THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions
Kristi L. Harrington, Circuit Court Judge

Court of Appeals Case No. 2015-000605

The State of South Carolina,

Respondent,

v.

Anthony Janirus Robinson,

Appellant.

Initial Brief of Respondent

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STATEMENT OF THE CASE

Appellant was indicted for the offense of trafficking in 10-28 grams of cocaine (Indictment 2013-GS-10-109). He pled not guilty and was tried before a jury on March 4, 2015. At the conclusion of his trial, the jury found him guilty of simple possession of cocaine. The trial court thereafter sentenced Appellant to a 10-year term of incarceration and a fine of $12,500, with credit for any time served.

This appeal follows.

STATEMENT OF FACTS

Sometime on or before the early morning hours of September 21, 2012, Shana Brown lent Kewanna Rivers borrow her white Oldsmobile 88.[1] Appellant was with Ms. Rivers when she borrowed the car, but Ms. Brown lent the car to Ms. Rivers because "she ha[d] the permit and the license." (Tr. tr. p. 225, line 6 – p. 226, line 3; p. 230, lines 3-16). Ms. Rivers was the only one given permission to drive the car by Ms. Brown and, when Ms. Rivers and Appellant left, Ms. Rivers was driving the car. (Tr. Tr. p. 226, lines 4 –13; p. 230, lines 3-16.)

On September 21, 2012, Officer James Greenawalt of the North Charleston Police Department,[2] was at the Club Showtime on Ashley Phosphate Road in North Charleston in Charleston County because of the increase in arrests at the club. (Tr. tr. p. 110, lines 5-18.) He parked his patrol car at the front of the parking lot so it was visible to people going in and out of the lot, and then conducted a foot patrol in the parking lot, actually walking between each and every car. (Tr. tr. p. 110, line 12 – p. 111, line 16.) As he passed an unoccupied white Oldsmobile 88, the smell of marijuana attracted his attention. He turned, looked at the car, and walked even closer to it allowing him to smell a "very small, strong odor of marijuana" coming from the car. (Tr. tr. p. 111, line 16 – p. 112, line 4.) Suspicious of the vehicle, Officer Greenawalt positioned himself in a breeze-way

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[1] At the time the car was loaned to Ms. Rivers, Ms. Brown said there was no cocaine in it and that the cocaine found in the car by the police was not hers. She testified at the trial that she did not recall there being a black, hooded sweatshirt in the back seat. (Tr. tr. p. 227, line13 – p. 228, line 10; p. 230, lines 3-13.)

[2] At the time of the trial, which was approximately two and a half years after the incident, Officer James Greenawalt had been with the North Charleston Police Department for almost seven years, had almost 13 years of law enforcement experience, and had attended several advanced classes, amounting to almost 100 hours, on narcotics and drugs. (Tr. tr. p. 109, lines 6-21.)

of the apartments right next to the club, from where he had an unobstructed view of the car, and waited. (Tr. tr. p. 112, lines 5 – 22.)

Appellant later came out of the club with a woman, Ms. Rivers, and walked to the car. Ms. Rivers walked to the passenger side of the car, and Appellant – who appeared to Officer Greenawalt to be in control of the car – walked to the driver's side and unlocked the door with the keys he had. Prior to that time, no one else had gone to or from the car while Officer Greeawalt had been watching. (Tr. tr. p. 112, line 16 – p. 114, line 10.) After Appellant opened the driver's door, but before either he or Ms. Rivers got into the car, Officer Greenawalt approached him, identified himself, and told him why he was there. With the door of the car open, Officer Greenawalt smelled an "extremely stronger" odor of marijuana coming from inside the car. Officer Greenawalt determined the odor was of burnt marijuana (as opposed to raw, unsmoked marijuana). (Tr. tr. p. 114, line 9 – p. 115, line 5.)

