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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO DORCHESTER COUNTY
Honorable Maite Murphy, Circuit Court Judge

Appellate Case No. 2024-000696

DANIEL J. LAWRENCE,

APPELLANT,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

BRIEF OF RESPONDENT
PURSUANT TO *WHITE V. STATE*

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Whether the trial court correctly found that Officer Jenkins had reasonable suspicion to conduct an investigatory stop when an anonymous tip was sufficiently corroborated by the officer's personal observations and based on decades of experience, the officer reasonably believed Appellant was engaged in criminal activity when Appellant matched the description of the tip, the car in which Appellant was a passenger evaded the officer after being spotted, and Appellant's conduct was suspicious in an area known for burglaries.

2. Whether the trial court correctly denied Appellant's motion to suppress because the warrantless search was reasonable under (1) the automobile exception when probable cause was established after the officer smelled marijuana, observed ashes, and found stolen debit cards while searching for weapons, and (2) the *Terry* exception when the officer observed a gun in plain view in the car and discovered evidence of theft while conducting a safety search for weapons.

STATEMENT OF THE CASE

In May 2019, the Dorchester County Grand Jury indicted Daniel J. Lawrence ("Appellant") for burglary – first degree (2018-GS-18-2104) and unlawful carrying of a handgun (2018-GS-18-2106). (App. 275; 278). On November 12-13, 2019, Appellant proceeded to a jury trial before the Honorable Maite Murphy. Assistant solicitors Donald Sorenson and George Smythe prosecuted the case. Appellant was represented by John Loy, Esq. Appellant was convicted by the jury, and Judge Murphy sentenced him to a concurrent sentence of forty (40) years for burglary – first degree and one (1) year for the weapon charge.

On December 9, 2019, a notice of appeal was filed on Appellant's behalf by John Loy. On January 6, 2020, the Court of Appeals dismissed the appeal for failure to timely serve the notice of appeal. *State v. Lawrence*, S.C. Ct. App. Order Filed Jan. 6, 2020. The remittitur was sent on January 24, 2020. (App. 311).

On May 18, 2020, Appellant filed an application for post-conviction relief ("PCR"), alleging trial counsel was deficient for failing to file a notice of appeal and other reasons. On February 8, 2024, an evidentiary hearing convened before the Honorable Paul M. Burch. Appellant was present and represented by Christopher Geel, Esq. Appellant knowingly and intelligently waived all grounds for PCR relief and proceeded solely on the issue of whether he is entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). Based on a letter from Appellant's trial counsel admitting to failing to timely file a notice of appeal, the State ("Respondent") conceded that Appellant is entitled to a belated appeal. (App. 305; 312).

On April 10, 2024, Judge Burch issued an Order granting Appellant a belated appeal under *White* and dismissing all other PCR claims with prejudice. Appellant's petition for a writ of certiorari and brief followed.

STATEMENT OF THE FACTS

On October 31, 2018, between 11 am and noon, an anonymous caller (later identified as Kim Donoghue, the victim's neighbor) called police to report that a Black man in a camo jacket was walking through her neighborhood acting suspiciously. (App. 6). The caller reported that the man was walking through the neighborhood empty handed, then about thirty (30) minutes later, was seen placing a black and white stripped bag behind the neighbor's house across the street from hers. (App. 6). The caller then reported that the man got into a silver-colored vehicle and was leaving. (App. 6).

Officer Hampton Jenkins testified that he was on patrol and was dispatched in reference to the call and at almost the exact time that the information was relayed, he observed the silver sedan pass him and could see a Black male with a camo jacket matching the caller's description. (App. 7). Officer Jenkins testified that when he passed by, the car "expedited" its way out of the neighborhood. (App. 39). Officer Jenkins testified that he waited until the car reached Dorchester Road to catch up to them. (App. 39). Officer Jenkins testified that it would have been a physical impossibility for them to get where they were ("from point A to point B") by following the speed limit. (App. 39). Officer Jenkins testified that the area was known for burglaries, most of which occurred in the daytime. (App. 37). Based on this information, Officer Jenkins waited for the car then initiated a traffic stop, believing he had reasonable suspicion of criminal activity. (App. 7; 40).

