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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Laurens County

Honorable Donald B. Hocker, Circuit Court Judge

Opinion No. 2025-UP-429 (S.C. Ct. App. Filed December 23, 2025)

Lower Court Case No. 2022-GS-30-01427

THE STATE,

RESPONDENT,

V.

BRYAN PRESTON COOPER,

APPELLANT

APPELLATE CASE NO. 2023-000231

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on January 28, 2026.

QUESTION PRESENTED

Did the Court of Appeals err in not addressing whether the South Carolina Constitution protects a motorist from being ordered to exit the vehicle when police have no reasonable suspicion either of ongoing criminal activity unrelated to the traffic stop or that the motorist is armed or dangerous?

STATEMENT OF THE CASE

Petitioner Bryan Preston Cooper was indicted for possession of methamphetamine and resisting arrest by a Laurens County grand jury on October 14, 2022. R. 184. He was tried before the Honorable Donald B. Hocker, and a jury on February 8-10, 2023. R. 1. At trial, petitioner was represented by Callie West and Joel Broome. Jake Lampke and Jared Simmons represented the state.

On February 10, 2023, the jury convicted appellant of possession of methamphetamine, while the resisting arrest charge was dismissed by the prosecutor during trial. R. 172, l. 23 - 214, l. 5. Judge Hocker sentenced appellant to six years with credit for ten days pretrial confinement. R. 177, ll. 21-25.

Petitioner was stopped for speeding in the afternoon hours on a rural road in Laurens County. R. 13, ll. 10-25; R. 22, l. 20 - 23, l. 6. At the time of the stop, deputy Parham (hereinafter the officer) was on routine patrol and initiated a traffic stop of appellant's vehicle for speeding and saw the appellant "reaching over into the passenger seat area" after stopping his vehicle. R. 14, ll. 15-23. This movement indicated to the officer that the driver was "either they are reaching for a possible weapon, or trying to conceal something." R. 15, ll. 3-7. At this moment, the officer's stop was solely related to a traffic offense, with no ongoing criminal activity surrounding the location or the vehicle. R. 24, l. 24-25, l. 11. Petitioner stopped his vehicle very shortly (approximately five to ten seconds) after the initiation of blue lights. R. 19, l. 25 - 20, l. 2. As the officer exited his vehicle, his body camera video was active but the dash-cam in the vehicle he was driving was broken and not recording.¹ R. 88, ll. 14-23; State's Exhibit 1. The officer smelled no suspicious odors prior to ordering petitioner from the vehicle

¹ State's Exhibit 1, body camera video, is on file with this Court for review.

and petitioner was fully cooperating with the officer when he was ordered to exit the vehicle. State's Exhibit 1; R. 94, l. 25 - 96, l. 17. While petitioner's vehicle had tinted windows, he rolled down all four windows of his vehicle at the instruction of the officer, giving clear views into the vehicle's interior. State's Exhibit 1. During the initial encounter, petitioner's pet cat can be seen in the video, with petitioner expressing concern the cat would jump from the vehicle and the officer himself having to move his arms to block the cat from jumping out of the opened windows. State's Exhibit 1. After the officer forcibly opened petitioner's door and ordered him to "step out and put your hands behind your back," petitioner refused and asked why he is being ordered out of vehicle. State's Exhibit 1 01:05-01:15. Over the next several minutes of the encounter, petitioner remained seated and calm, indicating he wanted a "supervisor" and had done "nothing wrong." State's Exhibit 1 01:15-05:22. The officer removed petitioner from his vehicle for "investigative detention" since he was "reaching for something" when pulled over. State's Exhibit 1 05:18-05:27. Petitioner then admitted he had "pipes" in the vehicle, got out of the vehicle under threat of force (the officer was pointing his taser at appellant and had threatened to use it several times), and was handcuffed and placed in the officer's vehicle. State's Exhibit 1 05:25-09:25. While petitioner was detained, the officer searched petitioner's vehicle and discovered "pipes" and a pill bottle containing a crystal substance he believed to be drugs.² State's Exhibit 1 09:25-13:20; State's Exhibits 2, 5, & 6.

Petitioner moved to suppress all evidence seized as a result of the traffic stop for the unlawful search of appellant's vehicle (the officer opening the driver's door) and unreasonable order for petitioner to exit the vehicle during a routine traffic stop. R. 33, l. 21 - 37, l. 3. Judge Hocker denied the motion to suppress and ruled the evidence could be introduced pursuant to

² States Exhibit 2 shows the pipes in the driver's seat, State's Exhibits 5 and 6 show the bottle containing the methamphetamine; and are on file with this Court for review.

Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) and McHam v. State, 404 S.C. 465, 746 S.E.2d 41 (2013), *abrogated on other grounds by* Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) based upon the officer safety. R. 49, ll. 1-22.

