STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Edward W. Miller, Circuit Court Judge
Appellate Case No. 2016-000800

THE STATE,

Respondent,

vs.

KARACUS KOREAN FREEMAN,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

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

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville County Courthouse
Greenville, SC 29601
(864) 467-8282

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STATEMENT OF ISSUE ON APPEAL

Appellant's issue regarding the admission of incriminating evidence discovered during a search of the vehicle he was driving at the time of the investigatory 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 by instructing the trial judge he had no objection to the heroin when the solicitor moved for it to be admitted into evidence during trial. However, notwithstanding any issue preservation concerns, the trial judge correctly denied Appellant's suppression motion because, under the totality of the circumstances, the officers involved in Appellant's case possessed reasonable suspicion to conduct an investigatory stop of the vehicle Appellant was driving at the time of the stop after they received reliable information from a cooperating non-confidential informant about that informant's narcotics supplier and corroborated significant aspects of that information prior to conducting the stop.

STATEMENT OF THE CASE

In May of 2014, Appellant Karacus Freeman was arrested after law enforcement officers discovered over seven grams of heroin during an investigatory stop of a vehicle. In June of 2015, the Greenville County Grand Jury indicted Appellant for one count of trafficking in heroin in an amount greater than four grams. On April 5, 2016, a jury trial was commenced in the Greenville County Court of General Sessions with the Honorable Edward W. Miller, 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 ten-year term of imprisonment. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

At approximately 7:42 p.m. on the evening of May 26, 2014, Officer Andrew Sturman of the Greenville Police Department arrested Robert Arnold, whom the officer knew had previously been arrested while in possession of marijuana and heroin, for trespassing at an apartment complex. (R. pp. 8-9; pp. 13-14; pp. 42-44). Officer Sturman then transported Arnold to the Greenville County Detention Center, searched him, and discovered three illegal prescription pills in his pocket. (R. pp. 9-10; pp. 44-45). In response, the officer spoke with Arnold about the pills, and Arnold agreed to make a phone call to his heroin supplier in exchange for assistance with his charges. (R. pp. 10-11; p. 45). Thereafter, with Officer Sturman listening in, Arnold placed a call on his cell phone to a person he identified as "K" between 8:40 p.m. and 9:00 p.m., asked "K" about purchasing some heroin, and inquired of "K" where he was located at that particular time. (R. pp. 11-15; pp. 45-46). Based on the call, Officer Sturman learned "K" was going to be in the vicinity of Joe Louis Street within the next fifteen to twenty minutes. (R. p. 12; p. 46). He further learned from Arnold the vehicle "K" typically drove was a white Monte Carlo with blue racing stripes and large rims. (R. p. 12; p. 47). Officer Sturman then quickly relayed that information to Officer Mauricio Reyes, a fellow officer working for the Greenville Police Department, and Officer Reyes immediately responded to the area around Joe Louis Street to look for "K" and the white Monte Carlo.[1] (R. p. 14; pp. 17-18; pp. 47-48; pp. 51-52).

Thereafter, at approximately 9:18 p.m., Officer Reyes observed a white Monte Carlo with blue racing stripes and large rims turn off of Joe Louis Street onto another street, and he initated an investigatory stop of that vehicle. (R. pp. 17-19; pp. 52-53). At that time, Officer Eric Koepke, a canine handler with the Greenville Police Department, arrived on the scene with his drug-detection dog, Valor, and he moved to assist Officer Reyes. (R. p. 20; pp. 26-28; pp. 64-

[1] The information was relayed to Officer Reyes at approximately 9:00 p.m. (R. p. 14; p. 18).

66). Once the Monte Carlo stopped, Officer Reyes approached the vehicle, asked the driver, Appellant Karacus Freeman, to step out of the car, and placed him in handcuffs once he did so. (R. pp. 19-21; pp. 53-54). Officer Reyes then asked Appellant for consent to conduct a search of the vehicle, Appellant declined to provide consent, and Officer Koepke had Valor conduct a sniff search of the Monte Carlo.[2] (R. p. 20; pp. 28-29, pp. 54-55; p. 68). During the sniff search, Valor alerted to the presence of drugs on several different occasions. (R. p. 20; pp. 29-30; p. 55; p. 68). Officer Reyes then conducted a search of the vehicle and located an open beer can in the center console along with a bag containing a chalky brown substance that appeared to be heroin hidden near the vehicle's gear shifter. (R. pp. 20-21; p. 25; pp. 55-56; p. 71).

