

“In State v Moore South Carolina Court of Appeals Issues a Significant Opinion in the Field of Traffic Stops and Search and Seizures”

Case Name: State v Moore (South Carolina Court of Appeals, Opinion No. 5160; filed July 17, 2013)

FACTS:

Officers Dale Owens, Donnie Gilbert, Ken Hancock and K-9 Deputy Jason Carraway, all of the Spartanburg County, Sheriff’s Office) were patrolling US Interstate-85 in Spartanburg County around 1:00 a.m. Owens observed the defendant (Ashley Eugene Moore), traveling an estimated 10 miles an hour over the posted speed limit. Owens also observed Moore execute an improper lane change. Owens activated his blue lights and stopped the defendant. Owens testified that it took the defendant longer than the average motorist to stop and that he failed to release his left turn signal. Officer Owens observed Moore talking on his cell phone as he approached the vehicle. Owens opined that the average motorist would have ended the phone call when an officer approached their vehicle and that drug traffickers often leave a cell phone on so that their superiors can hear the contents of the traffic stop. An alcoholic odor emanated from the defendant’s vehicle. Moore informed Owens that the vehicle was a rental and provided the rental agreement, along with his driver’s license. Officer Owens testified that the defendant was extremely nervous, with his hands shaking noticeably and his breathing clearly accelerated. The defendant consented to a “pat down search”. Officer Owens observed and seized “a large wad of money” from Moore’s person. Moore had indicated he was unemployed. Moore stated he was travelling from a suburb of Atlanta to Marion, North Carolina to visit his grandmother. It was determined that a third party had rented the vehicle for Moore. Moore declined consent for Officer Owens to search the vehicle.

Subsequently, Owens issued a warning ticket to Moore for his moving violations. Critically, Officer Owens decided to detain Moore until the K-9 drug unit could arrive. The dog alerted to an odor inside the car and the officer searched the vehicle. Crack cocaine was found in two containers in a bag in the trunk, along with a semi-automatic weapon and a bundle of currency.

Moore was indicted for trafficking crack cocaine and possession of a weapon during the commission of a violent crime.

PROCEDURAL HISTORY:

Moore’s case was called to trial on April 25, 2011. The defendant’s attorney argued for suppression of all the evidence found from the K-9 search on the basis that Officer Owens lacked “reasonable suspicion of criminal activity” to further detain Moore beyond the scope of the initial traffic stop which ended when the warning ticket was issued. The state argued against this motion for suppression. The trial judge denied the defendant’s motion for suppression and Moore was convicted on both charges.

ISSUE:

Did the seizure and subsequent search of the defendant, and his vehicle, violate the defendant’s 4th Amendment rights?

HOLDING:

Yes. The trial court’s denial of the defendant’s motion to suppress evidence was in error. Although the arresting officer testified and pointed out multiple factors for his extended detention of the defendant, these factors (nervousness, a wad of cash money and unusual travel plans) do not eliminate a substantial

portion of innocent travelers and do not pass muster under state and federal case law construing a citizen's 4th Amendment rights.

In the case at bar, testimony regarding "alleged flight indicators" on the part of the defendant lost the majority of their significance when the defendant cooperated, stayed throughout the traffic stop and performed field sobriety tests. A "wad of money" (when it could have consisted of one dollar bills or 100 dollar bills?) does not reasonably contribute to an officer's suspicions.

In summary, we find that the state presented a similar case to State v Tindall, 388 S. C. 518, 698 S.E. 2d 203 (2010). In Tindall, the defendant was driving to visit a family member, the vehicle was rented by a third party, he was coming from a major city known as a drug hub and he displayed nervous conduct throughout the entire traffic stop. Clearly, these facts did not provide Officer Owens with reasonable suspicion of a serious crime; and when the defendant declined the request to search the vehicle, his continued detention was illegal. The weapon and drugs discovered during the search of the vehicle should have and must be suppressed.

REVERSED