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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARREN KEITH BELT,

APPELLANT

APPELLATE CASE NO. 2015-002350

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion to suppress the evidence found inside the car Appellant was driving at the time of his arrest where the officers' continued detention of Appellant constituted a seizure for the purposes of the Fourth Amendment and the officers lacked reasonable, articulable suspicion to extend the traffic stop of Appellant past the time required to issue a traffic citation for speeding?

STATEMENT OF THE CASE

On September 10, 2013, the Charleston County grand jury indicted Appellant Darren Belt for two counts of armed robbery. R. 262 (Indictments).

On September 14 – 17, 2015, Belt was tried before the Honorable Kristi L. Harrington and a jury. Belt was represented by Michael Detreville, and the State was represented by assistant solicitors Alex Zeigler and Scott Maynor. R. 8, 84, 177, and 500. The jury found Belt guilty on both counts of armed robbery. R. 725.

On October 23, 2015, Belt appeared for a hearing on his motion for new trial, which was denied. R. 733 – 739. Judge Harrington then proceeded to sentencing, imposing concurrent sentences of eighteen years. R. 750.

This appeal follows.

STATEMENT OF FACTS

Introduction

Belt was tried for the armed robberies of Glenn McElhenney and Shane Burnett, which occurred at **12:15 a.m.** on May 7, 2013. R. 34, l. 19 – 35, l. 21. Belt's co-defendants, Randi Parks and Ricky Hayes, were both apprehended within ten minutes of the robbery. R. 39, ll. 6-15; R. 319, l. 13 – 322, l. 21. **One hour and twenty-two minutes** after the robbery, former officer Alex Gillespie saw Belt driving approximately one-quarter mile from where the robbery occurred. Gillespie saw that Belt was a black male driving alone in the area and had a hunch that he may be the missing suspect. Gillespie determined that Belt was driving ten miles over the posted twenty-five mile per hour speed limit, and **initiated a traffic stop at 1:37 a.m.** R. 40, ll.6-10; R. 44, ll. 14-19; R. 48, ll. 10-13; R. 71, l. 3 – 73, l. 20. Belt was detained for **twenty-four minutes** before Parks gave police additional information regarding the third suspect, which was relayed to Gillespie and the other officer at the scene of the stop at **2:01 a.m.** R. 118, l. 3-16; R. 125, l. 20 – 127, l. 20; State's Ex. 1 (DVD of traffic stop, on file with this Court). As will be seen *infra*, nothing in the intervening twenty-four minutes raised the officers' suspicion beyond a mere hunch. Belt was subsequently arrested and charged with the instant offenses.

Defense counsel moved to suppress the items obtained from Belt's jeep, specifically a book bag that contained letters addressed to co-defendant Hayes, because the officers illegally elongated the traffic stop. R. 30 – 168; R. 182 – 214; R. 1 – 7 (Defense Motion to Suppress). The trial court denied the motion. R. 168, l. 25 – 169, l. 12; R. 214, l. 21 – 216, l. 9. Defense counsel renewed his objections to the evidence at all necessary times, including prior to the introduction of the evidence, at the close of the State's case, before the case was submitted to the jury, and in a motion for new trial. R. 278, l. 19 – 279, l. 4; R. 289, l. 17 – 290, l. 13; R. 340, l. 22 – 341, l. 5; R. 342, ll. 3-8; R.

343, l. 5 – 345, l. 9; R. 659, ll. 4-10; R. 724, ll. 13-18; R. 735- 739; R. 730 – 732 (Defense Motion for New Trial).

Robbery

On May 7, 2013, at approximately 12:15 a.m., McElhenney and Burnett were walking down the sidewalk, after an evening of drinking and listening to music at a local bar. R. 242, l. 21 – 243, l. 25. Former officer Alex Gillespie[1] was across the street conducting "business checks," which involved verifying that the doors to the businesses were secure and leaving a note for the owner. Gillespie saw the two men, who were being loud, and "made a mental note" to go speak to them. R. 33, l. 20 – 35, l. 18. Meanwhile, three or four black men, one of whom had a gun, approached McElhenney and Burnett and demanded that the men empty their pockets. R. 60, ll. 20-23; R. 244, l. 6 – 245, l. 10; R. 366, ll. 16-22. When Gillespie turned around he saw that "the two white males were surrounded by three black males" and thought it "was kind of suspicious." R. 35, ll. 17-24.

Gillespie was walking across the street toward the group when he saw one of the men raise his hands in the air. R. 35, ll. 3-8; R. 35, l. 25 – 36, l. 2. Gillespie unholstered his gun and yelled "hey," causing the suspects to run. R. 36, ll. 3-5. Gillespie said he pursued them until he lost sight of one of the suspects and the other two ran in another direction. R. 36, ll. 3 – 37, l. 4. He issued a be-on-the-lookout ("BOLO") for three black males dressed in all black. R. 99, ll. 14-25; R. 317, l. 5 – 318, l. 3; R. 338, ll. 9-12. Though not in the BOLO or his written report, Gillespie later claimed that one of the robbers wore a black baseball cap with white or silver lettering. R. 37, ll. 5-15; R. 62, l. 25 – 63, l. 6; R. 69, ll. 4-22.

[1] At the time of Belt's trial, Gillespie was "no longer employed" by the police department due to an unrelated matter. R. 26, l. 5 – 30, l. 2; R. 33, ll. 3-5.

Gillespie returned to McElhenney and Burnett, one of whom said that the robbers were wearing dark black clothing and that one had braids in his hair. R. 39, ll. 1-5. McElhenney was given medical treatment for a pre-existing "watermelon size" hernia, which was aggravated during the robbery. R. 37, l. 23 – 38, l. 10; R. 245, l. 16 – 246, l. 3; R. 255, ll. 12 – 256, l. 24. Burnett was taken to the police station to be interviewed by officer Andrew Decamp. R. 135, ll. 1-21; R. 408, l. 20 – 413, l. 21.

