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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JENNIFER BLAIR MCNAUGHTON,

APPELLANT

APPELLATE CASE NO. 2025-001041

INITIAL BRIEF OF APPELLANT

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Whether the trial court erred in denying Ms. McNaughton's motion to suppress drug evidence found during the warrantless search of her truck in violation of the Fourth Amendment where no exceptions applied because the officers lacked reasonable suspicion to prolong the traffic stop for a minor traffic violation and where Ms. McNaughton's consent to search was not voluntary because she was surrounded by four narcotics officers in the dark?

STATEMENT OF THE CASE

On April 21, 2022, a Lancaster County grand jury indicted Jennifer Blair McNaughton for trafficking more than ten grams but less than twenty-eight grams of methamphetamine. Indictments. On May 19, 2025, Ms. McNaughton's case was called to trial before the Honorable Donald B. Hocker, and a jury. Tr. 1. William Frick represented Ms. McNaughton. Tr. 1. Julian Cuthbertson and Kaitlyn Easler prosecuted for the state. Tr. 1.

The jury found Ms. McNaughton guilty as indicted. Tr. 239, ll. 8-14. Judge Hocker sentenced Ms. McNaughton to three and half years' imprisonment. Tr. 253, ll. 1-5.

This appeal follows.

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 Ms. McNaughton's motion to suppress drug evidence found during the warrantless search of her truck in violation of the Fourth Amendment where no exceptions applied because the officers lacked reasonable suspicion to prolong the traffic stop for a minor traffic violation and where Ms. McNaughton's consent to search was not voluntary because she was surrounded by four narcotics officers in the dark.

Introductory facts

On the evening of January 5, 2022, Preston Davis, investigator for the Lancaster County Drug Task Force was surveilling the home of Charles Outen pursuant to a Crime Stoppers tip alleging Mr. Outen was selling drugs out of his home. Tr. 18, ll. 7-16; 111, ll. 2-19. At some point during his surveillance a green Dodge truck left the driveway. Tr. 18, l. 18—19, l. 9. Officer Davis noticed one of the three brake lights on the truck was not working and he conducted a traffic stop. Tr. 19, ll. 14-20. Jennifer Blair McNaughton was driving the truck and during the stop she was removed from the truck, and her truck was searched. Tr. 20, l. 23—21, l. 2; 22, ll. 11-25. The search revealed a quantity of methamphetamine. State's exhibit 4, SLED drug report.

Motion to suppress drug evidence

Prior to trial, defense counsel moved to suppress drug evidence found during the search of Ms. McNaughton's truck. Tr. 6, ll. 6-10. The solicitor called Preston Davis, the officer that stopped Ms. McNaughton, to testify regarding the traffic stop and subsequent warrantless search. Tr. 16-43. Davis worked as an investigator for the drug task force team. Tr. 17, ll. 1-7. Davis testified they received a Crime Stoppers tip that Charlie Outen was selling narcotics from his home, and the drug task force began surveilling the home. Tr. 17, ll. 8-22; 18, ll. 10-21.

Davis testified a green Dodge truck drove away from the location and he quickly noticed the brake light on the cab was not working. Tr. 19, ll. 7-18. Davis activated his blue lights. He testified the truck "jumped over the sidewalk, down into the parking lot, making an [evasive][1] move into the parking lot as if they were trying to avoid me." Tr. 19, l. 19—20, l. 7. He explained the truck "traveled over the sidewalk, down to - - a real abrupt turn into the parking lot, over the sidewalk instead of using the driveways." Tr. 20, ll. 10-12. Davis claimed this type of driving made him believe the car was trying to "evade" him or "they had some type of contraband, guns, narcotics, that they were trying to conceal." Tr. 20, ll. 13-16. He did not have a dash camera because he was driving an unmarked car. Tr. 26, ll. 16-22. There were four unmarked police cars and three additional narcotics officers on the scene during the traffic stop, including Lockhart, Hammond, and Williamson. Tr. 21, ll. 5-11; 22, ll. 20-22; 26, ll. 2-20.

Davis activated his body-worn camera when he approached the truck. Court's exhibit 1 (clipped (02)) Inv. Preston Davis.[2] He asked the driver why she jumped the curb, and she responded that she was nervous because of the presence of law enforcement. Tr. 20, ll. 17-22. Davis asked the driver to step out of the truck for "officer safety" because he could not see into the vehicle due to its height and because of the evasive driving maneuvers. Tr. 20, l. 25—21, l. 4.

He described the driver's demeanor as "obviously nervous . . . even stat[ing] that she was nervous. Tr. 21, ll. 16-18. Davis asked for her license, which she did not have. She told Davis

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1 The transcript reflects Davis said "abrasive," counsel for Ms. McNaughton contends this is a typo made throughout the transcript and Davis actually said "evasive." Tr. 20, l. 6; 21, l. 3; 41, l. 5.

