

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals
Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2015-002134

S.C. SUPREME COURT

THE STATE,

Respondent,

vs.

STEPHENO JEMAIN ALSTON,

Petitioner.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The Court of Appeals correctly affirmed the trial judge's denial of Alston's motion to suppress the large quantity of cocaine found hidden inside of his rental vehicle because, under the totality of the circumstances, the law enforcement officer who conducted the stop of Alston's rental vehicle possessed both reasonable suspicion and probable cause to conduct a traffic stop after directly observing Alston drift back and forth and fail to maintain his lane of travel while driving down the interstate, observed numerous indicators of criminal activity during the course of the stop that justified an extension of the stop and led the officer to reasonably and correctly suspect Alston was involved in criminal activity, and validly searched the rental vehicle after Alston freely and voluntarily provided him with consent to conduct a search three separate times.

STATEMENT OF THE CASE

In March of 2011, Petitioner Stepheno Jemain Alston was arrested after a large quantity of cocaine was discovered in his rental vehicle during a traffic stop. In June of 2011, the Spartanburg County Grand jury indicted Alston for one count of trafficking in cocaine in an amount greater than four hundred grams. On March 18, 2013, the solicitor called Alston's case to trial before a jury in the Spartanburg County Court of General Sessions with the Honorable J. Derham Cole, circuit court judge, presiding. Alston was not present at that time, and the trial proceeded forward in his absence. At the conclusion of trial, the jury convicted Alston as indicted. Following the verdict, the trial judge sentenced Alston and sealed the sentence. Subsequently, Alston was apprehended, and, on September 19, 2013, a sentencing hearing was conducted in the Spartanburg County Court of General Sessions. During the hearing, the trial judge unsealed Alston's sentence and imposed a twenty-five-year term of imprisonment along with a \$200,000 fine. Alston then timely filed and perfected an appeal.

Subsequently, on appeal, the Court of Appeals issued an unpublished opinion in which it unanimously affirmed Alston's conviction. State v. Alston, Op. No. 2015-UP-381 (S.C. Ct. App. filed July 29, 2015). Thereafter, Alston petitioned the Court of Appeals for rehearing, and the petition was denied. Alston then filed a petition for a writ of certiorari in the Supreme Court, and that petition was granted on July 18, 2016.

STATEMENT OF FACTS

Shortly before 1:00 p.m. on March 28, 2011, Master Deputy Donnie Gilbert of the Spartanburg County Sheriff's Office was monitoring traffic on Interstate 85 when he observed the driver of a brownish-green Hyundai Santa Fe with a Georgia license tag travelling in the middle lane of the three-lane highway.¹ (R. pp. 12-13; pp. 104-105; State's Ex. # 2 (Recording of Traffic Stop)). When the vehicle passed by his location, its driver drove onto the dotted line dividing the middle lane from the far left lane before swerving back into the vehicle's lane of travel. (R. p. 13; pp. 44-45; p. 105). In response, Deputy Gilbert began pursuing the vehicle in order to initiate a traffic stop and observed its driver "drift" onto the dotted dividing line several more times. (R. pp. 13-14; 105-106). Deputy Gilbert then moved into position behind the vehicle and activated his patrol vehicle's blue lights, and the driver of the vehicle quickly pulled over to the side of the roadway. (R. p. 14; p. 106).

Thereafter, at approximately 12:54 p.m., Deputy Gilbert approached the vehicle from the passenger side and immediately noticed the luggage stowed in the back of the vehicle had been covered with a blanket, which the officer perceived to be suspicious as he had not typically seen covered luggage in the "thousands" of routine traffic stops he had conducted during his lengthy law enforcement career.² (R. pp. 9-10; p. 16; pp. 40-41; pp. 103-104; pp. 107-108; State's Ex. # 2). He further noticed multiple personal keys had been placed on the rental company key ring

¹ During trial, Deputy Gilbert noted Interstate 85 was a major crime corridor that connected Atlanta, Georgia, to the northern part of the United States. (R. p. 18).

² Regarding his law enforcement background, Deputy Gilbert recounted during trial he had been working in law enforcement for nearly thirteen years at the time of the traffic stop, had worked as a member of the South Carolina Highway Patrol for nearly twelve years, and had been a member of teams performing criminal interdiction on roadways for nearly six years at both the South Carolina Highway Patrol and Spartanburg County Sheriff's Office. (R. pp. 9-12; pp. 103-104). Furthermore, Deputy Gilbert noted he had received approximately 500 to 600 hours of criminal interdiction training during his career, including in regard to the subjects of detecting hidden vehicle compartments and conducting roadside interviews, he had personally conducted "thousands" of traffic stops, and had been involved in "hundreds" of felony arrests while working on the criminal interdiction teams. (R. p. 11; pp. 108-110).

associated with the vehicle, which the officer perceived to be abnormal and recognized through his training and experience as a tactic designed to “personalize” the vehicle in an effort to mask the fact it was a rental. (R. p. 22; pp. 108-109).

After approaching the vehicle, Deputy Gilbert made contact with the driver and lone occupant of the vehicle, Petitioner Stepheno Jemain Alston. (R. p. 16; p. 122). When he did so, Alston immediately asked him why he was stopped in a defensive manner, which the officer also perceived to be abnormal in light of the fact the vast majority of people he had stopped waited for him to explain the basis for the stop. (R. pp. 16-17; p. 112; p. 122; State’s Ex. # 2). Deputy Gilbert then asked Alston for his driver’s license, and Alston provided the officer with a license indicating he was from Rome, Georgia, which Deputy Gilbert knew was located in close proximity to Atlanta, Georgia, a major hub of criminal activity. (R. p. 17; p. 70; p. 107). Immediately after that, Deputy Gilbert asked Alston if he had had anything to drink and explained he stopped his vehicle because he had observed him hit the dotted dividing lane with his tires several times. (R. p. 18; State’s Ex. # 2). The officer then asked Alston for the paperwork associated with the vehicle, and Alston quickly provided a rental agreement to Deputy Gilbert. (R. p. 18; State’s Ex. # 2). Upon receiving the rental agreement, Deputy Gilbert reviewed it and noticed the vehicle was rented by a third-party female renter two days earlier in Cartersville, Georgia, Alston was listed as an authorized driver of the vehicle, no smoking was permitted in the vehicle, and the vehicle was only authorized to be driven in Georgia, Tennessee, Kentucky, Virginia, and West Virginia.³ (R. pp. 20-21; p. 74; pp. 112-113; pp. 118-119; p. 209). Based on the facts he knew through his training and experience third-party rentals were commonly associated with criminal activity and female renters were frequently used by criminal

³ During trial, Deputy Gilbert explained the specific states listed on the rental agreement raised a “big red flag” for him because it appeared “from the beginning of the trip [Alston] was trying to avoid Interstate 85.” (R. p. 26).

organizations in an effort to allay law enforcement suspicions coupled with the fact the rental vehicle was not authorized to be driven in South Carolina, Deputy Gilbert became more concerned and suspicious. (R. pp. 20-22; p. 113; pp. 151-152). The officer then asked Alston to step out of the vehicle just over two minutes after initiating the stop. (State's Ex. # 2).

