STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2012-207226

THE STATE,

Respondent,

vs.

RODERICK POPE,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

United States Supreme Court Cases:

Other State and Federal Cases:

Other Authorities:

STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly denied Appellant's suppression motion because, under the totality of the circumstances, the officers possessed reasonable suspicion to conduct an investigatory stop and probable cause to search Appellant's vehicle after they received reliable information from a cooperating informant about the informant's crack cocaine supplier and corroborated significant aspects of that information prior to conducting the stop and search.

II.

The trial judge properly admitted both the scale and the crack cocaine into evidence during trial because testimony was presented establishing that the scale offered into evidence was the one located in the search of the black Ford Expedition and was in substantially unchanged condition and because testimony was presented establishing the identity of each person who was in custody of the crack cocaine and what was done with it prior to the analysis of the crack cocaine at S.L.E.D.

STATEMENT OF THE CASE

In June of 2010, Appellant Roderick Pope was arrested along with two other men following a narcotics investigation and automobile stop. In August of 2010, the Union County grand jury indicted Appellant for one count of trafficking in crack cocaine in an amount between ten and twenty-eight grams. On December 6, 2011, a jury trial was commenced in the Union County court of general sessions with the Honorable John C. Hayes, III, circuit court judge, presiding. At the conclusion of trial two days later, the jury convicted Appellant of the lesser-included offense of possession of crack cocaine with intent to distribute. Following the verdict, the trial judge sentenced Appellant to a fifteen-year term of imprisonment suspended to seven-and-a-half years and five years of probation. At the conclusion of the sentencing proceedings, Appellant moved for reconsideration of his sentence, and the trial judge took the motion under advisement. Subsequently, on January 11, 2012, the trial judge denied Appellant's motion. Appellant then filed a timely notice of appeal.[1]

[1] The other men arrested with Appellant, Randy Jarrod Crosby and Lashad Demond Brewton, were also indicted for one count each of trafficking in crack cocaine in an amount between ten and twenty-eight grams, and both men were tried together with Appellant. Like Appellant, Crosby and Brewton were convicted of possession of crack cocaine with intent to distribute, and the trial judge sentenced Crosby to a fifteen-year term of imprisonment suspended to ten years and five years of probation and Brewton to a ten-year term of imprisonment suspended to five years and five years of probation. Also like Appellant, both men moved for reconsideration of their sentences. Subsequently, the trial judge denied Crosby's motion, granted Brewton's motion, and resentenced Brewton to a ten-year term of imprisonment suspended to thirty months and five years of probation.

STATEMENT OF FACTS

On the afternoon of June 24, 2010, a confidential informant working with the Union County Sheriff's Office purchased crack cocaine from an individual he knew as "Vince" at a convenience store located off of Highway 176 in Union County while law enforcement officers covertly monitored the transaction. (R. pp. 14-15; pp. 27-28; p. 46; pp. 92-93; p. 118; pp. 187-188; pp. 237-238; p. 241; p. 323; p. 343). Once the transaction was completed, the officers moved in and arrested "Vince," who was subsequently identified as Vinson Eugene Harris, and his wife for distribution of crack cocaine. (R. pp. 14-15; pp. 27-28; p. 46; pp. 92-93; p. 118; pp. 187-188; pp. 237-238; p. 323; p. 343).

After Harris and his wife were arrested, they were transported to the Union County jail, and Harris asked to speak with a law enforcement officer. (R. p. 99; pp. 323-324; p. 336; pp. 342-344). Following Harris' request, Sergeant James Johnson, a narcotics investigator with the Union County Sheriff's Office, went to meet with Harris, and Harris advised the officer that he needed to obtain bond so he could go to work the next day. (R. p. 15; pp. 93-94; pp. 99-100; p. 324; p. 336; pp. 342-345). In exchange for assistance in obtaining bond, Harris offered to arrange for Appellant Roderick Pope, his narcotics supplier, to bring crack cocaine to Union County. (R. p. 15; pp. 93-94; pp. 99-100; p. 324; p. 336 pp. 342-345). In response, Sergeant Johnson accepted Harris' offer, returned Harris' cell phone to him, and notified Lieutenant John Sherfield of the Union County Sheriff's Office about the arrangement.[2] (R. pp. 15-16; pp. 65-66; p. 93; p. 97; p. 345).

[2] Harris' cell phone was returned to him because Harris indicated that he needed to use his own phone in order to be able to arrange a narcotics transaction with Appellant because Appellant would not answer a phone call from an unknown number. (R. pp. 65-66; p. 93).

Subsequently, with Sergeant Johnson present, Harris called Appellant to arrange for the delivery of crack cocaine, and Appellant indicated he would attempt to get some crack cocaine for Harris.[3] (R. p. 16; pp. 93-94; pp. 324-325; p. 344; p. 346). Shortly thereafter, Appellant called Harris back, and the two agreed for Appellant to drive to Union County from Spartanburg County along Highway 176, meet Harris at a convenience store located off of the highway, and deliver half of an ounce of crack cocaine to Harris in exchange for $650. (R. p. 30; pp. 95-97; pp. 325-326; pp. 347-349). Following the call, Harris informed Sergeant Johnson of the details of the arranged transaction and noted that Appellant always drove or rode in a black Ford Expedition, and Sergeant Johnson relayed those details to Lieutenant Sherfield. (R. p. 17; p. 96; pp. 113-114; pp. 326-327; p. 348).

In response, Lieutenant Sherfield and other officers with the Union County Sheriff's Office set up surveillance at various points along Highway 176 to wait for the black Ford Expedition to arrive. (R. p. 17; p. 194). Meanwhile, Harris and Appellant continued to exchange phone calls, and Harris updated Sergeant Johnson with the information he received from Appellant, which Sergeant Johnson then provided to the other officers.[4] (R. p. 97; p. 194). During one of the calls, Appellant informed Harris that he was passing the Lighthouse Fish Camp on Highway 176 and entering Union County, and that information was passed along to the officers conducting surveillance along the highway. (R. p. 18; p. 97; p. 326; p. 348).

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[3] Sergeant Johnson was only able to hear Harris speaking during Harris' conversations with Appellant and could not hear Appellant's side of the conversations. (R. p. 107).

[4] During the calls, Harris noted that he could hear other individuals in the background in addition to Appellant. (R. p. 26; p. 72; pp. 95-96; p. 326).

