STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2012-212700

THE STATE, ...RESPONDENT

v.

KENNETH ODELL JACKSON,.....APPELLANT.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly denied Appellant's motion to suppress evidence discovered in the search of the car he was driving following a lawful traffic stop where the police did not measurably extend the duration or scope of the traffic stop through any of their investigative actions and, even if the stop was extended into a second detention, the police developed reasonable suspicion to believe a crime had been committed based on specific articulable facts learned before and during the stop?

STATEMENT OF THE CASE

Appellant was indicted at the February 22, 2012 term of the grand jury for Spartanburg County for possession with intent to distribute cocaine (2012-GS-42-0824) and possession with intent to distribute methamphetamine (2012-GS-42-0827).[1] He was represented by Ricky Keith Harris, Esquire. (R.p.1). On July 23-25, 2012, Appellant proceeded to trial by jury pursuant to which he was found guilty of simple possession of cocaine and possession with intent to distribute methamphetamine. He was sentenced by the Honorable Roger L. Couch to ten (10) years' imprisonment suspended upon the service of four (4) years' imprisonment and three (3) years' probation for possession with intent to distribute methamphetamine, and three (3) years' concurrent imprisonment for possession of cocaine. (Indictments & Sentencing Sheets). Appellant timely filed a notice of intent to appeal his convictions and sentences and subsequently submitted a Brief. This Brief of Respondent (the State) follows.

[1] Appellant was also indicted for possession with intent to distribute hydrocodone (2012-GS-42-0825) and possession with intent to distribute clonazepam (2012-GS-42-0826); however, during trial the State elected to dismiss these two charges and proceeded only on the charges of possession with intent to distribute cocaine and methamphetamine. (R.p.8, line 21-p.11, line 17; R.p.270, line 1-p.270, line 14).

STATEMENT OF FACTS

Master Deputy Andrew Daniel (Daniel) of the Spartanburg County Sheriff's Office (SCSO) was working in the SCSO's street crime unit in 2011. On the evening of November 29, 2011, Daniel initiated a traffic stop of Appellant because the rear license tag on the vehicle Appellant was driving was not properly lit.[3] Immediately after Daniel pulled the car over, several other officers arrived at the scene. Several minutes later, during the course of the stop, a canine drug detection unit also arrived. The canine handler walked the dog around the vehicle to do a "free air sniff." The dog alerted to an odor inside the car and the officers searched the vehicle.[4] In the center console they found two pill bottles containing a variety of pills, a plastic bag, a white envelope, and a spiral notebook which appeared to be a drug ledger. In a sunglasses holder they found a small plastic bag of white powder which appeared to be cocaine. Appellant was then arrested. (R.p.34, line 1-p.42, line 2; p.81, line 10-p.82, line 4; R.p.208, line 1-p.213, line 15; p.224, line 17-p.227, line 4; p.243, line 2-p.248, line 14; p.257, line 13-p.266, line 23).

Prior to trial, Appellant moved to suppress results of the search of the automobile. He argued the initial stop and detention were not supported by reasonable articulable suspicion or probable cause. Appellant also argued that even if the initial stop was justified, the officers illegally exceeded the scope of that stop by unreasonably extending its duration without having developed reasonable suspicion of a serious crime to justify

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[3] The South Carolina Code provides in part that: "Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear." S.C. Code Ann. § 56-5-4530 (Supp. 2011).

[4] Testimony at the suppression hearing established that fourteen minutes and thirty-five seconds elapsed between the initial stop and the moment the drug dog alerted to the odor of drugs in the car. (R.p.37, line 3-p.38, line 18; p.76, lines 3-9).

further detention. (R.p.12, line 14-p.28, line 21). The State called five officers with the SCSO to testify at the ensuing suppression hearing.

SCSO Investigator Paul Anthony Norris (Norris) served in the narcotics division for six years, had training in basic narcotics, and received methamphetamine lab certifications and a nine-week certification from the South Carolina Criminal Justice Academy (CJA). He testified that in August of 2011 he started an investigation of Appellant that culminated in a controlled buy of hydrocodone.[5] Norris described using a "C.I."[6] to arrange the buy and said Appellant instructed the C.I. to meet him at a Wendy's parking lot. The C.I. was outfitted with recording equipment and was given money to make the buy. Norris and Investigator Beck watched from a parked car across the street as the C.I. walked up to a charcoal gray [Dodge] Magnum with a black male sitting inside and made a transaction. The controlled buy was videotaped. Norris testified he watched the video and identified Appellant both as the person in the video and the person now in court. He also identified a photograph of a charcoal colored Magnum as the car Appellant drove to the controlled buy. Norris told his supervisors, Lieutenant Cooper and Sergeant Pharis, about the controlled buy and the ongoing investigation of Appellant. (R.p.29, line 2-p.32, line 25). On cross-examination Norris acknowledged he did not get a tag number from the vehicle used in the controlled buy, but he noted it was the same color and model as the vehicle Appellant was driving at the time of the traffic stop. (R.p.33, lines 2-16).

