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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2023-001978

THE STATE,

Appellant,

v.

JOSHUA FELIPE SIMMONS,

Respondent.

# FINAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

I. Whether the circuit court erred by suppressing drug evidence found during a search of Respondent's vehicle after a valid traffic stop and arrest where the plain view, search incident to arrest, and inventory search exceptions to the Fourth Amendment's warrant requirement apply.

## STATEMENT OF THE CASE

On October 1, 2018, a Charleston County grand jury indicted Respondent for trafficking cocaine. (R. 200-201). Respondent elected to proceed pro se to a jury trial before the Honorable Deadra L. Jefferson. (R. 1). On December 11-14, 2023, Judge Jefferson heard pretrial motions. (R. 1, 3).

On the first day of the pretrial hearing, Judge Jefferson noted that Respondent moved for a continuance due to accidental non-disclosure of body camera recordings from one of the officers involved in his arrest. (R. 3-4). Respondent asserted that he previously received two copies of one officer's body camera recording instead of one copy of two officers' body camera recordings. (R. 3-4).

The State informed Judge Jefferson that when Respondent asked for body camera and dash camera footage, the State reached out to the Charleston Police Department and received only Officer Bianchi's body camera footage. (R. 13). The Charleston Police Department did not find any other body camera footage at that time. (R. 13-14). On December 7, 2023, while discussing the case with Lieutenant Sean Engles, the State became aware that two additional body camera recordings existed—one from Lieutenant Engles and one from Officer Preston. (R. 14). The State informed Respondent of the existence of the videos immediately and offered to watch the videos for the first time with Respondent that same day. (R. 14). The State confirmed that it turned the videos over to Respondent as soon as it received them. (R. 15). The State asserted that a continuance was not needed because the two additional videos did not depict anything new but rather showed the same things as Officer Bianchi's video, just from different points of view. (R. 15). The State noted that each of the three body camera recordings were approximately 30 minutes in length. (R. 22-23).

When Judge Jefferson asked the State if it had offered Respondent a plea deal, the State informed Judge Jefferson that it was seeking to amend Respondent's indictment from trafficking to possession with intent to distribute (PWID) and that Appellant had rejected a prior offer. (R. 5-6). Upon Judge Jefferson's suggestion, Respondent conferred with standby counsel about whether he should plead guilty "straight up in light of the fact that he's moved from a mandatory penalty to a suspendable penalty." (R. 6-8).

Respondent's standby counsel indicated that Respondent consented to amend the indictment from trafficking to the lesser included of PWID. (R. 24). Judge Jefferson decided to proceed with jury selection but wait to swear the jury until she decided the continuance motion. (R. 24). Judge Jefferson read the indictment to the jury pool. (R. 28). A jury was selected at the conclusion of the selection process. (R. 45).

On the second day of the pretrial hearing, Judge Jefferson noted that she appointed defense counsel to represent Respondent after court concluded the preceding day. (R. 53). Defense counsel informed the court that Respondent had a suppression issue, which Judge Jefferson decided to take up the next day. (R. 62-65).

On the third day of the pretrial hearing, defense counsel withdrew Respondent's motion for a continuance. (R. 75). Judge Jefferson noted Respondent filed at least two motions to suppress, one of which requested body camera recordings that defense counsel withdrew as moot. (R. 75-76). The State informed Judge Jefferson of Respondent's criminal record and other pending charges. (R. 77, 81-82).