Officer Jenkins testified that when he approached the car, he smelled an "overwhelming odor of burnt marijuana" and observed a cupholder full of ashes. (App. 8; 10). Officer Jenkins testified that he asked Appellant, who was the passenger, why he was in the area, and Appellant responded that he was visiting his girlfriend but did not know what street she lived on when asked.

(App. 8-9). Officer Jenkins testified that he observed a black and white stripped bag between Appellant's legs that matched the description of the 911 call. (App. 10). Officer Jenkins testified that he could "clearly" see in plain view that electronics were in the bag. (App. 45). However, when asked by Officer Jenkins about what was in the bag, Appellant looked at the officer and stated it was dirty clothes. (App. 45).

A backup officer arrived, and the driver of the car, Tevin Beaton, was placed under arrest when dispatched advised that he was driving under a suspended driver's license. (App. 11). The backup officer ordered Appellant out of the car, and upon exiting, Officer Jenkins observed a gun in plain view on top of Appellant's bag. (App. 11; 46). Appellant took off his camo jacket and placed it on top of the bag as he exited the car. (App. 46). Officer Jenkins testified that he removed the gun to secure it for safety and removed Appellant's jacket to see if there were any other weapons. (App. 11-12). Officer Jenkins testified that in the pocket of Appellant's jacket, he found watches and debit cards with the victims' names on them. (App. 12-13). Officer Jenkins testified that in the bag that was between Appellant's legs, he found items that were later identified by the victims. (App. 13).

Pre-trial, Appellant made two motions to suppress the evidence seized, arguing Officer Jenkins lacked reasonable suspicion and lacked probable cause to conduct a search on the vehicle. (App. 4). The trial court denied Appellant's motion to suppress for lack of reasonable suspicion, finding that under all of the circumstances, Officer Jenkins had reasonable suspicion that Appellant was involved in criminal activity. (App. 109-111). The trial court explained its ruling as follows:

> In considering all of the circumstances that has been presented to the Court, and starting with reasonable suspicion, I think the officer did have reasonable suspicion. Officer Jenkins testified to different factors to give rise to that suspicion. We have to look at all the factors.
> ...

> 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...certainly relayed that the person was acting suspiciously, gave the description. The person 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.
>
> ...
>
> 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, the call comes in that matches the description of the suspicious activity, along with leaving the neighborhood, certainly I think that's an articulable factor that it may be involved in criminal activity.

(App. 109-111).

The trial court also denied Appellant's motion to suppress for lack of probable cause for search, finding that under all of the circumstances, the officer had probable cause for the search. The trial court explained its ruling as follows:

> Upon arriving – upon seeing the police officer, the car apparently accelerates speed.... 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 being somewhat combative, and the defendant's demeanor, and obviously hiding the truth somewhat in his description of 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.... He also had indicated that he didn't know what the address was.
>
> ...
>
> So as far as the probable cause for the search...There's probable cause based on the totally [sic] of the circumstances.

(App. 111-13).

Before the jury, Officer Jenkins testified to the same facts as the pre-trial motion regarding the stop and search and the contents of Appellant's jacket and bag. (App. 141-148). Jerome Brown, one of the victims, testified that the items found belonged to him and his family. (App. 209).

STANDARD OF REVIEW

Appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. *State v. Frasier*, 437 S.C. 625, 879 S.E.2d 762 (2022). The dual inquiry requires (1) the appellate court to review the trial court's factual findings for any evidentiary support, but (2) the ultimate legal conclusion in the case is a question of law subject to de novo review. *Id.* at 633-34, 879 S.E.2d at 766.

ARGUMENT

I. Under the totality of the circumstances, Officer Jenkins had reasonable suspicion to conduct an investigatory stop when an anonymous tip was sufficiently corroborated by the officer's personal observations and based on decades of experience, the officer reasonably believed Appellant was engaged in criminal activity when Appellant matched the description of the tip, the car in which Appellant was a passenger evaded the officer after being spotted, and Appellant's conduct was suspicious in an area known for burglaries.

The trial court correctly found under the totality of the circumstances that Officer Jenkins had reasonable suspicion to conduct an investigatory stop when the anonymous tip was corroborated by the officer's personal observations based on his experience. An investigative stop is constitutional if it is 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) (citing *Reid v. Georgia*, 448 U.S. 438 (1980)). Reasonable suspicion must be an objective, specific basis for suspecting the person stopped of criminal activity. *Frazier*, 437 S.C. at 635, 879 S.E.2d at 767. In determining whether reasonable suspicion exists, the court must consider the totality of the circumstances. *State v. Pradubsri*, 420 S.C. 629, 635, 803 S.E.2d 724, 727 (Ct. App. 2017).

