

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BALLAM JUSTIN ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2023-000275

BRIEF OF APPELLANT

WANDA H. CARTER
Chief Appellate Defender

W. CHANDLER NORVILLE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court commit reversible error in limiting Alexander's cross-examination of co-defendant William McMurray about McMurray's sentencing exposure, thereby violating Alexander's Sixth Amendment rights?

II. Whether the trial court erred in finding that the traffic stop was not unconstitutionally prolonged when the officer detained appellant and the other vehicle occupants to wait for a K-9 unit to sniff the car, without reasonable suspicion?

STATEMENT OF THE CASE

On November 24, 2020, a Greenville County grand jury indicted appellant for possession with intent to distribute (PWID) cocaine, PWID heroin, trafficking in methamphetamine, possession of a weapon during the commission of a violent crime, and trafficking in gamma hydroxybutyric acid (GHB). Appellant was tried between February 14 and 17, 2023, before the Honorable Edward W. Miller and a jury. R. 1. W. Christopher Castro represented appellant; Grace Moroney represented the state. R. 1. The jury convicted appellant as indicted. R. 702. Judge Miller sentenced appellant to an aggregate prison term of twenty-five (25) years. R. 710, ll. 7-9. Appellant noted a timely appeal.

On December 8, 2023, the undersigned counsel filed an *Anders* brief and petition to be relieved as counsel. Appellant responded by filing a *pro se* brief. On July 14, 2026, this Court denied counsel's motion to be relieved and ordered the parties to brief the issue of whether the trial court committed reversible error in limiting [appellant's] cross-examination of co-defendant William McMurray about McMurray's sentencing exposure, thereby violating [appellant's] Sixth Amendment rights. Also, this Court also ordered the parties to brief any other issue of arguable merit.

This brief follows.

STATEMENT OF FACTS

Background

On April 24, 2020, appellant was riding in a rental car driven by William McMurray. R. 267, l. 1, 5-7; 275, ll. 18-22. Officer Nick Ledbetter initiated a traffic stop on the car for following too closely. R. 262, l. 24 – 263, l. 1. McMurray told Ledbetter that the group was travelling home from Atlanta after having travelled there the night before. R. 272, ll. 11-20. McMurray stated that the group was travelling from Atlanta back to Charlotte, North Carolina, and the purpose of their trip was to help a friend with something. R. 63, ll. 4-11. Ledbetter also discovered that McMurray had a non-extradition arrest warrant issued in Walton County, Georgia. R. 271, ll. 1-9. Based on these facts, Ledbetter asked McMurray for consent to search the car. R. 282, ll. 7-11. McMurray refused. R. 282, ll. 7-11. Therefore, a K-9 officer had a dog sniff the car, which resulted in the K-9 “alerting” on the car. R. 283, ll. 1-6.¹

During the resulting probable cause search, officers found a gray brick in the car. R. 286, ll. 3-4. They also found a black bag containing substances on the passenger floorboard and a Fanta bottle containing clear liquid. R. 296, ll. 3-4; 457, ll. 13-18. As a result, all occupants of the car were arrested.

Trial

Prior to trial, appellant moved to suppress the evidence found in the vehicle on the ground that the search was unconstitutionally prolonged by bringing a K-9 to sniff the vehicle. Officer Ledbetter testified that he believed he had reasonable suspicion to search the vehicle based on three things: the “aggressive driving,” the quick turnaround trip from Atlanta after having travelled there the previous night, and McMurray’s arrest warrant. R. 60, ll. 5-11.

¹ Ledbetter testified that he did not have probable cause to search the car prior to the K-9 alerting. R. 136, ll. 1-6.

Ledbetter believed that the one-day trip from Charlotte to Atlanta was suspicious simply because of the length of the trip. R. 63, ll. 14-15. When Ledbetter decided he had reasonable suspicion to search the car, he asked McMurray whether there was anything illegal in the car. McMurray replied “not that I’m aware of.” R. 70, l. 12.