Lieutenant Engles testified that he initiated a traffic stop of Respondent's vehicle on Savannah Highway because Respondent failed to maintain his lane. (R. 89-90). Respondent pulled over after Lieutenant Engles activated his lights and siren. (R. 90). Lieutenant Engles

approached Respondent's vehicle from the driver's side, and his partner, Officer Preston, approached from the passenger side. (R. 90). Lieutenant Engles told Respondent that he was pulled over for failing to maintain his lane and drifting from one side of the lane to touching the yellow line. (R. 90). According to Lieutenant Engles, Respondent appeared nervous and other cars were going by "pretty fast." (R. 90). Lieutenant Engles and Officer Preston asked Respondent to exit and step behind the vehicle. (R. 90). The officers noticed continued nervous behavior while talking to Respondent behind the vehicle. (R. 91). While Officer Preston talked to Respondent, Lieutenant Engles returned to the car and used his flashlight to look inside through an open window. (R. 91). He saw two open containers of alcohol—a liquor bottle and a beer bottle—hanging in a transparent bag from the gearshift. (R. 91, 102). Lieutenant Engles returned to Respondent, placed him in handcuffs, and told him about the open containers in the vehicle. (R. 91-92).

After placing Respondent in handcuffs, Lieutenant Engles filled out a tow form and conducted an inventory search. (R. 92). Charleston Police Department's policy was to conduct an inventory search to document any possessions of value in a vehicle to prevent claims and ensure items do not go missing. (R. 92). He confirmed that he was trained in how to search a vehicle pursuant to Charleston Police Department policy and protocol. (R. 92-93). Lieutenant Engles testified that he utilized his training to conduct the inventory search on Respondent's vehicle. (R. 93).

In the driver's side door panel, Lieutenant Engles found three and a half grams of a white powder that field tested positive for cocaine. (R. 93). He also found a digital scale on the driver's side floorboard. (R. 94). Another officer, Officer Bianchi, found an additional amount of white powder in a sunglasses case. (R. 94).

On cross-examination, Lieutenant Engles testified that other than Respondent's failure to maintain his lane, he did not see any other indicators of drunk driving. (R. 97). He confirmed that he shined his flashlight inside the vehicle when he approached for officer safety and that some people are not nervous when police pull them over at night. (R. 98). Lieutenant Engles stated that he opened Respondent's door for him after deciding to ask Respondent to exit the vehicle, but he did not see any bottles at that time. (R. 99). He confirmed that after talking with Respondent, he did not think Respondent was too inebriated to drive. (R. 102). Lieutenant Engles stated that the alcohol bottles were in a bag hanging down at leg level on the driver's side of the center console with the handles over the shifter. (R. 102). After Respondent was handcuffed, Lieutenant Engles articulated a twofold basis for searching the vehicle: (1) Respondent was under arrest for the open containers and the car had to be towed, so the car also needed to be inventoried, and (2) the open containers led him to believe that there could be other contraband in the vehicle, which would initiate a probable cause search of the vehicle. (R. 103-04).

On examination by Judge Jefferson, Lieutenant Engles testified that he had Respondent step out of the vehicle for safety purposes and to have the opportunity to interact with him face-to-face to gauge nervousness and deceptiveness. (R. 104-05). Lieutenant Engles stated that he arrested Respondent for open container violation instead of issuing a citation because Respondent had not been honest about the presence of the open containers. (R. 106). Lieutenant Engles testified that the decision to arrest or issue a citation remained in his discretion. (R. 106).

Lieutenant Engles stated that he went back to look inside the vehicle while Officer Preston was talking to Respondent behind the car to make sure he had not overlooked something in his initial approach. (R. 106). Lieutenant Engles felt it was necessary to take a second look because he got the impression that Respondent was not being forthright and honest with law enforcement

and wanted to see if there was any reason in plain view that would explain Respondent's nervousness. (R. 107).

On redirect examination, Lieutenant Engles stated that asking Respondent to move to the rear of the vehicle allowed him to move farther from the edge of Savannah Highway and lessen the chances of being hit by a car. (R. 107). He clarified that when he returned to look in the vehicle while Officer Preston was talking to Respondent at the rear of the vehicle, he did so for officer safety because Respondent might reenter the vehicle. (R. 108). Lieutenant Engles confirmed that Respondent did not have the rental agreement for the vehicle and was unable to produce it when asked. (R. 110).

