ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2011-203786

THE STATE,

Respondent,

vs.

KENNETH DARRELL MORRIS, II,

Petitioner.

BRIEF OF RESPONDENT

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II.

Even assuming that the search of the rental vehicle's trunk was somehow improper, the decisions of the Court of Appeals and the trial judge should be affirmed because Morris had no legitimate expectation of privacy in either the vehicle or the vehicle's trunk in light of the facts that he did not rent the vehicle, he was not authorized to drive the vehicle, he had no lawful right to control the vehicle, he had no actual possessory interest in the vehicle, and he had no connection to the vehicle's true owner.

STATEMENT OF THE CASE

Petitioner Kenneth Darrell Morris, II was arrested following a traffic stop during which illegal drugs were discovered. On July 3, 2008, the York County grand jury indicted Morris for one count of trafficking in ecstasy and one count of possession of marijuana with intent to distribute. On April 15, 2009, a jury trial was commenced in the York County court of general sessions with the Honorable John C. Hayes, III, circuit court judge, presiding. At the conclusion of trial, the jury convicted Morris of trafficking in ecstasy and the lesser-included offense of simple possession of marijuana. Following the verdict, the trial judge sentenced Morris to concurrent terms of imprisonment of thirty years for the trafficking conviction and one year for the simple possession conviction while fining Morris $50,000 for the trafficking conviction. Morris then timely filed and perfected an appeal.

Subsequently, following oral argument, the Court of Appeals unanimously affirmed Morris' convictions. State v. Morris, Op. No. 4872 (S.C. Ct. App. filed Aug. 17, 2011). Morris petitioned the Court of Appeals for rehearing, and the petition was denied. However, the Court of Appeals withdrew its previous opinion and filed a substituted opinion. State v. Morris, Op. No. 4872 (S.C. Ct. App. re-filed Nov. 2, 2011). Morris then filed a petition for a writ of certiorari in the Supreme Court, and the petition was granted on December 19, 2013.

STATEMENT OF FACTS

On the afternoon of February 6, 2008, Officer L.T. Vinesett, Jr., a member of the York County Sheriff's Office's highway interdiction team, was patrolling I-77 in York County with a state constable when he observed the driver of a Ford 500, which he knew to be a common rental car, commit a traffic infraction by following another vehicle too closely. (R. pp. 6-7). As a result, Officer Vinesett drove towards the Ford, and, when he did so, the driver of the Ford quickly exited the interstate onto another highway. (R. p. 7). Officer Vinesett then followed the Ford to a gas station, activated his blue lights, and initiated a traffic stop. (R. pp. 7-8). The traffic stop began at approximately 2:06 p.m. (State's Ex. # 16 (Recording of the Traffic Stop)).

After stopping the vehicle, Officer Vinesett approached from the passenger's side and observed two occupants inside. (R. p. 8). He asked the driver for his license and registration, and Petitioner Kenneth Darrell Morris, II, the driver of the vehicle, produced a North Carolina driver's license while Brandon Nichols, the passenger, produced a rental agreement for the Ford. (R. pp. 8-9). The rental agreement stated that Nichols rented the vehicle, listed Nichols as the authorized driver, and specifically indicated that no other drivers were authorized to drive the vehicle. (R. pp. 9-10).

When Officer Vinesett initially approached the Ford, the passenger window of the vehicle was open. (R. p. 10). Through the open window, Officer Vinesett detected an odor of marijuana emanating from inside. (R. p. 10). Additionally, he observed hollowed-out cigars and loose tobacco scattered all over the interior of the car, including on the center console and on the floorboards of the vehicle. (R. p. 11). Officer Vinesett took note of the hollowed-out cigars because his experience taught him that drug users commonly hollow out cigars and replace the tobacco inside with marijuana to allow the

users to covertly smoke marijuana while creating the appearance that they are only smoking cigars. (R. p. 11).

After obtaining Morris' license, Officer Vinesett asked Morris to step out of the vehicle and move to the front passenger seat of the officer's patrol car in order to avoid the rain. (R. p. 10; p. 13). Officer Vinesett spoke with Morris in the patrol car at approximately 2:08 p.m. (State's Ex. # 16). During their conversation, Morris claimed that he and Nichols were returning from a trip to Atlanta and had gone to visit some girls. (R. p. 13). Morris also revealed that he had a prior criminal record resulting from drug charges. (R. p. 32; p. 78; State's Ex. # 16). After speaking with Morris, Officer Vinesett left Morris in the patrol car and went to speak with Nichols. (R. p. 14). Officer Vinesett's conversation with Nichols took place at approximately 2:10 p.m. (State's Ex. # 16). Outside of the presence of Morris, Nichols offered a different account of their activities, claiming that he and Morris were returning from Atlanta and had gone to see a cousin play basketball. (R. p. 14). Nichols then exited the Ford, and Officer Vinesett again noticed the odor of marijuana coming from the vehicle. (R. p. 14).

After speaking with both Morris and Nichols, Officer Vinesett requested the assistance of a canine unit at approximately 2:12 p.m. (R. p. 35; State's Ex. # 16). At that time, Officer Vinesett also continued checking Morris' license while completing the initial purpose of the traffic stop. (R. p. 32). Officer Vinesett noted that he was still working on the traffic stop at approximately 2:13 p.m. (State's Ex. # 16). Then, shortly before 2:14 p.m., Officer Vinesett frisked Morris with consent, allowed him to go to the restroom while accompanied by the state constable, and informed him that the traffic stop was not yet complete. (R. pp. 34-35; State's Ex. # 16).

Thereafter, the requested canine officer arrived on the scene. (R. p. 14). At approximately 2:15 p.m., which was roughly nine minutes into the stop, the officers asked Nichols for consent to search the vehicle, and Nichols refused. (State's Ex. # 16). In the rainy weather conditions, the police dog then walked around the exterior of the car at approximately 2:16 p.m. (R. p. 15; State's Ex. # 16). After walking around the vehicle, the dog did not alert to the presence of drugs. (R. p. 15). However, Officer Vinesett, who was familiar with the police dog and had previously observed it performing sniff searches on vehicles, noticed that the dog was not focusing on the vehicle, was shaking off rain water, and was looking around. (R. p. 15). Based on his observations, the officer concluded that the dog did not appear to like being out in the rainy conditions. (R. p. 15).

Subsequently, Officer Vinesett informed Nichols that he smelled marijuana in the car during the stop, but Nichols denied any marijuana had been smoked. (State's Ex. # 16). At approximately 2:20 p.m., which was roughly fourteen minutes into the stop, Officer Vinesett briefly searched the interior of the car without consent. (R. p. 16; pp. 40-41; State's Ex. # 16). The search of the interior lasted less than thirty seconds. (State's Ex. # 16). Officer Vinesett then looked into the trunk of the vehicle and, within less than thirty seconds, located a gift box with a sandwich bag inside containing 393 ecstasy pills. (R. pp. 16-17; pp. 40-41; State's Ex. # 16). Following the discovery of the drugs, both men were quickly arrested. (R. p. 17). Subsequently, approximately one-half pound of marijuana was discovered hidden under the spare tire during an inventory search of the vehicle. (R. p. 66). The drugs recovered from the vehicle were analyzed and conclusively identified as ecstasy and marijuana. (R. p. 70; p. 71). Morris was then

indicted for trafficking in ecstasy and possession of marijuana with intent to distribute, and he proceeded to trial. (R. pp. 91-94).

