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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Spartanburg County
Honorable Roger L. Couch, Circuit Court Judge
Court of Appeals Appellate Case No. 2011-191327

THE STATE,

Petitioner,

vs.

ASHLEY EUGENE MOORE,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

I.

The Court of Appeals erred in reversing Respondent's convictions and sentences because it misapplied the standard of review used in Fourth Amendment cases and misapplied the totality of the circumstances test used in search and seizure cases. The officer's decision to extend the scope and duration of the traffic stop was reasonable and justified under the totality of the circumstances based on the existence of multiple factors establishing a reasonable and articulable suspicion of criminal activity.

STATEMENT OF THE CASE

Procedural History

On October 22, 2010, a Spartanburg County Grand Jury indicted Respondent for trafficking cocaine base and possession of a weapon during the commission of a violent crime.

On April 25, 2011, Respondent proceeded to trial before a jury. Robert Hall represented Respondent, and Assistant Solicitor Eddie Hunter represented the State. The jury found Respondent guilty as charged.

Thereafter, the Honorable Roger L. Couch sentenced Respondent to twenty-five years of imprisonment for the trafficking cocaine base conviction and five years of imprisonment for the possession of a weapon during the commission of a violent crime conviction. Judge Couch ran the sentences concurrently.

On April 27, 2011, Respondent served a timely notice of intent to appeal. On April 2, 2013, the Court of Appeals heard oral argument on this matter. On July 17, 2013, the Court of Appeals issued an opinion in which it reversed Respondent's convictions and sentences. State v. Moore, 404 S.C. 634, 746 S.E.2d 352 (Ct. App. 2013). On July 29, 2013, the State served a petition for rehearing *en banc*. On September 27, 2013, the Court of Appeals denied the State's petition for rehearing *en banc*. This petition for writ of certiorari follows.

Factual History

On June 30, 2010, at approximately 1:10 a.m., Officer Dale Owens and Corporal Ken Hancock observed Respondent driving on Interstate 85 ("I-85") above the posted speed limit. (R. pp. 8-9.) In addition, Respondent failed to maintain his lane. (R. p. 9.) When Officer Owens first observed Respondent, Respondent was driving in the far right

hand lane. (R. p. 14.) However, Respondent eventually moved to the center lane. (R. p. 14.) When Officer Owens turned his blue lights on to pull Respondent over for the traffic violations, Respondent turned on his left turn signal. (R. pp. 14-15.) Respondent eventually turned on his right turn signal; however, according to Officer Owens, it took Respondent longer than the average time to pull over and come to a stop. (R. p. 15.) In Officer Owens' training and experience, it appeared to him that Respondent was preparing to flee. (R. pp. 15-16.)

After Respondent pulled over, Respondent failed to turn off his right hand turn signal, which, according to Officer Owens, was indicative of criminal behavior. (R. p. 17.) When Officer Owens approached Respondent's vehicle, Respondent was talking on the phone. (R. p. 19.) Officer Owens had to tell Respondent to hang up the phone. Officer Owens testified that, in his experience, most innocent people hang up the phone when they get pulled over. (R. pp. 19-21.) However, drug traffickers often have to answer to a higher person. (R. p. 19.) In some drug trafficking cases, when a drug trafficker gets pulled over, he or she will leave the phone on so the person he or she answers to can hear what is happening during the stop. Sometimes, the drug trafficker will leave the phone on so in case he or she decides to flee, the person the drug trafficker answers to will know where the drug trafficker is located. (R. p. 19.)

When Officer Owens approached Respondent's vehicle, Officer Owens smelled alcohol coming from inside the vehicle. (R. p. 21.) Officer Owens gave a signal to Corporal Hancock indicating that he smelled alcohol. In Officer Owens' training and experience, people who traffic drugs will often drink alcohol in order to calm their nerves. (R. pp. 21-22.)

Officer Owens asked Respondent for Respondent's driver's license and registration. (R. p. 24.) Respondent informed Officer Owens that the car he was driving was a rental car. (R. p. 24.) Respondent provided the rental agreement and his driver's license. Officer Owens noticed that Respondent's hand was shaking heavily. (R. p. 24.) In Officer Owens' report, he noted that Respondent was overly nervous. (R. p. 24.) Additionally, Respondent's breathing was accelerated, and the pulse in his neck appeared to be elevated and pounding. (R. p. 24.)