Apprehension of Co-defendants

Other offices responded to the area and canvassed for suspects. Co-defendant Ricky Hayes approached officer David Ivey and said that he was the victim of a robbery. Officer Gary Myers went to assist Ivey, who suspected that Hayes was one of the robbery suspects and detained him. Ivey and Myers continued to search the area and saw a foot sticking out from under a dump truck. The foot belonged to co-defendant Randi Parks, who had McElhenney's wallet in his pocket. Hayes and Parks were both taken to the police station while officers looked for a third suspect. R. 122, l. 24 – 123, l. 19; R. 183, l. 23 – 186, l. 5; R. 438, l. 11 – 442, l. 5. After an additional forty-five minutes to an hour, officers pulled back their search in hopes that the third suspect might "start moving." R. 39, l. 6 – 40, l. 5; R. 91, ll. 9-22.

Traffic Stop

At **1:37 a.m.**, Gillespie initiated a traffic stop of Appellant Belt after he saw "a green jeep traveling at a fast speed driven by a black male." R. 40, ll. 6-17; R. 44, ll. 17-19; R. 50, ll. 6-15; State's Ex. 1 (DVD). Gillespie had turned behind the car, paced it,[2] and determined that Belt was

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[2] "Pacing" is a technique for measuring speed whereby the officer maintains a constant distance between the police car and the suspect's car long enough to make a reasonably accurate estimate of its speed. State v. Moore, 404 S.C. 634, 637 n.1, 746 S.E.2d 352, 353 n.1 (Ct. App. 2013), *reversed by* 415 S.C. 245, 781 S.E.2d 897 (2016), *petition for cert filed* No. 15-9150 (U.S. Apr. 29, 2016).

traveling ten miles over the speed limit of twenty-five miles per hour. R. 40, ll. 11-17. Gillespie said that he thought the driver of the jeep was "[a] possible suspect" because "[h]e was a black male leaving the area in which three black males had just robbed two white males at gunpoint" and he was driving at a "high rate of speed." R. 71, l. 3 – 72, l. 21. However, Gillespie admitted that **one hour and twenty-two minutes** had passed since the robbery such that it is possible that Belt had come into the area from a great distance in the interim period. R. 72, l. 22 – 74, l. 15.

Suppression Hearing

The State called four witnesses at the suppression hearing, including Gillespie, who intervened in the robbery and initiated the traffic stop of Belt; Sergeant Gregory Horton, who assisted with the traffic stop; Corporal Dan Eckert, who interrogated co-defendant Parks at the police station; and Corporal Gary Myers, who participated in the inventory search of Belt's jeep. Gillespie's recording equipment was not functioning properly, such that there was no audio recording of the statements made during the traffic stop or during the subsequent search of the jeep. R. 45, l. 24 – 46, l. 25; R. 75, l. 9 – 76, l. 12; State's Ex. 1 (DVD).

Gillespie testified that the location of the stop was approximately one-quarter mile away from the robbery location. R. 48, ll. 10-13. He waited briefly to approach Belt's vehicle because his supervisor, Horton, was en route. R. 40, ll. 19-25. According to Gillespie, **an ordinary traffic stop would be completed in five to ten minutes**. R. 66, ll. 4-6. A total of **forty-four minutes** passed between the time the traffic stop of Belt was initiated and when Belt was placed under arrest and handcuffed. R. 66, ll. 7-10.

When Gillespie began walking toward the jeep at **1:39 a.m.**, he said that he placed his hand on his gun because he suspected that Belt might have been involved with the robbery and the gun involved in the robbery had not been located. R. 55, l. 19 – 56, l. 10; State's Ex. 1 (DVD).

Gillespie claimed that when he looked through the window into the back seat, he saw a black shirt and black hat with white writing. R. 41, ll. 6-19; R. 45, ll. 7-11. Gillespie later admitted that at the prior trial of co-defendant Hayes, he testified that he saw a black hoodie rather than a black shirt in the jeep. R. 301, l. 21 – 303, l. 3. Neither Horton, Eckert, nor Myers recalled being told about or seeing the items that Gillespie described. No such items were collected from or photographed in the jeep either. R. 50, ll. 9-12; R. 159, l. 11-20; R. 194, l. 15 – 196, l. 4. Thus, Gillespie's uncorroborated testimony was literally the only evidence that any dark clothing or a hat were in the jeep.

Once Gillespie made contact with Belt, he requested his license and registration, which showed that the owner of the jeep was William Belt, Belt's father. Gillespie said that **the computer check was completed "within approximately the first five minutes of the stop."** R. 56, l. 11 – 57, l. 7; R. 108, ll. 14-22; R. 92, l. 22 – 93, l. 6; R. 192, l. 15 – 193, l. 2; R. 206, ll. 14-19. Notably, Belt was not wearing dark clothing, but rather khaki pants and a blue tank top. R. 65, l. 13 – 66, l. 3; State's Ex. 1 (DVD). Gillespie and Horton began asking Belt questions about what he was doing in the area. Belt told them that he was looking for the house of a woman he was going to "meet." Though neither of the officers could recall the name of the neighborhood Belt mentioned, they both testified that they knew the area well and had not heard of it. R. 42, ll. 5-17; R. 92, l. 6-21; R. 151, l. 24 – 152, l. 17. Again, because of the lack of functioning audio recording equipment, the only evidence of what was said during the stop came from the officers' testimony.[3] R. 308, ll. 7-25.

[3] Officer Decamp conducted the post-arrest interrogation of Belt. He testified that Belt told him that he had come to Mt. Pleasant from out of town and "was looking for a neighborhood called Shadow Creek on Chuck Dawley Boulevard near the Kangaroo gas station" where he was supposed "to meet up or see a woman." R. 405, l. 5 – 406, l. 10; R. 414, l. 5 – 415, l. 16. Belt said he was stopped by police after he had been unsuccessful in locating the house and was on his way back out of town. R. 406, ll. 17-21. Decamp confirmed that there is a Kangaroo gas station on Chuck Dawley Boulevard, by which the Hickory Shadows neighborhood is located. The Exxon gas station where Belt was stopped and arrested is approximately two miles from that Kangaroo gas station. R. 415, l. 10 – 416, l. 22.

Gillespie said that once he approached the vehicle and saw a single black male with braids and the black shirt and hat in the back seat, the stop was no longer "just a speeding stop" and he believed that Belt "was linked to the armed robbery." R. 47, l. 18 – 48, l. 7; R. 51, l. 12 – 52, l. 17. Horton, who never claimed to see or have been made aware of any clothing in the backseat,[4] said that he "believed that we probably had the third suspect" after they spoke with Belt. R. 93, ll. 7-10; R. 113, ll. 13-22.