2 Court's exhibit 1 is a flash drive containing video from the body-worn cameras of Davis, Hammond, and Lockhart. When referencing the videos in the brief counsel will denote which officer's body-worn camera (BWC) video is being cited.

her name was "Blair McNaughton." Tr. 21, l. 25—22, l. 2. When he requested something that had her name on it, she gave him a card with the name Jennifer McNaughton. Tr. 22, ll. 1-10.

Davis admitted he did not see anything suspicious in "plain sight." Tr. 32, ll. 19-25. Davis stated that he asked for consent to search her truck, and she gave consent. Tr. 22, ll. 11-16. Davis elaborated that Ms. McNaughton's exact response was, "I don't want you to, but you can." Tr. 23, ll. 3-13. Defense counsel asked Davis if he continued to pressure Ms. McNaughton after she said she did not want them to search her truck. Davis testified that he did not remember the exact conversation but stated, "I could have." Tr. 33, ll. 1-19. He said Investigator Hammond began searching and told him he found narcotics inside the truck. Tr. 22, ll. 20-22. Davis testified the entire stop took five to ten minutes total. Tr. 24, ll. 1-4.

The court questioned Davis regarding the stop. Tr. 38-41. The court asked Davis specifically what he believed established reasonable suspicion of criminal activity during the stop. Davis stated the prior tip, the evasive driving, and Ms. McNaughton's nervous demeanor. Davis further elaborated on Ms. McNaughton's nervous behavior stating, "I've done hundreds of traffic stops and it was a different nervous than a normal nervous for a traffic stop." He said that when he asked her if she had anything illegal in her truck she looked at the truck and back at him and based on his experience when people look around like that they are looking directly at the contraband. Tr. 41, ll. 16-23.

Davis's body-worn camera video reflects that when questioned about her name Ms. McNaughton explained she is called by her middle name Blair. Court's exhibit 1 Davis BWC at 1:42. The video shows one of the officers already peering into the car with a flashlight while Ms. McNaughton is speaking with two other officers. Court's exhibit 1 Davis BWC at 2:37. Contrary to Davis's testimony that Ms. McNaughton was nervously glancing at the truck when

asked if she had anything illegal the video clearly shows she looked directly at the officer who asked the question. Court's exhibit 1 Davis BWC at 4:13. Ms. McNaughton gets a bit flustered when Davis pressed her again about searching her truck and it appears she felt unhappy but acquiesced. Court's exhibit 1 Davis BWC at 4:16.

In support of the motion defense counsel argued officers prolonged the traffic stop without reasonable suspicion and that Ms. McNaughton's consent was not voluntary. Tr. 85-89. Defense counsel asserted that aside from Ms. McNaughton being nervous the officer had no other articulable suspicion that there was criminal activity afoot. Counsel argued pursuant to *Frasier*,[3] nervousness alone was insufficient. Counsel further analogized this case with *Frasier* and stated this was a drug stop masquerading as a traffic stop. Tr. 85-88. Regarding consent counsel averred Ms. McNaughton had first said "I'd rather you not" and complied after further pressure. Tr. 88-89.

The solicitor conceded the stop was prolonged stating, "the prolonged stop was justified." Tr. 90, ll. 3-4. They relied on *State v. Corley*[4] to support their assertion that there was reasonable suspicion in this case. Tr. 90, ll. 5-17. The solicitor further contended that because Ms. McNaughton was seen leaving a known drug house and "attempted to flee" the officers had reasonable suspicion that criminal activity was going on. Tr. 90, l. 16—91, l. 8. Then the solicitor walked it back and claimed the stop was not prolonged in any way but if it was then it was justified because of Ms. McNaughton's driving. Tr. 91, ll. 9-16. Regarding consent the solicitor argued that the totality of the circumstances supported finding Ms. McNaughton's consent voluntary. Tr. 92, l. 2—93, l. 13.

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3 *State v. Frasier*, 437 S.C. 625, 879 S.E.2d 762 (2022).

4 *State v. Corley*, 392 S.C. 125, 708 S.E.2d 217 (2011).

The court declared it was a "close case" but ultimately denied defense motion to suppress the drug evidence. Tr. 95-97. The court reasoned the case differed from *Frasier* because of the surveillance of the known drug house stating, "without that, then I think defense motion to suppress would be a whole lot stronger." Tr. 95, l. 21—96, l. 4. The court found there was reasonable suspicion of criminal activity to justify prolonging the initial stop. Tr. 96, ll. 22-24. Concerning consent to search the court found it was voluntarily made and there was no force or coercion. Tr. 97, ll. 1-24.

Discussion

Neither Davis's testimony nor the body-worn camera videos of the traffic stop support finding the officers had reasonable suspicion of criminal activity sufficient to prolong the traffic stop and considering the totality of the circumstances Ms. McNaughton's reluctant compliance to a search of her truck was not voluntary consent.

"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).

Here, everyone agreed the stop was prolonged. The solicitor initially conceded the stop was prolonged and the court in its ruling found "reasonable suspicion to prolong the traffic stop." Tr. 95, ll. 11-13; 97, ll. 20-21.

