THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
William P. Keesley, Circuit Court Judge

Opinion No. 2015-UP-417 (S.C. Ct. App. filed August 12, 2015)

Appellate Case No: 2015-002170

State of South Carolina, ... Respondent,

v.

Raheem Jamar Bonham, ... Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General
S.C. Bar No. 8729

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

ATTORNEYS FOR RESPONDENT

Other Counsel of Record:

Wanda H. Carter, Deputy Chief Appellate Defender
S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia, SC 29211-1589
(803) 734-1343
Attorney for Petitioner

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QUESTION PRESENTED

1. Whether the Court of Appeals properly affirmed the trial court's denial of Petitioner's motion to suppress the drugs discovered in the search of the rental car in which he was a passenger where: (1) the police did not stop the vehicle in question and instead engaged in a consensual police encounter after the driver independently stopped the car; (2) as a passenger, Petitioner had no legitimate expectation of privacy in the vehicle or the passenger compartment where the drugs were found; (3) the brief investigative detention of Petitioner was reasonable under the totality of the circumstances; and (4) there was no nexus between the investigative detention and the discovery of the drugs during the consent search of the car.

STATEMENT OF THE CASE

Raheem Jamar Bonham (Petitioner) was indicted at the June 2013 term of the grand jury for Lexington County for possession of crack cocaine (2013-GS-32-967). He was represented by Bennett E. Casto, Esquire. (R.p.1). On June 3-6, 2013, Petitioner proceeded to trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable William P. Keesley to one (1) year's imprisonment. (R.p.314-p.317). Petitioner timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and a motion to be relieved as counsel. By Order dated August 14, 2014, this Court denied the motion to be relieved and directed the parties to brief the following issue and any other issue of arguable merit: "Whether the trial court erred in denying Bonham's motion to suppress the drug evidence." Petitioner subsequently filed a Brief in support of his Appeal and the Respondent (the State) filed a brief in response. Petitioner's conviction and sentence were affirmed in an unpublished opinion from the Court of Appeals. State v. Bonham, Op. No. 2015-UP-417 (S.C. Ct. App. filed August 12, 2015). (App.p.1-p.2). Petitioner submitted a timely Petition for Rehearing and by Order filed September 17, 2015, the Petition was denied. (App.p.3-p.11). On November 9, 2015, Petitioner submitted a Petition for a Writ of Certiorari to this Court and now this Return on behalf of the State follows.

STATEMENT OF FACTS

On the evening of August 10, 2012, three officers with the Lexington County Sheriff's Department (LCSD) were conducting surveillance on a known drug house in Lexington County. At 9:45 p.m. they saw a white Kia Rio pull into the driveway and stay for less than two minutes before backing out and driving away. The officers left their surveillance location in three patrol cars in an attempt to intercept the Kia; however, it pulled over and stopped just before the police caught up to it. As the officers were parking, they saw three individuals getting out of the Kia. Petitioner got out of the front passenger seat and began walking toward a group of ten to fifteen people who were standing nearby. Two of the officers asked Petitioner to come back and placed him in brief investigative detention when he became argumentative and made threats. At that point the third officer had determined the car was not stolen and approached the driver to ask if the police could search the car. The driver gave unlimited consent to search. The officers found a plastic bag under the front passenger seat which contained two yellowish-white rocks believed to be crack cocaine.[1] They subsequently placed Petitioner under arrest. (R.p.36, line 12-p.56, line 25; p.61, line 23-p.90, line 16).

Prior to trial, Petitioner moved to suppress the drugs found in the search of the automobile. He argued the police made an unlawful stop and seizure which violated the Fourth Amendment. (R.p.35, line 15-p.36, line 2). The State called the three LCSD officers to testify about the encounter and search during the ensuing suppression hearing. First, the State called the arresting officer, LCSD Deputy Nicholas Edward Burt (Burt). He was part of the crime suppression task force, which had been conducting surveillance on a known drug house in Lexington County. Burt explained there had been eight or nine

[1] Laboratory testing later confirmed the rocks were indeed crack cocaine.

complaints about the house from January through June of 2012 and that he had personally made a drug arrest based on a marijuana sale from the drug house in July. (R.p.36, line 12-p.41, line 25).