At the outset of trial, Morris moved to suppress the recovered drugs as the fruits of an illegal search and an unlawful detention, and the trial judge conducted a suppression hearing on Morris' motion.[1] (R. p. 4). During the suppression hearing, Officer Vinesett recounted the details of the traffic stop. (R. p. 6). Specifically, Officer Vinesett testified that he noticed the smell of marijuana coming from the vehicle when he initially approached the vehicle. (R. p. 10). After smelling the odor of marijuana, Officer Vinesett stated that he believed there was cause to extend the traffic stop and question Morris and Nichols. (R. pp. 32-33). Furthermore, he testified about the hollowed-out cigars and loose tobacco that he observed and the inferences that he drew from those items. (R. p. 11). Officer Vinesett also testified about the police dog's failure to alert on the vehicle and explained why he did not believe that the lack of an alert was dispositive due to the dog's unfocused demeanor in the rain. (R. p. 15).

On cross-examination, Officer Vinesett testified that the average traffic stop without any indicators of criminal activity usually lasted approximately five minutes. (R. p. 20). He further acknowledged that he did not include references to any indicators of the presence of drugs in his initial police report, but he specifically identified the indicators that he observed at the scene, which primarily consisted of the loose tobacco, the hollowed-out cigars, and the smell of marijuana, during his testimony.[2] (R. p. 23; pp.

[1] A recording of the traffic stop was played during the suppression hearing. (Tr. p. 46; State's Ex. # 16).

[2] In addition to Officer Vinesett's testimony, Commander Marvin Brown, the supervisor of the York County Sheriff's Office's narcotics unit, also testified during the suppression hearing. (R. p. 49). Commander Brown indicated that Officer Vinesett did not include any indicators of criminal activity in his initial incident report based on unit policies. (R. p. 49). However, he noted that Officer Vinesett included the reason for the stop and all of the indicators of criminal activity that he observed during the course of the

27-29). Additionally, he conceded that the drug dog's failure to alert was a fair indicator that no drugs were present. (R. p. 38). However, he explained that his experience enabled him to distinguish between the smell of marijuana and the smell of cigars and testified that he believed, based on his training and the indicators that he had detected, that someone was or had been smoking marijuana in the rental car. (R. p. 31; pp. 43-44).

At the conclusion of the hearing, defense counsel argued that the extension of the traffic stop was not supported by reasonable articulable suspicion and that no probable cause existed to search the trunk of the vehicle. (R. pp. 51-56). In response, the solicitor asserted that Officer Vinesett's detection of the odor of marijuana during the traffic stop established probable cause and authorized the officer to search any area or container in the vehicle where the object of the search – marijuana – could be hidden. (Tr. pp. 56-57). After considering the arguments of counsel, the trial judge denied the motion to suppress. (R. p. 57). In denying the motion, the trial judge found that the detention was reasonable and that the scope of the stop was not exceeded. (R. p. 57). He further ruled that the stop was not excessively long and that the police dog's failure to alert to the presence of drugs did not require the officers to terminate the stop or their investigation. (R. pp. 58-59). The trial judge based his ruling on the smell of marijuana, the training of the officer, and the testimony regarding the hollowed-out cigars and loose tobacco observed in the vehicle. (R. p. 57). While noting the inconsistencies in Morris and Nichol's stories may have heightened the officer's suspicions, the trial judge declined to rely on those inconsistencies in reaching his decision. (R. pp. 61-62). The trial judge also found the search was supported by probable cause. (R. p. 62). Thereafter, the drugs were admitted

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stop in the case summary report that he prepared subsequent to filling out the incident report. (R. pp. 50-51).

into evidence over Morris' objection, the jury convicted Morris of trafficking in ecstasy and simple possession of marijuana, and Morris appealed. (Tr. pp. 67-69; pp. 72-73).

On appeal, the Court of Appeals affirmed Morris' convictions. State v. Morris, 395 S.C. 600, 603, 720 S.E.2d 468, 469 (Ct. App. 2011). Regarding the reasonableness of the detention, the Court held that Officer Vinesett had reasonable suspicion to extend the length and scope of the traffic stop after the officer detected the odor of marijuana and observed hollowed-out cigars and loose tobacco in Morris' rental vehicle. Id. at 608, 720 S.E.2d at 471-472. In reaching that conclusion, the Court specifically noted that the trial judge found Officer Vinesett's testimony regarding the smell of marijuana to be credible. Id. at 607-608, 720 S.E.2d at 471. Regarding the reasonableness of the search, the Court instructed:

> The trial court specifically found that in Officer Vinesett's experience blunts are often hollowed to accommodate the smoking of marijuana. Similarly, the loose tobacco in the car indicated the blunts were recently hollowed in the car. Considering these factors in conjunction with the background odor of marijuana, the circumstances are sufficient to warrant a reasonable and prudent person to believe Morris and Nichols possessed marijuana. Accordingly, the officers had probable cause to search anywhere in the vehicle where marijuana could be located. The trial court properly admitted the drug evidence discovered in the trunk.

Id. at 610, 720 S.E.2d at 473.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence supporting the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). Critically, the appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

ARGUMENT

I.

The Court of Appeals properly affirmed the trial judge's denial of Morris' suppression motion because, under the totality of the circumstances, the officers developed a reasonable articulable suspicion of criminal activity justifying an extension of the scope and length of the traffic stop after they detected multiple suspicious factors indicative of drug activity during the course of the stop, including the odor of marijuana, and had probable cause to search anywhere in the vehicle where marijuana might be found, including in the trunk of the vehicle where the drugs were discovered, based on their detection of those indicators of criminal activity.

Morris contends that the Court of Appeals erred in affirming the trial judge's denial of his suppression motion. In support of that contention, Morris maintains that the officers did not develop reasonable articulable suspicion justifying the expansion of the scope and length of the traffic stop and did not have probable cause to search the trunk of the vehicle that Morris was driving. To the contrary, the officers developed reasonable articulable suspicion of criminal activity under the totality of the circumstances after detecting multiple suspicious factors consistent with drug activity, including the odor of marijuana, during the course of a lawful traffic stop. Based on the officers' detection of the odor of marijuana along with the other suspicious factors, the officers were justified in expanding the scope and duration of the traffic stop and had probable cause to search anywhere in the vehicle where marijuana might be found, including in the trunk. Accordingly, the trial judge properly denied Morris' motion to suppress the drugs discovered during the search of the car, and the Court of Appeals correctly affirmed the trial judge's ruling. Morris' convictions should be affirmed.