During appellant’s cross-examination of Ledbetter during the suppression hearing, the trial court twice made statements that implied it believed it was appellant’s burden to show that the search was unlawful. First, the trial court stated, “There’s no reason for this to take so long.” R. 94, ll. 19-20. This was followed by: “I tell you what, we’re about to end this hearing. *You show me* where he does not have an articulable suspicion to do the search.” R. 101, ll. 19-22 (emphasis added). Later, the trial court again remarked that appellant needed to demonstrate how the search was illegal; appellant corrected the trial court and stated that the burden was on the state to show that the search was legal. R. 120, ll. 5-18.

Ledbetter testified that he did not have any K-9 training. R. 134, ll. 22-25. Therefore, Ledbetter could not have made the determination whether the K-9 alerted or not. R. 136, ll. 1-6. In response to this questioning, the trial court told appellant: “That’s great for your jury argument. Move along.” R. 136, ll. 7-8. Appellant called Andy Jiminez, who was qualified as an expert in K-9 training and handling for narcotics detection over no objection. R. 154, l. 24 – 155, l. 4. Jiminez testified that the dog did not alert, but rather, the dog sat, which was interpreted as an alert by its handler. R. 181, ll. 1-4. However, the sit was caused by the handler pulling on the dog’s leash; the dog had not sniffed anything immediately prior to “alerting.” R. 182, ll. 6-19.

After the presentation of evidence, the trial court found that the search was not unconstitutionally prolonged. R. 243, ll. 10-11. The trial court further found that “the sniff was up to snuff,” and denied the motion. R. 236, ll. 8-13.

Kristen McCall was qualified as an expert in forensic chemistry. R. 536, l. 21 – 537, l. 2. She testified that the substances found in the car were: a total of 131.08 grams of methamphetamine, 2.08 grams of cocaine, 3.37 grams of a heroin/fentanyl mixture, and 1,216 milliliters—or 1.216 liters—of 1,4 Butanediol. R. 542, l. 21 – 543, l. 10, 19-23; 544, ll. 2-4; 546, ll. 1-9. Wendy Bell, a forensic toxicologist and chemist from SLED, testified that 1,4 Butanediol is a chemical compound which, upon ingestion, the human body converts to GHB. R. 580, ll. 1-12. 1,4 Butanediol is not illegal to possess and has accepted uses as an industrial solvent or floor cleaner. R. 586, ll. 5-9; 592, ll. 8-12. Bell told the jury that possession of 1,4 Butanediol is only an illegal act if the possessor intends to use it as a drug. R. 581, ll. 17-21. In other words, it is not illegal to possess the compound if “you can prove you have a legitimate reason to have it.” R. 581, ll. 20-21.²

William McMurray testified for the state. R. 608. He was originally charged with, *inter alia*, trafficking in methamphetamine 100-200 grams; however, he was permitted to plead guilty to trafficking in methamphetamine 28 to 100 grams in exchange for his testimony. R. 621, ll. 12-25. McMurray testified that he and appellant had met five to six days prior to travelling to Atlanta. R. 610, ll. 5-6. Appellant asked McMurray for his assistance in finding a better drug supplier. R. 611, ll. 4-8. Therefore, the purpose of the trip was for appellant to meet McMurray’s supplier, Bart, and purchase drugs from him. R. 611, ll. 19-22. McMurray also testified that an individual named George had rented the car on his behalf. R. 613, ll. 1-2. Importantly, during McMurray’s guilty plea hearing, McMurray testified that the drugs were intended “for George and me.” R. 628, ll. 17-19.

² Trial counsel did not object to the burden-shifting nature of this testimony.

During cross-examination, appellant attempted to elicit the extent to which McMurray had benefitted from his plea agreement with the state. To that end, appellant asked McMurray the following:

[TRIAL COUNSEL]: You would agree with me, wouldn't you, that when you pled your charge was trafficking methamphetamine between 100 and 200 grams. In exchange for your testimony today, you were allowed to plead to a lesser charge of trafficking in methamphetamine 28 to 100 grams; correct?

[McMURRAY]: Correct.

Q. Okay. And isn't it true that there's a mandatory minimum sentence –

[SOLICITOR]: Objection, Your Honor.

THE COURT: Woah, woah, that's – I'm going to sustain that. We're not going to get into the sentencing.

R. 623, ll. 10-21. Immediately thereafter, appellant informed the trial court that he had a matter of law, and the jury was sent from the courtroom. R. 623, ll. 22-25. The following exchange then occurred *in camera*:

THE COURT: What's your matter of law?