Moreover, Respondent admitted he had been drinking. (R. p. 25.) At that point, Officer Owens asked Respondent to exit the vehicle. As Respondent exited his vehicle, he tried to pick up his cell phone, which indicated to Officer Owens that Respondent might try to flee. (R. p. 26.) When Respondent exited the vehicle, he started walking towards Officer Owens' patrol car; however, Respondent left the door to his rental car open. (R. pp. 25-26.) Respondent started smoking a cigarette, which indicated to Officer Owens that Respondent was trying to calm his nerves. (R. p. 27.)

Thereafter, Respondent consented to a pat down search. (R. pp. 27-28.) Respondent raised his hands in the air even though the officers did not ask him to raise his hands. (R. p. 28.) Officer Owens felt like what he perceived to be a large sum of wadded money in Respondent's pocket. (R. pp. 28-29.) Corporal Hancock took the wad of money out of Respondent's pocket. Respondent continued to keep his hands in the air in the "felony position." (R. p. 28.)

During the suppression hearing, Officer Owens testified that, in his estimation, Respondent had approximately $1,000 in his pocket. (R. pp. 28-29.) Because Respondent told the officers that he was unemployed, the amount of money in Respondent's pocket alarmed the officers of potential criminal activity. (R. p. 29.) Furthermore, Officer Owens

continued to smell alcohol on Respondent even though he was no longer near Respondent's car. Despite the fact the officers told Respondent not to place his hands in his pockets, Respondent placed his hands in his pockets. (R. pp. 30-31.)

Respondent told Officer Owens that he was coming from Lawrenceville, Georgia, which is a suburb of Atlanta, Georgia. (R. p. 32.) According to Officer Owens, Atlanta is a major drug source city. (R. p. 32.) In Officer Owens' fourteen years of experience, approximately 95 percent of the drugs he has found on I-85 came from Atlanta. (R. p. 32.)

Moreover, according to the rental agreement, Respondent was not the one who rented the vehicle he was driving. (R. p. 24; R. pp. 31-33.) According to Officer Owens, a third party rental vehicle is one of the largest indicators of criminal activity. (R. p. 33.) Respondent told Officer Owens that he was on the way to visit his grandmother, which raised Officer Owens' suspicions. (R. pp. 34-35.) According to Officer Owens, most people do not visit their grandparents that late at night. (R. p. 35.) Moreover, the vehicle was rented earlier that afternoon, so Officer Owens wondered why Respondent did not visit his grandmother earlier that day considering Respondent did not have a job. (R. p. 35.)

Thereafter, Officer Owens administered three field sobriety tests to Respondent. (R. pp. 38-43.) Officer Owens concluded that Respondent was not impaired. (R. p. 43.) Respondent claimed he did not have any weapons, alcohol, or drugs in the vehicle. (R. p. 43.) After Officer Owens administered the field sobriety tests, he asked Respondent for consent to search Respondent's car; however, Respondent refused to give his consent. (R. pp. 43-44.) In fact, Respondent told the officers that he did not want them to search his luggage, which was located in his trunk. (R. p. 44.)

Afterwards, Officer Owens gave Respondent a warning ticket.[1] However, Officer Owens advised Respondent that he was detaining Respondent based on his reasonable suspicion that Respondent was involved in criminal activity. (R. pp. 44-45.) Officer Owens informed Respondent that they had to wait for a drug detection unit to come to the vehicle. Respondent was in an investigative detention; however, he was not handcuffed. (R. p. 46.)

Fifteen minutes later, approximately 31 minutes into the stop, the drug detection unit arrived, and the drug dog alerted to an odor. (R. pp. 45-47; R. p. 69.) The officers searched Respondent's vehicle and found an opened alcoholic beverage under the front passenger seat of the vehicle. (R. pp. 47-48.) Moreover, the officers found two containers of crack cocaine, a semiautomatic weapon, and approximately $4,000 in the trunk of Respondent's vehicle. (R. p. 48.)

After hearing all arguments, the trial judge denied Respondent's motion to suppress the contraband. (R. p. 89.)

[1] According to Officer Owens, most people calm down after he tells them they are only getting a warning for the traffic violation; however, Respondent remained nervous. (R. p. 38; R. p. 53.)

ARGUMENT

I.

The Court of Appeals erred in reversing Respondent's convictions and sentences because it misapplied the standard of review used in Fourth Amendment cases and misapplied the totality of the circumstances test used in search and seizure cases. The officer's decision to extend the scope and duration of the traffic stop was reasonable and justified under the totality of the circumstances based on the existence of multiple factors establishing a reasonable and articulable suspicion of criminal activity.

