STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2023-001755

THE STATE,

Respondent,

v.

KYLE NICHOLAS MOUZON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge correctly denied Appellant's motion to suppress evidence found in Appellant's vehicle because there was probable cause to search the vehicle without a warrant.

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant for one count of possession with intent to distribute (PWID) methamphetamine, first offense. Appellant proceeded to a jury trial September 11, 2023, before the Honorable Bentley Price. Karla Martinez, Esquire and Jason King, Esquire represented Appellant. The jury found Appellant guilty as indicted. Appellant was sentenced to 100 days of incarceration followed by two years of probation with substance abuse counseling. This appeal follows.

STATEMENT OF FACTS

In the early morning hours of July 15, 2021, Kyle Mouzon (Appellant) drove from his home in North Charleston to pick up his then girlfriend Sonya Herron from downtown Charleston. (R. 96-97). Before heading home, they pulled into a gas station as they began arguing because Herron thought Appellant had been cheating their entire relationship. (R. 80-81, 96-98). Herron calmed down enough to get into Appellant's vehicle, but, while driving, they began arguing again. (R. 97-98).

Charleston Police (CPD) Officer Sean Flaherty arrived at the gas station as Appellant was leaving and he put out on the radio the incident and that the vehicle was a dark Chevy truck. (R. 22). Shortly thereafter, CPD Officer Jeremy Bailey encountered a dark in color Chevy truck traveling down Meeting St. (R. 22). Bailey followed the truck briefly as it was weaving within its lane and conducted a traffic stop when the truck came to an abrupt stop in the middle of the road. (R. 22). As Bailey approached the vehicle on the driver's side, he began to introduce himself and explain the reason for the stop, and when he did, he could hear a minor argument occurring. (R. 24). The female passenger asked if she could exit the vehicle, and she did. (R. 24). Bailey then asked Appellant to exit the vehicle as well to separate them. (R. 24-25).

CPD Officer McCaughley Bryan spoke with Herron, the female passenger, and learned that it was possible there were a large amount of narcotics in the vehicle in a few places. (R. 68-69). While Officer Bailey was speaking with Appellant, other officers had been speaking with Herron and approached Bailey to inform him that Herron stated there were a large amount of drugs in the vehicle. (R. 25). After learning there was a possibility of narcotics inside the vehicle, CPD Officer Dillon Chow detained Appellant. (R. 25-26, 54). While he was being detained, Bailey ran Appellant's driver's license, and it came back suspended. (R. 26). The officers believed probable cause was evident and began a search of the vehicle. (R. 26).

In a locked compartment, opened by Appellant's truck keys, police discovered a crystalline substance believed to be meth, a glass pipe, and a digital scale. (R. 27-29, 56). Subsequent testing confirmed that the substance was 3.2 grams of Methamphetamine. Appellant was arrested for driving under suspension and possession of methamphetamine. (R. 38).

Prior to trial, trial counsel made a motion to suppress the drugs based on the fact that the officers had no reasonable suspicion to believe there was any criminal activity in the car. (R. 4). Trial counsel argued that Herron's statements did not give rise to probable cause for a warrantless search based on the fact she was intoxicated, upset, and made many statements about where drugs could possibly be located. (R. 4-5). The State argued that Herron's statements gave the police probable cause to prolong the traffic stop and to search the vehicle. Further, the State argued that the police did find the drugs in a place where Herron said the drugs might be located. (R. 4-8). Trial counsel reiterated that there was nothing outside of the statements made by Herron to indicate or give rise to suspicion that Appellant had drugs in the car and that those statements were not enough to support a warrantless search. (R. 8). The trial court denied the motion without making any factual or legal findings. (R. 8).

STANDARD OF REVIEW

"In criminal cases, the Appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E. 2d 216, 220 (2006). "On appeals from a motion to suppress based on fourth amendment grounds, this court applies a deferential standard of review and will reverse if there is clear error." State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). "This deference does not bar this court from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence." Id. "If there is any evidence to support the trial judge's decision, this court will affirm." State v. Spears, 429 S.C. 422, 433 839 S.E.2d 450, 455 (2020) (citing State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000)). "The 'clear error' standard means that an appellate court will not reverse a trial court's finding of fact simply because it would have decided case differently." State v. Pichardo, 367 S.C. 84, 95, 623 S.E.2d 840, 846 (2005) (citing Easley v. Cromartie, 532 U.S. 234, 121 S. Ct. 1452, 149 L.Ed.2d. 430 (2001)).

