

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Barnwell County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARLOS MANDELL BADGER,

APPELLANT

APPELLATE CASE NO. 2025-001587

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to suppress the warrantless search of appellant's car when the State's K-9 officer trespassed inside appellant's vehicle prior to alerting to the presence of narcotics?

STATEMENT OF THE CASE

Appellant was indicted on September 5, 2024, by a Barnwell County grand jury for trafficking in fentanyl (28 g or more), trafficking in cocaine base (28 to 100 g), and trafficking in methamphetamine (3rd) (100 – 200 g) following a traffic stop in Barnwell County on November 29, 2023. A pretrial suppression hearing was held on June 24, 2025, before the Honorable Walton J. McLeod, IV. R.*.¹ Benjamin Stitley appeared on behalf of Appellant and David Miller represented the state. R. *. Judge McLeod denied the suppression motion. Appellant was tried before the Honorable Debra McCaslin and a jury from July 29 -31, 2025. R. *. Mr. Stitley continued representing Appellant while Mr. Miller along with Tyler Sanderlin and Tyler Satterfield represented the State. R. *.

The jury convicted Appellant as indicted. Tr. 175, l. 9 – 176, l. 3. Judge McCaslin sentenced Appellant to thirty years imprisonment for the fentanyl and cocaine charges and twenty-five years imprisonment for the methamphetamine charge. Tr. 179, l. 15 – 180, l. 6. This appeal follows.

¹ This brief will reference cites to the suppression hearings as "June 24 Tr." and the later trial cites as simply "Tr." This footnote will be deleted from the final brief after the Record on Appeal has been compiled.

STANDARD OF REVIEW

“Each party has the burden to prove separate things during the motion to suppress. The state bears the burden to demonstrate that it was entitled to conduct the search or seizure under an exception to the Fourth Amendment's warrant requirement.” State v. Robinson, 410 S.C. 519, 530, 765 S.E.2d 564, 570 (2014). “[T]he criminal defendant retains the burden to establish that he is asserting his own Fourth Amendment rights, rather than vicariously asserting the rights of others; therefore, the defendant bears the burden to demonstrate that he had an actual and reasonable expectation of privacy in the place illegally searched.” Id. Once a privacy right is held to exist, the court may not

sponsor the notion of requiring a defendant to prove that this right—a right she already possesses—exists in any given case. We must therefore part company with the *Mitchell* Court, as we will not impose upon a defendant the burden of establishing the absence of exigent circumstances. We have consistently held the prosecution has the sole burden of proving the existence of an exception to the warrant requirement.

State v. Key, 431 S.C. 336, 348, 848 S.E.2d 315, 320–21 (2020) (referencing and declining to follow Mitchell v. Wisconsin, 139 S. Ct. 2525, 2531 (2019)).

“[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).

ARGUMENT

The trial court erred in failing to suppress the warrantless search of appellant's car when the state's K-9 officer trespassed inside appellant's vehicle prior to alerting to the presence of narcotics.

A. Relevant facts.

On November 30, 2023, Lieutenant Matt Davis of the Barnwell County Sheriff's Office initiated a traffic stop of appellant's vehicle for failing to signal a right turn into the parking lot of a Circle K gas station. June 24 Tr. 7, ll. 8 – 20; 8, l. 20 – 9, l. 10; 10, l. 20 – 11, l. 10. While described by Lt. Davis as a routine traffic stop, four different vehicles from the Barnwell County Sheriff's Office participated in the stop for failure to signal a right turn, one of which was a K-9 unit. June 24 Tr. 13, l. 4 – 15, l. 4; 16, ll. 12 – 23. Despite this large police presence and the absence of any direct evidence of appellant's failure to signal (no dashcam video was available since Davis's camera was full at the time), the lower court denied suppression on the basis that the lack of turn signal authorized the initial traffic stop. June 25 Tr. 35, ll. 12 – 18.

At trial, appellant's counsel moved to suppress the narcotics on an additional basis: a physical trespass by the K-9 unit. Tr. 35, l. 10 – 38, l. 9. The State did not contest the fact that the K-9 ("Maui") entered the appellant's vehicle with his front paws. Ct.'s Ex. 2. As officer Kleinholz described the search:

Q. And at that point in time, what did Maui do?

A. He had a breathing change, and then after the breathing change, he started going inside the vehicle.

Q. And what do you do? What did you do when he went inside the vehicle?

A. I just kept walking around the door of the vehicle.

Q. All right, I want to ask you -- and did, did Maui ultimately do the sit or the freeze position that you were talking about?