At 9:45 p.m. on the night of August 10, 2012, Burt and two other officers on the task force saw a white Kia Rio pull into the house's driveway. The car stayed for just under two minutes before backing out and driving away. Burt testified that based on his training and experience this scenario was consistent with a drug sale or buy. He also noted the house is in a neighborhood with a high crime rate. The three officers left their surveillance point in three separate marked patrol cars, driving two different routes through the neighborhood in an attempt to intercept the white Kia. The Kia pulled over and stopped on the street just before the police caught up to it. As Burt turned his car around to stop, he saw three people beginning to get out of the Kia. A black female got out of the driver's seat, a second black female got out of the back seat on the driver's side, and Petitioner got out of the front seat on the passenger side. Burt ran the license tag and registration through dispatch and discovered the car was not stolen. He then made contact with the driver, obtained her driver's license, and determined her license was suspended. Burt asked the driver for consent to search the car and within five minutes of the initial contact she gave unlimited consent to search. (R.p.42, line 1-p.52, line 23).

Upon searching the car, the police found a plastic bag under the front passenger seat which contained two yellowish-white rocks believed to be crack cocaine. They also found information in the glove compartment confirming what they had learned from running the registration, that the car was owned by a rental agency. Although the person

listed on the rental agreement was not one of the three people in the car, Burt had no indication the driver of the vehicle was not in lawful possession or that she could not give consent to search. Petitioner was not listed on the rental agreement. (R.p.52, line 24-p.56, line 25).

Next, the State called Sergeant John William Finch (Finch) to the stand. Finch was serving as a backup officer during the August 10, 2012 surveillance operation. He noted the history of complaints about the drug house and the prior drug arrests stemming from activity at that house. Finch described similar observations to those made by Burt, including seeing the Kia spend less than two minutes at the house before driving away quickly. He confirmed that although the officers were pursuing the Kia, it had already stopped by the time they caught up and saw the three individuals getting out. (R.p.61, line 23-p.69, line 11). Finch saw Petitioner exit the vehicle and begin walking toward a crowd of ten to fifteen people who were hanging around the side of the road. The officers told Petitioner to return the car and when Petitioner became aggressive and threatening, Finch placed him in investigative detention. After the other officers found the drugs in the car, Finch asked Petitioner if it was his dope. Petitioner first replied, "That's all I've got" and then said, "no, that's not mine." Finch arrested Petitioner and read him his Miranda rights. Petitioner then told Finch the drugs were his and said he wanted to cooperate. (R.p.69, line 12-p.80, line 4).

Finally, the State called Captain Barron Lee Thomas (Thomas) to the stand. He was also assisting Finch and the suppression unit on the night of the incident. Thomas described leaving the surveillance point to try to find the Kia after it left the house. He testified the Kia had already stopped and that the driver and two passengers were

beginning to exit when he stopped his vehicle and got out. Thomas described his interactions with Petitioner which ultimately led to Petitioner being handcuffed and placed in investigative detention. Burt advised Thomas the driver had given consent to search the car. Thomas looked in the passenger side of the Kia and immediately noticed the plastic bag containing the drugs sitting at the base of the front passenger seat on the floor. (R.p.81, line 22-p.90, line 16).

Next, the trial court heard arguments in regard to the motion to suppress. Petitioner complained that the officers intended to intercept the white Kia despite not having seen anyone get out of or approach the car during the two minutes it was at the drug house. He then noted the car was not pulled over for any type of traffic violation. Petitioner initially argued the "stop" occurred when Thomas told Petitioner to come back to the car after he attempted to walk away. He further argued there was no reasonable articulable suspicion of criminal activity for the police to initiate the encounter and claimed the drugs should be suppressed as a result of the "unconscionable stop." (R.p.91, line5-p.96, line 21). The State responded that under the totality of the circumstances, the brief investigative detention of Petitioner shortly before the discovery of the drugs was reasonable and constitutional after the initial encounter. (R.p.96, line 23-p.99, line 20). The trial judge then gave his initial impressions about Petitioner's motion. He noted there had been no evidence the officers actually stopped the vehicle and said the officers seemed to have acted properly in telling Petitioner to come back when he tried to walk away from the car. The judge commented that Petitioner's entire challenge seemed to be an attempt to assert the rights of somebody else in regard to the consent search of the vehicle rather than his own. (R.p.100, line 25-p.104, line 18).