[TRIAL COUNSEL]: Your Honor, I'm going to hand up –

THE COURT: Just tell me. You know, I don't need all the narrative.

[TRIAL COUNSEL]: Yes, sir.

THE COURT: Just cut to the chase.

[TRIAL COUNSEL]: State v. Mizell.

THE COURT: What about it?

[TRIAL COUNSEL]: Very clearly says that my client's Sixth Amendment right to confrontation outweighs any issues that the state has with the jury possibly learning about the mandatory minimum for his sentence when he said what he's going to say.

What State v. Mizell says, very clearly, is I have the right to bring that out, especially since his net result at the end of the day – his transcript very clearly said we're going to come back here and ask for consideration. So his net result is not yet known in accordance with State v. Mizell.

He has other charges that are currently pending that have not been involved. As a result, he's going to have a net benefit. [Mizell] says, very clearly, that I am allowed to go and bring out the fact that he's facing a minimum mandatory 25 years in prison.

THE COURT: That's not what he pled to. What did he plea to? 28 to 100, what does it carry?

[SOLICITOR]: He pled to seven to 25. Your Honor, in my discussions with Mr. McMurray, he, actually, is unaware of what he faces at this time. But it is – in the State's view, because it carries the exact same term of 25 years, could fact 25 years, the prejudicial effect of the state of the 25-year mandatory being brought in for the original charge, what [appellant] is on trial for today is not outweighed by the probative value. He can get it out that there may be bias based on his reduction –

THE COURT: Yeah, he didn't agree to a mandatory minimum 25 years.

[TRIAL COUNSEL]: But, Your Honor, the case law very clearly –

THE COURT: Fine. He didn't plead to that. That's not what he's looking at.

[TRIAL COUNSEL]: May I just build the record, Your Honor. I'm happy to abide by the Court's ruling. I just need to build the record, Your Honor.

THE COURT: What record do you need to build?

[TRIAL COUNSEL]: [Mizell] very –

THE COURT: You said it.

[TRIAL COUNSEL]: Very clearly says, Your Honor –

THE COURT: I tell you, I have been extraordinarily tolerant of your repetitive statements. You can argue the case if it becomes necessary on an appellate level. He did not plead to a mandatory

minimum of 25 years. You're not going there. Maybe I'm wrong, but you're not going there. Is that clear?

R. 624, l. 3. - 626, l. 10. Trial counsel again explained to the trial court that he understood the ruling and was attempted to make a record. R. 626, ll. 11-13. In response, the trial court threatened to hold trial counsel in contempt of court, and remarked that the trial court had never, in its 21-year career, been closer to holding an attorney in contempt. R. 626, ll. 14-25. The trial court then admonished trial counsel to "take a deep breathe [sic] and back down." R. 627, l. 1.

After the jury returned its verdict, appellant moved for a new trial on the ground that, *inter alia*, his right to cross-examine McMurray was improperly limited. R. 706, ll. 8-13. The trial court denied the motion. R. 707, l. 6.

STANDARD OF REVIEW

As to the first issue, the trial court's limitation of cross-examination is reviewed for abuse of discretion. *State v. Pradubsri*, 403 S.C. 270, 275-76, 743 S.E.2d 98, 101 (Ct. App. 2013) (collecting cases).

As to the second issue, this Court reviews the trial court's factual findings for "any evidentiary support," but this Court reviews the trial court's ultimate legal conclusion *de novo*. *State v. Fraiser*, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022).

ARGUMENTS

I. The trial court impermissibly limited appellant's cross-examination of McMurray, in violation of the Sixth Amendment.

In exchange for his testimony, McMurray's sentencing exposure was reduced from a mandatory twenty-five years' imprisonment to as little as seven years' imprisonment, less than one-third as long. This fact was extraordinarily relevant to appellant's cross-examination, because McMurray had a very real interest in pleasing the state with his testimony, and therefore, was more likely to engage in biased testimony. Appellant attempted to present caselaw to the trial court that authoritatively said exactly that. The trial court, however, refused to review the caselaw, and instead threatened to hold appellant's lawyer in contempt of court. All of this was error. Appellant is entitled to a new trial.