For safety and to prevent them from running, Officer Greenawalt detained Appellant and Ms. Rivers and placed handcuffs on both of them. He explained to them that they were being detained because of the strong odor of marijuana coming from the car they were getting ready to enter. They were both were very compliant. (Tr. tr. p. 115, line 6 – p. 116, line 20.) Officer Greenawalt walked Appellant to the rear of his car and asked if he had anything illegal on his person; Appellant replied negatively. (Tr. tr. p. 116, lines 21-25.) Officer Greenawalt then asked if he could search Appellant, and Appellant consented. During the resulting search of Appellant, Officer Greenawalt found two nuggets of marijuana in a folded one-dollar bill in Appellant's back pocket and a partially smoked marijuana blunt in his front, left pocket. (Tr. tr. p. 117, line 1 – p. 118,

line 1.) Officer Greenawalt conducted a field test for marijuana and it was positive for THC, the active chemical in marijuana. Appellant was then told that he was under arrest for possession of marijuana. (Tr. tr. p. 118, lines 2-17.)

Officer Greenawalt called for a transport unit to transport Appellant; when it arrived, Appellant was placed in the back of that unit. (Tr. p. 118, line 18 – p. 119, line 7.) Department policy required Appellant's car to be towed and that a tow form, containing an inventory of valuable or illegal items in the car, to be completed to protect the owner and the police department. (Tr. tr. p. 119, line 8 – p. 120, line 13.) Officer Greenawalt conducted an inventory of the car, during which he found:

- a black bag inside the closed front seat center console, between the driver's seat and front passenger seat, containing three (3) clear, sandwich-sized plastic baggies of cocaine (Tr. tr. p. 120, line 14 – p. 123, line 5.);
- a plastic baggie of cocaine inside the right pocket of a black, man-sized, large hooded jacket (Tr. tr. p. 124, line 12 – p. 125, line 15); and
- a scale in the jacket (Tr. tr. p. 125, lines16-22).

The white powdery substance in the baggies field tested positive for cocaine (Tr. tr. p. 120, lines 17-19.) The baggies with the cocaine found in the car, the scales, and the marijuana were all collected as evidence. The black plastic bag and the sweatshirt were left in the car. (Tr. tr. p. 125, line 23 – p. 127, line 24; p. 136, lines 4-6; p. 140, lines 21-23.)

After finding the cocaine in the car, Officer Greenawalt called Officer Victor

Buskirk,[3] the Watch Commander, and told him he had a suspect in custody with almost an ounce of cocaine. Officer Buskirk responded to the Charleston County club, was given an update, and advised Officer Greenawalt to advise Appellant of his rights. (Tr. tr. p. 167, line 9 – p. 170, line 11.)

Officer Greenawalt then walked over to Appellant, who was sitting in the back of the transport vehicle. In view of, but not earshot of Officer Buskirk, Officer Greenawalt advised him of his rights. Appellant advised him that he understood his rights and was willing to talk to him. (Tr. tr. p. 127, line 25 – p. 129, line 12; p. 130, lines 9-11; p. 171, line 2 – p. 172, line 2; p. 182, line 19 – p. 183, line 14.) Officer Greenawalt did not make any promises to Appellant, did not threaten him, and did not deliberately mislead him in any way. (Tr. tr. p. 129, line 20 – p. 130, line 1.) When then asked about the cocaine, Appellant said the cocaine – not distinguishing between the cocaine found in the console and that found in the jacket – was his. (Tr. tr. p. 130, line 6 – p. 131, line 8.) Officer Buskirk, telling Appellant that someone who has almost an ounce of cocaine can help the police, talked to him in an effort to get him to work with the narcotics unit to identify his supplier. Appellant said that he could not do that and that most of "that" was fake anyway. (Tr. tr. p. 172, line 12 – p. 177, line 7; p. 184, line 3 – p. 185, line 6.)

Officer Greenawalt started the paperwork to have the Oldsmobile towed, but before that could be done, the registered owner, Shannon Brown arrived on the scene.[4]

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[3] At the time of the trial, which was approximately two and a half years after the incident, Officer Victor Buskirk had been with the North Charleston Police Department for almost 14 years. (Tr. tr. p. 167, lines 12-18.)