After finding the bag containing the suspicious substance, Officer Reyes spoke with both Appellant, whom he discovered had a name beginning with the letter "K," and a female passenger who was also inside the Monte Carlo at the time of the stop, and each of them denied ownership of the bag. (R. pp. 21-22; p. 56). Officer Reyes then took the passenger into custody, and Appellant responded by becoming irate and claiming ownership of the bag. (R. p. 22; p. 57). After that, Officer Reyes secured the bag, which was ultimately determined to contain several grams of heroin, and placed Appellant under arrest.[3] (R. p. 23; pp. 75-78).

Subsequently, Appellant was indicted for trafficking in heroin, and he proceeded to trial. (R. pp. 2-3; pp. 102-103). At the outset of trial, Appellant moved to suppress the incriminating evidence discovered during the investigatory stop, and the trial judge conducted an in limine hearing on the matter. (R. p. 4). During the hearing, Officer Sturman testified about how Arnold

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[2] Prior to having his drug-detection dog conduct the sniff search, Officer Koepke asked Appellant if there would be any reason why Valor would alert to the presence of the odor of narcotics, and Appellant responded he had just smoked marijuana before he got into the vehicle. (R. p. 29).

[3] At the time of the investigatory stop, Appellant was only under arrest for an open container violation and for driving under suspension based on the fact he admitted during the stop he did not have a valid driver's license. (R. p. 19; p. 23).

provided information and arranged a drug transaction for the officers following his arrest for trespassing, and Officer Reyes and Officer Koepke testified about their ensuing investigatory stop of the vehicle Arnold stated would be involved in the arranged transaction, which resulted in the discovery of the heroin along with Appellant's arrest.[4] (R. pp. 8-31). However, Officer Reyes candidly acknowledged during his testimony he did not observe Appellant engage in any overt criminal behavior prior to conducting the stop. (R. pp. 24-25).

Following the presentation of that testimony, defense counsel argued the incriminating evidence discovered during the investigatory stop should be suppressed based on an alleged absence of reasonable suspicion for the stop. (R. p. 31). In support of that contention, defense counsel asserted the officers did not observe any illegal activity or traffic violations prior to the stop, did not know anything about the reliability of Arnold, and did not corroborate any of the information provided by Arnold. (R. pp. 31-33). In rebuttal, the solicitor argued the stop was supported by reasonable suspicion in light of the fact the officers used Arnold, a non-confidential informant, to arrange a drug transaction while listening in on the call before locating Appellant and the unique vehicle he was driving. (R. pp. 33-35). After considering the arguments of counsel, the trial judge concluded the investigatory stop was supported by reasonable suspicion and denied the suppression motion. (R. p. 35).

Thereafter, as the trial continued forward, the officers involved in the drug investigation that led to Appellant's arrest testified about the investigatory stop of the vehicle Appellant was driving and the discovery of the bag of heroin during that stop.[5] (R. pp. 40-71). Additionally,

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[4] Arnold also testified during the in limine hearing, stated he knew Appellant "a little bit," and acknowledged he had previously been arrested on multiple occasions for drug offenses. (R. pp. 5-6). However, he claimed he did not specifically remember either being arrested by Officer Sturman on May 26, 2014, or placing a phone call to Appellant in the presence of the officer. (R. pp. 6-7).

[5] Arnold also testified during the evidentiary phase of trial and again denied remembering anything related to the events of Appellant's case while claiming to suffer from seizures. (R. pp. 40-41).

Kelly Dixon, who had formerly worked as a forensic chemist for the Greenville County Department of Public Safety and who was an expert in the analysis of controlled substances, testified about her analysis of the substance recovered from the vehicle Appellant was driving at the time of the stop and confirmed that substance constituted over seven grams of heroin.[6] (R. pp. 72-73; pp. 75-78). The solicitor then moved to introduce the heroin into evidence, and the heroin was admitted without objection after defense counsel responded: "No objection, Judge." (R. p. 76).

Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 98). Following the verdict, defense counsel moved to renew all of his earlier motions, and the trial judge reaffirmed his earlier rulings denying those motions. (R. pp. 99-100). The trial judge then sentenced Appellant to a ten-year term of imprisonment. (R. p. 101).

[6] Dixon was the fifth witness to testify for the State during the evidentiary phase of trial. (R. p. 72).

