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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Paul M. Burch, Circuit Court Judge

DANIEL JAMAAL LAWRENCE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000696

BRIEF OF APPELLANT PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUES ON APPEAL

1. Did Officer Jenkins lack a reasonable suspicion to stop the car in which appellant was a passenger because he did not personally observe any suspicious behavior and the unknown tipster lacked any indicia of reliability?

2. Did the trial court err in denying appellant's motion to suppress the fruits of a warrantless search since it did not identify what exception to the warrant requirement applies or the crime for which it found the officers had probable cause?

STATEMENT OF THE CASE

Appellant Daniel Lawrence was indicted for first degree burglary and the unlawful carrying of a handgun. App. 275, 278. He was tried before Judge Maite Murphy and a jury in Dorchester County on November 12–13, 2019. App. 1, 54. John Loy represented appellant, and Donald Sorenson represented the state. App. 1, 54. The jury found appellant guilty of both charges, and the trial court sentenced him to forty years in prison on the burglary charge and a concurrent one-year sentence on the handgun charge. App. 262:16-24, 272:15-22, 275, 278.

Trial counsel did not file a notice of appeal. App. 312, 314. Appellant filed a *pro se* notice on December 4, 2019, and it was dismissed as untimely. App. 310. Thereafter, trial counsel informed appellant he had known of appellant's desire to appeal and failed to file a notice due to a "break down in communication." App. 312. Appellant filed a PCR application alleging trial counsel was deficient for failing to file the notice of appeal, for failing to request a competency evaluation, and for other reasons. App. 289-90. Christopher Geel represented appellant at the PCR hearing, and the state conceded appellant was entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). App. 301-07. At the hearing appellant waived his PCR claims except for the *White* issue. App. 305:21-306:25. The PCR court, Judge Paul M. Burch, issued an order finding appellant was entitled to a belated appeal and dismissing his other claims. App. 313-15.

Pursuant to *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) (mem.), appellant now files this brief and a petition for a writ of certiorari.

STATEMENT OF FACTS

On Halloween in 2018, between 11 a.m. and noon, an anonymous caller reported to police that a Black man in a camo jacket and grey sweatpants was walking around her neighborhood suspiciously. App. 5:22-6:15, 33:2-13. Dispatch notes recorded the man was suspicious "because, colon, male walking around the area" and someone saw him store a bag. App. 34:14-20. Officer Hampton Jenkins responded and began driving towards the Whitehall subdivision in Dorchester County. App. 6:2-6. The record does not reflect whether Jenkins was driving an identified patrol call or an unmarked vehicle. Officer Jenkins never identified the caller and instead referred to her as a "concerned citizen."[1] App. 6:13, 30:9, 34:21-22. The previously unknown caller reported that she had seen the man half an hour earlier without a bag, and that he had just placed a black-and-white-striped bag behind the neighbor's house. App 6:13-18. The caller then reported the man was leaving in a silver sedan. App. 6:19-25. At that time, Jenkins saw a silver sedan with a Black male passenger in a camo jacket leaving the neighborhood. App. 7:1-4.

Jenkins decided to pull the car over, so he turned around and stopped the car on Dorchester Road. App. 7:8-10. Although Jenkins testified the car "expedited its way out of the neighborhood," he did not stop the car for a traffic violation but based on his suspicion from the call. App 39:7-40:13. Appellant was the passenger in the front seat of the car. App. 7:24-8:5. Jenkins also testified the area he was in "was known for daytime burglaries," but he did not indicate how frequently they occurred. App. 37:17-22. He also testified that when he had previously stopped people based on similar tips, he had mixed results: "a lot of times if you get someone that

[1] Kim Donoghue testified at trial that she saw a Black man walking around suspiciously and called the police. App.133:1-136:23. The state did not offer any evidence proving Jenkins knew the caller was Donoghue or anyone else in particular.

people in the neighborhood don't recognize, they will call them in as suspicious. Some people are minding their own business; some people are engaged in criminal activities." App. 37:19-22.

