STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge
Appellate Case No. 2013-002534

THE STATE,

Respondent,

vs.

JAMECO ABDUL TONEY,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's issue regarding the admission of the incriminating evidence discovered during the search of the rental vehicle he was driving at the time of the traffic stop was not properly preserved for appellate review because defense counsel only objected to the admission of that evidence through an in limine suppression motion raised at the outset of trial and then expressly waived that objection during trial by instructing the trial judge she had no objections to the incriminating evidence when the solicitor moved for it to be admitted. However, regardless of any issue preservation concerns, the trial judge committed no error in denying the suppression motion because Appellant did not have a legitimate expectation of privacy in the rental vehicle in light of the fact he was not authorized to drive or possess it and because the officer had probable cause to initiate the traffic stop after observing Appellant commit a traffic violation along with reasonable articulable suspicion to extend the scope and duration of the traffic stop based on the indicators of criminal activity he detected during the course of the stop, which included Appellant's abnormally nervous behavior that increased throughout the stop, Appellant's possession of an overdue rental vehicle he was not authorized to drive, and Appellant's suspicious responses to the officer's questions.

STATEMENT OF THE CASE

In November of 2010, Appellant Jameco Abdul Toney was arrested after a law enforcement officer located roughly fifteen pounds of marijuana during the course of a routine traffic stop inside of a rental vehicle Appellant was driving at the time of the stop. In July of 2011, the Darlington County Grand Jury indicted Appellant for one count of trafficking in marijuana in an amount between ten and one hundred pounds. On November 18, 2013, a jury trial was commenced in the Darlington County Court of General Sessions with the Honorable R. Ferrell Cothran, Jr., circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of nine years. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

Shortly before 12:20 p.m. on November 10, 2010, Corporal Brad Lawson of the Darlington County Sheriff's Office was positioned along the side of Interstate 20 when he observed the driver of a tan Chevy Malibu travelling down the roadway make an abrupt lane change and nearly cut off another vehicle in an unsafe manner.[1] (R. pp. 29-31; pp. 143-144; State's Ex. # 1 (Recording of Traffic Stop)). In response, Corporal Lawson began pursuing the vehicle and observed its driver make another abrupt lane change. (R. p. 31; p. 145). The officer then pulled next to the vehicle to conduct a quick visual check of its interior and noticed the vehicle's rear windows were partially rolled down, which he perceived to be suspicious due to the noise the open windows would have been producing while the vehicle was travelling at interstate speeds and due to the fact he knew drug traffickers frequently roll down vehicle windows to mask the odor of illegal drugs. (R. pp. 32-33; pp. 145-146; p. 171; p. 196). Corporal Lawson then moved into position behind the vehicle and activated his patrol vehicle's blue lights to initiate a traffic stop at approximately 12:20 p.m., and the driver of the vehicle quickly pulled over to the side of the interstate. (R. p. 33; p. 146; State's Ex. # 1).

Thereafter, at approximately 12:21 p.m., Corporal Lawson approached the vehicle and asked its driver and sole occupant, Appellant Jameco Abdul Toney, to provide him with his driver's license along with the paperwork associated with the vehicle. (R. p. 33; pp. 146-147; State's Ex. # 1). Appellant, who appeared to be more nervous than the

[1] During trial, Corporal Lawson noted he worked for the Darlington County Sheriff's Office for ten years, had twelve total years of law enforcement experience, had spent the majority of his career working in narcotics, had received two to three hundred hours of training in regard to drug interdiction, and had significant experience in that area. (R. pp. 29-30; pp. 143-144; pp. 166-167). Additionally, he indicated he had personally conducted thousands of traffic stops during his law enforcement career and had been trained to pick up on factors that are out of the ordinary while conducting a stop. (R. pp. 166-167). Furthermore, Corporal Lawson noted he was able to distinguish between the regular level of nervousness typically present in a normal traffic stop and something greater based on his numerous hours of training and significant experience in conducting stops. (R. pp. 193-194)

drivers the officer typically encountered during normal traffic stops, then handed Corporal Lawson his driver's license and a rental agreement for the vehicle. (R. pp. 33-34; p. 147). When he did so, the officer observed Appellant's hands were shaking abnormally and Appellant was breathing in a rapid and labored manner. (R. pp. 33-34; p. 147). Corporal Lawson then checked the vehicle's paperwork and discovered Appellant did not rent the rental vehicle, the rental vehicle was two days overdue to be returned to a rental agency located at the airport in Florence, and Appellant was not authorized to drive it pursuant to the express terms of the rental agreement.[2] (R. pp. 34-36; p. 40; p. 147; p. 149; p. 203). As a result, he asked Appellant to step out of the vehicle. (R. pp. 34-36; p. 148).