After hearing additional arguments and case references from the parties, the trial court denied Petitioner's motion to suppress. In regard to the initial encounter, the trial court found the police did not stop the vehicle and that it had stopped on its own. In regard to the investigative detention, the trial court found Petitioner's behavior after the car stopped combined with the officers' prior observations at the known drug house were sufficient to justify briefly detaining Petitioner. Finally, the trial judge found the search of the car was proper because the driver gave consent. (R.p.104, line19-p.123, line 17).

At trial, LCSD officers Burt, Finch, and Thomas provided testimony similar to that given at the pretrial hearing. They also provided additional details about the surveillance, their encounter with the white Kia Rio, the consent search of the car, the drugs discovered under the passenger seat during the search, and Petitioner's various statements in regard to whether the drugs were his. (R.p.141, line 1-p.166, line 14; p.174, line 20-p.175, line 16; p.184, line 7-p.207, line 6; p.210, line 19-p.212, line 20; p.213, line 14-p.222, line 15-p.225, line 4). The State also presented testimony from LCSD evidence custodian Candy Kyzer in regard to the chain of custody and LCSD chemist Emily Homer-Conrad in regard to lab tests confirming the substance was crack cocaine. The Best evidence kit containing the drugs and Homer-Conrad's written report were both admitted into evidence over Petitioner's renewed objections. (R.p.225, line 11-p.240, line 15).

At the conclusion of the State's case, Petitioner moved for a directed verdict and renewed all prior motions and objections he had made pretrial and during trial, including the motion to suppress. The trial judge held: "[L]ooking at the totality of the circumstances, I do think it's sufficient, but I acknowledge that it's a close call. And I

reiterate what I said earlier, had the officer stopped the car, I would have thrown it out." (R.p.242, line 8-p.243, line 6). Petitioner elected not to testify and offered no evidence in his defense and again renewed his motions, which were again denied by the trial court. (R.p.250, line 25-p.254, line 8). After closing arguments, the trial judge charged the jury on the applicable law, including general jury instructions on the burden of proof, the presumption of innocence, reasonable doubt, the role of the judge and the jury, direct and circumstantial evidence, the jury's duty to assess the credibility of the witnesses, criminal intent, actual and constructive possession, mere presence, and the elements of the crime. (R.p.258, line 9-p.295, line 10). After the jury returned a guilty verdict, Petitioner moved for a new trial and renewed all prior motions and objections. The motions were denied. (R.p.308, lines 11-20). The trial court sentenced Petitioner to one year's imprisonment. (R.p.314, lines 1-7; Sentencing Sheet).

CERTIORARI

Petitioner argues this Court should grant certiorari because the Court of Appeals erred in affirming the trial court's denial of his motion to suppress drugs seized by police following the search of a vehicle in which he was a passenger. He contends the factual scenario in his case did not constitute reasonable suspicion that criminal activity was afoot and as a result, the Court of Appeals should have reversed the trial court's denial of his motion to suppress. The State disagrees and submits the Court of Appeals properly affirmed the trial court's denial of his motion to suppress for several reasons including on grounds that: (1) as a passenger he had no reasonable expectation of privacy in the vehicle, (2) the search conducted under the authority of voluntary consent, and (3) the officers had reasonable suspicion supported by articulable facts that he was involved in criminal activity. Pursuant to Rule 242(b), SCACR, there are no "special and important reasons" for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. Indeed, the Court of Appeals decision was a straightforward exercise of applying existing precedent, logic, and practical consideration of the particular facts and circumstances of Petitioner's case. Thus, the State respectfully requests that Petitioner's petition for a writ of certiorari be denied and dismissed.

ARGUMENT

The Court of Appeals properly affirmed the trial court's denial of Petitioner's motion to suppress the drugs discovered in the search of the rental car in which he was a passenger where: (1) the police did not stop the vehicle in question and instead engaged in a consensual police encounter after the driver independently stopped the car; (2) as a passenger, Petitioner had no legitimate expectation of privacy in the vehicle or the passenger compartment where the drugs were found; (3) the brief investigative detention of Petitioner was reasonable under the totality of the circumstances; and (4) there was no nexus between the investigative detention and the discovery of the drugs during the consent search of the car.