[4] At approximately 2:00 a.m. on September 21, 2012, Ms. Rivers called Ms. Brown. Learning that both Ms. Rivers and Appellant were being detained by the police, Ms. Brown went to the club to retrieve her car. (Tr. tr. p. 228, line 11 – p. 229, line 1.)

Because she was the registered owner, did not have anything to do with what had happened, and because she would have had to pay $250 to get car out of the tow yard, Officer Greenawalt exercised his discretion to release the car to her instead of having it towed. (Tr. tr. p. 133, line 16 – p. 135, line 4; p. 136, lines 4-10.)

After the Oldsmobile was released to Ms. Brown and the scene was clear, Appellant was transported to the Charleston County Detention Center. (Tr. tr. p. 136, lines 7-24.) Upon his arrival at the Detention Center, Appellant was booked.[5] As part of the booking process, he was searched by Sergeant Anthony Williams. During that process, Appellant was asked to open his mouth and lift his tongue. He hesitated and appeared to be trying to conceal something by moving around his tongue. Officer Williams told him to hand over whatever he had in his mouth; after asking him a couple of times, Appellant finally handed over a small plastic bag containing a white substance. The bag had little marks on it, and it appeared as if Appellant had tried to chew it. (Tr. tr. p. 187, line 18 – p. 190, line 15.) Officer Williams handed it to Officer Whitten, a Transport Officer with the North Charleston Police Department, in a plastic glove. (Tr. p. 190, lines 20 – p. 191, line 24.) It was later turned over to Officer Greenawalt who processed it as evidence. (Tr. tr. p. 137, line 16 – p. 138, line 23; p. 139, lines 16-25.)

Pursuant to policy when a detainee is suspected of ingesting drugs, Appellant was then taken to the hospital to make sure he was okay. (Tr. p. 191, line 25 – p. 192, line 17.)

Inasmuch as Appellant had taken responsibility for the drugs found in the car, Ms. Rivers was not charged and released. (Tr. tr. p. 133, lines 10-15.)

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[5] Officer Williams testified on cross and redirect, when shown Appellant's property report from the Detention Center, that a cell phone was returned to Appellant and Appellant's property listing did not include a jacket. (Tr. p. 193, line 8 – p. 194, line 13.)

The three clear plastic bags of white powdery substance collected from the console of the Oldsmobile, the plastic bag of white powdery substance collected from the pocket of the jacket on the backseat of the Oldsmobile, and the plastic bag recovered from Appellant's mouth at the Detention Center were all tested by Mary Beth McCormack, a forensic scientist with SLED. (Tr. p. 208, line 9-15.) Her testing revealed that one bag contained 12.0 grams of cocaine, three bags contained a total of 1.6 grams of cocaine (these three bags were also weighed separately and found to contain 0.6, 0.5, and 0.5 grams of cocaine), and two bags contained a total of 11.7 grams of cocaine (they were not weighed separately as they were untied and leaking). The substance in one of the two other bags was determined not to be a controlled substance, but possibly caffeine, while the substance in the last bag was determined to be methalone. (Tr. tr. p. 216, line 13 – p. 218, line 5; p. 220, line 3 – p. 222, line 8.)

ARGUMENT

I.

Appellant has failed to preserve any issue concerning the search of the car and the seizure of the cocaine found inside it because of his failure to object at the time the evidence was introduced into evidence. If Appellant's objection was preserved, he does not have standing to challenge the search and seizure because he was not the owner of the car and did not permission from the owner to drive it. Additionally, even if Appellant's objection was preserved and he has standing to challenge the search and seizure, the trial court properly denied Appellant's motion to suppress the cocaine and other items found during the search of the car because probable cause to search existed and the police properly conducted an inventory in anticipation of having the car towed. (Issues I, II, and III.)