After Appellant exited the rental vehicle, Corporal Lawson advised him of the purpose of the stop, began preparing a warning ticket, and asked dispatch to run a check of Appellant's and the vehicle's information. (R. pp. 35-37; pp. 148-150). As the officer prepared the warning ticket, he asked Appellant where he was coming from and discussed the circumstances surrounding the vehicle's rental with him. (R. pp. 37-38; pp. 54-55; pp. 148-151; State's Ex. # 1). During their conversation, Appellant claimed he obtained the rental vehicle from Timothy Sanders, briefly mentioned something about child support, and then asserted he was returning with the vehicle from Columbia after visiting an unemployment office located there.[3] (R. pp. 37-38; p. 149; State's Ex. # 1). However, Appellant, who began nervously using his hands while speaking to the officer,

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[2] Notably, Corporal Lawson discovered Appellant had no authority to drive or possess the rental vehicle he was driving within two minutes of initiating the traffic stop. (R. pp. 147-148; p. 183; State's Ex. # 1).

[3] Pursuant to the information contained in the rental agreement, Sanders was the renter of the vehicle Appellant was driving at the time of the stop, had rented the vehicle on November 6, 2010, was supposed to have returned the vehicle to the rental agency on November 8, 2010, and was the vehicle's lone authorized driver. (R. p. 36; pp. 70-71; pp. 118-120; p. 147; p. 203).

was unable to say where the unemployment office was located even though he had purportedly visited it earlier that day. (R. pp. 37-38; p. 149; p. 174; State's Ex. # 1). Based on Appellant's suspicious responses, the signs of Appellant's increasing nervousness, and the other suspicious factors the officer detected during the course of the stop, Corporal Lawson began to suspect Appellant was involved in criminal activity.[4] (R. p. 39; pp. 149-150; pp. 174-175).

Thereafter, roughly ten minutes after Corporal Lawson activated his blue lights, the officer asked Appellant if there were any drugs or other illegal items located in the rental vehicle. (R. p. 41; p. 56; p. 151; State's Ex. # 1). In response, Appellant denied there was anything illegal in the vehicle but suspiciously turned away and looked back at the vehicle when asked if any marijuana was concealed inside. (R. p. 41; p. 151). Roughly two minutes later, Corporal Lawson asked Appellant for permission to search the vehicle, and Appellant responded he could not consent because it was not his vehicle. (R. p. 44; pp. 59-60; pp. 151-152; State's Ex. # 1). After that, Corporal Lawson contacted the rental agency, spoke with a customer service representative, and advised him of Appellant's unauthorized use of the rental vehicle.[5] (R. p. 42; pp. 69-72; pp. 119-120; pp. 152-153; State's Ex. # 1). The customer service representative then instructed him to take possession of the vehicle and search it in light of the fact the rental agreement had been breached. (R. p. 42; pp. 72-73; pp. 120-121; pp. 152-153).

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[4] In particular, Corporal Lawson stated he felt like Appellant's responses did not make sense due to the fact the officer knew both an unemployment office and vehicle rental agency were located in much closer proximity to Appellant's home in Hartsville than the ones Appellant reported visiting, and the officer noted Appellant also admitted during the course of the traffic stop he had previously been arrested on a drug charge in the past. (R. pp. 37-38; p. 55; pp. 149-150; State's Ex. # 1). Furthermore, Corporal Lawson indicated he noticed Appellant developed significant "cotton mouth" and had a visibly pulsing carotid artery as the stop progressed, which were indicators of nervousness he did not typically observe during routine traffic stops. (R. p. 39; pp. 174-175).

[5] Significantly, Corporal Lawson made contact with the rental agency at approximately 12:34 p.m. and received permission to search the rental vehicle at approximately 12:36 p.m. (State's Ex. # 1).

Once he obtained consent to search the rental vehicle from the rental agency, Corporal Lawson explained what he was going to do to Appellant and instructed him not to go back to the car. (R. p. 44; p. 153; State's Ex. # 1). Corporal Lawson was then interrupted by radio communications from other officers in his unit who were also involved in traffic stops at that time and spoke with them for several minutes. (R. pp. 42-43; pp. 153-154; State's Ex. # 1). Thereafter, at approximately 12:41 p.m., the officer began searching the rental vehicle while simultaneously trying to watch Appellant, and he located a tote bag in the vehicle's trunk that felt like it contained illegal drugs. (R. pp. 44-45; pp. 154-155; State's Ex. # 1). Corporal Lawson then asked Appellant what was in the bag, and Appellant responded by quickly fleeing. (R. pp. 45-46; p. 155; State's Ex. # 1). However, Appellant did not get far before Corporal Lawson apprehended him and placed him under arrest.[6] (R. pp. 45-46; p. 155).

Subsequently, Appellant was indicted for trafficking in marijuana, and he proceeded to trial. (R. p. 116; pp. 200-201). At the outset of trial, defense counsel moved to suppress the marijuana discovered during the search of the rental vehicle Appellant was driving at the time of the traffic stop, and the trial judge conducted an in limine hearing on the matter. (R. p. 4).