After Lieutenant Engles' testimony, defense counsel moved to suppress the drugs as the product of an illegal search. (R. 112). Defense counsel argued that the stop was "pretextual" before conceding that law enforcement was "well within their" rights and "absolutely" could stop Respondent. (R. 113). Defense counsel stated that he was not contesting whether reasonable suspicion existed. (R. 113). Defense counsel contested the "prolonged" nature of the stop and "tag-teaming" of Respondent by two officers "forcing" Respondent out of his car. (R. 113). Defense counsel stated that the area where Respondent pulled off of Savannah Highway in the dark is a ditch and confirmed that the stretch of highway is "very dangerous." (R. 114). Defense counsel acknowledged that the time from when Lieutenant Engles stopped Respondent to when Lieutenant Engles placed Respondent in handcuffs was a little less than eight minutes. (R. 115-16). Defense counsel noted that law enforcement had no indicators that Respondent was not fit to drive because Respondent was "effectively sober" when talking to law enforcement. (R. 117). Defense counsel stated that no hard time limit existed for the appropriate length of a traffic stop. (R. 120).

Defense counsel argued that while law enforcement properly stopped Respondent, they saw he had no signs of impairment but wanted to search his car, so they came up with a pretextual reason to search the vehicle. (R. 121). He asserted that once law enforcement found out Respondent was not impaired, the stop became prolonged and law enforcement should not have searched the vehicle. (R. 121). The court noted that Respondent's lack of identifying documents, rental agreement, and proof of insurance were problematic and would allow law enforcement to detain a driver. (R. 123-24). Defense counsel argued that the stop was prolonged because law enforcement held on to Respondent's "ID"[1] and did not give it back to him. (R. 124).

Judge Jefferson noted that an inventory search was performed after Lieutenant Engles arrested Respondent and that such searches do not require probable cause. (R. 131). Defense counsel requested that Judge Jefferson suppress the drugs that law enforcement found in the vehicle. (R. 136).

The State argued that Judge Jefferson should deny Respondent's motion to suppress. (R. 136). The State asserted that during the first eight minutes of this traffic stop, Officer Bianchi was running license plate information and Respondent's personal information because Respondent produced only an ID but not his driver's license. (R. 138). After asking Respondent to exit the vehicle, Officer Preston stood with him while Lieutenant Engles looked into the vehicle to see what was in plain view, at which point he saw the two alcohol bottles. (R. 138). According to the State, the alcohol bottles are what led to Respondent's arrest. (R. 138). The State contended that a search had not been conducted at this point in the traffic stop, which had not been prolonged.

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[1] In Officer Preston's body camera recording, Officer Preston asks for Respondent's driver's license, registration, and proof of insurance. Respondent says that he does not have his driver's license but hands Officer Preston what appears to be a debit/credit card and a company identification card. (Preston BWC Recording at 0:01:05 to 0:02:00).

(R. 138). The State emphasized that Charleston Police Department policy when the sole occupant of a vehicle is arrested, officers are to have the vehicle towed and conduct an inventory search of the vehicle. (R. 139). Citing to *State v. Miller*,[2] the State argued that the inventory search did not violate Respondent's Fourth Amendment rights because the South Carolina Supreme Court had determined that such a search is an exception to the search warrant requirement. (R. 139). The State reiterated that Lieutenant Engles asked Respondent to exit the vehicle but did not force him to get out and that law enforcement asked Respondent for the rental agreement and his driver's license, neither of which he produced. (R. 139).

After a brief recess, Judge Jefferson indicated that she had watched the body camera recordings. (R. 162). Judge Jefferson "preliminarily" decided that "anything after [Respondent was] handcuffed is out." (R. 162). Judge Jefferson ruled that Respondent's freedom was "impinged upon" at that point and law enforcement asked him inculpatory questions, which she asserted was "like classic *Denno*."[3] (R. 162). She indicated that she was concerned about law enforcement's request for Respondent to exit the vehicle, whether alcohol was in plain view, and whether the stop itself was legitimate. (R. 163-64). Judge Jefferson was also concerned that Respondent did not turn over his license, which law enforcement subsequently found in the vehicle during the inventory search, and that he did not have the rental agreement. (R. 164-67). Judge Jefferson stated that she would consider the matter overnight. (R. 167).

