STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000094

THE STATE,

Respondent,

vs.

COREY WILLIAM BROWN,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's suppression motion and admitted the 27.34 grams of cocaine during trial because the officers developed a reasonable articulable suspicion that Appellant was armed and dangerous during the course of the traffic stop after observing numerous suspicious factors prior to conducting the frisk.

STATEMENT OF THE CASE

On August 28, 2010, Appellant Corey William Brown was arrested for trafficking in cocaine following a routine traffic stop resulting in the discovery of more than twenty-seven grams of cocaine. During its November 24, 2010, term, the Spartanburg County Grand Jury indicted Appellant for trafficking in cocaine in an amount greater than ten grams. On January 21, 2013, Appellant proceeded to trial before the Honorable J. Derham Cole. Following jury selection, Appellant moved to suppress the cocaine and the trial court held a suppression hearing. At the conclusion of the hearing, Appellant moved for a bench trial and the State consented. Thereafter, the trial court took Appellant's motion under advisement and commenced with the bench trial.

The trial court denied Appellant's motion to suppress by written order signed and filed August 14, 2014. On January 9, 2015, the trial court reconvened, found Appellant guilty of trafficking in cocaine, and sentenced Appellant to the mandatory minimum sentence of five years' imprisonment. Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On August 28, 2010, Sergeant Mark Hillers and Officer Jonathan Lawson of the Spartanburg Public Safety Department were jointly patrolling the Northside of the city of Spartanburg, one of the city's most dangerous areas widely known for violence and drug trafficking, when they observed a light blue Chrysler vehicle on the side of the road near the intersection of Farley Street and North Forest Street. (Tr. 25-27, 52-54). The Chrysler was parked in a peculiar manner, sparking their interests. (Tr. 52-53). They observed Appellant sitting inside the Chrysler when a green Infiniti Q45 pulled directly alongside the stopped Chrysler. (Tr. 27, 53). Appellant exited the Chrysler, checked to ensure it was locked, and got into the driver's seat of the Infiniti. (Tr. 27, 53). Appellant then took off in the Infiniti, immediately making a left turn without using his turn signal. (Tr. 27, 53-54). Appellant then made an additional turn without using his turn signal. (Tr. 27, 54).

After observing the two illegal turns, Hillers and Lawson initiated a traffic stop in the 600 block of Magnolia Street in front of the Freemont School Apartments at approximately 10:45 p.m. (Tr. 28, 55). Lawson approached the driver's side where Appellant was located and Hillers approached the passenger's side. (Tr. 28, 55). Appellant, appearing very nervous, was sweating so profusely that perspiration beads had formed on his head. (Tr. 28). He incessantly looked around the vehicle and kept patting his right leg, a common sign that a suspect may have a weapon. (Tr. 28, 30). Lawson asked for Appellant's license and the vehicle's registration and insurance information. (Tr. 28). Appellant complied and Lawson returned to the patrol vehicle while Hillers remained in a cover position by the Infiniti's passenger side. (Tr. 28-29, 55-57).

While standing cover, Hillers noted the other passengers—a female in the front passenger seat and a male in the rear passenger seat—exhibited odd behavior that Hillers

described as "very, very nervous." (Tr. 55-57). Specifically, the rear seat passenger, Ronnie Lyles began talking non-stop and volunteered to Hillers that he did not have any drugs, opening surrounding bags in support of his claim. (Tr. 56-57). Hillers described his speech as "a hundred miles an hour", and "just [not] making much sense." (Tr. 56-57). The female passenger in the front seat stared straight ahead nervously. (Tr. 56). Hiller noted he was "on high alert" because of the way Appellant and passengers were acting. (Tr. 57).

Appellant began speaking with bystanders on the apartment stairwell in an "extremely loud" manner in an attempt to garner Hillers's attention. (Tr. 58). Once Hillers began watching Appellant, Appellant started silently mouthing something to the bystanders. (Tr. 58). Appellant then stuck his hand out of his open window, causing Hillers alarm and making him think Appellant had thrown something out of the window. (Tr. 58-60).