Sergeant Horton walked out of the view of the police car's video camera at **1:47 a.m.**, at which time he called the police station to speak with Corporal Eckert and find out if either co-defendant was being cooperative. R. 93, ll. 9-25; R. 101, l. 9 – 102, l. 6; State's Ex. 1 (DVD). Eckert testified that he began advising co-defendant Randi Parks of his Miranda rights at 1:45 a.m. Just after Parks had agreed to waive his Miranda rights, someone delivered a message to Eckhert to call Horton. Eckert excused himself and called Horton from a landline telephone. R. 123, l. 25 – 125, l. 9; R. 137, l. 12 – 138, l. 22; R. 161, ll. 3-7. At **1:51 a.m.**, Horton answered his cell phone, which he remained on until 1:54 a.m. R. 94, ll. 1-4; State's Ex. 1 (DVD). Eckert testified that they merely discussed whether Parks was being cooperative and that no details regarding the vehicle or driver were relayed from Horton to Eckert. R. 125, ll. 6-9; R. 141, ll. 5-16. Horton, on the other hand, said that he told Eckhert "the description of the person we were out with." R. 94, ll. 5-10.

Eckert then returned to Parks and told him that they had a person who they thought was the third suspect and that he should "tell his story and to be honest" by describing the third robber. R. 125, ll. 10-19. Parks told him that the missing robber went by "L" and was from North Charleston,

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[4] Horton testified during the suppression hearing that a black hat, black shirt, and latex gloves were listed on the tow sheet that documented items found in Belt's jeep. R. 116, ll. 15-22; R. 118, ll. 17-23. However, the tow sheet was later shown to Officer Myers, who testified that no such items were listed on it. R. 194, l. 9 – 195, l. 13.

though they rode down from Columbia earlier in the day. Parks said that "L" had cornrows and an eye deformity. At **2:01 a.m., twenty-four minutes after the traffic stop began**, Horton answered his cell phone, at which time Eckert relayed to him the initial description of the third suspect as a black male with cornrows and an eye injury. Eckhert then went back to speak with Parks, who further indicated that "L" drove a blue or green truck, though he changed that to say it was a truck or jeep. Parks also said that there was a book bag in the rear seat. R. 118, l. 3-16; R. 125, l. 20 – 127, l. 20; State's Ex. 1 (DVD).

The officers testified that Belt was unwilling to voluntarily come to the police station, so they decided that Eckert would come to the location of the traffic stop. At **2:10 a.m.**, Eckert arrived at the location of the traffic stop and spoke with Belt. Eckert said Belt was looking for a neighborhood with "Shadows" in the name, which was unfamiliar to Eckert. However, Eckert admitted that there is a Hickory Shadows subdivision in Mt. Pleasant. R. 96, ll. 16-23; R. 127, l. 21 – 130, l. 5; R. 151, l. 21 – 152, l. 17; R. 161, ll. 11-21; State's Ex. 1 (DVD). After Eckert spoke with Belt, Belt was placed under arrest for armed robbery and handcuffed at **2:21 a.m.** R. 51, ll. 4-11; R. 96, ll. 23-25; R. 130, ll. 8 – 131, l. 13; State's Ex. 1 (DVD). Belt, who is 5'2", was noticeably shorter than the officers. State's Ex. 1 (DVD); R. 400, l. 21 – 401, l. 6. Multiple officers, including Gillespie and Myers,[5] conducted a search of the jeep from 2:22 a.m. until 2:49 a.m. No black clothing, hat, or gloves, were collected, nor were they visible on the dash-cam video. The officers did seize a zipped book bag from the backseat of the jeep, which contained letters addressed to co-defendant Hayes. R. 42, l. 22 – 43, l. 2; R. 63, l. 13 – 64, l. 20; R. 186, l. 12 – 188, l. 5; R. 193, l. 3 – 196, l. 22; State's Ex. 1 (DVD). Belt was not given the traffic citation for

[5] While Gillespie said that he did not participate in the inventory search of the jeep, Myers said that he and Gillespie conducted the search together. Compare R. 42, l. 22 – 43, l. 2, with R. 194, ll. 1-8.

speeding until after he was arrested and taken to the Charleston County Detention Center. R. 57, l. 8 – 58, l. 21.

Following the testimony, defense counsel argued the suppression motion. R. 198, l. 1 – 207, l. 8; R. 1 – 7 (Defense Motion to Suppress). He noted that the extension of traffic stop beyond the reasonable amount of time needed to complete the stop must be supported by reasonable suspicion to continue detaining the defendant. He argued that the officers here were dilatory in performing the functions of the traffic stop in an effort to extend it so that further investigation could be conducted. R. 199, l. 18 – 201, l. 13. Defense counsel argued that the assertion that a dark shirt and hat were seen in Belt's back seat was not credible such that the officers lacked reasonable suspicion to believe Belt was involved in the armed robbery and necessitating suppression of the bag and its contents, which were taken from the jeep. R. 201, l. 14 – 204, l. 23; see also R. 198, ll. 2 – 199, l. 17.

The solicitor argued that Gillespie's suspicions were aroused when he saw the black shirt and hat in the back seat of Belt's jeep and saw Belt's hairstyle, allegedly consistent with what he had seen and the victim's statement that one of the robbers had braids. R. 208, l. 1 – 209, l. 3. He also cited that Belt was a black male traveling alone and that the officers were unfamiliar with the neighborhood where Belt said he was going. R. 209, ll. 3-16; R. 210, ll. 7-10. The solicitor further argued that Horton called Eckert "within a reasonable time period" and obtained details regarding the third robber given by one of the co-defendants. The solicitor noted that the description included an eye injury, which both officers noticed, and the officers' dissatisfaction with Belt's explanation of what he was doing in Mt. Pleasant. R. 209, l. 17 – 210, l. 10. Once Eckert arrived, he "noticed numerous factors . . . that were consistent with what he had been told by Mr. Parks . . . ." R. 210, ll. 10-13.