"In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." U.S. Const. amend. VI; *see Pointer v. Texas*, 380 U.S. 400, 403 (1965) (Sixth Amendment Confrontation Clause is applicable to the states under the Fourteenth Amendment). "Confrontation means more than being allowed to confront the witness physically. 'Our cases construing the (confrontation) clause hold that a primary interest security by it is the right of cross-examination.'" *Davis v. Alaska*, 415 U.S. 308, 315 (1974) (*quoting Douglas v. Alabama*, 380 U.S. 415, 418 (1965) (alteration in original)). The Confrontation Clause guarantees "that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." *State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994) (*quoting State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 402 (1986)).

“[A]s a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony.” *State v. Brewington*, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (citation omitted). And “on cross-examination, *any fact may be elicited* which tends to show interest, bias, or partiality of the witness.” *Id.* (emphasis added; internal quotation marks and citation omitted).

Generally, the jury should not be informed of a defendant’s sentencing exposure. *State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 318 (2002). However, “other constitutional concerns, such as the Confrontation Clause, limit the applicability of this rule in circumstances where the defendant’s right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence.” *Id.* at 331-32, 563 S.E.2d at 318.

In *Mizzell*, the state’s “key witness” was charged with the same crimes as the defendants on trial. *Id.* at 330, 563 S.E.2d at 317. The trial court did not permit the defendant to cross-examine that witness with his sentencing exposure but did permit the defendant to cross-examine the witness “about the sentence in general terms.” *Id.* Our Supreme Court found that this was error. *Id.* The *Mizzell* Court recognized that the case was “distinctive because the co-conspirator witness was charged with the same crimes as [the defendants] but had neither agreed to a plea bargain nor pled guilty.” *Id.* at 332, 563 S.E.2d at 318. However, the Supreme Court found that this fact made the witness’s bias *more* prevalent, not less; stating: “The fact the witness has yet to reach a plea bargain or been found guilty should not prevent the admission of such evidence. The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency.” *Id.* at 333, 563 S.E.2d at 318. Accordingly, the Supreme Court ordered a new trial. *Id.*

In *State v. Brown*, 303 S.C. 169, 399 S.E.2d 593 (1991), our Supreme Court analyzed a similar fact pattern. There, the defendant was charged with trafficking cocaine. *Id.* His co-conspirator testified against him, and in exchange, was permitted to plead guilty to one conspiracy charge, resulting in a 7.5-year prison term. *Id.* at 171, 399 S.E.2d at 594. The witness's trafficking charge, which could have resulted in a twenty-five-year prison term, was dismissed. *Id.* Like in *Mizzell*, the trial court did not permit the defendant to question the witness about her sentencing exposure. *Id.* And like in *Mizzell*, the Supreme Court ordered a new trial. *Id.* Critically, the Supreme Court stated: "The fact that [the witness] was permitted to avoid a mandatory prison term of more than three times the duration she would face on her plea to conspiracy is *critical evidence* of potential bias that appellant should have been permitted to present to the jury." *Id.* The Court also held that the state's interest in preventing the jury from learning of a criminal defendant's potential sentence was outweighed by the defendant's interest in meaningful cross-examination. *Id.* at 172, 399 S.E.2d at 594.

The present case is virtually indistinguishable from *Brown*. McMurray, without his plea agreement, avoided a mandatory prison term of twenty-five years. Rather, he faced only a prison term of seven to twenty-five years. The trial court apparently believed that McMurray, having not pleaded guilty to the mandatory twenty-five-year term, made the specific terms of his plea less relevant. Not so. The fact that McMurray was able to avoid a potentially three-and-a-half times longer sentence is especially relevant. The fact that McMurray had not yet been sentenced made him "*more likely* to engage in biased testimony in order to obtain a future recommendation for leniency." *Mizzell*, 349 S.C. at 333, 563 S.E.2d at 318 (emphasis added). The state's argument that McMurray's sentencing exposure should be excluded because McMurray still faced a *potential* twenty-five-year sentence has been thoroughly rejected by our Supreme Court.