Following the update about Appellant's location, Captain James McNeil of the Union County Sheriff's Office began driving in the direction of the Lighthouse Fish Camp. (R. pp. 275-276). Shortly thereafter, Captain McNeil encountered a black Ford Expedition driving in the opposite direction on Highway 176 and going into Union County approximately a mile to a mile and a half before McNeil would have reached the Lighthouse Fish Camp and after the black Ford Expedition would have passed the restaurant. (R. p. 276; p. 286; p. 289). Upon seeing the black Ford Expedition, Captain McNeil immediately relayed the vehicle's location to the other officers involved in the investigation and turned around to follow it. (R. p. 276). Moments later, Union County Sheriff David Taylor saw the black Ford Expedition approaching his position on Highway 176, and he turned around to follow it while activating his blue lights. (R. p. 19; pp. 79-80; pp. 196-197). In response to the blue lights, the passenger in the back seat of the vehicle leaned forward, and the driver of the vehicle momentarily continued to drive along Highway 176 before partially pulling over into the median of the highway approximately two miles away from the location where Harris had arranged for Appellant to meet him. (R. pp. 19-20; p. 30; p. 197).

After the driver of the black Ford Expedition pulled over, several officers responded to the scene, and Lieutenant Sherfield approached the driver's side of the vehicle. (R. p. 19; p. 197). When he did so, he saw Lashad Demond Brewton seated in the driver's seat, Appellant seated in the front passenger's seat with a cell phone in his hand, and Randy Jarrod Crosby seated in the rear passenger's seat. (R. pp. 19-20; pp. 197-198; p. 259). The officer then asked Brewton to step out of the vehicle, spoke with him briefly, advised him of his rights, placed him in handcuffs, and let him know that he was being detained. (R. p. 24; p. 34; p. 198). Meanwhile, other officers removed

Appellant and Crosby from the vehicle and similarly secured them. (R. p. 34; p. 58; p. 198).

Once the men were secured, Lieutenant Sherfield searched the passenger compartment of the black Ford Expedition.[5] (R. p. 20; p. 29). Inside, he found a cell phone on Appellant's seat and a gray digital scale without a battery cover and with white residue on it hidden underneath the seat that Crosby had been sitting in at the time of the stop.[6] (R. pp. 20-21; p. 71; p. 199; p. 259). Upon finding the scale, Lieutenant Sherfield conducted a field test on the white residue, and the residue tested positive for cocaine.[7] (R. pp. 20-21). In response, he immediately arrested Appellant and the others for possession of cocaine.[8] (R. p. 21; p. 199). The officers then briefly searched the men's outer clothing and located $573 in cash on Crosby and a cell phone and $280 in cash on Brewton.[9] (R. pp. 21-23; pp. 34-35; pp. 68-69; pp. 199-200; p. 217; p. 266; pp. 277-278; p. 282).

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[5] The black Ford Expedition was subsequently determined to be registered to Barbara Pope, an individual with the same last name as Appellant. (R. p. 248).

[6] Following the automobile stop, Lieutenant Sherfield inspected Appellant's cell phone and discovered that the phone contained contact information for an individual named "Vince." (R. p. 208). Furthermore, Lieutenant Sherfield discovered that the phone's records reflected that "Vince" called Appellant five times between 4:39 p.m. and 6:04 p.m. on the day of the automobile stop and that Appellant called "Vince" eleven times between 5:18 p.m. and 6:33 p.m. on the day of the stop. (R. pp. 210-212).

[7] The scale was subsequently transported to the Union County drug task force office and secured in a locked evidence cabinet with similar evidence until Appellant and his co-defendants' trial. (R. pp. 22-23; pp. 36-38).

[8] Subsequent to the arrests, Sergeant Johnson spoke to a magistrate about Harris' assistance with the narcotics investigation, and Harris was able to obtain release on bond. (R. p. 98; p. 100; pp. 104-105; p. 327; pp. 349-351). Harris later pled guilty to distribution of crack cocaine and was sentenced to a three-year term of incarceration, which he was serving at the time of Appellant and his co-defendants' trial. (R. p. 118; pp. 327-328).

[9] After the money was discovered during the search, Brewton refused to reveal how he acquired it but confirmed to Lieutenant Sherfield that he was unemployed. (R. p. 23; p. 25).

After Appellant and his co-defendants were arrested and searched, Lieutenant Sherfield asked Corporal Russell Vinson of the Union County Sheriff's Office, another officer involved in the narcotics investigation, to inspect the back area of his law enforcement vehicle before transporting Brewton and Crosby to the Union County jail. (R. p. 200; pp. 291-292). Corporal Vinson complied with Lieutenant Sherfield's request, found nothing inside of his vehicle, and then transported Brewton and Crosby to the jail. (R. pp. 292-293). Once he had done so, Corporal Vinson searched his vehicle and discovered a small plastic bag containing what appeared to be crack cocaine hidden underneath the seat that Crosby had been sitting in. (R. p. 59; p. 76; p. 33; p. 85; pp. 124-125; pp. 131-132). Corporal Vinson then secured the bag, and the substance was later transported to S.L.E.D. for analysis, where it was determined to be eleven-and-a-half grams of crack cocaine.[10] (R. p. 62; p. 77; pp. pp. 202-203; 293-294; pp. 297-298; pp. 373-374).

Subsequently, Appellant and his co-defendants were indicted for trafficking in crack cocaine in an amount between ten and twenty-eight grams, and they jointly proceeded to trial. (R. p. 4; pp. 519-520). At the outset of trial, Appellant, Crosby, and Brewton all moved for the trial judge to suppress the evidence discovered during and after the automobile stop and search, and the trial judge conducted a hearing on their suppression motions. (R. pp. 5-6; pp. 10-14). During the hearing, Lieutenant Sherfield, Sergeant Johnson, and the other officers testified about the details of Harris' arrest, the subsequent stop and search of the black Ford Expedition, and the discovery of the crack cocaine in the vehicle used to transport Brewton and Crosby to the jail. (R. pp. 14-20; p. 59; pp. 92-98). During Lieutenant Sherfield's testimony, he asserted that the vehicle was

[10] One half of an ounce is approximately fourteen grams. (R. p. 264).

stopped after Captain McNeil spotted a black Ford Expedition "right at" the Lighthouse Fish Camp following Harris' report that Appellant was travelling past that location. (R. pp. 16-20; pp. 25-26; p. 46; p. 72). Furthermore, Lieutenant Sherfield noted that the scale he found during his search of the vehicle did not have a battery cover at the time it was seized, indicated that one of the batteries from the scale had fallen out prior to the trial, stated that the scale's evidence bag had broken prior to trial, and admitted that he incorrectly asserted on a chain of custody affidavit that he seized the crack cocaine from Appellant, Brewton, and Crosby when, in fact, he actually took custody of the narcotics from Corporal Vinson. (R. pp. 36-38; p. 59; pp. 61-62; pp. 71-72; pp. 76-77).

At the conclusion of the suppression hearing, Appellant and his co-defendants moved for the evidence discovered as a result of the automobile stop to be suppressed, arguing that there was no reasonable suspicion supporting the stop of the black Ford Expedition and no probable cause supporting the search of the vehicle. (R. pp. 123-125; p. 127; pp. 130-131; pp. 133-134; pp. 136-137). Furthermore, Appellant and the others challenged the chain of custody regarding the scale found during the search of the vehicle, and Appellant argued that there was no evidence that he or the other defendants were in actual or constructive possession of the crack cocaine located in Corporal Vinson's vehicle following their arrest. (R. pp. 125-126; pp. 132-133; p. 137).

