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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Newberry County
Honorable Frank R. Addy, Circuit Court Judge

Opinion No. 2026-UP-058 (S.C. Ct. App. Filed February 11, 2026)
Lower Court Case No. 2022-GS-36-00476

THE STATE,

APPELLANT,

V.

JONATHAN C. DAWKINS,

RESPONDENT

APPELLATE CASE NO. 2026-000865

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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PETITIONER'S STATEMENT OF ISSUES ON CERTIORARI

The Court of Appeals erred in holding the trial court properly granted Dawkins' motion to suppress illegal drugs found on Dawkins' person.

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES

Did the Court of Appeals correctly affirm the trial court's suppression of evidence from the search of Respondent because the search exceeded the scope of a Terry pat down and the illegal search cannot be justified under the search incident to arrest exception because there was no objective basis to support probable cause for an arrest?

STATEMENT OF THE CASE

On November 10, 2022, the Newberry County Grand Jury indicted Respondent for possession with intent to distribute fentanyl, indictment #2022-GS-36-00476. (App. pp. 99-100). Respondent's case proceeded to a pre-trial suppression hearing before the Honorable William P. Keesley on December 5, 2022. Respondent was represented by Tristan M. Shaffer (Counsel), while the State was represented by Taylor W. Daniel. At the end of testimony and arguments, the hearing was continued until the following morning to provide the defense with time to examine two (2) body worn camera (BWC) videos being turned over by the State after all testimony concluded. (App. p. 55, line 23 - p. 59, line 14). The following morning, the court held that Brady[1] applied to both exculpatory and impeachment evidence, and indicated "a disjoin[d]er between what should be going on and what is going on...." As such, the court granted a continuance on the basis of fundamental fairness. (App. p. 70, line 1- p. 71, lines 1-24).

On February 21, 2023, the pre-trial suppression hearing reconvened before the Honorable Frank Addy, Jr. Respondent was still represented by Mr. Shaffer, and the State by Mr. Daniel. After reviewing all evidence presented and arguments of the parties, the trial court determined that the "rationale for the search is factually and legally inherently contradictory and a lot of what was testified to is, in my opinion, contradicted by the video. . . ." (App. p. 94, lines 22-25). Accordingly, the court suppressed the evidence. (App. p. 95, line 12 - p. 97, lines 1-10).

The State appealed. On February 11, 2026, in a *per curiam* unpublished opinion, the Court of Appeals affirmed suppression by the circuit court. State v. Dawkins, Op. No. 2026-UP-058 (S.C.Ct.App. filed February 11, 2026). The State filed a petition for rehearing that was

[1] Brady v. Maryland, 373 U.S. 83, 83 S.CT. 1194, 14 L.Ed.2d 215 (1963)

denied on March 11, 2026. The State filed a petition for writ of certiorari on April 16, 2026. This return follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous. State v. Wilson, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001). "[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to de novo review." State v. Frasier, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022). The trial court's factual findings on whether evidence should be suppressed due to a Fourth Amendment violation are reviewed only for clear error. State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). Thus, on appeal from a suppression hearing, appellate courts are bound by the circuit court's factual findings if any evidence supports the findings. State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004).

STATEMENT OF THE FACTS

In the early morning of October 30, 2021, Respondent, Jonathan C. Dawkins, was walking on Eleanor Street in Newberry, South Carolina. Corporal Daniel Coulombe (Cpl. Coulombe), of the Newberry Police Department was dispatched shortly after midnight in response to a complaint of Respondent allegedly making threats to a man and his friend on nearby Wise Street, and saw Respondent walking on Eleanor Street. He stopped his vehicle and called Respondent. Respondent walked toward Cpl. Coulombe, and eventually away from him. (App. p. 6, lines 7-17; p. 13, lines 8-16; p. 14, line 19 - p. 15, lines1-3). More officers arrived soon after, and Cpl. Coulombe made multiple assurances to Respondent indicating they were not going to arrest him. Respondent was placed in handcuffs by Cpl. Coulombe for "investigative detention," and searched. (App. p. 17, lines 3-20; p. 20, lines 5-15; p. 29, lines 1-9). A bottle of vodka was immediately removed from his back pocket by Officer Kristin Avey; Cpl. Coulombe opened Respondent's jacket and searched his pockets. Cpl. Coulombe retrieved a pill bottle containing four plastic baggies with approximately 50 blue pills in each, and a package with a small amount of marijuana. (App. p. 22, line 15- p. 24, lines 1-25; p. 28, lines 14-25; p. 42, lines 20-25). Respondent was arrested, for trafficking schedule II substance, and possession of marijuana.

