THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Florence County
The Honorable Thomas A. Russo, Circuit Court Judge

Opinion No. 4687 (S.C. Ct. App. filed May 13, 2010)

THE STATE OF SOUTH CAROLINA,

PETITIONER,

v.

SYLLESTER D. TAYLOR,

RESPONDENT.

BRIEF OF PETITIONER

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The Court of Appeals erred in reversing Respondent's conviction where, based upon the totality of the circumstances, officers had reasonable suspicion to stop Respondent.

STATEMENT OF THE CASE

Respondent was indicted in Florence County for possession with intent to distribute crack cocaine. (R. p. 39-40). He was tried in his absence in April 2007 before the Honorable Thomas A. Russo. The jury found Respondent guilty, and on April 20, 2007, he was sentenced, as a third-time drug offender, to thirty years. (R. p. 36, lines 19-25; p. 38, lines 15-18). A notice of appeal was timely filed and served. On May 13, 2010, the South Carolina Court of Appeals reversed Respondent's conviction, finding that the police did not have reasonable suspicion to stop Respondent. See State v. Taylor, 388 S.C. 101, 694 S.E.2d 60 (Ct. App. 2010). The State submitted a Petition for Rehearing and Suggestion for Rehearing *En Banc* on May 28, 2010. (App. p. 17-21). Respondent submitted a Return on June 11, 2010. (App. p. 22-27). The State submitted a Reply on June 15, 2010. (App. p. 28-29). On June 24, 2010, the Court of Appeals denied the State's Petition for Rehearing and Suggestion for Rehearing *En Banc*. (App. p. 30-32). The State's Petition for Writ of Certiorari followed, and this Court granted certiorari on April 20, 2011.

ARGUMENT

Factual Background

Around 11:00 pm on July 25, 2006, Florence County deputies received a dispatch regarding a report of suspected drug activity. (R. p. 3; p. 21; p. 31). The report, made by an anonymous caller, indicated that a black male on a bicycle near the intersection of Ervin and Gilyard Streets appeared to be selling drugs. (R. p. 3; 31). Inasmuch as this particular area was well known for its high incidence of crime and its heavy drug traffic, officers decided to respond to the location to follow up on the report. (R. p. 3, lines 6-8; p. 8-9; p. 22-23; p. 31). Deputy Bellamy first drove by in his car to see if he saw anyone. (R. p. 3-4; p. 23, lines 4-6). At that time, he observed Respondent, a black male, on a bicycle near the intersection of Ervin and Gilyard Streets. (R. p. 3, line 25 – p. 4, line 5; p. 23, lines 6-10). Respondent was the only person in the area. (R. p. 4, line 5).

After parking their vehicles some distance away, officers approached Ervin Street on foot in hopes of getting a better view. (R. p. 4, lines 5-10). About twenty minutes had passed since Deputy Bellamy first drove by and saw Respondent on his bicycle. (R. p. 24, lines 3-7). Officers found Respondent still in the same location, but now he was "huddled up trying to hide something" with another male. (R. p. 4, line 24 – p. 5, line 3). In that particular location - an isolated area that dead-ended into the woods - it was too dark for officers to see exactly what was going on between the two men. (R. p. 24, lines 9-25; p. 32, lines 8-10). However, Deputy Bellamy stated that in his experience in that line of work, ninety percent of the time, this behavior indicated that a person was engaging in illegal activity. (R. p. 5, lines 1-6; p. 24, lines 9-18). Therefore, suspicious of an illegal drug transaction, officers decided to approach. (R. p. 5, lines 5-7; p. 24, lines 17-18).

