

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2011-KM-01299-COA

GENO HARRELL

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	04/04/2011
TRIAL JUDGE:	HON. LEE SORRELS COLEMAN
COURT FROM WHICH APPEALED:	OKTIBBEHA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ROBERTA LYNN HAUGHTON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE
CITY ATTORNEY:	ROY E. CARPENTER
NATURE OF THE CASE:	CRIMINAL - MISDEMEANOR
TRIAL COURT DISPOSITION:	CONVICTED OF DISORDERLY CONDUCT AND FAILURE TO OBEY A LAW- ENFORCEMENT OFFICER AND FINED \$250
DISPOSITION:	REVERSED AND RENDERED: 02/26/2013
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE LEE, C.J., BARNES AND FAIR, JJ.

LEE, C.J., FOR THE COURT:

¶1. After being detained for an investigative stop by Sergeant Shawn Word, Geno Harrell became irate, refusing to give Sergeant Word his name and social security number and refusing to follow Sergeant Word's instructions. Sergeant Word issued Harrell an arrest citation for disorderly conduct and refusing to obey the commands of a law-enforcement officer. Harrell now appeals, arguing (1) the trial court erred when it refused to suppress the evidence of disorderly conduct and failure to obey law-enforcement commands; and (2) the

trial court erred when it denied Harrell's motion for a new trial and for acquittal.

FACTS AND PROCEDURAL HISTORY

¶2. On August 2, 2010, the Starkville chief of police called the police station and requested someone investigate a man walking two pit bulls near Louisville Street. The chief of police noted that the man did not seem to have control over the dogs, which posed a potential danger to a pedestrian in the area.

¶3. Sergeant Word responded to the call. When he reached Harrell, Sergeant Word rolled down his window and attempted to make conversation with Harrell. Harrell responded but did not stop walking. Sergeant Word called to Harrell to "hold on" so he could get Harrell's name and social security number to complete the paperwork regarding the call. Harrell became irate and demanded Sergeant Word's name and badge number. Sergeant Word exited his car and again attempted to explain the need for Harrell's information. Sergeant Word informed Harrell multiple times, if he would give his name and social security number, he could be "out of [there] in 20, 30 seconds." As Harrell became more agitated, so did the dogs. Sergeant Word instructed Harrell to sit on the grass because the dogs were calmer when Harrell was seated. Harrell refused to remain seated. Eventually, animal control arrived, and Harrell gave his information to Sergeant Word. Sergeant Word issued Harrell an arrest citation for disorderly conduct and failure to obey the command of a law-enforcement officer.

¶4. The Starkville Municipal Court found Harrell guilty of disorderly conduct and failure to obey the command of a law-enforcement officer and fined him \$500. Harrell appealed to the Oktibbeha County Circuit Court. After a trial de novo, Harrell was found guilty of the

same charges and fined \$250. This appeal followed.

STANDARD OF REVIEW

¶5. An unlawful-seizure claim is analyzed under a mixed standard of review. *Trejo v. State*, 76 So. 3d 702, 706 (¶8) (Miss. Ct. App. 2010). To determine if probable cause exists, this Court conducts a de novo review. *Id.* But this de novo review is limited to the trial court’s “decision based on historical facts reviewed under the substantial evidence and clearly erroneous standards.” *Id.* (citations omitted). When addressing the suppression of the evidence obtained from the unlawful seizure, the trial court’s findings of fact will only be disturbed on appeal if the trial judge “applied an incorrect legal standard, committed manifest error, or made a decision contrary to the overwhelming weight of the evidence.” *Clair v. State*, 845 So. 2d 733, 734-35 (¶4) (Miss. Ct. App. 2003).

DISCUSSION

¶6. Harrell contends that the investigative stop was an illegal seizure and that any evidence as a result of the stop should have been suppressed. Since we find this issue is dispositive, we will not address Harrell’s motion for a new trial or acquittal.

¶7. The Fourth Amendment to the United States Constitution and Article 3, Section 23 of the Mississippi Constitution protects people from “unreasonable searches and seizures.” A seizure occurs “[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968).