In response, the solicitor noted that Harris arranged a drug transaction with Appellant and provided law enforcement officers with information that was subsequently corroborated regarding Appellant's vehicle color, vehicle make, vehicle model, direction of travel, and precise location at a specific time. (R. pp. 138-140). Under those circumstances, the solicitor argued that the officers had probable cause to believe drugs would be located in the black Ford Expedition, justifying the stop and search of that

vehicle. (R. pp. 138-140). Additionally, regarding the challenge to the admissibility of the scale, the solicitor noted that the arguments raised by the defendants regarding the chain of custody could potentially impact the weight of the evidence but did not affect its admissibility. (R. pp. 140-141).

Following the arguments of counsel, the trial judge took the matter under advisement to consider the motions overnight. (R. pp. 142-143). Thereafter, on the following morning, the trial judge denied the suppression motions. (R. p. 157). In denying the motions, the trial judge found that the law enforcement officers' corroboration of the information provided by Harris regarding Appellant's vehicle make, vehicle model, vehicle color, direction of travel, and specific location established probable cause to believe contraband would be contained in the vehicle, which justified the stop and the search. (R. pp. 157-160; pp. 162-163). Furthermore, the trial judge declined to suppress the scale based on the alleged issue with the chain of custody after finding the scale was not a fungible item. (R. pp. 160-161). Finally, the trial judge declined to suppress the crack cocaine found in the law enforcement vehicle following the arrests of Appellant, Crosby, and Brewton. (R. p. 161; pp. 163-165).

Subsequently, during trial, Lieutenant Sherfield testified about Harris' arrest and the ensuing investigation that led to the arrests of Appellant, Brewton, and Crosby, the discovery of a scale in the black Ford Expedition, and the discovery of a bag of crack cocaine in the vehicle used to transport Brewton and Crosby to jail. (R. pp. 187-188; pp. 193-204). Regarding the crack cocaine, Lieutenant Sherfield indicated that he received the crack cocaine from Corporal Vinson, sealed it in an evidence bag, secured the bag in an evidence vault, and then subsequently transported the bag to the evidence intake area at S.L.E.D. where he delivered the crack cocaine to Nikki Perry, an evidence technician.

(R. pp. 202-205). Additionally, Lieutenant Sherfield acknowledged that he incorrectly listed on a chain of custody affidavit that he seized the crack cocaine from Appellant, Brewton, and Crosby when he actually received it from Corporal Vinson. (R. pp. 231-232). Furthermore, in regard to the scale, Lieutenant Sherfield identified the scale, which he stated was an item commonly used in the drug trade, as the one he found under Crosby's seat in the black Ford Expedition and noted that a battery was currently missing from the scale, and the scale was admitted into evidence over the objection of Appellant and his co-defendants. (R. pp. 205-207).

In addition to Lieutenant Sherfield's testimony, Captain McNeil testified about his role in the narcotics investigation and automobile stop, noting that he received word that a black Ford Expedition was passing the Lighthouse Fish Camp, he immediately began driving in the direction of the restaurant, and he encountered a black Ford Expedition at an intersection on Highway 176 approximately a mile to a mile and a half away from the restaurant. (R. pp. 275-276; p. 286; p. 289). Furthermore, Corporal Vinson testified about his role in the investigation and noted that he responded to the location of the automobile stop after the black Ford Expedition had been detained. (R. pp. 291-292). After he arrived, Corporal Vinson stated that Lieutenant Sherfield asked him to check the rear area of his vehicle before transporting two of the suspects to jail and that he complied with the lieutenant's request. (R. pp. 292-293). Corporal Vinson indicated he then transported Brewton and Crosby to jail and searched the back of his vehicle after dropping them off. (R. p. 293). When he did so, Corporal Vinson testified that he found a bag of crack cocaine hidden underneath Crosby's seat, secured the drugs in an evidence bag, and gave them to Lieutenant Sherfield when the lieutenant arrived at the jail. (R. pp. 293-294; pp. 297-298; pp. 300-301).

Following the officers' testimony, Appellant renewed his motion for the crack cocaine to be suppressed on the basis that he believed the testimony from the suppression hearing differed from the trial testimony regarding where the black Ford Expedition was first observed. (R. p. 311). In response, the solicitor argued that Captain McNeil saw the black Ford Expedition on the same highway that the Lighthouse Fish Camp was located on approximately one mile after the vehicle would have passed the restaurant, which he asserted corroborated the information provided by Harris about the location of Appellant's vehicle at that time. (R. pp. 313-314). The trial judge then took the matter under advisement, and Crosby and Brewton joined in Appellant's objection. (R. p. 315; pp. 317-318). Thereafter, the trial judge denied the motion, concluding that he would not have suppressed the narcotics had he been provided with Captain McNeil's trial testimony during the suppression hearing. (R. p. 318). In reaching that conclusion, the trial judge noted the fact that the black Ford Expedition was observed approximately a mile away from the location that Harris reported that the vehicle had just passed sufficiently corroborated Harris' information. (R. pp. 318-319).

Subsequently, Sergeant Johnson testified about Harris' arrest and subsequent offer to assist their investigation by arranging for Appellant to bring half of an ounce of crack cocaine to Union County. (R. pp. 343-345; p. 349). Sergeant Johnson indicated that Harris then provided him with information derived from phone calls Harris made to Appellant and that he relayed that information to Lieutenant Sherfield. (R. pp. 345-348). Specifically, Sergeant Johnson noted that he advised Lieutenant Sherfield that Appellant would be travelling in a black Ford Expedition along with other people and that he notified Lieutenant Sherfield when Appellant passed the Lighthouse Fish Camp. (R. p. 348). Furthermore, after the automobile stop was made, Sergeant Johnson testified that

he spoke to a magistrate on Harris' behalf regarding bond, which led to bond being set for Harris. (R. pp. 350-351).

Following Sergeant Johnson's testimony, the trial was recessed for the day. (R. p. 364). Then, on the third day of trial, Agent Willie Smith, a chemist in the S.L.E.D. drug analysis department and an expert in drug analysis, testified about his receipt and analysis of the drugs found in Corporal Vinson's law enforcement vehicle. (R. pp. 368-371). Regarding his acquisition of the drugs, Agent Smith indicated he received the crack cocaine that he subsequently tested from Doris Yarborough, who worked in the S.L.E.D. log-in department. (R. pp. 370-371). After that, Agent Smith testified that he secured the evidence in a drug vault that only he could access. (R. pp. 371-372). Thereafter, he stated he verified that the evidence bag was sealed and intact prior to conducting his analysis, analyzed the substance in the evidence bag, and determined that it was eleven-and-a-half grams of crack cocaine. (R. pp. 371-374).

