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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Laurens County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2023-000231

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THE STATE,

Respondent,

vs.

BRYAN PRESTON COOPER,

Appellant.

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# FINAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

"Does the South Carolina Constitution protect a motorist from a warrantless search and seizure during a routine traffic stop when police have no reasonable grounds for suspicion either of ongoing criminal activity unrelated to the traffic stop or that the motorist is armed or dangerous?"

## COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge somehow err by finding Appellant's constitutional rights were not violated during a traffic stop when: (1) the deputy validly initiated the stop of Appellant's vehicle after observing Appellant commit the criminal offense of speeding; (2) the deputy reasonably asked Appellant to exit the vehicle during the stop in order to best protect his own safety; (3) the deputy observed contraband in plain view only after Appellant finally stepped out of the vehicle; and (4) the deputy found Appellant's stash of methamphetamine during the valid search that followed the discovery of the contraband?

## STATEMENT OF THE CASE

In October of 2020, Appellant Bryan Preston Cooper, who was on parole at the time, was arrested after a deputy found methamphetamine and drug paraphernalia during the course of a traffic stop.[1] In October of 2022, the Laurens County Grand Jury indicted Appellant for possession of methamphetamine with intent to distribute and resisting arrest. On February 8, 2023, a jury trial was commenced solely on the drug-related charge in the Laurens County Court of General Sessions with the Honorable Donald B. Hocker, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Appellant of possession of methamphetamine. Following the verdict, the trial judge sentenced Appellant to a six-year term of imprisonment.[2] Appellant then timely filed a notice of appeal.

[1] Although not the basis for any rulings made during Appellant's trial, the fact Appellant was on parole at the time of the traffic stop was incredibly significant because it meant Appellant was *required* by unambiguous South Carolina law to "permit the search or seizure, without a search warrant, with or without cause, of [his] person, any vehicle [he] own[ed] or [wa]s driving, and any of [his] possessions" by any law enforcement officer. S.C. Code Ann. § 24-21-645(B); see Samson v. California, 547 U.S. 843, 857 (2006) (concluding "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee").

[2] In light of the outcome of trial, the solicitor elected to dismiss the resisting arrest charge on the same date as the verdict. Records for Bryan Preston Cooper, Laurens County Eighth Judicial Circuit Public Index, https://publicindex.sccourts.org/laurens/publicindex.

## STATEMENT OF FACTS

Just after 5:20 p.m. on the afternoon of October 18, 2020, Deputy Ryan Parham of the Laurens County Sheriff's Office was on patrol in Waterloo, South Carolina, when he spotted a vehicle travelling at speeds of approximately eighty to ninety miles per hour on Arnold Lane, which was a state roadway with a posted speed limit of only forty-five miles per hour. (R. pp. 13-14; p. 19; p. 23; p. 32). Based on the obvious speeding offense he had just witnessed, Deputy Parham quickly moved to initiate a traffic stop, and the driver of the vehicle responded to the deputy's flashing blue lights by stopping in the roadway just past a stop sign at the intersection of Arnold Lane and Indian Mount Road. (R. p. 14; Court's Ex. # 1 (Body Cam Recording)).

Once the driver had stopped his vehicle, Deputy Parham began to exit his patrol vehicle, and, as he did, he observed Appellant, the driver of the stopped vehicle, extend the upper half of his body over the center console and reach into the passenger-side floorboard with both arms. (R. pp. 14-15; p. 28; p. 44; p. 69; pp. 93-94). That unusual action on Appellant's part immediately raised the deputy's concerns because he believed Appellant may have been either reaching for a weapon or trying to conceal something. (R. p. 15; p. 69; pp. 93-94). Deputy Parham then approached Appellant's vehicle—which had heavily-tinted side windows—on foot from the passenger side, and, at that point, Appellant stopped reaching into his vehicle's passenger side. (R. p. 15; p. 69; Court's Ex. # 1).

Upon nearing the vehicle, Deputy Parham repeatedly instructed Appellant to place his hands on the steering wheel, and Appellant only complied with that simple command after the deputy repeated it five separate times. (R. p. 15; Court's Ex. # 1). Deputy Parham then asked Appellant why he was speeding, and Appellant responded he was heading to his job as a window tinter. (Court's Ex. # 1). Following that, Deputy Parham asked Appellant what he had been

reaching for, and Appellant—who had already stopped his vehicle before extending his body toward the passenger side—claimed he simply had been trying to prevent his cat, which was present inside the vehicle, from falling out of the seat when he was "putting on the brakes." (Court's Ex. # 1).