Jenkins then approached the car. App. 8:6-10. He testified he smelled marijuana as he approached and that he saw an ashtray in a cupholder. App. 8:15-16, 10:19-21. Tevin Beaton was driving, and he gave Jenkins his driver's license. App. 8:19-21, 10:23-25. Jenkins asked appellant what he was doing in the area, and appellant stated he had spent the night with his girlfriend who lived nearby. App. 8:22-25. Appellant told Jenkins he did not know what street she lived on because she had ordered him an Uber. App. 9:1-2. Jenkins then saw a blue-and-white striped bag on the passenger floorboard. App. 9:3-5. He could see an iPhone box and electronics in the bag. App. 9:6-9. When questioned, appellant told Jenkins the bag had dirty clothes in it. App. 9:9-11.

Jenkins then heard from dispatch that Beaton's license was suspended, so he pulled Beaton out of the car and arrested him. App. 11:6-9. Beaton's license was not actually suspended, however. App. 43:20-25. By then another officer arrived, and that officer told appellant to exit the vehicle. App. 11:14-16. Jenkins removed his jacket, placed it in the floorboard "on top of and next to the white bag," and exited the vehicle. App. 11:16-19. When he did so, Jenkins "could see a gun in plain view on top of everything else in that bag," and then the officers placed appellant in handcuffs. App. 11:19-20. Jenkins testified that after detaining appellant, "I don't remember if I took the bag out at that point, or if we waited. I did remove the jacket to see if there was anything else in it weapon wise." App. 12:1-4. Jenkins found watches and debit cards in the jacket pocket. App. 12:25-13:1. Eventually a man from the neighborhood identified the gun, the credit cards, and the contents of the bag as belonging to him and his family. App. 12:11-21.

Jenkins testified that his body-cam and dash-cam were operating during the stop and the other officers would have had body-cams as well. App. 15:11-17:14, 24:14-25:7. He was not able

to produce any of that footage. App. 24:2-10, 48:10-49:4. North Charleston Sergeant Joshua Rank testified that all of the recorded footage related to this case was lost on their servers. App. 71:19-72:6.

Prior to trial appellant made two motions to suppress the evidence seized at the scene of his arrest. App. 4:6-9. He objected to both the original seizure and the subsequent search. App. 4:9-12. The trial court denied appellant's motion based on the lack of a reasonable suspicion:

> In considering all of the circumstances that has been presented to the Court, and starting at the reasonable suspicion, I think the officer did have reasonable suspicion. Officer Jenkins testified to different factors to give rise to that reasonable suspicion. We have to look at all the factors.
>
> Certainly, Mr. Loy, if we take this one fact that he's walking in a neighborhood, happens to pick up a bag and go, that would be a strong argument. However, there are many other factors that were presented to the Court which give rise to it. First of all, being in the area where the day burglaries have been taking place, and there was concern about that.
>
> The person that called in, whether it's 911 or dispatch or whatever it was, certainly relayed that the person was acting suspiciously, gave the description. The person first didn't have a bag at all, and then came back for the bag and hid the bag, whether it was behind a bush or a fence. Certainly, that action was suspicious. It's not as if he was just walking by and picked up the bag and left again.
>
> So look at the bag itself, and it's clear that electronics are sticking out of the bag. There's no clothes in the bag. When the person gets in the car and leaves, and the call comes in that matches the description of the suspicious activity, along with leaving the neighborhood, certainly I think that's an articulable fact that it may be involved in criminal activity.

App. 109:23-111:2. The trial court then found there was probable cause for the search:

> Upon arriving -- upon seeing the police officer, the car apparently accelerates speed. And by the time that he does catch up to them, by then he pulls over. The odor of marijuana is a factor to consider. The bag of electronics is in plain view.

. . .

