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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAMAN PAUL STRICKLAND, JR.,

APPELLANT

APPELLATE CASE NO. 2026-001062

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court abused its discretion by allowing the state to elicit testimony that officers believed appellant was under the influence of methamphetamine because any probative value the evidence may have had was substantially outweighed by the risk of unfair prejudice?

II.

Whether the trial court erred by refusing to grant appellant's motion to suppress where S.C. Code Ann. § 24-21-410 did not apply to allow the search of bags found within the truck appellant was a passenger because they were not appellant's possessions, officers lacked reasonable suspicion to justify the search, and where no exception to the warrant requirement applied?

STATEMENT OF THE CASE

On October 21, 2025, the Pickens County grand jury indicted appellant for trafficking methamphetamine, possession of a controlled substance with intent to distribute, and possession of a weapon during commission of a violent crime. R *(Indictments).¹ On April 20, 2026, appellant's case was called to trial before the Honorable G.D. Morgan, Jr., and a jury. Tr. 1. John Edward Gardner and Hunter Zane Dunn prosecuted the case for the state. Tr. 1. Steven Luther Alexander represented appellant. Tr. 1. Ultimately, the jury found appellant guilty as indicted. Tr. 560, ll. 9-21. Judge Morgan imposed a total sentence of 25 years' imprisonment comprised of 25 years as to the trafficking offense, 5 years as to the possession with intent to distribute offense, and 5 years as to the weapons offense, set to run concurrently. Tr. 566, ll. 2-10. Judge Morgan also imposed a \$50,000 fine. Tr. 566, l. 4. Appellant filed a timely notice of appeal. R *(Notice of appeal).

This brief follows.

¹ Prior to trial the state moved to amend the indictment related to possession with intent to distribute alprazolam. Tr. 189, ll. 5-6. The state noted that the indictment set forth an improper CDR code and asked the court to amend the CDR code and violation statute. Tr. 189, ll. 7-11. The state explained that the indictment was true-billed for a schedule I-III violation, however, alprazolam was a schedule IV substance which carried a lower sentence. Tr. 189, ll. 11-17. Defense counsel objected and argued the statute code error was fatal. Tr. 190, ll. 5-8. The trial court granted the state's motion to amend the indictment and determined that an amendment would not be prejudicial where amending the indictment to bear the correct CDR code and statute carried a reduced sentence. Tr. 190, ll. 9-23

STANDARD OF REVIEW

“In criminal cases, appellate courts sit to review errors of law only.” *State v. English*, 443 S.C. 49, 55, 902 S.E.2d 385, 388 (2024). “The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.* at 429–30, 632 S.E.2d at 848.

“[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means [appellate courts] 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).

ARGUMENTS

I.

The trial court abused its discretion by allowing the state to elicit testimony that officers believed appellant was under the influence of methamphetamine because any probative value the evidence may have had was substantially outweighed by the risk of unfair prejudice.

Relevant facts

Pre-trial arguments

Defense counsel raised a pre-trial objection to the state eliciting testimony about prior drug use or observations alluding to prior drug use. Tr. 48, ll. 11-19. The state informed the court that it intended to elicit testimony about observations on the scene including the officers belief that appellant appeared to be under the influence of methamphetamine. Tr. 48, l. 21 – 49, l. 2. Defense counsel reiterated his objection. Tr. 49, ll. 6-11. The state clarified that officers “do state outright on the video that the defendant does appear to be under the influence of methamphetamine, and they make several other observations on camera with regards to his eyes and his movements.” Tr. 49, ll. 15-19. The state continued that it intended to play a portion of the video where deputies looked into appellant and co-defendant’s eyes to determine whether they appeared under the influence. Tr. 49, l. 19 – 50, l. 1.

Defense counsel replied that whether someone was under the influence was not relevant to possession or constructive possession and was not an element of the offense. Tr. 50, ll. 4-8. The state argued that the black burnt substance within the black bag was identified by the South Carolina Law Enforcement Division (“SLED”) as used methamphetamine. Tr. 50, l. 15 – 51, l. 1.

3.² The state argued that the used methamphetamine, which was side-by-side with the unused trafficking weight methamphetamine, was highly probative as to whether appellant possessed the items within the bag. Tr. 51, ll. 4-10. Defense counsel responded that the evidence was highly prejudicial and noted that the lab results did not indicate when the methamphetamine was used. Tr. 51, ll. 12-16. He argued “[e]ven if it is relevant, it’s highly prejudicial because it makes an inference to something that is not provable by the test.” Tr. 51, ll. 20-23.

In response to the trial court’s questioning, the state agreed that there was not any evidence as to when the methamphetamine was used. Tr. 51, l. 24 – 52, l. 1. As to probative value, the state argued that the unused and used methamphetamine found side-by-side and the lighters recovered from appellant’s person were highly probative as to appellant’s knowledge of the contents of the bag. Tr. 52, ll. 11-23. The state argued that the probative value was not substantially outweighed by the risk of unfair prejudice since the amount of methamphetamine recovered, 165 grams, would be put before the jury. Tr. 53, l. 22 – 54, l. 2. The state argued the officers would be able to identify when someone was under the influence of methamphetamine which provided a “strong inference.” Tr. 54, ll. 3-14. The trial court inquired what the probative value of “his eyes were glassy” was to the trafficking methamphetamine offense. Tr. 54, ll. 15-20. The state argued it went towards appellant’s likelihood of knowledge as to the contents of the bag. Tr. 54, ll. 21-22. The state also contended that officers believed appellant and co-defendant’s demeanors were different and did not believe co-defendant to be under the influence

² For clarity, State’s Exhibit 12, the SLED drug analysis request, identified that Bag “B” contained a black substance separate from the clear crystal like substance identified by Bag “A.” See R *(State’ Exhibit 12). Moreover, State’s Exhibit 27, the SLED lab report, provided that Ziplock bag “B” contained a crystal substance which tested positive for methamphetamine. R *(State’s Exhibit 27). Paola Laure, a SLED employee and expert in drug analysis, later testified that the Ziploc bag marked “B” and SLED Item 2 was found to be methamphetamine with a net weight of 0.42 grams. Tr. 438, ll. 1-7. She confirmed that the request form describing “Bag B, black substance,” was the item she analyzed as Item 2. Tr. 439, l. 1 – 440, l. 6.

of methamphetamine. Tr. 55, ll. 1-6. The state concluded that it did not believe that the probative value of the evidence was “substantially outweighed by the risk of unfair prejudice when we’re already dealing with methamphetamine and large amounts of it in this case in general.” Tr. 56, ll. 1-4. The state also clarified that “Bag B” was identified on the scene and bagged separately as a controlled substance due to officers belief that it was used heroin. Tr. 56, ll. 19-23. The state continued that it was listed as a black substance on the SLED analysis request form and was confirmed as testing positive for methamphetamine on the laboratory report. Tr. 56, l. 23 – 57, l. 1; *see also* R *(State’s Exhibit 12; State’s Exhibit 27).