Before the Court of Appeals, petitioner asserted error in the lower court in admitting evidence seized during a routine traffic stop when the officer used unfettered discretion to order petitioner to exit his vehicle during a routine traffic stop in contravention to Article I, Section 10 of the South Carolina Constitution. By unpublished opinion filed on December 23, 2025, the Court of Appeals found no error in the lower court's ruling that the arresting officer properly ordered appellant to exit his vehicle because of reasonable suspicion of criminal activity under Terry v. Ohio, 392 U.S. 1 (1968) and avoided answering the constitutional question of whether officers in South Carolina may order occupants to exit a vehicle during a routine traffic stop. Petitioner filed for rehearing which was denied by order dated January 28, 2026.

This petition for certiorari follows.

ARGUMENT

The Court of Appeals erred in not addressing whether the South Carolina Constitution protects a motorist during a routine traffic stop in the form of being ordered to exit the vehicle when police have no reasonable suspicion either of ongoing criminal activity unrelated to the traffic stop or that the motorist is armed or dangerous.

A. The Court of Appeals erred in avoiding answering the constitutional question by relying on the lower court's legal assertion that a valid *Terry* stop justified the officer's actions in ordering petitioner to exit the vehicle during a routine traffic stop.

The Court of Appeals avoided answering the constitutional question by concentrating on the officer's alleged "reasonable suspicion" due to appellant's off camera movements when the vehicle was first stopped. The Court of Appeals relied upon 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 concedes Terry v. Ohio, 392 U.S. 1 (1968) 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, this 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 here 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 petitioner's cat actively moving about the vehicle as captured on video.

Here, the officer expressed concern on approaching petitioner's vehicle due to seeing "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. This movement of the driver was not captured on video but was given weight by the trial judge and thus has evidentiary support in the record. However, this movement of a driver, standing alone, from the driver's seat towards the passenger's seat, does not justify a further search and seizure by law enforcement since it was explained by other observation of the officer. The stop was during daylight hours, there was no pursuit required, petitioner did not attempt to flee, a long chase did not proceed the encounter, the area was not known for crime of any kind, there was no suspicion that the vehicle or driver was involved in any criminal activity unrelated to the stop. The "movement" described by the officer was easily explained by the presence of petitioner's cat, which was loose in the vehicle and had slid off the seat due to the stop. State's Exhibit 1 00:20-01:00. The cat was actively moving about the vehicle in full view of the officer as petitioner rolled down all four vehicle windows in compliance with requests and petitioner kept his hands visible, close to the steering wheel, while also warning the officer that the cat would jump out of the vehicle. State's Exhibit 1 00:20-00:30. The officer himself can be seen making movements with his own hands and arms to keep the cat from jumping out of the vehicle windows. State's Exhibit 1, 00:40-00:59. Under these circumstances, a reasonable police officer would not believe his safety was at risk or that petitioner had committed some crime unrelated to speeding to justify a Terry stop and frisk, as these "initial stages of the encounter serve[d] to dispel his reasonable fear for his own or others' safety" Terry, 392 U.S. at 30, 88 S. Ct. at 1884-85. At the time, the officer was on the road as a certified law enforcement officer for only a single month. While his inexperience may have

played a role in his subjective view of the situation, petitioner's constitutional rights are not subject to the subjective beliefs of an inexperienced police officer.

“[W]hile 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.’ 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. Frasier, 437 S.C. 625, 635, 879 S.E.2d 762, 767 (2022).

In this matter, whether reasonable suspicion existed justifying the officer's decision to order petitioner from his vehicle is a question of law subject to de novo review. Id. at 633–34, 879 S.E.2d at 766. Since the interaction was recorded on video, this Court may review the encounter to determine whether the source of the reasonable suspicion (the movement of the driver towards the passenger area) was dispelled by other observations under the totality of the circumstances. Petitioner would assert that any justification for a Terry detainment was alleviated by the facts observed by the officer and viewable by this Court in the recorded interaction.³ As argued below, this Court should hold that officers do not have unfettered discretion to order motorists to exit vehicles during routine traffic stops. Since the interactions between petitioner and the officer recorded on video do not show reasonable suspicion of criminal activity unexplained by other observations, the officer could not justify ordering petitioner to exit the vehicle under Terry and would require authority for such seizure from other sources. The Court of Appeals erred in failing to reach this issue through reliance on the lower court's ruling that Terry justified the unconstitutional order to exit the vehicle.

³ State's Ex. 1 (Body Camera video) was transported and made part of the Record on Appeal and is available for this Court's review.

B. South Carolina's Constitution grants a greater degree of protection from warrantless searches and seizures than the Fourth Amendment and prohibits a "stop and exit" order by police related to a routine traffic encounter.

