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Jan 07 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Donald B. Hocker, Circuit Court Judge

Opinion No. 2025-UP-429

THE STATE,

RESPONDENT,

V.

BRYAN PRESTON COOPER,

APPELLANT

APPELLATE CASE NO. 2023-000231
(Submitted November 1, 2025-Filed December 23, 2025)

PETITION FOR REHEARING

On December 23, 2025, this Court issued an unpublished decision in connection with the above referenced matter finding no error in the lower court's ruling that the arresting officer properly ordered appellant to exit his vehicle during a routine traffic stop. Pursuant to Rule 221(a), SCACR, Bryan Preston Cooper requests that this Court grant rehearing because this Court's opinion on the justification for such order, a reasonable suspicion of criminal activity under Terry v. Ohio, 392 U.S. 1 (1968), improperly deferred to the lower court's factual findings on matters captured on video and did not take a de novo review of the ultimate legal conclusion:

the existence of reasonable suspicion. By finding reasonable suspicion, this Court also improperly avoided addressing the merits of whether an officer has unfettered discretion to order occupants to exit their vehicles during a routine traffic stop in contravention to Article I, Section 10 of the South Carolina Constitution.

Respectfully, this Court erred in refusing to address the initial question as to whether Article I, Section 10 of the South Carolina Constitution provides greater privacy protection than the Fourth Amendment of the United States Constitution in the context of officers ordering vehicle occupants to exit the vehicle during a routine traffic stop. As argued in appellant's brief before this Court, Article I, Section 10 of the South Carolina Constitution prohibits an officer from routinely ordering vehicle occupants to exit the vehicle during a traffic stop. This "heightened" protection stems mainly from the addition of the "unreasonable invasions of privacy shall not be violated" clause which distinguishes the rights afforded South Carolina citizens from the general Fourth Amendment rights enjoyed by all. *Compare State v. Counts*, 413 S.C. 153, 172, 776 S.E.2d 59, 70 (2015) (holding that "law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence and knocking on the door."), *with Kentucky v. King*, 563 U.S. 452, 469 (2011) (holding "law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do.").

Rather than unfettered discretion, an officer in South Carolina would require a valid reason to order occupants to exit the vehicle during a routine traffic stop, such as a reasonable suspicion of criminal activity under *Terry v. Ohio*, 392 U.S. 1 (1968). South Carolina has already rejected this same unfettered discretion in "knock and talk" situations. *Counts*, 413 S.C. at 172, 776 S.E.2d at 69 ("[W]e believe there must be some threshold evidentiary basis for law

enforcement to approach a private residence. Otherwise, we foresee the potential for abuse if law enforcement targets a neighborhood and indiscriminately knocks on doors with the hope of discovering contraband without a search warrant.”). This Court erred in failing to address the impact of unfettered discretion of law enforcement in ordering occupants to exit their vehicle during a routine traffic stop.

This Court’s opinion, by avoiding the initial question, concentrates on the officer’s alleged “reasonable suspicion” due to appellant’s off camera movements when the vehicle was first stopped. This holding was based on the officer’s testimony that upon approaching the appellant’s vehicle he observed “the driver reaching over into the passenger seat area” and “I saw half his body position over into the passenger seat.” R. 14, l. 19 - 15, l. 2. Appellant would concede Terry would provide a proper basis for ordering occupants to exit the vehicle, but the underlying facts of this case, as captured on video, do not support a Terry stop and frisk (or as applied here a stop and exit to be frisked command).