On appeal to the Court of Appeals, Petitioner contended the trial judge erred in denying his motion to suppress drugs seized by the police following the search of a vehicle in which he was a passenger. He maintained the vehicle was illegally stopped in violation of the Fourth and Fourteenth Amendments of the United States Constitution because no reasonable suspicion existed to support the stop that led to the search. Petitioner argued the officers did not observe any actions from the occupants of the vehicle to suggest a drug transaction occurred and therefore the vehicle stop was illegal and the drugs discovered during the search should have been suppressed as fruit of the poisonous tree. He continues to advance this argument in his petition for a writ of certiorari. The State submits Petitioner's argument is without merit for several reasons and that the Court of Appeals properly affirmed the denial of his motion to suppress.

First, the motion to suppress was properly denied because the vehicle was not seized within the meaning of the Fourth Amendment. Instead, the officers merely initiated a consensual encounter after the car stopped on its own, and were then given consent to search by the driver. Thus, the search was entirely a product of consent and invoked no constitutional scrutiny. Second, even if the Court of Appeals determined the

stop and/or search of the car was unconstitutional, Petitioner was not entitled to the benefits of the exclusionary rule because he had no legitimate expectation of privacy in that vehicle or the passenger compartment where the drugs were found. Third, to the extent the Court of Appeals construed Petitioner's claim as a challenge to a seizure of his person while under investigative detention after the car stopped rather than a challenge to the stop/seizure of the car, the detention was nevertheless reasonable under the totality of the circumstances. Finally, even if the Court of Appeals determined Petitioner's investigative detention was an unconstitutional seizure, he was not entitled to suppression of the drugs because there was no nexus between that constitutional violation and discovery of the drugs during the consensual search of the car. For all of these reasons, the trial court properly denied Petitioner's motion to suppress the drugs discovered in the vehicle and the Court of Appeals properly affirmed that denial. Because the trial court's ruling was supported by the evidence, Petitioner's conviction was properly affirmed.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010); State v. Brockman, 339 S.C. 57, 66, 28 S.E.2d 661, 666 (2000); State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. Tindall, 388 S.C. at 521, 698 S.E.2d at 205; State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460

(2002). However, the appellate court must affirm the trial court if there is any evidence in the record to support the ruling. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456; State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

1. Consensual Encounter

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. That guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005).

In arguing the vehicle stop was not supported by reasonable suspicion, the predicate question raised by Petitioner's argument in this case is whether the officers "seized" the car, thereby triggering the Fourth Amendment, or simply initiated a consensual encounter invoking no constitutional scrutiny. See Pichardo, 367 S.C. at 100, 623 S.E.2d at 848; State v. Williams, 351 S.C. 591, 597-98, 571 S.E.2d 703, 707 (Ct. App. 2002). A consensual encounter has been defined as simply the voluntary cooperation of a private citizen in response to non-coercive questioning by a law enforcement official. Pichardo, 367 S.C. at 100, 623 S.E.2d at 848; Williams, 351 S.C. at 599, n.2, 571 S.E.2d at 708, n.2. Mere police questioning does not constitute a seizure for Fourth Amendment purposes. Florida v. Bostick, 501 U.S. 429, 434 (1991); Pichardo, 367 S.C. at 100, 623 S.E.2d at 849. The test for determining if a particular encounter constitutes a seizure within the meaning of the Fourth Amendment is whether

in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Michigan v. Chesternut, 486 U.S. 567, 573 (1988); United States v. Analla, 975 F.2d 119, 124 (4th Cir. 1992); Pichardo, 367 S.C. at 100, 623 S.E.2d at 849. Reasonableness is measured in objective terms by examining the totality of the circumstances. Ohio v. Robinette, 519 U.S. 33, 39 (1996); Pichardo, 367 S.C. at 101, 623 S.E.2d at 849.

Here, the evidence presented at the suppression hearing clearly supported the trial judge's conclusion that by stopping independently on the side of the road, rather than in response to blue lights or other police actions, the white Kia Rio was never seized by the LCSD officers. All three officers testified that although they were pursuing the car with the intent to intercept it, they never got to that point because the car stopped on its own before they caught up to it. The officers did not activate their blue lights and did nothing to cause the car to stop. Petitioner offered no evidence to the contrary. Under the totality of the circumstances, the car was simply not seized within the meaning of the Fourth Amendment and the police initiated a consensual encounter. Thus, the subsequent search of the car was entirely a product of consent and invoked no constitutional scrutiny. The trial court properly denied the motion to suppress and Petitioner's conviction was properly affirmed.