Defense counsel argued that the SLED laboratory report merely stated that the substance tested positive for methamphetamine and made no reference to whether it was used. Tr. 57, ll. 2-6. He argued that it was improper for officers to testify that they believed appellant was under the influence of methamphetamine and pointed to the body-worn camera footage which showed appellant calmly answering questions. Tr. 58, l. 7 – 59, l. 3. He contended that there was no evidence that methamphetamine had been used in the car as there was no smell of drugs in the car. Tr. 59, ll. 4-12. The trial court then ruled as follows,

I’m going to – I’m not going to issue a ruling on this right now. I’m going to see how the evidence plays out. I will say that I do have some concern under 403. I understand the State’s position on probative value. There is some probative value there. But I’ve got a little concern that it may be crossing the line on whether its unfairly prejudicial and substantially outweighs the probative value of it. I’m just going to see how the evidence plays out. So I’m going to hold off on there. But I sort of – that’s my first inclination right now. But I’ll see how it plays out. So we’ll hold off on that one.

Tr. 59, ll. 13-25.

Trial

Deputy Shane Brummitt testified that on June 13, 2022, he was working the 6:00 p.m. to 6:00 a.m. shift in Pickens County near a Spinx gas station. Tr. 225, l. 20 – 226, l. 17. He was performing his patrol duties near the Spinx when he saw a Ford truck with a moped that appeared unsecured with the tailgate down. Tr. 227, ll. 5-17. He pulled behind the truck to make sure the moped was secured. Tr. 227, ll. 18-22. Brummitt's dash camera footage was entered into evidence. Tr. 229, ll. 2-7; R *(State's Exhibit 1). He testified that the moped did not have a tag and it was being held in the truck by another individual. Tr. 229, l. 19 – 230, l. 2. He testified that he was not able to see the truck's license plate. Tr. 230, ll. 3-5. He initiated his blue lights. Tr. 230, ll. 13-23. Brummitt described the traffic stop. Tr. 231, l. 6 – 256, l. 18.³

Kevin Crowe, an officer with Greenville County Sheriff's Office, testified that he was on uniform patrol in June of 2022. Tr. 337, ll. 1-2. He explained that he had 14 years of law enforcement experience and had been involved in thousands of narcotics cases with the majority involving methamphetamine. Tr. 337, ll. 9-19. He testified that he observed people under the influence of methamphetamine numerous times. Tr. 337, ll. 20-22. Defense counsel objected and the trial court allowed the testimony to be proffered. Tr. 338, ll. 1-19.

Crowe's proffer

The state inquired what the indicators were that someone was under the influence of methamphetamine. Tr. 339, ll. 1-3. Crowe replied, "Pinpoint pupils, clammy skin, sweating, usually talking about being hot, can't focus on one – one line of questioning or one part of the story. They can't – they jump all over the place." Tr. 339, ll. 4-7. He made personal observations about appellant. Tr. 339, ll. 15-17. Specifically, he testified that appellant's eyes did not dilate or constrict as they should with the introduction of light, he was sweating

³ The traffic stop will be discussed in further detail below. *See infra* Issue II.

profusely, he had clammy skin, and he was having trouble focusing on one item at a time. Tr. 339, l. 23 – 340, l. 9. He testified that drugs were located in the truck pursuant to a traffic stop and that a black burnt substance consistent with burnt methamphetamine was recovered. Tr. 340, ll. 10-21.

Defense objection and argument

Defense counsel argued the testimony was more prejudicial than probative because the state was offering it to establish that appellant was under the influence of drugs on the night of the incident. Tr. 340, l. 23 – 341, l. 1. He argued that an expert would be required to establish when the methamphetamine was used and asserted that it could have “been smoked by anybody at any time prior to that.” Tr. 341, ll. 12-17. The trial court inquired whether the evidence was probative to the issue of identity stating, “He’s on meth, he’s got meth, and so therefore, on the issue of whose – it could be his.” Tr. 342, ll. 1-11. Counsel responded that any probative value the evidence might have was outweighed by the prejudicial effect. Tr. 342, ll. 12-15.

The state argued that burnt methamphetamine was recovered alongside the trafficking weight methamphetamine, and appellant was under the influence of methamphetamine based on the training and experience of the officers. Tr. 342, ll. 20-23. The state contended that whether appellant was under the influence of methamphetamine went to his knowledge about what was in the bag. Tr. 343, ll. 1-6. The state asserted that “by no stretch of the imagination,” was the probative value substantially outweighed by the risk of unfair prejudice because the allegations concerned 165 grams of methamphetamine. Tr. 343, ll. 7-14. Defense counsel noted that on the night of the incident the officers believed the substance to be heroin. Tr. 343, ll. 15-23.

Trial court's ruling

The trial court determined that the evidence was probative as to the issue of determining identity. Tr. 346, ll. 12-19. The court noted that Deputy Crowe provided testimony that there was burnt methamphetamine and the SLED labs bore out that it was methamphetamine. Tr. 346, ll. 19-23. Therefore, the trial court found that the evidence was probative. Tr. 346, l. 23. The court continued that, “[i]n the Court’s opinion, it does outweigh the probative value, but it does not substantially outweigh the probative value. And that’s the key issue under 403.” Tr. 347, ll. 4-7. The trial court allowed the testimony but advised that it did not want elaborate details. Tr. 347, ll. 8-14. The court confirmed that the issue was preserved on the record. Tr. 347, ll. 20-21.

Trial continued

In the presence of the jury, the state continued its examination of Deputy Crowe. He repeated that in his training and experience he has observed individuals under the influence of methamphetamine. Tr. 348, ll. 10-14. He explained that the indicators were clammy skin, sweating profusely, unable to narrow their train of thought to a particular question or sequence of events, and bouncing all over the place. Tr. 348, ll. 15-21. He identified physical indicators as pupil size explaining that those under the influence of methamphetamine have small pupils. Tr. 348, l. 22 – 349, l. 1. He described the traffic stop. Tr. 350, ll. 1-25. He was the back-up officer and approached the passenger side window. Tr. 351, ll. 4-17. Deputy Crowe’s body-worn camera footage was entered into evidence. Tr. 353, l. 20 – 354, l. 4; R *(State’s Exhibit 15). While describing the traffic stop and subsequent searches, Deputy Crowe testified that he observed appellant sweating profusely and noted it took appellant a long time to reply to questions. Tr. 369, ll. 18-23. He explained that they found what officers believed to be used heroin located in the small black bag. Tr. 365, ll. 1-13. He testified that co-defendant’s

demeanor was different from appellant's as co-defendant did not appear to be hiding anything. Tr. 369, l. 24 – 370, l. 8. He described appellant's demeanor as "a deer in headlights look." Tr. 370, ll. 15-18. He explained that he shined a flashlight to assess pupil dilation and appellant's pupils stayed constricted and did not dilate. Tr. 371, ll. 15-23. He testified that in his training and experience that observation was consistent with someone under the influence of methamphetamine. Tr. 371, l. 24 – 372, l. 2.