During this time, Lieutenant Munzo arrived on the scene to assist Hillers and Lawson. (Tr. 59). Hillers briefed Munzo on the situation, and then Munzo stood cover on the driver's side of the Infiniti while Hillers went to inform Lawson of Appellant's activity. (Tr. 29, 59). Hillers and Lawson rewound the cruiser's dash camera video in an attempt to see if Appellant had discarded anything through the open window, but were unable to make a determination. (Tr. 29-30, 59-61).

Lawson approached the driver's side of the Infiniti and asked Appellant to step out of the vehicle. (Tr. 29-30). Appellant refused to exit the vehicle; Lawson had to order Appellant out of the vehicle a total of five times before Appellant finally complied. (Tr. 29-30, 74-76, 79). Once out of the car, Appellant immediately looked right then left, a common sign that he was looking for an escape route to flee on foot. (Tr. 30, 60-61).

Lawson asked Appellant for consent to search his vehicle and person, both of which Appellant refused. (Tr. 30, 62). Lawson then asked Appellant if he could do a pat down for weapons due to officer-safety concerns; Appellant again refused and stated he did not have any weapons. (Tr. 31, 62). Appellant continually patted his right leg, which Lawson recognized as a common signal that Appellant might have a weapon. (Tr. 31, 61).

Lawson asked Appellant to turn around, place his hands on the vehicle, and spread his legs so he could pat down Appellant to ensure he did not have any weapons; Appellant complied. (Tr. 31). Lawson used his right hand to conduct a pat down along Appellant's bodyline—a Terry[1] frisk. (Tr. 31, 62). Lawson felt a large bulge in the right side of Appellant's pocket, the area Appellant had previously been patting incessantly. (Tr. 31-32, 62). Based on his experience, Lawson suspected this bulge was narcotics. (Tr. 31-32). Lawson asked Appellant what was in his pocket and Appellant replied it was a package, then stated it was only a small amount of marijuana. (Tr. 32, 62-63). Based on this information, Lawson placed Appellant under arrest. (Tr. 32). Lawson attempted to detain Appellant and Appellant resisted. (Tr. 33, 63, State's Ex. No. 1).

Once Appellant was detained, Lawson removed the package from Appellant's right pocket, which appeared to be a large quantity of cocaine. (Tr. 33, 63, 110-11). Lawson did a presumptive field test on the substance, which testified positive for the presence of cocaine. (Tr. 111). Lawson then took the package to the police department, sealed the bag, and deposited it into the evidence locker. (Tr. 111-12).

On September 10, 2010, Lieutenant Ashley Harris of the Spartanburg County Sherriff's Office Forensics Lab analyzed the substance. (Tr. 116-122). Harris conducted

[1] Terry v. Ohio, 392 U.S. 1 (1969).

two different tests, which both revealed the substance was cocaine. (Tr. 121-22). Harris weighed the cocaine, yielding 27.34 grams. (Tr. 120).

