STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

On Writ of Certiorari to the Court of Appeals
Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2014-002244

THE STATE,

Respondent,

vs.

RANDY JARROD CROSBY,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I.

The Court of Appeals correctly affirmed the trial judge's denial of Crosby's suppression motion because, under the totality of the circumstances, the officers possessed reasonable suspicion to conduct an investigatory stop and probable cause to search the vehicle in which Crosby was a passenger after they received reliable information from a cooperating informant about the informant's crack cocaine supplier and corroborated significant aspects of that information prior to conducting the stop and search of the crack cocaine supplier's vehicle.

II.

The Court of Appeals correctly affirmed the trial judge's decision to admit both the scale and the crack cocaine into evidence during trial where testimony was presented establishing the scale offered into evidence was the one located in the search of the black Ford Expedition and was in a substantially unchanged condition and where testimony was presented establishing the identity of each person who was in custody of the crack cocaine and what was done with it prior to the analysis of the crack cocaine at S.L.E.D.

STATEMENT OF THE CASE

Procedural History

In June of 2010, Petitioner Randy Jarrod Crosby was arrested along with two other men following a narcotics investigation and automobile stop. In August of 2010, the Union County Grand Jury indicted Crosby for one count of trafficking in crack cocaine in an amount between ten and twenty-eight grams. On December 6, 2011, a jury trial was commenced in the Union County Court of General Sessions with the Honorable John C. Hayes, III, circuit court judge, presiding. At the conclusion of trial, the jury convicted Crosby of the lesser-included offense of possession of crack cocaine with intent to distribute. Following the verdict, the trial judge sentenced Crosby to a fifteen-year term of imprisonment suspended to ten years and five years of probation. Crosby then moved for reconsideration of his sentence, and the trial judge took the motion under advisement. Thereafter, on December 15, 2011, Crosby filed a notice of appeal, and the

trial judge later denied Crosby's motion for reconsideration of his sentence on January 12, 2012.

Subsequently, on appeal, the Court of Appeals unanimously affirmed Crosby's conviction in an unpublished decision. State v. Crosby, Op. No. 2014-UP-324 (S.C. Ct. App. filed August 20, 2014). Thereafter, Crosby petitioned the Court of Appeals for rehearing, and the petition was denied. Crosby then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

On the afternoon of June 24, 2010, a confidential informant working with the Union County Sheriff's Office purchased crack cocaine from an individual he knew as "Vince" at a convenience store located off of Highway 176 in Union County while law enforcement officers covertly monitored the transaction. (R. pp. 14-15; pp. 27-28; p. 46; pp. 92-93; p. 118; pp. 169-170; pp. 219-220; p. 223; p. 305; p. 325). Once the transaction was completed, the officers moved in and arrested "Vince," who was subsequently identified as Vinson Eugene Harris. (R. pp. 14-15; pp. 27-28; p. 46; pp. 92-93; p. 118; pp. 169-170; pp. 219-220; p. 305; p. 325). After Harris was arrested, he was transported to the Union County jail, met with Sergeant James Johnson of the Union County Sheriff's Office after asking to do so, and advised the officer he needed assistance in obtaining bond. (R. p. 15; pp. 93-94; pp. 99-100; pp. 305-306; p. 318; pp. 324-327). In exchange for the assistance, Harris offered to arrange for Roderick Pope, his narcotics supplier, to bring crack cocaine to Union County. (R. p. 15; pp. 93-94; pp. 99-100; p. 306; p. 318; pp. 324-327). In response, Sergeant Johnson accepted Harris' offer, returned Harris' cell phone to him, and notified Lieutenant John Sherfield of the Union County Sheriff's Office about the arrangement. (R. pp. 15-16; pp. 65-66; p. 93; p. 97; p. 327).

Subsequently, with Sergeant Johnson present but only able to hear Harris' side of the conversation, Harris called Pope to arrange for a crack cocaine delivery, and Pope stated he would attempt to get Harris some crack cocaine. (R. p. 16; pp. 93-94; p. 107; pp. 306-307; p. 326; p. 328). Shortly thereafter, Pope called Harris back, and they agreed for Pope to drive to Union County along Highway 176, meet Harris at a convenience store located off of the highway, and deliver half of an ounce of crack cocaine to Harris in exchange for $650. (R. p. 181; pp. 246-248; pp. 307-308; pp. 329-331). Following the call, Harris informed Sergeant Johnson of the details of the arranged transaction while noting Pope always drove or rode in a black Ford Expedition, and those details were relayed to Lieutenant Sherfield. (R. p. 17; p. 96; pp. 113-114; pp. 308-309; p. 330).