ARGUMENT

Appellant's issue regarding the admission of incriminating evidence discovered during a search of the vehicle he was driving at the time of the investigatory 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 by instructing the trial judge he had no objection to the heroin when the solicitor moved for it to be admitted into evidence during trial. However, notwithstanding any issue preservation concerns, the trial judge correctly denied Appellant's suppression motion because, under the totality of the circumstances, the officers involved in Appellant's case possessed reasonable suspicion to conduct an investigatory stop of the vehicle Appellant was driving at the time of the stop after they received reliable information from a cooperating non-confidential informant about that informant's narcotics supplier and corroborated significant aspects of that information prior to conducting the stop.

Appellant contends the trial judge erred by denying his motion to suppress the heroin discovered during the investigatory stop of the white Monte Carlo. In support of that contention, Appellant maintains the officers lacked reasonable suspicion to conduct the investigatory stop of that vehicle in light of the fact there was allegedly insufficient indicia of reliability in regard to Arnold, the non-confidential informant who provided the information that led to the stop. Initially, Appellant's issue with the trial judge's denial of the suppression motion was not properly preserved for appellate review because defense counsel only moved for the evidence discovered during the search of the vehicle Appellant was driving at the time of the stop to be suppressed during an in limine hearing, did not renew his motion when the incriminating evidence was offered into evidence, and expressly waived his earlier motion by stating he had no objection to the admission of the evidence when it was introduced. 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 officers obtained reasonable suspicion to conduct the investigatory stop of the white Monte Carlo after the officers received information

from a cooperating non-anonymous informant about his drug supplier, whom he identified as Appellant, and corroborated significant aspects of that information, including in regard to the unique details of the vehicle and its precise location at a specific time, before conducting the stop. Critically, based on the information received by the officers and the corroboration of that information prior to the stop, the officers reasonably believed heroin would be found in the white Monte Carlo Appellant was driving. As a result, the trial judge properly denied Appellant's suppression motion, and his ruling was supported by the evidence presented during trial. Appellant's conviction 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 State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) ("[A]ppellate courts must affirm if there is any evidence to support the trial court's ruling."); 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). Importantly, those issue preservation requirements are designed "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 vehicle Appellant was driving at the time of the investigatory stop 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 heroin 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 his earlier suppression motion and did **not** raise any other objections to the admission of that evidence. Instead, defense counsel directly stated he had "[n]o objection" to the admission of the heroin. Thus, in Appellant's case, the only objection raised to the admission of the incriminating evidence discovered during the search 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 he had to its admission 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 his 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 he had no objection to the heroin, which constituted an express waiver of his 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 heroin 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 Denial of Appellant's Suppression Motion

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)).

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); see State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) ("To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity."); see also 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)). The reasonableness of a stop or detention "is measured in objective terms by examining the totality of the circumstances." Ohio v. Robinette, 519 U.S. 33, 39 (1996).

For Fourth Amendment purposes, an automobile stop, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). However, 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.").

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)). It " '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 determining whether reasonable suspicion existed to support a stop, the totality of the circumstances must be considered as a whole to ascertain whether the officer's actions were reasonable in light of everything available to him or her at the time of the stop. See United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[W]e have said repeatedly that [reviewing courts] must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. The process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' " (citations omitted)). Importantly, 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) (emphasis added); see State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); ("Reasonable suspicion is more than a general hunch but less than what is required for probable cause."); State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) ("Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch.").

Recently, in State v. Pope, 410 S.C. 214, 219, 763 S.E.2d 814, 817 (Ct. App. 2014), this Court considered a challenge to the denial of a motion seeking the suppression of evidence discovered as a result of an investigatory stop of a vehicle suspected to be involved in drug activity. In that case, officers arrested an individual named Vincent Harris after he was caught distributing cocaine, and, following his arrest, Harris agreed to arrange a drug transaction with