The majority opinion of the Court of Appeals is flawed for two reasons: First, the majority's opinion misapplied the standard of review in Fourth Amendment cases and improperly reassessed the trial court's specific factual findings. Second, the majority's opinion misapprehended the totality of the circumstances test applied in Fourth Amendment cases.

Officer Owens detained Respondent for a reasonable period of time while he completed the traffic stop and field sobriety test. During the course of the stop, Officer Owens developed a reasonable and articulable suspicion after observing numerous indicators of criminal activity, which led him to extend the duration of the stop to investigate further. The officer's actions during the traffic stop were objectively reasonable under the totality of the circumstances, and Respondent's detention was proper in scope and duration. The trial judge properly denied Respondent's suppression motion, and his ruling is supported by the evidence. Thus, this Court should grant certiorari and affirm Respondent's convictions and sentences.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to

support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

Discussion

A. The majority's opinion misapplied the standard of review.

First, the State respectfully submits that the majority's opinion misapplied the standard of review used in Fourth Amendment search and seizure cases.

On August 14, 2013, while the State's petition for rehearing *en banc* was pending, this Court issued an opinion in State v. Provet, 405 S.C. 101, 747 S.E.2d 453 (2013), in which it held that the expansion of the traffic stop was justified because the officer had a reasonable suspicion supported by articulable facts that criminal activity was afoot. Notably, similar to the dissent's opinion in the case at hand, this Court's opinion in Provet reiterated the importance of its deferential standard of review:

> We agree with the trial court and the Court of Appeals that Officer had a reasonable suspicion supported by articulable facts that

> criminal activity was afoot, justifying a second seizure. **Moreover, because the record contains evidence that supports the trial court's finding, under our deferential standard of review we must affirm its finding.**

Id. at 112, 747 S.E.2d at 459 (emphasis added).

Thus, regardless of whether this Court agreed with the trial court's decision that reasonable suspicion existed to justify the expansion of the traffic stop, this Court pointed out that it had to affirm the trial court's ruling because the record contained evidence that supported the trial court's decision. See Id.

Further, in response to Provet's arguments that there were several factors indicative of innocent travel, this Court stated: "While we agree these facts could be found to weigh against Officer's reasonable suspicion, **that determination was for the trial court**, and we **must** affirm when any evidence in the record supports its finding." Id. (emphasizes added). Moreover, this Court expressly rejected the proposition that the officer's subjective determinations could taint an objectively valid seizure. Id. at 113, 747 S.E.2d at 459. Instead, this Court reemphasized that its standard of review required it to affirm the trial judge's ruling if there was any evidence in the record to support the trial judge's finding. Id. at 112, 747 S.E.2d at 459.

As the dissent correctly pointed out in this case, "the trial court made specific factual findings regarding observations it found to be significant, focusing on two key facts – the 'large sum of wadded money in [Moore's] pocket' and Moore's explanation that he was driving to his grandmother's house at 1:00 a.m." Moore, 404 S.C. at 645, 746 S.E.2d at 358. Notably, these two factual findings were supported by the evidence. (See R. pp. 28-29; R. pp. 34-35.) During the suppression hearing, the officer testified that he saw Respondent pull out a large wad of money from his pocket. (R. pp. 28-29.) Because

Respondent informed the officer he was unemployed, the large wad of money in Respondent's pocket raised the officer's suspicions. (R. p. 29.) The majority dismisses this factor by stating that the officer "had no way of determining the total amount of cash in [Respondent's] pocket, and it could have consisted of one dollar bills or one hundred dollar bills. Thus, this fact does not reasonably contribute to his reasonable suspicion." Moore, 404 S.C. at 644, 746 S.E.2d at 357. This statement by the majority illustrates the majority's misapplication of the appellate court's limited standard of review. As the dissent properly pointed out, "[t]he majority's decision expressly disregards this standard of review as to these key facts. First, the majority improperly reassesse[d] the significance the officer placed on the money found in [Respondent's] pocket." Id. at 645, 746 S.E.2d at 358.