In response, Lieutenant Sherfield and other officers with the Union County Sheriff's Office set up surveillance at various points along Highway 176 to wait for the black Ford Expedition to arrive. (R. p. 17; p. 176). As they waited, Pope continued to make phone calls to Harris and, during one of the calls, informed him he was passing the Lighthouse Fish Camp on Highway 176. (R. p. 18; p. 97; p. 176; p. 308; p. 330). After learning of that information, Captain James McNeil of the Union County Sheriff's Office began driving in the direction of the Lighthouse Fish Camp and, shortly thereafter, encountered a black Ford Expedition headed in the opposite direction on Highway 176 approximately a mile to a mile and a half before McNeil would have reached the Lighthouse Fish Camp and after the black Ford Expedition would have passed the restaurant. (R. pp. 257-258; p. 268; p. 271). Upon seeing the black Ford Expedition, Captain McNeil immediately relayed the vehicle's location to the other officers involved in the investigation. (R. p. 258). Moments later, Union County Sheriff David Taylor saw the black Ford Expedition approaching his position on Highway 176, and he got into

position behind it and activated his blue lights. (R. p. 19; pp. 79-80; pp. 178-179). After that, the passenger in the back seat of the vehicle leaned forward, and the driver of the vehicle momentarily continued to drive along Highway 176 before partially pulling over into the median of the highway approximately two miles away from the location where Harris had arranged for Pope to meet him. (R. pp. 19-20; p. 30; p. 179).

Once the driver of the black Ford Expedition pulled over, several officers responded to the scene, and Lieutenant Sherfield approached the driver's side of the vehicle. (R. p. 19; p. 179). When he did so, he saw Lashad Demond Brewton seated in the driver's seat, Pope seated in the front passenger's seat with a cell phone in his hand, and Petitioner Randy Jarrod Crosby seated in the rear passenger's seat. (R. pp. 19-20; pp. 179-180; p. 241). The officer then asked Brewton to step out of the vehicle, spoke with him briefly, advised him of his rights, placed him in handcuffs, and let him know that he was being detained. (R. p. 24; p. 34; p. 180). Meanwhile, other officers removed Crosby and Pope from the vehicle and similarly secured them. (R. p. 34; p. 58; p. 180).

Once the men were secured, Lieutenant Sherfield searched the passenger compartment of the black Ford Expedition. (R. p. 20; p. 180). Inside, he found a cell phone on Pope's seat and a gray digital scale without a battery cover and with white residue on it hidden underneath the seat Crosby had been sitting in at the time of the stop.[1] (R. pp. 20-21; p. 71; p. 181; p. 241). Upon finding the scale, Lieutenant Sherfield conducted a field test on the white residue, and the residue tested positive for cocaine. (R. pp. 20-21). In response, he quickly arrested Crosby and the others for possession of

[1] Following the automobile stop, Lieutenant Sherfield inspected Pope's cell phone and discovered the phone contained contact information for an individual named "Vince." (R. p. 190). Furthermore, Lieutenant Sherfield discovered the phone's records reflected "Vince" called Pope five times between 4:39 p.m. and 6:04 p.m. on the day of the automobile stop and Pope called "Vince" eleven times between 5:18 p.m. and 6:33 p.m. on the day of the stop. (R. pp. 192-194).

cocaine. (R. p. 21; p. 181). He then asked Corporal Russell Vinson of the Union County Sheriff's Office, another officer involved in the narcotics investigation, to inspect the back area of his law enforcement vehicle before transporting Crosby and Brewton to the Union County jail. (R. p. 182; pp. 273-274). Corporal Vinson complied with Lieutenant Sherfield's request, found nothing inside of his vehicle, and then transported Crosby and Brewton to the jail. (R. pp. 274-275). Once he had done so, the officer searched his vehicle and discovered a small plastic bag containing what appeared to be crack cocaine hidden underneath the seat Crosby had been sitting in. (R. p. 59; p. 76; p. 184; p. 236; pp. 275-276; pp. 282-283). Corporal Vinson then secured the bag, and the substance was later transported to S.L.E.D. for analysis, where it was determined to be eleven-and-a-half grams of crack cocaine. (R. p. 62; p. 77; pp. 184-185; 275-276; pp. 279-280; pp. 355-356).

Subsequently, Crosby and his co-defendants were indicted for trafficking in crack cocaine in an amount between ten and twenty-eight grams, and they jointly proceeded to trial. (R. p. 4; pp. 484-485). At the outset of trial, Crosby, Pope, and Brewton all moved for the trial judge to suppress the evidence discovered during and after the automobile stop and search, and the trial judge conducted a hearing on their suppression motions. (R. pp. 5-6; pp. 10-14). During the hearing, Lieutenant Sherfield, Sergeant Johnson, and the other officers testified about the details of Harris' arrest, the subsequent stop and search of the black Ford Expedition, and the discovery of the crack cocaine in the vehicle used to transport Crosby and Brewton to the jail.[2] (R. pp. 14-20; p. 59; pp. 92-98).

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[2] Specifically, during his testimony, Lieutenant Sherfield asserted the vehicle was stopped after Captain McNeil spotted a black Ford Expedition "right at" the Lighthouse Fish Camp following Harris' report Pope was travelling past that location. (R. pp. 16-20; pp. 25-26; p. 46; p. 72). Furthermore, Lieutenant Sherfield noted the scale he found during his search of the vehicle did not have a battery cover at the time it was seized, indicated one of the batteries from the scale had fallen out prior to the trial, stated the scale's

At the conclusion of the suppression hearing, Crosby and his co-defendants moved for the evidence discovered as a result of the automobile stop to be suppressed, arguing there was no reasonable suspicion supporting the stop of the black Ford Expedition and no probable cause supporting the search of the vehicle. (R. pp. 123-125; p. 127; pp. 130-131; pp. 133-134; pp. 136-137). Furthermore, Crosby and the others challenged the chain of custody regarding the scale found during the search of the vehicle, and Pope argued there was no evidence he or the other defendants were in actual or constructive possession of the crack cocaine located in Corporal Vinson's vehicle following their arrests. (R. pp. 125-126; pp. 132-133; p. 137).