On the fourth day of the pretrial hearing, the State informed the court that it had edited the body camera footage pursuant to Judge Jefferson's ruling the day before. (R. 174). The State

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[2] 423 S.C. 95, 814 S.E.2d 166 (2018) (holding that law enforcement's impounding of the vehicle a defendant was driving when the defendant was lawfully arrested is a reasonable seizure under the Fourth Amendment and that an inventory search conducted with respect to a lawfully impounded vehicle is reasonable and valid under the Fourth Amendment).

[3] *Jackson v. Denno*, 378 U.S. 368 (1964).

indicated that it included clips that occurred after Respondent was placed in handcuffs, which show officers locating items in the vehicle but do not show any conversation with Respondent. (R. 175). Judge Jefferson reiterated that she ruled that everything after Respondent was handcuffed was excluded but that the State's argument would become moot once she ruled on Respondent's suppression motion. (R. 175-76).[4]

Judge Jefferson summarized Respondent's motion as seeking suppression of all fruits of the search of the vehicle due to lack of probable cause to extend the traffic stop. (R. 176). She stated that Respondent conceded "there was an appropriate traffic infraction for which [Respondent's] vehicle was stopped, that being failure to maintain a lane." (R. 176). Judge Jefferson noted Lieutenant Engles' testimony that he opened the car door for Respondent, that Respondent had no trouble exiting the vehicle, that he did not immediately see any alcohol bottles, and that Respondent did not have any balance or speech difficulties. (R. 177). She stated law enforcement did not administer any field sobriety tests because the officers present were not trained or certified to administer such tests. (R. 177).

Judge Jefferson recalled that when she watched the body camera recordings, she did not see a bag hanging from the gearshift and determined that the liquor bottle was partially under the driver's seat. (R. 178). Judge Jefferson found that when law enforcement first approached the

[4] While the State contends that Judge Jefferson erred in her ruling that the body camera recordings after Respondent was placed in handcuffs would be excluded in their entirety under *Denno*, the State acknowledges that Judge Jefferson's ruling is not yet ripe for appellate review because Judge Jefferson initially stated her ruling was "preliminary" and then determined it was moot due to her ruling on the suppression motion. Thus, Judge Jefferson did not determine with finality whether the body camera recordings that do not show Respondent or contain anything Respondent said after he was placed in handcuffs would be excluded. *See Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) ("Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within [section] 14-3-330 [of the South Carolina Code].").

vehicle and talked to Respondent while he was still in the vehicle, "there [was] nothing that [was] apparent in the car that would give rise or give the impression that there was some evidence of criminal activity being afoot in that vehicle or with [Respondent]." (R. 178). She determined that "basically a search took place" after Respondent exited the vehicle and items were found that led to Respondent's arrest, which resulted in a search incident to arrest. (R. 178-79). Judge Jefferson stated that the body camera recordings show that the sunglasses case that contained cocaine was found before the search incident to arrest, which meant that some search of the vehicle occurred prior to the inventory search of the vehicle. (R. 179).

Judge Jefferson determined that law enforcement "certainly" could have stopped and ticketed Respondent for failure to maintain a lane and found that law enforcement "rightly" stopped Respondent. (R. 180-81, 184-85). She expressed concern that the stop was "prolonged" but noted, citing *Pennsylvania v. Mimms*[5] and *State v. Pichardo*,[6] that law enforcement having Respondent exit the vehicle was not a violation of the Fourth Amendment on unreasonable searches and seizures. (R. 185). Judge Jefferson found no reasonable suspicion existed to extend the stop but affirmed that the stop was appropriate. (R. 188-89).