During the hearing, Appellant testified on his own behalf and offered his account of the traffic stop conducted on November 10, 2010. (R. p. 5). Specifically, Appellant, claimed he had been looking for a job that day and was travelling on Interstate 20

[6] Notably, following his arrest, Appellant spontaneously began making statements to Corporal Lawson, indicated the package the officer found contained fifteen pounds of marijuana, and claimed he went to pick it up as a favor to another person. (R. pp. 46-47; p. 156; State's Ex. # 1). Shortly after that, another officer arrived on the scene and advised Appellant of his rights, and Appellant repeated his claim he picked up the marijuana for someone else after waiving his rights. (R. p. 47; p. 77; pp. 124-125; State's Ex. # 1). Appellant then offered to cooperate with the officers and deliver the marijuana to its intended recipient while insisting he had been set up. (R. p. 47; p. 78; p. 125; p. 188; State's Ex. # 1). However, the officers elected not to attempt a controlled delivery in Appellant's case. (R. pp. 195-196).

towards the airport at the time of the traffic stop with the intention of returning the rental vehicle he was driving to Timothy Sanders, the person who had actually rented it, due to the fact the vehicle was overdue to be returned to the rental agency. (R. pp. 5-7). While driving towards the airport, Appellant stated he changed lanes from the right lane to the left lane when he saw a police vehicle stopped on the side of the road and then safely changed lanes back into the right lane when he observed the lane was open. (R. pp. 7-8). After making the lane change, Appellant stated he was pulled over, was advised by Corporal Lawson the car was stolen, and provided the officer with his driver's license and the vehicle's rental agreement. (R. pp. 8-9). Appellant indicated Corporal Lawson then asked him to exit the vehicle, questioned him, and requested consent to search the car, which he declined to provide. (R. pp. 9-10). Thereafter, Appellant alleged the officer contacted the rental agency over thirty minutes into the stop and obtained consent to search the vehicle. (R. pp. 10-11). He stated he then fled when Corporal Lawson approached the rental vehicle's trunk based on his past incidents with law enforcement officers but denied knowing there were any drugs inside the trunk. (R. pp. 11-13). After that, he claimed the officer obtained his surrender at gunpoint, attempted to get him to provide information about other people, and took him to jail when he would not provide that information. (R. pp. 12-13). He further noted he correctly indicated there were fifteen pounds of marijuana in the trunk during his conversation with the officer but claimed that was simply the result of an accurate guess. (R. p. 24).

Following Appellant's testimony, the solicitor proffered the testimony of several witnesses, including Corporal Lawson and William McKenzie, the consumer service representative from Avis Budget Rental Company who spoke with the officer during the traffic stop. (R. p. 29; p. 69; p. 72). During that testimony, Corporal Lawson recounted

the circumstances of the traffic stop he conducted on the date of the incident and identified the factors he observed during the course of the stop that correctly led him to believe Appellant was engaged in criminal activity. (R. pp. 31-65). Likewise, McKenzie confirmed he spoke with Corporal Lawson on the date of the incident, granted the officer permission to search the vehicle, and asked the officer to prevent Appellant, who was not authorized to drive the vehicle, from continuing to drive it. (R. pp. 70-73).

Thereafter, following the witnesses' testimony, defense counsel argued the incriminating evidence discovered during the course of the traffic stop should be suppressed "as the result of an unlawful search of the vehicle." (R. p. 80). In support of that contention, defense counsel asserted the initial traffic stop of the rental vehicle was unlawful in light of Appellant's testimony he safely changed lanes before he was pulled over. (R. pp. 80-81). Furthermore, defense counsel contended the officer unlawfully prolonged and measurably extended the traffic stop by questioning Appellant on matters unrelated to the initial purpose of the traffic stop without possessing reasonable articulable suspicion of criminal activity. (R. pp. 81-88). However, defense counsel conceded the officer knew Appellant was not authorized to drive the vehicle he was driving within "mere minutes" of initiating the stop. (R. p. 85).

In response, the solicitor initially asserted Appellant did not have a legitimate expectation of privacy in the rental vehicle and could not raise a constitutional challenge due to the fact he was not authorized to drive it, citing to the Fourth Circuit Court of Appeals' opinion in United States v. Wellons, 32 F.3d 117 (4th Cir. 1994). (R. pp. 88-89). However, notwithstanding Appellant's expectation of privacy in the rental vehicle, the solicitor argued the traffic stop was proper and supported by probable cause based on the testimony establishing the officer initiated the traffic stop after observing Appellant

make an unsafe lane change. (R. p. 90). Furthermore, the solicitor argued the officer possessed reasonable articulable suspicion of criminal activity based on the following factors he observed during the course of the traffic stop: (1) the rental vehicle's windows were partially rolled down while it was travelling along the interstate; (2) Appellant's hands were noticeably shaking and he was breathing heavily; (3) Appellant rambled during the stop; (4) Appellant provided inconsistent information about where he had been; (5) Appellant's nervousness increased instead of abated as the stop progressed; (6) Appellant's carotid artery was visibly pulsing; (7) Appellant developed "cotton mouth" during the stop; (8) Appellant was driving a vehicle he neither rented nor owned; (9) Appellant did not know where the place he claimed to have been coming from in Columbia was located; (10) Appellant used his hands excessively as he talked to the officer; (11) Appellant looked back at the rental vehicle when asked about marijuana; and (12) Appellant admitted he had a prior drug history. (R. pp. 90-92). The solicitor further noted the officer obtained consent to search the car from the rental agency during the course of the stop and was instructed to take possession of the rental vehicle from Appellant. (R. p. 92).