When Respondent and his associate realized that uniformed police officers were approaching, they immediately split up, and Respondent hopped on his bike and "started riding towards [the officers] as if to get away." (R. p. 11, lines 14-18; p. 25, lines 4-12). As Respondent was riding, Deputy Bellamy called out, "Sir, please stop, I need to talk to you for a second." (R. p. 25, lines 15-17). Respondent glanced at the officer but refused to stop, instead turning away as if to ride off. (R. p. 25, lines 19-22). Believing he had reasonable suspicion under the circumstances, and after Respondent once again refused to comply with his requests to stop, Deputy Bellamy conducted a takedown maneuver and patted down Respondent for weapons. (R. p. 5, line 14 – p. 6, line 5; p. 25, lines 22-25). Ultimately, crack cocaine was found on Respondent's person. (R. p. 6, lines 7-24).

In ruling on Respondent's motion to suppress the drugs, the trial judge found that, although the anonymous tip alone would not have been sufficient to justify a detention of Respondent, there was also "the observations of the officers." (R. p. 17, lines 2-17). The judge pointed out that, in addition to the tip reporting suspected drug activity, this was a "known drug area" where two officers confirmed that Respondent was "huddled up" in a suspicious manner with another individual. (R. p. 17, lines 12-19). The judge found that based upon the officers' testimony regarding their observations, there was "enough reasonable suspicion to stop and do an investigatory interview." (R. p. 17, line 24 – p. 18, line 1). Therefore, the judge denied Respondent's motion to suppress. (R. p. 18, lines 13-14).

The Court of Appeals erred in reversing Respondent's conviction where, based upon the totality of the circumstances, officers had reasonable suspicion to stop Respondent.

The trial judge properly concluded that the totality of the circumstances provided reasonable suspicion to stop Respondent. First, officers received an anonymous call reporting that a person matching Respondent's description was thought to be selling drugs in that location. (R. p. 3, lines 9-25). That particular location was well known for drugs and crime; furthermore, it was late at night. (See R. p. 21-24). Officers then observed Respondent loitering in this dark and isolated area for at least twenty minutes, notwithstanding that there was no apparent reason to be there at such a late hour and despite the fact that Respondent had available transportation. (R. p. 21-24). Moreover, there was no plausible reason for Respondent and his associate to "huddle up" in a suspicious manner unless they were concealing criminal activity. (R. p. 4-5; p. 11; p. 17, lines 14-19; p. 24).

Both officers – based upon their common sense perceptions and practical experience - believed that this "huddle" was highly indicative of drug activity, and the trial court properly gave great weight to the officers' testimony regarding their beliefs. (See R. p. 3, lines 6-8; p. 4-5; p. 5, lines 1-6; p. 11; p. 17, lines 13-25; p. 24, lines 11-16). See Ornelas v. U.S., 517 U.S. 690, 700 (1996) (police officers may draw inferences based upon their own experiences in the field, even if these same inferences might not be drawn by a layman); U.S. v. Cortez, 449 U.S. 411, 418 (1981) (pointing out that a trained officer may draw inferences and make deductions that might elude an untrained person); State v. Dupree, 319 S.C. 454, 458, 462 S.E.2d 279, 282 (1995) (due weight must be given to specific reasonable inferences an officer is entitled to draw in light of his experience); see also State v. Davis, 354 S.C. 348, 357, 580 S.E.2d 778, 783 (Ct. App.2003) ("[T]he law

is well settled that the officer's knowledge of general trends in criminal behavior is a relevant consideration in determining probable cause."); State v. Peters, 271 S.C. 498, 504, 248 S.E.2d 475, 478 (1978) ("In dealing with probable cause, ... as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.").

More importantly, when officers decided to approach in order to get a better view,[1] Respondent and his associate spotted them and immediately split up in opposite directions. (R. p. 5; p. 11; p. 25; p. 34-35). One officer testified that Respondent hopped on his bike and pedaled as if he was trying to "get away," and he ignored the officer's requests for him to "please stop" so that the officer could talk to him for "a second." (See R. p. 5, lines 8-9 & lines 14-15; p. 25, lines 10-22). Critically, although Respondent rode in the direction of the officer, he had no choice but to do so because the road dead-ended into the woods. (R. p. 5; lines 7-15; p. 24, line 19 – p. 25, line 22). Respondent's actions were plainly inconsistent with simply going about one's business, and instead indicated that he was attempting to flee and evade police.

