IN THE

SUPREME COURT OF VIRGINIA

RECORD NO. 092313

ALLEN EDWARD SIDNEY, JR.,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF OF THE COMMONWEALTH

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STATEMENT OF THE CASE

The Grand Jury of the Circuit Court of the City of Petersburg indicted Allen Edward Sidney, Jr., for one count of possession of cocaine, in violation of Virginia Code §18.2-250. (App. 3). In addition, Sidney was charged with misdemeanor possession of marijuana, in violation of Code §18.2-250.1. (App. 43-44).

The defendant filed a motion to suppress evidence and statements, asserting that he had been improperly seized by Petersburg police officers acting upon an anonymous tip indicating that there was an outstanding warrant for his arrest. (App. 1). Sidney asserted that his seizure under these circumstances was unsupported by a reasonable articulable suspicion "to order Sydney [sic] out of the car or detain him in any way," and that any statements obtained from him and any evidence seized thereafter were tainted as a result. (App. 1-2). Following an evidentiary hearing, the court denied the suppression motion.

On June 30, 2008, the defendant entered conditional pleas of guilty to both offenses, preserving the suppression issues for appellate review. (App. 41-44). By order entered March 11, 2009, the court sentenced the defendant to ten years of imprisonment, with nine years and ten months suspended for the conviction for possession of cocaine, (CR08-455), and an entirely suspended sentence of twelve months for the possession of marijuana. (CR08-475). (App. 80-81).

Sidney appealed the judgment and, by Order dated August 19, 2009, a judge of the Court of Appeals of Virginia denied the petition

for appeal. On October 19, 2009, a panel of the Court of Appeals denied Sidney's appeal for the reasons stated in that Court's previous Order. (Record No. 2125-08-2).

By Order entered March 15, 2010, this Court granted the defendant's petition for appeal.

ASSIGNMENTS OF ERROR

The Defendant asserts the following assignments of error:

I. THE COURT OF APPEALS ERRED BY UPHOLDING THE TRIAL COURT'S REFUSAL TO SUPPRESS THE EVIDENCE WHERE THE PETITIONER WAS DETAINED WITHOUT PROBABLE CAUSE OR A REASONABLE SUSPICION IN VIOLATION OF HIS RIGHTS UNDER THE FOURTH AMENDMENT OF THE U.S. CONSTITUTION AND COMPARABLE PARTS OF THE VIRGINIA CONSITUTION, AND WHERE THE EVIDENCE WAS OBTAINED AS A RESULT OF THIS DETENTION.

II. THE COURT OF APPEALS ERRED BY CONCLUDING THAT THE ANONYMOUS TIP AND DISPATCH TO POLICE SUPPORTED THE SEIZURE OF THE PETITONER, WHERE THE TIP AND DISPATCHED INFORMATION WERE NOT FROM AN INFORMANT WHOSE RELIABILITY WAS ESTABLISHED AND THE INFORMATION PROVIDED IN THE TIP WAS NOT PREDICTIVE AND WAS OTHERWISE INSUFFICIENT TO SUPPORT THE SEIZURE OF THE PETITONER.

III. THE COURT OF APPEALS ERRED BY CONCLUDING THAT THE TIP AND DISPATCH[ED] INFORMATION SUPPORTED THE SEIZURE OF THE PETITIONER WHERE THE MERE FACT THAT A WARRANT WAS ON FILE FOR ALLEN SIDNEY DID NOT MAKE THE

OTHERWISE UNRELIABLE TIP RELIABLE ENOUGH TO SUPPORT THE SEIZURE OF PETITIONER UNDER THE CIRCUMSTANCES OF THIS CASE.

QUESTION PRESENTED

WHETHER THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE. (ASSIGNMENTS OF ERROR I, II, & III)

STATEMENT OF FACTS

The Stop

Petersburg police officer Dustin Sloan received information broadcast from police dispatchers that an anonymous caller to police headquarters reported that the defendant, Allen Sidney, had an outstanding arrest warrant in the City. (App. 11-12, 16-17, 22-23). The tip described Sidney as a black male, approximately 5'7" to 5'9" in height. (App. 17). The tip further indicated that Sidney lived at 1300 Patterson Street in the city, and that he drove a tan Jeep Cherokee with wood grain paneling on its side. (App. 12, 17).