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[5] Subsequent testimony established the controlled buy was conducted on September 10, 2011, approximately two and one-half months before the traffic stop which is the subject of this appeal. (R.p.76, line 21-p.77, line 12).

[6] "C.I." or "CI" typically refers to a "confidential informant." See e.g., State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 483 (2013); State v. Padubsri, 403 S.C. 270, 273, 743 S.E.2d 98, 100 (Ct. App. 2013).

Master Deputy Daniel was on duty the evening of November 29, 2011, when he got a call from Sergeant Luther about surveillance Luther was conducting on a car that had just driven away from a nearby gas station. Luther asked Daniel to follow the car and see if he could find a reason to stop it. As he followed, Daniel saw the car swerve to the left and fail to maintain its lane, like the driver was reaching over to the right. Next, Daniel determined the car's license tag was not properly illuminated, explaining he could not see it from thirty to thirty-five feet away when his headlights were off. He turned on his blue lights, stopped the car, and asked the driver for his I.D. Appellant handed Daniel a provisional driver's license, which Daniel found suspicious given the time of night because a provisional license is normally used just to drive back and forth from work, church, a doctor's office, and similar places. Daniel asked Appellant if he had any narcotics in the car. As soon as Daniel mentioned drugs, Appellant "broke eye contact" and "looked away." Daniel then asked for consent to search the car. He noticed two air fresheners in the car and learned the car was not registered to Appellant. Daniel then called for a canine unit and returned to his patrol car to start his routine computer checks and to write a ticket. He testified he ran a "Spillman check," a warrant check, a driver's license check, and a registration and vehicle check, which took between ten and twelve minutes. Daniel ultimately handed Appellant the ticket for "improper tag light" after the dog arrived and the search of the car had begun. (R.p.33, line 21-p.42, line 4; State's Exhibits #1, #2 & #3).

On cross-examination, Daniel testified he asked Appellant to exit the vehicle so he could show Appellant why he had been stopped (the tag light) and to get out of traffic. Daniel said he asked Appellant about drugs because of Sergeant Luther's ongoing

investigation of this vehicle having just left an area often used for drug transactions. (R.p.47, line 20-p.49, line 3). Daniel testified he requested the drug dog because his suspicion was raised by: (1) the way Appellant swerved over as if he was hiding something; (2) the two air fresheners in the car; (3) his knowledge that Appellant was coming from an area of drug activity; and (4) Appellant's reaction when he was asked about drugs. (R.p.50, line 8-p.51, line 1). Daniel acknowledged he asked Appellant about drugs and for consent to search before running his computer checks, but explained he was simply conducting what he believed was a normal traffic stop. He testified it was not his intent to take as much time as necessary to write the citation in order to allow the drug dog to get to the scene. Daniel explained it simply took ten to fifteen minutes to run his computer checks and to write the citation. (R.p.51, line 12-p.54, line 2).

Officer Dan Swad (Swad) is a thirty-year veteran with the SCSO, with fifteen years' experience in narcotics investigations. He completed basic training at CJA, basic training in narcotics investigations, and various advanced investigative schools throughout the years. Swad testified it was common knowledge in the narcotics division that a particular area outside the gas station where Appellant was parked was used to facilitate drug transactions. He testified he and Sergeant Luther were specifically watching that area on November 29, 2011, because a lot of drug dealing had been going on there. Swad said Luther noticed a Dodge Magnum backed in to the gas station in the shadows in that area. They drove closer in an unmarked Dodge Durango and saw somebody sitting inside the car talking on a phone. Swad described the car as a dark-colored Dodge Magnum but did not see the tag. After a couple of minutes the car drove away and Luther called Daniel, who was in a marked patrol car, and asked Daniel to find

a reason to stop the car. Swad and Luther joined Daniel shortly after the car was pulled over. Swad described the driver as very nervous and said he was non-confrontational and looked away when he was asked a question. After learning the driver's identity, Swad called Sergeant Pharis who told him Norris had made undercover buys from Appellant in the recent past. (R.p.58, line 18-p.64, line 22). On redirect examination, Swad explained that the suspicious dark area in the gas station parking lot was not where a customer at the store would typically park. (R.p.71, lines 18-24).

Officer Roger Luther (Luther) of the SCSO is a twenty-five year veteran law enforcement officer with twelve years' experience in narcotics investigation and street-level drug enforcement. He assisted Swad on the night of November 29, 2011, and saw and heard everything Swad did before and during the traffic stop. Luther called and spoke to Sergeant Pharis shortly after Daniel requested a drug dog. (R.p.72, line 15-p.74, line 3). Sergeant Joseph Lathan Pharis (Pharis)[7] of the SCSO is a seventeen-year veteran law enforcement officer, which includes approximately thirteen and a half years in narcotics. He became a canine handler when he and his drug dog Sawyer completed canine training in October of 2010. Pharis identified a photo of Sawyer alerting to the car during the traffic stop. He testified he remembered getting a phone call asking if he was available to come to the traffic stop, so he headed straight there. Pharis then identified a photograph of the dark gray Dodge Magnum from the September 10, 2011, controlled buy from Appellant. He testified the car Appellant was driving on November 29, 2011, was the same color, make and model as the car in the photo. After Sawyer alerted, the car was searched. (R.p.74, line 10-p.82, line 4; State's Exhibits #3 & #4).