The United States Supreme Court has upheld the "stop and exit" order for routine traffic stops under Fourth Amendment challenge. See Pennsylvania v. Mimms, 434 U.S. 106 (1977) (*per curiam*) (holding that when police have lawfully stopped vehicle for traffic violation officer may order driver to exit vehicle). Appellant asserted that this "stop and exit" order, and the opening of appellant's driver side car door, amounted to an impermissible search and seizure under South Carolina's Constitution, and provided the lower court authority from other jurisdictions with similar additional Constitutional safeguards that rejected the blanket holding in Mimms. R, 34, l. 1 - 35, l. 3.

While South Carolina courts have referenced the authority of law enforcement to order drivers and passengers to exit the vehicle, the cases typically refer to Fourth Amendment decisions. See Milledge v. State, 422 S.C. 366, 375, 811 S.E.2d 796, 801 (2018) ("Upon initiating the traffic stop, a police officer may order the driver out of the vehicle in the interest of officer safety.")(citing Pennsylvania v. Mimms, 434 U.S. 106 (1977)); McHam v. State, 404 S.C. 465, 477, 746 S.E.2d 41, 48 (2013), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (noting the "parties agree that an officer may order the driver and any passengers to exit a detained vehicle without violating the Fourth Amendment").

Under S.C. Const. art. I, §10, South Carolinians are protected "from two distinct actions by the government: first are 'unreasonable searches and seizures[,] largely mirroring our federal constitution's Fourth Amendment, and second is a protection not found in the United States Constitution, to be secure from 'unreasonable invasions of privacy.'" Planned Parenthood S. Atl. v. State, 438 S.C. 188, 199, 882 S.E.2d 770, 776 (2023).

South Carolina courts have

[i]nterpreted South Carolina's express right against unreasonable invasions of privacy provision to provide greater—or, a more ‘heightened’—protection than that provided by the United States Constitution. State v. Weaver, 374 S.C. 313, 321, 649 S.E.2d 479, 483 (2007) (holding ultimately the search in question met the automobile exception to the warrant requirement and did not violate the more expansive right to privacy); see also State v. Brown, 423 S.C. 519, 533, 815 S.E.2d 761, 769 (2018) (Beatty, C.J., dissenting) (noting the heightened protection afforded by the state constitution and finding it protected petitioner from the warrantless search of his cell phone). ‘State courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution.’ State v. Easler, 327 S.C. 121, 131 n.13, 489 S.E.2d 617, 625 n.13 (1997). ‘This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling.’ State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001). ‘South Carolina and the other states with a right to privacy provision imbedded in the search and seizure provision of their constitutions have held such a provision creates a distinct privacy right that applies both within and outside the search and seizure context. Id. at 644, 541 S.E.2d at 841.

State v. German, No. 2018-002090, 2023 WL 3129475, at 9 (S.C. Apr. 5, 2023).

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.”).

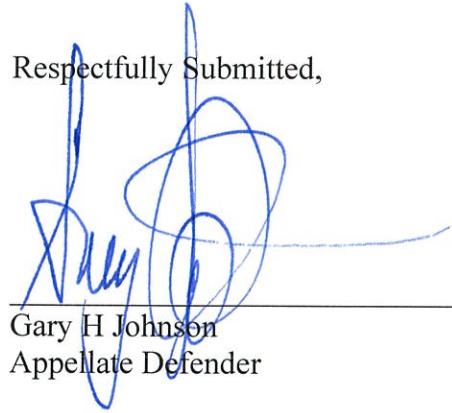
Rather than the unfettered discretion the Supreme Court has allowed under Pennsylvania v. Mimms, an officer in South Carolina would require a valid reason to order occupants to exit the vehicle during a routine traffic stop, such as a reasonable suspicion of criminal activity under Terry v. Ohio, 392 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.”). The Court of Appeals 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 under Article I, Section 10 of the South Carolina Constitution.

The present petition requests that this Court examine a novel question of law: whether South Carolina citizens may be ordered out of their vehicles at the unfettered discretion of an officer during a routine traffic stop. As this Court has already stated in Counts, this unfettered discretion is subject to the whims and abuse of the individual officer. While a true reasonable suspicion of criminal activity under Terry would justify an order to exit the vehicle, in the present case the alleged basis for the arresting officer’s “reasonable suspicion” was alleviated by observed facts captured on video. Considering petitioner’s right to privacy and protection from unreasonable searches and seizures under S.C. Const. art. I, §10, the officer’s opening of the vehicle door and order removing petitioner from his vehicle were both unlawful, and any evidence obtained related to these actions should have been suppressed.

CONCLUSION

As this novel question would be a departure from existing 4th Amendment precedent, this petition presents this Court with the opportunity to address the scope of an officer's discretion in ordering an occupant to exit their vehicle during a routine traffic stop.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Gary H. Johnson", is written over a horizontal line. The signature is stylized and somewhat illegible.

Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of March, 2026.