Sloan proceeded to 1300 Patterson Street, where he observed the described Cherokee parked in the driveway of the home. (App. 9-10, 11-12). Sloan then checked the Cherokee's license plates, and learned the Jeep was registered to the defendant's mother. (App. 11). While Sloan waited for additional police officers to arrive, the

defendant drove the Cherokee away from the home. (App. 11-12). Sloan followed, coordinating the stop of the vehicle with the assisting police officers, Officer Billings and Officer J.W. Schmidt. (App. 13).

Sloan stopped the jeep. (App. 13-14). Schmidt approached the driver, asking him for his license and registration. (App. 14). After Sidney was identified as the driver, he was informed of his outstanding arrest warrant, and placed under arrest. (App. 14-15).

The Suppression Proceeding

Although at the suppression hearing Sloan could not recall the specific charge for which the defendant was wanted, he testified that he had ascertained that information prior to stopping Sidney. (App. 22). Upon further inquiry from the trial court as to the sequence of events, Sloan explained that the anonymous tip had come in, and **dispatch confirmed that an outstanding warrant existed for Sidney.** (App. 22). When asked if he personally checked to determine the existence of Sidney's warrant, Sloan explained that the dispatcher told him that Sidney had an outstanding warrant. (App. 23).

In response to this testimony, the defendant objected to "any testimony about what [Sloan] did not directly hear, so speculation **of**

what dispatch might have done." (App. 23). Although the trial court sustained the defendant's objection to Sloan testifying regarding the actions undertaken by police dispatch to confirm the existence of the warrant, the defendant did not move to strike any of the testimony Sloan had already given indicating that dispatch personnel had confirmed the warrant's existence. (App. 23).

Officer Schmidt explained that police dispatchers provided him with the defendant's name, a physical description and a birth date, as well as a description of the Cherokee, with 30 day temporary license tags, and its location. (App. 26) **Schmidt also confirmed that he had been informed by dispatch that there was an outstanding warrant for Sidney's arrest**, although he testified that he did not learn of the specific charge alleged therein until after Sidney's arrest. (App. 26-27).

In denying the suppression motion, the trial court held that the dispatcher's knowledge of the existence of the warrant could properly be imputed to the officers. (App. 34-35). In so finding, the court determined that the officers possessed the necessary reasonable suspicion to make the traffic stop. (App. 35).

ARGUMENT

THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS.

Standard of Review

"A defendant's claim that evidence was seized in violation of the Fourth Amendment presents a mixed question of law and fact that [the appellate court] review[s] de novo on appeal." McCain v. Commonwealth, 275 Va. 546, 551-52, 659 S.E.2d 512, 515 (2008); See also Ornelas v. United States, 517 U.S. 690, 691, 699 (1996); Murphy v. Commonwealth, 264 Va. 568, 573, 570 S.E.2d 836, 838 (2002).

In making its determination, the Court must give deference to the trial court's factual findings and "independently determine whether the manner in which the evidence was obtained meets the requirements of the Fourth Amendment." McCain, 275 Va. at 552, 659 S.E.2d at 515; See Whitfield v. Commonwealth, 265 Va. 358, 361, 576 S.E.2d 463, 464 (2003). "The burden is on the defendant to show that the denial of his suppression motion, when the evidence is considered in the light most favorable to the Commonwealth, was reversible error." McCain v. Commonwealth, 261 Va. 483, 490, 545

S.E.2d 541, 545 (2001) (citing Fore v. Commonwealth, 220 Va. 1007, 1010, 265 S.E.2d 729, 731 (1980)).

An appellate court "should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers." Malbrough v. Commonwealth, 275 Va. 163, 169, 655 S.E.2d 1, 3 (2008) (quoting Reittinger v. Commonwealth, 260 Va. 232, 236, 532 S.E.2d 25, 27 (2000)).

Sidney's Seizure Was Not Based
on the Uncorroborated Tip Alone

It is well settled that an investigative detention constitutes a seizure within the meaning of the Fourth Amendment. See Delaware v. Prouse, 440 U.S. 648, 653 (1979). It is equally well established that such a detention must be justified by a reasonable suspicion, based upon specific and articulable facts, that criminal activity is "afoot." United States v. Sokolow, 490 U.S. 1, 7 (1989); McCain v. Commonwealth, 275 Va. at 552, 659 S.E.2d at 516.