At that point, Deputy Parham moved around to the other side of Appellant's vehicle and opened its driver door. (Court's Ex. # 1). Immediately after that, Deputy Parham directed Appellant to step out of the vehicle. (Court's Ex. # 1). However, instead of complying, Appellant remained in his seat, claimed he had not done anything, and requested the deputy's supervisor be brought to the scene. (Court's Ex. # 1). Over the course of the next four to five minutes, Deputy Parham continued to repeatedly instruct Appellant to exit the vehicle, and Appellant continued to refuse and resist, including when the deputy attempted to physically remove him by his wrist.[3] (Court's Ex. # 1). Based on Appellant's refusal to comply, Deputy Parham took out his taser and threatened to use it, but even that was not enough to obtain compliance from Appellant. (Court's Ex. # 1).

Around 5:29 p.m. and after resisting Deputy Parham's many attempts to get him to exit the vehicle, Appellant—who was still seated in the driver's seat at the time—finally relented and advised the deputy he was going to be "straight up" with him. (Court's Ex. # 1). He then candidly admitted he was in possession of a pipe, claimed that was all the contraband he had, and asserted it was "broke."[4] (Court's Ex. # 1). And, to bolster his admission, Appellant reached underneath where he was seated and attempted to show a pipe to the deputy. (Court's Ex. # 1).

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[3] At one point, Appellant confusingly insisted to the deputy he was being "cooperative" while at the same time continuing to refuse to comply with the deputy's commands. (Court's Ex. # 1).

[4] When asked what the pipe was for, Appellant readily admitted it was for "smoking meth." (R. p. 17).

Appellant exited his vehicle after that, and Deputy Parham swiftly handcuffed him and secured him in his patrol vehicle.[5] (Court's Ex. # 1). Deputy Parham then—after first securing Appellant's cat—began a search of the interior of Appellant's vehicle. (Court's Ex. # 1). During it, Deputy Parham found—in addition to pipes he had already observed in Appellant's seat when Appellant was exiting the vehicle—a pocket knife underneath where Appellant had been sitting and an open vitamin bottle containing a crystal-like substance later determined to be 0.55 grams of methamphetamine in one of the vehicle's cupholders. (Court's Ex. # 1). Based on that, Appellant was arrested. (Court's Ex. # 1).

Thereafter, at the outset of Appellant's ensuing trial for possession of methamphetamine, defense counsel moved to suppress the evidence uncovered during the traffic stop, and the trial judge conducted an in limine hearing on the matter in response. (R. p. 5; p. 12). During that hearing, Deputy Parham recounted the details of what occurred during the traffic stop, and the solicitor—despite defense counsel's insistence it would not be helpful to the trial judge's analysis—provided the trial judge with a recording of the stop that had been captured on the deputy's body camera. (R. pp. 13-14; pp. 47-48; p. 140).

Following the presentation of the deputy's testimony, defense counsel asserted all the evidence recovered during the traffic stop should be suppressed pursuant to both the federal and state constitution as the product of a supposedly unreasonable search and seizure. (R. pp. 33-34). As support for that assertion, defense counsel—while citing to decisions from Hawaii, Massachusetts, and Vermont—maintained the trial judge should find it was constitutionally unreasonable for the deputy to order Appellant to exit his vehicle during the stop due to the

[5] Before doing so, Deputy Parham conducted a frisk search of Appellant after Appellant advised him he had a knife in his pocket. (Court's Ex. # 1). However, no knife was found during that particular search. (Court's Ex. # 1).

enhanced privacy protections afforded by the South Carolina Constitution. (R. p. 34; p. 39). Furthermore, defense counsel maintained the deputy conducted an unlawful search when he reached for Appellant's door without a warrant and purportedly without any safety-based justifications. (R. p. 37; p. 39).

Conversely, the solicitor argued the suppression motion should be denied. (R. p. 40). In doing so, the solicitor noted the traffic stop itself was lawfully initiated after the deputy observed Appellant speeding. (R. p. 40). Furthermore, the solicitor noted the deputy observed Appellant make a concerning furtive movement after stopping his vehicle, which the solicitor contended was the type of occurrence that demonstrated the logic of the United States Supreme Court's decision in Pennsylvania v. Mimms, 434 U.S. 106 (1977). (R. pp. 40-41). Following that, the solicitor noted no incriminating evidence was located until it was observed in plain view when Appellant finally exited the vehicle as directed. (R. p. 41).