In response, the solicitor noted Harris arranged a drug transaction with Pope and provided law enforcement officers with information that was subsequently corroborated regarding Pope's vehicle color, vehicle make, vehicle model, direction of travel, and precise location at a specific time. (R. pp. 138-140). Under those circumstances, the solicitor argued the officers had probable cause to believe drugs would be located in the black Ford Expedition, justifying the stop and search of that vehicle. (R. pp. 138-140). Additionally, regarding the challenge to the admissibility of the scale, the solicitor noted the arguments raised by the defendants regarding the chain of custody could potentially impact the weight of the evidence but did not affect its admissibility. (R. pp. 140-141).

Following the arguments of counsel, the trial judge took the matter under advisement to consider the motions overnight. (R. pp. 142-143). Thereafter, on the next morning, the trial judge denied the suppression motions. (R. p. 157). In denying the motions, the trial judge found the law enforcement officers' corroboration of the

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evidence bag had broken prior to trial, and admitted he incorrectly asserted on a chain of custody affidavit he seized the crack cocaine from Crosby, Pope, and Brewton when, in fact, he actually took custody of the narcotics from Corporal Vinson. (R. pp. 36-38; p. 59; pp. 61-62; pp. 71-72; pp. 76-77).

information provided by Harris regarding Pope's vehicle make, vehicle model, vehicle color, direction of travel, and specific location established probable cause to believe contraband would be contained in the vehicle, which justified the stop and the search. (R. pp. 157-160; pp. 162-163). Furthermore, the trial judge declined to suppress the scale based on the alleged issue with the chain of custody after finding the scale was not a fungible item. (R. pp. 160-161). Finally, the trial judge declined to suppress the crack cocaine found in the law enforcement vehicle following the arrests of Crosby, Pope, and Brewton. (R. p. 161; pp. 163-165).

Subsequently, during trial, Lieutenant Sherfield testified about Harris' arrest and the ensuing investigation that led to the arrests of Crosby, Pope, and Brewton, the discovery of a scale in the black Ford Expedition, and the discovery of a bag of crack cocaine in the vehicle used to transport Crosby and Brewton to jail.[3] (R. pp. 169-170; pp. 175-186). In addition to Lieutenant Sherfield's testimony, Captain McNeil testified about his role in the narcotics investigation and automobile stop, noting he received word a black Ford Expedition was passing the Lighthouse Fish Camp, he immediately began driving in the direction of the restaurant, and he encountered a black Ford Expedition at an intersection on Highway 176 approximately a mile to a mile and a half away from the restaurant. (R. pp. 257-258; p. 268; p. 271). Furthermore, Corporal Vinson testified about his role in the investigation and noted he responded to the location of the

[3] Specifically, regarding the crack cocaine, Lieutenant Sherfield indicated he received the crack cocaine from Corporal Vinson, sealed it in an evidence bag, secured the bag in an evidence vault, and then subsequently transported the bag to the evidence intake area at S.L.E.D. where he delivered the crack cocaine to Nikki Perry, an evidence technician. (R. pp. 184-187). Additionally, Lieutenant Sherfield acknowledged he incorrectly listed on a chain of custody affidavit he seized the crack cocaine from Crosby, Pope, and Brewton when he actually received it from Corporal Vinson. (R. pp. 213-214). Furthermore, in regard to the scale, Lieutenant Sherfield identified the scale, which he stated was an item commonly used in the drug trade, as the one he found under Crosby's seat in the black Ford Expedition and noted a battery was currently missing from the scale, and the scale was admitted into evidence over the objection of Crosby and his co-defendants. (R. pp. 187-189).

automobile stop after the black Ford Expedition had been detained. (R. pp. 273-274). After he arrived, Corporal Vinson stated Lieutenant Sherfield asked him to check the rear area of his vehicle before transporting two of the suspects to jail and he complied with the lieutenant's request. (R. pp. 274-275). Corporal Vinson indicated he then transported Crosby and Brewton to jail and searched the back of his vehicle after dropping them off. (R. p. 275). When he did so, Corporal Vinson testified he found a bag of crack cocaine hidden underneath Crosby's seat, secured the drugs in an evidence bag, and gave them to Lieutenant Sherfield when the lieutenant arrived at the jail. (R. pp. 275-276; pp. 279-280; pp. 282-283).