Deputy Crowe then testified regarding a portion of the body-worn camera footage wherein he confronted appellant about trafficking methamphetamine. Tr. 373, l. 24 – 374, l. 2. He testified that he confronted appellant about property damage and an issue concerning a motorcycle, both of which he denied. Tr. 374, ll. 3-15. He then testified that he confronted appellant about trafficking methamphetamine and appellant "just put his head down," and did not say a word. Tr. 374, ll. 16-25. However, on cross-examination, Crowe acknowledged that appellant had repeatedly denied that the drugs were his and the confrontation about trafficking methamphetamine was not the first time he had been asked whether the drugs were his. Tr. 375, ll. 10-23. He also explained that typically methamphetamine keeps you awake and in his experience someone under the influence of methamphetamine is not sleepy. Tr. 377, ll. 4-9. He agreed that during the traffic stop, he made a comment that appellant looked like he was about to fall asleep. Tr. 377, ll. 10-14.

Closing arguments

During closing arguments, the state pointed to testimony concerning the officers belief that appellant was under the influence of methamphetamine during the night of the incident. The state argued as follows,

And you also got to hear from deputies about the defendant's demeanor in terms of being under the influence of

methamphetamine: clammy skin, sweating, pinpoint pupils, increased time to process or respond to things, staring off into space. You have to watch all of them. And that's important in this case for two reasons: one, because the driver of the car, Mr. Autrey, did not appear to be under the influence of methamphetamine; and second, because there was a burnt black substance within the bag alongside that methamphetamine which is what meth looks like after it has been used. And we can see here the black substance came back confirmed for methamphetamine. He's under the influence with the methamphetamine he had used that was sitting alongside the rest of the meth in that black bag. That shows you he had knowledge of it, and clearly different from what they observed about Mr. Autrey.

Tr. 483, ll. 4-20.

Discussion

“For evidence to be admissible, it must be relevant.” *State v. Daise*, 421 S.C. 442, 464, 807 S.E.2d 710, 721 (Ct. App. 2017); *see also* Rule 402, SCRE (“Evidence which is not relevant is not admissible.”). Generally, relevant evidence “means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” Rule 401, SCRE.

However, Rule 403, SCRE provides that, “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” In *State v. Gray*, 438 S.C. 130, 143-144, 882 S.E.2d 469, 476 (Ct. App. 2022), the South Carolina Court of Appeals wrote:

Relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . .” Rule 403, SCRE. “ ‘Probative value’ is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues.” *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). “[T]he more essential the evidence, the greater its

probative value.” *Id.* (alteration in original) (quoting *United States v. Stout*, 509 F.3d 796, 804 (6th Cir. 2007)). “Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates.” *Id.* “[T]he burden [is] on the opponent of the evidence to establish [its] inadmissibility.” *State v. King*, 424 S.C. 188, 200 n.6, 818 S.E.2d 204, 210 n.6 (2018).

In appellant’s case, the trial court abused its discretion by allowing the state to elicit testimony that officers believed appellant was under the influence of methamphetamine on the night of the incident given that any probative value the evidence may have had was substantially outweighed by the risk of unfair prejudice. While the trial court determined that the evidence was probative of identity, Tr. 346, ll. 12-23, officers belief that appellant was under the influence of methamphetamine was not expressly relevant to the offense charged. *See United States v. Nsahlai*, 121 F.4th 1052, 1060 (4th Cir. 2024) (explaining that “the threshold for relevance is a low bar, but it nonetheless requires that the evidence be ‘worth consideration by the jury’ or have a ‘plus value’ on the question before that body.”); S.C. Code Ann. § 44-53-375(C) (“ A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, . . . or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base . . . is guilty of a felony which is known as trafficking in methamphetamine or cocaine base.”) (internal quotation marks omitted). Nor was the evidence essential given that officers may still have testified that they recovered a bag with both burnt and unused methamphetamine. R *(State’s Exhibits 12, 27); *Gray*, 408 S.C. at 610, 759 S.E.2d at 165. In any event, Rule 403 requires that, if the probative value of the contested evidence is substantially outweighed by the danger of unfair prejudice, it must be excluded. Rule 403, SCRE.

The prejudicial effect of the contested evidence substantially outweighed any probative value where the state sought to introduce the evidence to comment on and attack appellant's character before the jury and represented simple propensity evidence. *See United States v. Miller*, 61 F.4th 426, 429 (4th Cir. 2023) (citing *Old Chief v. United States*, 519 U.S. 172, 180 (1997) (“Unfair prejudice speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground *different from proof specific to the offense charged.*”) (internal quotations and alterations omitted, emphasis in original)). In short, the state sought to introduce evidence that the officers belief of appellant's drug use equated to guilt for the charged offenses. Further, the state's assertion below that since the jury knew appellant was being tried for an offense involving 165 grams of methamphetamine, the unfair prejudice could not substantially outweigh the probative value falls flat. Tr. 343, ll. 7-14. It does not follow that merely because the jury was aware that appellant was charged with an offense involving methamphetamine that, in the state's own words, “by no stretch of the imagination,” could the prejudicial effect of that evidence substantially outweigh the probative value. Tr. 343, ll. 7-14. Certainly, the evidence posed the risk of unfair prejudice where the evidence injected drug use and officers belief about appellant's drug use into the trial. *United States v. Chaudhri*, 134 F.4th 166, 184 (4th Cir. 2025) (citing *United States v. Williams*, 445 F.3d 724, 730 (4th Cir. 2006)) (“Evidence is unfairly prejudicial and thus should be excluded under Rule 403 when there is a genuine risk that the emotions of a jury will be excited to irrational behavior, and this risk is disproportionate to the probative value of the offered evidence.”).⁴ Similarly, the jury's

⁴ *See also e.g., United States v. Sellers*, 906 F.2d 597, 602 (11th Cir. 1990) (noting the “extreme potential for unfair prejudice flowing from evidence of drug use.”); *Dailey v. Hecht*, 757 F. App'x 664, 669 (10th Cir. 2018) (unpublished) (explaining that “Evidence of drug use—including prescription drug use—carries the risk that a jury could make negative assumptions about the party or the party's character.”).

knowledge of the charged offense does not remove the prejudice created by testimony that appellant was under the influence of methamphetamine and the danger introduced by the evidence for the jury to render a decision on an improper basis. *State v. Heath*, 433 S.C. 506, 514, 860 S.E.2d 673, 677 (Ct. App. 2021) (citing *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (“Unfair prejudice means an undue tendency to suggest decision on an improper basis.”); *see also United States v. Mohr*, 318 F.3d 613, 619-620 (4th Cir. 2003) (“Rule 403 only requires suppression of evidence that results in unfair prejudice—prejudice that damages an opponent for reasons other than its probative value, for instance, an *appeal to emotion* . . .”)) (emphasis added).