When Alston exited the rental vehicle, Deputy Gilbert noticed a residential air freshener had been stowed in the vehicle's driver side door pocket, which was suspicious to the officer based on the facts it was an air freshener designed for a home instead of a vehicle, it was unusual for air fresheners to be placed in rental vehicles, and he was aware through his training and experience air fresheners were commonly used to mask odors, including the odor of drugs.⁴ (R. pp. 23-25; pp. 83-84; p. 114; pp. 117-118). The officer then asked Alston about the rental agreement, spoke with him about his travel plans, and asked him about the status of the license while preparing a warning citation.⁵⁶ (R. pp. 25-26; State's Ex. # 2). Additionally, Deputy Gilbert called Alston's license information into dispatch, and dispatch reported Alston's license was valid roughly six minutes into the stop. (R. p. 54; State's Ex. # 2).

During Deputy Gilbert's conversation with Alston, Alston reported he had left Georgia that morning for Newark, New Jersey, was travelling there to bring his depressed mother home for Mother's Day, and intended to stay in New Jersey for "about a week or so." (R. pp. 25-27; p. 120; p. 126; State's Ex. # 2). However, the officer perceived Alston's responses to be a "red flag" as Alston's reported travel plans were not consistent with the length of the rental period, Mother's Day was roughly a month and a half away, and the rental agreement did not authorize

⁴ Notably, during the traffic stop, Alston denied being a smoker. (State's Ex. # 2).

⁵ Based on the recording of the stop and the officer's testimony during trial, Deputy Gilbert began preparing the warning citation roughly four to five minutes after stopping Alston's rental vehicle. (R. p. 28; State's Ex. # 2).

⁶ Initially, Alston stated he had not had any problems with his license but later admitted it had previously been suspended for driving under the influence. (R. p. 29).

travel to New Jersey.⁷ (R. pp. 26-27; pp. 34-35). Deputy Gilbert then continued to question Alston while preparing the warning ticket, and, during the questioning, Alston acknowledged he was responsible for everything in the vehicle after initially stalling and stating he had no idea whether anyone else had access to the rental vehicle, which Deputy Gilbert perceived to be another “red flag.”⁸ (R. p. 32; pp. 36-37; p. 61; p. 123; pp. 127-128; State’s Ex. # 2). Furthermore, Alston claimed he worked at a clothing store to support his six children before providing the ages of seven children, which further raised the officer’s suspicions based on Alston’s stressed manner of delivery and the inconsistency of Alston’s statements.⁹ (R. pp. 33-34; p. 125; State’s Ex. # 2).

Based on the factors he had observed while preparing the warning ticket, Deputy Gilbert decided to ask Alston for consent to search the vehicle and did so roughly sixteen minutes into the stop after another officer arrived at that location and just after he finished preparing the warning citation.¹⁰ (R. pp. 35-37; p. 66; p. 70; pp. 127-132; State’s Ex. # 2). In response to the request, Alston indicated he was “just trying to figure out what all this [was] about,” and the officer informed Alston he was simply asking a question. (R. p. 37; p. 130; State’s Ex. # 2). At that point, Alston informed the officer he could search the vehicle. (R. p. 37; p. 130; State’s Ex. # 2). Deputy Gilbert then explained to Alston he could refuse to provide consent, and Alston

⁷ Based on the terms of the rental agreement, Alston was authorized to possess the vehicle for a period of only seven days, and he was already on the third day of the rental period at the time of the stop. (R. p. 27; p. 209).

⁸ While speaking with the officer, Alston also commented you should not let anyone use your vehicle “nowadays.” (State’s Ex. # 2).

⁹ Notably, the ages – fourteen years, thirteen years, ten years, five years, four years, three years, and six month – Alston listed for his children during the traffic stop were not fully consistent with the ages – twenty years, seventeen years, fourteen years, seven years, five years, four years, and three years – reported by defense counsel during the sentencing hearing, which was conducted roughly two and a half years after the stop. (R. p. 33; p. 125; p. 205).

¹⁰ While asking Alston for consent, Deputy Gilbert did not take any actions to coerce Alston into providing consent he did not draw his service weapon, he did not tell Alston he was not free to leave, and no other officers were in Alston’s immediate vicinity at that time. (R. pp. 38-39; State’s Ex. # 2). However, Deputy Gilbert admittedly did not expressly inform Alston he was free to leave before asking for consent to search. (R. pp. 63-64).

again affirmed the officer could search the vehicle. (R. pp. 37-38; pp. 130-131; State's Ex. # 2). After Alston had twice provided consent, Deputy Gilbert moved towards the vehicle, but he elected to return to Alston and ensure he clearly was providing consent for the search. (R. p. 38; p. 131; State's Ex. # 2). During their ensuing conversation, Alston indicated the officer was the one providing consent as opposed to himself, and Deputy Gilbert quickly confirmed that statement was incorrect. (R. p. 38; p. 69; p. 131; State's Ex. # 2). The officer then again asked for consent to search, and Alston once again clearly affirmed the officer was permitted to search the vehicle. (R. p. 38; p. 131; State's Ex. # 2).

Once he was certain he had Alston's consent, Deputy Gilbert began searching the rental vehicle and started his search with the covered luggage stowed in the vehicle's rear area. (R. p. 39; pp. 132-133; State's Ex. # 2). As he was conducting the search, Captain Randy Hollifield of the Spartanburg County Sheriff's Office arrived at the scene and began assisting with the search, and, shortly thereafter, the captain located two vacuum-sealed packages containing a white powdery substance hidden in a space near the steering column of the vehicle. (R. p. 40; pp. 133-134; pp. 155-160; State's Ex. # 2). Alston was then quickly placed under arrest, and the white powdery substance found in the rental vehicle was later confirmed to be over four hundred grams of cocaine. (R. p. 136; p. 169).

Subsequently, Alston was indicted for trafficking in cocaine, and he proceeded to trial. (R. pp. 211-212). However, Alston was not present at the time of trial, and the trial proceeded forward in his absence. (R. pp. 6-7). At the outset of the trial in absentia, defense counsel moved to suppress the cocaine discovered during the search of the rental vehicle Alston was driving at the time of the traffic stop, and the trial judge conducted an in limine hearing on the matter. (R. pp. 7-9).

During the hearing, Deputy Gilbert 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 Alston was engaged in criminal activity. (R. pp. 9-84). He further detailed his extensive training and experience that enabled him to identify the suspicious indicators of criminal activity during the stop. (R. pp. 9-12).

Following the presentation of Deputy Gilbert's testimony, defense counsel argued the incriminating evidence discovered during the course of the traffic stop should be suppressed because there was allegedly no valid basis for the traffic stop in light of the fact Alston did not actually cross the dotted dividing line prior to the initiation of the stop. (R. pp. 84-85). Additionally, defense counsel contended the officer illegally extended the traffic stop to conduct a narcotics investigation without reasonable articulable suspicion of criminal activity and asserted the officer stalled to allow another officer to arrive on the scene instead of issuing the warning citation. (R. pp. 85-87). Furthermore, defense counsel maintained Alston's consent was not valid and was the product of an illegally prolonged detention. (R. p. 85).