After being indicted on November 10, 2022, for possession with intent to distribute (PWID) fentanyl, Respondent's case proceeded to a pre-trial suppression hearing on December 5, 2022, before the Honorable William P. Keesley. The State called two witnesses: Cpl. Coulombe and Ofc. Avey. Regarding his basis for stopping and searching Respondent, Cpl. Coulombe testified under oath that he was concerned Respondent may have had a gun based

upon the nature of the initial complaint. (App. p. 15, lines 5-22). Despite the State's efforts to lead Ofc. Coulombe into saying otherwise, he recounted the following:

> Q- Alright. When the cuffs come on, you, you testified earlier that you had evidence that suggested public intoxication, is that correct?
>
> A- That's correct.
>
> Q- Okay. Did you, any other violations that you suspected initially?
>
> A- No. I had no reason other than I was still concerned about whether or not he had a weapon on him.
>
> Q- So at that point you search him for weapons after the handcuffs go on, is that correct?
>
> A- I did a Terry frisk pat down.
>
> Q- You're describing a Terry frisk?
>
> A- That's correct.

(App. p. 22, lines 7-19). Cpl. Coulombe then told the court that, during the Terry pat down, he "located a hard object in his upper left pocket, but I wasn't sure what it was, couldn't identify it as not being a weapon." (App. p. 22, lines 22-24). He claimed that he suspected the object could have been a weapon "based on the nature of the call." (App. p. 23, linen. 16; p. 25, lines 14-24). When asked again "the reason for the pat down," Cpl. Coulombe confirmed his stated reason for patting down Respondent was that he "believed [Respondent] may have had a weapon on him, officer safety reasons. Again, because of the nature of the call we did a pat down." (App. p. 25, lines 14-17). He removed the object, which was a green pill bottle "commonly used to carry drugs as well as prescription drugs." Upon opening the prescription pill bottle, four baggies containing blue pills in each were found. He also removed a package to access the bottle with what was believed to be marijuana from the same left breast pocket. In fact, Cpl. Coulombe only

removed the package of possible marijuana in order to determine whether the hard object—the bottle—was a weapon. (App. p. 23, lines 17-20; p. 24, line 4 - p. 25, lines1-13; p. 32, lines 1-17; p. 34, lines 19-23).

On cross examination, Cpl. Coulombe acknowledged that he did not decide to arrest Respondent when he first encountered Respondent, and even told Respondent that nobody was trying to "hook him up." Further, even after he handcuffed Respondent, and a bottle of vodka was found in Respondent's back pocket and Respondent smelled of alcohol, Cpl. Coulombe was only "leaning towards" the direction of arrest for public intoxication. Respondent was never arrested for public intoxication, or any other city ordinance violation. (App. p. 30, lines 17-24).

On redirect examination, the State asked, "Why didn't you just tell [Respondent] that you were planning to arrest him right away for public intoxication?" Cpl. Coulombe responded that he "was afraid [Respondent] was going to try to run again." (App. p. 33, lines 2-6). The State further asked Cpl. Coulombe if he thought "in your head that you were going to arrest [Respondent]m for public intoxication." Cpl. Coulombe answered, "I had smelled alcohol on him for a quick minute when he, we first made contact and got real close before he started creating that distance. So yeah, I was thinking in that direction already. My concern was he wasn't within arm's reach having officers in place in case he decided to run." (App. p. 33, lines 9-15). Yet on recross, Cpl. Coulombe again confirmed that he "wasn't looking for contraband, [he] was just looking for weapons," ostensibly under the plain feel doctrine[2] of Terry. (App. p. 34, line 8 - p. 35, lines 1-3).

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[2] Although the transcript from December 5, 2022, states the "playing field" doctrine, the term as written appears to be a scrivener's error that is later clarified on February 21, 2023, as the "plain feel" doctrine. (App. p. 31, lines 6-9; p. 34, lines 3-18; p. 84, lines 11-15).

Ofc. Avey also testified at the suppression hearing. She arrived next at Eleanor Street and encountered Respondent with Cpl. Coulombe. She suspected Respondent was intoxicated, and indicated her belief that the liquor bottle was located before the pill bottle was found. (App. p. 40, lines 13-18). On cross, she acknowledged that although the seal was broken, the bottle cap itself was closed on the bottle, and Respondent was not observed drinking from it at any time. (App. p. 42, line 20 - p. 43, lines 1- 11).