After listening to the arguments of counsel, the trial judge decided to wait to address the matter until the following day so he could discuss the issue further with the parties. (R. p. 106). Thereafter, on the following morning, the trial judge resumed the in limine hearing, and defense counsel asserted Appellant had standing to raise a constitutional challenge to the search of the rental vehicle in light of the fact he was challenging the legality of the initial seizure and detention instead of simply challenging the propriety of the search alone. (R. pp. 106-110). In support of that position, defense counsel cited to a footnote from the decision issued in United States v. Mubdi, 691 F.3d

334 (4th Cir. 2012), in which the Fourth Circuit Court of Appeals noted Mubdi alleged the decision in Wellons was not applicable to his case in light of the fact he was challenging the legality of a seizure instead of a search. (R. pp. 106-110). In response, the trial judge noted the Fourth Circuit Court of Appeals in Mubdi upheld the search in that case only after finding the seizure to be proper in light of the presence of factors consistent with the factors present in Appellant's case, including the unauthorized use of a rental vehicle. (R. p. 110). Defense counsel then agreed with the trial judge's reading of the Mubdi decision but argued that decision was not based on the decision in Wellons. (R. pp. 110-111). Furthermore, defense counsel asserted the South Carolina Supreme Court decision in State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987), established individuals in South Carolina have greater rights to challenge evidence introduced against them than the rights afforded by the United States Constitution. (R. pp. 111-113).

Subsequently, after thoroughly discussing the issue with counsel, the trial judge noted Appellant had standing in regard to his person but did not have a reasonable expectation of privacy in the rental vehicle since he was not authorized to drive it. (R. p. 113). Additionally, the trial judge indicated the rental agency certainly had the authority to allow the officer to search the rental vehicle. (R. p. 113). The trial judge further noted the search in the Mubdi case was determined to be proper based on the existence of sufficient factors to warrant an extension of the traffic stop. (R. p. 113). The trial judge then denied Appellant's suppression motion while citing to the decision in Wellons. (R. pp. 115-116).

Thereafter, during trial, several witnesses testified for the State – without objection – about the events of November 10, 2010, including in regard to Appellant's unauthorized use of the rental vehicle, the discovery of roughly fifteen pounds of

marijuana during the traffic stop, and the incriminating statements Appellant made following his arrest. (R. pp. 117-130). Furthermore, Sergeant Garry Billiott, an expert in marijuana analysis, testified he analyzed the marijuana recovered during the traffic stop, confirmed it was marijuana, and noted it weighed 14.83 pounds.[7] (R. pp. 131-142). Finally, Corporal Lawson testified as the fifth and final witness for the State and discussed the details of his stop of the rental vehicle Appellant was driving on the date of the incident, his discovery of marijuana during the course of the stop, his subsequent arrest of Appellant, and the incriminating admissions Appellant made following his arrest. (R. pp. 143-195). Additionally, during the officer's testimony, the solicitor moved for the marijuana discovered during the search to be admitted into evidence, and defense counsel responded: "No objections[,] Your Honor." (R. p. 159). The trial judge then admitted the marijuana into evidence "without objection." (R. p. 159).

Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 198). Following the verdict, the trial judge sentenced Appellant to a nine-year term of imprisonment. (R. p. 199).

[7] During Sergeant Billiott's testimony, the solicitor moved for the marijuana analysis report prepared by the officer to be admitted into evidence, and the trial judge admitted it after defense counsel expressly stated she had "[n]o objections" to that report. (R. pp. 133-134).

ARGUMENT

Appellant's issue regarding the admission of the incriminating evidence discovered during the search of the rental vehicle he was driving at the time of the traffic stop was not properly preserved for appellate review because defense counsel only objected to the admission of that evidence through an in limine suppression motion raised at the outset of trial and then expressly waived that objection during trial by instructing the trial judge she had no objections to the incriminating evidence when the solicitor moved for it to be admitted. However, regardless of any issue preservation concerns, the trial judge committed no error in denying the suppression motion because Appellant did not have a legitimate expectation of privacy in the rental vehicle in light of the fact he was not authorized to drive or possess it and because the officer had probable cause to initiate the traffic stop after observing Appellant commit a traffic violation along with reasonable articulable suspicion to extend the scope and duration of the traffic stop based on the indicators of criminal activity he detected during the course of the stop, which included Appellant's abnormally nervous behavior that increased throughout the stop, Appellant's possession of an overdue rental vehicle he was not authorized to drive, and Appellant's suspicious responses to the officer's questions.

Appellant contends the trial judge erred by denying his motion to suppress the marijuana discovered during a traffic stop conducted while he was driving a rental vehicle he had no legitimate authority to drive. In support of that contention, Appellant maintains the trial judge allegedly found he lacked constitutional standing to challenge both the propriety of the traffic stop and ensuing detention and the propriety of the search of the rental vehicle in denying the suppression motion. He further maintains the stop and detention violated his constitutional rights because the officer allegedly lacked probable cause to believe a traffic violation had occurred and reasonable suspicion to believe Appellant was involved in criminal activity. Initially, Appellant's issue with the trial judge's denial of the suppression motion was not properly preserved for appellate review. Critically, in Appellant's case, defense counsel moved for the evidence discovered during the search of the rental vehicle to be suppressed during an in limine hearing, and the trial judge issued an in limine ruling denying that motion. Thereafter, during trial, the incriminating evidence was not offered into evidence directly after the

