STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Pickens County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

ROBERT ALLEN HENDERSON, JR.,

APPELLANT.

APPELLATE CASE NO. 2024-001211

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# INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred denying appellant's motion to suppress drug evidence found during a warrantless search of appellant in violation of the Fourth Amendment where no exception applied, and appellant's will was overborne such that his consent was not voluntarily given?

## STATEMENT OF THE CASE

On July 25, 2023, a Pickens County grand jury indicted appellant for possession with intent to distribute (PWID) methamphetamine. Indictment. On July 8-9, 2024, appellant's case was called to trial before the Honorable Patrick Cleburne Fant, III, and a jury. Tr. 1. Katelyn Williams and Jeffery Zuschke represented appellant. Tr. 1. Assistant solicitors, Adam Norris and Jake Hofferth, prosecuted for the state. Tr. 1.

The jury found appellant was *not guilty* of PWID methamphetamine but guilty of simple possession of methamphetamine.[1] Tr. 184, ll. 13-23; verdict form. The trial court sentenced appellant to ten years' imprisonment, suspended upon the service of four years' imprisonment and three years' probation. Tr. 188, ll. 12-17.

This appeal follows.

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1 The transcript reflects the jury found appellant guilty of simple possession of "marijuana." Tr. 184, ll18-19. That is an error in the transcript as the jury charge, verdict form, and sentence sheet both reflect the accurate lesser included charge was possession of methamphetamine and appellant was not charged with any crime related to marijuana. Tr. 177, l. 22—179, l. 2; Verdict form; Sentence sheet.

## STANDARD OF REVIEW

In *State v. Frasier*, the South Carolina Supreme Court clarified its standard of review for cases involving an appeal from a motion to suppress based on Fourth Amendment grounds. 437 S.C. 625, 879 S.E.2d 762 (2022). In *Frasier* the Court explained due to the "dawn of the technological age, appellate courts are no longer dependent on the trial court" when the appellate court reviews the evidence. *Id*, at 633–34, 879 S.E.2d at 766. Accordingly, the Court held "appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. *Id.* This dual inquiry means [the appellate court] review[s] the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion ... is a question of law subject to de novo review." *Id.*

## ARGUMENT

The trial court erred denying appellant's motion to suppress drug evidence found during a warrantless search of appellant in violation of the Fourth Amendment where no exception applied, and appellant's will was overborne such that his consent was not voluntarily given.

**Introductory facts**

On January 6, 2022, around 10:30 pm-11:00 pm, officer Terry Bradley was patrolling the Sun Inn motel in Pickens County. Officer Bradley observed a white Toyota Corolla leaving the parking lot. Bradley alleged the tag light on the car was not illuminated. He conducted a traffic stop of the car and after a short interaction removed appellant from the car and searched him finding 3.53 grams of methamphetamine in appellant's pocket. Tr. 32—55.

**Pre-trial motion to suppress**

Prior to the start of trial defense counsel made a motion to suppress the drug evidence. Tr. 29—93. Defense counsel contended the drug evidence found in appellant's pocket should be suppressed where the stop was unlawful, the unlawful stop led to an unlawful seizure of appellant resulting in appellant's inability to consent. Thus, the search of appellant and the car were unlawful where appellant's consent was invalid because of the nature of the unlawful detention. Tr. 31, ll. 4-12; 72, ll. 1-5.

The arresting officer Deputy Terry Bradley testified he was patrolling "the Sun Inn [] a known high crime drug area" on January 6, 2022, between 10:30 pm and 11pm. Officer Bradley testified he noticed a white Toyota Corolla had no working tag lights and initiated a traffic stop. Tr. 32, l. 14—33, l. 5. Bradley asked the driver, appellant, to provide his driver's license, registration, and proof of insurance. Appellant provided his license and a DMV record and told Bradley he would have to call for insurance because he did not own the car. State's exhibit, 6,

Bradley's BWC time 0.35. Once found, appellant provided the registration for the car. Bradley testified appellant was "nervous" because appellant's hands were shaking, and he handed wrong documents to Bradley. He stated, based on appellant's supposed nervousness and confusion regarding the registration he believed appellant could be under the influence of alcohol or drugs. Bradley professed appellant's suspicious behavior consisted of handing him wrong documents, shaking hands, and smoking a cigarette. Tr. 33, ll. 9-25; 35, ll. 12-16. He testified there was nothing in plain view in the car or on appellant's person to cause any suspicion of the presence drugs or weapons. Tr. 39, l. 21—42, l. 12.