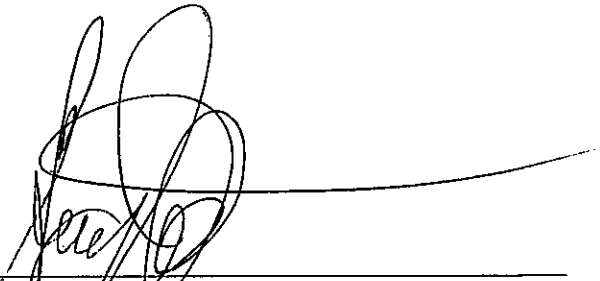
An officer may initiate a Terry stop *unrelated to the traffic violation* “if he has an objectively reasonable and articulable suspicion illegal activity has occurred or is occurring.” State v. Moore, 415 S.C. 245, 252, 781 S.E.2d 897, 901 (2016). Importantly, our Supreme Court in Moore warned of the dangers of “the many creative ways law enforcement attempts to parlay the single element of nervousness into a myriad of factors supporting reasonable suspicion.” Id., 415 S.C. at 255, 781 S.E.2d at 902. The “furtive movement” assertion carries similar dangers of overuse. Moreover, in the present case, any alleged “furtive movement” concern was allayed by the objective observations of the officer based upon the presence of appellant’s cat actively moving about the vehicle as argued in Appellant’s Brief and captured on video.

Finally, this Court’s opinion appears to have deferred to the ultimate legal conclusion made by the trial court that “reasonable suspicion” existed based upon the totality of the circumstances. Certainly, the trial court’s factual findings *not captured on video*, such as the existence of the alleged furtive movements noted by the arresting officer, would require such deference. However, the interactions between appellant and the officer recorded on video require no such deference. “However, with the dawn of the technological age, appellate courts are no longer dependent on the trial court in our review of evidence. The most obvious example is the advent of body and dashcam footage, whereby this Court reviews the same video as the trial court. Accordingly, while the need for deference remains, particularly in determining issues of credibility, it is no longer necessary for us to defer to the trial court's overall ruling in every case.” State v. Frasier, 437 S.C. 625, 632, 879 S.E.2d 762, 766 (2022). Moreover, “the ultimate legal conclusion—in this case whether reasonable suspicion exists—is a question of law subject to *de novo* review.” Id., 437 S.C. at 633–34, 879 S.E.2d at 766.

Since this Court’s opinion has deferred to both the factual findings and the legal conclusion of the lower court, it should reconsider its opinion and, in so far as the interactions between appellant and the arresting officer are video recorded, and whether reasonable suspicion supporting a Terry detainment was a question of law, make its own determination of both the factual question and the ultimate legal conclusion. As argued herein and in Appellant’s Brief, any justification for a Terry detainment of appellant was alleviated by the facts observed by the officer and viewable by this Court in the recorded interaction.

South Carolina citizens may not be ordered out of their vehicles at the unfettered discretion of an officer during a routine traffic stop. While Terry would justify such an order, the alleged basis for the arresting officer’s “reasonable suspicion” was alleviated by observed facts

captured on video. Considering appellant's right to privacy and protection from unreasonable searches and seizures under S.C. Const. art. I, §10, Parham's opening of the vehicle door and order removing appellant from the vehicle were both unlawful, and any evidence obtained related to these actions must be suppressed.



Gary H Johnson
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ATTORNEY FOR APPELLANT

This 7th day of January, 2026.

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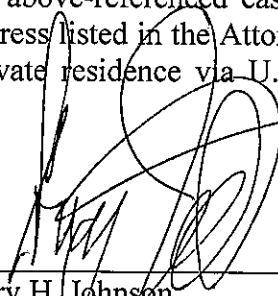
BRYAN PRESTON COOPER,

APPELLANT

APPELLATE CASE NO. 2023-000231

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Bryan Preston Cooper, at his private residence via U.S. mail, this 7th day of January, 2026.



Gary H. Johnson
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ATTORNEY FOR APPELLANT

Bast, Daniel

From: Bast, Daniel
Sent: Wednesday, January 7, 2026 12:28 PM
To: mfarthing@scag.gov
Cc: Johnson, Gary; ccollins@scag.gov
Subject: 2023-000231 - The State v. Bryan Preston Cooper
Attachments: 2023-000231 - The State v. Bryan Preston Cooper - Petition for Rehearing.pdf

Good afternoon,

Attached is a copy of the petition for rehearing in the above referenced case which will be filed today, January 7, 2026, with the Court of Appeals.

All the best,

Daniel Bast
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