The State reiterated that Respondent did not provide a driver's license or rental agreement for the vehicle, to which Judge Jefferson responded, "That's a ticket" and "That's not an arrest." (R. 190). The State asserted that the stop was not prolonged because Respondent did not provide satisfactory information. (R. 190). Judge Jefferson made note of the consent amendment to Respondent's indictment on the indictment and dismissed the jury. (R. 196-97; 202-203).

This appeal followed.

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[5] 434 U.S. 106 (1977).
[6] 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005).

## STANDARD OF REVIEW

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

## ARGUMENT

Initially, Judge Jefferson's ruling that suppresses "all fruit" of the search of Respondent's vehicle is immediately appealable because suppression of all evidence of from Respondent's vehicle significantly impairs the State's ability to prosecute this case. *See State v. McKnight*, 287 S.C. 167, 168, 337 S.E.2d 208, 208 (1985) ("A pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable under [section] 14-3-330(2)(a) [of the South Carolina Code].").

### I. The circuit court erred in suppressing evidence found during a search of Respondent's vehicle after a proper traffic stop and arrest because the plain view, search-incident-to-arrest, and the inventory search exceptions to the Fourth Amendment warrant requirement apply.

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "The ultimate standard set forth in the Fourth Amendment is reasonableness." *Cady v. Dombrowski*, 413 U.S. 433, 439 (1973). "Whether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case." *South Dakota v. Opperman*, 428 U.S. 364, 375 (1976). In most circumstances, evidence seized in violation of the Fourth Amendment's reasonableness standard must be excluded from trial. *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007).

"Generally, a warrantless search is per se unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures." *Id.* However, a warrantless search can be reasonable if it falls under one of the exceptions to the warrant requirement. *Id.* "These exceptions include . . . : (1) search incident to a lawful arrest; . . . (5) the plain view doctrine; . . . ." *State v. Brown*, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012). Another of those exceptions is an inventory search conducted according to standard police procedures. *Robinson v. State*, 407 S.C.

169, 185, 754 S.E.2d 862, 870 (2014) (stating "if police officers are following their standard procedures, they may inventory impounded property without obtaining a warrant").

**A. Plain View**

"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. Wright*, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011). Therefore, for evidence to be lawfully seized under the plain view exception, the State must show: (1) the initial intrusion which afforded the police officers the plain view of the evidence was lawful; and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities. *Id.*

Here, Judge Jefferson determined, in essence, that the alcohol bottles were not in plain view based on her viewing of the body camera recordings. (R. 178-79). She stated that while the videos were not the "best quality," she did not see a bag hanging off of the gearshift as Lieutenant Engles testified. (R. 179). Lieutenant Engles testified that there was a plastic bag hanging on the gearshift that he saw through the driver's window before arresting Respondent. (R. 102). While the body camera recordings might not show the bag's handles over the gearshift, the bag is visible in Lieutenant Engles' body camera recording on the driver's side of the center console directly below the gearshift. (Engles BWC Recording at 0:10:27 to 0:10:32).

Lieutenant Engles testified that he saw an open bottle of beer and an open bottle of liquor in a plastic bag near the gearshift and arrested Respondent thereafter. (R. 91). His body camera recording follows his testimony. (Engles BWC Recording). As open bottles of beer and liquor are open containers prohibited under section 61-4-110 of the South Carolina Code, the incriminating nature of the evidence was immediately apparent to Lieutenant Engles when he saw it through

Respondent's open window. Therefore, the beer and liquor bottles qualify for the plain view exception to the warrant requirement; thus, Judge Jefferson erred in suppressing them.