BWC's of Cpl. Coulombe and Ofc. Avey were also entered as exhibits. The videos depicted Cpl. Coulombe and Ofc. Avey approaching Respondent. Early on, Cpl. Coulombe tells Respondent that "nobody's trying to hook you up." Court's Ex. #4, BWC Cpl. Coulombe, starting at 1:43.[3] However, Cpl. Coulombe informs Respondent, "I can't let you leave until we talk to them [complaining witnesses] and get both sides of the story." Court's Ex. #4, BWC Cpl. Coulombe, starting at 1:47. When both Cpl. Coulombe and Ofc. Avey are both standing within arm's reach of Respondent in a yard and speaking with him, Respondent states his concern that "they're gonna charge me with intoxicated." However, Cpl. Coulombe assures him, "No, nobody is trying to lock you up. Chill man." Further, Ofc. Avey likewise stated, "No, no, that's why we're just talking to you." Court's Ex. #4, BWC Cpl. Coulombe, starting at 2:34; Court's Ex. #7, BWC Ofc. Avey, starting at 4:10.

Shortly after, Cpl. Coulombe tells Respondent, "Come here, come here." Petitioner complies, saying, "I'm not gonna run." Regardless, Cpl. Coulombe tells Respondent, "You're not giving me any chance right now. You give me no choice, no choice, 'cause you trying to walk away." Court's Ex. #4, BWC Cpl. Coulombe, starting at 3:50; Court's Ex. #7, BWC Ofc.

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[3] No transcripts were made of any BWC footage. Accordingly, the quotations from BWC videos are approximated start times from each respective video counter, and based upon Respondent's good faith effort to present what he believes to be present. If any discrepancies exist, Respondent respectfully refers the Court to the BWC's.

Avey, starting at 5:35. Thus, with just Cpl. Coulombe and Ofc. Avey present, Cpl. Coulombe places Respondent in handcuffs and tells him, "It's investigative detention so I know you're not going anywhere. It's that simple." Court's Ex. #4, BWC Cpl. Coulombe, starting at 4:06; Court's Ex. #7, BWC Ofc. Avey, starting at 5:35.

Cpl. Coulombe and Ofc. Avey then walk Respondent to the street, and the top of the vodka bottle can be seen in the back pocket of Respondent's pants. Other officers arrive. Ofc. Avey asks Respondent if he has a gun on him, begins to look in his waist band, and eventually pulls out the vodka bottle from his back pocket. Court's Ex. #7, BWC Ofc. Avey, starting at 6:02 & 7:09. Cpl. Coulombe looks inside Respondents inner jacket pocket, then unzips the outer breast pocket and removes items. Court's Ex. #4, BWC Cpl. Coulombe, starting at 6:07; Court's Ex. #7, BWC Ofc. Avey, starting at 7:09. Specifically, he first finds a package, and asks Respondent if they are edibles; Respondent answers Cpl. Coulombe's question, "It's a little weed, man." Cpl. Coulombe then goes back into the same pocket and finds the large green pill bottle. Id. Respondent was neither Mirandized nor told he was under arrest prior to being searched.

Counsel argued that Coulombe's testimony was not credible, specifically regarding the feel of the pill bottle in this case being like a gun barrel. Additionally, Counsel asserted the frisk of Respondent violated the scope permitted by Terry. Specifically, police here went beyond patting down the outside of Respondent's clothing for weapons; instead, they moved clothing and searched inside his pockets. (App. p. 47, line 20 - p. 48, lines 1- 20; p. 53, line 18 - p. 54, lines1-17). Finally, Counsel indicated the claim that police were going to arrest Respondent—despite repeated statements on video to the contrary—was merely the State's way of saying "we know we have a bad Terry frisk here so let's come up with some argument for why it's illegal to

have."[4] (App. p. 48, lines 20-25). As such, Counsel indicated the State was "grasping for straws" by saying the search was a Terry frisk, but if that is not believable, then Respondent was going to be arrested anyway. Counsel asserted those arguments of the government fail in light of "the video and the objective evidence of this case." (App. p. 49, lines 7-12).

The State argued that the search could be both a valid Terry frisk and a search incident to arrest. (App. p. 49, lines 14-15; p. 50, lines 18-19; p. 53, lines 1-10). As to its argument regarding search incident to arrest, the State asserted officers were responding to a 911 call regarding threats. It further argued Respondent's demeanor and breath, along with the vodka bottle in Respondent's pants, indicated Respondent was intoxicated. (App. p. 53, lines 1-12). After arguments, two BWC videos were turned over by the State to Respondent at approximately 5:00 pm. (App. p. 55, line 23 - p. 59, lines 1- 14; p. 64, lines 1-8). The following morning, the court determined that Brady applied to both exculpatory and impeachment evidence, and indicated "a disjoin[d]er between what should be going on and what is going on...." As such, the court granted a continuance on the basis of fundamental fairness. (App. p. 70, line 10 - p. 71, lines 1- 24).

On February 21, 2023, the pre-trial suppression hearing reconvened before the Honorable Frank Addy, Jr. (App. p. 73). The court reviewed all transcripts and videos previously placed in evidence, as well as the BWC videos produced after the last hearing. On the BWC of Officer Rupp (Ofc. Rupp), he first speaks with the complaining witnesses, and then walks over to speak with Respondent. As Respondent is being moved towards the road, Cpl. Coulombe asks what their side of the story is. Ofc. Rupp responds, "Hey, he's threatening them and stuff like that."

