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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2024-000732

THE STATE, ...APPELLANT

v.

RICHARD LEROY ANDERSON, ...RESPONDENT.

INITIAL BRIEF OF APPELLANT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the circuit court committed an error of law in granting Respondent's motion to suppress drug evidence discovered following a lawful traffic stop of a car in which he was the passenger where, even if Respondent's detention was extended, the police developed reasonable suspicion of criminal activity to justify extending the length of the traffic stop?

STATEMENT OF THE CASE

Richard Leroy Anderson (Respondent) was indicted at the July 2023 term of the Horry County Grand Jury for distribution of cocaine base (2023-GS-26-03140) and distribution of LSD (2023-GS-26-03146). He was subsequently indicted at the September 2023 term of the grand jury for possession of fentanyl (2023-GS-26-04885) and possession of cocaine base (2023-GS-26-04886). (Indictments). Prior to the charges being brought to trial, Respondent filed a written "Motion to Suppress & Supporting Memorandum of Law." (January 12, 2024 Motion).

On February 15, 2024, a hearing on the motion to suppress was convened before the Honorable Benjamin H. Culbertson at the Horry County Courthouse. Respondent was represented by Melinda Knowles of the Horry County Bar, and Appellant (the State) was represented by Assistant Solicitor Kaitlin L. Cook of the Fifteenth Circuit Solicitor's Office. (Tr.p.1). After hearing arguments from the parties and watching a body-worn camera (BWC) video recording from the officer who initiated the traffic stop at issue, the court took the matter under advisement. (Tr.p.24). In a Form 4 order dated February 22, 2024, Judge Culbertson granted the motion to suppress and directed Ms. Knowles to prepare a formal order. (February 22, 2024 Order). In a formal order dated March 5, 2024, and filed March 11, 2024, Judge Culbertson ordered that the drug evidence seized from Respondent be suppressed and that it be inadmissible at the trial of the case. (March 5, 2024 Order).

The state timely moved to reconsider and on March 20, 2024, filed a "Memorandum in Support of Motion to Reconsider." On March 29, 2024, Respondent filed a "Reply to Motion to Reconsider," and in a Form 4 Order dated April 11, 2024, and filed April 24, 2024, Judge Culbertson denied that motion. (March 29, 2024 Reply; April 11, 2024 Order). The State timely

filed a notice of intent to appeal the orders granting Respondent's motion to suppress. This Brief of Appellant now follows.

STATEMENT OF FACTS

In his motion to suppress, Respondent argued that: "[a]s a mere passenger in a vehicle subjected to a traffic stop for a minor traffic violation, [he] should have never been detained." He contended "the purpose of the traffic stop was complete when the driver was arrested, and nothing occurred after that event which would provide the reasonable suspicion needed to justify further detention." Respondent concluded: "This traffic stop was prolonged after the purpose of the stop had been fulfilled and this was done without sufficient legal justification leading to [his] unlawful seizure." (Motion p.12).

Suppression Hearing

At the suppression hearing before Judge Culbertson, Respondent continued to press the arguments made in his written motion. He complained that rather than being allowed to drive the car away or walk away after the driver was placed under arrest, he was asked to step out and stand with a second officer at the rear of the vehicle while an inventory search was being conducted. Respondent claimed he was "subjected to a second detention, this time outside of the vehicle" and was "subjected to questioning that went beyond the scope of the stop." He argued the officers had no "objectively reasonable and articulable suspicion of criminal activity." (Tr.p.2-p.14).

After hearing from counsel for Respondent, Judge Culbertson asked the solicitor: "Well, I mean, why did the officers detain the [Respondent]?" The State offered: "**I do have the officers here if you want them to testify.**" But the judge responded: "**No,** just tell me, why did they detain a passenger when they stopped [the] car for an illegal turn signal?" (Tr.p.14) (emphasis

added). The solicitor first laid the foundation supporting the lawfulness of both the traffic stop and the initial seizure of the driver and passenger (issues which were not contested by Respondent). She then explained that as soon as the arresting officer encountered the driver, before he had completed the purpose of the initial stop, the officer smelled the odor of marijuana coming from the vehicle. The solicitor argued there was no "second detention" because the vehicle was going to be towed, which necessitated an inventory search. She also argued that the smell of marijuana alone established reasonable suspicion of criminal activity by Respondent, especially considering the police conducted a search of the driver incident to arrest and did not discover marijuana on his person—which was also prior to Respondent being asked to exit the car. The State agreed Respondent was not free to leave while the officers were investigating the origin of the marijuana smell, but argued first that this was a reasonable temporary seizure of both the driver and the passenger as part of a relatively short traffic stop and second that it did not constitute unlawfully prolonging Respondent's original detention because reasonable suspicion had already been established under the circumstances of the stop. (Tr.p.14-p.20).