¶8. The Mississippi Supreme Court has divided “[p]olice activity in preventing crime, detecting violations, making identifications, and . . . apprehending criminals” into three types

of action: (1) voluntary conversations, (2) investigative stops and temporary detentions, and (3) arrests. *Singletary v. State*, 318 So. 2d 873, 876 (Miss. 1975). Here, Sergeant Word performed an investigative stop. For an investigative stop to be lawful under the Fourth Amendment, the stop must be brief, and “the officer[] [must] have ‘reasonable suspicion, grounded in specific and articulable facts’ that allows the officer[] to conclude the suspect is wanted in connection with criminal behavior.” *Eaddy v. State*, 63 So. 3d 1209, 1213 (¶14) (Miss. 2011) (quoting *Walker v. State*, 881 So. 2d 820, 826 (¶10) (Miss. 2004)). Articulated another way, the officer must have a reasonable suspicion “that criminal activity may be afoot.” *Terry*, 392 U.S. at 30; *see also United States v. Cortez*, 449 U.S. 411, 417-18 (1981); *Brown v. Texas*, 443 U.S. 47, 51(1979); *Ranier v. State*, 944 So. 2d 115, 118 (¶6) (Miss. Ct. App. 2006).

¶9. The State never contends that criminal activity was “afoot.” Neither the chief of police, who made the call, nor Sergeant Word, who responded to the call, stated he had any reasonable suspicion that Harrell was involved in any type of criminal behavior. Instead, the State argues the standard is not the “reasonable suspicion of criminal behavior” standard articulated in *Terry*, *Trejo*, *Eaddy*, and numerous other federal and state cases. The State asserts, “[I]t is enough if there is reasonable articulable **suspicion of a potential hazard** that is able to, or likely could, expose others to harm or injury.” (Emphasis added). However, the State fails to cite any supporting authority for this potential-hazard standard.

¶10. At trial, testimony was given regarding certain city ordinances demanding specific requirements to own pit bulls. However, no testimony was given that Harrell was in violation of any of these ordinances. Even assuming Harrell was violating a city ordinance

by walking his pit bulls on leashes, Sergeant Word testified that he observed the dogs and determined that the dogs were not vicious. This occurred *prior* to stopping Harrell. When Sergeant Word stopped Harrell to obtain his name and social security number, he did not have reasonable suspicion that any crime – even disobeying a city ordinance – had occurred or was about to occur. Harrell’s Fourth Amendment rights were violated “because [Sergeant Word] lacked any reasonable suspicion to believe [Harrell] was engaged or had engaged in criminal conduct.” *Brown*, 443 U.S. at 53.

¶11. If the officer did not have reasonable suspicion to perform the investigatory stop, “then evidence obtained during the investigatory stop . . . is deemed fruit of the poisonous tree and is inadmissible.” *Reynolds v. City of Water Valley*, 75 So. 3d 597, 600 (¶9) (Miss. Ct. App. 2011) (citing *Haddox v. State*, 636 So. 2d 1229, 1233 (Miss. 1994)). Since Sergeant Word did not possess the requisite reasonable suspicion that Harrell was engaged or had engaged in criminal conduct, Harrell’s statements and actions after the unlawful stop are fruit of the poisonous tree and are, therefore, inadmissible.

¶12. The trial court committed manifest error when it refused to suppress the evidence of Harrell’s disorderly conduct and failure to obey law-enforcement commands. The arrest for disorderly conduct and failure to obey a law-enforcement officer would not have occurred absent the unlawful seizure. Therefore, the judgment of the trial court is reversed and rendered.

¶13. THE JUDGMENT OF THE OKTIBBEHA COUNTY CIRCUIT COURT IS REVERSED AND RENDERED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO OKTIBBEHA COUNTY.

IRVING AND GRIFFIS, P.JJ., BARNES, ISHEE, ROBERTS AND FAIR, JJ.,

CONCUR. MAXWELL, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION. JAMES, J., NOT PARTICIPATING.