Following his arrest, Appellant was indicted for trafficking in cocaine, and he proceeded to trial. (Indictment, Tr. 1, 5). At the outset of trial, Appellant moved to suppress the cocaine discovered during the traffic stop based on the alleged unconstitutionality of the search in which it was discovered. (Tr. 25). The trial court held an in-camera hearing on Appellant's suppression motion, during which Lawson and Hillers detailed the circumstances of the traffic stop, including: the area's high number of violent and narcotics crimes, Appellant discarding his vehicle and getting into the driver's seat of another vehicle before driving away, Appellant's failure to use proper turn signals twice, Appellant's suspicious and nervous behavior when Lawson approached his vehicle (profusely sweating, fidgeting, patting his right leg, looking around the car's interior), the nervous and suspicious behavior of rear passenger Ronnie Lyles (talking incoherently, repeatedly volunteering he had no drugs and opening bags to show officers), the female front passenger staring straight head during the entirety of the stop, Appellant yelling at bystanders then silently mouthing to them once he had Hillers's attention, Appellant putting his hand outside of the window as if he is attempting to drop something, Appellant looking around as if he was looking for an escape route, and Appellant repeatedly patting right leg once outside of the vehicle. (Tr. 25-69). Appellant testified in support of suppression, claiming: his car broke down while he was on a date, Ronnie Lyles tried to jump his car but when unsuccessful agreed to let him borrow his car for the evening, he properly used his turn signal for both turns, gave officers his license and all appropriate paperwork, never dropped anything out of the window, and did not threaten the officers. (Tr. 70-81). Appellant also presented Mike West, the training

coordinator and public education coordinator for Spartanburg 911, who testified as to the 911 calls from the various officers pertaining to the stop of Appellant. At the conclusion of the testimony, Appellant argued the nearly twenty-eight grams of cocaine should be suppressed, arguing the officers did not have any reasonable suspicion he was armed and dangerous. (Tr. 96-105). The State replied the officers developed a reasonable articulable suspicion that Appellant was armed and dangerous during the traffic stop warranting a Terry frisk based on the totality of the circumstances, including the undeniable nexus between drugs and weapons. (Tr. 105-09). At the conclusion of the hearing, Appellant moved for the jury to be excused and to proceed forward with a bench trial; the State consented to a bench trial. (Tr. 92-95). The trial court took Appellant's motion to suppress under advisement and excused the jury. (Tr. 95, 109). The previous testimony taken during the suppression hearing was incorporated into the trial with the exception of Appellant's testimony. (Tr. 109, 124). At the conclusion of testimony, the trial court kept the matter under advisement and stated he would rule by order on Appellant's motion. (Tr. 126).

On August 19, 2014, the trial court denied Appellant's motion to suppress the cocaine by written order. In the order, the trial court concluded law enforcement "had reasonable articulable suspicion that drugs and or weapons were present to support a pat down of the defendant." (August 19, 2014 Order). The court then listed the factors giving rise to this suspicion, including the various nervous and apprehensive behaviors of Appellant and his passengers, the time of night and the extremely dangerous area, and Appellant's repeated patting of his right leg. (August 19, 2014 Order). The trial court noted the "indisputable nexus between drugs and guns," citing State v. Banda, 371 S.C. 245, 639 S.E.2d 36 (2006).

The trial court reconvened on January 9, 2015, and issued an identical order denying Appellant's motion on the same date. (Tr. 127-130, January 9, 2015 Order). The trial court found Appellant guilty of trafficking in cocaine and sentenced him to the mandatory minimum term of five years' imprisonment. (Tr. 127-130).

ARGUMENT

The trial judge properly denied Appellant's suppression motion and admitted the 27.34 grams of cocaine during trial because the officers developed a reasonable articulable suspicion that Appellant was armed and dangerous during the course of the traffic stop after observing numerous suspicious factors prior to conducting the frisk.

Appellant asserts the trial court erred in admitting the cocaine discovered during the frisk search. Specifically, Appellant contends the trial court should have suppressed the nearly twenty-eight grams of cocaine found on Appellant because officers did not articulable suspicion to conduct a frisk pursuant to Terry v. Ohio, 392 U.S. 1 (1986). Appellant argues the only articulable facts provided by law enforcement were Appellant's patting of his leg and beads of sweat on his head, which he asserts did not give the officers reasonable articulable suspicion that Appellant was armed and dangerous as required under Terry. To the contrary, the officers' decision to conduct the frisk search was entirely justified and reasonable because the circumstances known to the officers at the time of the frisk search, including that Appellant was present in a high drug and crime area, Appellant showed signs of nervous agitation (including excessive perspiring), Appellant repeatedly reached down between the seat and center console of the car and touched the right side of his pants while still in the vehicle, Appellant did not comply with the officers 'numerous request to step out of the vehicle, Appellant looked left and looked right to possible escape routes as he stepped out of the vehicle, Appellant continued to pat his right leg once out of the vehicle, and the disproportionately nervous behaviors of both passengers, reasonably led the officers to believe Appellant posed a danger to the officers and was armed and dangerous. Accordingly, the trial court properly denied the pre-trial suppression motion and admitted Appellant's narcotics into evidence during trial. Appellant's convictions should be 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. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial court's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence in the record to support the ruling. 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 court. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