ARGUMENT

The trial judge correctly denied Appellant's motion to suppress evidence found in Appellant's vehicle because there was probable cause to search the vehicle without a warrant.

Appellant argues that the trial judge erred by denying a motion to suppress drugs found in Appellant's truck as a result of a warrantless search. Specifically, that statements made by Appellant's intoxicated and emotional passenger did not give rise to probable cause sufficient to sustain a warrantless search. Appellant's argument lacks merit because the officers had probable cause to search the vehicle without a warrant. Further, even if there wasn't probable cause to search without a warrant, there would have been inevitable discovery of the evidence.

Appellant was charged with possession of a controlled substance found after police performed a traffic stop. The United States Constitution protects people from unreasonable searches and seizures. "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained." U.S. Const. amend. IV. The State of South Carolina also provides people with protections against unreasonable searches and seizures. "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained." S.C. Const. art. I, § 10.

"Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of the fourth amendment." State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App 2005). "Thus an automobile stop is 'subject to the constitutional imperative that it not be unreasonable under the circumstances.'" Id. (citing Whren v. United States, 517 U.S. 806, 116 S. Ct. 1769, 135 L.Ed.2d 89 (1996)). "Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se." Id. "The police may also stop and briefly detain a vehicle if they have reasonable suspicion that the occupants are involved in criminal activity." Id. Here, Appellant's vehicle was seen weaving within the lane and then came to an abrupt stop in the middle of the road almost causing a collision. (R. 22).

"Once a motor vehicle is detained lawfully for a traffic violation, the police may order the driver to exit the vehicle without violating Fourth Amendment proscriptions on unreasonable searches and seizures." State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 708 (Ct. App. 2002). "In carrying out the stop an officer 'may request a driver's license and vehicle registration, run a computer check, and issue a citation.'" Id. (citing United States v. Sullivan, 136 F.3d 126, 131 (4th Cir. 1998). Officer Bailey approached the vehicle to inform Appellant the purpose of the stop, asked him to step out of the vehicle for his safety due to the minor argument happening inside the vehicle, and obtain driver's licenses, registration, and insurance. (R. 24-26).

"The officer's observations while conducting the traffic stop may create reasonable suspicion to justify further search or seizure." State v. Provet, 405 S.C. 101, 109, 747 S.E.2d 453, 457 (2013). While Bailey was running licenses, his backup, Officer Bryan was speaking with Herron who informed her there was a large amount of narcotics in the vehicle that could be located in multiple different places. (R. 68-69). These observations occurred while Officer

Bailey was talking with Appellant and informing him the reason for the stop; therefore it was not an extension to the traffic stop. Illinois v. Caballes, 543 U.S. 405 (2005) (recognizing no constitutional violation or unreasonable extension resulted from a simultaneous dog sniff search conducted while another officer was completing the initial purpose of the stop).

Further, "A non-confidential informant should be given a higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false." State v. Pope, 410 S.C. 214, 224, 763 S.E.2d 814, 819 (Ct. App. 2014). Here, Heron was non-confidential informant since it was a face-to-face encounter with the officers, meaning she could potentially be held accountable if she provided false information to police. Also, she made incriminating admissions to officers by admitting to being a drug user and using drugs with Appellant which enhanced her reliability.

The search of Appellant's vehicle was proper. Generally, a warrantless search is per se unreasonable and violates the Fourth Amendment prohibition against unreasonable search and seizures. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007) (citing State v. Freiburger, 366 S.C. 125, 620 S.E.2d 787 (2005)). However, a warrantless search will withstand constitutional scrutiny where the search falls within one of the several well-recognized exceptions to the warrant requirement. Id. "These exceptions include: (1) Search incident to lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception' (5) plain view doctrine; (6) consent; and (7) abandonment." State v. Moore, 377 S.C. 299, 309, 659 S.E.2d 256, 261 (2008). The two bases for the automobile exception are (1) the ready mobility of automobiles and the potential that evidence may be lost before a warrant is obtained and (2) the lessened expectation of privacy in motor vehicles which are subject to governmental regulation. Id. at 310, 262.

