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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of General Sessions
The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2023-001055

THE STATE,

Respondent,

v.

MICHAEL LINDSAY FAILE,

Appellant.

BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

Whether the trial court correctly admitted two images of Faile's truck traveling on public roads captured by cameras using automated license plate reader technology.

STATEMENT OF THE CASE

A York County grand jury indicted Appellant Michael Faile for shoplifting. Faile proceeded to jury trial on June 20, 2023, before the Honorable William A. McKinnon and a jury. Faile was convicted as charged and sentenced as a recidivist to 54 months' incarceration. This direct appeal follows.

STATEMENT OF FACTS

This shoplifting incident occurred on May 17, 2022, at a Belk store in Rock Hill. The store's asset protection manager, Monica Dotson, observed Faile via the store's surveillance cameras stealing a pocketbook and bookbag. Tr.pp.112–16.

Faile left the store and got into a white Chevrolet truck. Tr.p.116. There was tape over the license plate, but the first two letters—"VM"—were visible. Tr.p.116.

Dotson was familiar with the truck from prior incidents. Tr.p.121. Another store employee was able to video Faile with her cell phone in the parking lot. Tr.pp.126–29. Dotson remembered Faile from two prior shoplifting incidents where Faile stole handbags. Tr.pp.134–36, p.139–41.

Rock Hill police officer Damien Williams investigated the incident. He began by searching for an image of the suspect's vehicle on a surveillance camera operated by the city and installed by the Flock Safety camera company. Williams explained Rock Hill has approximately 24 cameras placed in various parts of the city, especially high crime areas. Tr.p.190. Williams explained the cameras have automated license plate recognition technology (ALPR) and can aid police in identifying stolen vehicles or finding missing persons. Tr.p.192. The cameras can target specific vehicles and require "human intervention" to scan for a specific vehicle or plate number. Tr.p.192. Williams testified police use the system's search function to search for vehicles in the investigation of specific crimes. Tr.p.193.

The Flock camera system is privately owned and used by public and private entities. The Rock Hill Police Department pays for access to its images. Williams

testified the police department only uses images from its own cameras or from another law enforcement agency's cameras. Tr.p.235.

The camera that captured the image of Faile's truck was positioned at an off ramp for I-77 at Dave Lyle Boulevard. Tr.p.191. Williams looked at this specific camera because it was near the Belk store. Tr.p.191. He also knew which time of day Faile would have driven past the camera. Tr.p.191. Armed with this information, Williams was able to find an image of Faile's truck by searching through the images captured by that particular camera at that time of day. Tr.pp.194-95, pp.220-21.

Williams then searched the federal NCIC database for license plates associated with Chevrolet pickups starting with the letters "VM." Tr.p.195. He identified Faile's plate number as fitting the description and searched the Flock system for that plate number. Tr.p.249-50. He located an image taken the day after the shoplifting incident by a camera in Camden. Tr.pp.222-23. This image showed Faile's truck with its license plate uncovered. Consistent with the truck used in the shoplifting, Faile's truck had a dent in the rear bumper. Tr.p.261. The officer concluded it was the same truck involved with the shoplifting in Rock Hill. Tr.pp.223-24. Police searched the DMV database and discovered Faile had a Camden address. Tr.p.255. They then prepared a six-person lineup with Faile's DMV photograph. Tr.p.256. Within a week, police showed Dotson the lineup and she identified Faile as the person she saw shoplifting. Tr.p.256-58.

STANDARD OF REVIEW

On review of a motion to suppress based on the Fourth Amendment, the appellate court reviews the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion is a question of law subject to de novo review. State v. Frasier, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022).

ARGUMENT

The trial court correctly refused to suppress two images of Faile's vehicle because Faile had no reasonable expectation of privacy in his movements on public roads.

The trial court correctly refused to suppress two images of Faile's truck being driven on public roads. Faile had no reasonable expectation of privacy in his public movements, and thus police did not need a warrant to place cameras with automated license plate recognition technology on public roads in Rock Hill and Camden. This Court should affirm.

Issue preservation.