Reasonable suspicion can arise from an anonymous tip provided that the totality of the circumstances justifies acting on the tip. *Taylor*, 401 S.C. at 108, 736 S.E.2d at 665. However, an anonymous tip requires an indicium of reliability. *Alabama v. White*, 496 U.S. 325, 328-29 (1990). If an anonymous tip lacks in indicia of reliability (meaning standing alone it would neither warrant a person of reasonable caution to believe that a stop was appropriate), then the tip requires "more than the tip itself" to establish reasonable suspicion. *See id.* at 329. To determine whether reasonable suspicion was established, courts must evaluate the totality of the circumstances by taking into account *facts known to the officer from personal observation* and giving the anonymous tip the weight it deserves in light of its indicia of reliability as *established through independent*

police work. See id. at 330-31 (emphasis added) (holding that at the time of the stop, the anonymous tip had been "sufficiently corroborated" to furnish reasonable suspicion that the defendant was engaged in criminal activity when the police made personal observations through independent police work).

In *Florida v. J.L.*, the United States Supreme Court held that officers did not have reasonable suspicion when officers received an anonymous call, and the officers did not make observations of their own. *Florida v. J.L.*, 529 U.S. 266, 270 (2000). The officers responded to an anonymous tip that a Black male was standing at a bus stop with a gun. *Id.* at 267. Upon arriving, the officers did not see a firearm, and the defendant did not make any threatening or otherwise unusual movements. *Id. Apart from the tip*, the officers had no reason to suspect the defendant of illegal conduct. *Id.* (emphasis added). The Court reasoned that the officers' suspicions of the defendant engaging in criminal activity were based *solely* on the anonymous tip and *not from any observations of their own. Id.* at 270 (emphasis added).

In *Taylor*, the South Carolina Supreme Court held that officers had reasonable suspicion to conduct an investigatory stop when the officers received an anonymous call that a Black male on a bicycle appeared to be selling drugs in an area well-known to law enforcement for its high incidence of drug trafficking, and the defendant fled when spotted by officers. *Taylor*, 401 S.C. at 113, 736 S.E.2d at 667.[1] Officers responded to the anonymous call and observed the defendant matching the description provided. *Id.* at 106-107, 736 S.E.2d at 664. Officers observed the defendant and others "huddled up," and upon realizing that the officers were approaching, the defendant and his associate "immediately split up[.]" *Id.* The defendant rode his bicycle "in an apparent attempt to flee the area." *Id.* Believing that he had reasonable suspicion, the officer

[1] *Taylor* was decided under the old standard of review for Fourth Amendment suppression rulings: clear error. The current standard of review is provided in *State v. Frasier*.

conducted a pat down for weapons and found drugs. *Id.* The Court analogized the defendant's case to *United States v. Lender*, 985 F.2d 151 (4th Cir. 1993) (holding officers had reasonable suspicion when they observed the defendant engage in behavior they believed to be a drug transaction while patrolling an area they knew had a large amount of drug traffic). *Id.* at 108-11, 736 S.E.2d at 665-67. The *Taylor* Court reasoned that under the totality of the circumstances, the officers had reasonable suspicion based on the officers' past experiences, knowledge of the area for being high in drug traffic, the defendant's evasive conduct, and nothing contradicting the officers' suspicion that illegal activity was taking place. *Id.* at 111-12, 736 S.E.2d at 667.

A. Officer Jenkins's suspicion that Appellant was engaged in illegal activity was not based solely on the anonymous tip but was supported by the officer observing Appellant and the car, both of which matched the call's description, leaving the area in an evasive manner after being spotted.

Officer Jenkins's suspicion that Appellant was engaged in illegal activity was not based *solely* on the anonymous tip but was supported by the officer observing of Appellant and the car leaving the area in an evasive manner. Courts have recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. *Illinois v. Wardlow*, 528 U.S. 119 (2000). Evasive conduct is a factor that courts consider in determining whether reasonable suspicion exists. *Taylor*, 401 S.C. at 112, 736 S.E.2d at 667 (citation omitted).