> But as far as the odor, the electronics, the driver's demeanor, and obviously hiding the truth somewhat in his description of what he was doing, he couldn't tell where he was, what he was doing. He basically said that he was at his girlfriend's house, spent the night, and they were clothes. I see no clothes here, and these items were in plain view. So that's certainly inconsistent with what is in plain view.
>
> He also indicated that he didn't know what the address was. . . .
>
> As far as the DUS is concerned, Officer Jenkins received information regarding the DUS and made the arrest upon the driver, and asked the Defendant to get out of the car. At that point, he saw the gun, again in plain view, which gives rise to the reasonable suspicion. And based upon seeing the gun in plain view, that gives rise to the probable cause for the search of the items.

App. 111:3-111:12.

Before the jury, Officer Jenkins testified to the same effect as he did for the pre-trial motions. App. 141:23-148:11. His testimony described the contents of the jacket and bag found following the stop and search, and the state introduced pictures of the items that Jenkins took at that time. App. 148:10-156:25. Ultimately, Jerome Browne testified that the items obtained in the search belonged to him and his family. App. 209:7-21.

STANDARD OF REVIEW

"[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis." *State v. Frasier*, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022). The appellate court will "review 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." *Frasier*, 437 S.C. at 633-34, 879 S.E.2d at 766.

ARGUMENT

I. The traffic stop was not based on a reasonable, articulable suspicion and instead depended upon an uncorroborated tip lacking sufficient indicia of reliability.

The Fourth Amendment guarantees all citizens the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. "An investigative detention is constitutional if supported 'by a reasonable and articulable suspicion that the person seized is engaged in criminal activity.'" *State v. Taylor*, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) (quoting *Reid v. Georgia*, 448 U.S. 438, 440 (1980)). "'Reasonable suspicion' requires a 'particularized and objective basis that would lead one to suspect another of criminal activity.'" *State v. Khingratsaiphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). "While such a detention does not require probable cause, it does require something more than an 'inchoate and unparticularized suspicion' or 'hunch.'" *State v. Anderson*, 415 S.C. 441, 447, 783 S.E.2d 51, 54 (2016) (quoting *United States v. Sprinkle*, 106 F.3d 613, 617 (4th Cir. 1997)) (internal quotation marks omitted).

In circumstances like those present in this case, courts have found police officers had reasonable suspicion to conduct an investigatory stop in two general categories of cases. In the first category, police officers receive a tip that someone is committing a crime and that tip has sufficient "indicia of reliability." *E.g. Alabama v. White*, 496 U.S. 325, 328 (1990) (quoting *Adams v. Williams*, 407 U.S. 143, 146 (1972)); *Florida v. J.L.*, 529 U.S. 266, 274 (2000); *State v. Green*, 341 S.C. 214, 217, 532 S.E.2d 896, 897 (Ct. App. 2000). In the second category, police officers personally observe suspicious activity. *E.g. Terry v. Ohio*, 392 U.S. 1, 6 (1968); *State v. Taylor*, 401 S.C. 104, 106-07, 736 S.E.2d 663, 664 (2013). This case fits in neither category because the anonymous caller and tip bore no indicia of reliability and Jenkins saw no suspicious activity himself. Even taken together, all of the circumstances do not support the stop.

a. The tip lacked indicia of reliability because the caller was anonymous, without previously reliable reports, and offered no "predictive information" that could corroborate her report.