In response, counsel for Respondent claimed this was the first time she had heard anything about the officers smelling the odor of marijuana. (Tr.p.20, lines 19-21). The solicitor noted it was in a video recording provided to Respondent from the arresting officer's BWC. (Tr.p.20, line 22-p.21, line 10). Judge Culbertson decided he needed to see the video recording. The solicitor offered, for the second time: "**I could just have the officer testify** . . . ," to which Judge Culbertson replied: "**No**, I want to see the Body - - if you said - - that they were provided notice that the reason Mr. Anderson was detained was because they smelled the odor of alcohol [sic], that that's on the Body Cam and that was given to his attorney, then let me see the Body Cam and let me see if it's on there." (Tr.p.21-22) (emphasis added). In the middle of the judge's

comment, immediately after the judge said "no" to the offer for testimony, the solicitor stated: "Yes, Your Honor." The court took a recess while a computer was set up for viewing the BWC video, and then Judge Culbertson watched the video recording in open court, apparently stopping it at approximately the 11:30 mark before taking the matter under advisement. (Tr.p.22-24).

Body-Worn Camera Video of Arresting Officer

The BWC video recording from Officer Brandon Sonko of the Myrtle Beach Police Department begins at approximately 8:30 a.m. on May 6, 2023, when he initiates a traffic stop of a vehicle for failing to use a turn signal when required. *See* S.C. Code Ann. § 56-5-2150(B) (2023) ("A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning."). Within a minute of the start of the video, Sonko pulls the car over, walks to the driver's side window, and begins talking to the driver (Kerson). Sonko tells Kerson he was stopped for failing to use a signal when required when he turned at a stop sign, and Kerson responds that he was coming out of a parking lot. Sonko says he knows and asks for Kerson's license and registration; however, Kerson tells Sonko it is not his car and is only able to provide his ID and then starts smoking a cigarette. (BWC 0:50-2:16). Sonko returns to his patrol car to run a check of the ID given by Kerson where he tells a second officer at the scene that it looks like it is just an ID and not an actual driver's license (DL). The computer check reveals Kerson's DL is in fact suspended, so Sonko makes a further computer inquiry to determine why. At this point, Sonko comments that Kerson seems "very shaky." (BWC 2:16-4:11). In the background a second officer can be seen approaching the passenger side of the car; however, it is unclear if he is talking to Respondent or just standing next to the car. (BWC 3:46-4:02). Still sitting in his

patrol vehicle, Sonko comments that he smelled a faint odor of marijuana in the car but it seemed to be covered somewhat by the smell of cigar smoke. (BWC 4:11-4:20).

Based on his follow-up computer inquiry, Sonko learns Kerson's DL is suspended due to a DUI charge. (BWC 4:20-4:25). Sonko gets back out of his patrol vehicle and returns to Kerson's car. A second officer joins him and Sonko asks Kerson to get out of the car. (BWC 4:25-5:00). A third officer who appears to be a K9 handler then goes to Respondent's open window and they appear to be chatting. (BWC 4:52-5:00). Kerson exits the car and is placed under arrest and is told he is being arrested for driving under suspension (DUS). (BWC 5:00-5:28). The officers let Kerson have a few more drags from his cigarette after putting him in handcuffs. (BWC 5:28-5:56). Sonko then conducts a search of Kerson incident to arrest during which he finds a cell phone, money, and cigars, but no weapons or drugs. (BWC 5:56-8:10). Kerson is placed in the back of a police car while the K9 officer can be seen chatting with Respondent through the passenger window. (BWC 8:10-8:53).

