STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Walton J. McLeod, IV, Circuit Court Judge
Appellate Case No. 2022-000658

THE STATE,

Respondent,

vs.

MAXIE PAUL WAGNER,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

"Whether the trial court reversibly erred by failing to suppress evidence from the search of Appellant's vehicle where the basis of the traffic stop was for a suspended license plate, yet where the information regarding the license plate was provided to the narcotics investigator making the stop 12 days earlier, and where the investigator did not run the plate to verify if it was still suspended prior to the stop?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by denying Appellant's motion to suppress the cocaine, methamphetamine, and other incriminating evidence found during the course of the traffic stop when: (1) the officer possessed reasonable articulable suspicion of criminal activity at the outset of the stop based on the information he had received twelve days earlier from a fellow officer indicating Appellant's vehicle's license plate was suspended, which meant it was not lawful for Appellant to drive that vehicle; and (2) even if the officer did not possess reasonable suspicion at the outset of the stop, his verification of the license plate suspension status just ten minutes into the stop constituted an intervening circumstance that broke the causal chain between the initiation of the stop and the discovery of Appellant's drugs and incriminating items?

STATEMENT OF THE CASE

In February of 2020, Appellant Maxie Paul Wagner was arrested after a variety of illegal drugs—including cocaine and methamphetamine—were found during the course of a traffic stop. In October of 2020, the Lexington County Grand Jury indicted Appellant for trafficking in cocaine and possession of methamphetamine with intent to distribute. On May 9, 2022, a jury trial was commenced in the Lexington County Court of General Sessions with the Honorable Walton J. McLeod, IV, circuit court judge, presiding.[1] At the conclusion of the three-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twelve years for the convictions. Appellant then filed a timely notice of appeal.

[1] At the time of his trial, Appellant had numerous other pending criminal charges. (R. pp. 359-360).

STATEMENT OF FACTS

Toward the beginning of 2020, narcotics officers from the Lexington County Sheriff's Office were actively engaged in a criminal investigation of Appellant, who was a member—or former member—of the Warlocks motorcycle gang and a suspected drug dealer. (R. p. 20; pp. 54-55; p. 359). As part of that investigation, Investigator Tyler Kennedy ran the license plate of Appellant's Volkswagen Passat through the record system of the South Carolina Department of Motor Vehicles ("DMV") at approximately 3:36 p.m. on January 29, 2020, and discovered the plate was suspended. (R. p. 20; p. 41; pp. 55-56; pp. 58-60). Upon making that discovery, he immediately alerted his fellow officer, Investigator John Gietz, of what he had learned. (R. p. 20; pp. 56-57; p. 62).

Thereafter, at around 5:00 p.m. on February 10, 2020, Investigator Gietz was positioned near the home of Appellant's wife, Erin Wagner ("Wife"), in his unmarked vehicle when he observed Appellant's Passat driving along the roadway. (R. p. 19; p. 23; p. 130; p. 177; p. 182; p. 184). Based on the information he had received twelve days earlier about the suspended license plate, Investigator Gietz got into position behind Appellant's vehicle, followed it for a bit, and then activated his vehicle's blue lights to initiate a traffic stop. (R. pp. 19-20; pp. 23-25; p. 34; p. 130). In response, the driver of the Passat pulled over at a nearby gas station.[2] (R. p. 42; p. 188).

Once the vehicle had stopped, Investigator Gietz approached it and found Appellant seated in the driver's seat, Wife seated next to him, and a child seated in the back. (R. p. 21; pp. 131-132; p. 177; p. 191). The investigator proceeded to make contact with Appellant, and, while

[2] At approximately 5:05 p.m., Investigator Gietz alerted dispatch he was at the gas station. (R. pp. 39-42; p. 190). Just five minutes after that, dispatch confirmed to the investigator Appellant's Passat's license plate was suspended. (R. pp. 20-21; pp. 39-41; p. 52; p. 220).

speaking with him, he quickly detected a strong odor of marijuana emanating from the vehicle. (R. p. 21; p. 132). In addition to that, Investigator Gietz observed red rubber tubing he recognized as drug paraphernalia associated with intravenous drug usage, and he saw Appellant "fumbling around" with some razor blades located in the vehicle's center console area. (R. pp. 21-22; pp. 132-133; p. 135). As a result, Investigator Gietz directed Appellant and Wife to exit the vehicle, and they both complied. (R. pp. 21-22; p. 137; p. 140).