In rebuttal, the solicitor initially asserted the traffic stop was proper and supported by probable cause based on the testimony establishing the officer initiated the traffic stop after observing Alston strike the dotted dividing lane, which was evidence Alston was guilty of failing to maintain his lane of travel. (R. pp. 89-90). Additionally, the solicitor argued the officer possessed reasonable articulable suspicion of criminal activity to detain Alston during the stop based on the numerous indicators of criminal activity he observed coupled with his extensive law enforcement training and experience. (R. pp. 90-93). Furthermore, the solicitor asserted Alston freely and voluntarily provided consent to search the rental vehicle and noted Deputy Gilbert expressly advised Alston he had a right to refuse consent after asking for it. (R. pp. 93-95).

After considering the arguments of counsel, the trial judge elected to take the matter under advisement overnight before ultimately denying the suppression motion when the trial resumed the following morning. (R. pp. 95-98). In denying the motion, the trial judge found the initial traffic stop was valid and supported by probable cause, the detention of Alston was reasonable under the totality of the circumstances, and the search of the rental vehicle was properly conducted with Alston's consent.¹¹ (R. p. 98).

Thereafter, during trial, Deputy Gilbert and Captain Hollifield testified for the State about the events of March 28, 2011, including in regard to their discovery of over four hundred grams of cocaine hidden inside of Alston's rental vehicle. (R. pp. 102-160). In addition to that testimony, Mary Elizabeth Stuart, an officer who formerly served as a forensic chemist for the Spartanburg County Sheriff's Office and was an expert in the chemical analysis of controlled substances, testified about her analysis of the substance recovered during the stop of Alston's rental vehicle, confirmed it was cocaine, and noted it weighed 434.04 grams. (R. pp. 164-169). Alston's cocaine was then admitted into evidence over defense counsel's objection. (R. p. 170).

Subsequently, at the conclusion of trial, the jury convicted Alston as indicted. (R. p. 202). Following the verdict, the trial judge sentenced Alston and sealed the sentence, and Alston ultimately received a twenty-five year term of imprisonment along with a \$200,000 fine when he was eventually apprehended several months later. (R. pp. 205-206). Alston then timely appealed his conviction. (App'x p. 1).

¹¹ Specifically, the trial judge ruled: "[W]ith regard to the motion to suppress, I find that the stop made by the officer was pursuant to a valid traffic stop, that it was based upon probable cause, that the detention resulting from that stop was based upon the totality of the circumstances as presented by the evidence in this case, was reasonable under the Fourth Amendment and that the search made of the vehicle which resulted in the seizure of evidence to be used in the trial against him was based upon consent and in this case with actual knowledge of his right to refuse consent. All right. And, therefore, the motion to suppress is denied." (R. p. 98).

On appeal, the Court of Appeals unanimously affirmed Alston's conviction. (App'x pp. 1-2). In affirming, the Court first determined Deputy Gilbert had probable cause to initiate the traffic stop after Alston's vehicle struck the dotted dividing line along with reasonable suspicion to initiate the stop based on the fact Alston's "drifting" in his lane of travel made it reasonable to believe he was potentially impaired while driving. (App'x pp. 2-4). Additionally, the Court held Deputy Gilbert extended the duration of the traffic stop by continuing to question Alston after completing the purpose of the stop but found the extension of the stop was proper based on the reasonable articulable indicators of criminal activity the officer observed during the course of the stop, which included the following facts: (1) the luggage stowed in Alston's vehicle had been covered with a blanket; (2) Alston defensively asked why he was stopped at the beginning of the stop; (3) Alston was travelling from an area near Atlanta, a known hub of criminal activity; (4) Alston was travelling on Interstate 85, a major crime corridor; (5) the rental vehicle had been rented by third-party; (6) the rental vehicle had been rented by a female renter; (7) Alston was driving the vehicle in South Carolina even though it was not permitted to be driven there; (8) Alston put an air freshener in the rental vehicle; (9) Alston placed his house keys on the rental key ring; (10) Alston's travel plans were inconsistent with the terms of the rental agreement in regard to both destination and length of the planned travel; (11) Alston claimed he was picking his mother up for Mother's Day despite the fact it was roughly a month and a half away; and (12) Alston claimed to have six children but provided the ages of seven. (App'x pp. 5-7). Finally, the Court determined the search of the vehicle was validly conducted with Alston's consent, which was freely and voluntarily provided. (App'x pp. 7-8).

ARGUMENT

The Court of Appeals correctly affirmed the trial judge's denial of Alston's motion to suppress the large quantity of cocaine found hidden inside of his rental vehicle because, under the totality of the circumstances, the law enforcement officer who conducted the stop of Alston's rental vehicle possessed both reasonable suspicion and probable cause to conduct a traffic stop after directly observing Alston drift back and forth and fail to maintain his lane of travel while driving down the interstate, observed numerous indicators of criminal activity during the course of the stop that justified an extension of the stop and led the officer to reasonably and correctly suspect Alston was involved in criminal activity, and validly searched the rental vehicle after Alston freely and voluntarily provided him with consent to conduct a search three separate times.

Alston contends the Court of Appeals committed reversible error by affirming the trial judge's denial of his motion to suppress the evidence discovered during a stop of the rental vehicle he was driving along a South Carolina roadway. In support of that contention, Alston maintains the officer who conducted the stop allegedly had no reasonable suspicion or probable cause to justify the stop of the rental vehicle, the officer did not possess the reasonable suspicion necessary to justify an extension of the stop, and the officer's search of the rental vehicle was conducted without valid consent. Contrary to Alston's contentions, the officer obtained reasonable suspicion and probable cause to initiate a stop of Alston's rental vehicle after he observed the vehicle drift within its own lane of travel, drive onto a dotted dividing line, and fail to remain within its lane of travel as far as practicable under the circumstances. Then, during the course of the traffic stop, the officer observed numerous indicators of criminal activity, including the fact the luggage in the rear of the rental vehicle had been covered, the presence of a residential air freshener in the rental vehicle, the fact the rental vehicle was rented by a female third-party, the fact Alston was travelling on a known crime corridor from a known crime hub, Alston's defensive response to the traffic stop, Alston's stressed response to a question asked of him during the course of the stop, and the inconsistency of Alston's reported travel plans with the rental agreement, that warranted an extension of the stop. Thereafter, the officer sought

consent for a search from Alston, and Alston freely and voluntarily provided the officer with such consent, which led to the discovery of Alston's hidden stash of cocaine. Because the initial stop was proper, any extension of the stop that occurred was supported by reasonable suspicion, and the search the led to the discovery of the drugs was conducted with valid consent, the trial judge properly denied Alston's suppression motion, and the Court of Appeals correctly affirmed the trial judge's ruling in light of the fact it was fully supported by the evidence presented during trial. Alston's conviction and the decision of the Court of Appeals 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. 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. Propriety of the Initial Traffic Stop

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, based on the plain language of that constitutional provision, the touchstone of the Fourth Amendment is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) (“The touchstone of the Fourth Amendment is reasonableness.”). 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 constitutional requirements regarding searches and seizures. 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, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). While the Fourth Amendment requires a stop to be reasonable under the circumstances, 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.”); 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

mater, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”).

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.”).