Faile failed to preserve this issue for appellate review for two reasons. First, he did not proffer evidence to establish a factual basis for his claim. Faile did not offer any evidence establishing Flock Safety's retention or privacy protocols, the extent of its camera system, or how it works. Faile cross-examined Officer Williams about the Flock system in Rock Hill, and established that Rock Hill has approximately 24 cameras, but Williams did not know Flock's policies or how the cameras work. Tr.p.235, pp.244–47. Counsel asserted the Flock database retains images for 30 days, and Officer Williams agreed with that assertion based on his experience using the Rock Hill system. Tr.p.244. But Faile failed to produce any evidence whatsoever about Camden's Flock system, where the second image of his uncovered license plate was taken. The State introduced evidence that the image was captured at Highway 521 in Camden, but there was no testimony about how many cameras Camden has. Tr.pp.222–23. Faile relies on what his attorney "informed the trial court" about the Flock system. Brief of Appellant at 6. But his

attorney's assertions are not evidence. He has not provided this Court with an adequate record upon which to assess his novel and potentially consequential claims. Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 446, 494 S.E.2d 827, 834 (Ct. App. 1997) (explaining appellant "has the burden of presenting this Court with an adequate record"); Commonwealth v. McCarthy, 142 N.E.3d 1090, 1105 (Mass. 2020) (explaining court could not "determine how pervasive a system of ALPRs would have to be to invade a reasonable expectation of privacy" because appellant did not make an adequate record).

Second, Faile did not contemporaneously and specifically object to the introduction of evidence about the Flock camera system. Faile moved to suppress the images on constitutional grounds in a pretrial hearing, but did not object to officer testimony during trial explaining the Flock system or how officers retrieved the image of his license plate from the Rock Hill camera. Tr.pp.190–95. When he finally objected to the image of Faile's truck taken near the Belk store in Rock Hill, he did so on hearsay and authentication grounds, not constitutional grounds. Tr.pp.196–97. When the State offered the second image, taken by Camden's Flock camera, Faile objected based on his "previous objections as to admissibility and authenticity of the photographs from the Flock Safety Corporation." Tr.p.222. This general objection was not specific enough to bring his constitutional argument to the trial court's attention. Faile's previous trial objections had been based on the hearsay and authentication rules; to renew his pretrial constitutional objection, Faile was required to state the objection with specificity. Faile renewed his

constitutional objection after the State rested, but by that time it was too late.

Tr.p.299. This issue is not preserved for review. See State v. Mueller, 319 S.C. 266, 268, 460 S.E.2d 409, 410 (Ct. App. 1995) (“Because the evidence developed during trial may warrant a change in the ruling, the losing party must renew his [pretrial] objection at trial when the evidence is presented in order to preserve the issue for appeal.”).

Discussion.

Even if preserved, Faile has failed to show a constitutional violation. Police do not need a warrant to set up surveillance cameras on public roads. Faile had no reasonable expectation of privacy in his public movements, and therefore police did not conduct a “search” by capturing an image of his vehicle.¹ This Court should affirm.

The government conducts a search either by committing a physical trespass upon a “person, house, paper or effect,” or by intruding upon a person’s “reasonable expectation of privacy.” See United States v. Jones, 565 U.S. 400, 409 (2012). In this case, the government did neither. Faile had no reasonable expectation of privacy in his movements on public roads. See United States v. Knotts, 460 U.S. 276, 281 (1983) (“A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.”).

¹ The below argument addresses Faile’s arguments under both the South Carolina and Federal Constitutions concurrently. While South Carolina’s constitution may provide greater privacy protections than the Federal Constitution, the police investigation in this case was not an unreasonable invasion of privacy for the same reasons it was not a search under the Federal Constitution.

And he surely had no reasonable expectation of privacy in his license plate number, the very purpose of which is to make vehicles immediately identifiable to observers. New York v. Class, 475 U.S. 106, 114 (1986) (“The exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a ‘search.’”). Unlike searches within the home, no warrant is required for visual observation of persons or property in public view. United States v. Karo, 468 U.S. 705, 715 (1984); McCarthy, 142 N.E.3d at 1106 (“There is no real question that the government, without securing a warrant, may use electronic devices to monitor an individual’s movements in public to the extent that the same result could be achieved through visual surveillance.”).

Because Faile’s truck was observable to the naked eye, it was susceptible to being photographed in public. Everybody knows that cameras are ubiquitous in public areas—commercial surveillance cameras, doorbell cameras, car dashboard cameras. No person should have any expectation that their movements in public places are private, and such an expectation would not be reasonable. The Fourth Amendment protects the privacies of life. It does not provide a cloak of invisibility for one’s public movements.

Faile attempts to draw support from Carpenter v. United States, 585 U.S. 296 (2018), where the Supreme Court held individuals have a privacy interest in their cell phone’s long-term historical location data. There, police accessed nearly 13,000 location points in Carpenter’s historical location data, enabling them to compile an “exhaustive chronicle” of his movements over 127 days, potentially

revealing his personal habits and private associations. Id. at 302. Distinguishing Knotts, the court compared limited tracking during “a discrete automotive journey” with the deeply revealing “twenty-four hour surveillance” of a cell phone’s historical location data. Id. at 306–07.