Sonko goes back to his patrol car and begins gathering equipment and forms he needs to do an inventory search of the car. (BWC 8:53-9:32). Sonko then tells the K9 officer – "We can get him (Respondent) out of the car – I need to inventory the vehicle." (BWC 9:32-9:38). In response to a question, Respondent tells the K9 officer that nothing in the car belongs to him. The K9 officer asks Respondent to get out and tells him they will "get him out of there in a minute." (BWC 9:38-9:46). The K9 officer asks the arresting officer if he wants him to "run the dog" before he leaves and Sonko apparently declines. (BWC 9:46-9:52). At this point, Respondent gets out of the car very slowly and the officers ask if he is alright. Respondent says yes and says he is slow because he is "just old," which gets laughs from the officers. After he

gets out, Respondent can be seen standing at the left-rear of the car next to the K9 officer. (BWC 9:52-10:17).

Sonko then begins an inventory search of the vehicle and almost immediately tells the others officer to "keep him near for a few minutes until I'm done doing this. I just found . . . ." (the item in Sonko's hand appears to be a plastic baggie). (BWC 10:17-10:42). Sonko tells the other officers he found a scale and does not want Respondent disappearing just yet. Powdery residue can be seen on the scale. The time between Respondent getting out of the car and Sonko discovering the baggies and the scale is less than one minute. (BWC 10:42-10:55). Around this same time, another officer can be heard saying that Respondent has weed. The officer is heard saying he asked Respondent if he had anything illegal on him and Respondent answered, "I do" and pulled marijuana from his pocket. (BWC 10:50-11:28). Sonko had begun describing the crack residue he found on the scale when the other officer tells him about Respondent's admission. Sonko says: "Well I guess he's coming." (BWC 10:55-11:40).

After the decision is made to arrest Respondent, Sonko continues searching the car and finds a marijuana blunt, commenting that it must have been the reason he was getting the odor of marijuana when he first approached the vehicle. (BWC 11:40-12:34). Sonko and a second officer continue searching and find additional suspicious items between the seat and the console. (BWC 12:34-13:30). Eventually Sonko pops the trunk to continue the search while another officer is searching Respondent incident to his arrest. (BWC 13:30-16:20). The other officer then hands Sonko a bag containing suspected drugs that he found in Respondent's pockets and explains to Sonko that when he first talked to Respondent, Respondent said he had a little bit of weed, which Respondent pulled from his own pocket, but the rest of the drugs were subsequently found when Respondent was searched. (BWC 16:20-17:15).

Ruling by Circuit Court

In the order granting Respondent's motion to suppress, Judge Culbertson made several "findings of fact," primarily describing the traffic stop that led to Respondent's admission to being in possession of marijuana and the ensuing arrest and search which led to the discovery of the cocaine base, fentanyl, and LSD at issue in the case. (March 5, 2024 Order p.1-p.3). Notably, those findings made absolutely no mention of Officer Sonko's statement in the BWC video recording that he smelled marijuana, which occurred approximately four minutes into the stop, prior to Sonko running the initial computer check on Kerson's ID. They also make no findings about the scale with the white powdery residue Sonko discovered in the car prior to Respondent's admission. Not surprisingly, Judge Culbertson also made no credibility findings in regard to Officer Sonko's observations and no findings about his level of training and experience.

Judge Culbertson next makes several "Conclusions of Law" ruling in part that: "In the case at hand, no reasonable, articulable suspicion existed to support the continued detention of [Respondent] after completion of the traffic stop." (Order p.5). He goes on to find:

> After carefully evaluating the totality of the circumstances in this case, this Court finds and concludes as a matter of law that the detention, questioning, and warrantless search of [Respondent] violated his Fourth Amendment right against unlawful search and seizure. In reaching this conclusion, I find that Officer Sonko unjustifiably extended the length of [Respondent's] detention beyond the time reasonably necessary to effectuate the initial purpose of the stop. The initial purpose of the stop was achieved when the driver was arrested as the crime that triggered this traffic stop was the driver's alleged failure to use a turn signal. [Respondent], a mere passenger in the vehicle, should have been permitted to leave the scene when the decision to arrest the driver was made as law enforcement had no reasonable articulable suspicion to support his continued detention.

(Order p.6).