In response to the trial court's inquiry, defense counsel conceded that the initial traffic stop for speeding was valid such that the sole question for the court was whether there was reasonable suspicion to extend the traffic stop and conduct "a second seizure of the vehicle." R. 214, ll. 1-20. The trial judge issued her ruling denying the motion to suppress and finding:

> Based upon the ongoing investigation, the fact that they were looking for, they had two individuals in custody out of the three potential suspects. One of the suspects matching the description of the individual that was driving the car I do find that there was facts sufficient to support reasonable suspicion to extend the traffic stop. Because of that I find that everything that was taken into custody and seized was lawfully seized.

R. 214, l. 21 – 215, l. 10.

Additional Evidence at Trial

Belt's Statement and Jail Call

In addition to testimony from the officers at trial, the State introduced testimony regarding Belt's post-arrest statement to detective Decamp, portions of Belt's jailhouse phone call, the inconsistent testimony of the victims, and the incredible testimony of Randi Parks. Belt's statement to Decamp was consistent with what he told the officers during the traffic stop. Belt said that he had come to Mt. Pleasant from out of town and "was looking for a neighborhood called Shadow Creek on Chuck Dawley Boulevard near the Kangaroo gas station" where he was supposed "to meet up or see a woman." R. 405, l. 5 – 406, l. 10; R. 414, l. 5 – 415, l. 16. Belt said he was stopped by police after he had been unsuccessful in locating the house and was on his way back out of town. R. 406, ll. 17-21. Decamp confirmed that there is a Kangaroo gas station on Chuck Dawley Boulevard, by which the Hickory Shadows neighborhood is located. The Exxon gas station where Belt was stopped and arrested is approximately two miles from that Kangaroo gas station. R. 415, l. 10 – 416, l. 22. The jailhouse call corroborated nothing more than Parks' assertion that Belt went by the nickname Lizard and that Belt had been in Columbia prior to his arrest. Belt made no

admissions to involvement in the robbery; rather, he told his friend that he was in the "wrong place" at the "wrong time." R. 672, l. 24 – 673, l. 15; R. 699, ll. 11-19.

Inconsistent Testimony of McElhenney and Burnett

Glenn McElhenney and Shane Burnett's testimony was inconsistent both with each other and with their own prior statements. Their credibility regarding the description of the robbers was further damaged by their admission that they saw news reports shortly after the robbery, which included the "mug shots"[6] of the three suspects who were arrested. R. 249, ll. 8-11; R. 391, ll. 13-25; R. 689, l. 5 – 697, l. 23. McElhenney said that the area where the incident took place was not well lit, while Burnett claimed it was "fairly well lit." Compare R. 253, ll. 5-14, with R. 392, l. 24 – 393, l. 1. McElhenney said that there were three robbers, one in front of them and two behind them, but Burnett said that there may have been four robbers, two in front of them and at least one behind them. Compare R. 244, ll. 15-18; R. 253, l. 14 – 254, l. 18, with R. 365, ll. 2-9; R. 366, ll. 16-22. However, they both agreed that they focused on the gun, they got their own items out of their pockets, and no knife was used in the incident. R. 244, ll. 21-22; R. 246, ll. 13-14; R. 259, ll. 14-20; R. 260, l. 11 – 261, l. 2; R. 263, ll. 11-25; R. 264, ll. 13-25; R. 367, ll. 17-18; R. 370, l. 25 – 371, l. 1; R. 380, ll. 15-23.

In the statement he gave four days after the incident, McElhenney said that all of the robbers were black, one had dreads, and two wore hoodies. However, he testified at trial that his statement that one had dreads may have been tainted by the news coverage and that one of the hoodies could have been a "ball cap or something." R. 248, l. 25 – 249, l. 15; R. 257, l. 3 – 259, l. 1. Notably, McElhenney had never mentioned a ball cap until Belt's trial. R. 259, ll. 2-8. McElhenney testified

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[6] A "mug shot" is a "typical police photographs, taken when a person has been arrested, depicting the appellant in two classic poses; a standing close-up facial view and a standing close-up side view." State v. Tate, 288 S.C. 104, 105, 341 S.E2d 380, 381 (1986).

that he was not involved in any identification procedures and that he would not have been able to identify any of the robbers regardless. R. 262, l. 23 – 263, l. 10.

On the night of the incident, Burnett gave a written statement[7] at the police station, in which he described four assailants, all of whom were black males, 18-25 years old, wearing black clothing, with shoulder length hair and no facial hair. R. 389, l. 7 – 390, l. 3; R. 412, ll. 7-23. Burnett acknowledged that his statement was supposed to be as detailed as possible. R. 388, ll. 7-19. However, he said that he was tired and "didn't think it was really important" because he overheard a few officers say that they "had three guys in custody." R. 375, l. 18 – 376, l. 12; R. 388, l. 20 – 389, l. 6; R. 391, ll. 9-12. Detective Decamp, who interviewed Burnett, described Burnett as "very forthcoming with details" and did not appear exhausted. Decamp said that Burnett told him that he could only provide common characteristics and could not differentiate between the suspects any further. R. 408, l. 20 – 413, l. 21.

Nonetheless, Burnett provided surprising detail regarding the suspects' appearance at trial. Burnett testified that the gunman was attractive, young looking, and not very big, wearing dark clothing – possibly a hoodie or dreadlocks. R. 367, l. 14 – 368, l. 6; R. 373, ll. 19 – 374, l. 4; R. 394, l. 6 – 395, l. 17. He further claimed to see a second man in front of them, who had a scar on his eye, dark clothing, and was "not as little boyish looking as the person holding the gun." R. 368, l. 7 – 369, l. 18. Burnett, who is 5'9" tall, admitted that he testified at Hayes' trial that the second person in front of them, supposedly Belt, was "maybe my height." Belt is 5'2," a distinctively short stature for a man. R. 382, l. 6 – 384, l. 22; R. 398, l. 24 – 399, l. 8; R. 400, l. 3 – 401, l. 6; R. 447, ll. 8-9; R. 473, ll. 10-12.

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[7] Burnett's written statement was not known to the officers prior to or during the traffic stop of Belt such that it could not have factored into the officers' reasonable articulable suspicion to detain Belt. R. 135, ll. 1-21.

The officers testified that they did not utilize any identification procedures because of the suggestive nature of a show-up and because the news coverage with the suspect's "mug shots" seen by the victims would have tainted any future line-up. R. 528, l. 19 – 530, l. 14; R. 591, ll. 8-23. Notably, Belt's braided/corn row hairstyle and eye deformity would have both been evident from a "mug shot," though his distinctive height would not. R. 697, ll. 17-23; R. 473, l. 18 – 474, l. 6; see also State's Ex. 1 (DVD). Both Parks and Hayes had "short, shaved off" hairstyles at the time of the incident, which would have also been evident from their mug shots. R. 528, ll. 11-18.