[7] Sergeant Pharis is incorrectly identified as Joe "Ferris" in the July 24-25, 2012, trial transcript.

Next, the trial court heard arguments in regard to the motion to suppress. Appellant repeated his challenge to both the initial traffic stop and the subsequent detention that led to the search of the car. He argued the tag light violation was not sufficient to justify the stop because the officer did nothing to substantiate that violation after the stop was made. Appellant further argued the detention should have been ruled unlawful because Daniel spent time asking him questions, seeking consent to search, and calling for a canine unit instead of immediately making routine inquiries incident to a traffic stop and writing a citation for the traffic violation. He claimed these actions demonstrated the police officers' intent was to conduct a drug investigation rather than a traffic stop. Appellant also claimed these actions extended the duration of the stop longer than necessary and were unlawful because they were not the least intrusive means reasonably available to effectuate the purpose of the stop. (R.p.88, line 7-p.91, line 20). The trial judge responded that it appeared the drug sniff took place before the traffic stop was completed because the citation had not yet been written and given to Appellant. (R.p.94, lines 8-10). Appellant disagreed and argued the traffic stop ended "at the point in time where it was determined that a tag-light violation had occurred and that a citation was going to be written." (SROA.p.1, lines 17-25).[8]

In regard to the initial traffic stop, the State argued the tag light violation was sufficient to justify the stop regardless of the officers' subjective intent. In regard to the detention, the State argued it was lawful because the dog arrived and conducted the sniff before the police had completed the routine inquiries incident to the traffic stop and written a citation. Alternatively, the State argued that to the extent the court determined

[8] To the extent it wasn't clear at the time of trial, this argument has now been soundly rejected by the South Carolina Supreme Court. State v. Provet, 405 S.C. 101, 110, 747 S.E.2d 453, 458 (2013).

Appellant was detained beyond the reasonable length of a traffic stop, the officers possessed a reasonable articulable suspicion of drug activity, which was sufficient to justify the continued detention under the facts presented. (R.p.100, line 17-p.107, line 1).

The trial judge then recalled Daniel to the stand and questioned him about the traffic stop. Daniel testified he believed he was still in the process of writing the ticket when the dog arrived. (R.p.107, line 16-p.110, line 13). On cross-examination Daniel acknowledged asking Appellant whether there were drugs in the car, asking for permission to search the car, and calling for the drug dog before he started running his computer checks and writing the citation. He testified that after he returned to his car, he was accessing databases and "doing his computer stuff" while he was talking to other officers. Daniel described the various computer checks he was running but could not say exactly what time they were all complete. He admitted he had no intention of completing the citation and allowing Appellant to leave before the drug dog arrived, because at that point he felt like Appellant was already being detained for further investigation. (R.p.110, line 19-p.118, line 9). However, under further questioning, Daniel testified he was diligently checking the systems in his car and that he did not deliberately delay writing the ticket or entering computer information. He testified he was working towards writing the ticket the entire time and never stopped or stretched the process out longer on purpose just because he had decided he was going to detain Appellant. (R.p.118, line 12-p.119, line 18).

The trial court heard final arguments and commented: "The testimony now is apparently the intention was to extend it," and that "the question is was there a reasonable suspicion." The court took the matter under advisement and adjourned for the evening.

(R.p.121, line 5-p.128, line 7). The following morning the trial court denied Appellant's motion to suppress. The judge found the initial stop was lawful based on the tag light violation, even though the reason may have been pretextual in nature. The court further found that, under the totality of the circumstances, the police had reasonable suspicion to continue the traffic stop for further investigation based on information that developed as the stop proceeded. Specifically, the trial court identified the following specific articulable facts: (1) knowledge of the controlled buy from Appellant in what appeared to be an identical vehicle less than three months before the stop; (2) Appellant's overly nervous behavior during the stop; (3) Appellant's swerving out of his lane while possibly attempting to hide something immediately before the stop; (4) the presence of two air fresheners in the car; (5) the car being registered to a third party; and (6) knowledge that the car was coming from a high crime area. (R.p.135, line 3-p.138, line 21).

At trial, SCSO officers Norris, Daniel, Luther, Pharis, and Swad provided testimony similar to that given at the pretrial hearing with the exception that no mention was made of the September 10, 2011 controlled buy from Appellant. They also provided additional details about the evidence discovered in the car during the search. (R.p.152-p.269). During Daniel's testimony, Appellant renewed his objection to the admissibility of any evidence discovered during the traffic stop. The trial court noted Appellant's objection, said the ruling denying the motion to suppress was the same, and noted the objection would continue throughout the line of questioning. (R.p.167, line 12-p.168, line 21). Appellant again renewed his objection during Pharis' testimony. The objection was noted and the court's ruling was again the same. (R.p.247, lines 3-8).