Following the officers' testimony, Crosby and the others renewed their motions for the crack cocaine to be suppressed on the basis they believed the testimony from the suppression hearing differed from the trial testimony regarding where the black Ford Expedition was first observed. (R. pp. 293-294; pp. 299-300). In response, the solicitor argued Captain McNeil saw the black Ford Expedition on the same highway the Lighthouse Fish Camp was located on approximately one mile after the vehicle would have passed the restaurant, which he asserted corroborated the information provided by Harris about the location of Pope's vehicle at that time. (R. pp. 295-296). Thereafter, the trial judge denied the motions, concluding he would not have suppressed the narcotics had he been provided with Captain McNeil's trial testimony during the suppression hearing. (R. p. 297; p. 300). In reaching that conclusion, the trial judge noted the fact the black Ford Expedition was observed approximately a mile away from the location Harris reported the vehicle had just passed sufficiently corroborated Harris' information. (R. pp. 300-301).

Subsequently, Sergeant Johnson testified about Harris' arrest and his resulting offer to assist their investigation by arranging for Pope to bring half of an ounce of crack cocaine to Union County. (R. pp. 325-327; p. 331). Sergeant Johnson indicated Harris then provided him with information derived from phone calls Harris made to Pope and he relayed that information to Lieutenant Sherfield. (R. pp. 327-330). Specifically, Sergeant Johnson noted he advised Lieutenant Sherfield Pope would be travelling in a black Ford Expedition along with other people and that he notified Lieutenant Sherfield when Pope passed the Lighthouse Fish Camp. (R. p. 330).

Following Sergeant Johnson's testimony, the trial was recessed for the day. (R. p. 346). Then, on the third day of trial, Agent Willie Smith, a chemist in the S.L.E.D. drug analysis department and an expert in drug analysis, testified about his receipt and analysis of the drugs found in Corporal Vinson's law enforcement vehicle. (R. pp. 350-353). Regarding his acquisition of the drugs, Agent Smith indicated he received the crack cocaine he subsequently tested from Doris Yarborough, who worked in the S.L.E.D. log-in department. (R. pp. 352-353). After that, Agent Smith testified he secured the evidence in a drug vault only he could access. (R. pp. 353-354). Thereafter, he stated he verified the evidence bag was sealed and intact prior to conducting his analysis, analyzed the substance in the evidence bag, and determined it was eleven-and-a-half grams of crack cocaine. (R. pp. 353-356).

At the conclusion of Agent Smith's testimony on direct examination, the solicitor moved to admit the crack cocaine into evidence. (R. pp. 358-359). Pope then objected and asked the trial judge to refrain from ruling on the objection until after he completed his cross-examination of Agent Smith. (R. pp. 358-359). Thereafter, on cross-examination, Agent Smith confirmed Perry received the evidence from an officer, took it

into the drug intake area at S.L.E.D., and secured it until Yarborough retrieved the evidence and transported it to him. (R. pp. 362-363). He further noted he would not have tested the submitted substance if the evidence bag had been tampered with and indicated he would have returned the evidence to the submitting law enforcement agency if he had knowledge of a problem with the chain of custody. (R. p. 366; p. 368).

Following Agent Smith's testimony, Crosby and his co-defendants objected to the admission of the crack cocaine on the basis Agent Smith stated he would not have tested the drugs if he was aware that there was a problem with the chain of custody, which they argued existed in light of the incorrect information on Lieutenant Sherfield's affidavit. (R. pp. 372-373). In response, the solicitor asserted the chain of custody was established by the testimony presented during trial and the arguments raised by Crosby and his co-defendants merely impacted the weight of the evidence as opposed to its admissibility. (R. pp. 373-374). After considering the issue, the trial judge agreed with the solicitor, found the chain of custody had been established in regard to the narcotics, admitted the crack cocaine over objection, and noted the issues with the affidavit could be argued to the jury but did not affect the admissibility of the drugs. (R. pp. 374-375).

Subsequently, at the conclusion of trial, the jury convicted Crosby of the lesser-included offense of possession of crack cocaine with intent to distribute. (R. p. 466). Following the verdict, the trial judge sentenced Crosby to a fifteen-year term of imprisonment suspended to ten years and five years of probation. (R. p. 474). Crosby then moved for reconsideration of his sentence, and the trial judge took the motion under advisement. (R. pp. 481-482). Thereafter, Crosby filed and perfected an appeal, and the trial judge later issued an order denying Crosby's motion. (R. p. 487; App'x pp. 1-2).

On appeal, the Court of Appeals primarily relied upon the opinion issued in the appeal filed by Crosby's co-defendant, Pope, and affirmed Crosby's conviction. (App'x pp. 1-2). In that opinion, the Court of Appeals determined the officers had reasonable suspicion to stop Pope's vehicle based on the officers' corroboration of the details Harris provided about the arranged drug transaction coupled with the fact Harris' identity was known to the officers. State v. Pope, 410 S.C. 214, __, 763 S.E.2d 814, 820 (Ct. App. 2014). Likewise, the Court of Appeals found the officers had probable cause to search Pope's vehicle based on the officers' corroboration of the information provided by Harris combined with the fact Crosby behaved in a furtive manner inside of the vehicle after he saw the officers behind it. Id. at __, 763 S.E.2d at 821. Finally, the Court of Appeals held the scale was a non-fungible item and a sufficient chain of custody was established during trial in regard to both the scale and the crack cocaine. Id. at __, 763 S.E.2d at 822. For those reasons, the Court of Appeals concluded the trial judge did not abuse his discretion in denying Pope's suppression motion or in admitting the scale and crack cocaine into evidence during trial. Id.