During the pretrial hearing held *the day before* Appellant's trial, the defense moved to suppress the cocaine found in an Oldsmobile. Defense counsel informed the trial court that there was no need for testimony. In the course of presenting the motion and responding to the motion, the Assistant Solicitor and defense counsel summarized the facts surrounding the search in this case. (Tr. tr. p. 11, line 11 – p. 16, line 7.) On September 21, 2012, an officer was on foot patrol in the parking lot outside of a nightclub, when he happened upon a car that smelled "pretty strong" of marijuana. (Tr. tr. p. 11, lines 11-15; p. 13, lines 10-11.) He staked out the car, and saw Appellant and a woman exit the club and approach it. The woman went to the passenger side and Appellant went to the driver's door; Appellant opened the door as the officer approached him. When the door opened, the officer was overwhelmed by the odor of marijuana in the car. (Tr. tr. p. 11, lines 15-20; p. 12, lines 23-24; p. 23, lines12-17.) At that point, Appellant consented to a pat down of his person; during the pat-down, the officer found marijuana on Appellant. Appellant was taken into custody for possession of marijuana.

He was going to be taken to jail and they were going to tow the car so an inventory had to be done. When the officer was conducting the inventory, he found cocaine in the center console and cocaine in a sweatshirt in the back seat. The car was not towed because the owner was called, came to the scene, and took possession of the car. (Tr. tr. p. 11, lines 20-25; p. 13 – p. 15, line 17.)

The defense made the following arguments to the trial court in support of its motion to suppress.

> .... So it was a search that was conducted in light of his smelling marijuana of a parked car and then, incident to the arrest, for possessing marijuana.
>
> It would be our contention that the automobile exception should not apply in this case, given that under the circumstances he could have retrieved a search warrant. I understand the case law does provide that probable cause can be established by the officer smelling marijuana in the case of automobiles.
>
> But I think under the Supreme Court's progeny from Carroll and Beltman, and all those other cases, that these – that the thing we consider wouldn't necessarily be at issue here because the car was parked and not during a traffic stop. This was not presented as a traffic stop. So I don't think there was any exigency, there was not ready mobility and – or potential for lost evidence, which would be the language from Carroll. Obviously, an expectation of privacy would be the same in a parked car as it would be in a moving car. Bur because I think that there was a sort of –
>
> THE COURT: Where was the car, [defense counsel]?
>
> DEFENSE COUNSEL: In a nightclub parking lot. And my client was seen coming out of the nightclub.
>
> And so what we would say is that the officer was sort of in a unique position to obtain a sesarch warrant for an automobile in this case, and he could have obtained that by swearing to the magistrate that he smelled marijuana. We would request that what was found in the car be suppressed on that basis.

(Tr. tr. p. 11, line 25 – p. 13, line 5.)

> Judge, we would take issue with based on the officer's reports that there wasn't indication as to whether or not thise was inventory or a search. I believe that the tow company was not there. And under Gantz, it is important to draw a distinction between the search and inventory. And I don't think there was anything really to indicate that this was an inventory search. It was a search incident to the arrest for marijuana, which I think is an important distinction
>
> THE COURT: Was the car towed?
>
> DEFENSE COUNSEL: No.
>
> It was eventually turned over, Your Honor. The owner was called and came and got it.
>
> THE COURT: Your client was not the owner? He was just the driver?
>
> DEFENSE COUNSEL: Yes.

(Tr. tr. p. 14, line 10 – p. 15, line 1.)

> THE COURT: Anything further on that?
>
> DEFENSE COUNSEL: No, Your Honor.
>
> THE COURT: Based upon the – and do you want the officer here? We can do this –
>
> Do you agree substantially with what the officer would testify to, based upon the police report?
>
> DEFENSE COUNSEL: We do to the extent that we do disagree that this was an inventory search.
>
> I don't believe that there's some indication that the ownder of the car was contacted to come retrieve it, Your Honor. They just walked by. That this was a situation where the car was planned to be turned over to the owner, and law enforcement was well-aware of that. There was no reason to inventory the car if they were turning it over to the owner.