Motion to Reconsider

In its motion to reconsider, the State challenged Judge Culbertson's ruling on two grounds: (1) procedural error in not allowing the State to present testimony from the officers at the scene, and (2) legal error because the odor of marijuana coming from the vehicle created reasonable suspicion of criminal activity to prolong the traffic stop and probable cause to search the vehicle. (March 20, 2024 Memo. p.6). In regard to the claim of legal error, the State argued that if the court deemed the basis for the traffic stop had concluded and there was a second detention, the stop was nevertheless lawfully prolonged because there was reasonable suspicion of criminal activity due to the odor of marijuana and Kerson's and Respondent's behavior. (Memo p.10). Relying appropriately on the typical evidentiary review described in *State v. Tindall*, 388 S.C. 518, 698 S.E.2d 203 (2010) and *State v. Frasier*, 437 S.C. 625, 879 S.E.2d 762 (2022), the solicitor first pointed out that without testimony from the officers, the appropriate findings of law could not be made because the necessary findings of fact were not made. (Memo p.12). Next, the solicitor provided a detailed review of the facts and analysis from *Frasier*, *State v. Morris*, 411 S.C. 571, 769 S.E.2d 854 (2015), and *State v. Moore*, 415 S.C. 245, 781 S.E.2d 897 (2016), to demonstrate why the actions taken in Respondent's case were proper and lawful and not in violation of the Fourth Amendment. (Memo p.12-p.22). The State argued that even without testimony, the BWC video alone provided ample evidence to justify prolonging the stop including: the odor of marijuana, Kerson driving someone else's car while having a suspended DL, Kerson and Respondent smoking cigarettes upon interacting with law enforcement, Kerson's shaky hands, Kerson answering questions that were not asked of him, and both Kerson and Respondent claiming they did not know each other. (Memo p. 22).

In his reply to the motion to reconsider, Respondent argued Judge Culbertson's order granting suppression was proper and fully supported by relevant and current caselaw, and reasserted his original position that the drug evidence seized was illegally obtained during a period of unlawful detention following a traffic stop of a vehicle in which he was a passenger. (March 29, 2024 Reply p. 1). In support of this argument, Respondent first took issue with the State's failure to offer corrections to his proposed order after it was submitted to the court, claiming the solicitor "should be prohibited from now addressing issues about how this order was written." (Reply p.4).[1] Next, while acknowledging the fact that the odor of marijuana was identified at the beginning of the traffic stop, Respondent argues: "It appears based upon the Court's ruling in this matter that the judge did not believe that this odor of marijuana . . . was the reason for the search of the vehicle." (Reply p.4). Finally, Respondent attempted to distinguish the facts in his case from those in *Morris* and argued "[t]he decision of the Court should remain in place because it was the right ruling in this matter." (Reply p.6). As noted above, Judge Culbertson denied the State's motion to reconsider "without oral argument." (April 11, 2024 Order).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Robinson*, 426 S.C. 579, 591, 828 S.E.2d 203, 209 (2019); *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001); *State v. Holcomb*, 426 S.C. 557, 562, 827 S.E.2d 367, 370 (Ct. App. 2019). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous.

[1] The State submits it was not the solicitor's job to review Respondent's proposed order to ensure it was legally sound prior to adoption of that order by the circuit court. Indeed, the procedural and legal errors made by the circuit court in granting the motion to suppress were appropriately set forth in the memorandum in support of the State's motion to reconsider and provided the court with ample opportunity to correct these errors or ask for an amended proposed order.

State v. Brown, 402 S.C. 119, 124, 740 S.E.2d 493, 495 (2013); *State v. Baccus*, 367 S.C. 41,48, 625 S.E.2d. 216, 220 (2006). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. *Wilson,* 345 S.C. at 6, 545 S.E.2d at 829. An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

Appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. *Frasier*, 437 S.C. at 633, 879 S.E.2d at 766. This dual inquiry means the appellate court reviews the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion is a question of law subject to de novo review. *Id.* at 633-34, 879 S.E.2d at 766.

ARGUMENT

I.

The circuit court committed an error of law in granting Respondent's motion to suppress drug evidence discovered following a lawful traffic stop of a car in which he was the passenger because, even if Respondent's detention was extended, the police developed reasonable suspicion of criminal activity to justify extending the length of the traffic stop.