Additionally, the majority disregarded its standard of review when it trivialized the trial court's specific factual finding regarding Respondent's explanation that he was on the way to his grandmother's house at 1:00 a.m. (R. pp. 34-35; R. p. 89.) The trial judge found that Respondent was "less than truthful about the purpose of his trip." (R. p. 89.) As the dissent properly pointed out, "we are not permitted to simply ignore this finding." Id. at 647, 746 S.E.2d at 359.

The State respectfully submits that the majority simply disagreed with the trial judge's conclusion and applied a de novo standard of review.

B. The majority's opinion misapplied the totality of the circumstances test.

Second, the State respectfully submits that the majority's opinion misapplied the totality of the circumstances test that is used in Fourth Amendment cases.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. Pichardo, 367 S.C. at 97, 623 S.E.2d at 847. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). Thus, only unreasonable searches and seizures are prohibited. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]").

For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). While the Fourth Amendment requires a stop to be reasonable under the circumstances, a traffic stop is reasonable per se when probable cause exists to believe a traffic violation has occurred. State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002). The reasonableness of a stop or detention "is measured in objective terms by examining the totality of the circumstances." Ohio v. Robinette, 519 U.S. 33, 39 (1996). "[A] minor traffic violation arrest will not be rendered invalid by the fact it was a 'mere pretext for a narcotics search.' " State v. Corley, 383 S.C. 232, 240, 679 S.E.2d 187, 191-192 (Ct. App. 2009) (citations omitted). "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." Whren v. United States, 517 U.S. 806, 813 (1996).

Once a lawful traffic stop is initiated, an officer may order the driver out of the vehicle and "may request a driver's license and vehicle registration, run a computer check, and issue a citation." Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (citing United

States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation). Such an investigatory stop must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848; see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) ("The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.").

Even if a traffic stop is initially lawful, the detention "can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." Illinois v. Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 ("Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, continued questioning beyond the duration of an initial traffic stop is lawful and permissible where: (1) the officer has a reasonable articulable suspicion of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Id.

Reasonable suspicion consists of "'a particularized and objective basis' that would lead one to suspect another of criminal activity." State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). " '[R]easonable suspicion' . . . is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that

deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act." United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)). "In this highly fact-specific inquiry, reasonable suspicion 'is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.' " State v. Wallace, 392 S.C. 47, 51-52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting Foreman, 369 F.3d at 781).

The reasonable suspicion standard "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[.]" Illinois v. Wardlow, 528 U.S. 119, 123 (2000). "Reasonable suspicion is more than a general hunch but less than what is required for probable cause." State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); see State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) ("Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch."). In order for an officer to have reasonable suspicion regarding the presence of illegal drugs, the officer is required to have a particularized and objective basis arising from the totality of the circumstances that would lead an individual to suspect drugs are located in a lawfully stopped vehicle. State v. Banda, 371 S.C. 245, 254, n. 4, 639 S.E.2d 36, 41 (2006).

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 104, 623 S.E.2d at 85. In reviewing the totality of the circumstances, the individual factors of the traffic stop must not be considered piecemeal or in isolation. See Branch, 537 F.3d at 337 ("Courts must look at the 'cumulative information available' to the officer . . . and not find a stop unjustified based merely on a 'piecemeal refutation of each individual' fact and inference[.]" (citations omitted)). Instead, all of the circumstances of the stop must be

considered as a whole to determine whether the officer's actions were reasonable in light of all of the information available to him at the time. See United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) ("[J]ust as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion."). "In applying the concept of reasonable suspicion to the various facts of a case, '[i]t is the entire mosaic that counts, not single tiles.' " Wallace, 392 S.C. at 52, 707 S.E.2d at 453 (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)). Thus, the presence of several factors seemingly consistent with innocent travel can establish reasonable suspicion when viewed together in totality. United States v. Sokolow, 490 U.S. 1, 9 (1989).

South Carolina courts have addressed what constitutes reasonable suspicion of criminal activity in the context of a traffic stop in several recent cases. In State v. Tindall, Tindall was stopped by law enforcement for speeding, swerving, and driving too closely. 379 S.C. 304, 307, 665 S.E.2d 188, 190 (Ct. App. 2008). Shortly thereafter, Tindall was given a warning ticket, but the officers continued to question him. Id. Approximately fifteen to twenty minutes into the stop, Tindall consented to a search of the vehicle and cocaine was discovered. Id. Subsequently, the trial court denied Tindall's motion to suppress the narcotics as the product of an illegal detention and search, and the Court of Appeals affirmed. Id. at 311, 665 S.E.2d at 192.