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[4] Counsel also asserted that the municipal ordinance outlawed an open container, not a broken seal. Based upon the evidence adduced in the case, Counsel argued Respondent had not violated the ordinance. (App. p. 49, lines 1-5).

Court's Ex. # 3, BWC Ofc. Rupp, starting at 2:55. Respondent answers, saying, "I'm telling y'all I didn't say anything." Court's Ex. # 3, BWC Ofc. Rupp, starting at 3:03. Ofc. Rupp then questions Respondent about where he lives and what he was doing that night. Id. Respondent then indicates he exchanged no words with the complaining witnesses that night. Court's Ex. # 3, BWC Ofc. Rupp, starting at 3:29.

A blonde female officer on the left of the camera then instructs Cpl. Coulombe and Ofc. Avey, **"Pat him down, because we're talking about a gun, so."** Court's Ex. # 3, BWC Ofc. Rupp, starting at 3:38 (emphasis added). Ofc. Avey then begins feeling the back of Respondent's jacket, and asks if he has a gun on him, to which Respondent sys, "No, ma'am." Court's Ex. # 3, BWC Ofc. Rupp, starting at 3:45. Without patting down the front of Respondent's Carhart jacket, Cpl. Coulombe puts his hand directly into the left front pocket of the jacket and asks about Respondent's cell phone shortly after. Court's Ex. # 3, BWC Ofc. Rupp, starting at 4:15. Ofc. Avey then comes to the front of Respondent and opens the front of his Carhart jacket and continues to search while Cpl. Coulombe is off camera. Court's Ex. # 3, BWC Ofc. Rupp, starting at 4:20. Cpl. Coulombe then asks, "Is that edibles?", which corresponds to him asking the same question on his own BWC during the search. Court's Ex. # 3, BWC Ofc. Rupp, starting at 4:40; Court's Ex. #4, BWC Cpl. Coulombe, starting at 6:07. Respondent later informs Ofc. Rupp that he didn't have a gun, and Ofc. Rup responds, "You know how it works man, we're out for whatever, we come across that, we do what we gotta do." Court's Ex. # 3, BWC Ofc. Rupp, starting at 5:20. As Respondent was about to be put into the police cruiser, Ofc. Rupp then told Respondent, "If I believed what [the complaining witnesses] were saying, you'd be arrested for something different. We're not arresting you for that. It's only what you got on you, that's all." Court's Ex. # 3, BWC Ofc. Rupp, starting at 5:54.

Counsel argued the search was indeed a Terry frisk based upon the evidence presented, especially from the BWC's and even Cpl. Coulombe's incident report stating as much. Counsel further asserted the State exceeded the scope of search permitted by Terry when police moved Respondent's jacket and went into his pocket. Finally, Counsel argued the testimony of Cpl. Coulombe and Ofc. Avey was not credible and in contradiction to the other evidence, and such contradictions especially called into question any assertions made at the hearing that the search was incident to arrest. (App. p. 77, lines 1-16; p. 78, line 1 - p. 79, lines 1- 11; p. 90, lines 2-23; Defense Ex.# 1, Flash drive/videos/incident report.

The State still maintained its primary argument that the search was lawful under Terry. However, the State also averred it was justified as a search incident to arrest largely based upon the testimony of Cpl. Coulombe and Ofc. Avey, and the presence of the vodka bottle. (App. p. 79, lines 12 - p. . 84, lines 1- 2; p. 85, line 24 - p. 87, lines 1- 17; p. 88, line 11 - p. 89, lines 1- 2).

The trial court rebuffed the State's assertions, stating it was troubled by "these conflicting rationales for the pat down" which it determined "raise an issue as to the legitimacy of the explanations being given for the Terry pat down and obviously the video. . . . The video contradicts that version of events or at least . . . the ones that I looked at." (App. p. 89, lines 3-24; p. 93, lines 2-17; p. 94, lines 11-14). As such, the trial court held as follows:

> [T]he Court's problem again is that **the rationale for the search is factually and legally inherently contradictory and a lot of what was testified to is, in my opinion, contradicted by the video** . . . that the defense only became aware of at trial. And I know that Judge Keesley had some reservations about how all this played out. I have those same reservations. If this was a straight search incident to arrest, then it would be game over, but the characterization of this as an investigative detention, . . . but, fine, it's investigative detention, so Terry frisk applies.