The trial court, of course, would have known this had it read *Mizzell*, which trial counsel attempted to pass to it. Rather than reading an on-point decision from the Supreme Court, the trial court refused and then threatened to hold trial counsel in contempt for attempting to comply with the error preservation rules. Appellant's right to cross-examine McMurray on his bias is well-established. The trial court erred by refusing to allow him to do so.

Further, the error was not harmless. Because this error is of a constitutional nature, the error must be harmless beyond a reasonable doubt. *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986); *accord*, *Chapman v. California*, 386 U.S. 18 (1967). To determine whether an error of this sort is harmless, this Court must consider several factors, including:

[T]he importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

Id. When the witness in question provides the only direct evidence of a crucial fact, the limitation of their cross-examination will rarely be harmless. *See, e.g., Mizzell*, 349 S.C. at 334, 563 S.E.2d at 318 ("Critically, however, [the witness] was the only witness to testify as an eyewitness to petitioners' burglary of the home."); *State v. Pradubsri*, 403 S.C. 270, 284, 743 S.E.2d 98, 106 (Ct. App. 2013) (witness provided the only evidence of constructive possession of drugs).

The improper limitation of appellant's cross-examination of McMurray cannot be harmless here. For one, one of the charges that the state brought against appellant required the state not only prove constructive possession of 1,4 Butanediol, but intent to use that compound as a drug, since 1,4 Butanediol is not itself a controlled substance. The only evidence that appellant intended to use the compound as a drug came directly from McMurray's testimony. Furthermore, the state based its case on constructive possession, meaning that it had to prove not

only that appellant was present with the drugs and knew that they were there, but that he “had dominion and control, or the right to exercise dominion and control, over the [drugs].” *Pradubsri*, 403 S.C. at 282, 743 S.E.2d at 105 (alteration in original); *State v. Jackson*, 395 S.C. 250, 255, 717 S.E.2d 609, 611-12 (Ct. App. 2011) (“Possession requires more than mere presence.”).

Finally, the fact that the trial court permitted appellant to elicit that McMurray hoped to get a better deal out of sentencing does not cure the constitutional error. A juror might not understand the extent to which McMurray stood to benefit from his testimony. And, especially in this case, a juror would be forgiven for underestimating the true extent of the benefit that McMurray was awarded; after all, going from a guaranteed twenty-five years in prison to a potential seven years in prison is not just a better deal, it is an exceptional one. Simply, “[a] [better deal] may have different meanings to different jurors.” *Mizzell*, 349 S.C. at 334, 563 S.E.2d at 319.

For these reasons, the trial court erred by limiting appellant’s cross-examination of McMurray. Further, the error was not harmless beyond a reasonable doubt. Accordingly, appellant is entitled to a new trial. This Court should reverse.

II. The trial court erred in finding that the traffic stop was not unconstitutionally prolonged when the officer detained appellant and the other vehicle occupants to wait for a K-9 unit to sniff the car, without reasonable suspicion.

The search that led to the discovery of the drugs was based on probable cause generated by a K-9 “alerting” on the vehicle. However, the purpose of the traffic stop was to write a warning citation for following too closely, and at the time the K-9 arrived, the time necessary to perform that task had long since expired. To justify prolonging the traffic stop, the officer needed reasonable suspicion that there was criminal activity beyond the reason for the traffic stop. The officer did not have such suspicion here. Therefore, the trial court erred in declining to suppress the drug evidence from the vehicle. This Court should reverse.

The Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” *See also*, S.C. Const. art. I, § 10 (similar). For the purposes of the Fourth Amendment, a person has been “seized” if a reasonable person in the same circumstances would not have believed he was free to leave the encounter. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). A law enforcement officer may only seize a person to investigate further, even if only briefly, if that officer has a reasonable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 22 (1968). Such a seizure must be temporary; it may last no longer than necessary to effectuate the purpose of the detention. *Florida v. Royer*, 460 U.S. 491, 500 (1983).