Upon considering the matter, the trial judge denied the suppression motion. (R. pp. 48-49). In doing so, the trial judge reached several conclusions. (R. p. 49). Initially, he concluded Deputy Parham had a probable cause basis to stop Appellant's vehicle after observing him speeding. (R. p. 49). Next, he concluded Deputy Parham's decision to open Appellant's door was reasonable under the circumstances involved and was justified in the interest of officer safety because: (1) Appellant had been driving at a high rate of speed; (2) Appellant concerningly reached across the vehicle after stopping; (3) the deputy was alone at the time of the stop; and (4) even before the driver door was opened, Appellant had to be repeatedly asked to put his hands on the steering wheel to get him to do so. (R. p. 49). Finally, the trial judge concluded the pipe and knife were observed in plain view when Appellant did eventually exit his vehicle. (R. p. 49).

Following that ruling, Appellant's trial proceeded forward, Deputy Parham testified before the jury about events that led up to Appellant's arrest, and Appellant's methamphetamine was admitted into evidence over objection. (R. pp. 67-111; p. 124). Ultimately, based on that testimony and evidence, the jury convicted Appellant of possession of methamphetamine after less than an hour of deliberations. (R. pp. 172-173).

## 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 correctly found Appellant's constitutional rights were not violated and properly declined to suppress Appellant's methamphetamine and other incriminating evidence because: (1) the deputy validly initiated the stop of Appellant's vehicle after observing Appellant commit the criminal offense of speeding; (2) the deputy reasonably asked Appellant to exit the vehicle during the stop in order to best protect his own safety; (3) the deputy observed contraband in plain view only after Appellant finally stepped out of the vehicle; and (4) the deputy found Appellant's stash of methamphetamine during the valid search that followed the discovery of the contraband.**

Appellant contends the trial judge reversibly erred by failing to suppress the methamphetamine and other incriminating evidence discovered during the course of the traffic stop. As support for that contention, Appellant—while relying on appellate decisions from Hawaii, Massachusetts, and Vermont—maintains the eminently logical conclusion reached by the United States Supreme Court in Pennsylvania v. Mimms, 434 U.S. 106 (1977), should be cast aside in South Carolina and our state constitution's additional privacy provision should purportedly be interpreted to require an officer conducting a traffic stop to possess a "reasonable belief that safety either of the officer or public is in danger or criminal activity unrelated to a traffic stop has occurred" in order to be able to simply ask a driver to step out of a stopped vehicle. Appellant further maintains Deputy Parham's actions were constitutionally intolerable in his case because the deputy personally opened Appellant's driver door and asked him to exit the vehicle without sufficient justification. To the contrary, Deputy Parham validly initiated a traffic stop of Appellant's vehicle after observing Appellant commit the criminal offense of speeding. And, during the course of that stop, the deputy reasonably asked Appellant to exit the vehicle in order to best protect his own safety and in a manner consistent with existing South Carolina law and United States Supreme Court precedent. Following that, Deputy Parham observed contraband in plain view only after Appellant finally stepped out of the vehicle and then found Appellant's stash of methamphetamine during an ensuing search. Under such

circumstances, the deputy did not do anything that was constitutionally unreasonable or improper, and, therefore, the trial judge properly declined to grant the suppression motion in Appellant's case. Appellant's conviction should be affirmed.

Both the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution provide protections 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[.]"). Furthermore, primarily to guard against invasive technological advancements, the South Carolina Constitution also expressly protects our citizens from "unreasonable invasions of privacy." S.C. Const. art. I, § 10; see State v. Forrester, 343 S.C. 637, 647, 541 S.E.2d 837, 842 (2001) ("[T]he drafters of our state constitution's right to privacy provision were principally concerned with the emergence of new electronic technologies that increased the government's ability to conduct searches.").

Through the additional provision regarding invasions of privacy, "the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution." State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007). Thus, "the South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment." Id. However, the South Carolina Constitution by its express language only forbids searches, seizures, and invasions of privacy that are *unreasonable*. S.C. Const. art. I, § 10. As a result, *only* unreasonable searches, seizures, and invasions of privacy are impermissible in our state. See State v. Foster, 269 S.C.