At the conclusion of Agent Smith's testimony on direct examination, the solicitor moved to admit the crack cocaine into evidence. (R. pp. 376-377). Appellant then objected and asked the trial judge to refrain from ruling on the objection until after he completed his cross-examination of Agent Smith. (R. pp. 376-377). Thereafter, on cross-examination, Agent Smith confirmed that Perry received the evidence from an officer, took it into the drug intake area at S.L.E.D., and secured it until Yarborough retrieved the evidence and transported it to him. (R. pp. 380-381). He further noted that he would not have tested the submitted substance if the evidence bag had been tampered with and indicated that he would have returned the evidence to the submitting law enforcement agency if he had knowledge of a problem with the chain of custody. (R. p. 384; p. 386).

Following Agent Smith's testimony, Appellant and his co-defendants objected to the admission of the crack cocaine on the basis that Agent Smith stated he would not have tested the drugs if he was aware that there was a problem with the chain of custody, which they argued existed in light of the incorrect information on Lieutenant Sherfield's affidavit. (R. pp. 390-391). In response, the solicitor asserted that the chain of custody was established by the testimony presented during trial and that the arguments raised by Appellant and his co-defendants merely impacted the weight of the evidence as opposed to its admissibility. (R. pp. 391-392). After considering the issue, the trial judge agreed with the solicitor, found that the chain of custody had been established in regard to the narcotics, admitted the crack cocaine over objection, and noted that the issues with the affidavit could be argued to the jury but did not affect the admissibility of the drugs. (R. pp. 392-393).

Subsequently, the State rested its case, Appellant and his co-defendants moved for directed verdicts while also renewing their previous motions, and the trial judge denied all of the motions. (R. pp. 416-429). Appellant and the others then raised new objections to the admission of the crack cocaine, arguing that it should not have been admitted because Corporal Vinson was not asked to specifically identify the bag of crack cocaine offered into evidence during trial as the one he found in his law enforcement vehicle. (R. pp. 430-432). Again, the trial judge denied the motions after finding that the chain of custody regarding the crack cocaine had been sufficiently established. (R. pp. 433-434). Appellant, Brewton, and Crosby then rested their cases, and the parties presented their closing arguments to the jury. (R. pp. 434-435; pp. 441-483). During Appellant and his co-defendants' closing arguments, they challenged the credibility of Lieutenant Sherfield's testimony and repeatedly called the jury's attention to the loss of the battery

from the scale and Lieutenant Sherfield's misstatement on the chain of custody affidavit. (R. pp. 452-453; pp. 458-459; p. 464; p. 468; pp. 480-481).

Thereafter, at the conclusion of trial, the jury convicted Appellant of the lesser-included offense of possession of crack cocaine with intent to distribute. (R. p. 501). Following the verdict, the trial judge sentenced Appellant to a fifteen-year term of imprisonment suspended to seven-and-a-half years and five years of probation.[11] [12] (R. p. 514). Appellant then moved for reconsideration of his sentence, and the trial judge took the motion under advisement. (R. pp. 516-517). Subsequently, the trial judge issued an order denying Appellant's motion. (R. p. 522).

[11] During the sentencing proceedings, Appellant and Crosby expressed remorse to the trial judge, and Crosby indicated the incident would not be repeated. (R. p. 509; p. 514).

[12] Brewton and Crosby were both also convicted of the lesser included offense of possession of crack cocaine with intent to distribute. (R. p. 501). Similar to Appellant, the trial judge sentenced Brewton to a ten-year term of imprisonment suspended to five years and five years of probation and sentenced Crosby to a fifteen-year term of imprisonment suspended to ten years and five years of probation. (R. p. 507; p. 509).

ARGUMENT

I.

The trial judge properly denied Appellant's suppression motion because, under the totality of the circumstances, the officers possessed reasonable suspicion to conduct an investigatory stop and probable cause to search Appellant's vehicle after they received reliable information from a cooperating informant about the informant's crack cocaine supplier and corroborated significant aspects of that information prior to conducting the stop and search.

Appellant contends that the trial judge erred in denying his motion to suppress the evidence discovered as a result of the investigatory stop and search of the black Ford Expedition. In support of those contentions, Appellant maintains that there was no reasonable suspicion justifying the investigatory stop and no probable cause justifying the search of the vehicle. To the contrary, the officers obtained reasonable suspicion to conduct the investigatory stop and probable cause to search the vehicle after the officers received information from a reliable cooperating informant about his narcotics suppliers, whom he identified as Appellant, and corroborated significant aspects of that information, including the color, make, model, direction of travel, and precise location of Appellant's vehicle, before conducting the stop and search. Critically, based on the information received by the officers and the corroboration of that information prior to the stop and search, the officers reasonably believed crack cocaine would be found in the black Ford Expedition. As a result, the trial judge properly denied Appellant's suppression motion, and his ruling was supported by the evidence presented during trial. Appellant's conviction should be affirmed.

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). Critically, 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).

ANALYSIS

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[.]").

Pursuant to the Fourth Amendment, "[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity." State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) ("To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity."); see also United States v. Sokolow, 490 U.S. 1, 7 (1989) ("[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." (citation omitted)). 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).

For Fourth Amendment purposes, an automobile stop, 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). However, the initiation of an automobile stop is reasonable per se when either probable cause exists to believe a traffic violation has occurred **or** reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) ("[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity."); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) ("Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se."); State v. Morris, 312

S.C. 116, 117, 439 S.E.2d 291, 292 (Ct. App. 1993) ("[U]nder Terry, an officer may stop an automobile."); see also Whren v. United States, 517 U.S. 806, 810 (1996) ("An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.").

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)). "Reasonable 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.' " State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting 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 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 automobile stop must not be considered piecemeal or in isolation. See United States v. Branch, 537 F.3d 328, 337 (4th Cir. 2008) ("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, including the officer's own experience and specialized training, 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."); see also United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[W]e have said repeatedly that [reviewing courts] must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. The process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' " (citations omitted)). "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)).

However, even if an automobile stop is supported by reasonable suspicion, an automobile search is not constitutionally permissible unless it is reasonable under the circumstances. See U.S. Const. amend. IV (prohibiting "unreasonable searches and seizures"). The well-settled rule is warrantless searches are unreasonable per se unless they fall under an exception to the Fourth Amendment's warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978). Notably, South Carolina courts have recognized several exceptions to the warrant requirement, including the automobile exception. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981); see State v. Morris, 395 S.C. 600, 609, 720 S.E.2d 468, 472 (Ct. App. 2011) ("[T]he ready mobility of and the lessened expectation of privacy in automobiles endorse an exception to that rule based upon probable cause.").