> **Based on the contradictions that I observed in the video, as opposed to what was testified to, I feel like the Court has no choice but to suppress the drugs in this case.**
>
> So the Court's ruling will be that the—although the initial interaction was certainly proper, although they had the right to arrest him and could have arrested him for the open container, for the open liquor bottle, **the testimony from the December hearing was that this was an investigative detention. Again, the testimony's contradictory in and of itself and it conflicts with what the video cameras show, what the body cam videos show. Based upon all of that, the Court finds that the search did not meet constitutional muster and that a—and that the State's failed to put forward a rational basis to support the actions of the officers that evening when they conducted the search.** They were certainly doing a good job in terms of trying to investigate the situation, but the Court can't be left to guess at what the legal rationale was for the search.

(App. p. 94, line 21 - p. 96, lines 1-6 (emphasis added). Upon further questioning by the State, the court further stated the following:

> [I]f it was a search incident to arrest, I don't see why there was any testimony elicited about investigative detention or Terry frisk or plain feel. All of that is irrelevant to a search incident to arrest. That's why I'm saying the inherently contradictory nature of the testimony in December has just got the Court scratching its head and so, yes, I am suppressing it because it's an illegal Terry frisk. If it was a search incident to arrest, I presume that you would have led with that and it would have been game over. I don't—**I can't help the internally and inherently contradictory nature of the justifications put forward for this search, and so it is being suppressed**, and that's the Court's ruling.

(App. p. 96, line 14 - p. 97, lines 1-5).

ARGUMENT

The Court of Appeals correctly affirmed the trial court's suppression of evidence from the search of Respondent because the search exceeded the scope of a Terry pat down and the illegal search cannot be justified under the search incident to arrest exception because there was no objective basis to support probable cause for an arrest.

The trial court's ruling that the search carried out by police was pursuant to Terry rather than a search incident to arrest is supported by the evidence in the case, including BWC video footage and Cpl. Coulombe's incident report. Further, the trial court's concerns regarding contradictions between the testimony of Cpl. Coulombe and Ofc Avey with the other evidence in the case, highlights the lack of credibility given to the testimony of Cpl. Coulombe and Ofc. Avey regarding their version of events. These findings must stand because they are supported by evidence in the record. Further, because the trial court's determination that the officers' testimony was contradicted by other evidence, and that such contradictions revealed the fact that the true nature of the search was pursuant to Terry and not a search incident to arrest, this ruling is likewise supported by the evidence in the record and must also be upheld. As such, the State's efforts to resuscitate the bad Terry search under a search incident to arrest theory is likewise foreclosed since the State's theory is dependent upon the credibility of testimony from Cpl. Coulombe and Ofc. Avey, which was inherently tainted by their inconsistency with the other evidence presented. Accordingly, the trial court's ruling suppressing the evidence as an unlawful search pursuant to Terry and not a search incident to arrest should be upheld.

"The security and protection of persons and property provided by the Fourth Amendment are fundamental values." State v. Gamble, 405 S.C. 409, 420, 747 S.E.2d 784, 789 (2013) (citing Alderman v. United States, 394 U.S. 165, 175, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969)). "No right is held more sacred, or is more carefully guarded by the common law, than the right of every

individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." State v. Woodruff, 344 S.C. 537, 544, 544 S.E.2d 290, 294 (Ct. App. 2001) (citing Union Pacific Ry. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 1001, 35 L.Ed. 734, 737 (1891)). "The Fourth Amendment to the Constitution of the United States grants citizens the right to be secure against unreasonable search and seizure." State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) (citing U.S. Const. amend. IV). Also, the Fourth Amendment is applicable to the States through the Due Process Clause of the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961). "The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'" Woodruff, 344 S.C. at 544, 544 S.E.2d at 294 (quoting United States v. Mendenhall, 446 U.S. 544, 553–54, 100 S.Ct. 1870, 1877, 64 L.Ed.2d 497, 509 (1980)).

"The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation." Terry v. Ohio, 392 U.S. 1, 28–29, 88 S.Ct. 1868, 1883–84, 20 L.Ed.2d 889 (1968). "The entire deterrent purpose of the rule excluding evidence seized in violation of the Fourth Amendment rests on the assumption that 'limitations upon the fruit to be gathered tend to limit the quest itself.'" Id. (citing United States v. Poller, 43 F.2d 911, 914, 74 A.L.R. 1382 (C.A.2d Cir. 1930)). "Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation" Id. 392 U.S. at 29, 88 S. Ct. at

1884, 20 L.Ed.2d at 889 (citing Warden v. Hayden, 387 U.S. 294, 310, 87 S.Ct. 1642, 1652, 18 L.Ed.2d 782 (1967)).