Discussion / Analysis

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. Pichardo, 367 S.C. at 97, 623 S.E.2d at 847. "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. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie,

494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]").

For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). However, a traffic stop seizure is reasonable per se when probable cause exists to believe a traffic violation has occurred. State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002); see Whren v. United States, 517 U.S. 806, 810 (1996) ("An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general mater, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.").

Once a lawful traffic stop is initiated, an officer "may request a driver's license and vehicle registration, run a computer check, and issue a citation." Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)). Additionally, based on "the inordinate risk" to his or her safety that an officer faces while conducting a traffic stop, the officer may order the driver and any passengers to exit the vehicle pending the completion of the stop. Pennsylvania v. Mimms, 434 U.S. 106, 110 (1977); see Maryland v. Wilson, 519 U.S. 408, 415 (1997) ("[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop."); see, e.g., United States v. Sakyi, 160 F.3d 164, 168 (4th Cir. 1998) ("[E]very traffic stop poses a meaningful level of risk to the safety of police officers. . . . [T]he substantial risk to police officers during traffic stops is 'too plain' for argument." (citations omitted)).

During the course of the stop, an officer may also conduct a frisk search of the driver or any passenger in the vehicle if the officer harbors "reasonable suspicion that the

person subjected to the frisk is armed and dangerous." Arizona v. Johnson, 555 U.S. 323, 327 (2009); see State v. Adams, 397 S.C. 481, 492, 725 S.E.2d 523, 529 (Ct. App. 2012) ("An officer conducting a lawful traffic stop may conduct a pat-down search for weapons if the officer 'has reason to believe that the person is armed and dangerous.' " (citations omitted)). For a frisk search to be reasonable and justified, "[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Terry v. Ohio, 392 U.S. 1, 27 (1968); see also United States v. Swann, 149 F.3d 271, 274 (4th Cir. 1998) (recognizing "the standard justifying a frisk is not onerous"). "Among the circumstances to be considered in connection with [the] issue [of the propriety of a stop and frisk] are the 'characteristics of the area' where the stop occurs, the time of the stop, whether late at night or not, as well as any suspicious conduct of the person accosted such as an obvious attempt to avoid officers or any nervous conduct on the discovery of their presence." United States v. Bull, 565 F.2d 869, 870-871 (4th Cir. 1977).

Reasonableness depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law enforcement officers. Mimms, 434 U.S. at 109. "Reasonable suspicion 'is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.' " State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)). It is "more than a general hunch but less than what is required for probable cause." State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255

(Ct. App. 2007); see State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) ("Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch."). "In 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).

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 United States v. Branch, 537 F.3d 328, 337 (4th Cir. 2008) ("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 must be considered as a whole to determine whether the officer's actions were reasonable in light of all of the information available to the officer 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)); see also 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)).