Incredible Testimony of Co-Defendant Randi Parks

As defense counsel predicted in his opening statement, co-defendant Randi Parks was "a bad witness" and a liar. R. 238, l. 16 – 239, l. 18; R. 442, l. 10 – 443, l. 5; R. 451, l. 24 – 455, l. 22. Parks had prior convictions including: possession with intent to distribute a controlled dangerous substance in 2004, second degree burglary in 2005, and four counts of second degree burglary and two counts of grand larceny in 2012. R. 421, ll. 10-23. Parks had been released from the Department of Corrections just sixty days prior to the instant offenses. R. 451, ll. 18-22. Prior to Belt's trial, Parks pled guilty to two counts of armed robbery and his escape charge was dismissed. Though Parks' sentencing was deferred, Parks maintained that he was not hoping to gain any benefit from his testimony at Belt's trial.[8] R. 421, l. 24 – 422, l. 25; R. 450, l. 3 – 451, l. 17; R. 477, ll. 1-25.

According to Parks, in the early morning hours of May 6, 2016, he and Belt were "hanging out" and gambling in Columbia when their "dice game" was robbed. At approximately 8:00 a.m., they drove to Ricky Hayes' father's house, where they told Hayes about being robbed. At around

[8] SCDC records indicate that Parks, who admittedly pointed the loaded revolver at both victims, was later sentenced to concurrent terms of ten (10) years incarceration.

3:00 or 4:00 p.m., Hayes suggested that they all go to Charleston to "make some money" by robbing someone. Hayes had a gun with him. R. 426, l. 4 – 429, l. 5; R. 460, ll. 11-23. Parks drove them to Charleston in Belt's jeep and they spent the day drinking and smoking marijuana. R. 429, l. 6 – 431, l. 14. They eventually went to a "female" named Mandy's house. Parks overheard Hayes and Mandy talking about a drug dealer that they could rob, but Mandy later asked the men to leave because her father was coming by her house. Parks claimed that they left around 11:00 p.m. or 12:00 a.m. and that he fell asleep in the back seat of Belt's jeep, thinking they were headed back to Columbia. R. 431, l. 15 – 433, l. 9; R. 470, l. 8 – 471, l. 8. He recalled that Hayes' book bag was in the seat next to him. R. 447, ll. 2-7.

According to Parks, he was awoken suddenly by Hayes and Belt, who told him to get out of the truck and ran across the street. Parks followed them. Hayes gave Parks the gun and instructed him where to go to confront McElhenney and Burnett. Parks said that he stood in the front of the men and pointed the gun at them while Hayes and Belt stood behind and went through their pockets. R. 434, l. 19 – 438, l. 10; R. 465, l. 19 – 466, l. 6; R. 474, l. 11 – 475, l. 20. He further claimed that Belt held a knife to one of the victim's throats. R. 466, l. 7 – 467, l. 10. Notably, both victims denied that their pockets were gone through or that a knife was used. R. 263, ll. 11-25; R. 380, ll. 15-23.

Parks admitted that he sent two letters to Belt's defense attorney, both of which indicated that Belt was innocent. He claimed that he sent the letters "out of fear," yet he provided no detail as to any threats he had received. R. 445, ll. 2-15; R. 455, l. 23 – 458, l. 5; R. 483, ll. 4-23. The day after the robbery, Parks ran from the local detention center when the gate opened. However, he claimed that he "gave himself up" and that the officer used excessive force. R. 444, ll. 5-24; R. 478,

l. 11 – 480, l. 20. Eckert disputed that claim, saying that Parks did not surrender voluntarily and that Eckhert was investigated and cleared of the excessive force allegation. R. 582, l. 14 – 583, l. 6.

ARGUMENT

The trial court erred in denying Appellant's motion to suppress the evidence found inside the car Appellant was driving at the time of his arrest where the officers' continued detention of Appellant constituted a seizure for the purposes of the Fourth Amendment and the officers lacked reasonable, articulable suspicion to extend the traffic stop of Appellant past the time required to issue a traffic citation for speeding.

Gillespie's initial hunch that Belt may have been involved in the robbery that occurred well over an hour earlier was because he saw that Belt was a black man, traveling alone, in the area of the robbery. When he determined that Belt was driving thirty-five miles per hour in a twenty-five mile per hour zone, he was able to lawfully stop him for a traffic violation. Gillespie approached with caution and called Horton to assist him because of his hunch that Belt was involved in the robbery and the fact that the gun involved had not been found, both reasonable acts to protect the officer's safety. However, Gillespie and Horton's hunch did not develop into reasonable, articulable suspicion during the time needed to issue the traffic citation such that Belt's continued detention was unlawful.

As will be discussed more fully *infra*, Gillespie as not deterred by that fact that Belt was wearing khaki pants and a blue tank top despite the fact that saw that the robbers were dressed in black. While Gillespie claimed to have seen a black shirt and baseball cap in the backseat of Belt's jeep, his assertion was uncorroborated by any of the four other officers who looked in the jeep. No photographs were taken and no shirt or hat was collected as evidence. Moreover, if Belt was wearing a baseball cap during the robbery, it is unlikely that the victims could have seen his hair style under the hat. Belt also gave reasonable responses to the officers' questions about where he was going. It was also counter-intuitive to believe that the third robber was still within one-quarter mile of the incident location over one hour and twenty-two minutes later. As defense counsel pointed out at trial, Belt could have driven to Mt. Pleasant from Orangeburg in that time. Further,

there was no testimony that Belt displayed any signs of nervousness or evidence of flight. It is also notable that Belt had a very distinctive height of 5'2," yet neither Gillespie nor the victims mentioned that one of the robbers was remarkably short.

By the time that co-defendant Parks provided additional information on the description of the third suspect, twenty-four minutes had passed since the traffic stop began. The continued detention of Belt had already become unlawful. Therefore, the book bag and its contents that were taken from Belt's jeep should have been suppressed. Those items were the only independent evidence connecting Belt to co-defendant Hayes.