Likewise, “probable cause is a flexible, common-sense standard.” Texas v. Brown, 460 U.S. 730, 741 (1983). “The very term itself, ‘probable cause,’ does not import absolute certainty.” In re Care and Treatment of Brown v. State, 372 S.C. 611, 619, 643 S.E.2d 118, 122

(Ct. App. 2007). The probable cause standard merely requires that the facts and circumstances available to the officer at the time of a stop would warrant a reasonably cautious person in the same situation to believe an offense has been committed and the person stopped committed it. See id. at 619-620, 643 S.E.2d at 122 (instructing probable cause only requires that the facts available to an officer would warrant a man of reasonable caution in the belief an offense has been committed and the accused committed it); see also Wortman v. City of Spartanburg, 310 S.C. 1, 4, 425 S.E.2d 18, 20 (1992) (“Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise.”). Importantly, the probable cause standard does **not** demand any showing the officer’s belief was correct or more likely true than false. Brown, 460 U.S. at 742. “Probable cause may be found somewhere between suspicion and sufficient evidence to convict.” Blassingame, 338 S.C. at 250, 525 S.E.2d at 540.

In the case sub judice, Deputy Gilbert possessed reasonable suspicion to initiate an investigatory stop of Alston’s vehicle after he observed Alston “drift” in his lane of travel and drive onto the dotted line dividing Alston’s lane of travel from another traffic lane on several different occasions before activating his patrol vehicle’s blue lights. Significantly, the officer possessed reasonable suspicion because Alston’s “drifting” within his lane reasonably led the officer to suspect Alston could have been impaired or driving under the influence, which provided Deputy Gilbert with a valid basis upon which to initiate a traffic stop.¹² 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

¹² Notably, Deputy Gilbert clearly expressed his concern about Alston’s possible impairment at the very outset of the traffic stop by quickly asking Alston whether he had had anything to drink. (State’s Ex. # 2).

law.” (citation omitted)); see also People v. Loucks, 135 Ill. App. 3d 530, 533, 481 N.E.2d 1086, 1087 (Ill. App. Ct. 1985) (“Weaving within the lane of traffic in which a vehicle is traveling provides a sufficient basis for an investigatory stop of a motor vehicle, and in the instant case the evidence was undisputed that the vehicle the defendant was driving was weaving within its own lane of travel continuously for a distance of about two blocks. Such erratic driving provided Officer Cassidy with articulable facts that there was a substantial possibility that the defendant had committed, was committing, or was about to commit an offense. The undisputed evidence showed that Officer Cassidy had sufficient basis for making an investigative stop of the defendant’s motor vehicle.”); State v. Ellanson, 293 Minn. 490, 491, 198 N.W.2d 136, 137 (Minn. 1972) (holding an officer had the right to stop Ellanson in order to investigate the cause of his unusual driving where the officer observed Ellanson’s weaving within his own lane of travel); State v. Dorendorf, 359 N.W.2d 115, 117 (N.D. 1984) (“[A] vehicle’s weaving within its own lane of traffic may be caused by a number of reasons, among them: 1) the driver is tired, 2) the vehicle has equipment problems, or 3) the driver is under the influence of alcohol. The officers stopped Dorendorf to determine exactly what was causing the vehicle to weave. . . . We conclude that the circumstances in the instant case justified the initial stop of Dorendorf.”); State v. Lange, 255 N.W.2d 59, 63 (N.D. 1977) (“Although Lange places great emphasis on the fact that his vehicle did not at any time cross the center line, we do not think a police officer who has been alerted to a possible DWI suspect and who observes the vehicle wandering in its lane of traffic need wait for the driver to commit a traffic offense or become involved in an accident before he has probable cause to stop the vehicle.”); State v. Bailey, 51 Or. App. 173, 175, 624 P.2d 663, 664 (Or. Ct. App. 1981) (“We now hold . . . that the observation of a vehicle weaving within its own lane for a substantial distance gives rise to probable cause to believe that the

driver is driving under the influence of intoxicants and justifies a stop for further investigation.”); Leming v. State, 493 S.W.3d 552, 560-561 (Tex. Crim. App. 2016) (“Failing to stay entirely within a single lane is not an offense if it is prudent to deviate to some degree to avoid colliding with an unexpected fallen branch or a cyclist who has strayed from his bike lane. But indiscriminate and purposeless swerving is its own actionable offense under Section 545.060, regardless of whether the particular circumstances permit such deviation to occur without endangering anyone. . . . [The officer] knew from personal observation that [Leming] had several times at least come very *close* to entering the adjacent lane – even if he could not quite tell whether [Leming] had actually entered it – and he knew that [another driver] had also observed the Jeep to be ‘swerving’ even before [the officer] arrived on the scene. This was sufficient information to justify a temporary detention to investigate whether [Leming] had actually failed at some point to remain in his dedicated lane of traffic as far it was practical to do so under the circumstances. It matters not whether that failure was unsafe.”).

Moreover, notwithstanding the fact the stop was valid in light of the fact the officer possessed reasonable suspicion, Deputy Gilbert also had probable cause to stop Alston for a traffic violation. Significantly, pursuant to S.C. Code Ann. § 56-5-1900(a), a driver driving on a roadway in South Carolina that is divided into two or more clearly marked traffic lanes shall drive his or her vehicle “as nearly as practicable entirely within a single lane and shall not [move the vehicle] from the lane until the driver has first ascertained that such movement can be made with safety.” Importantly, the term “practicable” has been defined as “reasonably capable of being accomplished” or “feasible.” BLACK’S LAW DICTIONARY 1291 (9th ed. 2009); see generally State v. Bolin, 378 S.C. 96, 100, 662 S.E.2d 38, 40 (2008) (indicating a statute’s words must be given their plain and ordinary meaning without resorting to subtle or forced construction

in order to limit or expand the statute's operation). Before initiating the traffic stop of Alston's vehicle, Deputy Gilbert observed Alston "drift" outside of his lane when Alston drove onto the dotted dividing line, which clearly was **not** a part of Alston's lane of travel as the line's express purpose was to divide his lane from the one next to it and the line itself certainly could not be a part of two separate lanes simultaneously. See Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) ("[A] court must reject a statute's interpretation leading to absurd results not intended by the Legislature."); see also S.C. Code Ann. § 56-5-430 ("The entire width **between boundary lines** of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel is a '*street*' or '*highway*.' " (emphasis added)). At that time, there were no road conditions or exigent circumstances making it unfeasible or impracticable for Alston to operate his vehicle entirely within his own lane of travel, and Alston never even suggested to the officer there was something that caused him to drift onto the dividing line when informed of the basis for the stop. (State's Ex. # 2). Under those circumstances, Alston failed to maintain his vehicle within a single lane as nearly as practicable and, thus, was guilty of committing a traffic violation, which provided Deputy Gilbert with a valid probable cause basis for initiating the traffic stop.¹³ See State v. Vinson, 400 S.C. 347,

¹³ In arguing to the contrary on appeal, Alston contends his act of driving onto the dotted dividing line did not constitute a traffic violation because he was statutorily permitted to change lanes when such a movement could be made with safety and it was safe for him to change lanes at the time he admittedly drove onto the dividing line. (App. Br. p. 15). Importantly though, that particular argument was **not** raised to the trial judge and, thus, cannot properly be raised or considered for the first time on appeal. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing a party cannot properly raise one argument in support of an issue at trial and then raise a different argument in support of the issue on appeal); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."); see also l'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (recognizing the requirements of issue preservation in South Carolina are designed "to enable the lower court to rule properly after it considered all relevant facts, law, and **arguments**" (emphasis added)). However, even assuming that argument was somehow properly preserved for appellate review, it would not establish Alston's act of driving onto the dividing line was legal and permissible because Alston did not drive onto the divided lane while in the process of **moving from his lane** of travel and, instead, simply drove onto the dotted line while failing to maintain