2. No Expectation of Privacy

Even assuming that the stop of the vehicle was somehow improper, Petitioner was not entitled to the benefits of the exclusionary rule because he failed to establish that his own constitutional rights were violated by the stop and the consent search. The evidence and testimony presented during the suppression hearing established that Petitioner was

neither the driver nor an authorized user of the rental car. Petitioner did not have --- and did not assert that he had --- a legitimate expectation of privacy in either the rental vehicle or the property seized. Absent such a legitimate expectation of privacy in the vehicle stopped and searched by the officers, Petitioner could not properly challenge the propriety of the stop and search conducted by the officers and was not entitled to have the drugs excluded from evidence during his trial. Accordingly, even if the trial court erred in ruling the stop was proper, its decision was appropriately affirmed on appeal.

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. For purposes of the Fourth Amendment, a search occurs when "an expectation of privacy that society is prepared to consider reasonable is infringed." United States v. Jacobsen, 466 U.S. 109, 113 (1984). Likewise, a seizure occurs when there is some meaningful interference with an individual's possessory interest in property or with the individual's freedom of movement. Id.; see Terry v. Ohio, 392 U.S. 1, 16, n.16 (1968) ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred."). However, the rights protected by the Fourth Amendment are personal rights and cannot be vicariously asserted. Alderman v. United States, 394 U.S. 165, 174 (1969). As a result, a criminal defendant asserting a challenge to an allegedly unreasonable search or seizure must establish that his own personal Fourth Amendment rights were violated by that search or seizure in order to be entitled to the benefits of the exclusionary rule. State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987); see Rakas v. Illinois, 439 U.S. 128, 132, n.1 (1978) ("The proponent of a motion to

suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.").

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

In Petitioner's case, the evidence and testimony presented during the suppression hearing established that Petitioner was merely a passenger in the vehicle. As a passenger, he had no legitimate claim to the vehicle, no lawful right to control the vehicle, and no possessory interest in the vehicle. See United States v. Hargrove, 647 F.2d 411, 412 (4th Cir. 1981) ("[O]ne who can assert no legitimate claim to the car he was driving cannot reasonably assert an expectation of privacy in a bag found in that automobile. . . . A person who cannot assert a legitimate claim to a vehicle cannot reasonably expect that the vehicle is a private repository for his personal effects, whether or not they are enclosed in some sort of a container[.]"). Petitioner did not have an expectation of privacy in the

rental vehicle that society accepts or recognizes as legitimate and could not properly claim that his own constitutional rights were violated by the alleged stop of the vehicle and the resulting search. See U.S. v. Kennedy, 638 F.3d 159,165 ("[A]s a general rule, the driver of a rental car who has been [l]ent the car by the renter, but who is not listed on the rental agreement as an authorized driver, lacks a legitimate expectation of privacy in the car unless there exists extraordinary circumstances suggesting an expectation of privacy."); Rakas, 439 U.S. at 148-149 (recognizing that a mere passenger in a vehicle would normally not have a legitimate expectation of privacy in the vehicle's trunk or glove box or in the area underneath the vehicle's seats).

In challenging the propriety of the alleged stop and search of the rental vehicle during trial, Petitioner did not present any evidence or testimony to establish that he had a subjective or legitimate expectation of privacy in the vehicle or any of the items in the vehicle. Thus, he failed to establish that his own constitutional rights were violated by the search. See Rawlings v. Kentucky, 448 U.S. 98, 104 (1980) ("Petitioner, of course, bears the burden of proving not only that the search of Cox's purse was illegal, but also that he had a legitimate expectation of privacy in that purse."); McKnight, 291 S.C. at 114, 352 S.E.2d at 473 ("One who seeks to have evidence suppressed on this basis must establish that his *own* Fourth Amendment rights were violated." (italics in original)); see also State v. Robinson, 396 S.C. 577, 583, 722 S.E.2d 820, 823 (Ct. App. 2012) ("For Robinson to establish a Fourth Amendment violation, he must show a legitimate expectation of privacy on the porch."). Because Petitioner failed to establish that he had a legitimate expectation of privacy in the area searched by the officers, Petitioner could not properly claim the protections of the Fourth Amendment in challenging the propriety

of the search during trial or on appeal. See United States v. Salvucci, 448 U.S. 83, 85 (1980) ("[D]efendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have in fact been violated."); Rakas, 439 U.S. at 134 ("A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search or a third person's premises or property has not had any of his Fourth Amendment rights infringed."). Therefore, the drugs discovered following the stop of the rental vehicle were properly admitted into evidence during trial. Accordingly, even assuming that the stop and search of the rental vehicle were somehow improper, the decision of the trial judge was properly affirmed by the Court of Appeals. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