By that point, other officers had arrived at the scene to provide support, and both Appellant and Wife were separately advised of their rights. (R. p. 22; p. 64; pp. 140-141; p. 200). After being so advised, Appellant elected to speak with Investigator Gietz and initially denied there were any drugs present inside in the vehicle. (R. p. 141). However, upon learning the car was going to be searched, Appellant pivoted from that claim, admitted there were drugs hidden within, and acknowledged ownership of them. (R. pp. 22-23; pp. 141-142). Appellant further admitted he was selling drugs at the time and alleged he was doing so because he had been unable to get any other job. (R. p. 175).

Ultimately, based on everything that had occurred up to that point, Investigator Gietz conducted a search of Appellant's Passat. (R. p. 142). Inside, he found: (1) red rubber tubing; (2) a syringe filled with a yellowish liquid; (3) a digital scale with suspected drug residue on it; (4) $1,628.25 in cash; (5) a plastic bag containing suspected marijuana; (6) several plastic bags containing suspected cocaine; (7) a bag containing suspected methamphetamine; (8) a cell phone; (9) a ledger that appeared to be connected to drug activity; and (10) a box of additional syringes. (R. p. 142; pp. 148-150; pp. 152-153; p. 155; pp. 171-172).

As a result of those discoveries, Investigator Gietz arrested Appellant, who acknowledged he had more methamphetamine in his pocket. (R. p. 158). The investigator then

searched Appellant's pockets and found another cell phone, more cash, and more suspected methamphetamine. (R. p. 158). After that, he secured that evidence along with all the other evidence that had been uncovered and transported Appellant to the Lexington County Detention Center. (R. pp. 153-154; pp. 176-177).

Following Appellant's arrest, the license plate on his vehicle was removed and ultimately returned to the DMV as required due to its suspended status. (R. pp. 63-65; p. 220). Likewise, the drugs recovered during the traffic stop were submitted for analysis, and an expert forensic chemist confirmed one of the substances consisted of over three grams of methamphetamine while the other substance consisted of over forty-four grams of cocaine. (R. p. 294; p. 296; pp. 300-301). Furthermore, the cell phones recovered during the stop were submitted for analysis, and, on one of the phones, incriminating messages and photographs were found, including messages containing information consistent with the information contained within the recovered ledger.[3] (R. pp. 238-239; pp. 262-264; pp. 287-288). Subsequent to that, Appellant was indicted for trafficking in cocaine and possession of methamphetamine with intent to distribute, and he proceeded forward to trial. (R. p. 14; pp. 373-376).

At the outset of trial, defense counsel moved to suppress all the evidence uncovered in Appellant's case on the basis the traffic stop purportedly was not supported by probable cause or reasonable suspicion. (R. p. 18; pp. 368-370). During the ensuing in limine hearing on that motion, Investigator Gietz recounted the details of the traffic stop, including the information he first obtained from Investigator Kennedy about Appellant's vehicle's suspended license plate. (R. p. 19). Investigator Gietz further recounted he confirmed Appellant's license plate was

[3] The other phone, which had mistakenly not been placed into "airplane mode" when it was seized, could not be searched because it had been remotely reset, which was consistent with what Appellant advised Investigator Gietz he planned to do once he obtained release from pre-trial incarceration. (R. p. 178; pp. 239-240; pp. 269-270).

suspended through dispatch during the course of the stop, and his testimony in that regard was corroborated by testimony and evidence establishing the license plate was verified as suspended approximately ten minutes into the stop. (R. pp. 20-21; p. 23; p. 31; pp. 39-41; p. 52). In addition to that, Investigator Kennedy confirmed he discovered Appellant's license plate was suspended on the afternoon on January 29, 2020, and immediately relayed that information to Investigator Gietz. (R. pp. 54-56; p. 58; p. 62).

After that testimony and evidence was presented, defense counsel contended all the evidence discovered during the traffic stop should be suppressed as the product of an unconstitutional seizure. (R. pp. 71-73). In support of that contention, defense counsel asserted Investigator Gietz could not validly initiate a traffic stop of Appellant's vehicle because his information about Appellant's suspended license plate was twelve days old and, thus, any reasonable suspicion or probable cause that existed for a stop had purportedly dissipated due to the passage of time. (R. pp. 73-74; pp. 82-83). However, defense counsel conceded there would have been no conceivable basis for suppression if Investigator Gietz had run the license plate information through dispatch prior to initiating the stop and acknowledged the investigator did, in fact, confirm the license plate was suspended just ten minutes into the stop. (R. p. 75; p. 102). Conversely, the solicitor argued the information provided to Investigator Gietz about Appellant's license plate being suspended provided a valid basis for the traffic stop. (R. pp. 78-80).