In addition, as defense counsel argued below, the evidence posed a high risk of prejudice because it “makes an inference to something that is not provable by a test.” Tr. 51, ll. 20-23. Further, the state relies on the fact that burnt methamphetamine was found in the bag containing the unused methamphetamine, however, neither SLED tests nor the state could identify when the burned methamphetamine in the bag may have been used. Tr. 51, l. 24 – 52, l. 1; Tr. 57, ll. 2-6; Tr. 341, ll. 12-17; R *(State’s Exhibit 12, 27). The trial court’s error by allowing the state to elicit this evidence was compounded by the state’s closing argument which emphasized to the jury the officers observations of appellant on the night of the incident and their belief that he was under the influence of methamphetamine. Tr. 483, ll. 4-20.

The result is that the trial court abused its discretion by allowing the state to elicit testimony concerning officers belief that appellant was under the influence of methamphetamine because the prejudicial effect of the evidence substantially outweighed the probative value. Tr. 346, l. 12 – 347, l. 7. Accordingly, this Court should reverse.

II.

The trial court erred by refusing to grant appellant's motion to suppress where S.C. Code Ann. § 24-21-410 did not apply to allow the search of bags found within the truck appellant was a passenger because they were not appellant's possessions, officers lacked reasonable suspicion to justify the search, and where no exception to the warrant requirement applied.

Relevant facts

Pre-trial arguments

Prior to trial, defense counsel filed a written motion to suppress and dismiss and a memorandum of law in support of his motion. R *(Court's Exhibit 2). Therein, he argued that all evidence located in the searches on June 13, 2022, comprising of a firearm, alleged illegal drugs, and alleged prescriptions should be suppressed because neither probable cause nor reasonable suspicion existed to support the search. R *(Court's Exhibit 2 at 16-26).

The trial court heard pre-trial arguments on defense counsel's motion to suppress the drug and firearm evidence resulting from the search of two separate bags, a small black bag and a blue backpack, found inside of the truck appellant was a passenger. Tr. 107, l. 25 – 108, l. 7. As relevant,⁵ defense counsel explained that officers learned that appellant was on probation “and that his search status is reasonable suspicion.” Tr. 116, ll. 13-16, 20-24. He explained that officers justified the search of appellant's person because dispatch reported that appellant was on probation and their belief that they had reasonable suspicion that the moped was stolen. Tr. 117, ll. 1-7. He cited the probation statute as S.C. Code Ann. § 24-21-410 (2010) noting that “when someone is on probation, they must agree in writing to a search or seizure without a search

⁵ Defense counsel argued several other grounds concerning his motion to suppress including the basis for the initial traffic stop, discovery violations, and the prolonged nature of the stop.

warrant based on reasonable suspicions of three things: the defendant's person, the vehicle or a vehicle that the defendant is driving or owns, and any of the defendant's possession." Tr. 118, ll. 12-18. Counsel argued that the officers were required to verify appellant's probation status, which they failed to do. Tr. 119, ll. 2-20. He contended that the statute was violated. Tr. 119, ll. 14-20. He argued that in any event, the search should be limited rather than "a full search of everything." Tr. 119, ll. 21-24. He clarified that the statute allowed a search of appellant's person, which officers did. Tr. 119, ll. 24-25. He noted that nothing illegal was found on appellant's person. Tr. 120, ll. 1-7. He argued that the statute would allow officers to search appellant's possessions. Tr. 120, ll. 17-18.

Defense counsel first argued that the possessions appellant claimed were his coat and the moped, and thus, officers could have searched those items because he admitted they were his. Tr. 120, l. 22 – 121, l. 6. He explained that after appellant's person was searched, Brummitt turned immediately to search the vehicle. Tr. 122, ll. 9-11. He highlighted that while officers searched appellant, the co-defendant was left in the vehicle. Tr. 123, ll. 2-9. He asserted that the question was whether the small black bag was one of appellant's possessions. Tr. 123, l. 25 – 124, l. 2. He argued that Brummitt observed a bag in appellant's lap, but that was the blue backpack from which a gun was recovered. Tr. 124, ll. 7-24. Defense counsel argued that Deputy Camp's body-worn camera footage contained a conversation with Brummitt wherein the officers acknowledge that while they thought the bag was appellant's they were not sure because they left co-defendant alone in the truck. Tr. 125, ll. 3-14. He asserted that by the officers own admission they were not certain who had possession of the small black bag. Tr. 125, ll. 14-16.

Defense counsel continued that, at best, officers could have searched the blue backpack but not the small black bag. Tr. 125, ll. 17-25. He pointed out that officers searched the small

black bag first. Tr. 126, ll. 1-8. He highlighted that appellant and co-defendant were both charged for the drugs; however, appellant was only charged with the weapons offense indicating that officers were convinced appellant was the only person in possession of the blue backpack. Tr. 126, ll. 13-19. He argued that there was nothing on appellant's person, the moped was not searched, and there was nothing in his coat. Tr. 126, ll. 20-22. He argued that drugs were only found in the small black bag and asserted that from officers viewpoint the small black bag was not one of appellant's possessions. Tr. 126, l. 23 – 127, l. 1. Defense counsel concluded that there was no basis for the search and it was an improper search. Tr. 127, ll. 2-3. He asserted that officers searched the wrong thing based on the reasonable suspicion standard under the probation statute. Tr. 127, ll. 3-5. He also argued that being on probation itself was not reasonable suspicion for a search. Tr. 127, ll. 7-8. He contended that the fact that appellant did not have keys for the moped was not reasonable suspicion to search and it did not extend to the small black bag. Tr. 127, l. 21 – 128, l. 12. After the state provided argument concerning the traffic stop, the trial court instructed the parties that the court wanted to hear testimony from Deputy Brummitt. Tr. 133, ll. 17-24.

Deputy Brummitt pre-trial testimony

Deputy Brummitt first explained his basis for initiating the traffic stop which included the unsecured moped and a tag that was not visible. Tr. 134, l. 14 – 139, l. 13. He testified that after he initiated the traffic stop, he made contact with the driver and began asking questions about the moped. Tr. 140, ll. 6-13. He called in both the driver and appellant's license numbers. Tr. 140, ll. 18-21. He described appellant's demeanor as "just talking and talking and talking," and noted he was sweating. Tr. 141, ll. 3-8. He testified that when he walked up appellant "had the blue bag, and he was rifling through it." Tr. 141, ll. 19-22. He explained that while he was speaking

with appellant he was moving the bag and adjusting his jacket. Tr. 141, l. 23 – 142, l. 4. He testified that he was trying to figure out why there was an unsecured moped in the truck and explained that he suspected the moped was stolen. Tr. 142, l. 20 – 143, l. 5. He testified that appellant did not have paperwork or a key for the moped. Tr. 143, ll. 16-25.