"[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." Thompson v. Louisiana, 469 U.S. 17, 19–20, 105 S.Ct. 409, 410, 83 L.Ed.2d 246 (1984) (citing Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967)). One such exception is commonly known as a frisk of a defendant by police for weapons: "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) (citing Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). "'When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others,' he may conduct a limited protective search for concealed weapons." Adams v. Williams, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612 (1972) (quoting Terry, 392 U.S., at 24, 88 S.Ct., at 1881). "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law." Id.

Another exception to the warrant requirement is a search incident to arrest. "Where the formal arrest followed quickly on the heels of the challenged search of petitioner's person," it is not "particularly important that the search preceded the arrest rather than vice versa." Rawlings v.

Kentucky, 448 U.S. 98, 111, 100 S. Ct. 2556, 2564, 65 L. Ed. 2d 633 (1980). "The fact that an arresting officer improperly based a search of an individual on a Terry-stop rationale does not prevent the State from otherwise justifying the search by proving probable cause to make a warrantless arrest of the individual existed prior to the search." State v. Moultrie, 316 S.C. 547, 551, 451 S.E.2d 34, 37 (Ct. App. 1994) (citing Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)). "But those cases merely hold that a stop or search *that is objectively reasonable* is not vitiated by the fact that the officer's real reason for making the stop or search has nothing to do with the validating reason." Florida v. Jardines, 569 U.S. 1, 10 (2013). As discussed below and correctly found by the Court of Appeals, in this case the search incident to arrest exception did not apply because there was no objective basis to support probable cause for an arrest.

"In general, a warrantless arrest is proper for purposes of the Fourth Amendment where the facts and circumstances within the arresting officer's knowledge are sufficient for a reasonable person to believe that a crime has been or is being committed by the person to be arrested." United States v. Miller, 925 F.2d 695, 698 (4th Cir. 1991) (citing Brinegar v. United States, 338 U.S. 160, 175–76, 69 S.Ct. 1302, 1310–11, 93 L.Ed. 1879 (1949)). "A search may be conducted incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest." State v. Freiburger, 366 S.C. 125, 132, 620 S.E.2d 737, 740 (2005) (citing State v. Brown, 289 S.C. 581, 347 S.E.2d 882 (1986)).

In the present case, the facts as displayed by the array of BWC videos readily indicate the search of Respondent was under the auspices of Terry.[5] First, Cpl. Coulombe approached

[5] Court's Ex. # 3, BWC Ofc. Rupp; Court's Ex. #4, BWC Cpl. Coulombe; Court's Ex. #7, BWC Ofc. Avey.

Respondent on Eleanor Street following-up on the 911 call from dispatch regarding alleged threats. (App. p. 6, lines 7-17; p. 13, lines 8-16; p. 14, line 19—p. 15, lines 1-3). He and Ofc. Avey spoke with Respondent, and placed him in "investigative detention" for the purpose of preventing him from leaving the area prior to resolution of the 911 complaint.[6] In fact, Cpl. Coulombe and Ofc. Avey specifically denied detaining Respondent for intoxication at the time of his detention.[7] In other words, despite their testimony at the suppression hearing to the contrary, both the conduct and language of Cpl. Coulombe and Ofc. Avey on their BWC's highlighted the fact that Respondent's detention was not for anything to do with alcohol; rather, it was to further investigate allegations of his purported threats, and nothing in their words or actions indicated an intent to arrest Respondent for anything else. This is squarely within the ambit of a Terry stop and frisk.

Second, once near the roadway and upon Ofc. Rupp's arrival, Respondent was confronted with the allegations of the complaining witnesses, and briefly questioned regarding his purported interaction with them. After denying speaking with the complaining witnesses that night, Respondent was searched in a "pat down" only after another officer present specifically directed Ofc. Avey and Cpl. Coulombe to pat him down because a firearm was alleged in the complaint.[8] It was at this time, at the specific direction to pat down Respondent for weapons,[9] that Cpl. Coulombe and Ofc. Avey searched Respondent. This too would have been under the color of Terry. As Cpl. Coulombe wrote in his incident report, "While R/Os were performing a Terry frisk, he located a

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6 Court's Ex. #4, BWC Cpl. Coulombe, starting at 3:50, and at 4:06; Court's Ex. #7, BWC Ofc. Avey, starting at 5:35.

7 Court's Ex. #4, BWC Cpl. Coulombe, starting at 2:34; Court's Ex. #7, BWC Ofc. Avey, starting at 4:10.

8 Court's Ex. # 3, BWC Ofc. Rupp, starting at 2:55.

9 The officer directed Cpl. Coulombe and Ofc. Avey to "pat him down, because we're talking about a gun, so." Court's Ex. # 3, BWC Ofc. Rupp, starting at 3:38.

round object in [Respondent's] upper left outer pocket." Defense Ex.# 1, Flash drive/videos/incident report.