It is a "requirement that an anonymous tip bear standard indicia of reliability in order to justify a stop." *J.L.*, 529 U.S. at 274. A tip can have sufficient reliability in multiple ways. For example, if an officer has a previous relationship with the informant and knows her to be reliable, that can render the officer's reliance on the report reasonable. *See Adams*, 407 U.S. at 146 ("The informant was known to him personally and had provided him with information in the past. This is a stronger case than obtains in the case of an anonymous telephone tip."); *State v. Rogers*, 368 S.C. 529, 535, 629 S.E.2d 679, 682 (Ct. App. 2006) (upholding stop where "the officer received the information from a known, accountable informant whose reputation could be assessed and who explained how he knew about the planned robbery"). In other cases, it may be reasonable to rely on an anonymous tip if it contains predictive information that demonstrates the tipster's knowledge or otherwise demonstrates her reliability and corroborates her veracity. *See White*, 496 U.S. at 329; *J.L.*, 529 U.S. at 270; *State v. Pradubsri*, 420 S.C. 629, 638, 803 S.E.2d 724, 728 (Ct. App. 2017) (predictive information corroborated by police observations). Because Jenkins did not know who was reporting the man walking around, this case cannot fit into the first group and the state must demonstrate the reliability of the tip in some other way. *See State v. Key*, 431 S.C. 336, 348, 848 S.E.2d 315, 321 (2020) ("[T]he prosecution has the sole burden of proving the existence of an exception to the warrant requirement.").

The leading case on anonymous tips is *Alabama v. White*, 496 U.S. 325 (1990), where the Supreme Court upheld the stop of a driver based on an anonymous tip that she was carrying narcotics. 496 U.S. at 326-27. The tipster predicted "that Vanessa White would be leaving 235–C Lynwood Terrace Apartments at a particular time in a brown Plymouth station wagon with the right taillight lens broken, that she would be going to Dobey's Motel, and that she would be in

possession of about an ounce of cocaine inside a brown attaché case." 496 U.S. at 327. An officer and his partner immediately went to the apartments and watched as a woman left the 235 building and entered a brown Plymouth station wagon with a broken taillight. *Id.* They followed her "as it drove the most direct route to Dobey's Motel" for several miles. *Id.* The officers stopped her just prior to the turn into Dobey's. *Id.* The sole issue on appeal was whether the officer had reasonable suspicion to stop her. 496 U.S. at 328.

The Court first noted that "standing alone" such a tip "would not warrant a man of reasonable caution in the belief that a stop was appropriate." 496 U.S. at 329 (cleaned up) (quoting *Terry*, 392 U.S. at 22). However, "there [wa]s more than the tip itself" because the officers were able to corroborate that "a woman left the 235 building and got into the particular vehicle that was described by the caller," she did so "within the timeframe predicted by the caller," and her destination was, as predicted, Dobey's Motel. 496 U.S. at 329, 331. The Court emphasized the value of this predictive behavior for proving the tip reliable and thus the suspicion reasonable:

> We think it also important that, as in [*Illinois v.*] *Gates*, "the anonymous [tip] contained a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of third parties ordinarily not easily predicted." The fact that the officers found a car precisely matching the caller's description in front of the 235 building is an example of the former. Anyone could have "predicted" that fact because it was a condition presumably existing at the time of the call. What was important was the caller's ability to predict respondent's *future behavior*, because it demonstrated inside information—a special familiarity with respondent's affairs. The general public would have had no way of knowing that respondent would shortly leave the building, get in the described car, and drive the most direct route to Dobey's Motel. Because only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities. When significant aspects of the caller's predictions were verified, there was reason to believe not only that the caller was honest but

> also that he was well informed, at least well enough to justify the stop.

White, 496 U.S. at 332 (first alteration added) (internal citations omitted).[2] Thus, predictive information is key to demonstrating reliability.

On the other hand, where a report contains nothing more than readily observable observations, that alone cannot create a reasonable suspicion of a crime. In *Florida v. J.L.*, the Court held officers lacked reasonable suspicion for an investigatory stop based solely on an anonymous tip "that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." 529 U.S. at 268. The stop was invalid because the call "provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility." 529 U.S. at 271. "All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L." *J.L.*, 529 U.S. at 271. Building on *White* and *Adams*, in *J.L.* the Court explained why it is important if a caller is anonymous: "Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, 'an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity.'" *J.L.*, 529 U.S. at 270 (first citing *Adams*, 407 U.S. at 146-14, then quoting *White*, 496 U.S. at 329). With readily observable information alone, an anonymous caller has effectively no credibility.