"Pursuant to the automobile exception, if there is probable cause to search a vehicle, a warrant is not necessary so long as the search is based on facts that would justify the issuance of a warrant even though a warrant has not been actually obtained." State v. Weaver, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007). "The burden of establishing probable cause as well as the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures is upon the prosecution." State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (1995) (citation omitted).

> The standard for probable cause to conduct a warrantless search is the same as that for a search with a warrant. That is, a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search, that there exists a practical, nontechnical probability that a crime is being committed or has been committed and incriminating evidence is involved.

Id. (citations omitted). "The automobile exception to the search warrant requirement is based on: (1) the ready mobility of automobiles and the potential that evidence may be lost or destroyed before a warrant is obtained and (2) the lessened expectation of privacy in motor vehicles {that} are subject to government regulation." State v. Bonilla, 429 S.C. 253, 278, 838 S.E.2d 1, 13-14 (Ct. App. 2019) (citing State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007)). "If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more." Id. In determining whether the automobile exception was satisfied, the principle components of the determination of probable cause will be whether the events leading up to the search, viewed from the standpoint of an objectively reasonable officer, amount to probable cause. Bonilla, 429 S.C. at 278, 939 S.E.2d at 14. "Probable cause exists where there is a justifiable determination based upon the totality of the circumstances and in view of all the evidence available at the time of the search, that there exists

a practical, non technical probability that a crime is being committed or has been committed and incriminating evidence is involved." Id. at 279, 838 S.E.2d at 14 quoting State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995).

Here, Bryan spoke with Herron, who had been dating Appellant for approximately a year and a half, and told Bryan that she had used drugs with Appellant throughout this relationship. (R. 68-69, 74). Herron told Bryan that there was a possibility that there was a large amount of drugs in the vehicle. (R. 68-69). Appellant was then detained, and his license was run by Bailey and subsequently came back suspended. (R. 26). Based on the information of drugs in the vehicle by the passenger and Appellant driving under a suspended license, there was probable cause to conduct a warrantless search of the vehicle.

However, even if there is no probable cause, the evidence would have been found based on the inevitable discovery doctrine.[1] The inevitable discovery doctrine provides that illegally obtained evidence may nevertheless be admissible if the prosecution can establish by a preponderance of the evidence that the evidence would have ultimately been discovered by lawful means. State v. Cardwell, 425 S.C. 595, 601, 824 S.E.2d 451, 454 (2019) (citing Nix v. Williams, 467 U.S. 431, 444, 104 S. Ct. 2501, 81 L.Ed.2d 377 (1984)). A preponderance of the evidence establishes that the evidence found in Appellant's vehicle would have ultimately been discovered by lawful means. Driving under a suspended license is an arrestable offense. See S.C. Code § 56-1-460. Appellant was subsequently arrested for driving under suspension. (R. 38). Therefore, the car would have been searched in an inventory and the drugs would have

[1] "The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light, but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. However, the challenged evidence is admissible if it was obtained from a lawful source independent of the illegal conduct." State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996).

ultimately been found. In conclusion, the trial judge properly denied Appellant's motion to suppress. And therefore, the ruling should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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February 25, 2025

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2023-001755

THE STATE, Respondent,

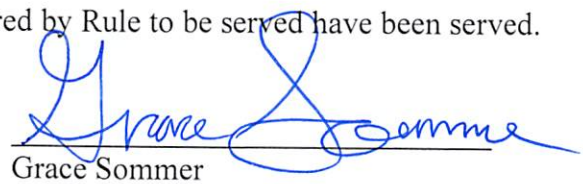
v.

KYLE NICHOLAS MOUZON, Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Jessica M. Saxon, counsel of record for the Appellant by electronic mail to the addresses listed for each counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 25th day of February, 2025.



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Good Afternoon Ms. Saxon,

Attached please find a Final Brief of Respondent in The State v. Kyle Nicholas Mouzon (2023-001755). This Brief will be filed today with the Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

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