373, 378, 237 S.E.2d 589, 591 (1977) ("It is only unreasonable searches and seizures that are prohibited."); 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. See Knight v. State, 284 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."). And, unlike in Hawaii, Massachusetts, Vermont, and some other states throughout the country, minor traffic offenses in South Carolina—including speeding—constitute misdemeanor *criminal* offenses. Compare S.C. Code Ann. § 56-5-730 ("It is unlawful and, unless otherwise declared in [the Uniform Act Regulating Traffic on Highways] 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."); S.C. Code Ann. § 56-5-1520(G) ("A person violating the speed limits established by this section is guilty of a misdemeanor[.]"); and S.C. Code Ann. § 56-5-6190 ("It is a misdemeanor for any person to violate any of the provisions of [the Uniform Act Regulating Traffic on Highways] unless such violation is by this chapter or other law of this State declared

to be a felony."); with Haw. Rev. Stat. Ann. § 291D-3 ("No traffic infraction . . . shall be classified as a criminal offense."); Commonwealth v. Twombly, 758 N.E.2d 1051, 1053 n. 4 (Mass. 2001) (explaining speeding is a civil motor vehicle infraction under Massachusetts law); and State v. de Macedo Soares, 26 A.3d 37, 38 (Vt. 2011) (characterizing speeding as "a civil traffic violation, not a criminal offense").

Once a traffic stop has validly been initiated, an officer may—amongst other things—"order the driver" and any passengers "out of the vehicle in the interest of officer safety" pursuant to established South Carolina law. Milledge v. State, 422 S.C. 366, 375, 811 S.E.2d 796, 801 (2018); see Maryland v. Wilson, 519 U.S. 408, 415 (1997) ("[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop."). Significantly, for *decades*, such a course of action has been recognized as constitutionally proper in South Carolina and virtually everywhere else in the nation because: (1) a traffic stop inherently poses "inordinate" risks to the officer conducting it; (2) the safety of the officer is both a legitimate and weighty concern; (3) the driver has already been temporarily seized by virtue of the traffic stop itself; and (4) the intrusion into the driver's personal liberty occasioned by an order to exit the vehicle during the already-initiated stop is a de minimis one that "hardly rises to the level of a petty indignity" and, at most, constitutes a "mere inconvenience." Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) (per curiam); see Milledge, 422 S.C. at 376, 811 S.E.2d at 801 (instructing "the additional intrusion of ordering the driver to exit the vehicle is de minimis and can only be characterized as a mere inconvenience when balanced against legitimate concerns for the officer's safety" (citation, internal quotations, and ellipsis omitted)); see also Loper v. State, 8 A.3d 1169, 1174 (Del. 2010) (recognizing an officer may order a driver or passenger of a stopped vehicle to exit the vehicle once a valid traffic stop has been made and

refusing to hold on state constitutional grounds "a person already being lawfully detained as a result of a valid traffic stop is 'seized' a second time when ordered to leave his car"); State v. Hale, 489 P.3d 450, 454 (Idaho 2021) ("[B]ecause traffic-stops are fraught with danger to police officers, an officer may take certain negligibly burdensome precautions in order to complete his mission safely, such as asking for the driver and passenger to exit the vehicle[.]" (citations and internal quotations omitted)); Carlisle v. Commonwealth, 601 S.W.3d 168, 179 (Ky. 2020) ("It is well settled that a police officer may, *as a matter of course*, order the driver of a lawfully-stopped vehicle to exit the vehicle." (emphasis added)); State v. Bizzell, 100 N.E.3d 1267, 1273 (Ohio Ct. App. 2017) ("It is well established that even without suspicion of criminal activity, a police officer may order a motorist who is stopped for a traffic violation to get out of his car." (citations and internal quotations omitted)); State v. Bullock, 805 S.E.2d 671, 676 (N.C. 2017) ("Asking a stopped driver to step out of his or her car improves an officer's ability to observe the driver's movements and is justified by officer safety, which is a 'legitimate and weighty' concern."); Commonwealth v. Ross, 297 A.3d 787, 793 (Pa. Super. Ct. 2023) ("To effectuate the safety of officers, during a lawful traffic stop, the officer may order the driver of a vehicle to exit the vehicle until the traffic stop is completed, even absent a reasonable suspicion that criminal activity is afoot." (citations and internal quotations omitted)); State v. Milette, 727 A.2d 1236, 1239 (R.I. 1999) ("This Court has long recognized that a police officer may order the driver of a lawfully stopped motor vehicle to exit the vehicle for the purposes of verifying identification and to further the strong public interest in securing the safety of law enforcement officers."); State v. Donaldson, 380 S.W.3d 86, 93 (Tenn. 2012) ("A majority of the courts that have addressed the issue . . . have endorsed the ruling in Mimms.").