353-354, 734 S.E.2d 182, 185 (Ct. App. 2012) (“The plain language of section 56-5-1900 requires a driver to maintain his vehicle ‘entirely within a single lane’ and excuses this mandate only when it is not practicable or the driver can safely change lanes. Trooper Horne testified Vinson’s front tire crossed into the area between the double yellow lines that separated opposing lanes of traffic in a ‘no passing’ zone. This action, in and of itself, is a violation of the statute. Furthermore, Trooper Horne stated there were no other cars on the road during that time that would have prompted Vinson’s decision to cross the center line. Because it was practicable to remain within his lane of traffic, we find Trooper Horne had the requisite reasonable suspicion to pull Vinson’s vehicle over for a violation of section 56-5-1900.”); see also People v. Smith, 172 Ill. 2d 289, 296-297, 665 N.E.2d 1215, 1218-1219 (Ill. 1996) (“The plain language of the statute establishes two separate requirements for lane usage. First, a motorist must drive a vehicle as nearly as practicable entirely within one lane. Second, a motorist may not move a vehicle from a lane of traffic until the motorist has determined that the movement can be safely made. It follows that when a motorist crosses over a lane line and is not driving as nearly as practicable within one lane, the motorist has violated the statute. Once Officer Charles saw defendant cross over a lane line and drive in two lanes of traffic, Officer Charles had probable cause to arrest defendant for a violation of the Code. Thus, Officer Charles’ stop of defendant was proper.” (citation omitted)); State v. Hodge, 147 Ohio App. 3d 550, 558, 771 N.E.2d 331, 338 (Ohio Ct. App. 2002) (“The legislature did not intend for a motorist to be punished when road debris or a parked vehicle makes it necessary to travel outside the lane. Nor, we are quite certain, did the legislature intend this statute to punish motorists for traveling outside their lane to avoid striking

his own lane – which he eventually returned to – as nearly as practicable under the circumstances. See S.C. Code Ann. § 56-5-1900(a) (“A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be **moved from the lane** until the driver has first ascertained that such movement can be made with safety.” (emphasis added)).

a child or animal. We are equally certain the legislature did not intend the statute to give motorists the *option* of staying within the lane at their choosing. Common sense dictates that the statute is designed to keep travelers, both in vehicles and pedestrians, safe. The logical conclusion is that the legislature intended only special circumstances to be valid reasons to leave a lane, not mere inattentiveness or carelessness. To believe that the statute was intended to allow motorists the option of when they will or will not abide by the lane requirement is simply not reasonable.”); State v. McBroom, 179 Or. App. 120, 124-125, 39 P.3d 226, 228-229 (Or. Ct. App. 2002) (interpreting a statute requiring drivers to operate their vehicles as nearly as practicable entirely within a single lane as requiring drivers to stay within the lines marking a lane, instructing the legislature “did not intend to permit opposing motorists to vie for control of the center dividing line[,]” and holding it was reasonable for the officer to believe McBroom violated the statute where there was nothing in the record suggesting McBroom “failed to stay within his lane because he was responding to an apparent hazard or because he had some other valid reason for leaving his lane”).

Because Deputy Gilbert possessed reasonable suspicion to believe Alston was engaged in criminal activity and probable cause to believe Alston had committed a traffic violation, Deputy Gilbert’s stop of Alston’s rental vehicle was entirely proper and constitutionally reasonable.¹⁴ See Vinson, 400 S.C. at 352, 734 S.E.2d at 184 (“A traffic stop is not unreasonable if conducted with probable cause to believe a traffic violation has occurred, or when the officer has a reasonable suspicion the occupants are involved in criminal activity.”); see also Foster, 269

¹⁴ Moreover, even assuming Deputy Gilbert’s determination Alston committed a traffic violation by failing to maintain his lane of travel was somehow incorrect, the traffic stop of Alston’s rental vehicle would have nonetheless been entirely reasonable and proper because it was objectively reasonable for the officer to believe Alston’s actions constituted a violation of South Carolina law based on the plain language of the Section 56-5-1900(a). See Heien, 135 S. Ct. at 540 (“It was . . . objectively reasonable for an officer in Sergeant Darisse’s position to think that Heien’s faulty right brake light was a violation of North Carolina law. And because the mistake of law was reasonable, there was reasonable suspicion justifying the stop.”).

S.C. at 378, 237 S.E.2d at 591 (“It is only unreasonable searches and seizures that are prohibited.”). Therefore, the trial judge committed no error in finding the initial stop to be valid, and the Court of Appeals properly affirmed the trial judge’s ruling on appeal. 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.”). Alston’s conviction and the decision of the Court of Appeals should be affirmed.

B. Propriety of the Extension of the Stop

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.” State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct. App. 2005) (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 Rodriguez v. United States, ___ U.S. ___, 135 S. Ct. 1609, 1614 (2015) (“An officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop.”); 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 Rodriguez, 135 S. Ct. at 1614 (“Authority for the seizure . . . ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.”); 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.

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Id. 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. Sokolow, 490 U.S. at 9.

Over the course of the last several years, appellate courts in South Carolina have addressed what constitutes reasonable suspicion of criminal activity in the context of a traffic stop in a number of different cases. In State v. Tindall, 379 S.C. 304, 307, 665 S.E.2d 188, 190

(Ct. App. 2008), Tindall was stopped by law enforcement for speeding, swerving, and driving too closely. Shortly thereafter, Tindall was given a warning ticket, but officers continued to question him. Id. Approximately fifteen to twenty minutes into the stop, Tindall consented to a search of the vehicle and cocaine was discovered. Id. Subsequently, the trial court denied Tindall's motion to suppress the narcotics as the product of an illegal detention and search, and the Court of Appeals affirmed. Id. at 311, 665 S.E.2d at 192. In affirming the denial of the suppression motion, the Court ruled the initial traffic stop ended when Tindall's license was returned and he was issued a warning. Id. However, the Court determined the officer had a reasonable suspicion of criminal activity warranting Tindall's further detention based on the existence of the following indicators: (1) Tindall was nervous even after receiving a warning; (2) Tindall was driving a rental car he had not rented; (3) Tindall was only driving one way; (4) Tindall's planned driving time was approximately eighteen hours in one day; and (5) the cities involved in the trip were known "drug hubs." Id. Subsequently though, in a sharply-divided opinion, this Court reversed the decisions of the trial judge and the Court of Appeals. State v. Tindall, 388 S.C. 518, 520, 698 S.E.2d 203, 204 (2010). In reversing, a majority of this Court determined the officer completed the initial purpose of the traffic stop when he informed Tindall he would issue a warning ticket and learned from dispatch Tindall's license and registration were problem-free. Id. at 522, 698 S.E.2d at 205. The majority further concluded the information available to the officer at that time was not sufficient to constitute a reasonable suspicion of criminal activity. Id. at 523, 698 S.E.2d at 206. Thus, the majority held "the continued detention was illegal and the drugs discovered during the search of the vehicle must be suppressed." Id.