his narcotics supplier, whom he identified as Pope, in exchange for assistance in obtaining his release on bond. Id. at 219-220, 763 S.E.2d at 817. Harris then called Pope to set up a cocaine transaction for later that day, and, after making the call, he advised an officer Pope would be travelling to the arranged transaction on a specific highway in a black Ford Expedition. Id. at 220, 763 S.E.2d at 817. In response, officers began conducting surveillance of the highway, and, while they were doing so, Harris advised them Pope had indicated he had just passed a specific location along the highway. Id. At that point, officers observed a black Ford Expedition in the area described by Harris, and they initiated an investigatory stop of the vehicle, which ultimately led to the discovery of crack cocaine along with Pope's arrest. Id. at 220-221, 763 S.E.2d at 817-818. Thereafter, Pope was tried and convicted of possession of crack cocaine with intent to distribute after unsuccessfully moving for that evidence to be suppressed, and this Court affirmed his conviction on appeal. Id. at 219, 763 S.E.2d at 817. In affirming, this Court noted non-confidential informants possess a higher level of credibility due to the fact such informants expose themselves to public view and possible criminal and civil liability if the information they provide proves to be false. Id. at 224, 763 S.E.2d at 819. With that principle in mind, this Court concluded the trial judge properly denied the suppression motion in Pope's case because the information that had been provided to the officers by Harris, a known and non-confidential informant, in regard to the description of his supplier's vehicle, the vehicle's direction of travel, the vehicle's presence at a particular location at a specific time, and the fact multiple people were inside the vehicle, established reasonable suspicion justifying the investigatory stop after the officers corroborated various aspects of that information through their own observations. Id. at 225, 763 S.E.2d at 820.

In the case at bar, the trial judge properly denied Appellant's suppression motion because Officer Reyes's decision to conduct an investigatory stop of the white Monte Carlo was reasonable under the totality of the circumstances and was supported by reasonable suspicion of criminal activity. Critically, Officer Reyes's decision was reasonable because he and his fellow officers obtained reliable information about a narcotics supplier's active involvement in illegal activity from a cooperating non-confidential informant and independently corroborated important aspects of that information. Based on the officers' corroboration of the information, it was reasonable for Officer Reyes to believe heroin would be located in the vehicle Appellant was driving at the time of the stop, which justified the investigatory stop of the vehicle. As a result, the trial judge – just like the trial judge in Pope – correctly declined to suppress the incriminating evidence discovered during the course of the investigatory stop. See id. at 225-226, 763 S.E.2d at 820-821 (holding the trial judge did not err in denying the motion to suppress the evidence discovered during and after the search of the stopped vehicle after concluding the officers' actions were justified by both reasonable suspicion and probable cause).

Looking to the specific information known to the officers prior to the stop, Arnold, the cooperating informant, arranged a drug transaction by phone with his narcotics supplier, whom he identified as "K," while Officer Sturman listened in on the call as it was taking place. Arnold then provided information to the officer about the model, color, and unique identifying features of the vehicle "K" used along with the vehicle's expected location at a specific time. Although Officer Sturman had not previously worked with Arnold, it was reasonable for him and the other officers to rely on the information provided by Arnold because Arnold's admission to having a drug supplier was decidedly against his best interests and provided the officers with powerful evidence that could have been used against him in any future trial on charges related to the

illegal pills recovered from his pocket after his arrest. See United States v. Harris, 403 U.S. 573, 583-584 (1971) ("People do not lightly admit to a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility – sufficient at least to support a finding of probable cause to search. That the informant may be paid or promised a 'break' does not eliminate the residual risk and opprobrium of having admitted criminal conduct."); see also United States v. Tyler, 238 F.3d 1036, 1039 (8th Cir. 2001) ("Mr. Garza's disclosures were presumptively credible because they were made against his penal interest. . . . After the police caught Mr. Garza with drugs in his possession, he admitted not only that he had obtained the drugs from Mr. Tyler but also that he had purchased drugs from Mr. Tyler on 'numerous occasions' over the previous years. Thus, Mr. Garza's statements cannot be taken merely as blame-shifting because they admitted to criminal activities beyond those of which the police already knew him to be guilty."); Lopez v. State, 292 Ga. App. 518, 521, 664 S.E.2d 866, 869 (Ga. Ct. App. 2008) ("[T]he admissions against penal interest of a known informant in the hands of police (even though that informant's name is not disclosed at the trial of the accused) are valuable facts indicating that the informant is telling the truth and is reliable."); see generally State v. Driggers, 322 S.C. 506, 514, 473 S.E.2d 57, 61 (Ct. App. 1996) ("Klepp-Egge also acted against his best interests by providing the police with information that possibly linked him to the crime."). Additionally, the officers' reliance on the information provided by Arnold, a **non-confidential** informant, was further justified because Arnold could have been held responsible if the information he provided proved to be false since his identity was known to the officers and he was in police custody. See Driggers, 322 S.C. at 511, 473 S.E.2d at 60 ("[A] non-confidential informant should be given higher level of credibility because he exposes himself to public view