In affirming the denial of the suppression motion, the Court of Appeals ruled that the initial traffic stop ended when Tindall's license was returned and he was issued a warning. Id. However, the Court of Appeals determined the officer had a reasonable suspicion of criminal activity warranting Tindall's further detention based on the existence of the following indicators: (1) Tindall was nervous even after receiving a

warning; (2) Tindall was driving a rental car he had not rented; (3) Tindall was only driving one way; (4) Tindall's planned driving time was approximately eighteen hours in one day; and (5) the cities involved in the trip were known "drug hubs." Id.

But in a sharply-divided opinion, this Court reversed the decisions of the trial judge and the Court of Appeals. State v. Tindall, 388 S.C. 518, 520, 698 S.E.2d 203, 204 (2010). The majority of this Court determined the officer completed the initial purpose of the traffic stop when he informed the defendant he would issue a warning ticket and learned from dispatch defendant's license and registration were problem-free. Id. at 522, 698 S.E.2d at 205. The majority concluded that the information available to the officer at that time was not sufficient to constitute a reasonable suspicion of criminal activity. Id. at 523, 698 S.E.2d at 206. Thus, the majority held "the continued detention was illegal and the drugs discovered during the search of the vehicle must be suppressed." Id.

More recently, in Provet, this Court held that the officer had reasonable suspicion to justify the extension of the traffic stop. Provet, 405 S.C. at 115, 747 S.E.2d at 460. In Provet, a law enforcement officer stopped Provet for driving and equipment infractions on I-85 in Greenville County. Id. at 105, 747 S.E.2d at 455. During the course of the stop, the officer observed several signs of nervousness displayed by Provet, including shaking hands and accelerated breathing. Id. at 105-106, 747 S.E.2d at 455. The officer asked Provet several questions about where he was coming from and the purpose of his trip, and Provet provided seemingly deceptive responses. Id. at 106, 747 S.E.2d at 456. The officer additionally observed several air fresheners, numerous fast food bags, a cell phone, and some receipts in Provet's car. Id. Subsequently, after issuing a warning ticket, the officer immediately asked Provet if he had anything illegal in the car and asked for consent to search. Id. Provet consented and then fled when the officer attempted to remove a fast

food bag from the car filled with cocaine. Id. During trial, Provet moved to suppress the cocaine as the product of an illegal search, and the trial judge denied the motion, finding the officer had a reasonable suspicion of criminal activity justifying an extension of the traffic stop. Id. at 106-107, 747 S.E.2d at 456.

Regarding the initial detention in Provet, this Court noted that "ten minutes was a reasonable length of time for the initial traffic stop and that Officer's off-topic questions did not measurably extend the duration of the stop." Id. at 109, 747 S.E.2d at 458. Regarding the extension of the traffic stop after the warning was issued, this Court determined the officer possessed reasonable suspicion to extend the stop based on the presence of the following factors: (1) Provet's nervous behavior; (2) the fact third-party vehicle registration is common in drug trafficking; (3) Provet's inconsistent or deceptive responses to several questions; (4) the presence of numerous fast food bags, a cell phone, and some receipts; and (5) the presence of numerous air fresheners. Id. at 111-112, 747 S.E.2d at 459. Based on the factors present coupled with the officer's considerable experience, this Court concluded the trial court did not err in finding an extension of the stop was justified under the circumstances. Id. at 115, 747 S.E.2d at 460.

In State v. Wallace, Wallace was stopped on I-85 for committing a traffic violation. 392 S.C. at 50, 707 S.E.2d at 452. The officer took twelve minutes to complete the traffic stop and issued Wallace a citation. Id. However, based on his observations during the stop, the officer continued to question Wallace after issuing the ticket and requested consent to search the vehicle. Id. Wallace refused consent, and the officer walked a drug-sniffing dog around the vehicle. Id. The dog alerted on Wallace's car, and the officer found a substantial quantity of cocaine inside the car. Id. During trial, Wallace

moved to suppress the drugs found in his vehicle, and the trial judge denied the motion. Id.

