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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

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KEVIN T. HARDY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000096

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SUPPLEMENTAL APPENDIX

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ATTORNEYS FOR RESPONDENT

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**STATE OF NORTH CAROLINA** 


*Kevin T. Harbo*

**MOTORCYCLE LEARNER PERMIT** 10035046

WASHINGTON NC 27889-6853

class: C endors: None restr: 18  
 issued 05-17-2005 expires 11-17-2008  
 sex: M ht: 5-11 eyes: BRO hair: B




**STATE OF NORTH CAROLINA** 

*Kevin T. Harbo*

**DRIVER LICENSE** 10035046

WASHINGTON NC 27889-6853

KEVIN TILJUAN HARBO  
 RAEBGA, NE 27890-2695



class: C endors: None restr: 18  
 issued 05-19-2003 expires 10-17-2008  
 sex: M ht: 5-11 eyes: BRO hair: B  
 birthdate: *KEVIN*

**STATE OF NORTH CAROLINA**

**REGISTRATION CARD**

144 034 4

WASHINGTON NC 27889-6853


VEHICLE ID #	1YVGD31BSM5114325	TITLE #	775322032979055	VALID THRU	11/15/2005	GROSS WT	
MAKE	BMW	STYL	25	YEAR	1997	FUEL	Q
CLASSIFICATION	PRIVATE/PLUGS VEH	CUSTOMER ID # OWNER 1		CUSTOMER ID # OWNER 2		COUNTY	BEAUF
SHIPPING WEIGHT		CUSTOMER ID # OWNER 1		CUSTOMER ID # OWNER 2		COUNTY	BEAUF
VEHICLE WEIGHT		CUSTOMER ID # OWNER 1		CUSTOMER ID # OWNER 2		COUNTY	BEAUF
VEHICLE BRAND		CUSTOMER ID # OWNER 1		CUSTOMER ID # OWNER 2		COUNTY	BEAUF
TOTAL FEE	20.0	CUSTOMER ID # OWNER 1		CUSTOMER ID # OWNER 2		COUNTY	BEAUF

KEVIN TILJUAN HARBO

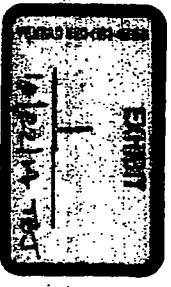
107 - INTERCON GENERAL INSURANCE CORP  
 INSURANCE COMPANY AUTHORIZED IN NC

POLICY NUMBER  
 92A750113300

*Kevin T. Harbo*  
 SIGNATURE



1YVGD31BSM5114325



**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,  
  
v.  
  
Kevin Tijuan Hardy, Appellant.

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Appeal From Greenville County  
G. Edward Welmaker, Circuit Court Judge

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Unpublished Opinion No. 2012-UP-315  
Heard April 10, 2012 – Filed May 23, 2012

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**AFFIRMED**

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Appellate Defender Lanelle Cantey Durant, of  
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy  
Attorney General John W. McIntosh, Senior  
Assistant Deputy Attorney General Salley W. Elliott,

Assistant Attorney General Mark R. Farthing, all of  
Columbia, for Respondent.

**PER CURIAM:** Kevin Tijuan Hardy was indicted for and convicted of trafficking in cocaine and crack cocaine and sentenced to twenty-five years and seven years, respectively. Hardy appeals, asserting the trial court erred in (1) denying his motion to suppress the drug evidence resulting from a traffic stop, and (2) allowing the State to present a factor to support reasonable suspicion to search that was discriminatory and violated the Equal Protection Clause. We affirm.