The automobile exception is based on: (1) the ready mobility of automobiles along with the potential that evidence may be lost or removed before a warrant is obtained; and (2) the lessened expectation of privacy in motor vehicles. State v. Cox, 290 S.C. 489, 491, 351 S.E.2d 570, 571 (1986). Under this exception, law enforcement officers can conduct a warrantless search of an automobile based on probable cause alone. State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995). "If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more." State v. Weaver, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007). Moreover, "[t]he justification to conduct such a warrantless search does not vanish once the car has been immobilized." Id. at 321, 649 S.E.2d at 482; see Willard, 374 S.C. at 135, 647 S.E.2d at 255 ("[T]emporary immobility may still be considered readily mobile so as to qualify for the automobile exception.").

Probable cause is "a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search, that there exists a practical, nontechnical probability that a crime is being committed or has been committed and incriminating evidence is involved." Bultron, 318 S.C. at 332, 457 S.E.2d at 621. "Probable cause may be found somewhere between suspicion and sufficient evidence to convict." Blassingame, 338 S.C. at 250, 525 S.E.2d at 540. However, the probable cause standard does not require absolute certainty. In re Care and Treatment of Brown v. State, 372 S.C. 611, 619, 643 S.E.2d 118, 122 (Ct. App. 2007); see also Illinois v. Gates, 462 U.S. 213, 235 (1983) ("[I]t is clear that 'only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause.' " (citations omitted)); Adams v. Williams, 407 U.S. 143, 149 (1972) ("Probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction.").

Significantly, in Alabama v. White, 496 U.S. 325, 326-327 (1990), law enforcement officers received an anonymous tip indicating that a person named Vanessa White would be leaving a particular apartment building at a particular time in a brown Plymouth station wagon with a broken right taillight lens and would be travelling to a motel in possession of an ounce of cocaine concealed in a brown attaché case. Id. at 327. After receiving the tip, the officers went to the apartment complex identified by the anonymous caller and observed a woman exit the building and leave in a vehicle matching the description provided by the caller. Id. at 331. The officers then followed the woman's vehicle and initiated an investigatory stop as she drove in the direction of the motel identified by the anonymous caller as White's destination. Id. at 331. Following the stop, White, who turned out to be the woman in the vehicle, provided

consent to search, and the officers located marijuana inside a locked attaché case in the vehicle and cocaine inside White's purse. Id. at 327. White was then arrested, and she subsequently pled guilty to possession of marijuana and possession of cocaine after her motion seeking the suppression of the drugs was denied. Id. at 327-328. Thereafter, White appealed, the Alabama Court of Criminal Appeals reversed the denial of the suppression motion after finding there was no reasonable suspicion justifying the investigatory stop, and the Alabama Supreme Court subsequently denied the State's petition for a writ of certiorari. Id. at 328. The State then filed a petition for a writ of certiorari in the United States Supreme Court, and the Supreme Court reversed the Court of Appeals' decision after granting the State's petition. Id. at 328. In reversing the decision, the Supreme Court found that the officers' corroboration of several significant aspects of the anonymous caller's tip, including the corroboration of the caller's predictions about what White was going to do, was sufficient to impart a degree of reliability to the information provided by the caller. Id. at 331-332. Importantly, because the anonymous caller had been right about some things, the Supreme Court explained that it was reasonable to conclude that the caller would be right about other things, including that White was engaged in criminal activity. Id. at 331. For those reasons, the Supreme Court held that the investigatory stop of White's vehicle was constitutionally permissible and supported by reasonable suspicion. Id. at 332.

Likewise, in Blitch v. State, ___ Ga. App. ___, 747 S.E.2d 863, 864 (Ga. Ct. App. 2013), Thomas Webb was arrested after selling cocaine to an undercover police officer. Following his arrest, Webb agreed to cooperate with the police and identified his cocaine supplier as an individual known as "Big Man." Id. Thereafter, with officers listening in, Webb used his cell phone to arrange for "Big Man" to sell crack cocaine to him at a

particular convenience store within ten minutes. Id. After the transaction was arranged, officers set up surveillance in the area of the convenience store, and Webb placed additional calls to "Big Man." Id. During one of the calls, "Big Man" indicated he was about to pull into the convenience store's parking lot in a Lincoln. Id. Moments later, officers observed a green Lincoln Town Car driving through the parking lot, initiated a stop, removed Blitch from the vehicle, handcuffed him, obtained his consent, and searched the car. Id. at 864-865. During the ensuing search, officers located crack cocaine, and Blitch was arrested. Id. at 865. Blitch was then charged with possession of cocaine with intent to distribute and convicted of the offense. Id. Following his conviction, Blitch appealed, challenging the propriety of the warrantless search of his vehicle. Id. On appeal, the Georgia Court of Appeals affirmed. Id. In reaching that decision, the Court of Appeals initially noted that Blitch consented to the search. Id. However, the Court of Appeals instructed that the search was nonetheless valid because the officers had probable cause to search under the circumstances. Id. Specifically, the Court of Appeals noted that Webb necessarily had to have a source for cocaine and a means for setting up drug transactions since he was a known seller of cocaine. Id. at 866. The Court of Appeals further found that Webb's reliability was further established by his agreement with the officers to lead them to his supplier and by the officers' corroboration of the information provided by Webb. Id. Based on the information provided by Webb and the corroboration of that information by the officers, the Court of Appeals concluded that the officers had probable cause to search Blitch's vehicle. Id.

In the case sub judice, the trial judge properly denied Appellant's suppression motion because the officers' decisions to conduct an investigatory stop and search of the black Ford Expedition were reasonable under the totality of the circumstances and were

supported by reasonable suspicion and probable cause. Critically, the officers' decisions were reasonable because the officers obtained reliable information about Appellant's involvement in illegal activity from a cooperating informant and, just like the officers in White and Blitch, independently corroborated important aspects of that information. Based on the officers' corroboration of the information, it was reasonable for the officers to believe that crack cocaine would be located in the black Ford Expedition at the time of the stop, which justified the investigatory stop and search of the vehicle. As a result, the trial judge correctly declined to suppress the scale, crack cocaine, and other evidence discovered during and after the investigatory stop and search.