(Tr. tr. p. 15, line 18 – p. 16, line 7.)

The State argued that the search was legal as an inventory because police were planning on towing the car and had looked through it for that purpose. They eventually decided not to tow it, but to instead release it to its registered owner when she showed up

at the scene. The State also argued that the search was proper because the odor of marijuana emanating from the car provided probable cause to search the car. (Tr. p. 15, lines 3-17.)

The trial court denied the motion to suppress as follows.

> Based upon the testimony that would be presented from the officer is –while I understand there may be some discrepancy or difference in opinion as to if the owner hadn't appeared, he would had the right to search it pursuant incident for towing – and, probably even more so, to turn it over to an owner – based upon the smell. I would think that he would then also have the right to an inventory search to make sure that there was no further contraband or illegal items in there.

(Tr. tr. p. 16, lines 8-19.) Although the record does not reflect an exception to the ruling by the defense, the trial court noted one. (Tr. tr. p. 16, lines 20-21.)

Appellant's trial began the next day, March 4. During the trial, the State presented the testimony of the officers who recovered the cocaine from the Oldsmobile and from Appellant's mouth, Officers Greenawalt and Williams. The defense did raise any Fourth Amendment challenges to their testimony about their discovery of the cocaine. (Tr. tr. p. 120, line 1 – p. 127, line 12; p. 189, line 4 – p. 191, line 23.) The evidence best kit, containing all of the plastic bags of cocaine recovered from the car and Appellant, was introduced into evidence at the end of the Ms. McCormack testimony about her testing and weight of the cocaine. (Tr. tr. p. 212, line 19 – p. 219, line 2.) At that time, no objection was made.

> [ASSISTANT SOLICITOR]: Your Honor, at this point I would like to admit State's Number 2, which is the best kit.
>
> THE COURT: Any objection?
>
> [DEFENSE COUNSEL]: No objection.

THE COURT: State's 2 into evidence without objection.

(Tr. tr. p. 219, lines 20-25.)

Argument

On appeal, Appellant claims the trial court erred in admitting the cocaine seized from the car as part of an inventory of the car's contents because there was no evidence establishing standard Department procedures governing such searches, the car was not taken into police custody, and Officer Greenawalt exceeded the boundaries of an inventory search by going into the pockets of the jacket found on the back seat. He asserts the inventory was unconstitutional, the evidence should have been suppressed, and his conviction should be reversed and the charges dismissed.

Respondent vehemently disagrees with Appellant's assertion of reversible error and maintains the search of the car, which resulted in the discovery of the cocaine was constitutional as either an inventory or under the automobile exception to the search warrant requirement. However, Respondent maintains that Appellant has failed to preserve or present any issue for appellate review, and does not have standing to challenge the search.

Issue Preservation and Presentation

In order to preserve an issue for appeal, an appellant must have timely raised an issue before the trial court with sufficient specificity, and the trial court must have ruled upon it. *State v. Brown*, 402 S.C. 119, 126 n 2, 740 S.E.2d 493, 496 n 2 (2013); *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Moreover, an appealing party is bound by the grounds and arguments asserted at trial and may not raise different ones on appeal. An appellant who raises a new argument on appeal will not have

preserved the issue for appellate review. *State v. McCray,* 332 S.C. 536, 542, 506 S.E.2d 301, 303 (1998) (party may not argue one ground at trial and another on appeal); *State v. Gardner*, 332 S.C. 389, 393-394, 505 S.E.2d 338, 340 (1998); *State v. Byram*, 326 S.C. 107, 116, 485 S.E.2d 360, 364 (1997). At no point during the hearing on the motion *in limine* and trial, did Appellant argue the search and seizure was unconstitutional because of either the failure of the State to present evidence of standard procedures for inventories or the claim that the search of the jackets pocket exceeded the scope of a lawful inventory. These two arguments on appeal were not presented to and ruled upon by the trial court and, consequently, are not properly before this Court on appeal. *State v. McCray,* 332 S.C. 536, 542, 506 S.E.2d 301, 303 (1998) (party may not argue one ground at trial and another on appeal); *State v. Gardner*, 332 S.C. 389, 393-394, 505 S.E.2d 338, 340 (1998); *State v. Byram*, 326 S.C. 107, 116, 485 S.E.2d 360, 364 (1997).