After considering the matter, the trial judge denied the suppression motion. (R. pp. 103-106). In doing so, the trial judge concluded no unreasonable seizure or search occurred in Appellant's case because the information known to Investigator Gietz provided him with reasonable suspicion to believe the driver of the vehicle stopped was illegally driving with a

suspended license plate. (R. pp. 103-105). Furthermore, the trial judge noted the investigator eventually confirmed the license plate was suspended at the scene. (R. p. 105).

Thereafter, as the trial proceeded forward, Investigator Gietz recounted the details of his stop of Appellant's vehicle, his discovery of Appellant's drugs and drug paraphernalia, and Appellant's ensuing confession to possessing the drugs, and testimony was presented about the incriminating information found on Appellant's cell phone. (R. pp. 129-142; pp. 148-160; pp. 168-212; pp. 219-221; pp. 234-243; pp. 255-270; pp. 287-289). Likewise, Appellant's drugs, ledger, and digital scale were admitted into evidence, and the forensic chemist verified the drugs were methamphetamine and a trafficking weight of cocaine.[4] (R. pp. 294-301).

Following the presentation of all that testimony and evidence, the case was submitted to the jury. (R. p. 353). A little less than an hour later, the jury convicted Appellant as indicted. (R. pp. 353-354).

[4] Notably, the cocaine and methamphetamine were admitted into evidence during trial "[w]ithout objection." (R. p. 299).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When reviewing a ruling on a constitutional search-and-seizure issue on appeal, the appellate court will "review the trial court's factual findings for any evidentiary support" and treat "the ultimate legal conclusion" as "a question of law subject to de novo review." State v. Frasier, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022).

ARGUMENT

The trial judge properly denied Appellant's motion to suppress the cocaine, methamphetamine, and other incriminating evidence found during the course of the traffic stop because: (1) the officer possessed reasonable articulable suspicion of criminal activity at the outset of the stop based on the information he had received twelve days earlier from a fellow officer indicating Appellant's vehicle's license plate was suspended, which meant it was not lawful for Appellant to drive that vehicle; and (2) even if the officer did not possess reasonable suspicion at the outset of the stop, his verification of the license plate suspension status just ten minutes into the stop constituted an intervening circumstance that broke the causal chain between the initiation of the stop and the discovery of Appellant's drugs and incriminating items.

Appellant contends the trial judge reversibly erred by failing to suppress the evidence discovered during the course of the traffic stop. In support of that contention, Appellant maintains his constitutional rights were violated by the stop because the officer who conducted it purportedly did not possess reasonable suspicion of criminal activity since the suspended license plate information he relied upon was twelve days old and was not verified until ten minutes *after* the stop was initiated. To the contrary, the officer possessed reasonable articulable suspicion to initiate the stop because he had received reliable information from a fellow officer indicating Appellant's vehicle's license plate was suspended and then observed Appellant driving that vehicle just twelve days later, which gave him reasonable grounds to believe Appellant was presently engaged in the continuing criminal offense of driving with a suspended license plate. However, even assuming the officer somehow did not possess reasonable suspicion at the outset of the stop, suppression would nonetheless have not been warranted because the officer's rapid verification of the suspended status of Appellant's vehicle license plate just minutes into the stop constituted an intervening circumstance that broke the causal chain between the initiation of the stop and the discovery of Appellant's drugs and other incriminating items. Accordingly, the trial judge properly declined to suppress the evidence discovered in Appellant's case, and there is no

proper basis upon which to disturb that correct ruling on appeal. Appellant's convictions should be affirmed.

A. Propriety of the Traffic Stop

Both the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution provide protection to our citizens against unreasonable searches and seizures. See U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]"); S.C. Const. art. I, § 10 ("The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated[.]"). Significantly, based on their plain wording, the touchstone of those constitutional provisions is reasonableness. Florida v. Jimeno, 500 U.S. 248, 250 (1991). As a result, *only* unreasonable searches and seizures are impermissible. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see also Heien v. North Carolina, 574 U.S. 54, 60 (2014) ("To be reasonable is not to be perfect[.]"); Illinois v. Rodriguez, 497 U.S. 177, 185 (1990) ("It is apparent that in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable.").