**B. Search Incident to Arrest**

The United States Supreme Court held that, "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *New York v. Belton*, 453 U.S. 454, 460 (1981). The Supreme Court additionally held that, while searching the passenger compartment, the officers could also examine the contents of any containers found within the passenger compartment as well because "if the passenger compartment is within the reach of the arrestee, so also will containers be within his reach." *Id.*

However, in *Arizona v. Gant*, 556 U.S. 332 (2009), the Supreme Court limited *Belton*'s bright-line rule. There, the Supreme Court found that if the arrestee was already secured and outside of reaching distance from the passenger compartment of the vehicle at the time of the search, a search could not be justified under the traditional rationale of protecting officer safety and preventing the destruction of evidence. *Id.* at 343. Therefore, the Supreme Court set forth the new rule: police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if (1) the arrestee is "unsecured and 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 crime of arrest. *Id.*

First, law enforcement made a lawful custodial arrest of Respondent. There was no contention that law enforcement improperly stopped Respondent for failing to maintain his lane. (R. 113, 176). Law enforcement then asked him to exit his vehicle—after he failed to produce a driver's license, proof of insurance, and either the vehicle registration or a rental agreement—for

their safety due to the high rate of speed along Savannah Highway. (R. 90, 107, 110). While Officer Preston talked to Respondent about his failure to maintain a lane and his lack of documents, Lieutenant Engles shined his flashlight into the windows of the vehicle and saw an open bottle of beer. (R. 91, 102). He then placed Respondent under arrest and in handcuffs before proceeding with a search of the vehicle. (R. 91-92).

Because Respondent was secured and out of reach of the vehicle, the first *Gant* justification for a search incident to arrest is not applicable here. However, the second justification—it is reasonable to believe the vehicle contains evidence of the crime of arrest—is applicable. It is reasonable for Lieutenant Engles to have believed that the vehicle contained evidence of an open container violation due to the beer bottle he saw through the window. Moreover, Lieutenant Engles' testified that one of the bases for his search of the vehicle was his belief that there could be another open container in the vehicle. (R. 103-04). Judge Jefferson noted that Lieutenant Engles testified no odor of alcohol existed when he pulled Respondent over and when Respondent exited the vehicle; however, this does not make it unreasonable for law enforcement to believe that the vehicle contained evidence of open container violations when law enforcement saw open beer and liquor bottles through the driver's window and observed Respondent's nervous behavior. (R. 91-92, 102, 177). Therefore, because it is reasonable for law enforcement to have believed Respondent's vehicle contained evidence of his open container violation, Judge Jefferson erred in suppressing the evidence found in the vehicle.

**C. Inventory Search**

"For an inventory search to be valid, the vehicle searched should first be in the valid custody of the law enforcement officers conducting the inventory." *United States v. Brown*, 787 F.2d 929, 931-32 (4th Cir. 1986). "The question . . . is . . . whether the police officer's decision to

impound was reasonable under the circumstances." *Brown*, 787 F.2d at 932; *see also United States v. Bullette*, 854 F.3d 261, 265 (4th Cir. 2017) ("An inventory search of an automobile is lawful (1) where the circumstances reasonably justified seizure or impoundment, and (2) law enforcement conducts the inventory search according to routine and standard procedures designed to secure the vehicle or its contents.").

**i. Reasonableness of Impoundment**

Law enforcement's decision to seize Respondent's vehicle was reasonable under the circumstances. *See State v. Miller*, 423 S.C. 95, 101-08, 814 S.E.2d 166, 169-73 (2018) (holding that law enforcement's decision to seize a vehicle after pulling over and arresting the sole occupant was reasonable under the circumstances and did not constitute a Fourth Amendment violation when law enforcement acted in accordance with a valid police department policy).

Because Respondent was the sole occupant of the vehicle, Respondent was arrested out of the vehicle, the arrest occurred away from Respondent's residence (the arrest occurred on the side of one of Charleston's main thoroughfares, which is also a busy U.S. Highway), and Respondent failed to produce any documentation regarding who the lawful owner or authorized user of the vehicle was, law enforcement reasonably impounded Respondent's vehicle. *See United States v. Brown*, 787 F.2d 929, 932-33 (4th Cir. 1986) (holding that law enforcement could reasonably impound and take lawful custody of the defendant's vehicle either because there was "no known individual immediately available to take custody of the car" or because the car could have been a nuisance where it was parked); *see also Miller*, 423 S.C. at 104, 814 S.E.2d at 171 (citing approvingly to *Brown*'s analysis of reasonable impoundment and lawful custody).