A. Reasonableness of the Detention

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S.

Const. amend. IV. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). As a result, **only** unreasonable searches and seizures are constitutionally prohibited. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]").

For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). The reasonableness of a stop or detention "is measured in objective terms by examining the totality of the circumstances." Ohio v. Robinette, 519 U.S. 33, 39 (1996). However, the initiation of a traffic stop is reasonable per se when probable cause exists to believe a traffic violation has occurred. State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002). Furthermore, "a minor traffic violation arrest will not be rendered invalid by the fact it was a 'mere pretext for a narcotics search.' " State v. Corley, 383 S.C. 232, 240, 679 S.E.2d 187, 191-192 (Ct. App. 2009) (citations omitted). "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." Whren v. United States, 517 U.S. 806, 813 (1996).

A lawful traffic stop begins at the point that an officer stops a vehicle to investigate a traffic violation and "ordinarily continues, and remains reasonable, for the duration of the stop." Arizona v. Johnson, 555 U.S. 323, 333 (2009). Once a lawful traffic stop is initiated, an officer may order the driver and any passengers out of the vehicle pending completion of the stop and "may request a driver's license and vehicle registration, run a computer check, and issue a citation." Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); see

Maryland v. Wilson, 519 U.S. 408, 415 (1997) ("[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop."). "Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave." Johnson, 555 U.S. at 333.

During the course of the stop, an officer can inquire into matters unrelated to the initial justification for the stop without converting the stop into something other than a lawful seizure so long as the unrelated questioning does not measurably extend the duration of the stop. Id.; see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing that additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation). Such an investigatory traffic stop must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848; see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) ("The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.").

Even if a traffic stop is initially lawful, the detention "can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." Illinois v. Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 ("Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, continued questioning beyond the duration of an initial traffic stop is lawful and permissible where:

(1) the officer has a reasonable articulable suspicion of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Id.

Reasonable suspicion consists of " 'a particularized and objective basis' that would lead one to suspect another of criminal activity." State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). "Reasonable suspicion 'is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.' " State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)). "In this highly fact-specific inquiry, reasonable suspicion 'is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.' " State v. Wallace, 392 S.C. 47, 51-52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting Foreman, 369 F.3d at 781), cert. dismissed as improvidently granted, 401 S.C. 264, 737 S.E.2d 480 (2012). The reasonable suspicion standard "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[.]" Illinois v. Wardlow, 528 U.S. 119, 123 (2000). "Reasonable suspicion is more than a general hunch but less than what is required for probable cause." State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); see State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) ("Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch.").

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 104, 623 S.E.2d at 85. In

reviewing the totality of the circumstances, the individual factors of the traffic stop must not be considered piecemeal or in isolation. See Branch, 537 F.3d at 337 ("Courts must look at the 'cumulative information available' to the officer . . . and not find a stop unjustified based merely on a 'piecemeal refutation of each individual' fact and inference[.]" (citations omitted)). Instead, all of the circumstances of the stop, including the officer's own experience and specialized training, must be considered as a whole to determine whether the officer's actions were reasonable in light of all of the information available to him at the time. See United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) ("[J]ust as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion."); see also United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[W]e have said repeatedly that [reviewing courts] must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. The process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' " (citations omitted)). "In applying the concept of reasonable suspicion to the various facts of a case, '[i]t is the entire mosaic that counts, not single tiles.' " Wallace, 392 S.C. at 52, 707 S.E.2d at 453 (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)). Thus, the presence of several factors seemingly consistent with innocent travel can establish reasonable suspicion when viewed together in totality. United States v. Sokolow, 490 U.S. 1, 9 (1989).

In the case sub judice, the traffic stop and detention of Morris was objectively reasonable under the totality of the circumstances, and any further extension of the scope

and duration of the stop was supported by reasonable articulable suspicion. Initially, Officer Vinesett unquestionably had probable cause to initiate the traffic stop after observing Morris commit a traffic infraction. See State v. Nelson, 336 S.C. 186, 193, 519 S.E.2d 786, 789 (1999) ("As a general matter, the decision to stop an automobile is reasonable where police have probable cause to believe that a traffic violation has occurred."); see also S.C. Code Ann. § 56-5-1930(a) (prohibiting drivers in South Carolina from following other vehicles "more closely than is reasonable and prudent"). Thereafter, during the course of the ensuing traffic stop, Officer Vinesett developed reasonable articulable suspicion of criminal activity based on the suspicious factors that he detected, which permitted the officer to extend the scope and duration of the stop.

Most critically, Officer Vinesett detected the odor of marijuana and observed hollowed-out cigars and loose tobacco scattered throughout the vehicle shortly after initiating the traffic stop. Based on his training and experience, Officer Vinesett perceived the smell of marijuana, the loose tobacco, and the hollowed-out cigars to be strong indicators that the crime of possession of marijuana had been committed or was being committed and that marijuana might be hidden in the vehicle. See State v. Odom, 376 S.C. 330, 335, 656 S.E.2d 748, 751 (Ct. App. 2007) (holding that an officer had reasonable articulable suspicion of the existence of drugs after smelling a strong odor of marijuana, observing a cigar on the dashboard, hearing Odom admit that he had smoked marijuana earlier, and seeing an empty holster in the vehicle); State v. Butler, 353 S.C. 383, 390, 577 S.E.2d 498, 501 (Ct. App. 2003) (holding that an officer was justified in extending the scope of a traffic stop after smelling the odor of alcohol). Furthermore, although not relied upon by the trial judge in his analysis of the stop, there were other indicators of criminal activity present during the traffic stop, including the facts that

Morris and his passenger presented inconsistent stories to the officers about their trip, that Morris was driving a rental car, which has been recognized as an indicator of drug activity, and that Morris and his passenger stated that they were returning from a one-day trip to Atlanta, which has been recognized as a known drug hub. See Wallace, 392 S.C. at 55, 707 S.E.2d at 455 (finding inconsistent stories between a driver and passenger, third-party vehicle ownership, and Atlanta's status as a drug hub to be relevant factors in establishing a reasonable articulable suspicion of drug activity); Provet, 391 S.C. at 504, 706 S.E.2d at 518 (considering the fact that third-party vehicle ownership is commonly connected with drug trafficking in finding that an officer had reasonable suspicion to extend a traffic stop). Therefore, under the totality of the circumstances, Officer Vinesett developed reasonable articulable suspicion of drug activity during the course of the traffic stop based on the indicators of criminal activity that he observed and detected. See State v. Banda, 371 S.C. 245, 254, n. 4, 639 S.E.2d 36, 41 (2006) (" 'Reasonable suspicion' in [the context of a traffic stop] requires an officer to have 'a particularized and objective basis,' based on the totality of the circumstances, that would lead one to suspect that drugs are present in the vehicle lawfully stopped." (citations omitted)); see also Robinson v. State, 407 S.C. 169, __, 754 S.E.2d 862, 870, n. 9 (2014) ("[T]he facts and inferences relied on by the officer must be articulable, not necessarily articulated."). As a result, Officer Vinesett was justified in expanding the scope of his investigation and the length of the traffic stop.