The circuit court committed an error of law in concluding the police had no reasonable articulable suspicion to support extending the length of Respondent's detention beyond the time necessary to effectuate the initial purpose of the traffic stop. The evidence squarely before the lower court included the uncontested fact that the arresting officer smelled marijuana when he first approached the driver of the car, before the purpose of the stop had been achieved. As

widely recognized, the detection of the odor of marijuana alone is sufficient to establish reasonable, articulable suspicion that an individual may be engaged in violation of narcotics laws. Indeed, many jurisdictions have concluded the odor of marijuana alone is sufficient to establish the even higher threshold of probable cause to conduct a reasonable search of an automobile. Under its de novo standard of review, this Court should reverse the circuit court and find that the drugs seized from Respondent were not the result of an unreasonable search and seizure under the Fourth Amendment and therefore should not have been suppressed. This is both because: (1) taken as a whole the duration of the entire stop, including any detention of Respondent during that stop, was so minimal that it was reasonable under the circumstances, and (2) any extension of Respondent's detention was nevertheless constitutional because the officers had reasonable suspicion of Respondent's criminal activity.

Alternatively, this Court should reverse the circuit court and remand this matter with instructions to reconvene an evidentiary hearing where the State is permitted to present testimony from the officers who initiated the traffic stop and caused Respondent's detention.

Discussion

Both the United States Constitution and the South Carolina Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; S.C. Const. art. I, § 10. A search compromises the individual's interest in privacy; a seizure deprives the individual of dominion over his or her person or property. *State v. Brown*, 401 S.C. 82, 88, 736 S.E.2d 262, 266 (2012); *State v. Wright,* 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (quoting *Horton v. California,* 496 U.S. 128, 133 (1990)). For constitutional purposes, a search occurs when "an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). The Fourth Amendment itself provides no remedy for a violation of

the warrant requirement. *Davis v. United States,* 564 U.S. 229, 230-31 (2011). 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. *Id.* at 231-32; *Brown*, 401 S.C. at 88, 736 S.E.2d at 266. Generally speaking, any evidence seized as the result of an unreasonable search and seizure must be excluded from trial. *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement. *Brown*, 401 S.C. at 89, 736 S.E.2d at 266; *Wright,* 391 S.C. at 442, 706 S.E.2d at 327. *See Kentucky v. King*, 563 U.S. 452, 462 (2011) ("[W]arrantless searches are allowed when the circumstances make it reasonable . . . to dispense with the warrant requirement."). These exceptions include the following: (1) search incident to a lawful arrest, (2) hot pursuit, (3) stop and frisk, (4) automobile exception, (5) the plain view doctrine, (6) consent, and (7) abandonment. *Brown*, 401 S.C. at 89, 736 S.E.2d at 266; *State v. Dupree,* 319 S.C. 454, 456, 462 S.E.2d 279, 287 (1995); *State v. Moore,* 377 S.C. 299, 309, 659 S.E.2d 256, 261 (Ct. App. 2008).

A person has been seized within the meaning of the Fourth Amendment at the point in time when, in light of all the circumstances surrounding an incident, a reasonable person would have believed that he was not free to leave. *Frasier*, 437 S.C. at 634, 879 S.E.2d at 767 (quoting *Robinson v. State*, 407 S.C. 169, 181, 754 S.E.2d 862, 868 (2014)). In order to prolong or exceed the scope of the stop beyond the initial traffic violation, law enforcement must have reasonable suspicion that criminal activity may be afoot. *Id.* "Reasonable suspicion does not entail a set of legal rules, but 'entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons,

not legal technicians, act.'" *Morris*, 411 S.C. at 578, 769 S.E.2d at 858. Although reasonable suspicion is not susceptible to a rigid, formulaic approach, it requires more than a mere hunch or unparticularized suspicion. *Frasier*, 437 S.C. at 635, 879 S.E.2d at 767. In other words, for an officer to have reasonable suspicion, there must be an objective, specific basis for suspecting the person stopped of criminal activity. *Id.* "While reasonable suspicion is not a high bar and is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop." *Id.* (quoting *Illinois v. Wardlaw*, 528 U.S. 119, 123 (2000)). This inquiry involves the totality of the circumstances, and courts must give due weight to common sense judgments reached by officers in light of their experience and training. *Id.*