In *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 person. *State v. Frasier*, 437 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, leave 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 the 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 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.

Davis testified Ms. McNaughton's driving was evasive because she jumped a curb while pulling over into a parking lot. Davis confronted her with this immediately when he approached her truck at the beginning of the stop. Ms. McNaughton explained she thought it was a driveway and that she was nervous because of the blue lights. Ms. McNaughton's nerves were reasonable under the circumstances. Because the officers were driving unmarked cars, the blue lights likely startled Ms. McNaughton, who was leaving to run an errand and appeared to be on the phone. There was no dash camera video of the purported evasive driving but even from Davis's testimony it does not follow that Ms. McNaughton's driving was evasive. She pulled over once

she saw blue lights. Maybe she did not do it perfectly, and accidentally struck the curb because it was dark outside and she was understandably nervous. However, it defies logic to purport that Ms. McNaughton pulling into a parking lot at normal speed after seeing blue lights behind her was an evasive driving maneuver.

It seems apparent that here, as in *Frasier*, this was a drug stop masked as a traffic encounter. Early on it the stop you can see one of the four officers peering into Ms. McNaughton's truck. When he was unable to see anything in plain view as anticipated, officers asked for consent to enter her truck to find what they were already looking for. Officer Hammond and another officer searched the truck. Hammond's body-worn camera video begins as he is already rifling through Ms. McNaughton's purse. After locating an amount of suspected drugs Hammond says, "I knew it when I felt it . . it ain't an eight ball but it's enough." Court's exhibit 1, Hammond BWC clip at 1:40.

The four officers of the drug task force did not have reasonable suspicion to prolong the traffic stop of Ms. McNaughton. Her brake light was out, and it should have been a simple stop and issue a ticket. Instead, Ms. McNaughton was removed from her vehicle and questioned about why she hit the curb and about whether she is currently dating Mr. Outen and then she is asked if they can enter her truck for a search based on nothing.

Officer Davis made much of Ms. McNaughton's nervous behavior calling it "a different nervous than a normal nervous for a traffic stop." Tr. 41, ll. 3-14. In the videos Ms. McNaughton appears startled and states she is nervous because of the blue lights and law enforcement. It is worth noting again that Ms. McNaughton was stopped by two unmarked cars and quickly surrounded by two other unmarked cars and four male officers. It is not unreasonable that she would be shaken up and nervous in this situation.

Officer Davis also stated that Ms. McNaughton's truck leaving a known drug house factored in his reasonable suspicion that criminal activity was afoot. However, the record does not include any evidence that there was a search of that home revealing drugs. The record does not include any evidence that any drug transaction was witnessed during the surveillance of the home. The tip and the surveillance of the home do not create reasonable suspicion sufficient to prolong this stop for a minor traffic violation. Instead, the testimony reveals the officers true motivations that night which were to search for drugs in Ms. McNaughton's truck.

Here, as in *Frasier*, the search of Ms. McNaughton's car was based on nothing more than a hunch that something else was afoot. There was no testimony given or anything visible in the body-worn camera videos that demonstrated criminal activity. Ms. McNaughton was cooperative, stepping out of her vehicle and trying to find a card with her name on it as requested by Davis because she did not have her license. She spoke freely and politely with the two officers asking her questions, sometimes both at once.

Ms. McNaughton expressed confusion at the reason for the stop because she did not know that having the cab brake light out was a traffic violation. No further investigation was necessary by officers where it was clear the cab brake light was indeed not working on Ms. McNaughton's truck. There was no reason for the officers to search her truck in furtherance of the brake light investigation. Instead of writing her ticket where it was obvious the light was out Davis and the other officers unlawfully prolonged the stop and began another investigation citing no other reason than Ms. McNaughton's nervousness which under our case law is insufficient.

> **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).

Considering the totality of the circumstances Ms. McNaughton's reluctant permission to search her truck was not voluntary. She was stopped in the evening, when it was dark and removed from her truck. Ms. McNaughton was met with four male officers and four vehicles with blue lights activated for a minor traffic violation. Ms. McNaughton initially said she did not want her truck to be searched, when pressed further as to why she stated, "I'd rather you not just because uh I mean you can there's nothing in there." Court's exhibit 1 Davis BWC video at 4:16. Ms. McNaughton was not free to leave, as she was clearly surrounded by four male officers and their vehicles. However, she was not yet officially placed under arrest. Notwithstanding her status, Ms. McNaughton believed that she could not deny Officer Davis's request to search her truck.

Accordingly, this Court should reverse the trial court's denial of Ms. McNaughton's motion to suppress drugs found during the warrantless search of her car.

CONCLUSION

Based on the foregoing, Ms. McNaughton respectfully requests this Court reverse the trial court's denial of her motion to suppress drug evidence found pursuant to a warrantless search in violation of the Fourth Amendment.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of April, 2026.