Next, Angela Nelson, the evidence officer for the SCSO, described the process for accepting, storing and securing evidence collected during investigations. (SROA.p.2, line 4-p.8, line 13). Finally, Mary Elizabeth Stuart, a forensic chemist with the SCSO, was qualified as an expert in testing controlled substances and conducting chemical analysis of those substances. She described the process for analyzing the substances found during the search of the car. Stuart testified that she identified 8.39 grams of methamphetamine that had been pressed into 47 tablets and 1.59 grams of powder cocaine. (SROA.p.9, line 4-p.19, line 22).

At the conclusion of the State's case Appellant moved for a directed verdict of acquittal and renewed his Fourth Amendment objection to the evidence obtained in the search. (SROA.p.20, line 14-p.21, line 22). The trial judge held: "My ruling on the reasonable suspicion and the appropriateness of the stop would remain the same based on the evidence that I heard both at the pretrial hearings and during the actual trial of the case." (SROA.p.22, lines 18-21). Appellant elected not to testify and offered no evidence in his defense. (SROA.p.23, lines 15-17). After closing arguments, the trial judge charged the jury on the applicable law, including general jury instructions on the burden of proof, the presumption of innocence, reasonable doubt, the role of the judge and the jury, direct and circumstantial evidence, the jury's duty to assess the credibility of the witnesses, criminal intent, actual and constructive possession, mere presence, and the elements of the crimes. (SROA.p.24, line 1-p.47, line 5).

At the conclusion of trial, the jury convicted Appellant of simple possession of cocaine (2012-GS-42-0824) and possession with intent to distribute methamphetamine (2012-GS-42-0827). (SROA.p.48, line 5). He was sentenced to ten (10) years'

imprisonment suspended upon the service of four (4) years' imprisonment and three (3) years' probation for possession with intent to distribute methamphetamine, and three (3) years' concurrent imprisonment for possession of cocaine. (R.p.278, lines 12-19; Sentencing Sheets).

ARGUMENT

The trial court properly denied Appellant's motion to suppress evidence discovered in the search of the car he was driving following a lawful traffic stop where the police did not measurably extend the duration or scope of the traffic stop through their investigative actions and, even if the stop was extended into a second detention, the police developed reasonable suspicion to believe a crime had been committed based on specific articulable facts learned before and during the stop.

Appellant contends the trial judge erred in failing to suppress the cocaine and methamphetamine discovered during the traffic stop of the vehicle he was driving. Appellant maintains the stop was unlawfully extended without reasonable suspicion or probable cause because he exhibited no concealing behavior which would justify further investigative detention. To the contrary, the State submits the police did not measurably extend the duration or scope of the approximately fourteen-minute-long traffic stop through any of their investigative actions and, even if the stop was extended into a second detention, the police developed reasonable suspicion to believe a crime had been committed based on specific articulable facts learned before and during the early stages of the traffic stop. Therefore, the trial court properly denied Appellant's motion to suppress the contraband discovered in the car. Because the ruling was supported by the evidence, 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. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010); State v. Brockman, 339 S.C. 57, 66, 28

S.E.2d 661, 666 (2000); State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. Tindall, 388 S.C. at 521, 698 S.E.2d at 205; 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. Provet, 405 S.C. at 107, 747 S.E.2d at 456; 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).

Scope and Duration of Initial Seizure

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. That 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. Maryland v. Buie, 494 U.S. 325, 331 (1990); State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977).

For Fourth Amendment purposes, a traffic stop of a vehicle, 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, violation of motor vehicle codes provides an officer reasonable suspicion to initiate a traffic stop. Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977); Provet, 405 S.C. at 108, 747 S.E.2d

at 457; see also State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) (finding the initiation of a traffic stop is reasonable per se when probable cause exists to believe a traffic violation has occurred). 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). Indeed, "a minor traffic violation arrest will not be rendered invalid by the fact it was a 'mere pretext for a narcotics search.'" State v. Corley, 383 S.C. 232, 240, 679 S.E.2d 187, 191-92 (Ct. App. 2009) (citations omitted). "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." Whren v. United States, 517 U.S. 806, 813 (1996); see also Provet, 405 S.C. at 108, 747 S.E.2d at 457 (noting the officer's subjective motivations are irrelevant to the analysis).

A lawful traffic stop begins at the point an officer stops a vehicle to investigate a traffic violation and "ordinarily continues, and remains reasonable, for the duration of the stop." Arizona v. Johnson, 555 U.S. 323, 333 (2009). Once a lawful traffic stop is initiated, an officer may order the driver and any passengers out of the vehicle pending completion of the stop and "may request a driver's license and vehicle registration, run a computer check, and issue a citation." Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); see also Maryland v. Wilson, 519 U.S. 408, 415 (1997) ("[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop."). "Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave." Johnson, 555 U.S. at 333.

During the course of the stop, an officer can inquire into matters unrelated to the initial justification for the stop without converting the stop into something other than a lawful seizure, so long as the unrelated questioning does not measurably extend the duration of the stop. Id.; Provet, 405 S.C. at 108-09, 747 S.E.2d at 457; see also Muehler v. Mena, 544 U.S. 93, 100-01 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation). Such an investigatory traffic stop must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848; see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) ("The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.").