trial judge issued his preliminary ruling, and, when it was introduced, defense counsel expressly waived her earlier objection by stating she had no objections to the evidence. As a result, Appellant's issue with the trial judge's denial of the suppression motion and the admission of the incriminating evidence cannot properly be raised or addressed on appeal. However, even if the issue was somehow properly preserved for appellate review, the trial judge correctly denied Appellant's suppression motion because Appellant had no legitimate expectation of privacy in the rental vehicle in light of the fact he was not authorized to drive or possess it and, thus, could not challenge the propriety of the search of the rental vehicle, which was performed after Corporal Lawson developed a probable cause basis to stop the vehicle and reasonable articulable suspicion to believe Appellant was involved in criminal activity. Accordingly, 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 judge'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 supporting the ruling. State v.

Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005); see also State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (" 'When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.' " (citation omitted)). Critically, 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); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 ("In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge's ultimate determination de novo but, rather, would apply a deferential standard of review.").

ANALYSIS

A. Issue Preservation

In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary, subject to change based on developments during trial, and not a final ruling

on the admissibility of the challenged evidence. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999); see State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996) ("A ruling in limine is not a final ruling on the admissibility of evidence."). As a result, even if a threshold objection has been raised, a defendant must object at the time evidence is introduced during trial in order to preserve an issue with the evidence's admission for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993); see State v. Griffin, 339 S.C. 74, 77, 528 S.E.2d 668, 669 (2000) ("[A]n in limine ruling is not final and does not preserve the issue for appeal."). "However, where a judge makes a ruling on the admission of evidence on the record **immediately prior to** the introduction of the evidence in question, the aggrieved party does not need to renew the objection." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (emphasis added). "This exception is based on the fact that when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection." State v. Wiles, 383 S.C. 151, 156-157, 679 S.E.2d 172, 175 (2009).

In the case sub judice, defense counsel raised an in limine motion at the outset of trial seeking for the evidence discovered in the search of the rental vehicle to be suppressed, and the trial judge issued a preliminary ruling denying Appellant's motion at the conclusion of an in limine hearing on the matter. Thereafter, during trial, the solicitor moved to admit the marijuana discovered during the search while the fifth witness to testify for the State was on the witness stand. At that time, defense counsel did **not** renew her earlier suppression motion and did **not** raise any other objections to the admission of that evidence. Instead, defense counsel directly stated she had "[n]o objections" to the evidence. The trial judge then responded by admitting the marijuana "without objection." Thus, in Appellant's case, the only objection raised to the admission

of the incriminating evidence discovered during the search of the rental vehicle was raised through an in limine motion, the trial judge only ruled on the admissibility of that evidence in a preliminary fashion at the conclusion of an in limine hearing, and the incriminating evidence was admitted without objection after defense counsel expressly waived any objection she had to it when it was offered into evidence during trial.

Critically, because the trial judge's in limine ruling did not constitute a final ruling on the admissibility of the incriminating evidence and the incriminating evidence was not admitted immediately after the trial judge issued his preliminary ruling on the matter, defense counsel was required to renew her earlier suppression motion and contemporaneously object to the admission of the incriminating evidence during trial in order to preserve any issue with the admission of that evidence for appellate review. See State v. Atieh, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012) ("A ruling in limine is not final; unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review."). However, defense counsel did **not** do so and, instead, directly indicated she had no objections to the evidence whatsoever, which constituted an express waiver of her previously-raised suppression motion. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had

'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."); see also State v. Stokes, 339 S.C. 154, 163, 528 S.E.2d 430, 434 (Ct. App. 2000) ("[T]he record reflects that this issue was only raised and ruled on in limine. Stokes never raised the issue again at any time during the trial. Merely raising an argument in limine does not preserve the issue for appellate review."). Accordingly, Appellant's issue in regard to the admission of the marijuana was not properly preserved for appellate review and cannot properly be raised or addressed on appeal. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"); see also State v. Vanderbilt, 287 S.C. 597, 598, 340 S.E.2d 543, 554 (1986) ("Issues not properly preserved at trial may not be raised for the first time on appeal."). Appellant's conviction should be affirmed.

B. Propriety of the Trial Judge's Finding Appellant Lacked Standing to Challenge the Search of the Rental Vehicle

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.").

Importantly, before a criminal defendant can challenge the propriety of a search or seizure, the defendant seeking to raise such a challenge 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."). That is true because rights protected by the Fourth Amendment are personal rights and cannot be vicariously asserted. Alderman v. United States, 394 U.S. 165, 174 (1969).

Significantly, "capacity 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) the individual had a subjective expectation that the area searched would remain free from intrusion; and (2) 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 a subjective expectation of privacy can be considered legitimate if it is one society accepts and recognizes as reasonable).