In *Taylor*, the Court compared the facts of *Lender* to *United States v. Sprinkle*, 106 F.3d 613 (4th Cir. 1997). *Taylor*, 401 S.C. at 665-66, 736 S.E.2d at 108-110. In *Lender*, the court determined officers had reasonable suspicion when the defendant attempted to evade officers by turning his back and walking away when the officers tried to approach him. *Id.* at 109-10, 736 S.E.2d at 665-66 (citing *Lender*, 985 F.2d at 154). By contrast, in *Sprinkle*, the court held that officers did not have reasonable suspicion when after being spotted by police, the defendant drove in a "normal, unsuspicious fashion" and did not speed, drive erratically, or commit any traffic

violations. *Id.* at 110, 736 S.E.2d at 666 (citing *Sprinkle*, 106 F.3d at 616). The *Taylor* Court recognized flight as a factor that courts can consider under a totality of circumstances analysis. *Id.* at 112, 736 S.E.2d at 667 (holding the defendant's attempt to flee the area upon realizing the officers were approaching, along with other factors, gave officers reasonable suspicion under the totality of the circumstances).

Similar to the defendants in *Taylor* and *Lender*, the car in which Appellant was a passenger attempted to flee the area upon spotting Officer Jenkins. The anonymous tip was corroborated by Officer Jenkins' contemporaneous observations of Appellant and the car, both of which matched the identification provided by the caller: a Black male wearing a camo jacket and a silver car. (App. 6-7). Appellant argues the officer "barely observed the car before stopping it." However, the record refutes this as Officer Jenkins testified that he turned his car around and "waited for them." (App. 7). Officer Jenkins testified that he observed and saw the car "expedite" out of the neighborhood after the officer passed them. (App. 39). Instead of relying solely on the anonymous tip to initiate the stop, Officer Jenkins waited and observed the car acting in an evasive manner before acting.

Appellant argues that Officer Jenkins did not observe the car speeding away from him but assumed flight and inferred speeding. However, the record supports the officer's reasonable inference and belief based on his experience and common sense. Officer Jenkins testified that he was a patrolman with sixteen (16) years of experience with the North Charleston Police Department. (App. 5). It is reasonable to infer, based on his experience, that Officer Jenkins was familiar with the area he was patrolling. Officer Jenkins testified that when the car "expedited" out of the neighborhood, it took him until Dorchester Road to "catch up" to them. (App. 39). Officer Jenkins testified that although he did witness any traffic violation, he knew that the car was

exceeding the speed limit because "it would have been a physical impossibility" for the car to get from "point A" (the neighborhood) to "point B" (the area of the stop) by following the speed limit. (App. 39:7-23). Officer Jenkins' inference and belief that the car was speeding was based on his experience, common sense, and familiarity with the area. *Wardlow*, 528 U.S. at 119 ("the reasonable suspicion determination must be based on commonsense judgments and inferences about human behavior"); *Frasier*, 437 S.C. at 635, 879 S.E.2d at 767 ("courts must give due weight to common sense judgments reached by officers in light of their experience and training").

Appellant also argues that the record does not reflect whether the officer was in an identified patrol car or an unmarked vehicle. However, it is reasonable to presume that the officer was in an identified patrol car based on the Officer's testimony that on that particular day, he was wearing a uniform while on patrol. (App. 14:25-15:10). Notwithstanding, since the officer was dressed in uniform, Appellant would have known Officer Jenkins was police and attempted to flee upon seeing the officer.

Unlike the defendants in *J.L.* and *Sprinkle*, the car's movements were unusual and not normal. Thus, Officer Jenkins did not rely *solely* on the anonymous tip to establish reasonable suspicion because apart from the tip, the officer observed the car acting in a suspicious manner to evade him. Accordingly, the trial court correctly considered evidence of Appellant's evasion in its totality of circumstances analysis.

B. In addition to Appellant's evasion, Officer Jenkins's suspicion that Appellant was engaged in illegal activity was supported by the officer's knowledge that the area was known for daytime burglaries, and Appellant suspiciously placing a bag behind a house during the daytime after being seen without one thirty (30) minutes prior.