In addition, in the Conclusion of his brief, Appellant includes a one sentence statement that, because the inventory search violated the Fourth Amendment, his statements to the police should have been excluded as fruit of the poisonous tree. (Initial Brief of Appellant at pp. 18-19.) During the *Jackson v. Denno* hearing, defense counsel actually stated he had no objection to the admissibility of the statements. (Tr. tr. p. 27, line 4 – p. 48, line 24.). Appellant also failed to object when Officers Greenawalt and Buskirk testified about the statements in front of the jury. This issue has not been preserved for appeal due to his failure to raise the issue before the trial court and have it ruled upon. *State v. Brown*, 402 S.C. 119, 126 n 2, 740 S.E.2d 493, 496 n 2 (2013); *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). In addition, even had it been preserved, the issue would be deemed abandoned because this one

sentence statement in the Conclusion of Appellant's brief is the extent of this "argument" and there are no citations of authority. *Ex parte Cannon*, 385 S.C. 643, 668, 685 S.E.2d 814, 828 (2009).

In addition, in order to preserve an objection to a ruling on a motion *in limine*, a contemporaneous objection must be made when the evidence is introduced. *State v. Kromah*, 401 S.C. 340, 737 S.E.2d 490 (2013); *State v. Rivers,* 411 S.C. 551, 769 S.E.2d 263 (Ct. App. 2015). The exception to this general rule is when a ruling on the motion *in limine* is made immediately prior to the introduction of the evidence in question. *State v. Kromah, supra*; *State v. Mueller,* 319 S.C. 266, 268–69, 460 S.E.2d 409, 410–11 (Ct. App. 1995) (where there is no evidence between the ruling and the testimony, the decision on the motion *in limine* is a final one because there is no basis for the trial court to change its ruling).

Appellant made an oral motion *in limine* to suppress the items found during the search of the car. That motion was heard the day before the trial began, and was premised not on the testimony of any witnesses, but upon the summary of the facts by counsel. During that hearing, Appellant argued the search of the car was unconstitutional because it was an improper search incident to arrest; while the odor of marijuana constituted probable cause to search, the automobile exception did not apply because the car was parked and the police could have obtained a search warrant; and the search did not qualify as an inventory because the car was returned to the owner and not towed. The trial court denied the motion to suppress. The next day, the jury was selected and the trial was held. As set forth, herein, Appellant did not renew his objection to either testimony about the search or the introduction of the cocaine itself at the time it was introduced. His

failure to do so resulted in his failure to preserve any issue related to the search and seizure for appeal. *See State v. Kromah*, *supra*; *State v. Griffin*, 339 S.C. 74, 77, 528 S.E.2d 668, 669 (2000); *State v. Rivers*; *supra.*

Standing to Challenge the Search

The Fourth Amendment does not prohibit searches and seizures – just unreasonable searches and seizures. *See, e.g., Illinois v. McArthur*, 531 U.S. 326 (2001). "The touchstone of the Fourth Amendment is reasonableness." *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006); *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). See also *Katz v. United States,* 389 U.S. 347, 360 (1967).

> "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections.

Rakas v. Illinois, 439 U.S. 128, 142-143 (1978).

The Fourth Amendment does not apply in the absence of a reasonable expectation of privacy. *See, e.g., Minnesota v. Carter*, 525 U.S. 83 (1998); *Katz v. United States,* 389 U.S. 347 (1967). To determine whether an expectation of privacy is one that is protected by the Fourth Amendment, there are two questions, both of which must be answered affirmatively.

- Did the individual, by his conduct, exhibit an actual (*i.e.*, subjective) expectation of privacy?
- If so, is that subjective expectation of privacy one that society is prepared to recognize as reasonable?