Initially, the State submits the duration of the traffic stop of Appellant's vehicle was objectively reasonable under the totality of the circumstances and encompassed the time it took to conduct the free air sniff conducted by the drug dog. Daniel unquestionably had probable cause to initiate the traffic stop after observing Appellant's tag light violation. See State v. Nelson, 336 S.C. 186, 193, 519 S.E.2d 786, 789 (1999) ("As a general matter, the decision to stop an automobile is reasonable where police have probable cause to believe that a traffic violation has occurred."). The length of the entire detention from the moment Daniel stopped the vehicle Appellant was driving to the moment the drug dog alerted to the odor of drugs in the car was approximately fourteen minutes. While there is no firm rule as to the appropriate length of a stop and detention, the traffic stop of Appellant's vehicle was not measurably extended by any of the

investigative actions undertaken by the police and was arguably reasonable in duration notwithstanding the existence of reasonable suspicion to expand the scope of the stop. See Johnson, 555 U.S. at 333 ("An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." (emphasis added)); United States v. Sharpe, 470 U.S. 675, 683 (1985) (finding a twenty-minute detention during an investigatory traffic stop was objectively reasonable); Provet, 405 S.C. at 109, 747 S.E.2d at 457-58 (finding the initial traffic stop concluded in a reasonable amount of time even if the officer's questioning was unrelated to the purpose of the traffic stop where the entire stop lasted approximately ten minutes); Branch, 537 F.3d at 338 ("We begin with the basic fact that much of Branch's 30-minute detention was justified by the 'ordinary inquiries incident' to a routine traffic stop." (citations omitted)); United States v. Jeffus, 22 F.3d 554, 557 (4th Cir. 1994) (finding a fifteen-minute traffic stop to be reasonable); United States v. Jones, 44 F.3d 860, 872 (10th Cir. 1995) (approving of a thirty-minute traffic stop); United States v. Hardy, 855 F.2d 753, 761 (11th Cir. 1988) (finding a fifty-minute investigatory stop to be reasonable). The State submits a fourteen-minute detention during a valid traffic stop was objectively reasonable on its face.

Furthermore, at the time the officers decided to conduct their search of the vehicle based on the drug dog's alert, the purpose of the traffic stop had not yet been completed because Daniel had not yet finished running routine computer checks and writing the citation. Compare Tindall, 388 S.C. at 522, 698 S.E.2d at 205 (finding a constitutional violation because: "At this point, the purpose of the traffic stop was accomplished except

for the issuance of the warning ticket. However, rather than issue the ticket, the officer continued to question Tindall for an additional six to seven minutes[.]") and State v. Williams, 351 S.C. 591, 604-05, 571 S.E.2d 703, 710-11 (Ct. App. 2002) (finding a constitutional violation where the officer issued and explained the ticket and returned the defendant's license and registration, and then asked the defendant and a passenger a series of questions regarding their itinerary and relationship) with Provet, 405 S.C. at 106, 747 S.E.2d at 456 (finding no constitutional violation where the canine unit arrived before the officer received the dispatcher's return call regarding the status of Provet's license and registration and issued him a traffic warning citation) and State v. Jones, 364 S.C. 51, 610 S.E.2d 846 (Ct. App. 2005) (finding no constitutional violation when the officer asked questions while in the process of checking driver's license and writing ticket, and did not deviate from his normal procedures). As in Provet and Jones, the State submits Daniel's routine questioning during the course of the traffic stop did not otherwise convert the stop into an unlawful detention. He did not measurably prolong the traffic stop or exceed its scope by asking brief, general investigative questions during the course of the traffic stop, such as those related to ownership of the car and whether drugs were in the car. It was reasonable for him to seek verification of Appellant's answers via computer checks, particularly in connection with ownership of the car and the reason given for a provisional driver's license. Such questions and actions are appropriate to any traffic investigation, and did not unreasonably prolong the traffic stop's duration. Berkemer v. McCarty, 468 U.S. 420, 439 (1984); Jeffus, 22 F.3d at 556-57 (4th Cir. 1994); United States v. Purcell, 236 F.3d 1274, 1279-80 (11th Cir. 2001); see United States v. Allegree, 175 F.3d 648, 650 (8th Cir. 1999) (a reasonable investigation

may include asking for the driver's license and registration, asking the driver to sit in the patrol car, and asking about the driver's destination and purpose); see also Tindall, 698 S.E.2d at 205 (in carrying out a routine traffic stop, law enforcement officer may request driver's license and vehicle registration and run a computer check) and Pichardo, 367 S.C. at 98, 623 S.E.2d at 847. A mere fourteen minutes elapsed between the time Daniel initiated the traffic stop and the time the drug dog arrived to perform the sniff, which was prior to Daniel completing his routine functions and presenting the citation to Appellant. (Tr1.p.59, line 3-p.60, line 18; p.98, lines 3-9). On its face, this short time period was reasonable, and Appellant's assertion the police prolonged the traffic stop just to wait on the canine unit's arrival is contradicted by Daniel's testimony. (R.p.51, line 12-p.54, line 2). Appellant argues in his brief that because Daniel subsequently conceded he intended to detain Appellant for further investigation until the canine unit arrived at the scene to perform a sniff, Daniel in fact did so. However, subjective intentions play no role in the inquiry. Whren, 517 U.S. at 813. Fourteen minutes was a reasonable length of time for the initial traffic stop and Daniel's off-topic questions did not measurably extend the duration of the stop.