The odor of marijuana is sufficient to establish a reasonable, articulable suspicion that a person may be engaged in violation of drug laws. *See Morris*, 411 S.C. at 579, 769 S.E.2d at 858 (finding reasonable suspicion to extend a traffic stop existed at the outset where, when the officer approached the passenger side of the vehicle, he detected the odor of marijuana and observed several hollowed out blunts in a cup in the center console); *see also Dimino v. State*, 286 P.3d 739, 744 (Wyo. 2012) ("The distinctive odor of marijuana establishes reasonable, articulable suspicion that an individual may be engaged in violation of narcotics laws."); *State v. Lang*, 942 N.W.2d 388, 399–400 (Neb. 2020) ("The smell of marijuana provided officers with reasonable suspicion to expand the traffic stop to include investigation of possible criminal activity involving controlled substances."); *Cole v. State*, 562 S.E.2d 720, 722 (Ga. 2002) ("The fact that the officer detected the smell of marijuana coming from the interior of the car was sufficient to create a reasonable suspicion that Cole had marijuana in the car."). Indeed, the odor of marijuana has been found by many jurisdictions to satisfy even the more stringent "probable

cause" test. *Dimino v. State*, 286 P.3d 739, 744 (Wyo. 2012); *see also Mason v. State*, 42 So. 3d 629, 634 (Miss. Ct. App. 2010) ("Thus, if an officer clearly smells contraband, such as marijuana, that smell can establish probable cause and the right to search the vehicle and its passengers."); *United States v. Franklin*, 547 F.3d 726, 733 (7th Cir. 2008) ("A police officer who smells marijuana coming from a car has probable cause to search that car."); *United States v. Beard*, 708 F.3d 1062, 1065 (8th Cir. 2013) ("The smell of marijuana in a vehicle can establish probable cause to search the vehicle for drugs."); *State v. Moore*, 734 N.E.2d 804, 807 (Oh. 2000) ("[T]he smell of marijuana, alone, by a person qualified to recognize the odor, is sufficient to establish probable cause to search a motor vehicle, pursuant to the automobile exception to the warrant requirement. There need be no other tangible evidence to justify a warrantless search of a vehicle."); *Caffee v. State*, 814 S.E.2d 386, 392 (Ga. 2018) ("Many appellate courts, this one included, have concluded that a police officer has probable cause to search when that officer, through training or experience, detects the smell of marijuana."); *People v. Henderson*, 152 N.Y.S.3d 731, 733 (N.Y. 2021) ("[T]he odor of marijuana emanating from a vehicle, when detected by an officer qualified by training and experience to recognize it, is sufficient to constitute probable cause to search a vehicle and its occupants."). As explained by the Mississippi Supreme Court, the "plain smell" of marijuana correlates to the plain view doctrine, in that the sense of smell is no less trustworthy than the sense of sight. *Dies v. State*, 926 So.2d 910, 918 (Miss. 2006).

In the case at bar, Officer Sonko possessed reasonable suspicion of Respondent's criminal activity at the moment he interacted with Kerson when asking for his license and registration and smelled marijuana. This interaction started within a minute of the stop and concluded less than two minutes after Sonko exited his patrol car. Approximately four minutes

after the stop, Sonko told the other officer about the odor of marijuana, and this was over five minutes **before** Respondent was even asked to exit the car. As noted by our Supreme Court in *Morris*: "We cannot say a thirteen minute stop was unduly prolonged or burdensome, especially where a reasonable suspicion to extend the stop existed at the outset." *Morris*, 411 S.C. at 579, 769 S.E.2d at 858. Likewise, reasonable suspicion to detain Respondent existed at the outset of Sonko's traffic stop. Based on the evidence in the record, the circuit court made a legal error in finding otherwise and in ordering the suppression of legitimately discovered evidence which confirmed that reasonable suspicion.

Furthermore, and feeding directly into the legal error made, the circuit court did not make any factual findings to attempt to provide evidentiary support for its ruling. Instead, it improperly prohibited the State from eliciting testimony at the suppression hearing and then made an error of law based on the uncontested evidence that was in the record. As a result, the circuit court erred in determining the search was not supported by reasonable suspicion. The circuit court's order suppressing the drugs seized from Respondent should be reversed. This Court should either find that the drugs seized from Respondent were not the result of an unreasonable search and seizure under the Fourth Amendment as a matter of law, or it should remand to the lower court for further proceedings.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that this Court reverse the circuit court's decision and find that as a matter of law the evidence should not be suppressed. Alternatively, the State requests that this Court reverse the circuit court and remand this matter

with instructions to reconvene an evidentiary hearing where the State is permitted to present testimony from the officers who participated in the traffic stop.

Respectfully submitted,

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