In addition to Appellant's evasion from the officer, Officer Jenkins's suspicion that Appellant was engaged in illegal activity was also based on Appellant's conduct and the officer's knowledge that the area was known for daytime burglaries. Although not dispositive, being in a

high crime area can be a consideration in the court's analysis of the totality of circumstances to determine whether reasonable suspicion existed. *State v. Anderson*, 415 S.C. 441, 447, 783 S.E.2d 51, 55 (2016) (stating that an area's disposition toward criminal activity is an articulable fact (citing *Sprinkle*, 106 F.3d at 617)).

In *Taylor*, the Court determined the officers had reasonable suspicion when the area was known for high incidence of drug traffic and the anonymous tip provided that the defendant was possibly selling drugs in the area. *Taylor*, 401 S.C. at 111-12, 736 S.E.2d at 667. The officers responded and found the defendant "huddled up" with another male. *Id.* The *Taylor* Court acknowledged the officer's testimony that "according to past experience, 'ninety percent of the time,' this sort of behavior being indicated the presence of illegal activity." *Id.*

Similar to the officers in *Taylor*, Officer Jenkins' belief that Appellant was engaged in criminal activity was supported by his knowledge that the area was known for daytime burglaries and Appellant's suspicious conduct in the neighborhood. Officer Jenkins testified that he had sixteen (16) years of experience in North Charleston (App. 5), and the area was known for daytime burglaries. (App. 37). Officer Jenkins testified that in his experience, when they receive calls reporting suspicious behavior, some people are minding their own business, and some people are engaged in criminal activity. (App. 37). Although Officer Jenkins' testimony that when a call is received, "some" people are engaged in criminal activity is not as high of a percentage as the ninety percent (90%) occurrence in *Taylor*, the Officer appropriately considered Appellant's conduct in the area along with his knowledge that calls sometimes revealed that criminal activity occurred. Officer Jenkins testified that Appellant was seen placing a bag behind her neighbor's house after being seen empty-handed just thirty (30) minutes prior. (App. 6). This occurred between 11 am and noon (i.e. daytime). (App. 6).

Corroborating the Officer's knowledge about the occurrence of daytime burglaries, Appellant's conduct in placing a bag behind the neighbor's house after being seen empty-handed thirty (30) minutes prior was suspicious, as acknowledged by the trial court. (App. 110:17-18). Appellant's suspicious conduct in an area known for daytime burglaries and subsequent attempt to flee when spotted supported Officer Jenkins' suspicion that he was engaged in illegal activity. *Wardlow*, 528 U.S. at 124 ("it was not merely [the defendant's] presence in an area of heavy narcotics that aroused the officers' suspicion, but his unprovoked flight upon noticing police"). Thus, under the totality of the circumstances, Officer Jenkins' experience and knowledge of the area, Appellant's conduct in placing a bag of electronics behind the house, and Appellant's attempted evasion supported the Officer's belief of reasonable suspicion. Accordingly, the trial court correctly considered the high crime area in its totality of the circumstances analysis.

C. This Court must give due weight and deference to Officer Jenkins' judgement and belief that reasonable suspicion was established in light of the officer's twenty (20) years of experience in law enforcement, knowledge, expertise, and common sense.

This Court must give due weight and deference to Officer Jenkins' judgement and belief that reasonable suspicion was established in light of the officer's twenty (20) years of experience in law enforcement, knowledge, expertise, and common sense. It is well-settled that in a reasonable suspicion inquiry, "courts *must* give due weight to the commonsense judgments reached by officers in light of their experience and training." *Taylor*, 401 S.C. at 112-13, 736 S.E.2d at 667 (emphasis added); *Frasier*, 437 S.C. at 635, 879 S.E.2d at 767 (emphasis added); *State v. Robinson*, 396 S.C. 577, 585, 722 S.E.2d 820, 824 (Ct. App. 2012) ("[t]he officer's experience and intuition is an additional factor to consider in determining whether reasonable suspicion exists") (citation omitted). "We remain ever mindful of the difficult and often dangerous situation officers encounter daily and acknowledge that we give *great deference* to their experience and expertise." *Anderson*,

415 S.C. at 448, 783 S.E.2d at 55 (emphasis added). Officers are not required in the absence of probable cause to simply "shrug their shoulders and allow a crime to occur." *Taylor*, 401 S.C. at 109, 736 S.E.2d at 665 (quoting *Lender*, 985 F.2d at 154)).