For constitutional purposes, a traffic stop of a vehicle is reasonable per se when either probable cause exists to believe a traffic violation has occurred *or* reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity.[5] See Knight v. State, 284

[5] Unlike in some jurisdictions, traffic offenses in South Carolina constitute misdemeanor *criminal* offenses as opposed to civil traffic infractions. See S.C. Code Ann. § 56-5-730 ("It is unlawful and, unless otherwise declared in [the Uniform Act Regulating Traffic on Highways]

S.C. 138, 141, 325 S.E.2d 535, 537 (1985) ("[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity."); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) ("Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se."); see also United States v. Cortez-Galaviz, 495 F.3d 1203, 1205-1206 (10th Cir. 2007) ("The Fourth Amendment test for assessing the reasonableness of traffic stops . . . tracks our test for investigative detentions—that is, a traffic stop will be held reasonable when, under the totality of the circumstances, the officer bears a reasonable suspicion that criminal activity may be afoot." (citation and internal quotations omitted)). Meanwhile, the subjective motivations of the law enforcement officer initiating the stop are irrelevant. State v. Moore, 415 S.C. 245, 252, 781 S.E.2d 897, 901 (2016); see State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 457 (2013) ("The test whether reasonable suspicion exists is an objective assessment of the circumstances; the officer's subjective motivations are irrelevant."); see also Horton v. California, 496 U.S. 128, 138 (1990) ("[E]venhanded law enforcement is best achieved by the application of objection standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.").

As to what "reasonable articulable suspicion" has been recognized to mean, it is a flexible standard grounded in common sense and simply requires a showing of "a *minimal* level of objective justification" in order to be satisfied. Illinois v. Wardlow, 528 U.S. 119, 123 (2000)

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with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or to fail to perform any act required in this chapter."); cf. Whren v. United States, 517 U.S. 806, 808 (1996) (explaining "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred" in a case in which the traffic violations involved were not crimes but, instead, were merely civil violations).

(emphasis added); see State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) ("The term reasonable suspicion requires a particularized and objective basis that would lead one to suspect another of criminal activity" (citation and internal quotations omitted)); see also Robinson v. State, 407 S.C. 169, 184, 754 S.E.2d 862, 870 (2014) ("[T]he facts and inferences relied on by the officer must be articul*able*, not necessarily articulat*ed*."). Significantly, it "is not a high bar." United States v. Coker, 648 F. App'x 541, 544 (6th Cir. 2016) (citing Navarette v. California, 572 U.S. 393 (2014)); see Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing even the probable cause standard "is not a high bar"). Thus, pursuant to that standard, the presence of factors seemingly consistent with innocent behavior can—and frequently does—suffice to establish the existence of reasonable suspicion to believe criminal activity *may* be afoot, and an officer "need not rule out the possibility of innocent conduct" for reasonable suspicion to exist. United States v. Arvizu, 534 U.S. 266, 277 (2002); see Wardlow, 528 U.S. at 125-126 (recognizing factors that are "susceptible of an innocent explanation" can establish reasonable suspicion and probable cause); United States v. Whitfield, 634 F.3d 741, 744 (3d Cir. 2010) ("It is not necessary that the suspect actually have done or is doing anything illegal; reasonable suspicion may be based on acts capable of innocent explanation." (citation and internal quotations omitted)); Cortez-Galaviz, 495 F.3d at 1206 (explaining the reasonable suspicion standard does not require an officer to rule out the possibility of innocent conduct); cf. Texas v. Brown, 460 U.S. 730, 742 (1983) (emphasizing the higher probable cause standard "does not demand any showing that [an officer's] belief be correct or more likely true than false").

In the case sub judice, Investigator Gietz received information from Investigator Kennedy indicating Appellant's license plate was suspended pursuant to Section 56-10-240 of the South

Carolina Code of Laws. Pursuant to the version of that statutory provision in effect at the time, an individual in our state was required to surrender his vehicle's license plate and registration certificate within five days of the vehicle becoming uninsured unless a new insurance policy was immediately obtained.[6] See S.C. Code Ann. § 56-10-240(A) ("If, during the period for which it is licensed, a motor vehicle is or becomes an uninsured motor vehicle, then the vehicle owner immediately shall obtain insurance on the vehicle or within five days after the effective date of cancellation or expiration of his liability insurance policy surrender the motor vehicle license plate and registration certificate issued for the motor vehicle."). Meanwhile, upon learning a vehicle had become uninsured, the DMV was required to "suspend the owner's driving privileges, license plate, and registration certificate and . . . initiate action as required within fifteen days of the notice of cancellation to pick up the license plate and registration certificate." S.C. Code Ann. § 56-10-240(B). Significantly, an individual's willful failure to return a license plate and registration certificate pursuant to the statutory requirements constituted—and continues to constitute—a misdemeanor criminal offense. S.C. Code Ann. § 56-10-240(D).