Brummitt then explained that dispatch informed him that appellant was on probation. Tr. 144, ll. 7-11. Once he learned about appellant's probation status, he took appellant out of the truck and searched him. Tr. 144, ll. 23-25. He explained that he pulled appellant out "Because trying to put the puzzle pieces together, it seemed to me like this moped was stolen and I wanted to see if he had the keys." Tr. 145, ll. 3-7. He described other indicators of when a moped may be stolen, like having the ignition punched, but testified the ignition of the moped was not punched. Tr. 145, ll. 4-19. Brummitt testified that nothing of note was found on his search of appellant. Tr. 145, ll. 20-24. He testified that after he searched appellant, he went to the passenger side of the truck. Tr. 146, ll. 1-3. He explained that he moved the black motorcycle jacket and under the jacket was a black drawstring bag. Tr. 146, ll. 5-7. He explained, "I pulled it and set it in the seat because I believed it was his possessions. That's why I was searching his immediate area. When I opened it up, there was a large amount of crystal-like substance which I believed to be methamphetamine." Tr. 146, ll. 7-11.

On cross-examination, Brummitt agreed that appellant was answering questions about the moped and agreed that appellant "inserted himself into the conversation," because he claimed that the moped was his. Tr. 156, ll. 19 – 157, l. 1. He testified that he observed that appellant was sweating and agreed that appellant told him he had just moved the moped. Tr. 157, ll. 2-5. He testified that when he came to the door to talk to the driver he saw appellant with the backpack in his lap. Tr. 157, ll. 12-19. He agreed that at that point he did not see the small black

bag. Tr. 158, ll. 16-18. He testified that based on appellant's answers he suspected that the moped might be stolen. Tr. 158, ll. 19-22. He agreed that less than a minute after he learned of appellant's probation status, he searched appellant. Tr. 161, ll. 5-13. He agreed that his reasonable suspicion was that he believed the moped was stolen because appellant had no keys and his knowledge about the person appellant obtained the moped from. Tr. 161, ll. 17-25. Brummitt agreed that appellant told him he did not have keys to the moped. Tr. 162, ll. 17-19. He agreed that the reason he pulled appellant out to search him was his probation status and he believed there was reasonable suspicion appellant had stolen the moped. Tr. 164, ll. 15-23.

Brummitt agreed that after he found nothing of note from the search of appellant's person, he immediately searched the passenger side of the truck. Tr. 164, l. 24 – 165, l. 1. He agreed that while he testified that he believed the small black bag was in appellant's possession, he charged co-defendant, the driver, with the drugs as well. Tr. 165, ll. 13-18. He agreed that he did not first search the blue backpack that he observed appellant rifling through. Tr. 165, ll. 19-24. He agreed he only searched the blue backpack after he found the drugs. Tr. 166, ll. 6-13. He agreed that he left co-defendant alone in the truck while he was searching appellant and after he found the drugs he detained both men. Tr. 167, ll. 1-6. He recalled telling Deputy Camp that he thought the bag with drugs was appellant's, but he was not sure because he left the co-defendant alone in the truck while he was searching appellant. Tr. 168, ll. 15-20. He agreed that he was uncertain about who had possession of the small black bag. Tr. 168, ll. 21-25.

Pre-trial arguments continued

The state argued its theory was there was reasonable suspicion under the probation statute to search possessions of the appellant. Tr. 171, ll. 15-18. The state clarified it was not arguing under the automobile exception. Tr. 173, ll. 1-4. The state argued that it was "clear as day," that

Brummitt learned appellant was on probation and proceeded. Tr. 173, ll. 4-6. The state argued, “in terms of what he had when he went to search the defendant and the property of the defendant, you know, it was late at night, it was a high-crime area, he had conflicting stories regarding the moped, he had concerns about potential property theft.” Tr. 173, ll. 13-17. The state also cited furtive movements within the truck. Tr. 173, ll. 17-19. The state argued that Brummitt properly relied on those bases to search appellant’s person and property. Tr. 173, l. 19 – 174, l. 1. As to the probation statute, the state first contended that Brummitt could not check with probation at 10:30 p.m. and argued the legislature accounted for that by including the language “by other means available to the officer.” Tr. 175, ll. 2-15. The state argued the statute was satisfied by the information received from dispatch. Tr. 175, ll. 15-19. The state argued that this was a constructive possession case and Brummitt did not have to take appellant at his word with respect to his property. Tr. 175, l. 23 – 176, l. 7. The state argued that Brummitt relied on the fact the possessions were within immediate reach of where appellant was seated in the truck. Tr. 176, l. 24 – 177, l. 2. The state concluded that the small black bag could be considered appellant’s property for the purposes of the probation statute, which required a reasonable suspicion analysis rather than probable cause. Tr. 177, ll. 9-16.

Defense counsel responded that the state “essentially stipulated” that if the probation statute is not applicable, the automobile exception would suppress it. Tr. 179, ll. 10-15. He continued that Brummitt never saw the small black bag and had only a hunch as opposed to the required particularized and objective basis of criminal activity. Tr. 179, ll. 16-20. He emphasized that Brummitt testified he was unsure if appellant had possession of the bag. Tr. 179, ll. 20-24. The trial court stated that it would consider the arguments and look over everything that evening. Tr. 180, ll. 17-20.

Trial court's ruling

The following day, the trial court denied appellant's motion to suppress. Tr. 184, ll. 9-10. First, the trial court found there was reasonable suspicion to initiate the traffic stop. Tr. 184, l. 10 – 185, l. 2. Second, the trial court determined that because appellant was on probation the reasonable suspicion analysis was triggered. Tr. 185, ll. 3-7. The court found suspicion based on Brummitt's testimony that when he approached the truck appellant was nervous, sweating, answering questions posed at the co-defendant, and "continued to talk and talk and talk." Tr. 185, ll. 13-20. The court pointed to Brummitt's testimony that he learned appellant traded a motorcycle for the moped, but he did not have keys or paperwork for the moped. Tr. 185, ll. 21-25. The court noted that testimony revealed that appellant was fidgeting with his jacket while speaking with Brummitt. Tr. 186, ll. 9-13. The trial court explained that the probation statute authorized a search of appellant's person and his possessions. Tr. 186, ll. 13-20. The court explained that under the jacket, which was "objectively" appellant's, was the black bag containing the methamphetamine. Tr. 186, l. 22 – 187, l. 2. The court determined the bag's presence under the jacket could lead to the conclusion that it was a possession of appellant's. Tr. 187, ll. 1-10.