Bradley asked appellant if there were any weapons in his car, and then followed up by asking if he could search the car. He next asked appellant to get out of his car and quickly requested to search appellant. Appellant agreed to each request of Bradley's requests. Bradley reached in appellant's jacket pocket and found a clear baggie with a crystal-like substance. Bradley then arrested appellant. Tr. 34, ll. 1-21. He acknowledged that without appellant's consent he could not have searched the car or appellant based on the encounter. Tr. 50, ll. 5-10. The encounter was recorded on Bradley's body-worn camera and was admitted pre-trial as Defendant's exhibit 1.[2]

Appellant testified he was driving another person's car and that the tag lights had "fallen down" but that he had new bulbs and tried to place them. Appellant contended the tag light was illuminated on the evening he was stopped and arrested. Tr. 52, l. 15—53, l. 5.

Initially defense counsel argued the traffic stop was unlawful where the tag lights were working and there was no evidence other than the officer's testimony that the lights were out. Tr. 56, ll. 7-25. Counsel pointed out that there was a pending bill that precluded a traffic stop for

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2 Defendant's exhibit 1 was later changed to state's exhibit 6. Tr. 141, ll. 2-12. This exhibit is on file with the Court.

this reason in the absence of another traffic violation. Tr. 57, ll. 4-16. The solicitor argued the traffic stop was lawful where the officer testified the tag light was not working and that the officer had reasonable suspicion to continue the investigation because appellant handed him the wrong paperwork. They contended the totality of the circumstances required the officer to remove appellant from the vehicle and that regardless appellant gave consent for the search. Tr. 58, l. 11—59, l. 20. The court denied defense counsel's motion and found the traffic stop was lawful. Tr. 61, ll. 13-19.

Next, defense counsel asserted the drug evidence found during the stop should be suppressed because appellant was unlawfully detained after he was removed from his car. Counsel contended appellant was lawfully asked out of the car but when the officer began asking about searching the car and his person an unlawful detention began. Counsel averred that, while any traffic stop may have safety concerns, the officer here admittedly saw no weapons, no ammunition, and no other suspected contraband in plain view and there was nothing more the officer could have found in furtherance of his investigation into the tag light. Tr. 62, l. 1—64, l. 8. She argued the officer abandoned the original investigation and the detention became illegal where there was not reasonable suspicion to prolong the stop. Tr. 66, l. 15—67, l. 15. Counsel argued the officer had the authority to remove appellant from the car but did not have legal authority to perform a frisk. Tr. 73, ll. 7-15. She further asserted appellant's consent was invalid because of the unlawful detention and thus all evidence should be suppressed. Tr. 74, ll. 2-19; 86, l. 7—89, l. 3.

The solicitor argued that because of the brevity of the encounter, the scope of the original stop was not exceeded and that because appellant handed the officer a wrong document the

investigation for the stop had not been completed. Tr. 75, l. 19—77, ll. 24. He further contended appellant's consent was voluntary under the circumstances. Tr. 89, ll. 6-24.

The court denied the motion to suppress finding the officer did not exceed the scope of the stop and therefore there was not an unlawful detention. The court further found appellant's consent was voluntary. Tr. 92, l. 14—93, l. 24.

**Discussion**

"A person has been seized within the meaning of the Fourth Amendment at the point in time when, in light of all the circumstances surrounding an incident, a reasonable person would have believed that he was not free to leave." *Robinson v. State*, 407 S.C. 169, 181, 754 S.E.2d 862, 868 (2014). Once police pull over a motor vehicle 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. Pichardo*, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing *Pennsylvania v. Mimms*, 434 U.S. 106 (1977)). "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*, 138 F.3d 126 (4th Cir. 1998)).

To prolong or exceed the scope of a stop beyond the initial traffic violation, law enforcement must have reasonable suspicion that criminal activity is occurring. *Robinson*, 407 S.C. at 182, 754 S.E.2d at 868-69 ("If, during the stop of the vehicle, the officer's suspicions are confirmed or further aroused—even if for a different reason than he initiated the stop—the stop may be prolonged, and the scope of the detention enlarged as circumstances require."). While reasonable suspicion is not susceptible to a rigid, formulaic approach, it requires more than a mere hunch or unparticularized suspicion. *Id.* at 182, 754 S.E.2d at 868. For an officer to have reasonable suspicion, "there [must] be an objective, specific basis for suspecting the person

stopped of criminal activity." *Id.* Although reasonable suspicion is not a high bar and "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop." *Illinois v. Wardlow*, 528 U.S. 119 (2000). This inquiry involves the totality of the circumstances, and "[c]ourts must give due weight to common sense judgments reached by officers in light of their experience and training." *State v. Moore*, 415 S.C. 245, 252-53, 781 S.E.2d 897, 901 (2016).