The defendant asserts the trial court erred in determining his detention was supported by a reasonable suspicion that criminal activity was afoot. He argues that the evidence adduced established only an unconfirmed anonymous tip that there was an outstanding

warrant for Sidney's arrest. (Def. Br. at 14-15). Relying on Jackson v. Commonwealth, 267 Va. 666, 673-74, 594 S.E.2d 595, 598-99 (2004), the defendant maintains that the quantity and quality of the information supplied to the police lacked sufficient indicia of reliability to justify the stop of his Cherokee and his resulting seizure.

Sidney contends the tip in this matter, concerning his description and wanted status, conveyed only "'easily obtained' facts which would be available to anyone observing the Cherokee driver." (Def. Br. at 10). Accordingly, Sidney argues the tip failed to demonstrate the informant's "basis of knowledge," establishing the reliability of the information so as to support the necessary quantum of suspicion to authorize an investigatory stop. (Def. Br. at 10-11). See Jackson, 267 Va. at 677, 594 S.E.2d at 601.

In support of his argument attacking the "basis of knowledge" for the anonymous tip, Sidney maintains that the officers failed to independently confirm the existence of an outstanding arrest warrant prior to stopping the Cherokee, relying upon the tip alone. (Def. Br. at 11). However, the evidence in the record, viewed in a light most favorable to the Commonwealth, does not support this assertion. Sidney argues that in light of the court's ruling on his objection to the

testimony of Officer Sloan no evidence was adduced to ***prove*** Sidney's wanted status prior to the execution of the investigatory stop. (Def. Br. at 12-13). Yet, Sidney's objection, by its terms, was limited to Sloan's speculation as to the specific means by which dispatch might have confirmed the existence of the warrant. ("I am going to object to any testimony about what he did not directly hear, so any speculation of what dispatch might have done.") (App. 23).

His objection did not address the information conveyed by dispatch directly to Sloan that such a warrant existed. (App. 23) Sloan clearly testified that he was aware of the nature of the outstanding warrant prior to the stop, (App. 22), and that the existence of an outstanding warrant in Sidney's name was confirmed by police dispatch. (App. 22-23).

In addition, assuming *arguendo* that Sidney's objection to Officer Sloan's testimony could be construed broadly enough to address not only the method by which the existence of the warrant was confirmed ***but the fact of its confirmation as well***, Sidney nevertheless failed to move to strike the testimony previously offered by Sloan concerning this confirmation. See M.G. v. Albemarle County Dep't of Soc. Servs., 41 Va. App. 170, 189 n.10, 583 S.E.2d 761, 770

n.10 (2003) (holding that where a party successfully objected to testimony already given on hearsay grounds but did not move to strike any of the testimony already given, that testimony was "part of the record for purposes of appeal" (citing Kent Sinclair, Joseph C. Kearfoot, Paul F. Sheridan & Edward J. Imwinkelried, Virginia Evidentiary Foundations § 2.4 [A], at 20 (1998); 1 John W. Cooley, Callaghan's Appellate Advocacy Manual: Lawyer's Edition § 3.09, at 29 (1993))).

Moreover, Officer Schmidt testified ***without objection*** at the suppression hearing that he was advised by police dispatch that an outstanding warrant existed for the defendant prior to his encountering Sidney. (App. 26). While Officer Schmidt testified that he again confirmed Sidney's outstanding warrants following the stop of the Cherokee, he noted that police dispatch reiterated their earlier advisement concerning the warrant's existence, telling him, "Yes. That is the subject that we dispatched you to as a wanted subject." (App. 27). Significantly, none of Officer Schmidt's testimony concerning the outstanding warrant was offered in the context of information conveyed to dispatch by the anonymous tipster. (App. 26-27). Therefore, even if the trial court erred in relying upon the

testimony of Officer Sloan in establishing that Sidney's wanted status was known prior to the initiation of the traffic stop, competent evidence adduced through Officer Schmidt without objection further established this fact. See Greenway v. Commonwealth, 254 Va. 147, 154, 487 S.E.2d 224, 228 (1997) (noting the improper admission of evidence does not create reversible error when it is merely cumulative of other competent evidence properly admitted).