This case more closely resembles *J.L.* than *White*. Officer Jenkins stopped Tevin Beaton's car based on essentially nothing more than a tip from a previously unknown and anonymous caller

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[2] *White* was a self-described "close case." 496 U.S. at 332. Three members of the Court dissented in an opinion written by Justice Stevens. *Alabama v. White*, 496 U.S. 325, 333 (1990) (Stevens, J., dissenting). They would have found the officers lacked a reasonable suspicion for the stop. *Id.*

who saw a Black man "suspiciously" walking around her neighborhood in the daytime. The tip contained no predictive information, and the caller was not known to be reliable or credible. The anonymous caller's descriptions of a Black man wearing a camo jacket in a silver sedan were all "readily observable and do not supply sufficient indicia of reliability to establish reasonable suspicion to justify an investigatory stop." *State v. Green*, 341 S.C. 214, 218, 532 S.E.2d 896, 897 (Ct. App. 2000); *White*, 496 U.S. at 332. The caller's observations in this case were not sufficient because they revealed no "special familiarity" with the person she reported—the tip entirely failed to "demonstrate[] the informant's basis of knowledge or veracity." *J.L.*, 529 U.S. 266, 270 (quoting *White*, 496 U.S. at 329). It was not "suitably corroborated" to support Jenkins's reliance. *J.L.*, 529 U.S. at 270.

The information the caller did provide that was confirmed—Black suspect, camo jacket, silver sedan—demonstrates only the unimportant way in which Jenkins "corroborated" the tip: he was able to surmise the passenger he saw was probably the man the caller had seen. *J.L.*, 529 U.S. at 272 ("An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse."). But "[t]he reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Id.* At most, Jenkins could infer the passenger in the car was the man reported, but that is not a sufficient basis for police officers to stop citizens.

To be clear, appellant does not suggest—nor could he—that law enforcement officers are powerless when they receive tips with so little indicia of reliability. Rather, he makes the common-sense argument that before the police can turn on their blue lights and detain a citizen, the officer must first reasonably determine whether the tip "either warrant[s] no police response or require[s]

further investigation before a forcible stop of a suspect would be authorized." *Adams*, 407 U.S. at 147. This case is one of the latter: some further investigation was required, *i.e.* it first needed to be "suitably corroborated." *J.L.*, 529 U.S. at 270.

b. Because Officer Jenkins himself observed nothing suspicious and could not corroborate any of the anonymous caller's reported suspicious activity, he lacked reasonable suspicion to stop the car.

When an investigation based on a tip does not in and of itself provide reasonable suspicion, officers' own investigation and observations can validate a stop only when they can corroborate the tip, as with predictive information, *see White*, 496 U.S. at 332, or if officers see suspicious activity themselves, *see Taylor*, 401 S.C. at 112, 736 S.E.2d at 667. Jenkins's stop does not fit into this second category of cases because he had almost no additional information whatsoever since he barely observed the car before stopping it.

Where a tip lacks indicia of reliability, there must be some additional basis for suspicion before officers can stop someone. *See J.L.*, 529 U.S. at 270, 274; *State v. Green*, 341 S.C. 214, 218, 532 S.E.2d 896, 897-98 (Ct. App. 2000) (holding traffic stop invalid because "[t]he officer made no personal observations and had no reason, aside from the anonymous tip, to suspect Green of illegal conduct"). In *White* the tip was sufficient only when combined with police officers' observations confirming the predictive information. 496 U.S. at 329-30. In *Terry v. Ohio*, 392 U.S. 1 (1968), it was the officer's own observations of two men repeatedly casing a store window that rendered his suspicion reasonable. 392 U.S. at 6, 28.