Fourth Amendment Jurisprudence

The Fourth Amendment guarantees "[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. "Evidence seized in violation of the Fourth Amendment **must** be excluded from trial." State v. Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) (emphasis added). "[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable." Wilson v. Arkansas, 514 U.S. 927, 931, 115 S.Ct. 1914, 1916 (1995). The Fourth Amendment is applicable to the States through the Due Process Clause of the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643 (1961).

A routine traffic stop is more like a brief stop under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968), than an arrest, see, e.g., Arizona v. Johnson, 555 U.S. 323, 330, 129 S.Ct. 781 (2009). Temporary detention of individuals during a traffic stop by police, even if only for a brief period and for a limited purpose, constitutes a seizure of the persons within the meaning of the Fourth Amendment. See Whren v. United States, 517 U.S. 806, 809–10, 116 S.Ct. 1769, 1772 (1996); see also United States v. Arvizu, 534 U.S. 266, 273, 122 S.Ct. 744, 750 (2002)

(noting that the Fourth Amendment's protection against "unreasonable searches and seizures" extends to "brief investigatory stops of persons or vehicles that fall short of traditional arrest"). "In carrying out a routine traffic stop, a law enforcement officer may request a driver's license and vehicle registration, run a computer check, and issue a citation." State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) (citing United States v. Sullivan, 138 F.3d 126, 131 (4th Cir.1998)). "[A] seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." Illinois v. Caballes, 543 U.S. 405, 407, 125 S.Ct. 834, 837 (2005).

A traffic stop typically ends when the police officer has "no further need to control the scene, and inform[s] the driver and passengers they are free to leave." Johnson, 555 U.S. at 333, 129 S.Ct. at 788. Accordingly, "[o]nce the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention." State v. Pichardo, 367 S.C. 84, 99, 623 S.E.2d 840, 848 (Ct. App. 2005); see also Tindall, 388 S.C. at 522-23, 698 S.E.2d at 205-06 (finding "the officer's continued detention of Tindall exceeded the scope of the traffic stop and constituted a seizure for purposes of the Fourth Amendment").

In Rodriguez v. United States, the United States Supreme Court reiterated that the Fourth Amendment tolerates certain unrelated investigations during a traffic stop only so long as it **does not lengthen the roadside detention.** 135 S.Ct. 1609, 1614 (2015). "[A] traffic stop 'can become unlawful if it is prolonged beyond the time reasonably required to complete the mission' of issuing a warning ticket [or citation]." Id. at 1614-15 (quoting Caballes, 543 U.S. at 407, 125 S.Ct. at 834); see also Johnson, 555 U.S. at 333, 129 S.Ct. at 788 ("An officer's inquiries into matters unrelated to justification for traffic stop . . . do not convert the encounter into something other than a lawful seizure, *so long as those inquiries do not measurably extend duration of the*

stop." (emphasis added)). Thus, an officer "may conduct certain unrelated checks during an otherwise lawful traffic stop" but "he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." Rodriguez, 135 S.Ct. at1614. Officers cannot avoid this rule by employing dilatory tactics. State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 457 (2013).

"The test whether reasonable suspicion exists is an objective assessment of the circumstances; the officer's subjective motivations are irrelevant." Provet, 405 S.C. at 108, 747 S.E.2d at 457 (citing Ohio v. Robinette, 519 U.S. 33, 38, 117 S.Ct. 417, 420-21 (1996)). Reasonable suspicion is something more than an "inchoate and unparticularized suspicion" or "hunch." Terry, 392 U.S. at 27, 88 S.Ct. at 1883. Instead, looking at the totality of the circumstances, reasonable suspicion requires there be an objective, specific basis for suspecting the person stopped of criminal activity. United States v. Cortez, 449 U.S. 411, 416-18, 101 S.Ct. 690, 694-95 (1981). The police officer may make reasonable inferences regarding the criminality of a situation in light of his experience, but he must be able to point to articulable facts that, in conjunction with his inferences, "reasonably warrant" the intrusion. Terry, 392 U.S. at 21, 27, 88 S.Ct. at 1880.

Although the totality of the circumstances evaluation requires more than a piecemeal refutation of each fact and inference, the individual factors may still be discussed "one by one" before they are their "combined strength" is ultimately evaluated. United States v. Sprinkle, 106 F.3d 613, 617 (4th Cir. 1997). If the individual factors "gain little, if any, strength when put together," reasonable, articulable suspicion of criminal activity will not exist. Id. at 618-19.

Discussion

The United States Supreme Court held in Rodriguez v. United States, 135 S.Ct. 1609, 1615 (2015), that investigations into a matter unrelated to a traffic stop cannot be done in a such a way as to prolong a stop absent reasonable and articulable suspicion that the detainee was or is engaged in criminal activity. In the present case, it was undisputed that the initial stop of Belt was a lawful traffic stop for speeding. Whren, 517 U.S. at 810 ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."). Therefore, the issue before the trial court was solely whether the officers had reasonable and articulable suspicion to continue detaining Belt past the time needed to complete the computer check and issue a traffic citation.

In ruling that the extension of the traffic stop was lawful, the trial judge cited to "the ongoing investigation," the fact that police had two suspects in custody and were looking for a third, and that "one of the suspects match[ed] the description of the individual [who] was driving the car." R. 214, l. 21 – 215, l. 10. Contrary to that ruling, the officers were not justified in delaying the release of Belt while they continued their investigation with the other suspects they had in custody. See State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 457 (2013) ("The officer may not extend the duration of a traffic stop in order to question the motorist on unrelated matters unless he possesses reasonable suspicion that warrants an additional seizure of the motorist. The officer cannot avoid this rule by employing dilatory tactics."). Further, the characterization of Belt as "matching" the description of the third suspect is an overstatement where the description provided was generally for a black male wearing black clothing, possibly with braids. The more distinctive characteristics of the third suspect that were provided by Parks were irrelevant because they were not provided to the officers until twenty-four minutes into the stop. See

United States v. Foster, 634 F.3d 243, 249 (4th Cir. 2011) ("[T]he Government cannot rely upon post hoc rationalizations to validate those seizures that happen to turn up contraband." (citing United States v. Martinez–Fuerte, 428 U.S. 543, 565, 96 S.Ct. 3074 (1976) (noting that a purpose of the Fourth Amendment is to "prevent hindsight from coloring the evaluation of the reasonableness of a search or seizure")).