3. Reasonable Suspicion

Although not articulated in his brief, Petitioner may claim he is also arguing the trial court erred in finding the police had reasonable suspicion of criminal activity to justify detaining him once he exited the car and started to walk toward the crowd. To the extent the Court of Appeals construed Petitioner's claim as encompassing a challenge to a seizure of his person while under investigative detention rather than merely a challenge to the stop/seizure of the car, it was nevertheless reasonable under the totality of the circumstances. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). Thus, only unreasonable searches and seizures are prohibited. Maryland v. Buie, 494 U.S. 325, 331 (1990); State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977). For Fourth Amendment purposes, a traffic stop of a

vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). The reasonableness of a stop or detention "is measured in objective terms by examining the totality of the circumstances." Ohio v. Robinette, 519 U.S. 33, 39 (1996). Indeed, "a minor traffic violation arrest will not be rendered invalid by the fact it was a 'mere pretext for a narcotics search.'" State v. Corley, 383 S.C. 232, 240, 679 S.E.2d 187, 191-92 (Ct. App. 2009) (citations omitted). "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." Whren v. United States, 517 U.S. 806, 813 (1996); see also Provet, 405 S.C. at 108, 747 S.E.2d at 457 (noting the officer's subjective motivations are irrelevant to the analysis).

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)); see United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[T]he Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity 'may be afoot'."). Reasonable suspicion "is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act." United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004). "In this highly fact-specific inquiry, reasonable suspicion 'is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.'" State v. Wallace, 392 S.C. 47, 51-52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting Foreman, 369 F.3d at 781). The

reasonable suspicion standard is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. Illinois v. Wardlow, 528 U.S. 119, 123 (2000); see State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007) ("Reasonable suspicion is more than a general hunch but less than what is required for probable cause."); State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) ("Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch."). In order for an officer to have reasonable suspicion regarding the presence of illegal drugs, the officer is required to have a particularized and objective basis arising from the totality of the circumstances that would lead an individual to suspect drugs are located in a lawfully stopped vehicle. State v. Banda, 371 S.C. 245, 254 n.4, 639 S.E.2d 36, 41 n.4 (2006).

Thus, in determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 104, 623 S.E.2d at 85. In reviewing the totality of the circumstances, the individual factors of the traffic stop must not be considered piecemeal or in isolation. See Branch, 537 F.3d at 337 ("Courts must look at the 'cumulative information available' to the officer . . . and not find a stop unjustified based merely on a 'piecemeal refutation of each individual' fact and inference[.]" (citations omitted)). Instead, all of the circumstances of the stop, including the officer's own experience and specialized training, must be considered as a whole to determine whether the officer's actions were reasonable in light of all of the information available to him at the time. See United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) ("[J]ust as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion might not alone give rise to

reasonable suspicion."). "In applying the concept of reasonable suspicion to the various facts of a case, '[i]t is the entire mosaic that counts, not single tiles.'" Wallace, 392 S.C. at 52, 707 S.E.2d at 453 (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)). Thus, the presence of several factors seemingly consistent with innocent travel can establish reasonable suspicion when viewed together in totality. United States v. Sokolow, 490 U.S. 1, 9 (1989).

The State submits that even if the acts of asking Petitioner to return to the car and then handcuffing him and placing him in a patrol car when he became belligerent constituted an investigative detention, the trial court properly found that detention was supported by reasonable articulable suspicion. Before and during the course of the stop, the police officers developed reasonable suspicion based on objective factors that would lead an individual to suspect drugs were located in the vehicle. These factors included: (1) knowing that more than one recent drug arrest had been made from the house under surveillance; (2) knowing the neighborhood as a whole was a high-crime area; (3) observing the suspect vehicle pull into and then leave that drug house in under two minutes; (4) observing that vehicle drive away from the known drug house at a high rate of speed; (5) discovering the suspect vehicle was a rental; and (6) observing Petitioner's behavior of walking quickly away from the vehicle as soon as the police approached the driver to initiate the consensual encounter after the stop.