CARLTON, J., DISSENTING:

¶14. I respectfully dissent from the majority’s opinion and would affirm Harrell’s judgment of conviction. The majority concludes that Harrell’s statements and actions should have been suppressed as fruits of an unlawful stop. The majority also provides that no criminal activity supported the officer’s investigative stop. I disagree with both of these contentions. Police power extends beyond investigating criminal activity and embraces the protection of lives, health, and property of the city. *See Patterson v. Kentucky*, 97 U.S. 501, 504 (1878). The majority overlooks the community-caretaker function of local law enforcement to protect the safety of the public, and the question for review here is “whether a reasonable person, given the totality of the circumstances, would believe the individual is in need of help or that the safety of the public is endangered.” *Trejo v. State*, 76 So. 3d 684, 689 (¶14) (Miss. 2011) (citations and quotation marks omitted).¹

¶15. In this case, the officer responded to a call regarding a potential danger of pit bulls near Louisville Street. The officer acknowledged that Harrell appeared to lack control over the pit bulls, and that the pit bulls posed a potential danger to pedestrians. Not only does the record reflect evidence of a potential danger to public safety supporting the investigative

¹ *See also Cady v. Dombrowski*, 413 U.S. 433, 436-48 (1973) (recognizing a community-caretaker function, distinct from the detection, investigation, or acquisition of evidence, justifying police contact and stops); *Floyd v. City of Crystal Springs*, 749 So. 2d 110, 114-19 (¶¶13-33) (Miss. 1999) (acknowledging the community-caretaker function of local law enforcement).

stop,² but the record also shows a violation of a city ordinance. Harrell was clearly and objectively involved in a violation of a city ordinance adopted to ensure the safety of citizens exposed to pit bulls in public places within the city. As such, Harrell was not just stopped for being a potential hazard to public safety but also for violating an ordinance intended to protect the public. *See Walker v. State*, 881 So. 2d 820, 826 (¶10) (Miss. 2004) (“The local policeman is . . . in a very real sense a guardian of the public peace[,] and he has a duty in the course of his work to be alert for suspicious circumstances, and, provided that he acts within constitutional limits, to investigate whenever such circumstances indicate to him that he should do so.”); *Moore v. City of Louisville*, 716 So. 2d 1136, 1137 (¶7) (Miss. Ct. App. 1998) (“The governing authorities of municipalities shall have power to make all needful police regulations necessary for the preservation of good order and peace of the municipality. Neither can there be any dispute over a municipality's authority to enforce its ordinances.” (internal citation omitted)).³

¶16. In this case, the city ordinance defining how pit bulls are to be controlled in public places reflects the duty and express authority of the police to enforce this ordinance. In addition to the express authority and duty to enforce the ordinance, I respectfully submit that, even if the ordinance did not exist, the trial court’s judgment should be affirmed since the facts of this case reflect an effective balance of the seizure and the advancement of the public

² *See Eaddy v. State*, 63 So. 3d 1209, 1213 (¶14) (Miss. 2011).

³ *See also Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444, 447-55 (1990) (sobriety checkpoints valid and effectively balanced degree of seizure with police interest advanced); The owner of a known vicious dog possesses a duty to control the animal. *See Mongeon v. A & V Enters., Inc.*, 733 So. 2d 170, 171-73 (¶¶5-12) (Miss. 1997); *Poy v. Grayson*, 273 So. 2d 491, 493-95 (Miss. 1973); *Phillips v. Garner*, 106 Miss. 828, 828, 64 So. 735, 736 (1914).

interest in the preservation of public safety.⁴ Law enforcement possesses the paramount duty to preserve public safety, and the use of private property is subject to the police's duty to preserve public safety.⁵ The United States Supreme Court has upheld police regulations necessitated by conditions of a civil society, which were enacted in good faith and had a direct connection with protection of life, health, and property. *Patterson*, 97 U.S. at 506.

¶17. A sufficient basis existed in this case to support a lawful investigatory stop and the admission of the evidence at trial. Based on the foregoing, I respectfully dissent from the majority's opinion.

⁴ See *Cady*, 413 U.S. at 436-48; *Floyd*, 749 So. 2d at 114-19 (¶¶13-33); *Moore*, 716 So. 2d at 1137 (¶7).

⁵ See generally *State v. J.J. Newman Lumber Co.*, 102 Miss. 802, 802, 59 So. 923, 926 (1912); *Moore v. State*, 48 Miss. 147, 147 (Miss. 1873).