Here, in light of his experience and knowledge, Officer Jenkins reasonably believed that he had reasonable suspicion to conduct the stop based on the totality of the circumstances. Officer Jenkins testified that he worked in law enforcement for twenty (20) years, including sixteen (16) years with the North Charleston Police Department. (App. 5). Officer Jenkins testified that he stopped the car in which Appellant was a passenger under a reasonable suspicion that criminal activity was afoot. (App. 40: 11-14).

Appellant argues that Officer Jenkins' stop was based *solely* on the anonymous tip and no supplemental observations. However, the Court rejected this argument in *Taylor* and stated, "[t]his view of the facts ignores the testimony of the officers regarding their observations." *Taylor*, 401 S.C. at 112-13, 736 S.E.2d at 667 (determining the officers had reasonable suspicion for the stop when the officers testified that they believed they had reasonable suspicion under the circumstances). Likewise, Appellant's argument ignores the testimony of Officer Jenkins regarding his observations of Appellant in light of his experience.

Officer Jenkins did not rely solely on the anonymous tip because the tip was "sufficiently corroborated" by Officer Jenkins' personal observations and independent police work in light of his experience, knowledge, and common sense. Additionally, nothing that Officer Jenkins observed contradicted his suspicion. *Id.* at 112, 736 S.E.2d at 667 (stating nothing contradicted the officers' suspicions that illegal activity was taking place). Thus, under the totality of the circumstances, the trial court correctly found that Officer Jenkins had reasonable suspicion to initiate the stop.

II. The warrantless search was reasonable under (1) the automobile exception when probable cause was established after the officer smelled marijuana, observed ashes, and found stolen debit cards while searching for weapons, and (2) the *Terry* exception when the officer observed a gun in plain view in the car and discovered evidence of theft while conducting a safety search for weapons.

Alleging the State failed to identify an exception to the warrant requirement, Appellant argues the warrantless search was unlawful under *Arizona v. Grant*, 556 U.S. 332 (2009) (establishing a two-part rule for vehicle searches incident to a recent occupant's arrest). However, the search was reasonable under the Fourth Amendment and *Grant* because two (2) exceptions to the warrant requirement apply in Appellant's case: the automobile exception and the *Terry* exception. *Grant*, 556 U.S. at 351 (stating that absent the court's justifications, 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*) (emphasis added).

Generally, a warrantless search is *per se* unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures. *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). However, a warrantless search withstands constitutional scrutiny and does not violate the Fourth Amendment where the search falls within one of several well recognized exceptions to the warrant requirement. *Id.* These exceptions include the following: (1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk (i.e. *Terry*); (4) automobile exception; (5) the plain view doctrine; (6) consent; and (7) abandonment. *State v. Brown*, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012).

A. The warrantless search was reasonable and lawful under the automobile exception because Officer Jenkins had probable cause to search the car after smelling marijuana, observing ashes, and finding stolen debit cards while searching for weapons.

The search was reasonable and thus, did not violate the Fourth Amendment. Under 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." *Weaver*, 374 S.C. at 320, 649 S.E.2d at 482 (citation omitted). The automobile exception to the search warrant is based on: (1) the ready mobility of automobiles and the potential that evidence may be lost or destroyed before evidence is obtained and (2) the lessened expectation of privacy in motor vehicles which are subject to government regulation. *Id.* (citation omitted). 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.* (citation omitted).

Here, Officer Jenkins was permitted under the Fourth Amendment to search the car without a warrant because the officer had probable cause to believe the car contained contraband. Officer Jenkins testified that when he approached the car after initiating a traffic stop, he smelled an "*overwhelming* odor of burnt marijuana." (App. 8) (emphasis added). Officer Jenkins also testified that he observed a cupholder full of ashes. (App. 10). By smelling an overwhelming odor of marijuana and observing ashes, Officer Jenkins had probable cause to believe the car contained contraband, such as illegal drugs. As a result, Officer Jenkins was permitted to search the car without a warrant and was permitted to search anywhere in the car where illegal drugs could be located, including Appellant's jacket and bag. *State v. Morris*, 395 S.C. 600, 610, 720 S.E.2d 468, 472 (Ct. App. 2011) (holding officers had probable cause to search anywhere in the vehicle where marijuana could be located where the officer testified that he smelled the odor of burnt marijuana and observed hallowed blunts in the car).