Reasonable Suspicion

Even if a traffic stop is initially lawful, the detention "can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." Illinois v. Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 ("Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically

unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, continued questioning beyond the duration of an initial traffic stop is lawful and permissible where: (1) the officer has a reasonable articulable suspicion of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Id. Thus, the officer's observations while conducting the traffic stop may create reasonable suspicion to justify further search or seizure. Provet, 405 S.C. at 109, 747 S.E.2d at 457.

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)); see United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[T]he Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity 'may be afoot'."). 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." 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); see State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007) ("Reasonable suspicion is more than a general hunch but less

than what is required for probable cause."); 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 order for an officer to have reasonable suspicion regarding the presence of illegal drugs, the officer is required to have a particularized and objective basis arising from the totality of the circumstances that would lead an individual to suspect drugs are located in a lawfully stopped vehicle. State v. Banda, 371 S.C. 245, 254 n.4, 639 S.E.2d 36, 41 n.4 (2006).

Thus, 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 traffic stop must not be considered piecemeal or in isolation. See Branch, 537 F.3d at 337 ("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."). "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)). Thus, the presence of several factors seemingly consistent with innocent travel

can establish reasonable suspicion when viewed together in totality. United States v. Sokolow, 490 U.S. 1, 9 (1989).

The doctrine of "collective knowledge" holds that probable cause may be based on collective knowledge of all law enforcement officers involved in an investigation and need not be based solely on information within the knowledge of the officer on the scene if there is some degree of communication. See State v. Dunbar, 345 S.C. 479, 493, 581 S.E.2d 840, 848 (Ct. App. 2003) (citing United States v. Morales, 238 F.3d 952 (8th Cir. 2001)), vacated in part by 356 S.C. 479, 581 S.E.2d 840 (2003) (finding the Court of Appeals was incorrect to base its decision on an argument not raised to the trial court below). Thus, probable cause may rest on the collective knowledge of law enforcement officers when reliable communication exists between them, and where the actual officer seeking a warrant lacks the specific information himself to form the basis for probable cause but sufficient information to justify the search was known by other law enforcement officers initiating or involved with the investigation. United States v. Hensley, 469 U.S. 221, 230-33 (1985). This rule exists because, in light of the complexity of modern police work, the seeking officer cannot always be aware of every aspect of an investigation; sometimes his or her authority to seek a search warrant is based on facts known only to his or her superiors or associates. The collective knowledge doctrine was developed in recognition of the fact that with larger or taxed police departments and mobile defendants an officer seeking a warrant might not be aware of all the underlying facts that provided probable cause but may nonetheless act reasonably in relying on information received by other officers in his or her department. See Whitely v. Warden, 401 U.S. 560, 568 (1971) ("Certainly police officers called upon

to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause.").

As noted above, Appellant no longer challenges whether the initial traffic stop was justified. Instead, he contends the circuit court erred in finding the police had reasonable suspicion of criminal activity to justify extending his detention beyond the time required to complete the purpose of the traffic stop. He asserts the Supreme Court's recent opinions in Tindall and Provet mandate a finding the police did not have sufficient reasonable suspicion to conduct further investigation after the stop. (Brief of Appellant, p.9-p.12). The State disagrees.

Even if the initial stop was extended into a second detention, the trial court properly found it was supported by reasonable articulable suspicion. Before and during the course of the traffic stop, the police officers developed reasonable suspicion based on objective factors that would lead an individual to suspect drugs were located in the vehicle. These factors included: (1) prior knowledge that the police made a controlled buy from Appellant less than three months before the traffic stop, from a car that was the identical color, make, and model as the car Appellant was driving at the time of the stop (R.p.64, lines 4-20; p.69, lines 2-10); (2) prior knowledge that the gas station store where the car was seen immediately before the traffic stop is located in a known drug dealing area (R.p.48, lines 10-19; p.50, lines 8-24; p.59, line 1-p.60, line 8; p.63, lines 3-7); (3) seeing the car parked beside that gas station, backed in, in the shadows, in an area a typical store customer would not park if simply going into the store to make a purchase (R.p.60, line 18-p.61, line 19; p.63, lines 3-7); (4) seeing the car swerve and fail to

maintain its lane while the driver leaned over, as if he were trying to hide something (R.p.34, lines 21-23; p.50, lines 8-24; p.57, line 21-p.58, line 7);[9] (5) discovering Appellant was driving with a provisional license, which typically restricts driving to activities during regular business hours (R.p.38, line 19-p.39, line 21; p. 57, lines 18-20); (6) discovering the car was registered to a third party (R.p.40, line 21-p.41, line 2); (7) observing Appellant's very nervous behavior during the stop, including the fact that he "broke eye contact" and "looked away" when asked whether there were drugs in the car (R.p.39, line 22-p.40, line 4; p.50, lines 23-23; p.69, line 21-p.64, line 3); and (8) seeing two air fresheners in the car (R.p.40, lines 11-20; p.50, lines 8-24).