In Appellant's case, the evidence and testimony presented during trial established Sanders, an individual who was not present at the time of the stop, was the only authorized driver of the rental vehicle Appellant was driving when he was pulled over by Corporal Lawson. Furthermore, the evidence and testimony established the rental agreement Appellant provided to the officer expressly stated no other drivers were

permitted to drive the vehicle, which meant Appellant was unmistakably driving the vehicle involved in the traffic stop without valid authorization. Because Appellant was an unauthorized driver of the rental vehicle, he had no legitimate claim to the vehicle, no lawful right to control the vehicle, and no right whatsoever to possess 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[.]"). Moreover, since he did not personally rent the vehicle and was not listed or identified in the rental agreement, Appellant had no connection of any kind to the actual owner of the rental vehicle. See United States v. Kennedy, 638 F.3d 159, 165 (3rd Cir. 2011) ("An authorized driver on the rental agreement has lawful possession of the vehicle and, within the scope of the rental agreement, may legitimately exclude others from using it. In contrast, an unauthorized driver has no cognizable property interest in the rental vehicle and therefore no accompanying right to exclude. The lack of such an interest supports the position that it is objectively unreasonable for an unauthorized driver to expect privacy in the vehicle." (citations omitted)). As a result, Appellant did not have an expectation of privacy in the rental vehicle society accepts or recognizes as legitimate and could not properly claim his own constitutional rights were violated by the search of the vehicle's trunk. See Missouri, 361 S.C. at 112, 603 S.E.2d at 596 ("A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable."); see also Kennedy, 638 F.3d at 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."); United States v. Luster, 324 F. App'x 224, 225 (4th Cir. 2009) ("An unauthorized driver of a rented car has 'no legitimate privacy interest in the car' and, therefore, a search of the car 'cannot have violated his Fourth Amendment rights.' This conclusion is not altered where the authorized lessee allows the unauthorized driver to drive the rental vehicle, as an unauthorized driver still does not have permission of the rental company, the owner of the vehicle." (citations omitted)); United States v. Wellons, 32 F.3d 117, 119 (4th Cir. 1994) ("[A]ppellant, as an unauthorized driver of the rented car, had no legitimate privacy interest in the car and, therefore, the search of which he complains cannot have violated his Fourth Amendment rights.").

Under those circumstances and just as the trial judge recognized, Appellant could raise a constitutional challenge in regard to his own person, which meant Appellant was free to challenge propriety of the traffic stop and detention that occurred when he was pulled over by Corporal Lawson and could properly object to any evidence discovered as a result of the stop and detention assuming they had been improper. See State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002) ("For Fourth Amendment purposes, the traffic stop of a vehicle is a seizure."); see also Wong Sun v. United States, 371 U.S. 471, 484 (1963) (prohibiting the introduction of evidence obtained as the result of an unlawful search **or** seizure). Importantly though, just as the trial judge **also** recognized after appearing to find the seizure to be proper, Appellant could not properly challenge the propriety of the search of the rental vehicle assuming the

stop and detention were lawful in light of the fact he had no expectation of privacy in the rental vehicle as an unauthorized driver with no right to be in possession of it.[8] 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."). Therefore, Appellant could not properly object to the admission of the incriminating evidence discovered during the search of the rental vehicle, and the trial judge properly denied Appellant's suppression motion.[9] See United States v.

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[8] On appeal, Appellant contends the trial judge failed to rule on his argument he had standing to challenge the propriety of the traffic stop and detention before finding he did not have standing to challenge the search. To the contrary, the trial judge responded to defense counsel's contention regarding standing during trial by noting the Fourth Circuit Court of Appeals had only addressed the propriety of the search conducted in the case referenced by defense counsel in support of her argument after finding the seizure that proceeded the search to be lawful based on the presence of factors strikingly similar to the factors present in Appellant's case. (R. p. 110). Thus, the trial judge appears to have ruled on Appellant's argument and found the seizure to be proper before he addressed the issue of whether Appellant had a legitimate expectation of privacy in the trunk of the rental vehicle. However, assuming Appellant's appellate contention was correct and the trial judge failed to rule upon the propriety of the traffic stop and detention, the trial judge's failure to rule upon that issue would clearly establish the issue was not properly preserved for appellate review in light of the fact an issue must be raised to **and** ruled upon before it can properly be raised and addressed on appeal. 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[.]").

[9] Significantly, notwithstanding Appellant's lack of a reasonable expectation of privacy in the rental vehicle, Corporal Lawson's search of the rental vehicle did not violate Appellant's constitutional rights because the officer obtained valid consent to search the vehicle from the rental agency that actually owned it. See State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012) (identifying several recognized exceptions to the warrant requirement, including the consent exception); see also United States v. Matlock, 415 U.S. 164, 171 (1974) ("[W]hen the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that

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."). Appellant's conviction should be affirmed.

C. Propriety of the Traffic Stop and Detention Notwithstanding Appellant's Lack of Standing to Challenge the Search of the Rental Vehicle

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. Significantly, "[t]he touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). As a result, **only** unreasonable searches and seizures are constitutionally prohibited, and law enforcement officers are not required to be perfect or mistake-free in order to be in compliance with the requirements of the Fourth Amendment. 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[.]"); see also Heien v. North Carolina, __ U.S. __, 135 S. Ct. 530, 536 (2014) ("To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.' " (citation omitted)).