Because the suspended license plate information he received was supplied by a fellow officer actively engaged in the investigation of Appellant, Investigator Gietz reasonably believed that information to be trustworthy. Cf. United States v. Caldwell, 97 F.3d 1063, 1067 (8th Cir. 1996) (holding an officer possessed reasonable suspicion justifying a traffic stop of Caldwell's vehicle based on several-month-old information suggesting Caldwell's license was suspended that had been supplied to the officer by an officer from another law enforcement agency). And, importantly, it was unquestionably reasonable and proper for him to rely upon that information under the circumstances involved. See Whiteley v. Warden, Wyo. State Penitentiary, 401 U.S.

[6] Earlier this year, our legislature amended the statute and eliminated the five-day grace period to surrender the license plate. Act No. 51, § 3, 2023 S.C. Acts & Joint Resolutions.

560, 568 (1971) (recognizing a law enforcement officer without any firsthand knowledge can rely—and act—upon information supplied by a fellow officer); United States v. Ventresca, 380 U.S. 102, 111 (1965) (instructing an officer can rely upon the observations of a fellow officer engaged in a common investigation even when seeking to establish probable cause for a warrant and describing such observations as "plainly a reliable basis for a warrant applied for by one of their number"); State v. Dunbar, 361 S.C. 240, 249, 603 S.E.2d 615, 620 (Ct. App. 2004) (acknowledging officers can rely upon information provided to them by other officers); cf. State v. Harris, 513 S.E.2d 1, 3 (Ga. Ct. App. 1999) ("We do not agree with Harris' contention that the stop was improper because the officer did not check to see if Harris' license had been reinstated before stopping him. The officer was entitled to rely upon the [several-week-old] information given to him by fellow officers.").

Furthermore, in light of the information received, Investigator Gietz had reason to believe criminal activity was afoot when he observed Appellant driving twelve days later because the fact Appellant's license plate was identified as suspended pursuant to Section 56-10-240 meant: (1) the DMV had received information indicating Appellant's vehicle was not insured as required; (2) the DMV had taken the steps necessary to suspend Appellant's driving privileges and license plate; and (3) it was a misdemeanor offense for Appellant to have willfully failed to surrender his vehicle's suspended license plate, which was still attached to the vehicle at that time, in the manner proscribed by law. S.C. Code Ann. § 56-10-240; see State v. Davis, 354 S.C. 348, 358, 580 S.E.2d 778, 783 (Ct. App. 2003) ("Based upon the status of the vehicle's suspended license plate this stop was proper[.]"). And, since a suspended license plate violation is an offense of an ongoing nature, the fact twelve days had elapsed since Investigator Gietz received that information did not render it unreasonable for him to believe Appellant's offense

remained ongoing, which was particularly true given the fact the investigator had not received any information suggesting the suspension status had changed in those twelve days. See Cortez-Galaviz, 495 F.3d at 1211 (concluding vehicle insurance information that had last been updated *twenty days* earlier "suffice[d] to afford a sufficiently particularized and objective basis to believe that a vehicle fails to comply with Utah vehicle insurance laws and, thus, to support a brief traffic stop"); see also United States v. Sandridge, 385 F.3d 1032, 1036 (6th Cir. 2004) ("Driving without a valid license is a continuing offense—in contrast, say, to a speeding or parking violation—and there are no facts in the record suggesting that Officer Grubb should have assumed that Sandridge's ongoing offense had ceased between March 5 and March 27, 2002."); cf. United States v. Pierre, 484 F.3d 75, 83-84 (1st Cir. 2007) (concluding five-month-old information indicating Pierre's license was suspended that an officer had received *from other officers* provided reasonable suspicion for a traffic stop while noting no one ever informed the officer Pierre's license status had charged prior to the stop); United States v. Laughrin, 438 F.3d 1245, 1248 (10th Cir. 2006) (concluding information about Laughrin's license being suspended that was at least twenty-two *weeks* old was "too stale" to justify a traffic stop and noting "[t]wenty-two days is significantly less than 22 weeks"); State v. Leyva, 599 So. 2d 691, 693 (Fla. Dist. Ct. App. 1992) (holding an officer had—"at a minimum"—reasonable suspicion based on the officer's "four-to-five-week-old knowledge that [Leyva]'s driver's license was suspended"); People v. Mazzie, 926 N.W.2d 359, 368 (Mich. Ct. App. 2018) ("[E]ven if the insurance information was two weeks old, given the continuing nature of the violation, it was enough to provide officers with a minimal level of objective justification for a stop."); State v. Duesterhoeft, 311 N.W.2d 866, 868 (Minn. 1981) (finding one-month-old information about Duesterhoeft's license being suspended provided reasonable suspicion for a traffic stop even