In the case sub judice, Deputy Parham observed Appellant driving his vehicle at a speed between *thirty-five to forty-five* miles per hour over the posted speed limit, which was an act that unquestionably constituted a criminal offense pursuant to South Carolina law. See S.C. Code Ann. § 56-5-1520(G) (establishing speeding as a misdemeanor criminal offense and classifying an act of speeding "in excess of twenty-five miles an hour above the posted limit" as the most serious form of the offense for penalty purposes). In fact, the speed at which Deputy Parham observed Appellant operating his vehicle was in excess of the permissible speed limit on *any* South Carolina roadway, including our interstate highways. See S.C. Code Ann. § 56-5-1520(B)(1) (setting the maximum speed limit for interstate highways in South Carolina at seventy miles per hour). Resultantly, it was entirely proper for the deputy to initiate a traffic stop in Appellant's case, and the seizure that resulted from it was constitutionally reasonable and proper. Cf. State v. Smith, 329 S.C. 550, 557, 495 S.E.2d 798, 801 (Ct. App. 1998) ("Because [Lieutenant] Thickens observed Smith speeding, he was justified in stopping Smith.").

Likewise, since the traffic stop itself was valid and proper, it was constitutionally reasonable for Deputy Parham to order Appellant to step outside his vehicle during the course of that stop in the interest of officer safety. Milledge, 422 S.C. at 375, 811 S.E.2d at 801; see Arizona v. Johnson, 555 U.S. 323, 330-331 (2009) (explaining traffic stops are especially fraught with danger to police officers and instructing the risk of harm to both officers and occupants of a stopped vehicle is minimized if officers routinely exercise *unquestioned command* of the situation); cf. Smith, 329 S.C. at 557, 495 S.E.2d at 801 ("Once Smith was lawfully detained for speeding, the officers could ask Smith to step out of the vehicle."). And, it was only *after* Appellant finally did so that Deputy Parham—while standing in the roadway—first observed in plain view the contraband pipes that led to his probable-cause-based search of the vehicle and

ensuing discovery of Appellant's stash of methamphetamine. See State v. Beckham, 334 S.C. 302, 317, 513 S.E.2d 606, 613 (1999) ("Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence."); State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995) (explaining the automobile exception to the general warrant requirement "allows law enforcement officials to conduct a search of an automobile based on probable cause alone due to the lessened expectation of privacy in motor vehicles traveling on public highways"); see also United States v. Runner, 43 F.4th 417, 422 (4th Cir. 2022) ("[T]he *predominate* purpose of stem pipes has been—and continues to be—to smoke illegal substances. Despite the increased use of glass pipes to ingest legal substances such as CBD oil, it is still reasonable that a police officer would reach the belief that a glass pipe was evidence of a crime supporting probable cause."); Flake v. State, 948 So. 2d 493, 498 (Miss. Ct. App. 2007) (explaining "possession of drug paraphernalia is relevant to possession of contraband" and noting glass pipes "are known and used in the drug culture for ingesting drugs, particularly methamphetamine"). Under such circumstances, Deputy Parham did not—just as the trial judge recognized—engage in any constitutionally-unreasonable behavior throughout the traffic stop, and, therefore, the trial judge correctly declined to grant Appellant's suppression motion.

In arguing to the contrary, Appellant contends the trial judge did, in fact, reversibly err by denying the suppression motion because Deputy Parham supposedly violated his constitutional rights by ordering him to exit the vehicle during the traffic stop and by personally opening his driver door when delivering that order. To bolster such a contention, Appellant cites to appellate decisions from Hawaii, Massachusetts, and Vermont as supposed support for why the sound

black-letter rule from Mimms should be rejected in South Carolina on state constitutional grounds.