The officers who initiated the encounter and briefly detained Petitioner described these factors, all of which combined to make them suspect Petitioner was engaged in criminal activity. As the trial court found, the combined impact of all factors, considered in light of the officers' knowledge and experience, provided ample basis for their

suspicion of illegal activity and justified the brief detention for investigation. Indeed, the factors taken as a whole provided the officers with reasonable suspicion Petitioner was engaged in criminal activity.

Applying the appropriate deferential standard of review, the evidence and testimony presented during the suppression hearing established the police conducted the stop in a reasonable manner and developed reasonable suspicion justifying their investigative detention once the stop occurred. See Segura v. United States, 468 U.S. 796, 806 (1984) ("By its terms, the Fourth Amendment forbids only 'unreasonable' searches and seizures."). Accordingly, the trial judge properly denied Petitioner's motion to suppress after finding the investigative detention to be proper under the totality of the circumstances, and his ruling was supported by the evidence. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("South Carolina appellate courts review Fourth Amendment determinations under a clear error standard. We affirm if there is any evidence to support the trial court's ruling."); Provet, 405 S.C. at 107, 747 S.E.2d at 456. Petitioner's conviction was properly affirmed.

4. Lack of Nexus

Here, the drugs were discovered solely as a result of the voluntary stop of the car and the consent given by the driver to search the car during the encounter. Nothing about Petitioner's concomitant detention led to the discovery of the drugs in the car. Even if Petitioner had walked away from the car unencumbered, the officers would have found the drugs he left in the car. Both those drugs and Petitioner's identity would have been inevitably discovered.[2] The discovery would have led to Petitioner's arrest whether he

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[2] The inevitable discovery doctrine is an exception to the exclusionary rule which requires the State to establish by a preponderance of the evidence that the same evidence seized unlawfully would have been

was detained by the officers at the scene or not. Because there was no nexus between the investigative detention and the drugs, suppression was not warranted under the circumstances of Petitioner's case even if the detention was not lawful. Cf. State v. Brown, 401 S.C. 82, 88-89, 736 S.E.2d 263, 266 (2012) (recognizing that exclusion of evidence exacts a heavy toll on both the judicial system and society at large and therefore exclusion is not deemed appropriate where it does not serve the exclusionary rule's sole purpose of deterring future Fourth Amendment violations). For this reason, and all of the other reasons set forth above, Petitioner's argument is without merit and the Court of Appeals properly affirmed the trial court's denial of his motion to suppress. The petition for certiorari should be denied.

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discovered inevitably by lawful means. State v. Jenkins, 398 S.C. 215, 227, 727 S.E.2d 761, 767 (Ct. App. 2012). Here, the alleged unlawful detention did not lead to seizure of the evidence at issue; therefore, the inevitable discovery doctrine is not directly applicable. Nevertheless, it illustrates why the exclusionary rule would likewise be inapplicable to the circumstances of Petitioner's case.

CONCLUSION

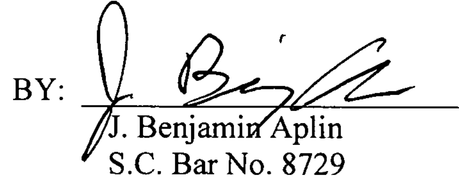
Based on the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court. If the Court grants the petition for a writ of certiorari, Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY: 
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
December 1, 2015

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
William P. Keesley, Circuit Court Judge

Opinion No. 2015-UP-417 (S.C. Ct. App. filed August 12, 2015)

Appellate Case No: 2015-002170

State of South Carolina, ...Respondent,

v.

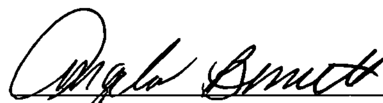
Raheem Jamar Bonham, ... Petitioner.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Return to Petition for a Writ of Certiorari*, dated December 1, 2015, on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Wanda H. Carter, Deputy Chief Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 1st day of December, 2015.



Angela Bennett
Administrative Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727