Additionally, Officer Jenkins had probable cause to believe there was additional evidence of theft in the car when the officer found the victim's stolen debit cards in Appellant's jacket pocket while searching Appellant for weapons after observing a gun in plain view (App. 11-13).

Pennsylvania v. Mimms, 434 U.S. 106 (1977) (holding a police officer may order a person out of a vehicle and search the individual for weapons where he or she has reason to believe the person is armed and dangerous); *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993) (holding any evidence an officer finds while doing a protective search for weapons search be seized so long as the officer's search stayed within the bounds of *Terry*). Upon finding the stolen debit cards, Officer Jenkins had probable cause to search other areas of the car where evidence of theft could be found, including Appellant's bag. Thus, Officer Jenkins' warrantless search of the car was lawful under the Fourth Amendment. Accordingly, the trial court correctly denied Appellant's motion to suppress.

B. The warrantless search was reasonable and lawful under *Terry* exception because Officer Jenkins discovered evidence of theft while conducting a safety search for weapons in the car after observing a gun in plain view.

The search was reasonable and thus, did not violate the Fourth Amendment under the *Terry* exception. In *Terry*, the United States Supreme Court held that where an officer observes unusual conduct and has reasonable suspicion that criminal activity may be afoot and the person with whom he is dealing may be armed and presently dangerous, then the officer may conduct a limited search to discover weapons that might be used against the officer. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Recognizing that traffic stops are especially fraught with danger to police officers, the Court extended the *Terry* exception to police searches of persons in automobiles for weapons where the officer has reasonable suspicion that the person is armed and dangerous. *Mimms*, 434 U.S. at 11-12. A *Terry* search on the basis of reasonable suspicion, not probable cause, must be strictly limited to what is necessary for the discovery of weapons that might be used to harm the officer or others nearby. *Dickerson*, 508 U.S. at 373. Any evidence the officer finds during a *Terry* search may be seized so long as the officer's search stayed within the bounds of *Terry*. *Id.*

In *Smith*, the court held that an officer's warrantless search of a defendant in response to a traffic stop did not violate the Fourth Amendment when the officer had reasonable suspicion that the defendant may be armed, and the officer found drugs while searching the defendant for weapons. *State v. Smith*, 329 S.C. 550, 495 S.E.2d 798 (Ct. App. 1998). An officer stopped the defendant for a traffic violation, and when ordered by another officer to step out of the vehicle and asked whether he had any weapons, the defendant did not respond. *Id.* at 553-54, 495 S.E.2d at 800. Believing the defendant may be armed, the officer searched him for weapons and found drugs in the defendant's jacket pocket. *Id.* The court determined that the search and seizure were reasonable and affirmed the trial judge's denial of the defendant's motion to suppress the evidence seized. *Id.*

Similar to *Smith*, after observing a gun in the car, Officer Jenkins had reason to believe Appellant was armed and searched Appellant's jacket and bag for weapons. (App. 11-13; 46). While searching for weapons, Officer Jenkins found evidence of theft: debit cards with the victims' names on them and electronics. (App. 11-13; 46). The incriminating nature of the debit cards and electronics was immediately apparent where the debit cards did not bear Appellant's name, and Appellant gave false statements to Officer Jenkins regarding the bags' contents despite the officer's "clear" observations otherwise (App. 45:6-9; 12:14-21). *Taylor*, 401 S.C. at 116, 736 S.E.2d at 669 (holding the incriminating nature of the contents of a tennis ball containing drugs became apparent while the officer was still in the process of ensuring the defendant was unarmed). Officer Jenkins' search of Appellant's bag did not exceed the scope of a *Terry* search because the officer had a reasonable suspicion that Appellant may be armed, and Appellant's bag was a place where other weapons could have been hidden. Thus, the search and subsequent seizures were lawful under the Fourth Amendment, and the trial court correctly denied the motion to suppress.

CONCLUSION

Based on the foregoing argument, this Court should find that the trial court did not err in denying Appellant's motions to suppress and affirm Appellant's convictions and sentences.

Respectfully submitted,

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