Regardless, the appellate court may conduct its own review of the record to determine whether the trial judge's decision was supported by the evidence. See Khingratsaiphon, 352 S.C. at 69, 572 S.E.2d at 460. According to Gillespie, an ordinary traffic stop is completed in five to ten minutes. Though no traffic citation was actually issued to Belt until well after his subsequent arrest, Gillespie confirmed that the check of Belt's license was completed within the first five minutes of the stop. R. 56, l. 11 – 58, l. 18; R. 66, ll. 4-10; R. 108, ll. 14-25. Thus, in determining whether there was reasonable and articulable suspicion to continue the detention, **the trial court had to assess the information that the officers had five to ten minutes into the stop**. As will be discussed more fully *infra*, at that time the officers had a limited description of the third suspect and had made observations of time and place, seen Belt's physical appearance and alleged items in plain view, and asked Belt about where he was going. That information was not sufficient to constitute reasonable and articulable suspicion to justify Belt's continued detention. Rather, the officers had a mere hunch that Belt might have been involved in the armed robbery that occurred approximately one hour and twenty-two minutes earlier.

In Robinson v. State, our Supreme Court wrote: "If, during the stop of the vehicle, the officer's suspicions are confirmed or further aroused—even if for a different reason than he initiated the stop—the stop may be prolonged, and the scope of the detention enlarged as circumstances require." 407 S.C. 169, 182, 754 S.E.2d 862, 869 (2014). The Robinson Court

held that the officers had reasonable articulable suspicion to stop Robinson and search the vehicle that he was driving. 407 S.C. 169, 182, 754 S.E.2d 862, 869 (2014). At 9:45 p.m., four men robbed a restaurant and a BOLO was issued for "four armed African–American men, approximately twenty years old, and wearing all-black clothing." Id. at 176-77, 754 S.E.2d at 866. At 10:06 p.m., an officer saw a parked car with its lights off in the darkened, fenced-in parking lot of a closed church that was located a short drive from the restaurant. The officer, who was aware of the BOLO, went to investigate. Id. at 177, 754 S.E.2d at 866. As he approached, he saw "four men in the vehicle who matched the approximate description of the BOLO—the correct number of men, the correct race, the correct age, and the correct approximate clothing color." Id. The officer took the driver's license to run a check for outstanding warrants and then waited for back-up officers, who arrived at 10:09 p.m. Id. at 177-78, 754 S.E.2d at 866. The occupants of the car, who had seemed relaxed, became "really nervous and silent" when the other officers arrived. Id. at 178, 754 S.E.2d at 866. Finding the behavior suspicious, the officers asked each of the men to step out of the car and patted them down for weapons. Id. A .22 caliber revolver with its serial number removed became visible after the last man got out of the car. Id. Because no one would claim the gun, the officers arrested all four men and searched the vehicle, where they found three more guns. Id. at 178, 754 S.E.2d at 867.

Our Supreme Court found that the officer had reasonable suspicion to approach Robinson's car based on his belief that there may have been a couple "necking" in the car, a potential misdemeanor. Id. at 183, 754 S.E.2d at 869. When the officer saw the four men in the car, "he knew that: (1) the police were looking for four African–American men in their twenties who robbed a bar within twenty minutes of the officer's encounter with the men; (2) the bar was

in close proximity to the church parking lot; (3) there were four young men in the vehicle who matched the approximate description of the BOLO—the correct number of men, the correct race, the correct age, and the correct approximate clothing color—and (4) there were four potential suspects and only one of him." Id. Based on that information, "the officer's suspicions regarding what type of potential criminal activity the vehicle's occupants could be involved in [changed], which consequently justified the officer enlarging the scope of his detention to investigate his new suspicions." Id. at 184, 754 S.E.2d at 869. The officer was also permitted to call for back up so that he would not be so greatly outnumbered. Id. The Court found that the men's sudden nervousness when the other officers arrived further aroused the officers' suspicions. Id. At that point, there was a reasonable suspicion that the four vehicle occupants were the four armed robbers described in the BOLO such that their removal from the vehicle and a pat-down for weapons was "eminently reasonable." Id. Once the altered gun was visible on the floorboard, the gun supplied the probable cause needed to arrest the men and continue the search of the vehicle. Id.

The present case is distinguishable from Robinson. In Robinson, the officer saw the car parked three to four miles from the incident location just twenty minutes after the robbery. Id. at 176-77, 193, 754 S.E.2d at 866, 874. It was also significant that the car was parked in a closed and fenced in church parking lot, where it had no reason to be and which was not readily open to the public. Id. at 183, 754 S.E.2d at 869. Here, Belt was driving approximately one-quarter mile from where the prior armed robbery had occurred. R. 48, ll. 10-13. However, it was **one hour and twenty-two minutes after the robbery**, reducing the significance of his proximity to the incident location. As defense counsel suggested at trial, Belt could have driven to Mt. Pleasant from Orangeburg in that time span. R. 72, l. 22 – 74, l. 15. Further, though multiple officers said

that Belt was driving at "a high rate of speed," Belt was in fact traveling at a speed of thirty-five miles per hour in a twenty-five mile per hour zone. R. 40, ll. 11-17; R. 55, ll. 1-8; R. 71, l. 3 – 72, l. 21; R. 130, ll. 19-23; R. 186, ll. 8-11; R. 300, ll. 10-19. As such, Belt's speed was hardly evidence of "flight," as alluded to by the officers. Additionally, while the time of day is a relevant consideration, 1:39 a.m. would not have been an unusual time to engage in a romantic tryst, consistent with Belt's statements to the officers that he was looking for the house of a woman he was supposed to meet up with. R. 42, ll. 5-17; see United States v. Clarkson, 551 F.3d 1196, 1202 (10th Cir. 2009) ("[T]ime of night [is] a factor in determining the existence of reasonable suspicion.").