In State v. Smith, 329 S.C. 550, 553, 495 S.E.2d 798, 800 (Ct. App. 1998), Smith was lawfully stopped for speeding. When an officer approached Smith's vehicle, he noticed Smith was acting in an "edgy" manner and was looking around. Id. at 553-554, 495 S.E.2d at 800. Fearing Smith might be looking for a weapon inside of the vehicle, the officer ordered Smith to step out and walk to the rear of the vehicle. Id. at 554, 495 S.E.2d at 800. The officer then asked Smith if he had any weapons on his person, and Smith did not respond. Id. After Smith failed to respond, the officer conducted a frisk search, felt a bulge in Smith's jacket that he knew to be narcotics, and asked Smith if the bulge was Smith's "reefer." Id. Smith confirmed that it was, and the officer arrested Smith after Smith unsuccessfully attempted to avoid arrest. Id. Following Smith's arrest, officers discovered marijuana and crack cocaine on Smith's person. Id. Subsequently, during trial, Smith moved to suppress the narcotics discovered by the officers, and the trial court denied Smith's motion. Id. Following his conviction, Smith appealed, and the Court of Appeals affirmed the trial court's ruling. Id. In reaching that decision, the Court concluded the circumstances known to the officer at the time of the search, including his observations of Smith's edgy behavior, "gave rise to a reasonable suspicion Smith might be armed and dangerous and justified [the officer's] patdown of Smith." Id. at 557, 495 S.E.2d at 802.

In the case at bar, Appellant contends the officers violated his constitutional rights by conducting the frisk search because there allegedly was nothing known to the officers at the time of the frisk search that would have led them to believe he was armed and

dangerous. Contrary to Appellant's assertions, the circumstances known to the officers at the time of the search coupled with the officers' training and experience led the officers to harbor a reasonable suspicion Appellant was armed and dangerous. Therefore, under the totality of the circumstances, Lawson's decision to conduct the frisk search was a reasonable one, and the trial court properly denied Appellant's pre-trial motion to suppress the cocaine discovered during the frisk search.

Establishing the reasonableness of the officers' suspicions, the traffic stop itself occurred in a high crime area known for drug activity and violent crimes. See Illinois v. Wardlow, 528 U.S. 119, 124 (2000) (recognizing a person's presence in a high crime area is one relevant contextual consideration in a Terry analysis); see also State v. Banda, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006) ("This Court has recognized that because of the 'indisputable nexus between drugs and guns,' where an officer had reasonable suspicion that drugs are present in a vehicle lawfully stopped, there is an appropriate level of suspicion of criminal activity and apprehension of danger to justify a frisk of both the driver and the passenger in the absence of other factors alleviating the officer's safety concerns." (citations and footnotes omitted)). Additionally, Appellant behaved in an unusual manner from the outset of the traffic stop, appeared extremely nervous, perspired so heavily that beads of sweat gathered on his head, repeatedly looked around the vehicle as if searching for a weapon, repeatedly reached down between the seat and center console of the car and touched the right side of his pants while still in the car, refused to get out of the numerous times, silently mouthed to bystanders, and repeatedly patted his right leg once he got out of the car, all which the officers recognized as signs of potential danger to the officers. Additionally, both passengers in Appellant's car acted peculiar, including Ronnie Lyles speaking incoherently to Hillers and repeatedly opening bags and

volunteering he did not have any drugs and the female passenger intently staring straight ahead throughout the stop, giving officers further suspicion that Appellant was armed and dangerous.

In light of Appellant's unsettling and excessively nervous behavior, Appellant's presence in a high drug and crime area, Appellant's repeated failure to get out of the car, Appellant's incessant patting of his right leg while inside and outside of the car, and the suspicious behavior of both passengers, Lawson was fully justified in believing Appellant might be armed and dangerous and in conducting the brief frisk search to ensure Appellant did not pose a risk to him or his fellow officers. See Smith, 329 S.C. at 557, 495 S.E.2d at 802 (finding the officer was justified in conducting a frisk search after Smith behaved in an edgy manner and Smith did not respond when asked whether he was armed); State v. Abrams, 322 S.C. 286, 288, 471 S.E.2d 716, 717 (Ct. App. 1996) ("In this case, the officers had a reasonable suspicion which justified their stop of Abrams. They saw him leaving an area known for drugs, where there had been a civil disturbance potentially involving drug activity, at 3:45 in the morning. The officers were therefore justified in frisking Abrams for weapons to ensure their safety."); see also Terry, 392 U.S. at 24 ("When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm."). When viewing all of the circumstances known to the officers at the time of the search in totality, Lawson's decision to conduct the frisk search was entirely prudent and reasonable. See Terry, 392 U.S. at 23 ("Certainly it would be unreasonable to require that police officers take unnecessary risk