The court concluded that taking all of the elements together from an objective standpoint, reasonable suspicion existed. Tr. 187, ll. 12-18. The court found that reasonable suspicion existed to stop the truck and to conduct the search of appellant, and thus, the search was proper. Tr. 187, ll. 18-21. The court denied appellant's motion to suppress. Tr. 187, l. 22. The trial court added that the officer being informed by dispatch of appellant's probation status was enough to satisfy the 'other available means,' language of the statute. Tr. 188, ll. 1-19.

Trial

Deputy Brummitt testified that while he was talking to appellant during the traffic stop, appellant was “elbow deep into a blue bag, like a backpack, rifling, moving around in there.” Tr. 234, ll. 10-22. He testified that appellant was making furtive movements. Tr. 235, ll. 2-5. He reiterated that appellant was rifling around a blue backpack that was in his lap. Tr. 235, l. 23 – 236, l. 1. He testified that appellant was moving around a black motorcycle jacket. Tr. 236, ll. 2-9. He testified that he ended up searching appellant but did not find anything of note. Tr. 241, ll. 10-21. He explained that he was looking to see if appellant had paperwork for the moped or a bill of sale. Tr. 241, ll. 17-21.

After searching appellant, Brummitt testified that he searched the cab of the truck where appellant was sitting. Tr. 241, ll. 14-17. He moved the jacket and explained that he found a black drawstring bag under the jacket. Tr. 242, ll. 19-23. There was not a center console in the truck. Tr. 243, ll. 3-4. He testified that he did not search the blue backpack first because appellant had put the bag down. Tr. 246, l. 24 – 247, l. 7. He testified that when he opened the black drawstring bag, he recognized what appeared to be methamphetamine. Tr. 247, ll. 12-15. He testified that there were two tinfoil pieces that had burn marks on them. Tr. 248, ll. 7-12. He placed appellant and co-defendant in handcuffs after he found the methamphetamine and twenty pills. Tr. 249, ll. 16-21. He then resumed the search of the passenger side of the truck. Tr. 250, ll. 3-6. He testified that appellant said the bag was not his. Tr. 251, ll. 4-6. Deputy Brummitt explained that next, he searched the backpack and found a revolver. Tr. 252, l. 21 – 253, l. 8. Appellant stated that the blue backpack was not his. Tr. 254, l. 22 – 255, l. 3. He testified that no one claimed possession of the drugs or gun. Tr. 256, ll. 8-13.

On cross-examination, Brummitt testified that while both appellant and co-defendant were in the cab of the truck he never saw the small black bag. Tr. 284, l. 23 – 285, l. 4. He agreed that appellant claimed ownership of the moped. Tr. 285, ll. 13-23. He agreed that co-defendant was in the driver's seat of the truck while appellant was searched. Tr. 289, ll. 15-20. He testified that watching the body-worn camera footage it appeared that co-defendant was moving papers and that co-defendant did not lean over. Tr. 289, l. 21 – 290, l. 1. He agreed, however, that co-defendant was left unobserved by himself and Deputy Crowe. Tr. 290, ll. 2-6. He agreed that at one point it appeared that co-defendant reached to the right. Tr. 291, ll. 15-23. He agreed that he made a statement that he left co-defendant unattended and that he did not know what he was doing in the truck. Tr. 293, ll. 9-12.

Brummitt then testified that immediately after the search of appellant's person, wherein nothing of note was found, he searched the interior of the truck. Tr. 293, ll. 19-25. After he searched the small black bag, he detained both appellant and co-defendant. Tr. 294, ll. 1-15. He agreed that both appellant and co-defendant maintained they did not possess the bag the drugs were found in. Tr. 295, ll. 4-12. He stated that there was no paperwork in the blue backpack identifying appellant and that he could only confirm that the gun was not stolen. Tr. 300, l. 7 – 301, l. 6. He likewise did not find any identification documents in the small black bag. Tr. 301, ll. 7-12. He agreed that he decided to charge both appellant and co-defendant for the drugs due to constructive possession. Tr. 303, ll. 4-10. He confirmed that he did not see the small black bag when he removed appellant from the truck and he did not search the backpack until after appellant was removed from the truck. Tr. 312, ll. 14-25. He agreed that he could not "pin" possession of the small black bag "on one person." Tr. 313, ll. 17-22. He agreed that he was unsure who had possession of the small black bag. Tr. 314, ll. 12-15.

James Autrey, appellant's co-defendant, testified that the state would dismiss his charges in exchange for his testimony. Tr. 315, l. 23 – 316, l. 5. He testified that appellant brought a "little small bag," with him when he got into the truck, but he could not recall what it looked like. Tr. 317, ll. 5-9. He explained that his truck did not have a center console and did not have room behind the seats. Tr. 319, ll. 15-18. On cross-examination, he testified that he could not recall what color the small bag appellant brought into the car was and could not recall if it was a backpack. Tr. 327, ll. 6-14. He testified that appellant only brought *one* bag with him. Tr. 327, ll. 22-23 (emphasis added). He also explained that prior to the traffic stop, when they were picking up the moped, Tammy Siegle⁶ had been in the cab of the truck. Tr. 328, ll. 4-15. He agreed that he was arrested and charged with trafficking methamphetamine. Tr. 331, ll. 22-25.

Deputy Crowe testified that he was the back-up officer and observed appellant with a backpack sitting in his lap. Tr. 357, ll. 3-22. Appellant was moving around. Tr. 358, ll. 2-9. He testified that Brummitt searched appellant's person. Tr. 361, ll. 2-10. He explained that next, they searched the area appellant was sitting. Tr. 361, l. 23 – 362, l. 4. He learned that a separate bag containing methamphetamine and pills was found. Tr. 364, ll. 9-22. A firearm was located in the larger bag. Tr. 367, ll. 12-16. Appellant did not claim possession of the narcotics. Tr. 368, ll. 17-19. On cross-examination, Crowe agreed that he did not see appellant's hands in the blue backpack. Tr. 383, ll. 12-15.

Trial court's additional ruling

The following day, the trial court provided a clarifying ruling on appellant's motion to suppress. The trial court stated,

⁶ For clarity, Tammy Siegle was the individual who was in the bed of the truck holding up the moped. Co-defendant refers to her as "Tambo," and testified that at the time of trial, "Tambo" was deceased. Tr. 316, ll. 13-20.

I denied the motion to suppress, and I detailed the reasons on the black bag. It also applied to the blue bag as well. Just for the record for appellate purposes, it applied to the blue bag as well. The grounds are the same as set forth in my ruling on the black bag.