A. Yes, sir, yeah, he ended up having a fixed position with his front paws inside the vehicle, and his rear on the ground.

Tr. 46, ll. 1 – 13.² While the video recording taken on scene makes the final signal difficult to identify, officer Kleinholz confirmed in his written report and under oath that the "signal" occurred while Maui was inside the vehicle. State's Ex. 2 (03:24-03:50); Ct. Ex. 2; Tr. 46, ll. 1 – 13. In his body camera video, Kleinholz verbally noted Maui's "position" at 03:42-03:44. At this point, the video confirms the report of officer Kleinholz, Maui's front paws are inside the vehicle. State's Ex. 2 (03:42-03:46).

In an effort to expand the alert to outside the vehicle, Kleinholz noted Maui had certain "pre-alert" alerts. The lower court questioned the officer about the timing and lack of video demonstrating these "pre-alert" alerts.

THE COURT: Okay, all right, where exactly did the dog first hit on the car? Was it when he was in that passenger seat, or was he outside of the vehicle?

THE WITNESS: He had the breathing change alert outside the vehicle before entering.

THE COURT: And where was he exactly? *I saw the dog. I watched the video, come around, go around the door, and then straight into the car, and then he barked.* And then I heard somebody say, "we found something", or he alerted, because the guy that was in the back who was writing the ticket or checking out the defendants, I guess driving record. He said, "Oh, he alerted".

So I want to know, I want you to explain to me how this dog alerts. How do you know that he's alerted?

² Officer Kleinholz testified Maui's ultimate signal of detection "would be a seated position or a fixed position." Tr. 45, ll. 1 – 4.

THE WITNESS: So the training different alerts we have just with my dog. Every dog is different, but the works I've documented have been to breathing changes. And in this scenario, went and ran around the front of the vehicle towards that driver door. I could tell he was – an odor by the change of his breathing.

I guess if you're not used to looking at it. It's maybe harder to see. But from my perspective, when I'm above him and he's pulling me in that direction, with that sense pulling him, he breathes in a totally different way than he would normally if we were just walking and he didn't smell anything. But the way he was pulling and the way he was breathing going around that front of that car, and hopefully went under or around it, but that door, he was getting an odor.

And to me, that's a work through my training, because I see it almost every week when we train, when he gets in that odor, of those highs.

THE COURT: Okay. And when he had this breathing change, he was outside of the vehicle?

THE WITNESS: Yes, ma'am. That's correct.

THE COURT: It doesn't say that in your report, though.

THE WITNESS: Yes, ma'am, correct

Tr. 50, l. 6 – 51, l. 22 (emphasis added).

B. The trial court's ruling.

Ultimately, the trial court denied the motion to suppress. Specifically, the trial court relied upon Maui's pre-signal behavior and the natural behavior of a dog

The question is: was it an unlawful search when the dog entered the inside of the vehicle? Is the question here. And I'll tell you that I've read case law that states that, you know a dog acted instinctively, is not a Fourth Amendment violation by going into the car. I mean, it's not. There's also a case, the *Curry* case, if y'all read it, that states just that, because the dog's alert provided probable cause to enter the vehicle almost immediately after the dog began its scan, *Curry* suffered no Fourth Amendment violation

from the dog subsequent intrusion into the cars passengers compartment.

But there's other case law that I've read there, not South Carolina case law that says, you know, when a dog acts instinctively, they're not going to call that a violation of the Fourth Amendment, as you stated earlier, Mr. Miller, it was de minimis, and they were going to go with it. Coupled with that, I've heard testimony from the dog's handler that the dog, he knew he was going to alert, and he testified it was on the outside when he reached the driver's door, because I think it was a driver's door, not the passenger door, that the drugs were found.

Tr. 68, 11 – 69, l. 9.³

Appellant's counsel renewed the objection when the seized narcotics were offered into evidence, preserving this matter for review by this Court. Tr. 127, ll. 5 – 11.