The Court of Appeals' majority opinion acknowledged that each individual circumstance described above could support reasonable suspicion. See State v. Taylor, 388 S.C. 101, 110-120, 694 S.E.2d 60, 64-69 (Ct. App. 2010). However, the opinion failed to take into account the *culmination* of these circumstances, instead improperly rejecting each circumstance separately. See id. at 120-24, 694 S.E.2d at 69-72. See U.S. v. Branch, 537 F.3d 328, 337 (4th Cir. 2008) ("Courts must look at the 'cumulative

[1] See Florida v. Royer, 460 U.S. 491, 497 (1983) (law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place).

information available' to the officer . . . and not find a stop unjustified based merely on a 'piecemeal refutation of each individual' fact and inference[.]" (citations omitted)); U.S. v. Mason, 628 F.2d 123, 129 (4th Cir. 2010) ("[J]ust as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion."); State v. Wallace, 392 S.C. 47, 707 S.E.2d 451, 453 (Ct. App. 2011) ("In applying the concept of reasonable suspicion to the various facts of a case, '[i]t is the entire mosaic that counts, not single tiles.' ") (*quoting* U.S. v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)); U.S. v. Cortez, *supra*, at 417 (in determining whether reasonable suspicion exists, the "whole picture" must be taken into account).

A proper examination of the *totality* of the circumstances makes it clear that officers did have reasonable suspicion to briefly stop and detain Respondent to investigate further. See Terry v. Ohio, 392 U.S. 1, 22-23 (1968) (a series of acts, each innocent by themselves, may give rise to reasonable suspicion); U.S. v. Sokolow, 490 U.S. 1, 8-10 (1989) (the relevant inquiry is not whether particular conduct is "innocent" or "guilty," but rather the degree of suspicion that attaches to particular types of non-criminal acts) (citation omitted); Illinois v. Wardlow, 528 U.S. 119, 124-25 (2000) (a person's presence in a high-crime area plus his unprovoked flight upon seeing the police provides reasonable suspicion for a stop); U.S. v. Lender, 985 F.2d 151, 154 (4th Cir. 1993) (reasonable suspicion existed based upon presence in high-drug area, lateness of the hour, appearance of a drug transaction, and an attempt to evade police); Adams v. Williams, 407 U.S. 143, 147 (1972) ("The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.").

Therefore, Petitioner submits that, considering the deferential standard of review on appeal, the trial court's finding regarding reasonable suspicion should not have been overturned. See State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (trial court should be affirmed if there is "any evidence" to support its ruling); State v. Khingratsaiphon, 352 S.C. 62, 70-71, 572 S.E.2d 456, 459-60 (2002) (the trial court's "totality of the circumstances" determination must be upheld if there are any articulable facts in the record supporting the ruling); Ornelas v. United States, *supra* ("An appeals court should give due weight to a trial court's finding that the officer was credible and the inference was reasonable."); see also Reed v. Ozmint, 374 S.C. 19, 24, 647 S.E.2d 209, 211 (2007) (pointing out that, because the circuit court judge is in the best position to judge credibility and assign weight to testimony, the appellate court should defer to his findings); State v. Pichardo, 367 S.C. 84, 95-96, 623 S.E.2d 840, 846 (Ct. App. 2005) (pointing out that under the "clear error" standard, an appellate court should not reverse a trial court's finding of fact simply because it would have decided the case differently). Accordingly, Petitioner submits that the Court of Appeals committed error when it reversed the trial court's admission of the drugs.

CONCLUSION

Based upon the foregoing, the State submits that the Court of Appeals' opinion should be vacated and Respondent's conviction affirmed.

Respectfully submitted,

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