### ii. Reasonableness of Inventory Search

The inventory search conducted by law enforcement was reasonable under the Fourth Amendment because law enforcement followed standardized procedures, did not act in bad faith, and did not conduct the inventory search for the sole purpose of investigation.

In *South Dakota v. Opperman*, the United States Supreme Court explained that inventory searches serve "three distinct needs: the protection of the owner's property while it remains in police custody; the protection [of] the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger." 428 U.S. 364, 369 (1976). In *Colorado v. Bertine*, the Supreme Court analyzed its jurisprudence on inventory searches in light of the facts of that case and held that "reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment . . . ." 479 U.S. 367, 374 (1987). In *United States v. Matthews*, the Fourth Circuit stated, "For the inventory search exception to apply, the search must have 'be[en] conducted according to standardized criteria,' such as a uniform police department policy, and performed in good faith." 591 F.3d 230, 235 (4th Cir. 2009) (quoting *Bertine*, 479 U.S. at 374 n.6, and then citing *United States v. Banks*, 482 F.3d 733, 739 (4th Cir. 2007)); *see also Opperman*, 428 U.S. at 372 ("The decisions of this Court point unmistakably to the conclusion reached by both federal and state courts that inventories pursuant to standard police procedures are reasonable.").

First, the evidence presented during the suppression hearing did not show that law enforcement acted in bad faith when searching Respondent's vehicle after arresting him. Additionally, the evidence did not show that law enforcement searched Respondent's vehicle for the sole purpose of investigation. Rather, according to Lieutenant Engles' testimony, law enforcement followed Charleston Police Department standard policy in inventorying the contents

of Respondent's vehicle to protect items in the vehicle and document any possessions of value. (R. 92).

Defense counsel's argument during the suppression hearing that law enforcement came up with a pretextual reason to search Respondent's car after they saw he had no signs of impairment is without merit. (R. 121). At no point during the traffic stop did Respondent present a driver's license, proof of insurance, vehicle registration, or a rental agreement. According to Lieutenant Engles, Respondent acted nervously between first contact and when he placed Respondent in handcuffs. (R. 90, 107).

Further, Judge Jefferson's determinations (1) that "basically a search took place" after Respondent was removed from the vehicle but before he was placed in handcuffs and (2) that the white powder in the sunglasses case was found prior to a search incident to arrest are not supported by any evidence presented to the court. (R. 178-79). Both Lieutenant Engles' body camera recording and Officer Bianchi's body camera recording indicate that the white powder found in the sunglasses case was found *after* the beer bottle, the liquor bottle, and the white powder in the driver's door pocket. (Engles BWC Recording; Bianchi BWC Recording). Therefore, law enforcement did not act in bad faith.

Second, Lieutenant Engles' testimony showed that the main purpose of searching Respondent's vehicle after placing him in handcuffs was not investigation, but rather "[t]o document any possession of value" pursuant to Charleston Police Department policy and protocol. (R. 92). Additionally, establishing an inventory of Respondent's car was one of Lieutenant Engles' stated purposes for searching the car after arresting Respondent. (R. 103-04). *See Bertine*, 479 U.S. at 373 (stating that when there is no showing that law enforcement, "who were following standardized procedures, acted in bad faith or for the sole purpose of investigation," then an

inventory search may be reasonable under the Fourth Amendment); *Miller*, 423 S.C. at 108, 814 S.E.2d at 173 (stating that the defendant did not argue law enforcement acted in bad faith and focusing on whether law enforcement's search was conducted pursuant to standard police procedures). Therefore, law enforcement did not search Respondent's vehicle for the *sole* purpose of investigation.