1. We find no error in the trial court's denial of Hardy's motion to suppress the drug evidence based on his assertion the search of his car exceeded the scope of the traffic stop. We find this case to be similar to that of State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011), and State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011), and distinguishable from State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010). Here, as in Provet, the traffic stop was not prolonged for questioning by the officer after the purpose of the traffic stop had been accomplished. Rather, the officer's series of questions and observations occurred prior to the conclusion of the traffic stop, as the officer was still waiting to hear from dispatch regarding Hardy's license and registration. After the officer completed the warning citation, dispatch reported back to him on the license and registration, and he explained the warning citation to Hardy and handed him the ticket, immediately asking Hardy for consent to search. Here, as in Provet, the officer did not prolong the stop several minutes to ask further questions after the purpose of the stop was met. Further, as in Provet and Wallace, the officer here developed his reasonable suspicion as a result of additional factors that were not present in Tindall. While the factors noted by the officer here, standing alone, may be insufficient to support reasonable suspicion, when considered together under the totality of the circumstances, they were sufficient to provide reasonable suspicion for the officer to detain Hardy while the drug detection canine walked around his vehicle. See Wallace, 392 S.C. at 55, 707 S.E.2d at 455 (holding that while none of the fourteen factors relied upon by the State to support reasonable suspicion independently amounted to reasonable suspicion of criminal activity, "blending each of [the] 'tiles' into the 'entire mosaic' of the totality of the

circumstances," the officer had reasonable suspicion to detain appellant while he walked the drug dog around the car). Finally, as in Provet and Wallace, the officer here was a highly experienced officer, having worked as a highway patrolman for a number of years, many of those years assigned to the Aggressive Criminal Enforcement (ACE) unit, and having taught criminal patrol and interdiction both at the state and national level.<sup>1</sup> See Wallace, 392 S.C. at 52, 707 S.E.2d at 453 (noting that where evidence showed officer involved was experienced, having worked in law enforcement for over ten years prior to Wallace's arrest during which time he was continually trained in drugs and drug interdiction, and officer's testimony described in detail what happened, what he observed, and the conclusions he drew from those facts in suppression hearing, considering such testimony and the totality of the circumstances of the case, the evidence supported the trial judge's ruling that the officer's suspicion was reasonable under the Fourth Amendment); Provet, 391 S.C. at 506, 706 S.E.2d at 519-20 (observing officer involved in that matter had four years of experience as a member of the ACE unit and finding, based on the totality of circumstances and particularly considering the officer's experience, there was evidence in the record to support the trial court's ruling and the trial court did not abuse its discretion in finding reasonable suspicion).

2. We further find no merit to Hardy's contention the trial court erred in "allowing the State to present, as one of the factors for reasonable suspicion to search, 'one black male driving alone' which was discriminatory and violated the Equal Protection Clause of the United States Constitution." This

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<sup>1</sup> At the time of this incident, the officer in question had more than fifteen years of experience as a highway patrolman and a total of eighteen years of experience in law enforcement. After five years of service with the Highway Patrol, he was assigned to the ACE unit and was a first-line supervisor under the ACE team at the time of this matter. He completed more than 1,000 hours in advanced criminal patrol and interdiction technique in the last ten years, was a certified instructor in criminal patrol and extending traffic stops with the National Highway Traffic Safety Association, was a certified instructor in advanced criminal patrol through the South Carolina Criminal Justice Academy, and was a national instructor with the National Criminal Enforcement Association.

issue is not preserved for review. Although Hardy's trial counsel questioned the officer concerning consideration of a "black male driving alone" as a factor to support reasonable suspicion, Hardy never argued to the trial court that the State had presented such a factor or that it should not be allowed to present such a factor, never argued to the trial court that such amounted to selective enforcement, and never asserted that it was a violation of his right to equal protection. In fact, Hardy raised no objection or motion in regard to this matter whatsoever. See State v. Jennings, 394 S.C. 473, 481-82, 716 S.E.2d 91, 95 (2011) (holding the rule that for an issue to be properly preserved it has to be raised to and ruled on by the trial court also applies to constitutional arguments); State v. McKnight, 352 S.C. 635, 646, 576 S.E.2d 168, 174 (2003) (noting contention must be raised to and ruled upon by trial court to be preserved for appellate review); State v. Haigler, 334 S.C. 623, 632, 515 S.E.2d 88, 92 (1999) (noting a constitutional argument is not preserved for appeal where the appellant fails to argue the constitutional basis for his request at trial). Further, the officer specifically indicated that he did not consider this fact as an indicator of criminal activity. The officer referenced Hardy's race when he was discussing the details of what he observed after he stopped Hardy, and his subsequent testimony makes clear that this was not included as one of the factors to support reasonable suspicion to extend the stop.

For the foregoing reasons, Hardy's conviction is

**AFFIRMED.**

**FEW, C.J., and HUFF and SHORT, JJ., concur.**