A traffic stop constitutes a seizure under the Fourth Amendment. *State v. Pichardo*, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005); *accord*, *Whren v. United States*, 517 U.S. 806 (1996). Accordingly, “an automobile stop is ‘subject to the constitutional imperative that it not be unreasonable under the circumstances.’” *Id.* (quoting *Whren*, 517 U.S. at 810). To that end, a

traffic stop must comply with the usual rules regarding seizures, that is, it must be temporary and limited to the purpose of the stop. *Royer*, 460 U.S. at 500; *Pichardo*, 367 S.C. at 98, 623 S.E.2d at 848. At the moment the purpose of the traffic stop is completed, the traffic stop becomes an unconstitutional seizure “unless a reasonable suspicion of some other crime exists.” *United States v. Sullivan*, 138 F.3d 126, 131 (4th Cir. 1998). The “purpose” of a traffic stop is that “an officer 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.

Reasonable suspicion is “an objective, specific basis for suspecting the person stopped of criminal activity.” *State v. Fraiser*, 437 S.C. 625, 635, 879 S.E.2d 762, 767 (2022). “Based upon [the] whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *United States v. Cortez*, 449 U.S. 411, 417-18 (1981). In determining whether an officer had reasonable suspicion, the Court must look at the totality of the circumstances. *Id.* However, “the relevant facts articulated by the officers and found by the trial court, after an appropriate hearing, must in their totality serve to eliminate a substantial portion of innocent travelers.” *United States v. Bowman*, 884 F.3d 200, 213 (4th Cir. 2018) (internal citations omitted).

Here, Officer Ledbetter’s suspicion was based on three facts: (1) the car was engaged in “aggressive driving;” (2) appellant’s group had travelled from Charlotte to Atlanta just the previous day and were already returning home; and (3) McMurray had an arrest warrant issued by a county in Georgia for marijuana. These facts do not provide Ledbetter with reasonable suspicion that the occupants of the vehicle were engaged in criminal activity.

Although reasonable suspicion must be determined by the totality of the circumstances, the Court should view each fact individually before evaluating them together. *See United States*

v. *Powell*, 666 F.3d 180, 187-88 (4th Cir. 2011). Therefore, the individual facts are analyzed separately below.

Aggressive driving. First, Ledbetter stated that McMurray’s “aggressive driving” was part of the reason that he had reasonable suspicion to prolong the traffic stop. However, “aggressive driving” was the purpose for the traffic stop in the first place. *See Pichardo*, 367 S.C. at 99, 623 S.E.2d at 848 (officer must have “reasonable articulable suspicion of *other* illegal activity....” (emphasis added)). McMurray’s driving does not provide suspicion of any criminal act other than following too closely. Further, there was not reasonable suspicion to support any criminal activity that could have been suggested by the driving itself, such as DUI. Moreover, Ledbetter did not testify that McMurray was driving evasively in an effort to avoid police, just that he was driving illegally. Therefore, McMurray’s driving does not provide reasonable suspicion to believe the K-9 sniff will produce evidence of a crime.

Short turnaround. Next, Ledbetter believed appellant’s group was engaged in criminal activity because they were travelling back to Charlotte after only having driven to Atlanta the day before. To start, Ledbetter’s belief that the length of this journey made turning it into a one-day turnaround suspicious is unreasonable. McMurray told Ledbetter that the purpose of the trip was to help a friend with something.³ The drive from Charlotte to Atlanta is simply not so long⁴ that it is suspicious to return home one day after arriving; especially when the purpose of the trip was to briefly assist a friend in some task. A large amount of innocent individuals would behave

³ Appellant also told Ledbetter that they had travelled to Atlanta to help a friend. R. 67, ll. 5-14. Appellant also told Ledbetter that they had left at 6:30 the previous afternoon. *Id.* To the extent that the fact Appellant’s group left in the previous *afternoon* is more suspicious, Appellant’s statement to that effect cannot be considered in the analysis, because at the time Appellant spoke to Ledbetter, the stop had already been prolonged. R. 111, l. 23 – 112, l. 12 (Ledbetter had already written out the traffic ticket when he spoke to Appellant).

⁴ Less than four hours, depending on traffic and route.

similarly—if the purpose of the trip can be completed in one day, there is no point in bearing the cost of lodging to stay longer, especially when the trip back can be completed in less than four hours. Thus, this fact does not “eliminate a substantial portion of innocent travelers.” *Bowman*, 884 F.3d at 213; *but see United States v. Foreman*, 369 F.3d 776, 785 (4th Cir. 2004) (“the vast majority of innocent travelers do not and would not drive *seven hours* to New York City, stay only *a few hours*, and return” (emphasis added)). All that was known to Ledbetter at the time was that appellant’s group had travelled to Atlanta to assist a friend. Under these circumstances, “a trip lasting *longer* than a day might be surprising.” *Foreman*, 369 F.3d at 795 n.11 (Gregory, J., concurring in part and dissenting in part) (emphasis in original). Accordingly, the short duration of appellant’s trip does not formulate reasonable suspicion.