in the performance of their duties."); see also 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 court properly denied Appellant's pre-trial suppression motion, and its ruling was supported by the evidence.[2] See Pichardo, 367 S.C. at 96, 623 S.E.2d at 846 ("An appellate court must affirm the trial court's ruling if there is *any* evidence to support the ruling." (italics in original)). Appellant's convictions should be affirmed.

[2] In his statement of the issue on appeal, Appellant solely contends the trial court should have suppressed the narcotics based on an allegedly unconstitutional Terry frisk. However, in the body of his brief, Appellant additionally appears to allege the officers exceeded the scope of the stop. To the extent Appellant is challenging the propriety of the stop on appeal, that issue is wholly unpreserved for appellate review for several different reasons. Initially, Appellant failed to preserve the issue for appellate review by not raising the issue in his statement of the issue on appeal. See Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); see also State v. Culbreath, 377 S.C. 326, 332, 659 S.E.2d 268, 271 (Ct. App. 2008) (noting, in order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal). Furthermore, the issue was likewise unpreserved because it was not ruled upon by the trial court. See August 19, 2014 Order and January 9, 2015 Order. Significantly, the trial court's ruling was premised solely on the constitutionality of Lawson's Terry frisk of Appellant and did not address the propriety of the detention. As a result, any issue regarding the propriety of the detention was not ruled upon by the trial court and, thus, was not preserved for appellate review. See State v. Watts, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996) ("To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. **If the issue is raised but not ruled on, it is not preserved for appeal.**" (emphasis added)); see also State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge."); State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) ("Only matter that has been ruled on below can be reviewed[.]"). However, even if the issue had somehow been preserved for appellate review, the officers' stop of Appellant was nonetheless proper in both initiation and scope. Officers properly stopped Appellant after observing him make two illegal turns. See Williams, 351 S.C. at 598, 571 S.E.2d at 707 (holding a traffic stop seizure is reasonable per se when probable cause exists to believe a traffic violation has occurred); see Whren, 517 U.S. at 810 ("An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general mater, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."). Additionally, officers properly requested his driver's license and vehicle registration and ran a computer check. See Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (Once a lawful traffic stop is initiated, an officer "may request a driver's license and vehicle registration, run a computer check, and issue a citation."). Officers did not unduly delay the traffic stop, which according to 911 dispatch calls did not begin until 10:49 p.m. and resulted in Appellant's arrest shortly thereafter. (Tr. 85-91). Accordingly, to the extent Appellant is challenging the constitutionality of the detention on appeal, that challenge is wholly without merit, and evidence discovered during the course of the stop was properly admitted during trial. See Pichardo, 367 S.C. at 96, 623 S.E.2d at 846 ("An appellate court must affirm the trial court's ruling if there is *any* evidence to support the ruling." (italics in original)).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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Jan. 12, 2016

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STATE OF SOUTH CAROLINA
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APPEAL FROM SPARTANBURG COUNTY
J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000094

THE STATE,

Respondent,

vs.

COREY WILLIAM BROWN,

Appellant.

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle C. Durant, 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 12th day of Jan., 2016.

Megan Harrigan Jameson

Megan Harrigan Jameson
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January 12, 2016

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RE: State v. Corey William Brown – Appellate Case No. 2015-000094

Dear Ms. Durant:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Megan Harrigan Jameson

Megan Harrigan Jameson
Assistant Attorney General
S.C. Bar No. 100108

MHJ/

Enclosures

cc: The Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services