As to the blue bag, there is testimony from Brummitt that the defendant was – had his hands in the blue bag, was fiddling with it, messing with it. And so on those grounds it applied, too. I just got to thinking about it. My ruling was meant to apply to both of them . . .

Tr. 387, l. 19 – 388, l. 7.

Discussion

The trial court erred by refusing to suppress the drugs and weapon recovered from law enforcement’s search of the small black bag and blue backpack where the trial court erroneously relied on S.C. Code Ann. § 24-21-410 to justify the search despite the state’s failure to establish that the bags were appellant’s possessions or that reasonable suspicion existed for the search of the bags, as required by the probation statute. The result was a warrantless search for which no exception to the warrant requirement applied. Therefore, this Court should reverse.

“Generally, the Fourth Amendment requires the police to have a warrant in order to conduct a search.” *Robinson v. State*, 407 S.C. 169, 185, 754 S.E.2d 862, 870 (2014) (citing *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007)). “Evidence seized in violation of the warrant requirement must be excluded from trial.” *Id.* “However, a warrantless search may nonetheless be proper under the Fourth Amendment if it falls within one of the well-established exceptions to the warrant requirement.” *Id.* (citing *State v. Moore*, 377 S.C. 299, 308-309, 659 S.E.2d 256, 261 (Ct. App. 2008)). In addition, the United States Supreme Court established that when an officer has reasonable suspicion that a probationer, who is subject to a search condition, is engaged in criminal activity, “there is enough likelihood that an intrusion on

the probationer's significantly diminished privacy interests is reasonable.” *See United States v. Knights*, 534 U.S. 112, 121 (2001); *see also Samson v. California*, 547 U.S. 843, 857 (2006).⁷ In South Carolina, section 24-21-410 provides that,

Before a defendant may be placed on probation, he must agree in writing to be subject to a search or seizure, without a search warrant, based on based on reasonable suspicions, of the defendant's person, any vehicle the defendant owns or is driving, and *any of the defendant's possessions* by:

- (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or
- (2) any other law enforcement officer.

S.C. Code. Ann. § 24-21-410 (2010) (emphasis added). The legislative intent to protect those on probation from suspicionless searches is supported by the Legislature's warning that such searches are a “means of reducing recidivism and [do] not authorize law enforcement officers to conduct searches for the sole purpose of harassment.” S.C. Code Ann. § 24-21-430 (2010).

“The term reasonable suspicion requires a particularized and objective basis that would lead one to suspect another of criminal activity.” *State v. Edwards*, 415 S.C. 401, 409, 782 S.E.2d 124, 128 (Ct. App. 2016) (citing *State v. Woodruff*, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001)) (internal quotation marks omitted). “Although reasonable suspicion is not susceptible to a rigid, formulaic approach, it requires more than a mere hunch or unparticularized suspicion.” *Fraiser*, 437 S.C. at 635, 879 S.E.2d at 767 (citing *Robison*, 407 S.C. at 181, 754 S.E.2d at 868). “In determining whether reasonable suspicion exists, the

⁷ This blanket denial of any expectation of privacy for those on probation has been rejected by other states on state constitutional grounds. *See State v. Short*, 851 N.W.2d 474, 506 (Iowa 2014) (“The United States Supreme Court in *Griffin*, *Knights*, and *Samson* has engaged in innovations that significantly reduce the protections of the Warrant Clause of the Fourth Amendment. We decline to join the retreat under the Iowa Constitution. We hold that under article I, section 8, the warrant requirement has full applicability to home searches of both probationers and parolees by law enforcement. As a result, because evidence seized in this case was obtained unlawfully, the motion to suppress should have been granted.”).

court must consider the totality of the circumstances.” *State v. Willard*, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007) (citing *State v. Rogers*, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006)); *see also State v. Morris*, 395 S.C. 600, 607, 720 S.E.2d 468, 471 (Ct. App. 2011).

The trial court erred by determining that appellant’s probation status justified the warrantless search of the small black bag because the record does not support that the bag was appellant’s possession, reasonable suspicion did not exist for the search of the bags, and no exception to the warrant requirement applied. Tr. 184, l. 9 – 188, l. 19; Tr. 387, l. 19 – 388, l. 7. First, as defense counsel articulated below, the order of events matter. Tr. 125, l. 17 – 126, l. 8. Officers first searched appellant’s person. Tr. 164, l. 24 – 165, l. 1, 293, ll. 19-25, 361, ll. 2-10. Nothing was found. Tr. 164, l. 24 – 165, l. 1, 293, ll. 19-25. Under the probation statute, the only remaining search, based on reasonable suspicion, could be of appellant’s possessions. S.C. Code. Ann. § 24-21-410. Instead of searching the blue backpack, which Deputy Brummitt testified was in appellant’s lap and he was rifling through, officers went directly to the small black bag. Tr. 157, ll. 12-19, 165, ll. 19-24, 166, ll. 6-13; Tr. 235, l. 23 – 236, l. 1, Tr. 246, l. 24 – 247, l. 7. In doing so, the warrantless search of the small black bag could not be shielded by the probation statute given that the state failed to establish that the small black bag was, in fact, one of appellant’s possessions.

Instead, the record reflects that officers were unsure who the owner of the small black bag was for several reasons: (1) Deputy Camp’s body-worn camera captured a conversation wherein Deputy Brummitt acknowledged that while they thought the bag was appellant’s they left co-defendant unintended in the truck where the bag was found, and Deputy Brummitt testified that he indeed made a statement that he left co-defendant unattended in the truck, R

*(Court's Exhibit 3, Deputy Campy body-worn camera, 2:20 – 2:30); Tr. 293, ll. 9-12; (2) Deputy Brummitt testified that he was unsure who had possession of the small black bag, *see* Tr. 168, ll. 21-25; Tr. 314, ll. 12-15; and (3) officers charged both appellant and co-defendant with the drug offense, but only appellant with the weapons offense, R *(Indictments); Tr. 165, ll. 13-18; *see also* R *(State's Exhibit 27) (naming both appellant and the co-defendant as subjects on the SLED drug analysis request for the recovered pills and clear crystal like substance). Nor did appellant claim ownership of any of the bags searched. Tr. 120, l. 22 – 121, l. 6; Tr. 251, ll. 4-6, 256, ll. 8-13; Tr. 368, ll. 17-19. Therefore, the trial court erred by relying on the probation statute to justify the search of the small black bag because the state failed to establish, and the record does not support that the small black bag was one of appellant's possessions. Tr. 186, l. 22 – 188, l. 19.