On appeal, the Court of Appeals affirmed the trial judge's ruling. Id. The Court of Appeals determined the following factors observed by the officer during the traffic stop established a reasonable articulable suspicion to extend the duration of the stop: (1) Wallace's abnormal braking after the officer initiated the stop; (2) Wallace's fumbling of his paperwork for an unusually long period of time; (3) the fact the passenger stared straight ahead and did not acknowledge the officer; (4) Wallace and the passenger's inconsistent responses about the trip; (5) Wallace's increasing nervousness throughout the stop; (6) the fact an unknown car pulled up behind Wallace's vehicle for several minutes during the stop; (7) Wallace's cell phone ringing during the stop; (8) the fact drug dealers frequently use decoy cars and communicate via cell phones; (9) the fact the passenger would not look at the officer while they were talking; (10) the fact the passenger was sweating and visibly nervous on a mild day; (11) the fact Wallace changed his story after the officer spoke with his passenger; (12) the fact the car was owned by a third-party, which is common in drug cases; (13) I-85's status as a known drug corridor; and (14) Atlanta's status as a known drug hub. Id. at 55, 707 S.E.2d at 455. While noting none of the factors taken in isolation established a reasonable articulable suspicion of criminal activity, the Court of Appeals held the presence of all of the factors together established a reasonable suspicion when examined in totality as required. Id.

In the case at hand, the trial judge properly denied Respondent's suppression motion because the officer observed numerous indicators of criminal activity during the course of the traffic stop before he extended the duration and scope of the stop. Much like in Wallace and Provet, Officer Owens detected multiple suspicious signs of criminal

activity during the course of the traffic stop **before** he issued the warning citation. After observing those indicators, the officer elected to extend the detention and have a drug-detection dog perform a sniff search of Respondent's vehicle after completing the purpose of the initial stop. As the officer's observations during the stop established a reasonable and articulable suspicion of criminal activity, the officer's decision to extend the stop was reasonable and justified under the totality of the circumstances. Therefore, the trial judge committed no error in denying Respondent's suppression motion.

As Respondent has conceded, Officer Owens was justified in initially stopping Respondent's vehicle after observing several driving violations. Thus, the sole issue on appeal is whether or not the detention was prolonged beyond the time reasonably required to complete its mission. Due to the fact Respondent exhibited signs of intoxication and the fact Respondent admitted to drinking a few alcoholic beverages, the traffic stop was reasonably extended in order for Officer Owens to conduct a field sobriety test. Officer Owens detained Respondent for approximately fifteen minutes before he issued Respondent a warning for the traffic violations and impairment violation, which was a reasonable amount of time under the circumstances. See United States v. Sharpe, 470 U.S. 675, 683 (1985) (finding a twenty-minute detention during an investigatory traffic stop was objectively reasonable); see also Branch, 537 F.3d at 338 ("We begin with the basic fact that much of Branch's 30-minute detention was justified by the 'ordinary inquiries incident' to a routine traffic stop." (citations omitted)); United States v. Jeffus, 22 F.3d 554, 557 (4th Cir. 1994) (finding a fifteen-minute traffic stop to be reasonable); see, e.g., United States v. Jones, 44 F.3d 860, 872 (10th Cir. 1995) (approving of a thirty-minute traffic stop); United States v. Hardy, 855 F.2d 753, 761 (11th Cir. 1988) (finding a fifty-minute investigatory stop to be reasonable).

Approximately fifteen minutes into the stop, Officer Owens decided to further detain Respondent after issuing the warning citation. Officer Owens' decision to extend the stop was based on his detection of the following indicators of criminal activity while he was preparing the citation and completing the stop: (1) Respondent turned on his left turn signal when he was initially pulled over (sign Respondent might flee); (2) Respondent took a long time to pullover (sign Respondent might flee); (3) Respondent never turned his turn signal off (sign of nervousness); (4) Respondent admitted he had been drinking (common in drug trafficking cases in order for the trafficker to calm nerves); (5) Respondent started smoking a cigarette (sign of attempt to calm nerves); (6) Respondent continued to talk on his cell phone even after he was pulled over (common in drug trafficking cases because most traffickers often have to answer to a higher person); (7) Respondent's hands were shaking heavily (sign of nervousness); (8) Respondent's breathing was accelerated (sign of nervousness); (9) Respondent's pulse was elevated (sign of nervousness); (10) Respondent tried to pick up his cell phone once he got out of the car (sign that Respondent might attempt to flee); (11) Respondent had a large amount of cash in his pocket even though he was unemployed; (12) Respondent drove a rental car that was rented by someone else (common in drug trafficking cases); (13) Respondent was driving on I-85 (known drug corridor); (14) Respondent was traveling from Atlanta (known as a major drug hub); (15) Respondent claimed he was on the way to visit his grandmother (most people do not visit their grandparents at 1:00 a.m.); and (16) Respondent raised his hands in the felony position even though the officers did not ask him to raise his hands.