C. The trial court's error.

"When 'the Government obtains information by physically intruding' on persons, houses, papers, or effects, 'a 'search' within the original meaning of the Fourth Amendment' has 'undoubtedly occurred.'" Florida v. Jardines, 569 U.S. 1, 5 (2013) (*quoting* United States v. Jones, 565 U.S. 400)). "It is beyond dispute that a vehicle is an 'effect' as that term is used in the Amendment." United States v. Jones, 565 U.S. 400, 404 (2012).

A traffic stop that extends beyond "the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." Rodriguez v.

³ The Court's reference here is apparently to an unpublished opinion out of the 4th Circuit: "Because the dog's alert provided probable cause to enter the vehicle almost immediately after the dog began its scan, Curry suffered no Fourth Amendment violation from the dog's subsequent intrusion into the car's passenger compartment." United States v. Curry, 478 F. App'x 42, 44 (4th Cir. 2012).

United States, 575 U.S. 348, 350 (2015).⁴ In the context of a canine search as presented in this case, "an exterior sniff of an automobile *does not require entry into the car* and is not designed to disclose any information other than the presence or absence of narcotics." City of Indianapolis v. Edmond, 531 U.S. 32, 40 (2000) (emphasis added). "[E]ven assuming a dog is generally reliable, circumstances surrounding a particular alert may undermine the case for probable cause—if, say, the officer cued the dog (consciously or not), or if the team was working under unfamiliar conditions." Florida v. Harris, 568 U.S. 237, 247 (2013).⁵ One such circumstance would be a physical intrusion by the dog into the vehicle itself since it "encroached on a protected area." United States v. Jones, 565 U.S. 400, 410 (2012). If the "*de minimis*" physical touching of the underbody of a vehicle to attach a tracking device was an unconstitutional search requiring probable cause, then the State's action here in physically entering the interior of the vehicle before alerting would be on equal footing. In fact, the Court in Jones noted "an officer's *momentary reaching into* the interior of a vehicle did constitute a search." Id., 565 U.S. at 410 (citing to New York v. Class, 475 U.S. 106 (1986)).

The trial court's reliance on the fact that this trespass was simply normal behavior for a dog does not absolve the State from the constitutional violation. While there is authority supporting this holding, its continued viability following Jones is doubtful. See United States v. Vazquez, 555 F.3d 923, 930 (10th Cir. 2009) (noting "the legality of such a sniff during a lawful detention when, as here, (1) the dog's leap into the car was instinctual rather than orchestrated and (2) the officers did not ask the driver to open the point of entry, such as a hatchback or

⁴ There was no assertion of an unconstitutional delay since the K-9 unit was part of the large law enforcement presence that stopped appellant's vehicle for the traffic offense of failing to signal a right hand turn into a gas station.

⁵ There was no assertion that the officer improperly cued Maui in conducting the search, only that Maui trespassed inside the vehicle before alerting.

window, used by the dog."); United States v. Sharp, 689 F.3d 616, 620 (6th Cir. 2012)⁶ ("We now join our sister circuits in holding that a trained canine's sniff inside of a car after instinctively jumping into the car is not a search that violates the Fourth Amendment as long as the police did not encourage or facilitate the dog's jump."). As Jones held, the physical intrusion matters. Moreover, if the subject intent of the officer is irrelevant to a constitutional violation, the "instinctive" behavior of the dog would likewise be irrelevant.

Fourth Amendment reasonableness "is predominantly an objective inquiry." *Indianapolis v. Edmond*, 531 U.S. 32, 47, 121 S. Ct. 447, 148 L.Ed.2d 333 (2000). We ask whether "the circumstances, viewed objectively, justify [the challenged] action." *Scott v. United States*, 436 U.S. 128, 138, 98 S. Ct. 1717, 56 L.Ed.2d 168 (1978). If so, that action was reasonable "whatever the subjective intent" motivating the relevant officials. *Whren v. United States*, 517 U.S. 806, 814, 116 S. Ct. 1769, 135 L.Ed.2d 89 (1996). This approach recognizes that the Fourth Amendment regulates conduct rather than thoughts, *Bond v. United States*, 529 U.S. 334, 338, n. 2, 120 S. Ct. 1462, 146 L.Ed.2d 365 (2000); and it promotes evenhanded, uniform enforcement of the law, *Devenpeck v. Alford*, 543 U.S. 146, 153–154, 125 S. Ct. 588, 160 L.Ed.2d 537 (2004).