The South Carolina Supreme Court addressed the importance of officers' observations in *State v. Taylor*, 401 S.C. 104, 736 S.E.2d 663 (2013). There the Court held officers had a reasonable suspicion to support an investigatory stop after an anonymous call at 11:00 p.m. reported a Black man on a bicycle who "appeared to be selling drugs in an area well known to law enforcement for its high incidence of crime and drug traffic." 401 S.C. at 106, 736 S.E.2d at 664.

Officers went to the area reported and saw a Black man on a bicycle alone. 401 S.C. at 106-07, 736 S.E.2d at 664. That, as in *J.L.*, was nothing more than the "readily observable location and appearance" which "help[ed] the police correctly identify the person whom the tipster means to accuse." *J.L.*, 529 U.S. at 272. Next, however, officers saw that man "huddle[] up" with another person, and they suspected a drug deal. *Taylor*, 401 S.C. at 107, 736 S.E.2d at 664. They testified that "'ninety percent of the time,' this sort of behavior indicated the presence of illegal activity." 401 S.C. at 112, 736 S.E.2d at 667. When the officers then approached, the men "'immediately' split up, and Respondent rode the bicycle towards the officers in an apparent attempt to flee the area." *Id.* One of the officers "called out to Respondent to stop, but Respondent continued his movement." *Id.*

Considering those facts together, the Court ultimately held the officers had a reasonable suspicion of criminal activity. *Taylor*, 401 S.C. at 113, 736 S.E.2d at 667. The Court pointed to the fact *the officers* saw the reported suspect "huddled up" with another man at 11:00 p.m. on bicycles, something that is suspicious in an area known for drug deals. 401 S.C. at 112, 736 S.E.2d at 667. It also particularly relied on the police testimony "that according to past experience, 'ninety percent of the time'" what they saw indicated illegal activity. *Id.* The final piece of evidence establishing a reasonable suspicion was the "undisputed attempt" to flee because "[e]vasive conduct may inform an officer's appraisal of a street corner encounter." *Id.* (citation omitted). The Court particularly criticized the underlying Court of Appeals decision where it noted the officers "made no supplemental observations suggesting any illegal activity was afoot." *Id.* (citation omitted). The Court held that statement was an incorrect view of the facts and "ignore[d] the

testimony of the officers regarding their observations." *Id.* Thus, the officers' observations were critical to finding there was reasonable suspicion for the stop.[3]

This case is squarely in contrast to *Taylor*. First, Jenkins personally observed nothing inherently suspicious, unlike a man on a bicycle at 11:00 p.m. "huddled up" with another. Second, while the officers in *Taylor* testified that "ninety percent of the time" the activity they observed was related to illegal activity, Jenkins' testified that when he had previously investigated reports like that in this case, he had mixed results: "Some people are minding their own business; some people are engaged in criminal activities." App. 37:19-22. Third, the defendant in *Taylor* pedaled away in an "undisputed attempt to avoid" the officers given that the men "immediately" split up when the officers appeared and that the officers called out for him to stop. Here, in contrast, the car was *already leaving the neighborhood*—and continuing to leave is not evidence of flight. Moreover, the state did not prove Jenkins was in a marked vehicle, but evidence of "flight" can be suspicious *only* when a suspect knows of the reason to flee. *See Illinois v. Wardlow*, 528 U.S. 119, 138 (2000) (Stevens, J., concurring in part and dissenting in part). Jenkins did not observe the car speeding away *from him* but rather assumed flight and inferred speeding only after he regained sight of the car. The only remote similarity between the cases is that officers in both cases knew the area to be one in which other crime occurred. But "being in a high crime area does not provide police officers carte blanche to stop any person they meet on the street." *State v. Anderson*, 415

[3] It is worth nothing the Court's decision in *Taylor* was based on the old standard of review prior to *State v. Frasier*, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022). *Taylor*, 401 S.C. at 113, 736 S.E.2d at 667 ("Our appellate courts must only reverse where there is *clear* error . . . ."). However, *Frasier* clarified that exclusion under the Fourth Amendment is, in part, a legal question reviewed *de novo*. *Frasier*, 437 S.C. at 633-34, 879 S.E.2d at 766. The question is no longer merely whether "sufficient evidence in the Record supported the trial court's conclusion." *Taylor*, 401 S.C. at 113, 736 S.E.2d at 667.