Contrary to the majority's opinion in this case, the multiple factors of nervousness that the officer observed was a proper consideration in the totality of the circumstances

test. As a trained officer with extensive experience,[2] the officer noted these factors not to just point out that Respondent was nervous, which most people are during traffic stops, but to note that Respondent was **overly** nervous. In addition, the majority's opinion ignored the officer's extensive training and experience when it applied the totality of the circumstances test. Further, contrary to the majority's opinion, the fact Respondent was drinking and driving was a viable factor to consider in the totality of the circumstances test even though the officer did not give Respondent a ticket for driving under the influence. The totality of the circumstances test does not require the officer to ignore the fact that Respondent was drinking and driving, which is common in drug trafficking cases, merely because the officer did not think it would be appropriate to issue Respondent a citation for driving under the influence.

Although some of the factors observed by the officer were potentially consistent with innocent travel, all of the factors taken together established a reasonable and articulable suspicion Respondent was involved in criminal activity. Based on the existence of a reasonable and articulable suspicion, Officer Owens was justified in extending the traffic stop and having a drug-detection dog perform a sniff search of Respondent's vehicle.

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[2] The officer's background in law enforcement included the following: (1) he was a member of the Highway Patrol with the South Carolina Department of Public Safety for seventeen years; (2) he spent twelve of those years with the Aggressive Crime Enforcement Unit—nine of which he served as the first line supervisor for the unit; (3) he received over a thousand hours in advanced criminal interdiction, which included drug interdiction; (4) he was certified as a "master interdictor" through the National Criminal Enforcement Association; and (5) he served as an instructor for the South Carolina Criminal Justice Academy in criminal interdiction. See Wallace, 392 S.C. at 52, 707 S.E.2d at 453 (relying on Branch, 537 F.3d at 336, for the contention that courts should give weight to the practical experience of officers when determining the reasonableness of an officer's suspicion); State v. Provet, 391 S.C. 494, 506, 706 S.E.2d 513, 519 (Ct. App. 2011), *affirmed by* Provet, 405 S.C. 101, 747 S.E.2d 453 (considering, in particular, the officer's experience with the Aggressive Criminal Enforcement Unit in determining the existence of reasonable suspicion).

Respondent contends Officer Owens improperly extended the duration of the stop, primarily relying on the Supreme Court's ruling in Tindall. However, Respondent's case is markedly different from the circumstances in Tindall. Unlike the officer in Tindall, the officer in this case observed all of the indicators of criminal activity **prior** to requesting Respondent's consent to search and detaining him further during the course of the canine sniff search of his vehicle. Compare Tindall, 388 S.C. at 522, 698 S.E.2d at 205 ("At this point, the purpose of the traffic stop was accomplished except for the issuance of the warning ticket. However, rather than issue the ticket, the officer continued to question Tindall for an additional six to seven minutes[.]") with State v. Provet, 391 S.C. 494, 504, 706 S.E.2d 513, 518 (Ct. App. 2011) ("Conversely, Owens' series of questions and observations occurred prior to the conclusion of the traffic stop because Owens was waiting to hear from dispatch regarding Provet's license and registration and a warning citation had yet to be issued.")

Viewing the circumstances of the stop in totality, the length of Respondent's detention was objectively reasonable, and the scope and duration of the stop were only extended after the officer developed a reasonable articulable suspicion of criminal activity. See, e.g., Branch, 537 F.3d at 338 ("[W]ithin minutes of detaining Branch, Officer White had observed enough 'specific and articulable facts' to generate a 'reasonable suspicion' of illegal activity."). Therefore, the trial judge properly denied Respondent's suppression motion, and his ruling is supported by the evidence presented at trial. Applying the appropriate deferential standard of review, there is no basis to overturn the trial judge's ruling. Thus, this Court should grant certiorari Court and affirm Respondent's sentences and convictions.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted. In requesting this relief, counsel for Petitioner certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

Respectfully submitted,

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October 28, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Spartanburg County
Honorable Roger L. Couch, Circuit Court Judge
Court of Appeals Appellate Case No. 2011-191327

THE STATE,

Petitioner,

vs.

ASHLEY EUGENE MOORE,

Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Petition for Writ of Certiorari on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 28th day of October, 2013.

Ellen R. DuBois

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