Ashcroft v. al-Kidd, 563 U.S. 731, 736 (2011).

Phrased to fit the facts before this Court: the Fourth Amendment regulates the trespass, not the intent behind the trespass. Vasquez and Sharp would exempt the motivation of the government's trespass and ignore the improper conduct entirely. This ignores al-Kidd and creates an improper exemption for unconstitutional conduct based upon motivation and source. It also ignores the Supreme Court's guidance that the tool used (a dog) does not insulate the search from Fourth Amendment concerns: "But the implication of that statement (*inclusio unius est exclusio alterius*) is that when the government uses a physical intrusion to explore details of the home (including its curtilage), the antiquity of the tools that they bring along is irrelevant."

⁶ The lower court made specific reference to Sharp in finalizing her ruling. Tr. 143, ll. 10 – 15.

Florida v. Jardines, 569 U.S. 1, 11 (2013). While officers had permission to approach the front door of a home and knock to speak to the occupant, the use of "trained police dogs to investigate the home and its immediate surroundings is a "search" within the meaning of the Fourth Amendment." Id., 569 U.S. at 11–12. Claiming the dog's trespass into the constitutionally protected space was merely instinct does not excuse the violation. This Court would not stand alone in this holding.

Here, there is uncontroverted evidence that the canine—a trained member of law enforcement—twice entered Campbell's vehicle as opposed to staying at its exterior. That is to say, the canine twice crossed the threshold from the exterior of the vehicle to the interior of the vehicle. Law enforcement undoubtedly gained information by physically intruding into one of Campbell's "effect[s]," thus both entries constitute searches within the meaning of the Fourth Amendment.

State v. Campbell, 5 N.W.3d 870, 876 (Wis. Ct. App. 2024); *see also* State v. Johnson, 15 N.W.3d 843, 851 (Minn. Ct. App. 2024) ("Although neither the United States Supreme Court nor the Minnesota Supreme Court has addressed whether a sniff by a narcotics-detection dog inside a vehicle constitutes a search, the principles established in *Jones* and *Jardines* compel us to conclude that the use of a narcotics-detection dog to physically occupy or intrude on any private property constitutes a search.").

Finally, the "pre-alert" signals by Maui that an alert was coming would not establish probable cause justifying the search of the interior of the vehicle. It may not be doubted that law enforcement required probable cause to enter appellant's vehicle to search its interior at the time of Maui's entry. *See Knowles v. Iowa*, 525 U.S. 113, 117 (1998) ("But while the concern for officer safety in this context may justify the 'minimal' additional intrusion of ordering a driver and passengers out of the car, it does not by itself justify the often considerably greater intrusion attending a full field-type search."). The search for narcotics of appellant's vehicle required

probable cause *before entry*. Some courts have held that pre-alert signals from a trained narcotics dog *with other factors* would support probable cause even if the dog's trained signal occurred after entry into the vehicle. See People v. Bailey, 427 P.3d 821, 828 (Col. 2018) ("We conclude that Mason's initial alert, when considered in conjunction with other circumstances present, provided the troopers probable cause to believe that there were narcotics in Bailey's car. In other words, consistent with our probable cause jurisprudence, our determination is rooted in the totality of the circumstances."). The State did not assert any other basis for probable cause in stopping appellant's vehicle – consistently pointing to the minor traffic violation as the only reason for the stop. June 24 Tr. 7, ll. 8 – 20; 8, l. 20 – 9, l. 10; 10, l. 20 – 11, l. 10. As such, there was no other basis for a finding of probable cause than Maui's pre-alert changes in breathing noted by Officer Kleinholz.

THE WITNESS: So the training different alerts we have just with my dog. Every dog is different, but the works I've documented have been to breathing changes. And in this scenario, went and ran around the front of the vehicle towards that driver door. I could tell he was – an odor by the change of his breathing.