Daniel, the officer who initiated the traffic stop, described six of the eight factors above, all of which combined to make him suspect Appellant was engaged in criminal activity. Swad, a thirty-year veteran with the SCSO with fifteen years' experience in narcotics investigations who arrived at the scene immediately after the car was pulled over, then described additional critical facts which heightened police suspicion. These consisted of Appellant's recent prior drug deal using the same car, and the suspicious location of the car in the gas station parking lot before the stop. (R.p.60, line 18-p.61, line 19; p.63, lines 3-7; p.64, lines 4-20; p.69, lines 2-10). Swad also corroborated Daniel's description of Appellant's nervous behavior. (R.p.63, line 21-p.64, line 3). Appellant argues the additional facts known to Swad should not have been considered by the trial court because there is no evidence in the record to show those facts were relayed to Daniel prior to the arrival of the drug dog. (Brief of Appellant, p.10). However, Appellant has failed to articulate why the trial court would be restricted in this fashion,

[9] Appellant argues there were no grounds existing for the court to infer he was aware a police car was behind him when he swerved (Brief of Appellant, p.9); however, Daniel was driving a marked patrol car (R.p.63, lines 8-20), which would have been obvious to Appellant or any other driver.

particularly where Daniel was not the only officer on the scene during the stop. Swad and Luther arrived immediately after the car was pulled over and assisted Daniel with maintaining the scene while Daniel completed the ordinary inquiries incident to a routine traffic stop. Their knowledge was as relevant as Daniel's knowledge in considering the totality of the circumstances known to the police.

In any event, under the doctrine of "collective knowledge," the reasonable suspicion for further detention may be based on collective knowledge of all law enforcement officers involved in an investigation and need not be based solely on information within the knowledge of the first officer on the scene if there is some degree of communication. Dunbar, supra. Here, there was more than merely a degree of communication. Swad and Luther were on the scene with Daniel as reasonable suspicion developed. They communicated with Pharis during the stop to check on the availability of the drug dog and were with Daniel for the remainder of the stop. (R.p.64, lines 4-20; p.69, lines 2-10; p.73, line 7-p.74, line 3). Therefore, all facts known and testified to by both Swad and Daniel must be considered.

As the trial court found, the combined impact of all factors, considered in light of the officers' knowledge and experience, provided ample basis for their suspicion of illegal activity and justified further detention for investigation. Indeed, the factors taken as a whole provided the officers with reasonable suspicion Appellant was engaged in criminal activity. Contrary to Appellant's assertion, a comparison with recent case law in South Carolina supports the trial court's decision to deny his motion to suppress.

In Tindall, the Supreme Court found that the following factors were not sufficient to constitute a reasonable suspicion of criminal activity: (1) Tindall was driving to

Durahm, a known "drug hub," to meet his brother; (2) Tindall was driving a rental car rented to another individual that was to be returned to Atlanta, another known "drug hub," on the day of the stop; (3) Tindall did a "felony stretch" on exiting the vehicle; and (4) Tindall seemed nervous. State v. Tindall, 388 S.C. 518, 520, 698 S.E.2d 203, 204 (2010). Thus, "the continued detention was illegal and the drugs discovered during the search of the vehicle must be suppressed." Id. In State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2012), certiorari dismissed as improvidently granted, this Court determined the following factors observed by the officer during the traffic stop established a reasonable articulable suspicion to extend the duration of the stop: (1) Wallace's abnormal braking after the officer initiated the stop; (2) Wallace's fumbling of his paperwork for an unusually long period of time; (3) the fact the passenger stared straight ahead and did not acknowledge the officer; (4) Wallace's and the passenger's inconsistent responses about the trip; (5) Wallace's increasing nervousness throughout the stop; (6) the fact an unknown car pulled up behind Wallace's vehicle for several minutes during the stop; (7) Wallace's cell phone ringing during the stop; (8) the fact drug dealers frequently use decoy cars and communicate via cell phones; (9) the fact the passenger would not look at the officer while they were talking; (10) the fact the passenger was sweating and visibly nervous on a mild day; (11) the fact Wallace changed his story after the officer spoke with his passenger; (12) the fact the car was owned by a third party, which is common in drug cases; (13) I-85's status as a known drug corridor; and (14) Atlanta's status as a known drug hub. Wallace, 392 S.C. at 55, 707 S.E.2d at 455. While noting none of the factors taken in isolation established a reasonable

articulable suspicion of criminal activity, this Court held the presence of all of the factors together established a reasonable suspicion when examined in totality as required. Id.

In Provet, the Supreme Court held the following factors observed by the officer during the traffic stop established reasonable suspicion supported by articulable facts that criminal activity was afoot, justifying a second seizure: (1) Provet was extremely nervous; (2) the vehicle was registered to a third party; (3) Provet's claims regarding his travel plans contradicted the officer's direct observations; (4) Provet's claim to be unemployed was not consistent with being able to afford to stay at a hotel and buy gas; (5) numerous air fresheners in the vehicle indicated a possibility Provet was seeking to mask odors; (6) numerous fast food bags, receipts, and a cell phone in the car; (7) a piece of luggage in the back seat despite Provet's claim he did not have luggage; and (8) Provet's delay tactics. Provet, 405 S.C. at 111-12, 747 S.E.2d at 459.