Looking to the specific information known to the officers prior to the stop and search, Harris, the cooperating informant, arranged a drug transaction with his narcotics supplier, whom he identified as Appellant. Harris then provided information to the officers about the make, model, and color of Appellant's vehicle, Appellant's reported direction of travel, and Appellant's expected route into Union County. Although the officers had not previously worked with Harris, it was reasonable for the officers to rely on the information provided by Harris because his admission of having a drug supplier was decidedly against his best interests and provided the officers with powerful evidence that could be used against him in any future trial on the distribution of crack cocaine charge for which he had been arrested earlier that day. See United States v. Harris, 403 U.S. 573, 583-584 (1971) ("Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these statements. People do not lightly admit to a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility – sufficient at least to support a finding of

probable cause to search. That the informant may be paid or promised a 'break' does not eliminate the residual risk and opprobrium of having admitted criminal conduct."); see also United States v. Tyler, 238 F.3d 1036, 1039 (8th Cir. 2001) ("Mr. Garza's disclosures were presumptively credible because they were made against his penal interest. . . . After the police caught Mr. Garza with drugs in his possession, he admitted not only that he had obtained the drugs from Mr. Tyler but also that he had purchased drugs from Mr. Tyler on 'numerous occasions' over the previous years. Thus, Mr. Garza's statements cannot be taken merely as blame-shifting because they admitted to criminal activities beyond those of which the police already knew him to be guilty."); Lopez v. State, 292 Ga. App. 518, 521, 664 S.E.2d 866, 869 (Ga. Ct. App. 2008) ("[T]he admissions against penal interest of a known informant in the hands of police (even though that informant's name is not disclosed at the trial of the accused) are valuable facts indicating that the informant is telling the truth and is reliable."); see, e.g., State v. Driggers, 322 S.C. 506, 514, 473 S.E.2d 57, 61 (Ct. App. 1996) ("Klepp-Egge also acted against his best interests by providing the police with information that possibly linked him to the crime."). Additionally, the officers' reliance on the information provided by Harris was further justified because Harris could have been held responsible if the information he provided proved to be false since his identity was known to the officers and he was in the officers' custody. See Driggers, 322 S.C. at 511, 473 S.E.2d at 60 ("[A] non-confidential informant should be given higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false."). In fact, had Harris provided false information to the officers, Harris' chances of achieving his desired objective of getting the officers to assist him in obtaining bond would have been greatly diminished.

Furthermore, because Harris' status as a drug dealer was unquestionable in light of his earlier arrest for distributing crack cocaine, the officers were fully justified in accepting Harris' statements about his narcotics supplier, which he logically had to have in order to successfully serve as a crack cocaine dealer. See Blitch, 747 S.E.2d at 866 ("Webb's basis of knowledge was self-evident because, as a seller of cocaine, he would necessarily have a source that supplied him with cocaine and had the means of setting up the drug transaction."). Under those circumstances, the officers justifiably relied on the information provided by Harris, and Harris' reliability was sufficiently established to make the officers' reliance on his information entirely reasonable. See Gates, 462 U.S. at 233 ("[An informant's veracity and basis of knowledge] are better understood as relevant consideration in the totality-of-the-circumstances analysis that traditionally has guided probable cause determinations: a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."); see, e.g., State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) ("The required reasonable suspicion can arise from an anonymous tip provided that the totality of the surrounding circumstances justifies acting on the tip.").

However, beyond the inherent reliability of Harris' information itself under the circumstances, the reasonableness of the officers' actions in conducting the investigatory stop and search was established by the officers' corroboration of significant aspects of the information provided by Harris **before** they acted on that information. Critically, prior to the stop, Harris informed the officers that Appellant would be travelling in a black Ford Expedition on Highway 176 and would be coming into Union County towards a convenience store located off of the highway. Thereafter, as the officers waited along the highway for the described vehicle to arrive, Harris informed the officers that Appellant

had just driven past the Lighthouse Fish Camp. Moments later, the officers observed a black Ford Expedition driving into Union County along Highway 176 approximately a mile to a mile and half after it would have passed the Lighthouse Fish Camp and only a few miles away from the location where Harris arranged to meet Appellant. Thus, before initiating the investigatory stop of the black Ford Expedition, the officers verified that the vehicle matched the description of the make, model, and color of the vehicle identified by Harris, that the vehicle was travelling towards the location where Appellant was supposed to meet Harris, and that it had recently driven by a specific location on the highway that Appellant reported he had just passed. See White, 496 U.S. at 332 ("Because only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities."); see also Gates, 462 U.S. at 244-245 ("It is enough, for purposes of assessing probable cause, that 'corroboration through other sources of information reduced the chances of a reckless or prevaricating tale,' thus providing 'a substantial basis for crediting the hearsay.' " (citation omitted)). Because the officers were able to corroborate those substantial details, including the information regarding the black Ford Expedition's precise location at a specific time, it was entirely reasonable for the officers to believe that Harris was also correct when he indicated that Appellant was involved in criminal activity and that crack cocaine would be found in the black Ford Expedition. See White, 496 U.S. at 331 ("[B]ecause an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity."); see also State v. Martinez, 150 N.C. App. 364, 369, 562 S.E.2d 914, 917 (N.C. Ct. App. 2002) ("Although Goff was not a known

informant, the officers independently verified the information that he provided to them. Based on Goff's information and the officers' independent verification of that information, the officers had probable cause to believe that defendant and Zavala were committing a felony in their presence."); see. e.g., Gates, 462 U.S. at 241 ("Our decisions applying the totality-of-the-circumstances analysis . . . have consistently recognized the value of corroboration of details of an informant's tip by independent police work."). As a result, the investigatory stop and search were entirely reasonable under the circumstances.

However, further supporting the reasonableness of the search, the officers further corroborated the information provided by Harris after initiating the stop but before conducting the search. Specifically, upon approaching the black Ford Expedition, the officers saw multiple people inside of the vehicle just as Harris had reported and observed Appellant with a cell phone in his hand, which was entirely consistent with the fact that Appellant was speaking to Harris on the phone shortly before the stop was initiated. See United States v. Draper, 358 U.S. 307, 313-314 (1959) ("Marsh[, the narcotics agent,] had personally verified every fact of the information given him by Hereford[, the informant,] except whether the petitioner had accomplished his mission and had three ounces of heroin on his person or in his bag. And surely, with every other bit of Hereford's information being thus personally verified, March had 'reasonable grounds' to believe that the remaining unverified bit of Hereford's information – that Draper would have the heroin with him – was likewise true. . . . [U]nder the facts and circumstances here, Marsh had probable cause and reasonable grounds to believe that petitioner was committing a violation of the laws of the United States relating to narcotic drugs at the time he arrested him."). Thus, just like in Blitch, the corroboration of the

significant details of the information provided by Harris after Harris identified Appellant as his narcotics supplier gave the officers a probable cause basis to believe that crack cocaine would be located in the black Ford Expedition. See Harris, 403 U.S. at 583-584 (finding an admission by an informant of involvement in a crime is "sufficient at least to support a finding of probable cause to search"); see also State v. Foreshaw, 245 N.J. Super 166, 175, 584 A.2d 832, 836 (N.J. Super. Ct. App. Div. 1991) ("After receiving the informer's tip, the officers properly corroborated the data provided. Just as the informer had predicted, the officers observed a sliver-gray Eldorado bearing New Jersey license plates traveling southbound on the Turnpike. Inside the vehicle were two males and a female. As was also foretold, the vehicle exited the highway at Exit 4 and headed towards Camden. Once the officers established that the informant had been correct, they had probable cause to believe that defendants' car contained contraband and as such properly stopped and searched the vehicle."); Lopez, 292 Ga. App. at 522, 664 S.E.2d at 869 ("Here the informant told police in advance the make, approximate model year, and color of the car the supplier would be driving, the location at which the car would be arriving, the gender of the supplier who would be driving the vehicle, and the time of the vehicle's arrival (the supplier would arrive within moments after the informant received the phone call). Police were able to personally witness and corroborate each of these details, which lent credibility to the informant's claim that the supplier was bringing drugs to the location."). Under those circumstances, the officers' decisions to stop and detain the vehicle were entirely reasonable and were supported by both reasonable suspicion and probable cause.[13]