However, Cpl. Coulombe and Ofc. Avey clearly exceeded the recognized boundaries of a Terry search when, contrary to testimony yet consistent with the BWC footage, they moved Respondent's Carhart jacket to search inside, and searched the insides of Respondent's pockets rather than conducting a simple pat down on the outside of his clothing for weapons.[10] Under such circumstances, the trial court's determination is supported by evidence in the record that the seizure and search of Respondent was indeed conducted under the auspices of Terry rather than a search incident to arrest, and that the search itself exceeded the scope permitted by Terry.[11] See, e.g., Adams v. Williams, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612 (1972) (quoting Terry, 392 U.S., at 24, 88 S.Ct., at 1881); see also State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004); State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000); State v.

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[10] Court's Ex. # 3, BWC Ofc. Rupp, starting at 4:15; Court's Ex. # 3, BWC Ofc. Rupp, starting at 4:20.

[11] Perhaps this is why the State has abandoned its prior argument to the trial court attempting to justify the search under Terry. On appeal, the issue advanced by the State regarding the admissibility of items found in the search of Respondent was neither Terry nor inevitable discovery; rather, the sole theory for admissibility now argued by the State to this Court is under search incident to arrest. R. 53, ll. 10-15; R. 79, ll. 15-19. Accordingly, all other theories argued by the State at trial are abandoned. See State v. Baccus, 367 S.C. 41, 50 n.1, 625 S.E.2d 216, 221 n.1 (2006) (holding an issue not argued in the brief was abandoned on appeal) (citing State v. Hiott, 278 S.C. 72, 276 S.E.2d 163 (1981)); see also First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling.") (citing State ex rel. McLeod v. Wilson, 279 S.C. 562, 310 S.E.2d 818 (Ct.App.1983)); S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct. App. 2008) ("[E]ven if an issue is preserved at the trial court level, it must still be properly raised and argued to the appellate court.") (citing Fields v. Fields, 342 S.C. 182, 191, 536 S.E.2d 684, 689 (Ct. App. 2000) (stating "issues not argued in the brief are deemed abandoned and will not be considered on appeal."); Rule 208(b)(1)(B) and (D), SCACR.

Frasier, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022); State v. Wilson, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001).

The trial court was also rightly troubled by the contradictory arguments made by the State and testimony by the officers when compared to the other evidence in the case. Despite the State's efforts to generate testimony for its argument that police were going to arrest Respondent for public intoxication regardless of their investigation into the purported threats, such a position was again belied by evidence on the BWC's and incident report. As indicated above, the BWC's show that at no time was Respondent going to be arrested for public intoxication, nor did the words and actions of the officers on the BWC's support their testimony indicating they were going to do so.

Furthermore, the fact that Respondent had a bottle in his back pocket was of no moment; as Counsel argued, the municipal ordinance under which the State argued was for an open container, not a broken seal. (App. p. 48, line 25 - p. 49, lines 1-5). As police acknowledged, the vodka bottle was closed, and Respondent was not drinking from it. (App. p. 43, lines 1-11). Therefore, the trial court was rightly concerned by the evidence in the case conflicting with both the testimony of police and theory of the State. If, as the trial court told the State in apparent exasperation, this was a search incident to arrest, then the State certainly would have led with that theory. However, such a theory was not supported by the BWC's or incident report of Cpl. Coulombe, and the credibility of Cpl. Coulombe's and Ofc. Avey's testimony in support of such a theory was already tainted and subverted by the BWC videos.

The present case is distinguished from State v. Moultrie, 316 S.C. 547, 451 S.E.2d 34, (Ct. App. 1994). As the Court of Appeals noted in affirming suppression:

> There was no serious dispute about probable cause in Moultrie because when deputies arrived on the scene, there was "a crowd of people surrounding Moultrie, a package of marijuana at Moultrie's feet, and a paper bag filled with cocaine, crack cocaine, and marijuana at the edge of the woods, exactly where [the informant] had

> told the deputies Moultrie stored his inventory of drugs." Id. at 552–53, 451 S.E.2d at 38. This court affirmed because "[t]h[o]se facts, when viewed under the totality of circumstances, were sufficient for a reasonable person to believe that Moultrie had been, or was currently, conducting drug transactions in front of his house." *Id.* at 553, 451 S.E.2d at 38.

State v. Dawkins, No. 2023-000274, 2026 WL 382015, at *1 (S.C. Ct. App. Feb. 11, 2026). As correctly noted by the Court of Appeals, "We do not see abundant probable cause in this record like there was in Moultrie." Dawkins, No. 2023-000274, 2026 WL 382015, at *2 (S.C. Ct. App. Feb. 11, 2026).