Notably, in Hawaii, the Hawaii Supreme Court rejected the rule from Mimms *in a footnote*. State v. Wyatt, 687 P.2d 544, 552 n. 9 (Haw. 1984). And, in doing so, it provided no real meaningful explanation or analysis and, instead, simply stated in conclusory fashion the Hawaii Constitution was "not subject to the reading urged upon [it]." Id.

Meanwhile, in Massachusetts, a majority of the Massachusetts Supreme Judicial Court rejected the underlying rationale of Mimms on state constitutional grounds upon deciding: (1) a request to exit a vehicle during a traffic stop was not actually—as the United States Supreme Court had reasoned—a minimal intrusion; (2) citizens do not expect an officer conducting a traffic stop to engage in behavior like issuing an "unjustified exit order" in order "to prolong the seizure in the hope that, sooner or later, the stop might yield up some evidence of an arrestable crime;" and (3) the rule from Mimms was somehow an invitation to discriminatory enforcement because it permitted but did not require automobile exit orders during any traffic stop. Commonwealth v. Gonsalves, 711 N.E.2d 108, 112-113 (Mass. 1999). As a result, the Massachusetts Supreme Judicial Court concluded an officer must have a reasonable basis to justify an exit order in that state. Id.; see Commonwealth v. Barreto, 136 N.E.3d 697, 703 (Mass. 2019) ("Where a vehicle has been stopped for an observed traffic violation, an exit order issued to a driver or passenger of the vehicle is justified if (1) police are warranted in the belief that the safety of the officers or others is threatened; (2) police have reasonable suspicion of criminal activity; or (3) police are conducting a search of the vehicle on other grounds."). However, in announcing that rule, the Massachusetts Supreme Judicial Court emphasized its newly-articulated state-specific standard would "not take much" to satisfy, and, as an example of

what would be sufficient, it pointed to a scenario in which the officer observed a rear passenger bend down as if replacing or retrieving an object under the front seat as the driver was pulling over. Gonsalves, 711 N.E.2d at 112-113.

Similarly, in Vermont, the Vermont Supreme Court elected to reject Mimms on state constitutional grounds based on the logic of the Massachusetts Supreme Judicial Court. State v. Sprague, 824 A.2d 539, 545-546 (Vt. 2003). However, in doing so, the Vermont Supreme Court emphasized "[t]he facts sufficient to justify an exit order need be no more than an objective circumstance that would cause a reasonable officer to believe it was necessary to protect the officer's, or another's, safety or to investigate a suspected crime." Id. at 546.

To the extent Appellant contends South Carolina should fall in line with Hawaii, Massachusetts, and Vermont and abandon the logic of Mimms, the logic of the Mimms decision is far more sound. That is true because there can be no legitimate question traffic stops are—and continue to be—highly dangerous, including in South Carolina. See Johnson, 555 U.S. at 330-331 (emphasizing the danger posed to law enforcement officers by traffic stops); cf. United States v. Bullock, 510 F.3d 342, 349 (D.C. Cir. 2007) ("Statistics show that traffic stops continue to be extraordinarily dangerous to the police officers who risk their lives to protect the public. Every year in traffic stops and pursuits in the United States, about 6,000 police officers are assaulted—and about 10 officers are killed. By ordering Bullock out of the car and frisking him for purposes of officer safety, Officer Jackson did not take any unreasonable steps in attempting to ensure that he would not become one of these statistics." (citations and internal quotations omitted)). Furthermore, as our United States Supreme Court has noted, the de minimis intrusion occasioned by a request to step out of a vehicle during a traffic stop is far outweighed by the officer safety justifications supported by allowing such requests to be made in a routine manner.

Mimms, 434 U.S. at 110-111; see Wilson, 519 U.S. 414 ("The only change in their circumstances which will result from ordering them out of the car is that they will be outside of, rather than inside of, the stopped car."); see also State v. Cox, 290 S.C. 489, 491, 351 S.E.2d 570, 571 (1986) (recognizing there inherently is a "lessened expectation of privacy in motor vehicles which are subject to governmental regulation"). And, critically, "[w]hat is at most a mere inconvenience *cannot* prevail when balanced against legitimate concerns for the officer's safety." Mimms, 434 U.S. at 111 (emphasis added); cf. Donaldson, 380 S.W.3d at 96 ("The balance of the competing interests favors the safety of the officer over the minimal intrusion to an individual directed to step outside of his vehicle after a valid traffic stop. This rationale not only applies under the Fourth Amendment to the United States Constitution but also under article 1, section 7 of the Tennessee Constitution."). Thus, just as the United States Supreme Court has instructed, those factors support the logical rule announced in Mimms, and the soundness of that rule is why an overwhelming majority of states have agreed with it. See Mimms, 434 U.S. at 109 ("Reasonableness, of course, depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." (citation and internal quotations omitted)); see also Gonsalves, 711 N.E.2d at 114 (recognizing most states that have considered Mimms have accepted it).