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permission to search was obtained from a third party who possessed common authority over or sufficient relationship to the premises or effects sought to be inspected."); State v. Laux, 344 S.C. 374, 376, 544 S.E.2d 276, 277 (2001) ("Common authority is defined as mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable for officers to believe the person granting consent has the authority to do so."); cf. State v. Moore, 377 S.C. 299, 307, 659 S.E.2d 256, 260 (Ct. App. 2008) ("[S]ince Moore's brother, the owner, also consented to the search and seizure of the vehicle, Moore cannot now claim that any alleged possessory interest in the vehicle was infringed or violated.").

Pursuant to the Fourth Amendment, "[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity." State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999). For Fourth Amendment purposes, an automobile stop, along with the detention of individuals during the stop, constitutes a seizure. Maybank, 352 S.C. at 315, 573 S.E.2d at 854. However, the initiation of an automobile stop is reasonable per se when either probable cause exists to believe a traffic violation has occurred or reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) ("[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity."); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) ("Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se."); State v. Morris, 312 S.C. 116, 117, 439 S.E.2d 291, 292 (Ct. App. 1993) ("[U]nder Terry, an officer may stop an automobile."); see also 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 matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."); United States v. Sokolow, 490 U.S. 1, 7 (1989) ("[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable

facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." (citation omitted)).

Significantly, a lawful traffic stop begins at the point an officer stops a vehicle to investigate a traffic violation and "ordinarily continues, and remains reasonable, for the duration of the stop." Arizona v. Johnson, 555 U.S. 323, 333 (2009). Once a lawful traffic stop is initiated, an officer may order the driver and any passengers out of the vehicle pending completion of the stop and "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)); 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."). "Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave." Johnson, 555 U.S. at 333.

During the course of the stop, an officer can inquire into matters unrelated to the initial justification for the stop without converting the stop into something other than a lawful seizure so long as the unrelated questioning does not measurably extend the duration of the stop. Id.; see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation). Such an investigatory traffic stop must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848; see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) ("The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the

appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.").

Even if a traffic stop is initially lawful, the detention "can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." Illinois v. Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 ("Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, continued questioning beyond the duration of an initial traffic stop is lawful and permissible where: (1) the officer has a reasonable articulable suspicion of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Id.

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)). "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)). "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), cert. dismissed as improvidently granted, 401

S.C. 264, 737 S.E.2d 480 (2012). 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). "Reasonable suspicion 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 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."); see also 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)). "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).

In the case at bar, Corporal Lawson possessed a probable cause basis to initiate the traffic stop after he observed Appellant make what he perceived to be an unsafe lane change, which constituted a traffic infraction under South Carolina law.[10] See Heien, 135 S. Ct. at 536 ("[T]o justify [a traffic stop], officers need only 'reasonable suspicion' – that is, 'a particularized and objective basis for suspecting the particular person stopped' of breaking the law." (citation omitted)); Whren, 517 U.S. at 810 (explaining a decision to conduct a traffic stop is reasonable "where the police have probable cause to believe that a traffic violation has occurred"); see also S.C. Code Ann. § 56-5-1900 (prohibiting a driver in South Carolina from changing lanes "until the driver has first ascertained that such movement can be made with safety"). As a result, the traffic stop of the rental vehicle Appellant was driving was reasonable and proper under the circumstances. See State v. Nelson, 336 S.C. 186, 193, 519 S.E.2d 786, 789 (1999) ("As a general matter, the decision to stop an automobile is reasonable where police have probable cause to believe that a traffic violation has occurred.").

[10] Notably, during the traffic stop, Appellant appeared to agree with Corporal Lawson he had made an unsafe lane change. (State's Ex. # 1). Specifically, at approximately 12:23 p.m., Corporal Lawson informed Appellant he came very close to another vehicle when he made a lane change, and Appellant responded: "Yes, sir." (State's Ex. # 1).

Furthermore, during the course of the ensuing traffic stop, Corporal Lawson developed reasonable articulable suspicion of criminal activity based on the suspicious factors he detected, which permitted the officer to extend the scope and duration of the stop. In particular, Corporal Lawson discovered Appellant was driving a rental vehicle he had no authority whatsoever to drive that had been rented by another person and was two days overdue to be returned to the rental agency that actually owned it. See United States v. Mubdi, 691 F.3d 334, 344 (4th Cir. 2012) (identifying the fact Mubdi was not an authorized driver of the rental vehicle he was driving as one of the factors establishing the existence of reasonable suspicion for an extension of a traffic stop), vacated on other grounds by Mubdi v. United States, __ U.S. __, 133 S. Ct. 2851 (2013); United States v. Boyce, 351 F.3d 1102, 1109 (11th Cir. 2003) ("[I]t raises a reasonable suspicion that the car is stolen if the rental agreement shows that the person detained is not authorized to drive the vehicle."); Crenshaw v. State, 248 Ga. App. 505, 510, 546 S.E.2d 890, 894 (Ga. Ct. App. 2001) ("Given that the rental agreement had, in fact, expired, [the officer] had an objective reason for believing that [the driver of the rental vehicle] may have been engaged in criminal conduct."); Sutton v. State, 220 P.3d 784, 790 (Wyo. 2009) (recognizing the fact a person is driving a rental vehicle that is overdue to be returned can serve as a factor towards establishing reasonable suspicion); see also Provet, 391 S.C. at 504, 706 S.E.2d at 518 (considering the fact third-party vehicle ownership is commonly connected with drug trafficking in finding an officer had reasonable suspicion to extend a traffic stop). Critically, that fact alone was a strong indicator of criminal activity and independently necessitated an extension of the traffic stop because it expressly demonstrated Appellant was **not** entitled to operate the vehicle he had been operating. See Branch, 537 F.3d at 336 (instructing a driver must be allowed to proceed on his way