and to possible criminal and civil liability should the information he supplied prove to be false."); cf. Rogers, 368 S.C. at 534-535, 629 S.E.2d at 682 ("In making his argument, Rogers relies on the case of State v. Green, 341 S.C. 214, 532 S.E.2d 896 (Ct. App. 2000), which relied on the case of Florida v. J.L., 529 U.S. 266 . . . (2000), both of which held an anonymous tip provided insufficient indicia of reliability to justify an investigatory stop. We find Green and J.L. clearly distinguishable from this case at hand. Both Green and J.L. involved investigatory stops based on *anonymous* tips, wherein the courts found the anonymous tips provided insufficient indicia of reliability to make an investigatory stop."). In fact, had Arnold provided false information to the officers, Arnold's chances of achieving his desired objective of getting Officer Sturman to assist him with his pending charges would have been greatly diminished. Cf. United States v. Greenburg, 410 F.3d 63, 67 (1st Cir. 2005) ("[The special agent] knew the informant's identity and therefore could hold the informant responsible if he provided false information. This tends to establish an incentive for the informant to tell the truth."). Under those circumstances, Officer Reyes and the other officers justifiably relied on the information provided by Arnold, and Arnold's reliability was sufficiently established to make the officers' reliance on his statements entirely reasonable. See Pope, 410 S.C. at 225, 763 S.E.2d at 820 ("Harris was not a confidential informant and exposed himself to criminal liability should the information he supplied to officers prove to be false."); see also Illinois v. Gates, 462 U.S. 213, 233 (1983) ("[An informant's veracity and basis of knowledge] are better understood as relevant consideration in the totality-of-the-circumstances analysis that traditionally has guided probable cause determinations: a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."); see generally State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) ("The required

reasonable suspicion can arise from an anonymous tip provided that the totality of the surrounding circumstances justifies acting on the tip.").

However, beyond the inherent reliability of the information provided by Arnold under the circumstances, the reasonableness of Officer Reyes's actions in conducting the investigatory stop was established by the officer's corroboration of significant aspects of the information provided by Arnold **before** he acted on that information. Critically, prior to the stop, Arnold informed the officers his narcotics supplier would be travelling in a white Monte Carlo with blue racing stripes and large rims in the vicinity of Joe Louis Street at approximately 9:15 p.m. to 9:20 p.m. Thereafter, around that approximate time, Officer Reyes and another officer observed a white Monte Carlo with blue racing stripes and large rims driving in the vicinity of Joe Louis Street at the time Arnold indicated that particular vehicle would be at that precise location based on his conversation with his drug supplier, which, notably, was overheard by Officer Sturman.[7] See Willard, 374 S.C. at 134-135, 647 S.E.2d at 255 ("Although the informant in this case was not previously proven reliable, . . . he was more than a mere tipster. The informant correctly identified Willard's vehicle, knew Willard's telephone number, and mentioned drugs during the conversation with Willard. Although the informant's reliability had not previously been tested, a non-confidential informant is given a higher level of credibility because he exposes himself to liability should the information prove to be false. We thus find support to affirm the trial court's finding of reasonable suspicion for the stop." (citation omitted)); cf. State v. Foreshaw, 245 N.J. Super. 166, 175, 584 A.2d 832, 836 (N.J. Super. Ct. App. Div. 1991) ("After receiving the informer's tip, the officers properly corroborated the data provided. Just as the informer had predicted, the officers observed a sliver-gray Eldorado bearing New Jersey license plates

[7] Notably, Arnold was able to accurately predict where the white Monte Carlo would be driving at a specific time despite the fact he had been in police custody for nearly two hours at the time of the investigatory stop. (R. p. 9; p. 18).