The present case is distinguished from State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005), where the officer testified that the defendant was going to be arrested for hitchhiking, was properly patted down and a gun found. "At the *in camera* hearing, Trooper Meredith testified that, although Freiburger had not been arrested at the time of the pat down search, he was going to be arrested for hitchhiking, or taken back to the jail. Trooper Meredith went on to testify that 'we did a safety search before we put somebody in the car. You check them to see if they have any weapons.'" Freiburger, 366 S.C. at 133, 620 S.E.2d at 741. The South Carolina Supreme Court found the search legitimate as a search incident to arrest. In contrast in the present case there was no definitive testimony that Respondent was going to be arrested for any specific offense and the pat down exceeded the scope of Terry.

Under the totality of the circumstances, Counsel's argument before the trial court rings true: the State was "grasping for straws" in its attempt to salvage what was openly a bad Terry frisk under the guise of a search incident to arrest at the suppression hearing. Although some warrantless searches may be valid under the search incident to arrest exception, that was simply not the case here. The trial court rejected the testimony of the officers and argument of the State due to inconsistencies with the BWC's. In other words, the trial court's ruling readily indicates the lack of

credibility of the testimony provided by Cpl. Coulombe and Ofc. Avey. Without credibility of the State's witnesses to buoy its alternate argument to justify the warrantless unconstitutional search of Respondent, it is likewise without evidentiary support. As such, the trial court correctly held that the actual basis for the search was a Terry frisk, and that the parameters of Terry were violated by law enforcement. The record supports the trial court's suppression of evidence from the search of Respondent as beyond the scope of a Terry frisk and that the search incident to arrest exception did not apply where, under the totality of the circumstances, testimony of the officers regarding the encounter was not credible due to contradictions with body worn camera videos, with the incident report, and with the alleged alternate reasons for the search.

. The Court of Appeals correctly affirmed suppression by the trial court finding that the search was not a pat down for weapons allowed by Terry writing:

> The body camera videos show that there was no pat down of Respondent's clothes for weapons as Terry allows. See Terry, 392 U.S. at 24, 28–29 (permitting an officer to conduct a protective pat-down search for weapons when the "officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others"). Instead, the officers reached directly into Respondent's pockets as if looking for contraband. See Minnesota v. Dickerson, 508 U.S. 366, 375–76 (1993) (finding an officer may seize contraband during a Terry frisk only "[i]f a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent"); see also id. at 378 (agreeing with the Minnesota supreme court's conclusion that the challenged evidence was inadmissible because the officer only determined the object was contraband after "manipulating the contents of the defendant's pocket"). We cannot say the circuit court erred in viewing this as a case where the officer's justification followed—rather than preceded—the search itself.

State v. Dawkins, No. 2023-000274, 2026 WL 382015, at *2 (S.C. Ct. App. Feb. 11, 2026).

The Court of Appeals correctly affirmed suppression by the trial court finding that the search incident to arrest exception did not apply because there was no objective basis to support probable cause for an arrest. "We do not see abundant probable cause in this record like there was

in Moultrie." Dawkins, No. 2023-000274, 2026 WL 382015, at *2 (S.C. Ct. App. Feb. 11, 2026).

In affirming suppression, the Court of Appeals wrote:

> The State has not consistently or definitively identified a justification or offense providing probable cause to arrest Respondent. At the first suppression hearing, the officers initially testified that this was a Terry frisk. As the hearing evolved, the solicitor attempted to guide them towards it being a search incident to arrest for unidentified violations of the local municipal code. During oral argument at this court, the State asserted officers had probable cause to arrest Respondent for a litany of offenses including third degree assault and battery.
>
> We cannot consider new arguments that were not presented below. See State v. Passmore, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005) ("The general rule of issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal."). As for the argument that the officers had probable cause to arrest Respondent for public intoxication, we interpret the circuit court's ruling as rejecting this because the court appears to have been deeply troubled, and understandably so, by the fact that the officers' testimony was directly contradicted by the body camera videos of what actually occurred. The standard of review requires us to defer to the circuit court. See Laughon v. O'Braitis, 360 S.C. 520, 524–25, 602 S.E.2d 108, 110 (Ct. App. 2004) (explaining appellate courts defer to credibility determinations because the circuit court "was in a better position to assess the credibility of the witnesses"). The argument that Respondent exhibited signs of public intoxication turns on the credibility of the officers' testimony. The mere fact that Respondent had a bottle of vodka in his back pocket, standing alone, does not objectively establish probable cause sufficient to justify a search incident to arrest.

State v. Dawkins, No. 2023-000274, 2026 WL 382015, at *2 (S.C. Ct. App. Feb. 11, 2026). The Court of Appeals correctly used an objective analysis in affirming suppression by the trial court. This Court should deny the petition for writ of certiorari.

CONCLUSION

Based on the above argument this Court should deny the petition for writ of certiorari.

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ATTORNEY FOR RESPONDENT

This 8th day of May, 2026.