Conversely, in State v. Provet, a law enforcement officer stopped Provet for driving and equipment infractions on Interstate 85 in Greenville County. Id., 391 S.C. at 496, 706 S.E.2d at 514. During the course of the stop, the officer observed several signs of nervousness displayed by Provet, including shaking hands and accelerated breathing. Id. The officer asked Provet several questions about where he was coming from and the purpose of his trip, and Provet provided seemingly deceptive responses. Id. at 497, 706 S.E.2d at 514. The officer additionally observed several air fresheners, numerous fast food bags, a cell phone, and some receipts in Provet's car. Id. at 497, 706 S.E.2d at 515. Based on his experience and observations, the officer believed Provet was involved in criminal activity. Id. Subsequently, after issuing a warning ticket, the officer immediately asked Provet if he had anything illegal in the car and asked for consent to search. Id. at 497-498, 607 S.E.2d at 514. Provet consented and then fled when the officer attempted to remove a fast food bag from the car filled with cocaine. Id. at 498, 706 S.E.2d at 515. During trial, Provet moved to suppress the cocaine as the product of an illegal search, and the trial judge denied the motion, finding the officer had a reasonable suspicion of criminal activity justifying an extension of the traffic stop. Id. On appeal, the Court of Appeals affirmed. Id. at 496, 706 S.E.2d at 514. Regarding the initial detention, the Court found the stop was proper as the officer's questioning was tangentially related to the traffic stop. Id. at 499, 706 S.E.2d at 516. The Court further found the questioning did not unreasonably extend the traffic stop because the officer had not completed the initial purpose of the stop and the stop was only eleven minutes long. Id. at 499-500, 706 S.E.2d at 516. Regarding the extension of the traffic stop after the warning was issued, the Court determined the officer possessed reasonable suspicion to extend the stop based on the presence of the following factors: (1) Provet's nervous behavior; (2) the fact third-party vehicle registration is common in drug

trafficking; (3) Provet's inconsistent or deceptive responses to several questions; (4) the presence of numerous fast food bags, a cell phone, and some receipts; and (5) the presence of numerous air fresheners. Id. at 504-505, 706 S.E.2d at 518-519. Based on those factors coupled with the officer's considerable experience, the Court concluded the trial court did not err in finding an extension of the stop was justified under the circumstances. Id. at 506, 706 S.E.2d at 519-520. Thereafter, on certiorari, this Court affirmed, finding "[t]he Court of Appeals correctly affirmed the trial court's findings that the traffic stop was not unlawfully extended, that [the o]fficer had reasonable suspicion for an additional seizure, and that [Provet]'s consent to search the vehicle was voluntary." Provet, 405 S.C. at 114, 747 S.E.2d at 406.

Similarly, in State v. Wallace, Wallace was stopped on Interstate 85 for committing a traffic violation.¹⁵ Id., 392 S.C. at 50, 707 S.E.2d at 452. During the stop, the officer took twelve minutes to complete the purpose of the stop and issued Wallace a citation. Id. However, based on his observations during the stop, the officer continued to question Wallace after issuing the citation and requested consent to search the vehicle. Id. Wallace refused consent, and the officer walked a drug-detection dog around the vehicle. Id. The dog alerted on Wallace's car, and a substantial quantity of cocaine was discovered inside. Id. During trial, Wallace moved to suppress the drugs found in his vehicle, and the trial judge denied the motion. Id. On appeal, the Court of Appeals affirmed the trial judge's ruling. Id. In affirming, the Court determined the following factors observed by the officer during the traffic stop established a reasonable articulable suspicion to extend the duration of the stop: (1) Wallace abnormally braked after the officer initiated the stop; (2) Wallace fumbled with his paperwork for an unusually long period of time; (3) the passenger stared straight ahead and did not acknowledge the officer; (4) Wallace

¹⁵ Notably, this Court initially granted certiorari in Wallace's case but ultimately dismissed certiorari as improvidently granted. Wallace, 401 S.C. at 265, 737 S.E.2d at 480.

and the passenger provided inconsistent responses about the trip; (5) Wallace became increasingly nervous throughout the stop; (6) an unknown car pulled up behind Wallace's vehicle for several minutes during the stop; (7) Wallace's cell phone rang during the stop; (8) the officer knew drug dealers frequently use decoy cars and communicate via cell phones; (9) the passenger would not look at the officer while they were talking; (10) the passenger was sweating and visibly nervous on a mild day; (11) Wallace changed his story after the officer spoke with his passenger; (12) the car was owned by a third-party, which is common in drug cases; (13) Interstate 85 is a known drug corridor; and (14) Atlanta is a known drug hub. Id. at 55, 707 S.E.2d at 455. While noting none of the factors taken in isolation established a reasonable articulable suspicion of criminal activity, the Court held the presence of all of the factors together established a reasonable suspicion when examined in totality as required. Id.

Most recently, in State v. Moore, 404 S.C. 634, 637, 746 S.E.2d 352, 353 (Ct. App. 2013), Moore was stopped on Interstate 85 in Spartanburg County for speeding and failing to maintain his lane. After the officer initiated his blue lights, Moore activated his left turn signal and then his right turn signal and took longer than the average motorist to pull over, which the officer perceived as suspicious factors. Id. at 637, 746 S.E.2d at 353-354. Additionally, during the stop, Moore forgot to turn off his turn signal, was talking on the phone when the officer approached, displayed signs of excessive nervousness, admitted to having a few alcoholic beverages, and was driving in a rental vehicle. Id. at 638, 746 S.E.2d at 354. Furthermore, when Moore exited the vehicle during the stop, he brought his cell phone, which the officer perceived to be suspicious, and lit a cigarette, which the officer perceived as a sign he was trying to calm his nerves. Id. As the stop continued, the officer discovered Moore was carrying a large quantity of money despite the fact he claimed to be unemployed, Moore was travelling from a

suburb of Atlanta, Moore's claimed travel plans were to visit a grandmother in North Carolina in the middle of the night, and the rental vehicle had been rented by a third party. Id. at 638-639, 746 S.E.2d at 354. Based on the indicators of criminal activity he had observed during the stop, the officer unsuccessfully sought consent to search from Moore and detained him until a drug-detection dog could be brought to the scene. Id. at 639, 746 S.E.2d at 354. Ultimately, the dog alerted on Moore's vehicle, a search of the vehicle resulted in the discovery of crack cocaine and other incriminating evidence, and Moore was placed under arrest. Id. Thereafter, during trial, Moore moved to suppress the crack cocaine as the product of an illegal search, and the trial judge denied the motion, finding the officer had a reasonable suspicion of criminal activity justifying an extension of the traffic stop. Id. at 639-640, 746 S.E.2d at 355. Subsequently, on appeal, the Court of Appeals reversed the trial judge's ruling in a divided opinion after finding the factors observed by the officer were not sufficient to establish a reasonable articulable suspicion of criminal activity and support the extension of the traffic stop. Id. at 644, 746 S.E.2d at 357. However, on certiorari, this Court unanimously reversed the decision of the Court of Appeals. Moore, 415 S.C. at 248, 781 S.E.2d at 898. In reversing, this Court found the majority of the Court of Appeals misapplied the appropriate standard of review by "reweigh[ing] the facts and substitut[ing] its de novo judgment." Id. at 253, 781 S.E.2d at 901. Properly applying the standard of review, this Court found the factors observed by the officer, which included the large quantity of cash, the unusual itinerary, the fact the rental vehicle was rented by a third-party, and Moore's excessive nervousness, supported a finding of reasonable suspicion when considered in totality along with the officer's extensive experience as a law enforcement officer. Id. at 253-255, 781 S.E.2d at 901-902.