following a routine traffic stop "**once the driver has demonstrated that he is entitled to operate his vehicle**" and the law enforcement officer has issued a warning ticket or citation for the traffic offense that necessitated the stop absent the existence of reasonable suspicion of criminal activity justifying an extension of the stop (emphasis added)). However, the fact Appellant was not authorized to drive the rental vehicle was not the sole suspicious factor detected by the officer during the course of the stop. Instead, Corporal Lawson **also** detected numerous other indicators of criminal activity, including: (1) the rental vehicle's windows were partially rolled down while it was travelling along the interstate, which the officer knew was commonly used to mask the odor of illegal drugs; (2) Appellant exhibited signs of excessive nervousness above and beyond those exhibited by drivers during routine traffic stops conducted by the officer; (3) Appellant's nervousness increased instead of abated as the stop progressed, which the officer knew to be abnormal; (4) Appellant provided inconsistent information about where he had been and did not know where the place he claimed to have been coming from in Columbia was located; (5) the responses Appellant provided did not make sense based on the fact he lived in close proximity to an unemployment office and rental agency he bypassed for ones located much farther away; and (6) Appellant reacted differently and suspiciously looked back at the rental vehicle when asked if there was any marijuana hidden in it. See Provet, 391 S.C. at 504-505, 706 S.E.2d at 518-519 (holding an officer possessed reasonable suspicion to extend the duration of a traffic stop after detecting the following factors during the course of stop: (1) Provet was behaving in a nervous manner; (2) the vehicle Provet was driving was registered to a third party, which is common in drug trafficking; (3) Provet provided inconsistent or deceptive responses to several questions; (4) numerous fast food bags, a cell phone, and some receipts were in Provet's vehicle;

and (5) there were numerous air fresheners in the vehicle); see also Mubdi, 691 F.3d at 344 ("The district court . . . correctly determined that the following suspicious behavior supported York's decision to extend the investigation: (1) Mubdi took an excessive amount of time to pull over; (2) he was exceedingly nervous; (3) he kept his foot on the car brake instead of shifting the transmission into park; (4) he could not provide details as to his destination or the family member he intended to visit; (5) he did not rent the car, contrary to what he told York; (6) he was not authorized to drive the rental car; and (7) the car was beyond the bounds authorized by the rental contract."). Based on the existence of those factors detected by the highly experienced officer, Corporal Lawson had reasonable suspicion to believe Appellant was involved in criminal activity independent of the traffic violation he committed and, as a result, was fully justified in expanding the scope of the investigation and the length of the traffic stop. See Cortez, 449 U.S. at 418 ("[A] trained officer draws inferences and makes deductions – inferences and deductions that might well elude an untrained person."); cf. Branch, 537 F.3d at 338 ("[W]ithin minutes of detaining Branch, Officer White had observed enough 'specific and articulable facts' to generate a 'reasonable suspicion' of illegal activity.").

Accordingly, because the officer possessed a probable cause basis to initiate the traffic stop and detected numerous factors leading him to reasonably suspect Appellant was involved in criminal activity during the course of the stop, Corporal Lawson's seizure of Appellant during the stop was entirely reasonable and did not violate Appellant's constitutional rights. See Segura v. United States, 468 U.S. 796, 806 (1984) ("By its terms, the Fourth Amendment forbids only 'unreasonable' searches and seizures."). Therefore, notwithstanding the fact Appellant's objection to the incriminating evidence was blatantly unpreserved for appellate review, the trial judge

committed no error in denying the suppression motion and admitting the marijuana and other evidence during trial. See State v. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013) ("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." (citations omitted)); State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."); see also Khingratsaiphon, 352 S.C. at 71, 572 S.E.2d at 460 ("*Assuming* the trial judge incorrectly based his ruling on the fact Officer Lyman heard 'gun' before conducting the frisk, the Court must nonetheless affirm his decision because other articulable facts (baggy clothing, gang graffiti, the approach of another individual, hearing a 'commotion') support the trial judge's decision upholding the frisk." (italics in original)). Appellant's conviction should be affirmed.

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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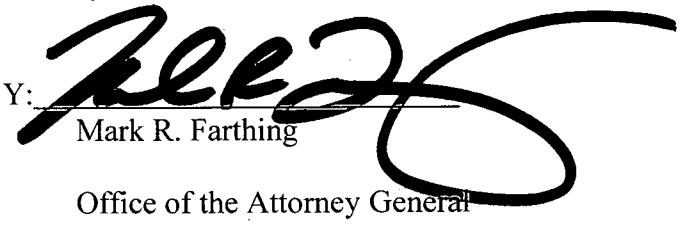
BY: 
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December 3, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Darlington County
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge
Appellate Case No. 2013-002534

THE STATE,

Respondent,

vs.

JAMECO ABDUL TONEY,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 3rd day of December, 2015.

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