This case is a far cry from Carpenter. Unlike cell phones or GPS trackers, Rock Hill’s 24 Flock cameras are not capable of creating an “exhaustive chronicle” of any person’s movements. Id. at 314. As is typical with Flock users, the Rock Hill Police Department positioned cameras in “strategically chosen locations,” such as high crime areas. See United States v. Martin, 753 F. Supp. 3d 454, 458 and n.3 (E.D. Va. 2024) (“Without extensive camera coverage in an area, it is not typically possible to determine the exact route that a car travels throughout a day.”). The record does not reflect how many cameras Camden has, but it is not surprising the city chose to put a camera on Highway 521, a major public thoroughfare. And regardless of the capacity of either system, the State only introduced two images of Faile’s truck, hardly an “exhaustive chronicle” of his movements.

The policework in this case was fairly old-fashioned. Police located the image of Faile’s truck from the incident date by simply looking through the contemporaneous images captured by the camera nearest to Belk “image by image.” Tr.p.221, pp.230–31. This was simple detective work, no different from viewing any other surveillance camera positioned near this location. Police identified Faile’s full license plate number in NCIC, a national crime database. The same data—white Chevy pickups with South Carolina plates beginning in “VM”—was available

through the DMV. Tr.p.56. Police then searched the Flock database to find the image of Faile’s truck in Camden. Tr.pp.249–50. This image was the only thing the Flock database added to this case.

A few courts have addressed constitutional claims based on police use of Flock camera systems, persuasively rejecting the argument that the systems violate the Fourth Amendment. See Martin, 753 F. Supp. 3d 454; United States v. Jackson, 2025 WL 1530574 (D. Kan. 2025). Other courts have addressed automated license plate reading technology generally. McCarthy, 142 N.E.3d 1090; United States v. Cooper, 2025 WL 35035 (E.D. La. 2025); United States v. Bowers, 2021 WL 4775977 (W.D. Pa. 2021); United States v. Wilcox, 415 F. App'x 990, 992 (11th Cir. 2011). Unsurprisingly, these courts have held ALPR cameras do not intrude upon any constitutionally-protected privacy interests.

Faile argues Flock cameras are not “standard ALPR,” noting the cameras are “high resolution” and can recognize various external features of a vehicle. Brief of Appellant at 11. But the fact that Flock cameras take good pictures and have better software does not mean they intrude upon a constitutionally-protected privacy interest. Further, the way police searched for Faile’s truck in the Flock database—by searching for his full license plate number—is standard ALPR. Police did not rely on the Flock system’s advanced software to locate his truck by distinctive markings; they simply searched for the full plate number. Tr.p.249–50.

Because Faile had no reasonable expectation of privacy in his public movements, police did not “search” him and did not need a warrant to capture an

image of his truck. Even if there was a search or an “invasion of privacy,” it would be reasonable under both the state and federal constitutions. The camera system police used in this case serves the important societal interest in preventing and detecting serious crimes and protecting the public against violent criminals. As far as this record reveals, the system is limited in scope, with a small number of cameras taking images of vehicles (not people) on public roads, which are then deleted after 30 days. Tr.pp.229–30, p.244. It does not intrude into the privacies of life.

Even if there was a constitutional violation, suppression would not be appropriate because the police acted in good faith. Not only do the above-cited cases support the legality of the Flock system, South Carolina has a statute authorizing SLED to amalgamate criminal justice data, which demonstrates the legislative intent that law enforcement agencies pool their resources to detect crime. S.C. Code Ann. § 23-3-110. There is no statute or binding appellate precedent to suggest the police department’s use of the Flock system was unconstitutional. See Herring v. United States, 555 U.S. 135, 144 (2009) (explaining “the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct”).

Further, police would have inevitably discovered that Faile’s license plate and vehicle description matched the suspect description in this case by searching DMV records. Tr.pp.56–57. Police found Faile’s full plate number initially by searching the federal NCIC database. Tr.p.195, pp. 249–50. They could have independently obtained Faile’s DMV photograph and shown it to Dotson, leading to

her positive identification. This identification, not the Camden Flock image, was the crucial evidence in the case. Suppression of the identification is not appropriate under the inevitable discovery doctrine. See State v. Cardwell, 425 S.C. 595, 599, 824 S.E.2d 451, 453 (2019). Finally, the Camden image, even if it somehow violated the constitution, does not warrant reversal. State v. Workman, 443 S.C. 369, 378, 905 S.E.2d 119, 123 (2024) (error is harmless when it has “little, if any, likelihood of having changed the result of the trial”). This Court should affirm.

CONCLUSION

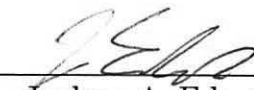
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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