Smith v. Maryland, 442 U.S. 735, 740 (1979). If both of these questions cannot be answered affirmatively, the expectation of privacy is not one that is protected by the Fourth Amendment.

The Supreme Court of the United States has held that "a person can have a legally sufficient interest in a place other than his own home so that the Fourth Amendment protects him from unreasonable governmental intrusion into that place." *Rakas v. Illinois*, 439 U.S. at 142-143 (1978); *Jones v. United States*, 362 U.S. 257, 263 (1960). Here, Appellant neither owned the car in question, nor was authorized to drive it. He made no showing that he had an expectation of privacy in the console or in the jacket in the back seat, much less one that society is willing to except as reasonable.[6]

> One 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. Whether a person has an expectation of privacy in a container that is searched is not determined by his subjective beliefs. His expectation must be objectively reasonable. 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, such as a paper bag.

United States v. Hargrove, 647 F.2d 411, 412 (4th Cir. 1981). See also *Rakas v. Illinois*, *supra*; *United States v. Luster*, 324 F. App'x. 224, 225 (4th Cir. 2009) (unauthorized driver of a rental car has no legitimate privacy interest in the car that is protected by the Fourth Amendment even if authorized renter allows the unauthorized driver to drive because the unauthorized driver does not have the permission of the rental company);

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[6] A defendant challenging a search and seizure bears the burden of establishing that his own Fourth Amendment rights were violated by the search or seizure. See *Rakas v. Illinois*, 439 U.S. 128, 130 n. 1 (1960). *See also Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980); *State v. McKnight*, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987).

United States v. Mincy, 321 Fed. Appx. 233 (4th Cir. 2008) (same). Appellant does not have standing to challenge the search and seizure, and his motion to suppress was properly denied.

The Search Did Not Violate the Fourth Amendment

A search and seizure that is not supported by a warrant based on a determination of probable cause is generally *per se* unreasonable unless an exception to the warrant requirement applies. *State v. Bultron*, 318 S.C. 323, 457 S.E.2d 616 (Ct. App. 1995); *State v. Brown,* 289 S.C. 581, 347 S.E.2d 882 (1986). The burden of establishing the existence of circumstances constituting an exception to the warrant requirement rests upon the prosecution. *Id.*

The automobile exception is a well-established exception to the search warrant requirement. *See California v. Carney,* 471 U.S. 386, 390–391 (1985); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Chambers v. Maroney*, 399 U.S. 42 (1970); *Carroll v. United States*, 267 U.S. 132 (1925). Under this exception, if there is probable cause to justify the issuance of a search warrant to search a vehicle, a search warrant is not necessary. *Maryland v. Dyson,* 527 U.S. 465 (1999). "The automobile exception to the search warrant requirement is based on: (1) the ready mobility of automobiles and the potential that evidence may be lost or destroyed before a warrant is obtained and (2) the lessened expectation of privacy in motor vehicles which are subject to government regulation." *State v. Weaver*, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007). See also *State v. Morris,* 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015). There is no separate exigency requirement. *Maryland v. Dyson,* 527 U.S. 465 (1999); *Pennsylvania v. Labron*, 518 U.S. 938 (1996); *United States v. Ross*, 456 U.S. 798 (1982).

> Our first cases establishing the automobile exception to the Fourth Amendment's warrant requirement were based on the automobile's "ready mobility," an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear. *California v. Carney,* 471 U.S. 386, 390–391, 105 S. Ct. 2066, 2068–2069, 85 L.Ed.2d 406 (1985) (tracing the history of the exception); *Carroll v. United States,* 267 U.S. 132, 45 S. Ct. 280, 69 L.Ed. 543 (1925). More recent cases provide a further justification: the individual's reduced expectation of privacy in an automobile, owing to its pervasive regulation. *Carney, supra,* at 391–392, 105 S. Ct., at 2069–2070. **If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more.** *Carney, supra,* at 393, 105 S. Ct., at 2070.