[13] On appeal, Appellant contends that the automobile exception did not apply to the black Ford Expedition because the vehicle was allegedly not mobile once Appellant and his accomplices were removed from it. However, even assuming the removal of the occupants of a vehicle temporarily prevented it from being

In light of the fact that the officers corroborated the information provided to them by an informant who could be held responsible if he was found to have given them false information, the officers were in possession of sufficient facts to establish reasonable suspicion and probable cause, which justified the investigatory stop and search of the black Ford Expedition. Compare Rogers, 396 S.C. at 535-536, 629 S.E.2d at 682-683 (finding an investigatory stop was supported by reasonable suspicion where "the officer received the information from a known, accountable informant whose reputation could be assessed and who explained how he knew about the planned robbery, thereby supplying a basis, outside of his already proven reliability for [the officer] to believe the confidential information had inside information on the matter."); with State v. Green, 341 S.C. 214, 218, 532 S.E.2d 896, 898 (Ct. App. 2000) (finding an investigatory stop was not supported by reasonable suspicion where "[t]he only information available to the officer was the statement of an unknown, unaccountable informant who neither explained how he knew about the money and narcotics, nor supplied any basis for the officer to believe he had inside information about Green"). Just like the officers in White, the officers' decision to conduct the stop in Appellant's case was entirely reasonable and did not violate Appellant's constitutional rights even though the officers were not able to verify that Appellant was in possession of crack cocaine until after the stop was conducted. Cf. White, 496 U.S. at 331 (finding an investigatory stop was constitutionally permissible based on the officers' corroboration of several pieces of information provided by an anonymous caller even though the officers did not verify the reported name of the woman

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moved, such a fact did not render the automobile exception inapplicable to the black Ford Expedition, which was readily mobile by its nature. See Weaver, 374 S.C. at 321, 649 S.E.2d at 482 ("The justification to conduct such a warrantless search does not vanish once the car has been immobilized."); see also United States v. Ross, 456 U.S. 798, 825 (1982) (holding that the automobile exception justified the warrantless search of a vehicle where probable cause existed even though Ross had been arrested and handcuffed prior to the search of the vehicle's trunk).

who got into the vehicle, did not verify the reported apartment number from which the woman left, and did not allow the woman to reach her reported destination prior to conducting the stop). Likewise, just like the officers in Blitch, the officers' decision to search the vehicle in the case at bar was reasonable and was supported by probable cause based on the officers' corroboration of the information provided by Harris in regard to his crack cocaine supplier. See Blitch, 747 S.E.2d at 866 (holding that officers had probable cause to search Blitch's vehicle after an informant identified Blitch as his cocaine supplier and arranged a drug transaction with Blitch and then the officers observed Blitch arrive at the location where the transaction was supposed to take place around the time it was supposed to take place in a vehicle matching the description of the one he was supposed to be driving); see also Gates, 462 U.S. at 246 ("[P]robable cause does not demand the certainty we associate with formal trials."). Because the investigatory stop and search were entirely reasonable, the trial judge properly denied Appellant's suppression motion, and his ruling was fully supported by the evidence presented during trial. See Foster, 269 S.C. at 378, 237 S.E.2d at 591 ("It is only unreasonable searches and seizures that are prohibited."); see also State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."). Appellant's conviction should be affirmed.

II.

The trial judge properly admitted both the scale and the crack cocaine into evidence during trial because testimony was presented establishing that the scale offered into evidence was the one located in the search of the black Ford Expedition and was in substantially unchanged condition and because testimony was presented establishing the identity of each person who was in custody of the crack cocaine and what was done with it prior to the analysis of the crack cocaine at S.L.E.D.

Appellant contends that the trial judge erred in admitting the scale and the crack cocaine into evidence during trial. In support of that contention, Appellant maintains that a sufficient chain of custody was not established in regard to the scale because the scale was kept in a drawer with other scales, the original evidence bag containing the scale broke, and one of the scale's batteries was lost. Appellant further maintains that the chain of custody regarding the crack cocaine was not sufficient because an officer listed incorrect information on a chain of custody affidavit. Contrary to Appellant's contentions, a chain of custody did not have to be established because the scale was a non-fungible item. Before it could be admitted into evidence during trial, the scale simply had to be identified as the scale taken in the search and be in substantially unchanged condition, and testimony was presented satisfying both of those prerequisites. However, even if the establishment of a chain of custody was required, the testimony presented during trial fully established who was in custody of the scale and what happened to it prior to trial. Likewise, the testimony presented during trial established the identity of each person who was in custody of the crack cocaine and what was done with it prior to the analysis of the crack cocaine at S.L.E.D. Accordingly, a complete chain of custody was established in regard to the crack cocaine. For those reasons, the trial judge did not abuse his discretion in admitting both the scale and the crack cocaine into evidence during trial. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

The reception or exclusion of evidence is a matter left largely to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). On appeal, appellate courts give "great deference" to trial judges when reviewing evidentiary rulings. State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010); see State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Moreover, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ANALYSIS

"The 'chain of custody' rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence." United States v. Howard-Arias, 679 F.2d 363, 366 (4th Cir. 1982). "The ultimate goal of chain of custody requirements is simple to ensure that the item is what it is purported to be." State v. Hatcher, 392 S.C. 86, 95, 708 S.E.2d 750, 755 (2011); see Howard-Arias, 679 F.2d at

366 ("The purpose of this threshold requirement is to establish that the item to be introduced, i.e., marijuana, is what it purports to be, i.e., marijuana seized from the 'Don Frank.' "). Notably, "[c]ourts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts." Hatcher, 392 S.C. at 94, 708 S.E.2d at 754.

On one hand, "the establishment of a strict chain of custody is not required" when a party seeks the admission of non-fungible evidence during trial. State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005); see State v. Glenn, 328 S.C. 300, 305, 492 S.E.2d 393, 395 (Ct. App. 1997) ("While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence – that is, evidence that is unique and identifiable – the establishment of a strict chain of custody is not required[.]"); see also State v. Rogers, 361 S.C. 178, 186, 603 S.E.2d 910, 914 (Ct. App. 2004) ("[B]ecause the purse is a non-fungible piece of evidence, chain of custody is not required for its admission."). Non-fungible evidence is "evidence that is unique and identifiable[.]" Freiburger, 366 S.C. at 134, 620 S.E.2d at 741. "If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition." Id. at 134, 620 S.E.2d at 741-742.