McMurray’s arrest warrant. Finally, Ledbetter believed that McMurray’s Georgia arrest warrant provided reasonable suspicion of criminal activity. It does not. To start, “[McMurray’s] prior arrest history in itself is insufficient to support reasonable suspicion as to [McMurray], much less [appellant].” *United States v. Black*, 707 F.3d 531, 540 (4th Cir. 2013) (citing *Powell*, 666 F.3d at 188 (“[A] prior criminal record is not, standing alone, sufficient to create reasonable suspicion.”) (parenthetical in *Black*)). Furthermore, the circumstances of McMurray’s arrest warrant belie the assertion of reasonable suspicion even further. McMurray’s arrest warrant was marked “no extradition,” meaning the law enforcement entity that issued it “did not want an arrest made” “outside of Georgia.” R. 59, ll. 15-19. This is despite the fact that the law enforcement entity who issued the warrant would have been well entitled to demand any law enforcement entity in the United States arrest McMurray and deliver him back to Georgia. *See* U.S. Const. art. IV, § 2, cl. 2. Second, the arrest warrant appears to have been for minor marijuana possession. This would be a minor offense in South Carolina. S.C. Code Ann. § 44-

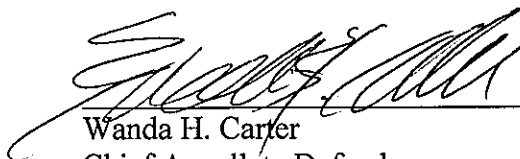
53-370(d)(5) (providing maximum penalty of 30 days in jail or a \$200 fine). It is an even more minor offense in Georgia, where thirteen separate jurisdictions refuse to enforce the state-wide ban on possession. *See* Rob DiRienzo, Fox 5 Atlanta, *East Point City Council votes to decriminalize weed possession* (Dec. 28, 2023), <https://www.fox5atlanta.com/news/east-point-city-council-votes-to-decriminalize-weed-possession> (last accessed Aug. 4, 2026). Therefore, the fact of McMurray’s arrest warrant for marijuana does not provide reasonable suspicion to believe he, much less the other passengers in the vehicle, were engaged in criminal activity.

Even taken together, these circumstances do not give rise to reasonable suspicion. Rather, they tell the story of a group of people making a reasonably-long two-day trip to assist a friend and committed a minor traffic infraction on the way home. One member of the group, at some point in the past (the record does not say when), apparently committed a minor marijuana offense, that the law enforcement agency responsible for prosecution deemed unworthy of extradition. None of this even hints that there is illegal activity occurring. Rather, it is a “situation where the Government attempts to meet its *Terry* burden by patching together a set of innocent, suspicion-free facts, which cannot rationally be relied on to establish reasonable suspicion.” *Black*, 707 F.3d at 539. The result was that the police were permitted to perform a warrantless search of the car based only on these suspicionless facts, which led to a K-9 “alert” of questionable veracity. Appellant’s Fourth Amendment rights are not so easily negated.

For these reasons, the traffic stop was unconstitutionally prolonged. The trial court’s contrary finding is wrong and must be reversed.

CONCLUSION

For the foregoing reasons, appellant's convictions and sentences should be reversed, and this case should be remanded for a new trial.



Wanda H. Carter
Chief Appellate Defender

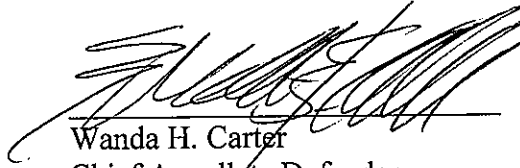
W. Chandler Norville
Appellate Defender

This 14th day of September, 2026.

ATTORNEYS FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Wanda H. Carter
Chief Appellate Defender

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SC Court of Appeals

W. Chandler Norville
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 14th day of September, 2026.