(Emphasis added.) *Pennsylvania v. Labron*, 518 U.S. at 940. The automobile exception includes the right to search containers within vehicle regardless to whom the container belongs. *Wyoming v. Houghton*, 526 U. S. 295 (1999); *State v. Brannon*, 347 S.C. 85, 94, 552 S.E.2d 773, 776 (Ct. App. 2001).

Here, Officer Greenawalt smelled an odor of marijuana coming from the car when it was parked, empty, in the parking lot with the doors shut and the windows up. Then, when Appellant unlocked and opened the driver's door he smelled a stronger odor of marijuana coming from the car. It is well-established that the odor of marijuana can satisfy the probable cause requirement to search a vehicle. See *United States v. Scheetz,* 293 F.3d 175, 183–84 (4th Cir. 2002) (smell of marijuana emanating from a properly stopped automobile constitutes probable cause to believe that marijuana is in the vehicle, justifying its search); *United States v. Morin,* 949 F.2d 297, 300 (10th Cir. 1991) (because marijuana has a distinct smell, it alone can satisfy the probable cause requirement to search a vehicle). Because probably cause to search the vehible existed, the automobile exception to the warrant requirement allowed the warrantless search by Officer

Greenawalt. The motion to suppress was properly denied.

In addition, the search was allowable as an inventory. While the Fourth Amendment applies to inventories conducted by law enforcement officers, they are not considered "searches" for Fourth Amendment purposes, *i.e.*, they are not conducted for criminal investigative reasons and the probable cause standard is inapplicable. *See Colorado v. Bertine,* 479 U.S. 367, 371 (1987)). "An inventory search is the search of property lawfully seized and detained, in order to ensure that it is harmless, to secure valuable items (such as might be kept in a towed car), and to protect against false claims of loss or damage." *Whren v. U.S.*, 517 U.S. 806, 811 n. 1 (1996). *See also Colorado v. Bertine, supra.* Probable cause is not the standard, and search warrants are not needed. Under the fourth amendment, the propriety of inventory searches is judged by the standard of reasonableness. *Id.*

Here, the evidence was that Officer Greenawalt was going to have the car towed, and began filling out the tow sheet. As part of that processed, he looked through the car for the purpose of inventorying the items in it. During that inventory he found the cocaine. It was only after that point that the Ms. Brown showed up and the decision was made to release the car to her rather than have it towed. Officer Greenawalt testified he exercised the discretion he said he had under his Department's policy to release the car to her because he saw no reason to make her have to pay $250 to get her car from the tow lot when she was not at fault. There is no evidence that Officer Greenawalt planned to release the car prior to the inventory search. Instead, the records establishes his change of plans was based upon the appearance of Ms. Brown, who had been called to the scene by Ms. Rivers, and they do not render the inventory unreasonable and unconstitutional. *See*

United States v. Woolbright, 831 F.2d 1390, 1394 (8th Cir. 1987) (change of plans in releasing detainee to federal authorities after inventorying his belongings during process of booking him into state detention facility did not render search unreasonable or indicate that search was not conducted pursuant to established procedures).

CONCLUSION

For the foregoing reasons and any other appearing in the Record on Appeal (as provided for in Rule 220, SCACR), the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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April 26, 2016

Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Anthony Janirus Robinson*
Court of Appeals Case No. 2015-000605

Dear Ms. Kitchings:

Enclosed for filing, please find the original and one (1) copy of the State's Initial Brief of Respondent served on Appellant in the above-referenced appeal and the original Designation of Matter to be Included in Record on Appeal. I have also enclosed the original Proof of Service indicating service of the Brief and Designation on yesterday's date.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

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Enclosures (as stated)

cc: Ronald G. Tate, Jr., Esquire, Counsel for Appellant
(with one copy of the Proof of Service)
Robert M. Dudek, Chief Appellate Defender , Co-Counsel for Appellant
(with one copy of the Proof of Service)