traveling southbound on the Turnpike. Inside the vehicle were two males and a female. As was also foretold, the vehicle exited the highway at Exit 4 and headed towards Camden. Once the officers established that the informant had been correct, they had probable cause to believe that defendants' car contained contraband and as such properly stopped and searched the vehicle."). Thus, before initiating the investigatory stop of the vehicle Appellant was driving, Officer Reyes verified the vehicle matched the highly unique characteristics of the vehicle described by Arnold in regard to model, color, identifying features, and location at a precise time. See Alabama v. White, 496 U.S. 325, 332 (1990) ("Because only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities."); see also Gates, 462 U.S. at 244-245 ("It is enough, for purposes of assessing probable cause, that 'corroboration through other sources of information reduced the chances of a reckless or prevaricating tale,' thus providing 'a substantial basis for crediting the hearsay.' " (citation omitted)). Because Officer Reyes was able to corroborate those substantial details, including the information regarding the white Monte Carlo's precise location at a specific time, it was entirely reasonable for the officer to believe Arnold was also correct when he indicated the person driving the vehicle was involved in criminal activity and would be in possession of heroin. See White, 496 U.S. at 331 ("[B]ecause an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity."); United States v. Draper, 358 U.S. 307, 313-314 (1959) ("Marsh[, the narcotics agent,] had personally verified every fact of the information given him by Hereford[, the informant,] except whether the petitioner had accomplished his mission and had three ounces of heroin on his person or in his bag. And surely, with every other

bit of Hereford's information being thus personally verified, Marsh had 'reasonable grounds' to believe that the remaining unverified bit of Hereford's information – that Draper would have the heroin with him – was likewise true. . . . [U]nder the facts and circumstances here, Marsh had probable cause and reasonable grounds to believe that petitioner was committing a violation of the laws of the United States relating to narcotic drugs at the time he arrested him."); see also State v. Martinez, 150 N.C. App. 364, 369, 562 S.E.2d 914, 917 (N.C. Ct. App. 2002) ("Although Goff was not a known informant, the officers independently verified the information that he provided to them. Based on Goff's information and the officers' independent verification of that information, the officers had probable cause to believe that defendant and Zavala were committing a felony in their presence."); see generally Gates, 462 U.S. at 241 ("Our decisions applying the totality-of-the-circumstances analysis . . . have consistently recognized the value of corroboration of details of an informant's tip by independent police work."). As a result, the investigatory stop of the vehicle Appellant was driving was entirely reasonable under the circumstances. See Pope, 410 S.C. at 226, 763 S.E.2d at 821 ("[T]he trial court did not err in denying the motion to suppress the evidence seized during the search of the vehicle because law enforcement had probable cause to believe the vehicle contained evidence of criminal activity.").

In light of the fact the investigatory stop of the vehicle Appellant was driving was supported by reasonable suspicion and was not constitutionally improper, Appellant's challenge to the propriety of that stop was – and is – meritless.[8] See Foster, 269 S.C. at 378, 237 S.E.2d at

[8] Moreover, although Appellant did not challenge the propriety of the search of the vehicle during trial or on appeal, that search was entirely proper and did not violate Appellant's constitutional rights because Officer Reyes indisputably had probable cause to believe narcotics were located in the vehicle after the drug-detection dog alerted to the presence of drugs during the course of the valid investigatory stop. See United States v. Jeffus, 22 F.3d 554, 557 (4th Cir. 1994) ("When the dog 'alerted positive' for the presence of drugs, the officer was given probable cause for the search that followed."); see also State v. Weaver, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007) ("If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more."); see generally State v. Lane, 271 S.C. 68, 72, 245 S.E.2d 114, 116

591 ("It is only unreasonable searches and seizures that are prohibited."); cf. State v. Peters, 271 S.C. 498, 502-503, 248 S.E.2d 475, 477 (1978) ("[E]ven if there was not sufficient evidence to support the informant's credibility based upon the officer's independent knowledge concerning prior dealings with this informant, the officer's direct observation of the Grand Prix automobile conforming in every respect to the informant's tip would provide sufficient circumstances to assure the reliability of the informant's information on this particular occasion. Corroboration of this nature has been allowed to bolster the credibility of a confidential informant."). As a result, the trial judge properly denied Appellant's suppression motion, and his ruling was fully supported by the evidence presented during trial. See 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."). Appellant's conviction should be affirmed.

(1978) (finding the detection of the odor of marijuana alone established probable cause supporting the issuance of a search warrant).

CONCLUSION

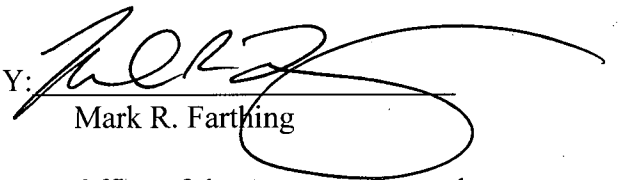
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

September 12, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Greenville County
Honorable Edward W. Miller, Circuit Court Judge
Appellate Case No. 2016-000800

THE STATE,

Respondent,

vs.

KARACUS FREEMAN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies 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."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: _____
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

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