Viewing this testimony in a light most favorable to the Commonwealth, it cannot be said that the officers failed to confirm the existence of Sidney's outstanding warrants prior to stopping his vehicle. This confirmation served to corroborate the information provided by the anonymous tipster, and provided necessary support for a reasonable suspicion to stop the Cherokee.[1]

"Anonymous information sufficiently corroborated may give reasonable suspicion for an investigative stop although the unverified tip by itself would not justify a forcible stop." Washington v.

[1] Code §19.2-81 contemplates a custodial arrest based upon information conveyed by radio dispatch concerning the existence of warrants for crimes from other jurisdictions and warrants for misdemeanors and capiases, it is reasonable under these circumstances that the information conveyed to Officers Sloan and Schmidt concerning Sidney's warrant coupled with the identifying information in their possession served to establish the requisite reasonable suspicion to justify his investigatory detention.

Commonwealth, 29 Va. App. 5, 12, 509 S.E.2d 512, 515 (1999) (en banc) (citing Alabama v. White, 496 U.S. 325, 331 (1990)).[2] Here, the officers corroborated the tip's report of an outstanding arrest warrant through police dispatch. Moreover, the officers corroborated the tip's description of the Cherokee and its location, in determining that the Jeep was registered to the defendant's mother. (App. 11). In so doing, the officers were able to bolster the reliability of the tip and increase their accumulated knowledge to the level of reasonable suspicion. Washington, 29 Va. App. at 12, 509 S.E.2d at 515.

The Trial Court Did Not Err in
Denying the Suppression Motion

The defendant contends that the trial court erred in denying the motion to suppress based upon an imputation of the dispatcher's knowledge of the arrest warrants to the police officers. (Def. Br. 14). Sidney's argument, however, is premised upon a conclusion that Officer Sloan was not made aware of the existence of an outstanding arrest warrant in advance of the stop and that no evidence established police dispatch ever confirmed the warrant's existence.

[2] This Court refused a petition for appeal in Washington in Record No. 990349.

(Def. Br. at 14). However, as noted above, in so arguing, the defendant fails to view the evidence in a light most favorable to the Commonwealth. McCain, 261 Va. at 490, 545 S.E.2d at 545.

Sloan and Schmidt both testified to the contrary during the suppression hearing in this matter. (App. 22-23). Also, the Commonwealth's proffer of evidence at the conditional guilty plea hearing noted that both Officers Sloan and Schmidt would have testified that the initial police dispatch concerning the defendant verified the existence of an arrest warrant on file. (App. 49-51). In response to this summary of evidence, the defendant stated, "No objection except subject to the suppression hearing and what we are preserving for appeal upon which that would turn its admissibility." (App. 52). Nevertheless, despite this objection, on appeal from a denial of a motion to suppress this Court reviews the evidence adduced both at the hearing on the motion and at trial. Jones v. Commonwealth, 52 Va. App. 548, 555, 665 S.E.2d 261, 264 (2008) (citing Blevins v. Commonwealth, 40 Va. App. 412, 420, 579 S.E.2d 658, 662 (2003), aff'd on other grounds, 267 Va. 291, 590 S.E.2d 365 (2004)).

After giving the appropriate deference to the trial court's factual findings, it cannot be said that the manner in which the evidence was obtained served to violate the requirements of the Fourth Amendment. See McCain, 275 Va. at 552, 659 S.E.2d at 515.

CONCLUSION

For the forgoing reasons, the Commonwealth asks this Court to affirm the judgment of the Circuit Court of City of Petersburg and the Court of Appeals.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
Appellee herein.

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CERTIFICATE OF TRANSMISSION AND SERVICE

On May 18, 2009, the required copies of this brief were hand delivered to the Clerk's Office of this Court for filing and three copies were mailed to Daniel W. Hall, Esquire, Office of the Public Defender, 105 Marshall Street, Second Floor, Petersburg, Virginia 23803, counsel for the Appellant. A copy was sent to the Court electronically to scvbriefs@courts.state.va.us.

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