though "[i]t would have been better if the officer had been able to recheck before making the stop"). Moreover, the mere possibility the status of Appellant's license plate theoretically *could* have changed in no way rendered the stop unreasonable due to the nature of the reasonable suspicion standard itself, which did not require Investigator Gietz to rule out all other possibilities before he could act upon his reasonably-founded suspicion of criminal activity. See Arvizu, 534 U.S. at 277 ("A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct."); State v. Spillner, 173 P.3d 498, 508 (Haw. 2007) ("Even in light of a more protracted interval . . . during which the individual *could* have corrected the former criminal behavior, a police officer may nevertheless have reasonable suspicion that the person has, in fact, failed to amend his or her behavior."); cf. State v. Wade, 673 So. 2d 906, 907 (Fla. Dist. Ct. App. 1996) (finding suspended license information from "a little less than two weeks" earlier justified a traffic stop even though the officer did not verify the information before initiating the stop).

Accordingly, while it certainly would have been more prudent for the investigator to confirm Appellant's license plate was suspended prior to initiating the stop—which would have provided probable cause as opposed to just reasonable suspicion—instead of waiting roughly ten minutes to do so, Investigator Gietz possessed reasonable suspicion of criminal activity at the time he initiated the traffic stop of Appellant's vehicle based on the recent information he had received from a fellow officer about its suspended license plate, and, thus, the stop was constitutionally proper. See United States v. Forjan, 66 F.4th 739, 746 (8th Cir. 2023) (explaining a traffic stop will generally be constitutionally proper when supported by reasonable suspicion of criminal activity); see also Wade, 673 So. 2d at 907 (rejecting the contention "information from a license record check is, per se, stale if not obtained *immediately* before the

officer makes the 'stop' that is based upon the information obtained from that records check"); cf. State v. Batts, 916 A.2d 788, 796 (Conn. 2007) ("[A]lthough the defendant contends [the officer] should have verified the status of the license suspension on [the date of the stop], the reasonable and articulable suspicion standard demands no such proof."); State v. Decoteau, 681 N.W.2d 803, 806 (N.D. 2004) ("If the officer recognizes the driver and a computer check verifies that the driver's license is suspended, the officer has more than a reasonable suspicion of unlawful activity; he has probable cause to arrest for the offense."). Therefore, the trial judge's ruling denying the suppression motion was a correct one. Cf. Cortez-Galaviz, 495 F.3d at 1210 ("Of course, outer boundaries exist for the usefulness of data, even for offenses typically protected and ongoing in nature, . . . but we need say no more to resolve Mr. Cortez-Galaviz's argument and this appeal than that we see no basis, on the record before us, to find that 20 days approaches that boundary for a vehicle insurance infraction."). Appellant's convictions should be affirmed.

B. Inapplicability of the Exclusionary Rule Even Assuming No Reasonable Suspicion Existed at the Time the Traffic Stop Was Initiated