Here, the factors supporting a finding of reasonable suspicion were significant and were consistent with the factors described in Provet and Wallace that South Carolina courts have determined were sufficient to support a finding of reasonable suspicion. Likewise, as noted by the solicitor at trial, the factors are nearly identical to those found sufficient by the Fourth Circuit Court of Appeals in Branch, supra. In Branch, the officer remembered the vehicle Branch was driving had been pulled over less than a month ago in an area known to be an "open air drug market." Combined with: (1) Branch's hands shaking and failure to make eye contact; (2) the presence of several air fresheners; (3) the car being registered to a third party; and (4) the fact Branch was "well known" to deal drugs, the Fourth Circuit found the officer possessed a reasonable articulable suspicion of narcotics activity. Branch, 537 F.3d at 338-39.

Despite these similarities, Appellant takes issue with parts of the trial court's analysis and asks this Court to engage in the type of individual factor analysis soundly rejected by both federal and state courts. See Arvizu; 534 U.S. at 273-77; Branch, 537 F.3d at 339; Foreman, 369 F.3d at 784; and Wallace, 392 S.C. at 55, 707 S.E.2d at 455. First, relying on U.S. v. Foster, 634 F.3d 243 (4th Cir. 2011), Appellant challenges the trial court's consideration of his prior drug sale, arguing knowledge that a suspect is merely under investigation is inadequate to furnish reasonable suspicion of criminal activity. (Brief of Appellant, p.8). But Appellant was not merely under investigation. The State submits Appellant's recent participation in the actual sale of a controlled substance from what appeared to be the same car constitutes a "concrete factor" demonstrating there was a reasonable suspicion of current criminal activity. Foster, 634 F.3d at 246-47. This is particularly true where that car was seen immediately before the traffic stop in a known drug-dealing area. An area's disposition toward criminal activity is an articulable fact that may be considered along with more particularized factors to support reasonable suspicion. U.S. v. McBride, 676 F.3d 385, 392 (4th Cir. 2012) (citing Wardlow, 528 U.S. at 124 (holding that officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation)). In Foster, the officer had some knowledge about Foster's history of automobile-related traffic offenses but lacked any explicit familiarity with Foster's prior marijuana arrest or that arrest's ultimate disposition. Foster, 634 F.3d at 246. Here, Swad possessed specific information about Norris' undercover buy from Appellant less than three months before the stop, and he witnessed the car Appellant was driving parked in a known drug-dealing location immediately

before the traffic stop. These circumstances are more concrete than the circumstances the Fourth Circuit found insufficient in Foster.

Appellant next argues the trial court improperly relied upon several factors that were merely indicative of innocent travel. He contends that affirming the trial court's decision in this case effectively: "permits a law enforcement officer to detain and investigate an innocent person whenever he drives another person's vehicle having two air fresheners away from an area of suspected drug activity if the driver momentarily crosses the yellow line." (Brief of Appellant, p.11). However, this argument completely ignores the controlled buy the police made from Appellant less than three months before the stop. Appellant's recent participation in the illegal sale of a controlled substance eliminates most, if not all, "innocent travelers" from the possibility of being subjected to a detention beyond the time required to conduct a valid traffic stop.

Conclusion

Applying the appropriate deferential standard of review, the evidence and testimony presented during the suppression hearing established the police did not measurably extend the duration or scope of the traffic stop through any of their investigative actions. The evidence further established the police conducted the traffic stop in a reasonable manner and developed reasonable suspicion justifying an extension of the stop, assuming one occurred. See Segura v. United States, 468 U.S. 796, 806 (1984) ("By its terms, the Fourth Amendment forbids only 'unreasonable' searches and seizures."). Accordingly, the trial judge properly denied Appellant's motion to suppress after finding the traffic stop and the ensuing detention to be proper under the totality of the circumstances, and his ruling was supported by the evidence. See State v. Wright,

391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("South Carolina appellate courts review Fourth Amendment determinations under a clear error standard. We affirm if there is any evidence to support the trial court's ruling."); Provet, 405 S.C. at 107, 747 S.E.2d at 456. Appellant's conviction should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
December 30, 2013

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2012-212700

THE STATE, ...RESPONDENT

v.

KENNETH ODELL JACKSON,.....APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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KENNETH ODELL JACKSON,.....APPELLANT.

PROOF OF SERVICE

I, Ellen DuBois, Legal Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated December 30, 2013, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Benjamin J. Tripp, Appellate Defender
S.C. Commission on Indigent Defense
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I further certified that all parties required by Rule to be served have been served. This 30th, day of December, 2013.

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The State v. Kenneth Odell Jackson
Appellate Case No. 2012-212700

Dear Mr. Tripp:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Assistant Attorney General
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JBA/ji
Enclosures

cc: Honorable Jenny A. Kitchings
(original & 9 enclosed)
Victim Services