An additional hurdle under the probation statute is the requirement that a warrantless search may only proceed if reasonable suspicion exists. S.C. Code. Ann. § 24-21-410. Even assuming the small black bag was one of appellant's possessions, officers lacked the requisite reasonable suspicion to conduct the search. Particularly, Deputy Brummitt identified his basis for reasonable suspicion as believing the moped was stolen based on his knowledge of the person appellant obtained the motorcycle from and appellant's lack of keys for the moped. Tr. 161, ll. 17-25. Contrary to that belief, Brummitt also testified that he did not observe common indicators of a stolen moped like the ignition being punched out, Tr. 145, ll. 4-19, and appellant readily explained to Brummitt that he did not have the keys for the moped, Tr. 162, ll. 17-19. In any event, while coupled with appellant's probation status, this may have covered the search of appellant's person, those observations did not provide a particularized and objective basis to believe that a search of the truck would uncover criminal activity. *Edwards*, 415 S.C. at 409,

782 S.E.2d at 128. Moreover, after appellant's person was searched, which yielded no results, law enforcement immediately proceeded to search the truck. Tr. 164, l. 24 – 165, l. 1. These circumstances demonstrate unparticularized suspicion.

Even further, the trial court's reliance on appellant's demeanor that he was nervous, sweating, and answering questions posed at the co-defendant, similarly does not satisfy reasonable suspicion given that the questions posed were about the moped which appellant claimed possession of and nervousness during a police encounter is exceedingly normal. *See Fraiser*, 437 S.C. at 636, 879 S.E.2d at 768 (acknowledging that "nervousness is typically present in any encounter with police," and explaining that "nervous behavior is a pertinent factor in determining reasonable suspicion, we, like many appellate courts, have become weary with the many creative ways law enforcement attempts to parlay the single element of nervousness into a myriad of factors supporting reasonable suspicion."); Tr. 185, ll. 13-20.

Appellant provided reasonable explanations for the indicators observed by officers and cited by the trial court. For instance, appellant explained that he had just moved his moped, which explained why he was sweating. Tr. 157, ll. 2-5. It is also worth noting that this traffic stop occurred during the summer on June 13, 2022. R *(Indictments); Tr. 225, l. 20 – 226, l. 17. Deputy Brummitt also agreed that appellant "inserted himself" into the conversation directed at the co-defendant, because questions were being posed about the moped. Tr. 140, ll. 6-13; Tr. 156, ll. 19 – 157, l. 1. Again, appellant claimed ownership of the moped and was in the best position to answer the officers questions that focused on the moped. Tr. 120, l. 22 – 121, l. 6; Tr. 285, ll. 13-23. Therefore, the facts cited by the trial court do little to establish that reasonable suspicion existed to proceed with a search pursuant to the probation statute. *See e.g., Fraizer*, 437 S.C. at 637, 879 S.E.2d at 768 (concerning a prolonged traffic stop, our Supreme Court

explained that facts such as repeating questions, noticing an unzipped zipper, sweating, and being nervous, did not satisfy reasonable suspicion as officers did not see any items that would demonstrate potential criminal activity). It cannot be said that officers had more than a mere hunch to support the ensuing search of the truck and bags within. *Fraiser*, 437 S.C. at 635, 879 S.E.2d at 767; *Willard*, 374 S.C. at 134, 647 S.E.2d at 255; *see also* Tr. 179, ll. 16-20.⁸

The trial court erroneously relied on appellant's probation status and, even if applicable, officers lacked reasonable suspicion to search the bags. The drug evidence and weapon should therefore be suppressed as fruit of an illegal search. *See State v. Adams*, 409 S.C. 641, 648, 763 S.E. 2d 341, 345 (2014) (citing *United States v. Najjar*, 300 F.3d 466, 477 (4th Cir. 2002) and *Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963)) ("Generally, evidence derived from an illegal search or arrest is deemed fruit of the poisonous tree and is inadmissible."). Because the probation status did not apply to cover the search of the bags, the result is that officers conducted a warrantless search for which no exception to the warrant requirement applies. *See State v. Abdullah*, 357 S.C. 344, 350, 592 S.E.2d 344, 348 (Ct. App. 2004) ("[A] warrantless search will withstand constitutionally scrutiny where the search falls within one of a few specifically established and well delineated exceptions to the Fourth Amendment exclusionary rule."). In fact, the state specifically argued to the trial court below that it was not relying on the automobile exception to justify the search. Tr. 173, ll. 1-4; Tr. 179, ll. 10-15; *see Abdullah*, 357 S.C. at 350, 592 S.E.2d at 348 (citing *State v. Bailey*, 276 S.C. 32, 35, 274 S.E.2d 913, 915 (1981)) ("In such

⁸ It is worth noting that officers only searched the blue backpack after the improper search of the small black bag, and thus, the trial court likewise erred by refusing to suppress the firearm recovered from the blue backpack. Tr. 387, l. 19 – 388, l. 7; *Hutto v. State*, 376 S.C. 77, 81, 654 S.E.2d 846, 848 (Ct. App. 2007) (citing *State v. Copeland*, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996)) ("The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality.").

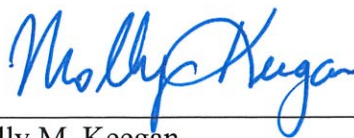
cases, the burden is on the State to justify a warrantless search.”).⁹ Absent the probation statute, a warrantless search is *per se* unreasonable, and the state bears the burden to establish that any exception to the warrant requirement would apply. *Robinson*, 407 S.C. at 185, 754 S.E.2d at 870. In appellant’s case, officers conducted a warrantless search neither authorized by the probation statute nor justified by an exception to the warrant requirement.

Therefore, the trial court’s erred by refusing to grant appellant’s motion to suppress and this Court should reverse.

⁹ Even had the state relied on the automobile exception, such reliance would have been error. “Pursuant to the automobile exception, if there is probable cause to search a vehicle, a warrant is not necessary so long as the search is based on facts that would justify the issuance of a warrant, even though a warrant has not been obtained.” *Weaver*, 374 S.C. at 320, 649 S.E.2d at 482. Probable cause did not exist for officers to search the truck or the bags within. *See State v. Morris*, 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015) (internal quotation marks omitted) (“Probable cause to conduct a search exists where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.”). At best, officers may have searched the moped given that officers articulated concern as to the unsecured nature of the moped, the circumstances surrounding how appellant came to be in possession of the moped, and their suspicion that the moped had been stolen. Tr. 161, ll. 17-25, 164, ll. 15-23. Nonetheless, based on the events leading up to the search—a search of appellant’s person which bore no illegal item—it cannot be said that the totality of the circumstances gave rise to probable cause. *Morris*, 411 S.C. at 580-581, 769 S.E.2d at 859. Thus, because probable cause did not exist to believe the truck contained contraband, the automobile exception was inapplicable. *Weaver*, 374 S.C. at 320, 649 S.E.2d at 482 (“If a vehicle is readily mobile and probable cause exists to believe it contains contraband; the Fourth Amendment permits police to search the vehicle without more.”).

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed, and the case remanded to the Pickens County Court of General Sessions for a new trial.



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This 30th day of October, 2026.