In the case at bar, Deputy Gilbert observed numerous indicators of criminal activity during the course of the traffic stop before he extended the duration and scope of the stop. Just like the officers in Wallace, Provet, and Moore, Deputy Gilbert detected multiple suspicious signs of criminal activity during the course of the traffic stop **before** he had sufficient time to complete the traffic stop and issue a citation. After observing those indicators, the officer elected to continue questioning Alston until another officer arrived on the scene and requested consent for a search after completing the purpose of the initial stop. As the officer's observations during the stop established a reasonable articulable suspicion of criminal activity, the officer's decision to extend the stop was reasonable and justified under the totality of the circumstances.

Specifically, from the outset of the traffic stop, Deputy Gilbert observed several suspicious factors of criminal activity, including the facts Alston covered his luggage with a blanket in the rear of the vehicle, Alston placed his personal keys on the rental key ring, and Alston immediately asked him why he was stopped before giving him a chance to explain himself. Additionally, the officer discovered Alston's rental vehicle had been rented by a third-party, the third-party renter was a female, Alston was travelling on a known crime corridor from a known crime hub, Alston was travelling in a state he was not authorized to operate the rental vehicle in to a state he was also not authorized to operate the vehicle in, Alston had obtained authorization only to drive in states that suggested he was trying to avoid travelling on Interstate 85, Alston had placed a residential air freshener in the rental vehicle despite the fact he claimed not to smoke and the rental vehicle's rental terms expressly forbid smoking, and Alston was initially deceptive about whether his driver's license had ever been suspended in the past. See Wallace, 392 S.C. at 55, 707 S.E.2d at 455 (finding third-party vehicle ownership, Atlanta's status as a known drug hub, and Interstate 85's status as a known drug corridor to be relevant

factors in establishing a reasonable articulable suspicion of drug activity); 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 and the presence of numerous air fresheners in finding the officer had reasonable suspicion to extend a traffic stop); see generally Branch, 537 F.3d at 336 (“[I]f the driver obstructs the police officer’s efforts in any way – for example, by providing inaccurate information – a longer traffic stop would not be unreasonable.”). Furthermore, while Deputy Gilbert was completing the warning citation, the officer spoke with Alston, who provided confusing travel plans that appeared illogical to the officer and that were inconsistent with the express terms of the rental agreement in several respects, and Alston also provided an inconsistent response regarding his children that suggested he was stressed. See Moore, 415 S.C. at 253-254, 781 S.E.2d at 901-902 (recognizing illogical travel plans and nervousness can be relevant factors in a reasonable suspicion analysis). Based on all of those factors, Deputy Gilbert decided to further detain Alston after completing the purpose of the stop, which was completed in a reasonable length of time, and his decision to extend the stop was fully supported by reasonable suspicion under the totality of the circumstances. See United States v. Sharpe, 470 U.S. 675, 683 (1985) (finding a twenty-minute detention during an investigatory traffic stop was objectively reasonable); see also Branch, 537 F.3d at 338 (“We begin with the basic fact that much of Branch’s 30-minute detention was justified by the ‘ordinary inquiries incident’ to a routine traffic stop.” (citations omitted)); United States v. Jeffus, 22 F.3d 554, 557 (4th Cir. 1994) (finding a fifteen-minute traffic stop to be reasonable); see generally Rodriguez, 135 S. Ct. at 1616 (recognizing reasonable suspicion is necessary to prolong a traffic stop beyond the amount of time reasonably required to complete the purpose of the stop); cf. Provet, 391 S.C. at 504, 706 S.E.2d at 518 (“Conversely, Owens’ series of questions and observations occurred prior

to the conclusion of the traffic stop because Owens was waiting to hear from dispatch regarding Provet's license and registration and a warning citation had yet to be issued.”).

Based on the indicators of criminal activity observed by the officer coupled with the officer's extensive experience in conducting traffic stops and conducting criminal interdiction along South Carolina roadways, the trial judge properly concluded any extension of the stop was supported by reasonable articulable suspicion. See Ornelas v. United States, 517 U.S. 690, 700 (1996) (“[A] police officer may draw inferences based on his own experience in deciding whether probable cause exists. . . . An appeals court should give due weight to a trial court's finding that the officer was credible and the inference was reasonable.”); Cortez, 449 U.S. at 418 (“[A] trained officer draws inferences and makes deductions – inferences and deductions that might well elude an untrained person.”). Although some of the factors observed by the officer were potentially consistent with innocent travel, all of the factors taken together established a reasonable articulable suspicion Alston was involved in criminal activity. See Sokolow, 490 U.S. at 10 (“[I]nnocent behavior will frequently provide the basis for a showing of probable cause, and . . . in making a determination of probable cause the relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts. That principle applies equally well to the reasonable suspicion inquiry.” (internal quotation marks and brackets from original omitted)); Moore, 415 S.C. at 255, 781 S.E.2d at 902 (“While each of the factors considered by the trial judge would be, standing alone, insufficient to support a finding of reasonable suspicion, we find that the totality of factors in this case is sufficient to support the trial court's finding in light of our deferential standard of review.”); see generally Robinson v. State, 407 S.C. 169, 184, 754 S.E.2d 862, 870, n. 9 (2014) (“[T]he facts and inferences relied on by the officer must be *articulable*, not necessarily

articulated.”). As a result, the trial judge – just like the trial judges in Wallace, Provet, and Moore – properly denied Alston’s suppression motion, and the Court of Appeals properly affirmed the trial judge’s ruling in light of the appropriate deferential standard of review. See Wright, 391 S.C. at 442, 706 S.E.2d at 326 (instructing “an appellate court must affirm if there is any evidence to support the ruling” in a case involving a Fourth Amendment issue); Provet, 391 S.C. at 506, 706 S.E.2d at 520 (“[W]e conclude the trial court did not err in finding reasonable suspicion existed to further detain Provet because there is evidence in the record to support the trial court’s ruling.”); see also Moore, 415 S.C. at 253, 781 S.E.2d at 901 (rejecting an analysis in which an appellate court reweighed the facts and substituted its own de novo judgment when considering whether an extension of a traffic stop was supported by reasonable articulable suspicion on criminal activity); cf. State v. Jones, 364 S.C. 51, 59, 610 S.E.2d 846, 850 (Ct. App. 2005) (“In the case at hand, there is evidence to support the trial judge’s findings and we cannot say his findings are clearly erroneous. We therefore find no abuse of discretion.”). Alston’s conviction and the decision of the Court of Appeals should be affirmed.