In challenging the reasonableness of the traffic stop on appeal, Morris primarily focuses on the length of the detention and the credibility of Officer Vinesett's testimony regarding his detection of the odor of marijuana. Regarding the length of the detention, only fifteen minutes elapsed from the moment that Officer Vinesett activated his blue

lights to the moment of Morris' arrest. Cf. Provet, 391 S.C. at 499, 706 S.E.2d at 516 (finding that a traffic stop was not unreasonably extended even if the officer's questioning was unrelated to the purpose of the traffic stop where the entire stop lasted less than eleven minutes). While there is no firm rule as to the appropriate length of a stop and detention, Morris' traffic stop was not unreasonable in length notwithstanding the existence of reasonable suspicion to expand the scope of the stop, and the traffic stop was not measurably extended by the officers' actions unrelated to the initial purpose of the stop. See State v. Provet, 405 S.C. 101, 109, 747 S.E.2d 453, 457-458 (2013) ("We agree with the trial court and the Court of Appeals that ten minutes was a reasonable length of time for the initial traffic stop and that [the officer's] off-topic questions did not measurably extend the duration of the stop."); see also United States v. Sharpe, 470 U.S. 675, 683 (1985) (concluding that a twenty-minute detention during an investigatory traffic stop was objectively reasonable); Branch, 537 F.3d at 338 ("We begin with the basic fact that much of Branch's 30-minute detention was justified by the 'ordinary inquiries incident' to a routine traffic stop." (citations omitted)); United States v. Jeffus, 22 F.3d 554, 557 (4th Cir. 1994) (finding a fifteen-minute traffic stop to be reasonable); see, e.g., United States v. Harrison, 606 F.3d 42, 45 (2nd Cir. 2010) (finding that an officer who had all of the information necessary to issue a traffic ticket after speaking with the driver did not measurably extend the traffic stop by subsequently speaking with the passengers for several minutes in an attempt to corroborate the driver's story); United States v. Derverger, 337 F. App'x 34, 36 (2nd Cir. 2009) ("We conclude without any need for further factfinding that the five minutes of questioning did not significantly extend the time Derverger was detained."); United States v. Jones, 44 F.3d 860, 872 (10th Cir. 1995) (approving of a thirty-minute traffic stop); United States v. Hardy, 855 F.2d

753, 761 (11th Cir. 1988) (finding a fifty-minute investigatory stop to be reasonable). However, even assuming the stop in Morris' case was measurably extended by the officers' actions during the stop, the officers were justified in doing so after developing reasonable articulable suspicion of criminal activity during the course of the stop.

Regarding the credibility of Officer Vinesett's testimony, the trial judge, who was in the best position to weigh the credibility of the testimony and evidence presented during the suppression hearing, specifically found Officer Vinesett's testimony regarding the presence of an odor of marijuana to be credible. See State v. Smith, 383 S.C. 159, 167-168, 679 S.E.2d 176, 181 (2009) ("Clearly, the trial judge was in the best position to assess the credibility of the witnesses that testified at the hearing on the motion for a new trial."); State v. Cutro, 332 S.C. 100, 117, 504 S.E.2d 324, 332 (1998) ("The trial judge, not this Court, is in the best position to be the arbiter of [the witness'] credibility."); State v. Tutton, 354 S.C. 319, 325, 580 S.E.2d 186, 190 (Ct. App. 2003) ("The determination of a witness's credibility must be left to the trial judge who saw and heard the witness and is therefore in a better position to evaluate his or her veracity."). Due to the trial judge's advantage of personally hearing the testimony and being in a position to personally evaluate the credibility of the witnesses, the trial judge's factual findings are entitled to substantial deference on appeal, and there is nothing suggesting the trial judge's findings in Morris' case were clearly erroneous. See Baccus, 367 S.C. at 48, 625 S.E.2d at 220 ("This Court is bound by the trial court's factual findings unless they are clearly erroneous."); see also United States v. Beard, 708 F.3d 1062, 1066 (8th Cir. 2013) (recognizing that credibility determinations are virtually unreviewable on appeal due to the deferential standard of review to which such determinations are entitled); cf. Jones v. State, 319 Ga. App. 678, 679, 738 S.E.2d 130, 131 (Ga. Ct. App. 2013) ("Jones argues

that the officer's uncorroborated claim that he smelled marijuana was merely pretextual, and he points to inconsistencies in the officer's testimony as to whether the odor detected was of burnt or raw marijuana. This challenge to the officer's credibility is meritless. . . . Notwithstanding the attempted impeachment and the absence of corroboration of the officer's testimony, it was for the trial court, sitting as finder of fact in ruling on the motion to suppress, to determine the credibility of the officer's testimony. Accordingly, the trial court was authorized to find that the officer gave credible testimony that he smelled both burnt and raw marijuana emitting from the car, which provided probable cause for the search." (citations omitted)).

In conclusion, the evidence and testimony presented during the suppression hearing established that the officers conducted the traffic stop in a reasonable manner. Furthermore, the evidence and testimony presented during the hearing established that the officers developed reasonable articulable suspicion based on their detection of numerous indicators of criminal activity during the course of the traffic stop, including the odor of marijuana. As a result, even assuming that the officers' actions measurably extended the traffic stop, the officers were justified in doing so under the totality of the circumstances. See Segura v. United States, 468 U.S. 796, 806 (1984) ("By its terms, the Fourth Amendment forbids only 'unreasonable' searches and seizures."). Therefore, the trial judge properly determined that the traffic stop was reasonable and that Morris' constitutional rights were not violated by his detention during the stop, and his ruling was supported by the evidence. See Provet, 405 S.C. at 107, 747 S.E.2d at 456 ("South Carolina appellate courts review Fourth Amendment determinations under a clear error standard. We affirm if there is any evidence to support the trial court's ruling." (citations omitted)); State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When

reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."). For the foregoing reasons, the Court of Appeals committed no error in affirming the trial judge's ruling. Morris' convictions should be affirmed.

B. Validity of the Search

The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const. amend. IV. Any evidence seized as the result of an unreasonable search and seizure must be excluded from trial. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). The well-settled rule is warrantless searches are unreasonable per se unless they fall under an exception to the Fourth Amendment's warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978). However, "warrantless searches [and seizures] are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement." Kentucky v. King, __ U.S. __, 131 S. Ct. 1849, 1858 (2011).

South Carolina courts have recognized several exceptions to the warrant requirement, including: (1) the search incident to lawful arrest exception; (2) the hot pursuit exception; (3) the stop and frisk exception; (4) the automobile exception; (5) the plain view exception; (6) the consent exception; and (7) the abandonment exception. State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012). Pursuant to the various accepted exceptions to the warrant requirement, a warrantless search or seizure will withstand constitutional scrutiny so long as the circumstances establish the existence of an exception along with the existence of probable cause. State v. Bultron, 318 S.C. 323, 331-332, 457 S.E.2d 616, 621 (Ct. App. 1995).

One of the recognized and accepted exceptions is the automobile exception. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981). That exception is based on: (1) the ready mobility of automobiles along with the potential that evidence may be lost or removed before a warrant is obtained; and (2) the lessened expectation of privacy in motor vehicles. State v. Cox, 290 S.C. 489, 491, 351 S.E.2d 570, 571 (1986). Under the automobile exception, law enforcement officers can conduct a warrantless search of an automobile based on probable cause alone. Bultron, 318 S.C. at 332, 457 S.E.2d at 621. "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." Weaver, 374 S.C. at 320, 649 S.E.2d at 482; see also State v. Moore, 377 S.C. 299, 310, 659 S.E.2d 256, 262 (Ct. App. 2008) (recognizing that the rationale for a vehicle search under the automobile exception is not negated even if the vehicle is immobilized or taken into police custody).

If probable cause exists supporting the search of a lawfully stopped automobile, the search can be extended to every part of the vehicle and all of its contents potentially containing the object of the search. Bultron, 318 S.C. at 332, 457 S.E.2d at 621; see also Wyoming v. Houghton, 526 U.S. 295, 307 (1999) ("We hold that police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search."). "The scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause." United States v. Ross, 456 U.S. 798, 823 (1982). "The scope of a warrantless search of an automobile is defined by the object of the search and the places in which there is probable cause to believe that it may be found." State v. Perez, 311 S.C. 542, 546, 430 S.E.2d 503, 505 (1993).

Probable cause is "a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search, that there exists a practical, nontechnical probability that a crime is being committed or has been committed and incriminating evidence is involved." Bultron, 318 S.C. at 332, 457 S.E.2d at 621; see Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as "a fair probability that contraband or evidence of a crime will be found"). "Probable cause may be found somewhere between suspicion and sufficient evidence to convict." State v. Blassingame, 338 S.C. 240, 250, 525 S.E.2d 535, 540 (Ct. App. 1999). However, the probable cause standard does **not** require absolute certainty. In re Care and Treatment of Brown v. State, 372 S.C. 611, 619, 643 S.E.2d 118, 122 (Ct. App. 2007).

Numerous courts have considered the issue of the level of significance that the existence of an odor of marijuana has to a probable cause determination. The overwhelming majority position in both state and federal courts is that the detection of an odor of marijuana during a traffic stop establishes probable cause sufficient to justify a warrantless search of an automobile. See State v. Zamora, 114 Ariz. 75, 77, 559 P.2d 195, 197 (Ariz. Ct. App. 1976) (finding an officer's detection of the faint odor of marijuana during a traffic stop, which was unverified by the other officers at the scene, provided probable cause to search the entire vehicle and trunk); State v. Betz, 815 So. 2d 627, 633 (Fla. 2002) ("Our conclusion here aligns this Court with a number of our sister jurisdictions in which courts have concluded that the smell of burnt marijuana, in combination with other circumstances, leads to law enforcement officers' possession of probable cause to search the entirety of a motor vehicle."); State v. Folk, 238 Ga. App. 206, 208, 521 S.E.2d 194, 198 (Ga. Ct. App. 1999) (holding that an officer's detection of

the odor of burning marijuana alone constituted probable cause for a warrantless vehicle search); People v. Kazmierczak, 461 Mich. 411, 416, 605 N.W.2d 667, 669 (Mich. 2000) ("Like the majority of courts in other states and jurisdictions, we are persuaded that detection of the odor of either fresh marijuana or marijuana smoke, standing alone, provides probable cause for a warrantless search."); Cowan v. Mississippi Bureau of Narcotics, 2 So. 3d 759, 766 (Miss. Ct. App. 2009) (finding that an officer had probable cause to search after smelling marijuana upon opening a passenger door); People v. Robinson, 103 A.D.3d 421, 421-422, 959 N.Y.S.2d 188, 189 (N.Y. App. Div. 2013) ("When the police asked defendant to roll down the windows, they detected an odor of marijuana. This was sufficient, by itself, to provide probable cause to arrest defendant and search the car[.]"); State v. Smith, 192 N.C. App. 690, 694, 666 S.E.2d 191, 194 (N.C. Ct. App. 2008) (finding that an officer's detection of the odor of marijuana established probable cause to search even though no drugs were ever recovered); see also United States v. Johns, 469 U.S. 478, 482 (1985) ("After the officers came closer and detected the distinct odor of marihuana, they had probable cause to believe that the vehicles contained contraband."); see, e.g., Andrea Levinson Ben-Yosef, Annotation, Validity of Warrantless Search of Motor Vehicle Based on Odor of Marijuana – Federal Cases, 188 A.L.R. Fed. 487 (2003) ("The majority of courts have found that the odor of marijuana alone supplies probable cause for a warrantless search.").

Significantly, the Fourth Circuit Court of Appeals addressed the issue of whether the odor of marijuana can establish probable cause for a warrantless search during a traffic stop in United States v. Haley, 669 F.2d 201 (4th Cir. 1982). In that case, an officer smelled marijuana on the defendants and inside of a vehicle lawfully stopped for speeding. Id. at 202. Based on his detection of the odor of marijuana, the officer

unlocked the trunk, opened a large garbage bag, and discovered marijuana inside. Id. at 203. The car was later searched after the officer procured what he believed to be a warrant, and over two hundred pounds of marijuana were found in the trunk. Id. Subsequently, Haley challenged the validity of the search during trial, and the district court judge suppressed the drugs based on the officer's failure to obtain a warrant before searching the vehicle. Id. at 202. However, on appeal, the Court of Appeals reversed the district court judge's suppression of the drugs. Id. at 203-204. In reaching that decision, the Court of Appeals concluded that the circumstances justified a warrantless search of the vehicle and instructed that "[s]ufficient probable cause arises when the officer smells marijuana inside the vehicle[.]" Id. at 203-204.

Similarly, in United States v. Scheetz, 293 F.3d 175 (4th Cir. 2002), the Fourth Circuit Court of Appeals again addressed the issue of whether probable cause can arise from the detection of the odor of marijuana. In that case, the defendant was stopped for performing an illegal U-turn directly after passing a sign notifying drivers of an impending police checkpoint. Id. at 182-183. During the stop, an officer smelled marijuana emanating from the vehicle, and the car was searched. Id. at 183. The search revealed marijuana in a knapsack found inside of the vehicle. Id. Subsequently, during trial, the defendant sought the suppression of the drugs, and his suppression motion was denied. Id. Thereafter, on appeal, the Court of Appeals affirmed the denial of the defendant's suppression motion, holding: "Once the car was properly stopped and the narcotics officers smelled marijuana, the narcotics officers properly conducted a search of the car." Id. at 184 (citing United States v. Morin, 949 F.2d 297, 300 (10th Cir. 1991)).

Likewise, in a highly instructive opinion, the Maryland Court of Special Appeals addressed the issues of whether probable cause arises from the detection of the odor of

marijuana during a traffic stop and what scope is permitted for a search following the detection of such an odor in Wilson v. State, 174 Md. App. 434, 921 A.2d 881 (Md. Ct. Spec. App. 2007). In that case, an officer stopped Wilson's rental vehicle for speeding. Id. at 438, 921 A.2d at 883. Thereafter, while talking with Wilson, the officer smelled the odor of burnt marijuana and decided to search the vehicle. Id. During the search of the passenger compartment, the officer found no evidence of a crime. Id. However, a subsequent search of the trunk revealed over six pounds of marijuana. Id. Wilson then proceeded to trial and sought the suppression of the marijuana found in the search, and the trial judge denied his motion. Id. at 437, 921 A.2d at 882. Subsequently, on appeal, the Court of Special Appeals conducted a thorough review of the appellate precedent of the United States Supreme Court along with opinions from federal and state courts before concluding that the odor of burnt marijuana emanating from a vehicle provides probable cause to believe that marijuana is located in the vehicle. Id. at 454, 921 A.2d at 892. Based on that conclusion, the Court of Special Appeals affirmed the denial of Wilson's suppression motion and instructed:

> To adopt appellant's argument [that the detection of the odor of burnt marijuana only establishes probable cause for a search of a vehicle's passenger compartment], the trunk, or any other area outside of the passenger compartment, becomes a safe harbor for the transportation of drugs for both users and traffickers who use drugs. We are not persuaded that a Fourth Amendment reasonableness analysis dictates that result. Probable cause is a "flexible, common-sense standard" to be applied in a "practical" and "non-technical" manner.

Id. at 455-456, 921 A.2d at 893 (citations omitted).

Most importantly, this Court has also previously addressed whether the detection of the odor of marijuana alone can establish probable cause. In State v. Lane, 271 S.C. 68, 70, 245 S.E.2d 114, 115 (1978), a delivery man noticed an odor coming from two

packages that were scheduled to be delivered to Lane's store. The delivery man contacted the police, an officer detected the odor of marijuana coming from the packages, the smaller package was opened, and marijuana was discovered. Id. The officers then obtained a warrant, allowed the delivery of the packages to be completed, and arrested Lane after the packages were delivered to his store. Id. at 71, 245 S.E.2d at 115. Subsequently, during trial, Lane challenged the admission of the drugs, and the trial judge granted his motion in respect to the package opened without a warrant while denying his motion in respect to the second package. Id. at 71, 245 S.E.2d at 115-116. Thereafter, in reviewing the trial judge's ruling on appeal, this Court considered whether the warrant to search the second package was independently supported by probable cause without relying on the knowledge obtained by opening the first package. Id. at 71, 245 S.E.2d at 116. Upon conducting that analysis, this Court held: "From the record it is evident that the odor emanating from the packages alone was a sufficient basis to establish probable cause as to their contents when it is considered that an officer of the law, familiar with the odor of marijuana, believed the odor being emitted was that of marijuana." Id. at 72, 245 S.E.2d at 116. As a result, this Court affirmed the trial judge's ruling. Id.

In the case at bar, the officers had probable cause to search Morris' rental vehicle based on the totality of the circumstances. Most significantly, Officer Vinesett testified that he smelled the odor of marijuana emanating from the car. Based on his detection of the odor of marijuana, Officer Vinesett had a probable cause basis to believe that marijuana would be located in the vehicle and was justified in searching anywhere in the vehicle that marijuana could be hidden, which included the trunk and the containers inside of it. See Wilson, 174 Md. App. at 454-455, 921 A.2d at 892 ("The reality is that marijuana and other illegal drugs, by their very nature, can be stored almost anywhere

within a vehicle. . . . The odor of burnt marijuana emanating from a vehicle provides probable cause to believe that additional marijuana is present elsewhere in the vehicle."). Furthermore, his probable cause basis was further supported by his detection of other indicators of criminal activity, including the hollowed-out cigars that he recognized as being commonly used to conceal marijuana use, the loose tobacco from the cigars scattered all over the vehicle, the inconsistent explanations for the purpose of their trip offered by Morris and Nichols, and the fact that Morris and Nichols were using a rental vehicle for a one-day trip to a known drug hub. Although the officer's detection of the odor of marijuana alone established a probable cause basis to conclude marijuana was hidden in the vehicle, the additional indicators of criminal activity coupled with the detection of the odor of marijuana unquestionably provided Officer Vinesett with grounds to find the existence of "a practical, nontechnical probability that a crime [wa]s being committed or ha[d] been committed and incriminating evidence [wa]s involved." Bultron, 318 S.C. at 332, 457 S.E.2d at 621.

Morris' challenge to the reasonableness of the search focuses primarily on his contention that Officer Vinesett's suspicion that the crime of "marijuana consumption" had been committed was allegedly dispelled before he searched the trunk. Initially, after Officer Vinesett detected the odor of burnt marijuana in the Ford, he had probable cause to believe the occupants of the vehicle were or had been in **possession** of marijuana, which was a necessary prerequisite for them to be able to smoke or consume it. See S.C. Code Ann. § 44-53-370(c) (prohibiting the possession – not consumption – of any controlled substance, including marijuana). Thus, Officer Vinesett had probable cause to search for marijuana in the vehicle anywhere it could be contained or hidden. See, e.g., United States v. Lewis, 606 F.3d 193, 198 (4th Cir. 2010) ("When Lewis rolled down his

window to comply, Mills smelled the odor of marijuana emanating from the vehicle. At that point, the officers possessed probable cause to search the vehicle[.]"); United States v. Humprhies, 372 F.3d 653, 658 (4th Cir. 2004) ("While smelling marijuana does not assure that marijuana is still present, the odor certainly provides probable cause to believe that it is."). Thereafter, Officer Vinesett observed hollowed-out cigars in the vehicle but did not locate any marijuana in his search of the interior. However, the fact that he located hollowed-out cigars, which had **not** been used to smoke tobacco since the officer noticed that the tobacco had been removed from them, supported his probable cause belief that marijuana was hidden in the vehicle. Furthermore, although the police dog called to the scene failed to alert to the presence of narcotics, that failure did not negate the officer's probable cause basis to search based on his own personal detection of marijuana and the other indicators of criminal activity that he had observed, particularly in light of the fact that the officer was familiar with the dog and believed its failure to alert was due to its distracted, unfocused demeanor.[3] Instead, the failure to alert was merely one factor to be considered under the totality of the circumstances in deciding if probable cause existed and, critically, did not require Officer Vinesett to abandon his investigation in light of the other indicators of criminal activity that he had detected.[4]

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[3] Notably, the officer's belief that the police dog's failure to alert was not due to an absence of marijuana in the vehicle proved to be correct. Approximately one-half of a pound of marijuana was discovered hidden in the trunk of the vehicle that Morris was driving. (R. p. 66). Thus, the police dog's failure to alert was unquestionably **not** because there was no marijuana for the dog to detect.

[4] Although the impact of a drug-detection dog's failure to alert has not yet been addressed in South Carolina, the overwhelming majority of courts considering the issue have concluded that it is simply a factor to be considered under the totality of the circumstances and does not negate the existence of other factors establishing probable cause. See United States v. Jodoin, 672 F.2d 232, 236 (1st Cir. 1982) ("The dog's failure to react does not, in our view, destroy the 'probable cause' that would otherwise exist. It is just another element to be considered by the magistrate."), abrogated on other grounds by Bloate v. United States, __ U.S. __, 130 S. Ct. 1345 (2010); United States v. Frost, 999 F.2d 737, 744 (3rd Cir. 1997) (finding that a drug-sniffing dog's failure to alert on a suitcase did not eliminate probable cause justifying a search of the suitcase derived from the other existing factors); United States v. Ramirez, 342 F.3d 1210, 1212-1213 (10th Cir. 2003) ("The factors giving rise to reasonable suspicion in the first place remained

Under the automobile exception, the officers were authorized to search anywhere in the vehicle where marijuana could be concealed, including the trunk where the drugs were ultimately discovered. See Ross, 456 U.S. at 825 ("If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."). Based on Officer Vinesett's detection of the odor of marijuana and observation of the loose tobacco and hollowed-out cigars, which the officer knew to be commonly associated with drug use, in the passenger compartment, the officers had a probable cause basis to believe that drugs would likely be located in the trunk of the car due to the fact that it was an area where marijuana could easily be concealed. See Lane, 271 S.C. at 72, 245 S.E.2d at 116 (finding that the detection of the odor of marijuana alone established probable cause supporting the issuance of a search warrant); see also Wilson, 174 Md. App. at 455, 921 A.2d at 892 ("It is not unreasonable for an officer to believe that the odor of burnt marijuana indicates current possession of unsmoked marijuana somewhere inside of the vehicle, including the trunk."); see, e.g., Gates, 462 U.S. at 244, n. 13 ("[P]robable cause requires only a

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unchanged by the positive or negative results of the first sniff test. . . . We will not require investigators to cease an otherwise reasonable investigation solely because a dog fails to alert, particularly when we have refused to require that a dog sniff test be conduct at all."); State v. Sanchez-Loredo, 42 Kan. App. 2d 1023, 1029, 220 P.3d 374, 378 (Kan. Ct. App. 2009) (holding that a drug-detection dog's failure to alert to the presence of narcotics did not eliminate the probable cause already established by the other circumstances); State v. Jackson, 42 So. 3d 368, 374 (La. 2010) (finding that an officer had probable cause to search a vehicle after detecting the odor of marijuana even though a drug-sniffing dog failed to alert on the vehicle); McKay v. State, 149 Md. App. 176, 188, 814 A.2d 592, 599 (Md. Ct. Spec. App. 2002) ("[A] drug sniffing dog's failure to detect drugs does not automatically negate probable cause. It is, instead, but one factor to be considered in the probable cause determination."); State v. Williamson, 146 N.M. 488, 499, 212 P.3d 376, 387 (N.M. 2009) (finding that a drug-detection dog's failure to alert did not negate probable cause for the search where the dog's failure to alert was sufficiently explained under the circumstances); State v. Alexander, 151 Ohio App. 3d 590, 604, 784 N.E.2d 1225, 1236 (Ohio Ct. App. 2003) (holding that a drug-sniffing dog's failure to alert on a bag did not negate the other circumstances establishing probable cause and, instead, was a single factor to consider when evaluating the totality of the circumstances); Commonwealth v. Brown, 924 A.2d 1283, 1289 (Pa. Super. Ct. 2007) ("[T]he failure of a trained dog to respond to the alleged presence of narcotics is but one factor to be considered in adjudging whether the totality of the circumstances establishes probable cause. Given the recognized fallibility of the dogs' sense of smell and its vulnerability to confusion by other ambient odors, a dog's failure to alert will not defeat probable cause where other factors, viewed within the totality of the circumstances, continue to support it.").

probability or substantial chance of criminal activity, not an actual showing of such activity. By hypothesis, therefore, innocent behavior frequently will provide the basis for a showing of probable cause; to require otherwise would be to sub silentio impose a drastically more rigorous definition of probable cause than the security of our citizens demands."). Accordingly, the search of the entire car, including the trunk, was supported by probable cause, and the search was reasonable and lawful under the totality of the circumstances. See Foster, 269 S.C. at 378, 237 S.E.2d at 591 ("It is only unreasonable searches and seizures that are prohibited.").

In conclusion, the officer's detection of the odor of marijuana and discovery of other indicators of criminal activity gave rise to a fair probability that marijuana was concealed in Morris' vehicle. See Texas v. Brown, 460 U.S. 730, 741 (1983) (instructing that probable cause is a flexible, common-sense standard). As a result, the trial judge properly determined that the search of the vehicle and the vehicle's trunk was supported by probable cause under the totality of the circumstances of the traffic stop, and his ruling was fully supported by the evidence. See Wright, 391 S.C. at 442, 706 S.E.2d at 326 ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."). For the foregoing reasons, the trial judge did not err in denying Morris' suppression motion, and the Court of Appeals correctly affirmed the trial judge's ruling. Morris' convictions should be affirmed.

II.

Even assuming that the search of the rental vehicle's trunk was somehow improper, the decisions of the Court of Appeals and the trial judge should be affirmed because Morris had no legitimate expectation of privacy in either the vehicle or the vehicle's trunk in light of the facts that he did not rent the vehicle, he was not authorized to drive the vehicle, he had no lawful right to control the vehicle, he had no actual possessory interest in the vehicle, and he had no connection to the vehicle's true owner.

Even assuming that the search of the rental's vehicle trunk was somehow improper, Morris was not entitled to the benefits of the exclusionary rule because he failed to establish that his own constitutional rights were violated by the search of the trunk. Critically, the evidence and testimony presented during the suppression hearing established that Morris was not an authorized driver of the rental vehicle and had no connection of any kind to the rental company that actually owned the vehicle. As a result, Morris did not have – and did not assert that he had – a legitimate expectation of privacy in either the rental vehicle or the rental vehicle's trunk. Absent such a legitimate expectation of privacy in the area that was searched by the officers, Morris could not properly challenge the propriety of the search conducted by the officers and was not entitled to have the drugs discovered during the search excluded from evidence during his trial. Accordingly, even if the Court of Appeals and the trial judge erred in ruling upon the propriety of the search of the rental vehicle's trunk, their decisions should not be reversed on appeal. Morris' convictions should be affirmed.

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. For purposes of the Fourth Amendment, a search occurs when "an expectation of privacy that society is prepared to consider reasonable is infringed." United States v. Jacobsen, 466 U.S. 109, 113 (1984). Likewise, a seizure occurs when there is some meaningful interference with an individual's possessory interest in property

or with the individual's freedom of movement. Id.; see Terry v. Ohio, 392 U.S. 1, 16, n. 16 (1968) ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.").

Importantly though, the rights protected by the Fourth Amendment are personal rights and cannot be vicariously asserted. Alderman v. United States, 394 U.S. 165, 174 (1969). As a result, a criminal defendant asserting a challenge to an allegedly unreasonable search or seizure must establish that his own personal Fourth Amendment rights were violated by that search or seizure in order to be entitled to the benefits of the exclusionary rule. State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987); see Rakas v. Illinois, 439 U.S. 128, 132, n. 1 (1978) ("The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.").

"[C]apacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." Rakas, 439 U.S. at 143 (citing Katz v. United States, 389 U.S. 347, 353 (1967)). A legitimate expectation of privacy is both subjective and objective in nature. State v. Missouri, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004). In order to establish a legitimate expectation of privacy, an individual must show: (1) that the individual had a subjective expectation that the area searched would remain free from intrusion; and (2) that the individual's subjective expectation is one that society recognizes as reasonable. Id.; see Minnesota v. Olsen, 495 U.S. 91, 95-96 (1990) (instructing that a subjective

expectation of privacy can be considered legitimate if it is one society accepts and recognizes as reasonable).

In Morris' case, the evidence and testimony presented during the suppression hearing established that Nichols was the only authorized driver of the rental vehicle and that no other drivers were permitted to drive the vehicle, which meant that Morris was driving the vehicle involved in the traffic stop without valid authorization. As Morris was an unauthorized driver of the rental vehicle, he had no legitimate claim to the vehicle, no lawful right to control the vehicle, and no possessory interest in the vehicle. See United States v. Hargrove, 647 F.2d 411, 412 (4th Cir. 1981) ("[O]ne who can assert no legitimate claim to the car he was driving cannot reasonably assert an expectation of privacy in a bag found in that automobile. . . . A person who cannot assert a legitimate claim to a vehicle cannot reasonably expect that the vehicle is a private repository for his personal effects, whether or not they are enclosed in some sort of a container[.]"). Moreover, since he did not personally rent the vehicle and was not listed or identified in the rental agreement, Morris had no connection whatsoever to the actual owner of the rental vehicle. See United States v. Kennedy, 638 F.3d 159, 165 (3rd Cir. 2011) ("An authorized driver on the rental agreement has lawful possession of the vehicle and, within the scope of the rental agreement, may legitimately exclude others from using it. In contrast, an unauthorized driver has no cognizable property interest in the rental vehicle and therefore no accompanying right to exclude. The lack of such an interest supports the position that it is objectively unreasonable for an unauthorized driver to expect privacy in the vehicle." (citations omitted)). As a result, Morris did not have an expectation of privacy in the rental vehicle that society accepts or recognizes as legitimate and could not properly claim that his own constitutional rights were violated

by the search of the vehicle's trunk. See Missouri, 361 S.C. at 112, 603 S.E.2d at 596 ("A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable."); see also Kennedy, 638 F.3d at 165 ("[A]s a general rule, the driver of a rental car who has been [l]ent the car by the renter, but who is not listed on the rental agreement as an authorized driver, lacks a legitimate expectation of privacy in the car unless there exists extraordinary circumstances suggesting an expectation of privacy."); United States v. Wellons, 32 F.3d 117, 119 (4th Cir. 1994) ("[A]ppellant, as an unauthorized driver of the rented car, had no legitimate privacy interest in the car and, therefore, the search of which he complains cannot have violated his Fourth Amendment rights."); see, e.g., United States v. Luster, 324 Fed. App'x 224, 225 (4th Cir. 2009) ("An unauthorized driver of a rented car has 'no legitimate privacy interest in the car' and, therefore, a search of the car 'cannot have violated his Fourth Amendment rights.' This conclusion is not altered where the authorized lessee allows the unauthorized driver to drive the rental vehicle, as an unauthorized driver still does not have permission of the rental company, the owner of the vehicle." (citations omitted)); cf. Rakas, 439 U.S. at 148-149 (recognizing that a mere passenger in a vehicle would normally not have a legitimate expectation of privacy in the vehicle's trunk or glove box or in the area underneath the vehicle's seats).

In challenging the propriety of the search of the rental vehicle's trunk during trial, Morris did not present any evidence or testimony to establish that he had a subjective or legitimate expectation of privacy in the vehicle, the vehicle's trunk, or any of the items in the vehicle's trunk, including the gift box containing the ecstasy, and, thus, failed to establish that his own constitutional rights were violated by the search of the trunk. See

Rawlings v. Kentucky, 448 U.S. 98, 104 (1980) ("Petitioner, of course, bears the burden of proving not only that the search of Cox's purse was illegal, but also that he had a legitimate expectation of privacy in that purse."); McKnight, 291 S.C. at 114, 352 S.E.2d at 473 ("One who seeks to have evidence suppressed on this basis must establish that his *own* Fourth Amendment rights were violated." (italics in original)); see also State v. Robinson, 396 S.C. 577, 583, 722 S.E.2d 820, 823 (Ct. App. 2012) ("For Robinson to establish a Fourth Amendment violation, he must show a legitimate expectation of privacy on the porch."). Because Morris failed to establish that he had a legitimate expectation of privacy in the area searched by the officers, Morris could not properly claim the protections of the Fourth Amendment in challenging the propriety of the search during trial or on appeal. See United States v. Salvucci, 448 U.S. 83, 85 (1980) ("[D]efendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have in fact been violated."); Rakas, 439 U.S. at 134 ("A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search or a third person's premises or property has not had any of his Fourth Amendment rights infringed."). Therefore, the drugs recovered during the search of the rental vehicle were properly admitted into evidence during trial. Accordingly, even assuming that the search of the rental vehicle's trunk was somehow improper, the decisions of the Court of Appeals and the trial judge should not be reversed on appeal. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); see also Sec. & Exch. Comm'n v. Chenery Corp., 318 U.S. 80, 88 (1943) ("[W]e do not disturb the settled rule that, in reviewing the decision of a lower court, it must be affirmed if the result is correct 'although the lower

court relied upon a wrong ground or gave a wrong reason.' The reason for this rule is obvious. It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate." (citations omitted)). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals and the judgment and conviction of the trial court should be affirmed.

Respectfully submitted,

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April 21, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2011-203786

THE STATE,

Respondent,

vs.

KENNETH DARRELL MORRIS, II,

Petitioner.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Brief of Respondent on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served. This 21st day of April, 2014.

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