ARGUMENT

I.

The Court of Appeals correctly affirmed the trial judge's denial of Crosby's suppression motion because, under the totality of the circumstances, the officers possessed reasonable suspicion to conduct an investigatory stop and probable cause to search the vehicle in which Crosby was a passenger after they received reliable information from a cooperating informant about the informant's crack cocaine supplier and corroborated significant aspects of that information prior to conducting the stop and search of the crack cocaine supplier's vehicle.

Crosby contends the Court of Appeals committed reversible error in affirming the trial judge's denial of his motion to suppress the evidence discovered as a result of the investigatory stop and search of the black Ford Expedition. In support of that contention,

Crosby maintains there was no reasonable suspicion justifying the investigatory stop and no probable cause justifying the search. To the contrary, the officers obtained reasonable suspicion to conduct the investigatory stop and probable cause to search the vehicle after the officers received information from a reliable cooperating informant about his narcotics supplier and corroborated significant aspects of that information, including the color, make, model, direction of travel, and precise location of the supplier's vehicle, before conducting the stop and search. As a result, the trial judge properly denied Crosby's suppression motion, and the Court of Appeals properly affirmed the trial judge's ruling. Crosby's petition for a writ of certiorari should be denied.

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. Pursuant to the Fourth Amendment, "[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity." State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) ("To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity."); see also United States v. Sokolow, 490 U.S. 1, 7 (1989) ("[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." (citation omitted)). 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).

For Fourth Amendment purposes, an automobile stop, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). However, the initiation of an automobile stop is reasonable per se when either probable cause exists to believe a traffic violation has occurred **or** reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) ("[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity."); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) ("Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se.").

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)). In determining whether reasonable suspicion existed, the totality of the circumstances must be considered as a whole to ascertain whether the officer's actions were reasonable in light of everything available to him at the time. See 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)).

However, even if an automobile stop is supported by reasonable suspicion, an automobile search is not constitutionally permissible unless it is reasonable under the circumstances. See U.S. Const. amend. IV (prohibiting "unreasonable searches and seizures"). 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). Notably, South Carolina courts have recognized several exceptions to the warrant requirement, including the automobile exception. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981); see State v. Morris, 395 S.C. 600, 609, 720 S.E.2d 468, 472 (Ct. App. 2011) ("[T]he ready mobility of and the lessened expectation of privacy in automobiles endorse an exception to that rule based upon probable cause.").

Pursuant to the automobile exception, law enforcement officers can conduct a warrantless search of an automobile based on probable cause alone. State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995). 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." Id. "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." State v. Weaver, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007). Moreover, "[t]he justification to conduct such a warrantless search does not vanish once the car has been immobilized." Id. at 321, 649 S.E.2d at 482; see State v. Willard, 374 S.C. 129, 135, 647 S.E.2d 252, 255 (Ct. App. 2007)

("[T]emporary immobility may still be considered readily mobile so as to qualify for the automobile exception.").

In the case sub judice, the Court of Appeals properly affirmed the trial judge's ruling denying Crosby's suppression motion because the investigatory stop and search of the black Ford Expedition were reasonable under the totality of the circumstances and were supported by reasonable suspicion and probable cause. Looking to the specific information known to the officers prior to the stop and search, Harris, the cooperating informant, arranged a drug transaction with his narcotics supplier, whom he identified as Pope. Harris then provided information to the officers about the make, model, and color of Pope's vehicle, Pope's reported direction of travel, and Pope's expected route into Union County. Although the officers had not previously worked with Harris, it was reasonable for the officers to rely on the information provided by Harris because his admission of having a drug supplier was personally incriminating and provided the officers with powerful evidence that could be used against him in any future trial on the distribution of crack cocaine charge for which he had been arrested earlier that day. See United States v. Harris, 403 U.S. 573, 583-584 (1971) ("Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these statements. People do not lightly admit to a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility – sufficient at least to support a finding of probable cause to search. That the informant may be paid or promised a 'break' does not eliminate the residual risk and opprobrium of having admitted criminal conduct."); see also State v. Driggers, 322 S.C. 506, 514, 473 S.E.2d 57, 61 (Ct. App. 1996) ("Klepp-Egge also acted against his best interests by providing the

police with information that possibly linked him to the crime."). Additionally, the officers' reliance on the information provided by Harris was further justified because Harris could have been held responsible if the information he provided proved to be false since his identity was known to the officers and he was in the officers' custody. See Driggers, 322 S.C. at 511, 473 S.E.2d at 60 ("[A] non-confidential informant should be given higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false."). In fact, had Harris provided false information to the officers, Harris' chances of achieving his desired objective of getting the officers to assist him in obtaining bond would have been greatly diminished. Furthermore, because Harris' status as a drug dealer was unquestionable in light of his earlier arrest for distributing crack cocaine, the officers were fully justified in accepting Harris' statements about his narcotics supplier, which he logically had to have in order to successfully serve as a crack cocaine dealer. See Blitch v. State, 323 Ga. App. 677, 680, 747 S.E.2d 863, 866 (Ga. Ct. App. 2013) ("Webb's basis of knowledge was self-evident because, as a seller of cocaine, he would necessarily have a source that supplied him with cocaine and had the means of setting up the drug transaction."). Under those circumstances, the officers justifiably relied on the information provided by Harris. See State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) ("The required reasonable suspicion can arise from an anonymous tip provided that the totality of the surrounding circumstances justifies acting on the tip.").

However, beyond the inherent reliability of Harris' information itself under the circumstances, the reasonableness of the officers' actions in conducting the investigatory stop and search was established by the officers' corroboration of significant aspects of the information provided by Harris **before** they acted on that information. Critically, prior to

the stop, Harris informed the officers his supplier would be travelling in a black Ford Expedition on Highway 176 and would be coming into Union County towards a convenience store located off of the highway. Thereafter, as the officers waited along the highway for the described vehicle to arrive, Harris informed the officers Pope had just driven past the Lighthouse Fish Camp. Moments later, the officers observed a black Ford Expedition driving into Union County along Highway 176 approximately a mile to a mile and half after it would have passed the Lighthouse Fish Camp and only a few miles away from the location where Harris arranged to meet Pope. Thus, before initiating the investigatory stop of the black Ford Expedition, the officers verified the vehicle matched the description of the make, model, and color of the vehicle identified by Harris, the vehicle was travelling towards the location where Harris' supplier was supposed to meet him, and it had recently driven by a specific location on the highway Harris' supplier reported he had just passed. See Alabama v. White, 496 U.S. 325, 332 (1990) ("Because only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities."); see also Illinois v. Gates, 462 U.S. 213, 244-245 (1983) ("It is enough, for purposes of assessing probable cause, that 'corroboration through other sources of information reduced the chances of a reckless or prevaricating tale,' thus providing 'a substantial basis for crediting the hearsay.' " (citation omitted)). Because the officers were able to corroborate those substantial details, including the information regarding the black Ford Expedition's precise location at a specific time, it was entirely reasonable for the officers to believe Harris was also correct when he indicated crack cocaine would be found in the black Ford Expedition. See White, 496 U.S. at 331 ("[B]ecause an informant is shown to

be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity."); see also Gates, 462 U.S. at 241 ("Our decisions applying the totality-of-the-circumstances analysis . . . have consistently recognized the value of corroboration of details of an informant's tip by independent police work."). As a result, the investigatory stop and search were entirely reasonable under the circumstances.

Further supporting the reasonableness of the search, the officers corroborated additional aspects of the information provided by Harris after they initiated the stop but before they conducted the search. Specifically, upon approaching the black Ford Expedition, the officers saw multiple people inside of the vehicle just as Harris had reported and observed Pope with a cell phone in his hand, which was entirely consistent with the fact Pope was speaking to Harris on the phone shortly before the stop was initiated. See United States v. Draper, 358 U.S. 307, 313-314 (1959) ("Marsh[, the narcotics agent,] had personally verified every fact of the information given him by Hereford[, the informant,] except whether the petitioner had accomplished his mission and had three ounces of heroin on his person or in his bag. And surely, with every other bit of Hereford's information being thus personally verified, March had 'reasonable grounds' to believe that the remaining unverified bit of Hereford's information – that Draper would have the heroin with him – was likewise true. . . . [U]nder the facts and circumstances here, Marsh had probable cause and reasonable grounds to believe that petitioner was committing a violation of the laws of the United States relating to narcotic drugs at the time he arrested him."). Thus, the corroboration of the significant details of the information provided by Harris after Harris identified Pope as his narcotics supplier gave the officers a probable cause basis to believe crack cocaine would be located in the

black Ford Expedition. See Harris, 403 U.S. at 583-584 (finding an admission by an informant of involvement in a crime is "sufficient at least to support a finding of probable cause to search"). Under those circumstances, the officers' decisions to stop and search the vehicle were entirely reasonable.

In light of the fact the officers corroborated the information provided to them by an informant who could be held responsible if he was found to have given them false information, the officers were in possession of sufficient facts to establish reasonable suspicion and probable cause, which justified the investigatory stop and search of the black Ford Expedition. Compare State v. Rogers, 368 S.C. 529, 535-536, 629 S.E.2d 679, 682-683 (Ct. App. 2006) (finding an investigatory stop was supported by reasonable suspicion where "the officer received the information from a known, accountable informant whose reputation could be assessed and who explained how he knew about the planned robbery, thereby supplying a basis, outside of his already proven reliability for [the officer] to believe the confidential information had inside information on the matter."); with State v. Green, 341 S.C. 214, 218, 532 S.E.2d 896, 898 (Ct. App. 2000) (finding an investigatory stop was not supported by reasonable suspicion where "[t]he only information available to the officer was the statement of an unknown, unaccountable informant who neither explained how he knew about the money and narcotics, nor supplied any basis for the officer to believe he had inside information about Green"). Accordingly, the officers' decision to conduct the stop in Crosby's case did not violate Crosby's constitutional rights even though the officers were not able to verify Crosby and the others were in possession of crack cocaine until after the stop was conducted in light of the officers' corroboration of the information provided by Harris in regard to his crack cocaine supplier. Cf. White, 496 U.S. at 331 (finding an investigatory stop was

constitutionally permissible based on the officers' corroboration of several pieces of information provided by an anonymous caller even though the officers did not verify the reported name of the woman who got into the vehicle, did not verify the reported apartment number from which the woman left, and did not allow the woman to reach her reported destination prior to conducting the stop); Blitch, 747 S.E.2d at 866 (holding officers had probable cause to search Blitch's vehicle after an informant identified Blitch as his cocaine supplier and arranged a drug transaction with Blitch and then the officers observed Blitch arrive at the location where the transaction was supposed to take place around the time it was supposed to take place in a vehicle matching the description of the one he was supposed to be driving). Because the investigatory stop and search were entirely reasonable, the trial judge properly denied Crosby's suppression motion, and the Court of Appeals properly affirmed the trial judge's ruling. See 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."). Crosby's petition for a writ of certiorari should be denied.

II.

The Court of Appeals correctly affirmed the trial judge's decision to admit both the scale and the crack cocaine into evidence during trial where testimony was presented establishing the scale offered into evidence was the one located in the search of the black Ford Expedition and was in a substantially unchanged condition and where testimony was presented establishing the identity of each person who was in custody of the crack cocaine and what was done with it prior to the analysis of the crack cocaine at S.L.E.D.

Crosby contends the Court of Appeals erred in affirming the trial judge's ruling admitting the scale and the crack cocaine into evidence during trial. In support of that contention, Crosby maintains a sufficient chain of custody was not established in regard

to the scale because the scale was kept in a drawer with other scales, the original evidence bag containing the scale broke, and one of the scale's batteries was lost. Crosby further maintains the chain of custody regarding the crack cocaine was not sufficient because an officer listed incorrect information on a chain of custody affidavit. Contrary to Crosby's contentions, all the prerequisites necessary for the scale, which constituted non-fungible evidence, and the crack cocaine, which constituted fungible evidence, to be admitted into evidence were satisfied, and a complete chain of custody was established in regard to both items. As a result, the trial judge properly admitted the scale and the crack cocaine into evidence during trial, and the Court of Appeals correctly affirmed the trial judge's ruling. Crosby's petition for a writ of certiorari should be denied.

"The 'chain of custody' rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence." United States v. Howard-Arias, 679 F.2d 363, 366 (4th Cir. 1982). "The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be." State v. Hatcher, 392 S.C. 86, 95, 708 S.E.2d 750, 755 (2011); see Howard-Arias, 679 F.2d at 366 ("The purpose of this threshold requirement is to establish that the item to be introduced, i.e., marijuana, is what it purports to be, i.e., marijuana seized from the 'Don Frank.' "). Notably, "[c]ourts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts." Hatcher, 392 S.C. at 94, 708 S.E.2d at 754.

On one hand, "the establishment of a strict chain of custody is not required" when a party seeks the admission of non-fungible evidence during trial. State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005); see State v. Glenn, 328 S.C. 300, 305, 492 S.E.2d 393, 395 (Ct. App. 1997) ("While the chain of custody requirement is strict

where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence – that is, evidence that is unique and identifiable – the establishment of a strict chain of custody is not required[.]"); see also State v. Rogers, 361 S.C. 178, 186, 603 S.E.2d 910, 914 (Ct. App. 2004) ("[B]ecause the purse is a non-fungible piece of evidence, chain of custody is not required for its admission."). Non-fungible evidence is "evidence that is unique and identifiable[.]" Freiburger, 366 S.C. at 134, 620 S.E.2d at 741. "If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition." Id. at 134, 620 S.E.2d at 741-742.

On the other hand, a complete chain of custody must be established as far as practicable when a party seeks the admission of fungible evidence like drugs or a blood sample during trial. State v. Governor, 362 S.C. 609, 612, 608 S.E.2d 474, 475 (Ct. App. 2005). However, the proof of the chain of custody need **not** exclude every possibility of tampering. State v. Smith, 326 S.C. 39, 41, 482 S.E.2d 777, 778 (1997); see Rogers, 361 S.C. at 187, 603 S.E.2d at 915 ("South Carolina law does not require testimony as to the exclusion of any possibility of tampering."). Instead, in order to satisfy the requirements for establishing the chain of custody, the evidence and testimony presented during trial must simply not leave to conjecture who was in possession of the fungible item and what was done with it between its seizure and analysis. State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct. App. 1995). "[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of

tampering, bad faith, or ill-motive." State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-206 (2007). Furthermore, "where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility." State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001).

Looking to the challenged evidence in Crosby's case, the scale was a uniquely-identifiable item and, thus, constituted non-fungible evidence. Cf. Freiburger, 366 S.C. at 134, 620 S.E.2d at 742 (instructing a gun is a non-fungible item); Rogers, 361 S.C. at 186, 603 S.E.2d at 914 (holding a purse is a non-fungible item); Glenn, 328 S.C. at 305, 492 S.E.2d at 395 (finding a porcelain fragment was a non-fungible item). As a result, a chain of custody did **not** have to be established before the scale could be admitted into evidence. See Freiburger, 366 S.C. at 134, 620 S.E.2d at 741 (recognizing a chain of custody does not have to be established prior to the admission of non-fungible evidence). Instead, the scale could properly be admitted into evidence if it was identified as the scale found during the search of black Ford Expedition and its condition was substantially unchanged, and Lieutenant Sherfield satisfied those requirements by identifying the scale as the one he found in the search and explaining the only change that occurred to the condition of the scale prior to trial was one of its batteries was missing. See id. at 134, 620 S.E.2d at 741-742 (instructing non-fungible evidence can properly be admitted on the "basis of testimony that the item is the one in question and is in a substantially unchanged condition"). However, even assuming a chain of custody had to be established before the scale could be admitted, the testimony presented during trial demonstrated Lieutenant Sherfield was in possession of the scale from the point it was taken during the search to the point it was introduced during trial and did not leave to conjecture what was done with the scale prior to trial. See Rogers, 361 S.C. at 187, 603 S.E.2d at 914-915 ("[E]ven

if a chain needed to be established, it had been. At trial, every individual who had possession of the purse, which contained the slip of paper, testified to having it and denied tampering with it."). Accordingly, the trial judge properly admitted the scale into evidence during trial, and the Court of Appeals correctly affirmed the trial judge's ruling.

Likewise, in regard to the crack cocaine, testimony was presented during trial establishing the identity of each person who was in custody of the crack cocaine and what was done with it prior to analysis, which meant a complete chain of custody was established in regard to the crack cocaine. Specifically, Corporal Vinson testified he secured the crack cocaine after finding it in his vehicle and turned it over to Lieutenant Sherfield, the lieutenant testified he secured the narcotics in a locked evidence vault that only he could access and then delivered the drugs to the evidence intake area at S.L.E.D., and Agent Smith testified an evidence technician brought the crack cocaine to him from the S.L.E.D. evidence intake area before he conducted his analysis. Additionally, Perry and Yarborough, the other S.L.E.D. employees who handled the crack cocaine, were specifically identified through the trial testimony. Thus, every individual who handled the crack cocaine was identified and a full chain of custody was established. See Governor, 362 S.C. at 613, 608 S.E.2d at 476 (finding fungible evidence should have been admitted in light of the fact a complete chain of custody was presented and noting discrepancies in the manner in which the evidence was handled were not a proper basis for suppression). Furthermore, Corporal Vinson, Lieutenant Sherfield, and Agent Smith all confirmed they secured the crack cocaine when it was in their possession, and Agent Smith stated the evidence bag in which the crack cocaine had been sealed had not been tampered with prior to his analysis, which established as far as practicable the crack cocaine had not been altered by anyone who handled the drugs. See Benton v. Pellum,

232 S.C. 26, 33-34, 100 S.E.2d 534, 537 (1957) ("'Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis.'" (citation omitted)). For those reasons, the trial judge properly admitted the crack cocaine into evidence during trial, and the Court of Appeals correctly affirmed the trial judge's decision to do so.[4] Accordingly, Crosby's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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November 24, 2014

[4] Significantly, any issues with the incorrect information on the chain of custody affidavit merely impacted the weight of the testimony as opposed to the admissibility of the crack cocaine. See Johnson, 318 S.C. at 196, 456 S.E.2d at 444 ("Although a discrepancy existed as to the dates Dailey received the evidence, no evidence was presented to indicate the drugs were not within the control of identifiable people during the entire time. **A reconciliation of this discrepancy was not necessary to establish the chain of custody,** but merely reflected upon the credibility of the evidence rather than its admissibility." (emphasis added)).

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2014-002244

THE STATE,

Respondent,

vs.

RANDY JARROD CROSBY,

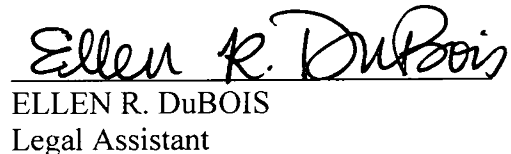
Petitioner.

PROOF OF SERVICE

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

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 24th day of November, 2014.



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ALAN WILSON
ATTORNEY GENERAL

November 24, 2014

RECEIVED
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S.C. Supreme Court

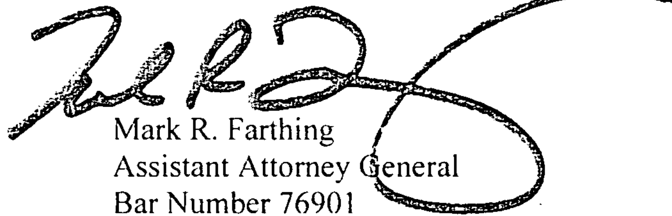
Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Randy Jarrod Crosby – Appellate Case No. 2014-002244

Dear Ms. Ganjehsani:

I am enclosing two (2) copies of the Return to Petition for Writ of Certiorari, along with proof of service, in the above-referenced case.

Sincerely,



Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Daniel E. Shearouse (original and six enclosed)
Victim Services