Typically, when a constitutional violation occurs, any evidence seized as the result of that unconstitutional action must be excluded from trial pursuant to the exclusionary rule, which is a judicially-created remedy designed to serve as a deterrent sanction against unconstitutional conduct. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007); see generally State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012) ("The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. However, the United States Supreme Court has fashioned a judicially-created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment." (citation omitted)). Importantly though, the exclusion of evidence following an

unconstitutional action "is not a personal constitutional right, nor is it designed to redress the injury occasioned by an unconstitutional search." Davis v. United States, 564 U.S. 229, 236 (2011) (citations and internal quotations omitted); see Stone v. Powell, 428 U.S. 465, 486 (1976) ("[T]he [exclusionary] rule is not a personal constitutional right. It is not calculated to redress the injury to the privacy of the victim of the search or seizure[.]"); Elkins v. United States, 364 U.S. 206, 217 (1960) ("The [exclusionary] rule is calculated to prevent, not to repair."). Due to the heavy costs exacted by the exclusion of evidence on both the judicial system and society as a whole, application of the exclusionary rule is only appropriate where the deterrent benefits of the rule outweigh the heavy costs its application would exact. Brown, 401 S.C. at 88, 736 S.E.2d at 266. As a result, not every constitutional violation warrants the application of the exclusionary rule. State v. Adams, 409 S.C. 641, 647, 763 S.E.2d 341, 345 (2014); see Davis, 564 U.S. at 243 ("Remedy is a separate, analytically distinct issue."); Illinois v. Gates, 462 U.S. 213, 223 (1983) ("The question whether the exclusionary rule's remedy is appropriate in a particular context has long been regarded as an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.").

With those principles in mind, one long-recognized exception to the applicability of the exclusionary rule is the attenuation—or intervening act—doctrine. Welcome v. State, 865 S.W.2d 128, 133 (Tex. App. 1993). Pursuant to it, "not all evidence conceivably derived from an illegal search [or seizure] need be suppressed if it is somehow attenuated enough from the violation to dissipate the taint." Adams, 409 S.C. at 648, 763 S.E.2d at 345 (citation and internal quotations omitted). In determining whether evidence has been purged of the taint of an unlawful search or seizure under the attenuation doctrine, the following factors may be considered: (1) the amount of time between the illegal action and the acquisition of the evidence;

(2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct. Id.; see United States v. Najjar, 300 F.3d 466, 477 (4th Cir. 2002) ("[A] direct unbroken chain of causation is necessary, but not sufficient to render derivative evidence inadmissible. To determine whether the fruit is no longer poisonous, we consider several factors, including: 1) the amount of time between the illegal action and the acquisition of the evidence; 2) the presence of intervening circumstances; and 3) the purpose and flagrancy of the official misconduct."). If—after the relevant factors are considered—there is sufficient attenuation between the unlawful search or seizure and the acquisition of the incriminating evidence, the exclusionary rule should not be applied and the evidence should be admitted. See United States v. Gaines, 668 F.3d 170, 173 (4th Cir. 2012) ("[W]here there is sufficient attenuation between the unlawful search and the acquisition of evidence, the 'taint' of that unlawful search is purged."); cf. Wong Sun v. United States, 371 U.S. 471, 491 (1963) ("We have no occasion to disagree with the finding of the Court of Appeals that [Wong Sun's] arrest . . . was without probable cause or reasonable grounds. At all events no evidentiary consequences turn upon that question. For Wong Sun's unsigned confession was not the fruit of that arrest, and was therefore properly admitted at trial.").

Notably, in Utah v. Strieff, 579 U.S. 232, 235 (2016), the United States Supreme Court considered the question of whether the attenuation doctrine was applicable "when an officer makes an unconstitutional investigatory stop; learns during the stop that the suspect is subject to a valid arrest warrant; and proceeds to arrest the suspect and seize incriminating evidence during a search incident to that arrest." In that case, an officer was conducting surveillance of a residence suspected to be connected to narcotics activity and observed Strieff exit the residence and walk toward a nearby convenience store. Id. at 235. In response, the officer approached

Strieff in the store's parking lot, detained him *without reasonable suspicion*, and asked him what he was doing at the residence. Id. In addition to that, the officer asked for identification and was presented with Strieff's identification card. Id. The officer then relayed Strieff's identifying information to a dispatcher and, by doing so, discovered Strieff had an outstanding warrant for his arrest. Id. Based on the outstanding warrant, the officer arrested Strieff, searched him incident to that arrest, and discovered methamphetamine and other incriminating evidence. Id. at 235-236. Subsequently, Strieff was charged with several crimes and sought for all the evidence to be suppressed as the product of an unconstitutional seizure unsupported by reasonable suspicion. Id. However, the trial judge declined to suppress the evidence, Strieff was convicted, and he appealed. Id. Ultimately, Strieff's case made its way to the United States Supreme Court where a six-justice majority found the suppression motion in Strieff's case was properly denied. Id. at 236-237. In reaching that conclusion, the majority considered the attenuation doctrine's pertinent factors in the context of what occurred in Strieff's case. Id. at 239. Upon doing so and although the incriminating evidence was discovered only minutes after Strieff was illegally detained, the majority concluded the evidence discovered in Strieff's possession was admissible because the unconstitutional stop was sufficiently attenuated by the discovery of the preexisting arrest warrant, which "broke the causal chain between the unconstitutional stop and the discovery of the evidence[,]" and because there was no evidence the illegal stop of Strieff "reflected flagrantly unlawful police misconduct." Id. at 242.