I guess if you're not used to looking at it. It's maybe harder to see. But from my perspective, when I'm above him and he's pulling me in that direction, with that sense pulling him, he breathes in a totally different way than he would normally if we were just walking and he didn't smell anything. But the way he was pulling and the way he was breathing going around that front of that car, and hopefully went under or around it, but that door, he was getting an odor.

And to me, that's a work through my training, because I see it almost every week when we train, when he gets in that odor, of those highs.

Tr. 50, l. 22 – 51, l. 16.

Appellant would assert an application of a warrant based not upon a trained signal from the K-9 but from "breathing changes" would not be sufficient to establish probable cause

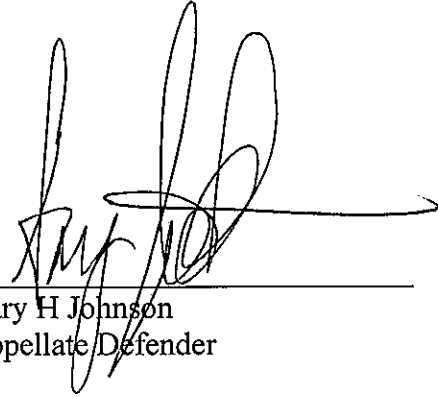
justifying either the issuance of a warrant or the warrantless search of an automobile on the basis of probable cause and the vehicle exception to the warrant requirement. "For probable cause to be established based on a drug dog's search, the dog must alert or indicate—fiercely sniffing is not enough." State v. Beames, 511 P.3d 1226, 1235 (Utah Ct. App. 2022). At most, these pre-signal behaviors would establish reasonable suspicion that an alert was forthcoming, not probable cause. See United States v. Pulido-Ayala, 892 F.3d 315, 319 (8th Cir. 2018) ("Given the strong reaction of the trained drug dog while it was outside the car, *together with Pulido-Ayala's suspicious reaction to the drug checkpoint*, we conclude that police had probable cause to believe that the vehicle contained contraband in the moment before Jampy actually crossed the threshold into the interior of the Mini Cooper."). In the absence of any suspicious behavior on the part of appellant, a fact acknowledged by law enforcement, the non-alert change in breathing would never alone support a finding of probable cause.

To the extent the "pre-alert" indications and "instinctive behavior" of Maui are unsettled in federal law, this Court should look to the South Carolina Constitution. Under Article I, section 10, South Carolinians are protected "from two distinct actions by the government: first are 'unreasonable searches and seizures[,] largely mirroring our federal constitution's Fourth Amendment, and second is a protection not found in the United States Constitution, to be secure from 'unreasonable invasions of privacy.'" Planned Parenthood S. Atl. v. State, 438 S.C. 188, 199, 882 S.E.2d 770, 776 (2023). This heightened protection distinguishes the rights afforded South Carolina citizens from the general Fourth Amendment rights enjoyed by all. Compare State v. Counts, 413 S.C. 153, 172, 776 S.E.2d 59, 70 (2015) (holding that "law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence and knocking on the door."), with Kentucky v. King, 563 U.S. 452, 469 (2011)

(holding “law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do.”). The idea that "pre-alert" indications and "instinctive behavior" of trained K-9 would justify the physical trespass into constitutionally protected locations should be rejected as an invasion of privacy that “shall not be violated” absent a warrant based upon probable cause. S.C. Const. art. I, §10.

CONCLUSION

This Court should reverse the lower court's refusal to suppress the narcotics seized from appellant's vehicle without probable cause and vacate appellant's convictions.

A handwritten signature in black ink, appearing to read 'Gary H. Johnson', is written over a horizontal line.

Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of October, 2026.

STATE OF SOUTH CAROLINA
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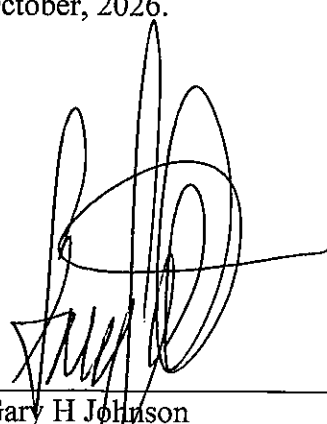
CARLOS MANDELL BADGER,

APPELLANT

APPELLATE CASE NO. 2025-001587

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 8th day of October, 2026.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT