STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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On Petition for Writ of Certiorari to the Court of Appeals
Appeal From Greenville County
Carmen T. Mullen, Circuit Court Judge

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THE STATE,

Respondent,

vs.

KARRIEM PROVET,

Petitioner.

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# RETURN TO PETITION FOR WRIT OF CERTIORARI

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ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit
County Courthouse
305 E. North Street, Suite 325
Greenville, S. C. 29601-2185
(864) 467-8648

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

## STATEMENT OF QUESTIONS PRESENTED

I. Did the Court of Appeals properly affirm the circuit court's determination the police officer articulated specific facts giving rise to his reasonable suspicion Petitioner was engaged in illegal activity?

II. Did the Court of Appeals properly affirm the circuit court's determination Petitioner voluntarily consented to the search of his vehicle?

## STATEMENT OF THE CASE

On May 24, 2005, the Greenville County Grand Jury indicted Petitioner Karriem Provet ("Provet") on one count of trafficking cocaine, more than 100 grams, and one count of resisting arrest. The matter was called for a jury trial on August 7, 2007, before the Honorable Carmen T. Mullen, Circuit Court Judge.

Prior to trial, Provet moved to suppress all evidence, including a videotape of the traffic stop and drugs seized from the car, asserting his detention was unconstitutional because it was not based on reasonable suspicion of criminal activity. He further asserted he did not consent to the search of his car, and even if he did, it was involuntary because the detention was illegal and the circumstances were coercive. (Record on Appeal [R.], pp. 24-25, 84-89, 95-96).

*In camera,* Corporal J.D. Owens ("Cpl. Owens") of the South Carolina Highway Patrol testified he had fourteen years law enforcement experience, and he supervised the upstate region of the Highway Patrol's Aggressive Criminal Enforcement Unit that targets, *inter alia*, drug trafficking, which he had worked with since 1998. On the night of May 1, 2002, he was patrolling Interstate 85 in Greenville County when he noticed a 1997 Ford Expedition following another vehicle too closely and operating with a defective tag light. He stopped the Expedition and approached it on the passenger side. Provet was driving the vehicle and there were no passengers. (State's Exhibit 1 [Videotape]; R., pp. 27-30).[1]

Cpl. Owens asked Provet for his driver's license and the vehicle registration. When

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[1]State's Exhibit 1 was transported to the Court of Appeals for consideration. All of Cpl. Owens' testimony relates to the events reflected on the videotape.

Provet handed the documents to Cpl. Owens, his hands were shaking and his breathing was accelerated beyond the nervousness displayed by "the majority of the people pulled over for a simple traffic violation." In addition, the vehicle was registered to a third party who was not present, which Cpl. Owens testified is very common in drug trafficking situations. (State's Exhibit 1; R., pp. 30-31).

Cpl. Owens asked Provet to get out and step to the rear of the vehicle, which is routine in traffic stop situations, and Provet consented to a pat down for weapons. After the pat down, Cpl. Owens and Provet walked to the passenger side of the patrol car (away from interstate traffic), and Cpl. Owens talked with Provet while he started writing a warning ticket for the traffic violations. (State's Exhibit 1; R., pp. 31-32).

Provet told Cpl. Owens he was visiting his girlfriend and had just left a Greenville Holiday Inn, but was unable to say where the motel was located. Cpl. Owens first observed the Expedition on the interstate before the exit for the only Holiday Inn in the area, however, so he knew Provet had not just left that motel. Based on Provet's demeanor and responses, Cpl. Owens believed he was being deceptive. (State's Exhibit 1; R., pp. 32-33).

Provet also told Cpl. Owens the vehicle belonged to a different girlfriend from the one was visiting, he was unemployed, and he had been in Greenville for two days but had no luggage in the vehicle. All of those factors, combined with his knowledge and experience and Provet's use of delaying tactics in responding to questions, further aroused Cpl. Owens' suspicions, and he called for a drug canine unit to respond to the scene. He also requested a computer check on Provet's driver's license, and because the vehicle was registered to an absent third party, he requested a check on the vehicle registration as well. (State's Exhibit

1; R., pp. 33-37).

While waiting for the license and registration checks, Cpl. Owens went back to the Expedition to compare the VIN numbers on the vehicle and the registration in case the vehicle was stolen. When he approached the vehicle at that time, he observed numerous fast food bags and air fresheners inside the vehicle, as well as a cell phone and receipts in the center console. (State's Exhibit 1; R., pp. 37-38).

Cpl. Owens testified the fast food bags and cell phone were significant to him because drug traffickers try to move quickly since there is the potential for violence, they have time deadlines to move the product, and they have to stay in constant contact with others involved in the transactions. He further testified the numerous air fresheners were significant because drug traffickers use them to disguise odors from law enforcement and drug detection canines. In addition, Cpl. Owens saw a bag on the rear seat even though Provet told him he had no luggage. Based on all these factors, Cpl. Owens suspected criminal activity. (R., pp. 38-40, 53-57).

After checking the VIN number and receiving information from the license and registration checks, Cpl. Owens completed a warning ticket for the traffic violations and explained it to Provet. As this was happening, Corporal Eddie Aman ("Cpl. Aman") arrived on the scene with a drug canine. He left the canine in his vehicle, walked up to where Cpl. Owens and Provet were standing next to Cpl. Owens' patrol car, and stood there while Cpl. Owens explained the ticket to Provet. (State's Exhibit 1; R., p. 41).

When Cpl. Owens finished explaining the ticket to Provet, he handed him his license and the vehicle registration back. This occurred approximately ten minutes after Cpl. Owens

initiated the traffic stop. (State's Exhibit 1; R., pp. 41, 84).

Cpl. Owens then asked Provet if he could search the Expedition. Provet consented, and Cpl. Owen told Cpl. Aman to run the canine around the vehicle. Prior to getting the canine out of his patrol car, Cpl. Aman told Provet he was going to check for anything in or around the Expedition that might be harmful to, or contaminated by, the canine. There was a fast food container in the front passenger floor board, and when Cpl Aman reached in to remove it, Provet fled across six lanes of traffic on I-85, over the center concrete barrier and guard rail, down the embankment and along the fence line. Cpl. Owens and Cpl. Aman caught him after a foot pursuit, and returned him to the scene. (State's Exhibit 1; R., pp. 41-44, 57-65).

After they returned to the scene, Cpl. Aman ran the drug canine around the Expedition. Inside the fast food container he saw earlier, officers found a plastic bag of white powder that field tested positive for cocaine. (State's Exhibit 1; R., pp. 44-45).

Cpl. Aman testified *in camera* that Cpl. Owens was talking to Provet when he arrived on the scene. After he walked up to where they were standing next to Cpl. Owens' patrol car, Cpl. Owens received the information on the license and registration checks, and finished explaining the ticket to Provet. Cpl. Owens then asked Provet for consent to search the vehicle, and he consented. Cpl. Aman went to inspect the roadway for glass or other hazards, and remove any food from the vehicle.[2] There was a partially open fast food chicken box in

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[2]According to the videotape and Cpl. Owens' trial testimony, Cpl. Aman specifically asked Provet whether there was food in the vehicle. When Provet told him there was food in there, Cpl. Aman told him he was going to get the food out and put it on top of the vehicle so the canine would not get into it. (State's Exhibit 1; R., pp. 146-147).

the passenger floorboard, and a Zip-loc type plastic bag was sticking out the top. As Cpl. Aman removed the box, Provet ran across the interstate. (R., pp. 66-74).

After they apprehended Provet, Cpl. Aman ran his drug canine around the vehicle and the canine positively alerted. Officers removed the bag Cpl. Aman previously observed, and the substance inside field tested positive for cocaine. (R., pp. 69, 77-78).

Based on the *in camera* testimony and the videotape from Cpl. Owens' patrol car, the circuit court found the initial traffic stop was legitimate, Cpl. Owens articulated factors supporting a reasonable basis to detain Provet and request consent to search, Provet consented to the search, and his consent was voluntary under the circumstances. Based on those findings, the court denied Provet's motion to suppress the evidence. (R., pp. 101-112).

Cpl. Owens and Cpl. Aman testified at trial consistent with their pre-trial testimony.[3] (R., pp. 132-185). A forensic chemist testified the substance found in Provet's vehicle was 220 grams of cocaine. (R., p. 219).

The jury convicted Provet of trafficking cocaine and resisting arrest, and the circuit court sentenced him to the mandatory twenty-five years incarceration on the trafficking conviction, and one year incarceration, concurrent, on the resisting arrest conviction. (R., pp. 309-310, 316-318). This appeal followed.

By Opinion filed January 31, 2011, the South Carolina Court of Appeals affirmed Provet's conviction, and denied his Petition for Rehearing by Order filed May 5, 2011.

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[3]Cpl. Owens also testified at trial he detected an "overwhelming" odor of air fresheners when he initially approached the Expedition, which meant the presence of more than one air freshener, a tactic commonly used to mask odors from law enforcement. (R., pp. 137-138). On State's Exhibit 1, Cpl. Owens specifically mentions the strong air freshener odor while discussing the events with another officer at the scene.

(Appendix, pp. 1-27). On August 30, 2011, Provet filed a Petition for Writ of Certiorari seeking review of the Court of Appeals decision.

## ARGUMENT

**I. The Court of Appeals properly affirmed the circuit court's determination the officer articulated specific facts giving rise to reasonable suspicion Provet was engaged in illegal activity.**

Provet contends the Court of Appeals erred in affirming the circuit court's denial of his motion to suppress, asserting Cpl. Owens did not have reasonable suspicion of criminal activity, and therefore, his continued detention was unlawful and his consent to search was necessarily involuntary. As he did before the Court of Appeals, Provet asks this Court to ignore the circuit court's findings, review the evidence *de novo*, and accept Provet's interpretation of the testimony and videotape.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). The appellate standard of review in Fourth Amendment search and seizure cases is limited to determining whether any evidence supports the trial judge's finding, and will reverse only if there is clear error. State v. Tindall, 388 S.C. 518, 698 S.E.2d 203, 205 (2010); State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000); State v. Adams, 377 S.C. 334, 659 S.E.2d 272 (Ct. App. 2008); State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005).

Generally, seizures of persons, including brief detentions, require probable cause to arrest, and investigative detentions violate the Fourth Amendment in the absence of probable cause. See Florida v. Royer, 460 U.S. 491, 499 (1983). In Terry v. Ohio, 392 U.S. 1 (1968), and its progeny, the courts created a limited exception to the probable cause requirement for investigative detentions, finding the balance between the public interest and the individual's right to personal security tilts in favor of a standard less than probable cause in those cases.

*See* United States v. Arvizu, 534 U.S. 266, 273 (2002); United States v. Sokolow, 490 U.S. 1, 7 (1989).

Under Terry, certain seizures are justifiable under the Fourth Amendment if there is a reasonable and articulable suspicion the person is involved in criminal activity. United States v. Cortez, 449 U.S. 411, 417 (1981); Pichardo, 623 S.E.2d at 847. For Fourth Amendment purposes, a police officer with reasonable suspicion a particular person has committed, is committing or is about to commit a crime, may detain the person briefly in order to investigate the circumstances that provoked suspicion. *See* Arvizu, 534 U.S. at 273; Berkemer v. McCarty, 468 U.S. 420, 439 (1984).

In the present case, it is undisputed the initial traffic stop was justified. Provet contends the circuit court and Court of Appeals erred in finding Cpl. Owens had reasonable suspicion of criminal activity to justify his continued detention, and asserts this Court's opinion in Tindall mandates a finding Cpl. Owens did not have sufficient reasonable suspicion.

In analyzing the circumstances in this case, particularly in light of Tindall, it must be noted **all** the interaction between Cpl. Owens and Provet on which Cpl. Owens premised his decision to ask for consent to search the vehicle, occurred **prior** to his receipt of the computer check results on Provet's driver's license and the vehicle registration, and his completing the warning ticket and presenting it to Provet. *Compare* State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002) (officer issued ticket and then asked driver and passenger questions regarding their itinerary and relationship) *with* State v. Jones, 364 S.C. 51, 610 S.E.2d 846 (Ct. App. 2005) (no constitutional violation when officer asked questions

while in the process of checking driver's license and writing ticket, and did not deviate from his normal procedures). "[M]ere police questioning does not constitute a seizure," and questioning on a matter unrelated to the purpose of a detention does not constitute a "discrete Fourth Amendment event." Muehler v. Mena, 544 U.S. 93, 101 (2005); *see also* Schneckloth v. Bustamonte, 412 U.S. 218 (1973)[upholding a request to search made during a traffic stop]; Tindall, 698 S.E.2d at 208 (Kittridge, A.J., dissenting opinion); *cf.* Florida v. Bostick, 501 U.S. 429, 434 (1991)(mere police questioning does not constitute a seizure).

As in Jones, Cpl. Owens' questioning during the course of the traffic stop did not otherwise convert the stop into an unlawful detention. He did not prolong the traffic stop or exceed its scope by asking brief, general investigative questions during the course of the traffic stop, such as those related to travel itinerary and ownership of the car, and it was reasonable for him to seek some verification of Provet's answers via computer checks, particularly in connection with ownership of the car. Such questions and actions are appropriate to any traffic investigation, and did not unreasonably prolong the traffic stop's duration.[4] Berkemer v. McCarty, 468 U.S. 420, 439 (1984); United States v. Purcell, 236 F.3d 1274, 1279-80 (11th Cir. 2001); United States v. Allegree, 175 F.3d 648, 650 (8th Cir. 1999) ("a reasonable investigation following a justifiable traffic stop may include asking for the driver's license and registration, asking the driver to sit in the patrol car, and asking about the driver's destination and purpose"); United States v. Jeffus, 22 F.3d 554, 556-557 (4th Cir.

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[4]A mere ten minutes elapsed between the time Cpl. Owens initiated the traffic stop and when he presented the warning ticket to Provet. On its face, this short time period was reasonable, and Provet's assertion Cpl. Owens prolonged the traffic stop just to wait on the canine unit's arrival is contradicted by the videotape.

1994); *see also* Tindall, 698 S.E.2d at 205 (in carrying out a routine traffic stop, law enforcement officer may request driver's license and vehicle registration and run a computer check).

"Reasonable suspicion" requires a particularized and objective basis leading one to suspect another of criminal activity. State v. Blassingame, 338 S.C. 240, 525 S.E.2d 535, 539 (Ct. App. 1999). The reasonable suspicion standard is less demanding than probable cause, and requires a showing considerably less than preponderance of the evidence. Illinois v. Wardlow, 528 U.S 119, 123 (2000).

Courts must consider the whole picture in determining whether reasonable suspicion exists. Sokolow, 490 U.S. at 8; *see also* United States v. Branch, 537 F.3d 328 (4th Cir. 1008) (judicial review of evidence offered to demonstrate reasonable suspicion must be commonsensical, focus on the evidence as a whole, and be cognizant of both context and the particular experience of police officers); State v. Wallace, 392 S.C. 47, 707 S.E.2d 451, 453 (Ct. App. 2011) (same). "'Court are not remiss in crediting the practical experience of officers who observe on a daily basis what transpires on the street.'" United States v. Foreman, 369 F.2d 776, 782 (4th Cir. 2004) (*quoting* United States v. Lender, 985 F.2d 151, 154 [4th Cir.1993]); Wallace, 707 S.E.2d at 453 (courts may appropriately consider the officer's practical experience in its reasonable suspicion analysis).

Factors consistent with innocent travel can give rise to reasonable suspicion of criminal activity when considered together and in context. Sokolow, 490 U.S. at 9. While individual factors standing alone may be insufficient to establish reasonable suspicion, in concert they may raise more than a simple hunch that criminal activity is afoot. Arvizu, 543

U.S. at 277; Branch, 537 F.3d at 339; United States v. McCoy, 513 F.3d 405 (4th Cir. 2008); Foreman, 369 F.3d at 785; Wallace, 707 S.E.2d at 453.

Provet asks this Court to engage in the type of individual factor analysis soundly rejected by federal and state courts. *See* Arvizu; Branch; Foreman; Wallace. Considered individually, out of context and without regard for Cpl. Owens' experience, each of the facts Cpl. Owens articulated as the basis for his suspicions is certainly susceptible of innocent explanation. In fact, Cpl. Owens stated he would not have proceeded on the basis of any one single fact, but the totality of the circumstances raised his suspicions. (R., pp. 57, 63). Contrary to Provet's assertions, however, the Court's analysis cannot stop there. Rather, the Court must consider the facts in context.

Cpl. Owens, an officer with fourteen years law enforcement experience, including extensive training and experience in drug interdictions, testified the following facts made him suspect criminal activity: 1) Provet was visibly, and unusually, nervous when he handed his license and registration to Cpl. Owens; 2) the vehicle was registered to a third party who was not present, a common practice with drug traffickers; 3) Provet's responses to Cpl. Owens' questions regarding his travel itinerary and purpose were inconsistent and appeared to be deceptive; 4) Provet used delaying tactics when responding to questions; 5) Provet said he did not have any luggage in the vehicle even though he said he had been staying in a motel for two days; 6) even though Provet said he did not have any luggage, there was a black bag in the vehicle; 7) Provet said he was unemployed, but he was driving a SUV that was relatively expensive to drive and had purportedly stayed in a motel for two days; 8) there were numerous fast food containers and a cell phone in the vehicle, and drug dealers

frequently eat fast food and communicate via cell phones when transporting drugs; and 9) there were numerous air fresheners in the vehicle, and air fresheners are frequently used to hide odors from law enforcement officers or drug detention canines. (State's Exhibit 1; R., pp. 30-40).[5] As the Court of Appeals and circuit court found, the combined impact of all these facts, considered in light of Cpl. Owens' knowledge and experience, provided ample basis for his suspicion of illegal activity and justified further detention for investigation.[6] *See e.g.*, Arvizu (similar facts constituted sufficient basis for reasonable suspicion of illegal activity); Branch (same); Foreman (same); Wallace (same).

Provet's reliance on Tindall and State v. Rivera, 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009), is misplaced. As the Court of Appeals found, there are key distinctions between those cases and the instant case.

In Tindall, the dispatcher reported to the officer there were no problems with the defendant's driver's license or the vehicle registration. Rather than issue the ticket at that time, however, the officer continued questioning the defendant for six to seven minutes while two other officers called for back-up stood outside the patrol car door. This Court found the detention after the dispatcher's report exceeded the scope of the traffic stop, and the officer did not have sufficient information at that time to reasonably suspect criminal activity. 698

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[5]Provet notes Cpl. Owens did not take the fast food bags, air fresheners or cell phone into evidence. While this is true, it is absolutely irrelevant to the reasonable suspicion analysis.

[6]Provet contends the videotape disputes Cpl. Owens' testimony regarding Provet's nervousness and delaying tactics. While a videotape is useful, it cannot be disputed certain things, such as hands shaking and accelerated breathing, may not be as clearly visible on a videotape as they are in person. Delaying tactics ,such as repeating the question or hesitating before answering, are apparent on the videotape.

S.E.2d at 205-06.

In Rivera, it is unclear from the opinion whether the officer requested a computer check on the defendant's license and registration, but at some point he apparently concluded he would only issue a warning ticket. Thereafter, he called for back-up and started talking to the defendant about transporting illegal drugs on the interstate. The Court of Appeals (with one dissent) found the continued questioning after the officer determined he would only issue the warning ticket exceeded the scope of the traffic stop. 682 S.E.2d at 310.

In contract, as discussed above, **all** of the facts on which Cpl. Owens based his suspicion of criminal activity were established **before** he received the dispatcher's report on Provet's driver's license and the vehicle registration. Until that time, the purpose of the traffic stop continued, and Cpl. Owens completed the warning citation immediately after receiving the dispatcher's report. He then gave the citation to Provet, explained it to him, and returned his license and registration **before** asking for consent to search the vehicle.[7]

Provet further contends the Court of Appeals "failed to consider the factors that were indicative of innocent travel." (Petition, p. 17). Significantly, while quoting extensively from the Court of Appeals opinion, Provet omits the single sentence most relevant to this contention.

After listing the factors on which the circuit court based its finding of reasonable suspicion, the Court of Appeals stated: "We are keenly aware that some of the items found in Provet's vehicle are commonplace and consistent with innocent travel." (Appendix, p.

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[7]The circumstances of the consent are discussed below in Issue II.

10).[8] The Court then acknowledged the factors had to be viewed in context, and the reasonable suspicion inquiry had to consider "the totality of the circumstances, particularly considering Owens' four years of experience as a member of the South Carolina Highway Patrol's Aggressive Criminal Enforcement Unit." (Appendix, pp. 10-11). Therefore, contrary to Provet's contention, the Court of Appeals expressly considered the innocent nature of certain factors, but applied the appropriate standard in analyzing all the factors in context.

Provet asks this Court to weigh each factor listed by the circuit court and the Court of Appeals individually and out of context, and to completely ignore Cpl. Owens' extensive knowledge and experience as a seasoned law enforcement officer. Such a review is contrary to well established law, ignores the practical realities of traffic stop situations in which law enforcement officers must make judgment calls, and unduly restricts them in carrying out their duty to investigate possible criminal activity. The evidence in this case amply supports the finding Cpl. Owens reasonably suspected criminal activity at the time he continued Provet's detention beyond the traffic stop, and the Petition for Writ of Certiorari should be denied on this issue.

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[8]This sentence is **first** sentence in the opinion after Provet's block quotes end.

**II. The Court of Appeals properly affirmed the circuit court's determination that Provet voluntarily consented to the search of his vehicle.**

Provet also contends the circuit court and Court of Appeals erred in finding his consent to search the vehicle was voluntary, asserting it was involuntary because he was not "free to leave," and it resulted from exploitation of his unlawful detention. Provet's reliance on State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002), as to this issue is misplaced.

A voluntary consent to search constitutes a waiver of Fourth Amendment rights. United States v. Perrin, 45 F.3d 869, 875 (4th Cir. 1995). Whether a consent to search is voluntary is a question of fact to be determined from the totality of the circumstances. Adams, 659 S.E.2d at 275. Law enforcement officers may request consent to search at any time, but if the request is made after an unconstitutional detention, any consent procured is *per se* invalid unless it is both voluntary and not an exploitation of the unlawful detention. *Id.*; Williams, 571 S.E.2d at 710.

As discussed above, there is ample evidence in the record supporting the finding Provet's detention was lawful. Therefore, it was not unconstitutional as a matter of law, and the Williams analysis of consent obtained after an unconstitutional detention does not apply.

Based on the evidence presented, particularly the videotape at the scene, the circuit court found Provet affirmatively gave consent to search the vehicle and engaged in further congenial conversation with the officers. The court also found there "was nothing threatening or coercive in either of the officers' behavior or voice that were shown on the video tape or by their testimony." (R., pp. 107-109, 111-112).

It should be noted Provet was never seated inside the patrol car, Cpl. Owens requested consent to search the vehicle after he handed Provet's license and registration back to him, and Provet consented within three seconds. Thus, there was no prolonged or coercive encounter on the side of the road prior to the consent.

While Cpl. Owens did testify he would not have let Provet leave at that point, he did not tell Provet he could not leave, or even attempt to stop him from leaving, prior to obtaining consent to search. Even if he had informed Provet he could not leave, however, it would not render Provet's consent involuntary since the continued detention was justified. *See* United States v. Boone, 245 F.3d 352, 362 (4th Cir. 2001) (if individual voluntarily consents to a search while justifiably detained on reasonable suspicion, the products of the search are admissible); *see also* United States v. Watson, 423 U.S. 411 (1976) (consent given while in custody may still be voluntary).

Taken to its logical conclusion, Provet's contention his consent was involuntary because the encounter took place in darkness on the side of a busy interstate (a time and place Provet chose when he violated the traffic laws), there were a number of officers at the scene (even though only two officers were standing there when Provet consented and then fled the scene), and he was ordered out of his vehicle and subjected to a Terry search (both related to officer safety and during the course of the traffic stop), will render involuntary any consent obtained during a nighttime traffic stop on the interstate with multiple officers present. This is not, and never has been, the law.

Circumstances of a particular situation may render a consent involuntary, but there was no evidence in this case indicating the officers engaged in coercive, deceptive or

intimidating behavior such that Provet's free will was overborne.[9] On the contrary, the videotape reveals the two officers were extremely polite and professional toward Provet at all times, the detention prior to the request for consent was short in duration and related to the traffic stop, neither officer accused Provet of criminal activity, Provet's documents were returned to him before Cpl. Owens requested consent to search the vehicle, and neither officer attempted to prevent Provet from leaving prior to him consenting to the search.[10] The finding Provet voluntarily consented to the search of his vehicle is amply supported by the evidence, and the Petition for Writ of Certiorari should be denied on this issue.

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[9]United States v. Blanc, 245 Fed.Appx. 271 (4th Cir. 2007) (2007 WL 2413146) (unpublished) (consent to search vehicle after officer reasonably suspected criminal activity was voluntary, and there was no evidence of coercion, deception or intimidation).

[10]Provet's assertion the circuit court and Court of Appeals should have considered his "age, maturity, education, intelligence and experience" is not preserved for appellate review. He did not present any evidence in the circuit court on any of those factors, or even argue those factors weighed against the voluntariness of his consent.

## CONCLUSION

Based on the foregoing, the State respectfully submits the Court should deny the Petition for Writ of Certiorari in its entirety.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Deputy Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: Deborah R.J. Shupe
DEBORAH R.J. SHUPE

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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THE STATE,

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Petitioner.

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**PROOF OF SERVICE**

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

Tricia A. Blanchette, Esquire
PO Box 12725
Columbia, SC 29211-2725

I further certify all parties required by Rule to be served have been served.

This 19th day of October, 2011.

Ellen R. DuBois

ELLEN R. DUBOIS
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727