l. 9). The officer was a good distance away from the vehicle in question and never witnessed any behavior or activity taking place other than talking between the men. Men having a conversation and paper tags on a vehicle would not support a reasonable suspicion that a criminal activity was occurring.

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 was illegal and led to an illegal detention of appellant and an illegal search of the vehicle he drove. This violated the Fourth Amendment to the United States Constitution and article 1 §10 of the South Carolina State Constitution, and as a result, the drug seized thereafter 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 29th day of October, 2021.

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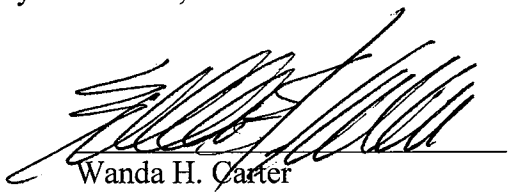
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Appellant in the above referenced case have been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Sheldon Alonzo Watson, #378551, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 29th day of October, 2021.



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