Third, proof of a standardized policy may be shown by either written rules and regulation or testimony regarding standardized practices; here, Lieutenant Engles' testimony is sufficient to show law enforcement had standardized procedures and followed such procedures. *See Miller*, 423 S.C. at 109, 814 S.E.2d at 174 (discussing officers' testimony that they conducted an inventory search pursuant to their training in accordance with the written policy); *United States v. Matthews*, 591 F.3d 230, 235 (4th Cir. 2009) ("The existence of . . . a [standardized criteria] may be proved by reference to either written rules and regulations or testimony regarding standard practices." (quoting *United States v. Thompson*, 29 F.3d 62, 65 (2d Cir. 1994))); *United States v. Clark*, 842 F.3d 288, 294 ("The government may prove the existence of standardized criteria 'by reference to either written rules and regulations <u>or</u> testimony regarding standard practices.'" (quoting *Matthews*, 591 F.3d at 235) (emphasis in original)).

Lieutenant Engles testified that Charleston Police Department's policy when the sole occupant of a vehicle is arrests was to tow the vehicle and conduct an inventory search to document any possessions of value in the vehicle to prevent claims and ensure items do not go missing. (R. 92). While Charleston Police Department's written policies on vehicle searches and seizures,[7] vehicle inventory,[8] and towing vehicles[9] were not introduced into evidence or shown to Judge

[7] Charleston Police Department General Order 29.21, effective Feb. 1, 2008.
[8] Charleston Police Department General Order 29.22, effective Feb. 1, 2008.
[9] Charleston Police Department General Orders 48.10 and 48.11, effective Feb. 1, 2008.

Jefferson during the suppression hearing, Lieutenant Engles testified that the post-arrest search of Respondent's vehicle was carried out pursuant to Charleston Police Department protocols and policy. (R. 92). Therefore, evidence presented to Judge Jefferson showed that law enforcement carried out the inventory search pursuant to valid police policies and procedures.

Thus, because (1) Respondent's vehicle was in the valid custody of law enforcement because of Respondent's arrest for an open container violation, (2) law enforcement did not act in bad faith in searching the vehicle after arresting Respondent, (3) law enforcement did not search the vehicle for the sole purpose of investigation, and (4) law enforcement followed Charleston Police Department policy and protocol in conducting the inventory search, Judge Jefferson erred in suppressing evidence found during the inventory search.

[*conclusion and signature block on following page*]

## CONCLUSION

Based on the foregoing, the State requests that this Court reverse the trial court's suppression of the relevant and admissible evidence and remand this matter for trial.

Respectfully submitted,

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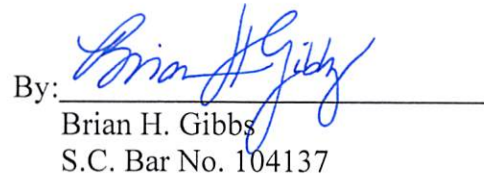

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**Attorneys for Appellant**

February 19, 2025
Columbia, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2023-001978

THE STATE,

Appellant,

v.

JOSHUA FELIPE SIMMONS,

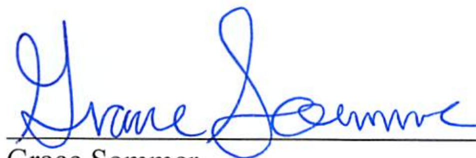
Respondent.

## PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Final Brief of Appellant on Sarah E. Shipe, Esquire, counsel of record for the Respondent, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 19th day of February 2025.



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## Grace Sommer

**From:** Grace Sommer
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**Attachments:** SIMMONS Joshua - FBOA.pdf

Good Afternoon Ms. Shipe,

Attached please find the Final Brief of Appellant in The State v. Joshua Felipe Simmons (2023-001978). This Brief will be filed today with the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

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