In *State v. Frasier*, the South Carolina Supreme Court held the police officer lacked reasonable suspicion to further detain the defendant after the initial traffic stop and the defendant did not voluntarily consent to the search of his person437 S.C. 625, 879 S.E.2d 762 (2022). In that case, two plainclothes officers were observing a bus station as part of the department's narcotics division. *Id.* at 629, 879 S.E.2d at 764. They saw a man, Frasier, leaving the station and look both ways before walking to a car driven by a woman. *Id.* When the car left the station, the officers noted that one of the brake lights was not working and called a patrol officer to conduct a traffic stop of the car. *Id.*

The officer that stopped the car testified when he initiated the stop the driver took longer than usual to pull over and when he arrived at the car her pant zipper was down. *Id.* The officer testified her zipper being down suggested she was potentially hiding contraband in her pants. *Id.* He also testified Frasier was nervous and was sweating profusely. *Id.* at 630, 879 S.E.2d at 764. Frasier was removed from the car and searched. *Id.* Frasier filed motion to suppress contending the officer lacked reasonable suspicion to prolong the stop and that he did not consent to a search of his person. *Id.* at 630, 879 S.E.2d 765. The motion to suppress was denied but reversed by the Court. *Id.* at 631, 879 S.E.2d 765.

In *State v. Moore*, the Court came to the opposite conclusion finding the officer had reasonable suspicion to further detain the defendant after the initial traffic stop. 415 S.C. 245, 781 S.E.2d 897 (2016). In that case, the Court found the totality of factors supported the trial court's finding that the officer had reasonable suspicion to prolong the stop where in addition to Moore's nervousness, Moore had a large sum of money in his pocket and Moore had an unusual itinerary. *Id.* at 253-255, 781 S.E.2d at 901-902.

Here, the officer did not have reasonable suspicion to prolong the traffic stop of appellant. Appellant was cooperative albeit a bit unprepared with documents. He explained it was not his car and he was not familiar with which piece of paper was the registration and did not have the insurance card at hand. Bradley did not need to do any further investigation into the taillight, if it is to be believed that the light was indeed not working. There was no reason for Bradley to search either the car or appellant in furtherance of the taillight investigation. Instead of going to write a ticket Bradly unlawfully prolonged the stop and began another investigation citing no other reason than appellant's nervousness which under our case law is not sufficient.

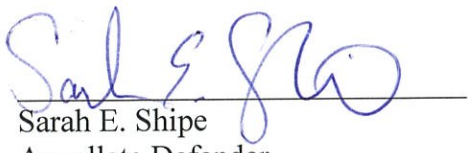
> **Whether a consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the "totality of the circumstances."** The burden is on the State to show voluntariness. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); *State v. Middleton*, 266 S.C. 251, 222 S.E.2d 763 (1976); vacated on other grounds, 429 U.S. 807, 97 S.Ct. 44, 50 L.Ed.2d 69 (1976), reaffirmed 268 S.C. 152, 232 S.E.2d 342 (1977); *State v. Newman*, 261 S.C. 352, 200 S.E.2d 82 (1973), cert. den. 417 U.S. 932, 94 S.Ct. 2643, 41 L.Ed.2d 235. This "totality of the circumstances" test applies whether the consent was given in a noncustodial situation, *Schneckloth v. Bustamonte*, *supra*, and *State v. Ellefson*, 266 S.C. 494, 224 S.E.2d 666 (1976), or in custodial situation, *United States v. Watson*, 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976).

*State v. Wallace*, 269 S.C. 547, 550, 238 S.E.2d 675, 676 (1977) (emphasis added).

Under the totality of the circumstances appellant's consent to search was not voluntary. Appellant was stopped late in the evening and removed from his car. He was not free to leave but was not yet officially placed under arrest. Notwithstanding his status, appellant was under the impression that he could not deny Officer Bradley's request to search his person or his vehicle. Accordingly, this Court should reverse the trial court's denial of appellant's motion to suppress drugs found during the warrantless search of appellant.

## CONCLUSION

Based on the foregoing the appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.



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This 10th day of June, 2025.