In the case at bar, Investigator Gietz—similar to the officer in Strieff—made an important discovery shortly after initiating an investigatory stop by confirming Appellant's license plate was suspended roughly ten minutes into the traffic stop. Significantly, like the officer's discovery of the outstanding arrest warrant during the unconstitutional stop in Strieff,

Investigator Gietz's rapid verification of his preexisting suspicions concerning the suspended status of Appellant's vehicle's license plate constituted a powerful intervening circumstances that—even assuming the stop was somehow not supported by reasonable suspicion at its outset—attenuated any connection between the initiation of the stop and the subsequent discovery of Appellant's drugs and other incriminating items. See id. at 243 ("For the violation to be flagrant, more severe police misconduct is required than the mere absence of proper cause for the seizure."); cf. Forjan, 66 F.4th at 750 ("Considering the factors together, the unlawful stop was sufficiently attenuated in this case by the discovery of Forjan's expired license and lack of insurance. Thus, despite the unlawful stop of Forjan, deterrence benefits of excluding the evidence do not outweigh its substantial societal costs."). Likewise, the suspended status of Appellant's license plate predated the stop and, thus, was not capable of being altered or impacted by the initiation of the stop. Cf. Strieff, 579 U.S. at 240 ("In this case, the warrant was valid, it predated Officer Fackrell's investigation, and it was entirely unconnected with the stop."); Welcome, 865 S.W.2d at 134 ("We note that the probable cause authorizing the legal arrest was not developed by using any of the fruits of the illegal arrest."). Meanwhile, Investigator Gietz's failure to verify the information he had received from Investigator Kennedy immediately before initiating the stop was—at worst—a simple act of negligence or imprudence as opposed to being a sign of some systemic or recurrent misconduct on the part of law enforcement. Cf. Strieff, 579 U.S. at 241-242 (concluding the attenuation doctrine warranted the denial of Strieff's suppression motion where "Officer Fackrell was at most negligent" in conducting the suspicionless stop that ultimately led to the discovery of the outstanding arrest warrant and the incriminating evidence and where "there was no indication that this unlawful stop was part of any systemic or recurrent police misconduct").

Under such circumstances, the attenuation doctrine supported the denial of Appellant's suppression motion even if Investigator Gietz did not possess reasonable suspicion at the outset of the stop. See Herring v. United States, 555 U.S. 135, 144 (2009) ("To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system."); cf. Strieff, 579 U.S. at 242 (finding the attenuation doctrine to be applicable where "all the evidence suggests that the [suspicionless] stop was an isolated instance of negligence that occurred in connection with a bona fide investigation of a suspected drug house"); United States v. Johnson, 383 F.3d 538, 545 n. 7 (7th Cir. 2004) ("[W]hen a lawful arrest due to an outstanding warrant is the intervening circumstance, the temporal component is less relevant than in situations where the police exploit an illegal detention to create a predictable response (e.g., confession or consent to search)."). Accordingly, even if Appellant was somehow correct about the propriety of the initiation of the stop, the trial judge's decision not to impose the "last resort" remedy of excluding Appellant's cocaine, methamphetamine, and other incriminating items from trial was still nonetheless a correct one. See Davis, 564 U.S. at 237 ("Exclusion exacts a heavy toll on both the judicial system and society at large. It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment. Our cases hold that society must swallow this bitter pill when necessary, but only as a 'last resort.' " (citations omitted)); cf. Forjan, 66 F.4th at 748 ("Although Deputy Hook did not have reasonable suspicion or probable cause to initiate the traffic stop of Forjan, that is not the end of the inquiry."). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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August 21, 2023

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Walton J. McLeod, IV, Circuit Court Judge
Appellate Case No. 2022-000658

THE STATE,

Respondent,

vs.

MAXIE PAUL WAGNER,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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