S.C. 441, 448, 783 S.E.2d 51, 55 (2016). Altogether, Jenkins's knowledge does nothing to alleviate the problems with the anonymous tip and it does not on its own demonstrate a reasonable suspicion for the stop.

Separately, the trial court erred in denying the motion to suppress to the extent it relied on Jenkins's observations following the stop because "[t]he reasonableness of official suspicion must be measured by what the officers knew before they conducted their search [or stop]." *J.L.*, 529 U.S. at 271. In denying appellant's motion based on the stop, the trial court identified as one of the factors to consider, "it's clear that electronics are sticking out of the bag. There's no clothes in the bag . . . ." That was error. 56 Corpus Juris, *Searches and Seizures* § 70, at 1184 (1932) ("If a search and seizure is illegal at its inception it cannot become legalized by what it brings light . . . ."). Prior to the stop the contents of the bag were not visible, appellant had answered no questions, and officers had seen no gun. The trial court erred in finding Jenkins had a reasonable suspicion of criminal activity because it relied on information obtained subsequent to the stop.

c. Totality of the Circumstances

Petitioner recognizes that the standard for probable cause requires courts to consider "the totality of the circumstances." *State v. Frasier*, 437 S.C. 625, 635, 879 S.E.2d 762, 767 (2022). A "piecemeal refutation of each individual fact and inference" will not suffice. *Taylor*, 401 S.C. at 108, 736 S.E.2d at 665 (quoting *United States v. Branch*, 537 F.3d 328, 337 (4th Cir. 2008)). Merely finding that each individual fact does not on its own rise to a reasonable suspicion does not prevent the facts from doing so when considered together. *Id.* (quoting *United States v. Mason*, 628 F.3d 123, 129 (4th Cir. 2010)). The question is: "would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the

action taken was appropriate?" *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968) (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)).

Here, particularly because the officer himself observed no suspicious activity whatsoever,[4] the answer must be no. Like the officers' suspicion in *J.L.*, Jenkins's suspicion of a burglary "arose not from any observations of [his] own but solely from a call made from an unknown location by an unknown caller." *J.L.*, 529 U.S. at 270. But that fails "the requirement that an anonymous tip bear standard indicia of reliability in order to justify a stop." *J.L.*, 529 U.S. at 274. Even considering the totality of the circumstances together, there was not a reasonable suspicion for the stop. Instead, as trial counsel argued, it was "just an officer acting on an unsubstantiated hunch of a person he's never actually spoken with." App. 90:17-18.

II. The trial court erred in denying the motion to suppress the fruits of the subsequent search because the state never identified an exception to the warrant requirement.

It is *per se* unreasonable and violative of the Fourth Amendment to conduct a search without a warrant unless an exception applies. *State v. Brown*, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012) (quoting *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011)). Because the state did not have a warrant, it had to demonstrate probable cause and identify an exception to the warrant requirement. *See State v. Key*, 431 S.C. 336, 348, 848 S.E.2d 315, 321 (2020) ("[T]he prosecution has the sole burden of proving the existence of an exception to the warrant

[4] Even accepting Jenkins's inference that Beaton was speeding as true, that does not independently support the stop. A stop cannot be retrospectively validated without entirely undermining the deterrent effect of the exclusionary rule. *See State v. Anderson*, 415 S.C. 441, 445 n.3, 783 S.E.2d 51, 54 n.3 (2016) (questioning officers' invalid detention of defendant pursuant to a warrant and "only afterwards attempt[] to claim it was a valid *Terry* stop" but ultimately deciding that issue was unpreserved). Jenkins testified he did not stop the car based on speeding, and to allow an officer to "luck into" a valid stop would disregard the underlying purpose of the exclusionary rule in the first place: to deter unreasonable invasions and police misconduct.

requirement."). Because the state did not do so it failed to meet its burden, and the trial court acted outside of its discretion and committed an error of law by denying the motion to suppress.