On the other hand, a complete chain of custody must be established as far as practicable when a party seeks the admission of fungible evidence like drugs or a blood sample during trial. State v. Governor, 362 S.C. 609, 612, 608 S.E.2d 474, 475 (Ct. App. 2005); see Hatcher, 392 S.C. at 95, 708 S.E.2d at 755 ("The State need not establish the

identity of every person handling fungible items in all circumstances; rather, the standard is whether, in the discretion of the trial judge, the State has established the chain of custody as far as practicable."). However, the proof of the chain of custody need **not** exclude every possibility of tampering. State v. Smith, 326 S.C. 39, 41, 482 S.E.2d 777, 778 (1997); see Rogers, 361 S.C. at 187, 603 S.E.2d at 915 ("South Carolina law does not require testimony as to the exclusion of any possibility of tampering."). Instead, in order to satisfy the requirements for establishing the chain of custody, the evidence and testimony presented during trial must simply not leave to conjecture who was in possession of the fungible item and what was done with it between its seizure and analysis. State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct. App. 1995). "[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive." State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-206 (2007). Furthermore, "where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility." State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001).

In Appellant's case, the trial judge committed no error in admitting either the scale or the crack cocaine into evidence during trial. Regarding the scale, the scale was a uniquely-identifiable item and, thus, constituted non-fungible evidence. Cf. Freiburger, 366 S.C. at 134, 620 S.E.2d 737 at 742 (instructing that a gun is a non-fungible item); Rogers, 361 S.C. at 186, 603 S.E.2d at 914 (holding that a purse is a non-fungible item); Glenn, 328 S.C. at 305, 492 S.E.2d at 395 (finding that a porcelain fragment was a non-fungible item). As a result, a chain of custody did **not** have to be established before the

scale could be admitted into evidence. See Freiburger, 366 S.C. at 134, 620 S.E.2d at 741 (recognizing that the establishment of a chain of custody is not required prior to the admission of non-fungible items into evidence). Instead, the scale could properly be admitted into evidence if it was identified as the scale found during the search of black Ford Expedition and its condition was substantially unchanged, and Lieutenant Sherfield satisfied those requirements by identifying the scale as the one he found in the search and explaining that the only change that occurred to the condition of the scale was that one of its batteries was missing. See id. at 134, 620 S.E.2d at 741-742 (instructing that non-fungible evidence can properly be admitted on the "basis of testimony that the item is the one in question and is in a substantially unchanged condition"). For those reasons, the trial judge committed no error in admitting the scale into evidence during trial. However, even assuming a chain of custody had to be established before the scale could be admitted, the testimony presented during trial demonstrated that Lieutenant Sherfield was in possession of the scale from the point it was taken during the search to the point it was introduced during trial and did not leave to conjecture what was done with the scale prior to trial. See Rogers, 361 S.C. at 187, 603 S.E.2d at 914-915 ("[E]ven if a chain needed to be established, it had been. At trial, every individual who had possession of the purse, which contained the slip of paper, testified to having it and denied tampering with it."). Accordingly, even if a chain of custody had been required, a chain of custody was sufficiently established to warrant the scale's admission into evidence during trial.

Regarding the crack cocaine, testimony was presented during trial establishing the identity of each person who was in custody of the crack cocaine and what was done with it prior to analysis, which meant a complete chain of custody was established in regard to the crack cocaine. Specifically, Corporal Vinson testified that he secured the crack

cocaine after finding it in his vehicle and turned it over to Lieutenant Sherfield, the lieutenant testified that he secured the narcotics in a locked evidence vault that only he could access and then delivered the drugs to the evidence intake area at S.L.E.D., and Agent Smith testified that an evidence technician brought the crack cocaine to him from the S.L.E.D. evidence intake area before he conducted his analysis. Additionally, Perry and Yarborough, the other S.L.E.D. employees who handled the crack cocaine, were specifically identified through the trial testimony. Thus, every individual who handled the crack cocaine was identified and a full chain of custody was established. See Governor, 362 S.C. at 613, 608 S.E.2d at 476 (finding fungible evidence should have been admitted in light of the fact that a complete chain of custody was presented and noting that discrepancies in the manner in which the evidence was handled were not a proper basis for suppression). Furthermore, Corporal Vinson, Lieutenant Sherfield, and Agent Smith all confirmed that they secured the crack cocaine when it was in their possession, and Agent Smith stated that the evidence bag in which the crack cocaine had been sealed had not been tampered with prior to his analysis, which established as far as practicable that the crack cocaine had not been altered by anyone who handled the drugs. See Benton v. Pellum, 232 S.C. 26, 33-34, 100 S.E.2d 534, 537 (1957) (" 'Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis.' " (citation omitted)). For those reasons, the trial judge properly admitted the crack cocaine into evidence during trial, and any issues with the incorrect information on the chain of custody affidavit merely impacted the weight of the testimony as opposed to the admissibility of the crack cocaine. See Johnson, 318 S.C. at 196, 456 S.E.2d at 444 ("The State established a continuous chain of custody through the testimony of all people

who had control and possession of the evidence. Although a discrepancy existed as to the dates Dailey received the evidence, no evidence was presented to indicate the drugs were not within the control of identifiable people during the entire time. **A reconciliation of this discrepancy was not necessary to establish the chain of custody**, but merely reflected upon the credibility of the evidence rather than its admissibility." (emphasis added)).

In conclusion, the trial judge committed no error in admitting either the scale or the crack cocaine into evidence because the scale was a non-fungible item and was specifically identified as the one recovered from the black Ford Expedition and because a complete chain of custody was established in regard to the crack cocaine, which was a fungible item. Critically, the testimony and evidence presented during trial regarding the identity of the scale and the crack cocaine's chain of custody ensured that the evidentiary items were what they were purported to be. See Hatcher, 392 S.C. at 95, 708 S.E.2d at 755 ("The ultimate goal of chain of custody requirements is simple to ensure that the item is what it is purported to be."). Under those circumstances, the trial judge did not abuse his discretion in admitting the scale and crack cocaine into evidence during trial. See Sweet, 374 S.C. at 6, 647 S.E.2d at 205-206 ("[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive."). Appellant's conviction should be affirmed.

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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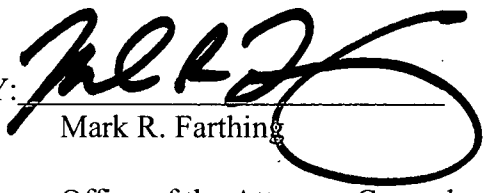
BY: 
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December 10, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2012-207226

THE STATE,

Respondent,

vs.

RODERICK POPE,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

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

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I further certify that all parties required by Rule to be served have been served.
This 10th day of December, 2013.

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