Beyond that, our legislature has for more than a century statutorily authorized law enforcement officers in our state to conduct warrantless *arrests* for any violations of criminal law committed within their view—including violations of our traffic laws, which constitute criminal offenses in our state unlike in states like Hawaii, Massachusetts, and Vermont. See S.C. Code Ann. § 17-13-30 ("The sheriffs and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State if such arrest

be made at the time of such violation of law or immediately thereafter."); see also S.C. Code Ann. § 56-5-730 (instructing traffic violations in South Carolina constitute misdemeanor criminal offenses unless otherwise specified). That authority—which was in effect at the time of the adoption of our state constitution's right to privacy provision—makes it constitutionally reasonable in South Carolina for an officer to arrest someone so long as there is probable cause to believe the individual committed a state traffic violation. S.C. Code Ann. § 17-13-30; see Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."). In light of that, it must necessarily *also* be constitutionally reasonable for an officer in our state to have the authority to simply ask an individual subject to arrest to step outside of the vehicle during the course of a traffic stop regardless of what additional justification the officer may or may not possess. Cf. Payton v. New York, 445 U.S. 573, 591 (2001) ("An examination of the common-law understanding of an officer's authority to arrest sheds light on the obviously relevant, if not entirely dispositive, consideration of what the Framers of the Amendment might have thought to be reasonable."). Therefore, the United States Supreme Court's reasonable rule in Mimms should not be rejected on state constitutional grounds in South Carolina, particularly in a manner that would create unnecessary risks for officers without meaningful justification for doing so. See Terry v. Ohio, 392 U.S. 1, 23 (1968) ("Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded."); see also Mimms, 434 U.S. at 111 ("The police have already lawfully decided that the driver shall be briefly detained;

the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it.").

However, even assuming a rule like the ones adopted in Hawaii, Massachusetts, and Vermont was somehow found to be warranted in South Carolina, Deputy Parham's actions *still* would have been constitutionally reasonable and proper under such a rule. Demonstrating that fact, Deputy Parham—prior to opening Appellant's door and directing him to step out of his vehicle—had already observed case-specific behavior making it reasonable for him to fear for his safety under the circumstances involved. Specifically, just after Appellant stopped his vehicle in response to the deputy's blue lights, Deputy Parham observed Appellant furtively reach both arms toward his vehicle's passenger-side floorboard, which was behavior consistent with an effort to hide or retrieve something he did not want the deputy to see. Gonsalves, 711 N.E.2d at 112-113; see United States v. Colin, 928 F.2d 676, 678 (5th Cir. 1991) (recognizing furtive movements inside a vehicle can support a reasonable belief an occupant is armed and dangerous); cf. State v. Bridges, 104 So. 3d 657, 662 (La. Ct. App. 2012) ("In the present case, Officer Aubert testified that after pulling the vehicle over, he observed Ms. Bridges motion as if she were putting something under the seat. Thus, . . . Officer Aubert and his partner could reasonably believe that Ms. Bridges was trying to hide or retrieve something, possibly a weapon."); State v. Archie, 477 So. 2d 864, 865 (La. Ct. App. 1985) ("Defendant's exaggerated motion as if to place something under the seat could easily lead a reasonably prudent man to believe that his safety or the safety of others was in danger and justified the search."). And, shortly after that, Deputy Parham was forced to repeat a simple request for Appellant to put his hands on his vehicle's steering wheel *five* times in order to get him to comply with it. See United States v. Colbert, 54 F.4th 521, 528-529 (7th Cir. 2022) (instructing a suspect's failure to comply