C. Propriety of the Search Conducted During the Stop

The Fourth Amendment prohibits 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). Generally speaking, any evidence seized as the result of an unreasonable search and seizure must be excluded from trial. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). The well-settled rule is warrantless searches are unreasonable per se unless they fall under an exception to the Fourth Amendment’s warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978). However, “warrantless searches are

allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement.” Kentucky v. King, 563 U.S. 452, 462 (2011).

South Carolina courts have recognized several exceptions to the warrant requirement, including: (1) the search incident to lawful arrest exception; (2) the hot pursuit exception; (3) the stop and frisk exception; (4) the automobile exception; (5) the plain view exception; (6) the consent exception; and (7) the abandonment exception. State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012). Pursuant to the various accepted exceptions to the warrant requirement, a warrantless search or seizure will generally withstand constitutional scrutiny so long as the circumstances establish the existence of an exception along with the existence of probable cause. State v. Bultron, 318 S.C. 323, 331-332, 457 S.E.2d 616, 621 (Ct. App. 1995).

One of the recognized exceptions to the warrant requirement is the consent exception. See Birchfield v. North Dakota, ___ U.S. ___, 136 S. Ct. 2160, 2185 (2016) (“It is well established that a search is reasonable when the subject consents[.]”). Pursuant to the consent exception, an officer can validly conduct a warrantless search of a constitutionally-protected area when he or she receives consent from an individual with authority or apparent authority to grant such consent and the consent is provided freely and voluntarily. See State v. Adams, 377 S.C. 334, 339, 659 S.E.2d 272, 275 (Ct. App. 2008) (holding warrantless searches and seizures are constitutionally permissible when conducted under the authority of **voluntary** consent); see also State v. Laux, 344 S.C. 374, 377, 544 S.E.2d 276, 277 (2001) (recognizing consent may be valid if the person granting consent reasonably appeared to have the apparent authority to grant the consent). Factors to consider when determining whether consent was validly provided include the characteristics of the individual providing consent, which include the individual’s age,

maturity, education, intelligence, and experience, and the conditions under which the consent was granted, which include the conduct of the officer asking for consent, the number of officers present, and the duration of the encounter. United States v. Boone, 245 F.3d 352, 361-362 (4th Cir. 2001). Importantly though, “when an officer asks for consent to search *after* an unconstitutional detention, the consent procured is per se invalid unless it is both voluntary and not an exploitation of the unlawful detention.” Pichardo, 367 S.C. at 105, 623 S.E.2d at 851. Significantly, the State bears the burden of establishing the voluntariness of consent, and the issue of whether consent was freely and voluntarily given is a question of fact to be determined from the totality of the circumstances. Id.

In Alston’s case, Deputy Gilbert possessed reasonable suspicion of criminal activity – for all the reasons previously mentioned – at the time he requested permission to search Alston’s rental vehicle. See Boone, 245 F.3d at 362 (“If individual voluntarily consents to a search while justifiably detained on reasonable suspicion, the products of the search are admissible.”); cf. Willard, 374 S.C. at 136, 647 S.E.2d at 256 (“We likewise find the search was not an exploitation of an unlawful detention. As previously discussed, we find reasonable suspicion existed to make the stop and detention. Furthermore, although Willard allegedly noticed the officers’ guns when first surrounded, there is no evidence of any threat of force against Willard once he had exited his vehicle. Nor is there evidence of coercion or promises made.”). Thus, Alston’s consent to the search was **not** the invalid product of an unlawful detention.

Moreover, Alston provided consent to Deputy Gilbert in a free and voluntary manner. Notably, establishing the voluntariness of Alston’s consent, Alston appeared to be of a sufficient age, maturity, and intellect to provide consent, and his previous license suspension for driving under the influence established he had prior experience with law enforcement and the criminal

justice system. Likewise, Alston had only been detained for roughly sixteen minutes at the time Deputy Gilbert asked for consent, and Deputy Gilbert did not undertake any coercive or threatening actions, such as pulling out his service weapon, in order to obtain Alston's consent. See State v. Mattison, 352 S.C. 577, 584, 575 S.E.2d 852, 855 (2003) ("Custody alone . . . is not enough in itself to demonstrate a coerced consent to search."). Instead, Deputy Gilbert expressly explained to Alston he had a right **not** to provide consent if he chose not to do so, he made sure Alston was consenting to a search by checking with him – and obtaining consent from him – on three separate occasions, and he quickly corrected Alston when Alston incorrectly stated the officer was the one providing the consent. See Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973) ("While **knowledge of the right to refuse consent is one factor to be taken into account**, the government need not establish such knowledge as the sine qua non of an effective consent." (emphasis added)); see also United States v. Stinson, 468 F. App'x 285, 291 (4th Cir. 2012) ("[T]he test for determining the voluntariness of consent is not whether an individual is free to leave, but whether a person felt free to refuse permission to search."). Furthermore, only one other officer was present on the scene at the time Alston thrice provided consent for the search, and nothing suggests the additional officer's presence did anything to coerce or threaten Alston into providing the consent.¹⁶ Under those circumstances, Alston's consent – which was provided after he was expressly advised of his right to refuse to provide it – was freely and voluntarily given, and the trial judge committed no error in finding that consent to be valid. Cf. Mattison, 352 S.C. at 585, 575 S.E.2d at 856 ("No evidence indicates Mattison gave consent while incompetent. Moreover, the record reveals no overt act, threat of force, or other form of coercion. Mattison claims the fact that he was 'surrounded' by a drug dog and four police

¹⁶ Notably, based on Deputy Gilbert's unrefuted testimony, the other officer who arrived before Deputy Gilbert asked for consent "stay[ed] away from" them and was behind Alston, which meant he was out of Alston's view. (R. pp. 65-66).

officers with squad cars flashing blue lights demonstrated a ‘show of force’ that indicates coercion. This argument lacks merit, as their presence was necessary at a crime scene. Thus, we cannot say as a matter of law that this activity constituted coercion, because the drug dog was instrumental in finding drugs in the car and the multiplicity of suspects warranted the plethora of law enforcement officers.”).

Because Alston provided consent freely and voluntarily on multiple occasions and because that consent was not the invalid product of an unlawful detention, the officers’ consensual search of the rental vehicle was constitutionally permissible. See *Palacio v. State*, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999) (“The constitutional immunity from unreasonable searches and seizures may be waived by valid consent.”). As a result, the trial judge properly exercised his discretion and denied the suppression motion, and the Court of Appeals correctly affirmed the trial judge’s ruling as there was nothing establishing the trial judge abused his broad discretion on the matter. See *Mattison*, 352 S.C. at 584, 575 S.E.2d at 856 (“A trial judge’s conclusions on issues of fact regarding voluntariness will not be disturbed on appeal unless so manifestly erroneous as to be an abuse of discretion.”). Alston’s conviction and the decision of the Court of Appeals should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals and the judgment and conviction of the trial court should be affirmed.

Respectfully submitted,

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October 17, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2015-002134

THE STATE,

Respondent,

vs.

STEPHENO JEMAIN ALSTON,

Petitioner.

CERTIFICATE OF COUNSEL

The undersigned certifies that this 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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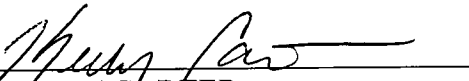
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PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Brief of Respondent on Petitioner by sending two copies of the same to:

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I further certify that all parties required by Rule to be served have been served.
This 17th day of October, 2016.


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