It was important for the state to identify the exception to the warrant requirement and then the crime which it believes gave the officers probable cause to search. Without knowing the precise basis for the warrantless search, appellant could not rebut the state's reasoning. For example, as trial counsel argued below, *Arizona v. Gant*, 556 U.S. 332 (2009), does not authorize these searches. In *Gant*, the Supreme Court "declared the following new two-part rule:"

> Police may search a vehicle incident to a recent occupant's arrest *only if* [1] the arrestee is within reaching distance of the passenger compartment at the time of the search *or* [2] it is reasonable to believe the vehicle contains evidence of the arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

Brown, 401 S.C. at 91, 736 S.E.2d at 267 (quoting *Gant*, 556 U.S. at 351) (alterations in original). *Gant* rejected the Court's prior rule developed in *New York v. Belton*, 453 U.S. 454 (1981), which had been "widely understood to allow a vehicle search incident to the arrest of a recent occupant even if there is no possibility the arrestee could gain access to the vehicle at the time of the search." 556 U.S. at 341.

If the state—and then the trial court—relied on *Gant*, that was incorrect. The first prong does not apply because both Beaton and appellant were handcuffed outside of the vehicle. The record does not support the second prong because Jenkins never testified what he arrested appellant for after he exited the vehicle. If appellant was arrested for unlawfully carrying a handgun under section 16-23-20(9)(a) of the South Carolina Code (2015)[5] because he had improperly stored it,

[5] This statute has been amended several times since appellant's arrest. *E.g.* Act 66, 2021 S.C. Acts 244-45.

then it was not reasonable to believe evidence of that crime would be found in the car since there can be no physical evidence to find.[6] Thus, had this been the basis of the search, that would have been improper.

By failing to explain the basis of its search and the crime for which it believed there was probable cause, the state failed to meet its burden of proof. Warrantless searches are *presumptively* impermissible. As part of meeting that burden, it is on the state to identify and demonstrate the exception on which it relies. Without doing so, it is now functionally impossible to challenge the trial court's ruling because appellant does not know the basis for it. There are myriad arguments appellant could now make depending on the exception relied upon. For example, if the state's basis was exigent circumstances or public safety, appellant could demonstrate no evidence in the record supports the state's assumption appellant was dangerous at the time of the stop. If the basis was "hot pursuit," appellant could challenge that assertion by showing Jenkins was not in fact chasing appellant because the stop occurred so quickly. However, because the state did not explain the basis on which it believed Jenkins did not need a warrant—or the crime for which he had reasonable cause to stop the car—appellant cannot now adequately challenge the trial court's ruling.

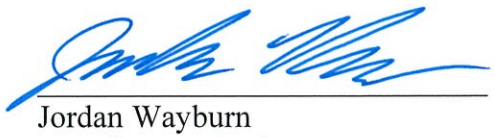
The state bears the burden of proving a warrantless search was permissible for good reason: to protect the rights of *everyone* from unnecessary, invasive, and unconstitutional searches and seizures. By declining to identify the exception to the *per se* rule that warrantless searches are

[6] The searches also cannot be justified as incident to Beaton's arrest because he was arrested for driving with a suspended license. It is not reasonable to believe evidence of that crime could be found in the car or appellant's belongings.

unreasonable, the state has failed to meet its burden of proof and the decision of the trial court must be reversed.

CONCLUSION

Based on the above argument, this Court should reverse Petitioner's convictions and sentences and remand for a new trial.



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ATTORNEY FOR APPELLANT

November 13, 2024.