with a police officer's order, including one to step out of a vehicle during a traffic stop, can contribute to a reasonable suspicion the suspect is armed and dangerous); United States v. Stachowiak, 521 F.3d 852, 856 (8th Cir. 2008) (concluding the fact the defendant "refused to cooperate with the officers and had to be forceably removed from his vehicle and handcuffed" contributed to a reasonable suspicion he was armed and dangerous). Accordingly, even if additional justification was needed for the deputy to be able to open Appellant's door and direct him to exit his vehicle, Deputy Parham possessed such justification under the specific circumstances involved. See McHam v. State, 404 S.C. 465, 481, 746 S.E.2d 41, 50 (2013) (instructing "officer safety can justify the opening of a door to an occupied vehicle under reasonable circumstances"), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018); see also United States v. Stanfield, 109 F.3d 976, 983 (4th Cir. 1997) ("[T]he actual invasion of privacy entailed in an officer's opening of the vehicle door is indistinguishable from, if not precisely the same as, that which occurs when an occupant is required to open the door to exit a vehicle pursuant to an order given under the authority of Mimms or Wilson."); State v. Ferrise, 269 N.W.2d 888, 890 (Minn. 1978) ("If an officer orders a driver to get out of his car, as in Mimms, what he in effect is doing is also ordering the driver to open the door, because that is generally the only reasonable way a person can get out of a car. Operationally then, there is little practical difference between ordering a driver to open his door and get out of his car, on the one hand, and opening the door for the driver and telling him to get out, on the other."); cf. State v. Cure, 93 So. 3d 1268, 1271 (La. 2012) ("Given Detective Bagneris's lawful authority to order the occupants out of the car, we fail to see how her act in opening the door of the Camry, thereby asserting unquestioned command of the situation, even marginally increased the degree of intrusiveness on the privacy interests of the driver occasioned by the officer's

direct order to exit the vehicle. Detective Bagneris did not attempt to enter the vehicle physically, and one way or the other, the door would open, thereby exposing the interior of the vehicle, including what the driver Dauth had on his lap.").

Accordingly, since Deputy Parham's actions during the traffic stop were constitutionally reasonable and proper, the trial judge correctly declined to suppress the incriminating evidence discovered during the stop.[6] See Foster, 269 S.C. at 378, 237 S.E.2d at 591 (instructing only unreasonable actions are constitutionally prohibited); see also Commonwealth v. Spence, 290 A.3d 301, 314 (Pa. Super. Ct. 2023) ("During a traffic stop, it is *inherently reasonable* for an officer to order the driver of the vehicle to alight from the car." (emphasis added)). Appellant's conviction should be affirmed.

[6] Moreover, since Deputy Parham's actions were fully consistent with existing South Carolina law and United States Supreme Court precedent, suppression would not have been appropriate in Appellant's case even if a new rule rejecting the rule from Mimms was adopted in South Carolina. See Davis v. United States, 564 U.S. 229, 241 (2011) ("[T]he harsh sanction of exclusion 'should not be applied to deter objectively reasonable law enforcement activity.' Evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule." (citation omitted)); Milledge, 422 S.C. at 375, 811 S.E.2d at 801 ("Upon initiating the traffic stop, a police officer may order the driver out of the vehicle in the interest of officer safety."); cf. State v. Brown, 401 S.C. 82, 96, 736 S.E.2d 263, 270 (2012) ("[W]e hold the Court of Appeals properly applied Gant and found the warrantless police search conducted incident to Brown's arrest for an open container violation was illegal. We further hold, however, pursuant to the Supreme Court's subsequent pronouncement in Davis, that the exclusionary rule is not applicable to this case because the officer relied upon existing appellate precedent at the time he conducted his search."); Narcisco v. State, 397 S.C. 24, 32, 723 S.E.2d 369, 373 (2012) ("[E]xcluding the evidence against [Narcisco] would not deter police misconduct because the police in this instance conducted a search incident to arrest pursuant to binding appellate precedent. Moreover, exclusion of the evidence in this case would result in severe social costs, including the articulation of an inexplicable and undecipherable message to law enforcement regarding how to conduct a legal search. The protection of the Fourth Amendment can only be realized if police are acting under a set of rules which make it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement." (citations omitted)).

## CONCLUSION

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

Respectfully submitted,

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March 4, 2024

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Laurens County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2023-000231

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THE STATE,

Respondent,

vs.

BRYAN PRESTON COOPER,

Appellant.

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**CERTIFICATE OF COUNSEL**

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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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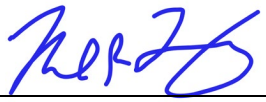
BY: 
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