There is also a distinctiveness to the description in Robinson of four black men, all in their twenties and wearing all-black clothing, which was lacking in the description of the third suspect in the present case. See 407 S.C. at 177, 754 S.E.2d at 866. It would be much more common to find one black man traveling alone than it would be to find four black men traveling together and all of the same age and wearing dark clothing. Additionally, Belt was wearing khaki pants and a blue tank top, not the black clothing that Gillespie saw the robbers wearing. R. 65, l. 13 – 66, l. 3; State's Ex. 1 (DVD). Gillespie claimed that he saw a black shirt and black hat with white or silver lettering in the backseat of Belt's jeep when he looked through the window. R. 41, ll. 6-19; R. 45, ll. 7-11. However, his testimony was of little weight because no other officers recalled seeing those items and they were never photographed or collected. R. 50, ll. 9-12; R. 159, l. 11-20; R. 194, l. 15 – 196, l. 4. There was also no mention of any discovery of dark pants. It seems improbable that, if Belt were one of the robbers, he would have discarded his dark pants but kept his dark shirt and hat.

Even Belt's hairstyle was not "a match" since the officers had not seen the other suspects and thus were unaware what hairstyle the third suspect may have had. Further, the dash-cam video reveals that Belt's hair was not in long braids. State's Ex. 1 (DVD). As such, it is improbable that his hairstyle would have been visible had he indeed worn a baseball cap. Thus, either the victim was mistaken when he said that one of the robbers had braids (since we know that the co-defendants' both had "short, shaved off" hairstyles), or Gillespie lied when he said he saw one of the robbers wearing a ball cap and then saw a ball cap in the jeep. See R. 528, ll. 11-18. Additionally, it is notable that neither Gillespie nor the victims made any mention that the third suspect had a distinctive height. Belt, who is only 5'2", has a strikingly short stature. R. 400, l. 21 – 401, l. 6; State's Ex. 1 (DVD).

The occupants' increased nervousness was also of particular significance in Robinson. 407 S.C. at 178-79, 184, 754 S.E.2d at 866-67, 870. In the present case, complainant Burnett described all three robbers as "jittery" and "nervous," characteristics that would not generally dissipate when confronted by police. R. 366, l. 23-25; R. 367, ll. 5-10; R. 371, l. 22. Yet, though often a staple of officers' testimony in a suppression hearing, there was no testimony in the present case that Belt exhibited any signs of nervousness during the traffic stop. See State v. Hewins, 409 S.C. 93, 760 S.E.2d 814 (2014) (citing nervousness as one factor in analyzing reasonable suspicion); State v. Corley, 392 S.C. 125, 708 S.E.2d 217 (2011) (same); State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct App. 2011) (same); State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011) (same); United States v. Mason, 628 F.3d 123 (4th Cir. 2010) (same); United States v. Foreman, 369 F.3d at 785 (4th Cir. 2004) (same). The officer in Robinson was also fearful for his safety, legitimizing his call for back up and later request that the occupants step out of the car. 407 S.C. at 184, 754 S.E.2d at 869. Though Gillespie initially approached Belt with his hand on his gun,

he was satisfied that directing Belt to hold his hands out of driver's side window was a sufficient safety precaution. R. 55, l. 19 – 56, l. 10; R. 111, ll. 9-15; State's Ex. 1 (DVD).

Regarding Belt's statements, the officers could not recall specifically where Belt said he was going other than that he was going meet a woman and that they had never heard of the neighborhood. Because Gillespie's audio recording equipment was not functioning properly, there is no record of the conversation. R. 45, l. 24 – 46, l. 25; R. 75, l. 9 – 76, l. 12; R. 308, ll. 7-25. While Horton said that Belt "could [not] really give us a description [of] how to get there," Belt's inability to direct them to the neighborhood was actually consistent with someone who was lost. R. 42, ll. 5-17; R. 92, l. 6-21. Thus, Horton's description of Belt's responses as "evasive" is an overstatement, especially where Belt supplied a partial name of neighborhood just two miles away and even described its location to an officer after he was arrested. R. 92, ll. 9-21; R. 129, l. 24 – 130, l. 5; R. 151, l. 21 – 152, l. 17; R. 405, l. 5 – 406, l. 21; R. 414, l. 5 – 415, l. 22. This was not nearly the sort of implausible story that courts have allowed to factor into reasonable suspicion. See United States v. Brugal, 209 F.3d 353 (4th Cir. 2009) (holding that unusual travel itinerary, coupled with, among other factors, evidence of flight, and defendant's implausible story that he exited the interstate to look for gas at an exit that showed no signs of activity created reasonable suspicion permitting the continuation of a traffic stop); United States v. Simpson, 609 F.3d 1140, 1148-49 (10th Cir. 2010) ("We have credited inconsistent travel plans as a factor contributing to reasonable suspicion when there are lies or inconsistencies in the detainee's description of them."). Thus, a comparison of the facts Robinson and in the present case reveals that vast differences in the information known to and gathered by the officers. Here, the officers had nothing more than a hunch. See United States v. Sprinkle, 106 F.3d 613, 617 (4th Cir.1997) (quoting Terry, 392 U.S. at 27, 88 S.Ct. at 1883)

(reasonable and articulable suspicion requires "something more than an 'inchoate and unparticularized suspicion or hunch.'").

A year after the Robinson opinion, the United States Supreme Court issued its opinion in Rodriguez v. United States, 135 S.Ct. 1609 (2015). The Rodriguez Court held that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." 135 S.Ct. at 1612. "A seizure justified only by a police-observed traffic violation, therefore, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation." Id. (quoting Illinois v. Caballes, 543 U.S. 405, 407, 125 S.Ct. 834, 837 (2005)). The officer stopped Rodriguez for driving on a highway shoulder, a violation of Nebraska law. Id. However, after the officer had conducted the necessary license checks on the driver and passenger, returned their documents, and issued a warning citation, the officer requested consent to conduct a drug sniff of Rodriguez's car. Id. at 1613. When Rodriguez refused, the officer had the occupants get out of the car and awaited arrival of a second officer. Id. He then got his K-9 out of his police car and conducted a drug dog sniff around the car. Id. The dog alerted and a large bag of methamphetamine was found in the car. Id. All told, seven or eight minutes elapsed from the time the officer issued the written warning until the dog indicated the presence of drugs. Id. The trial court allowed the admission of the drug evidence, finding that extension of the stop for only seven to eight minutes was "only a *de minimis* instruction on Rodriguez's Fourth Amendment rights and was therefore permissible." Id.

The Rodriguez Court clarified that the "*de minimis* additional intrusion" of requiring a lawfully stopped driver to get out of their vehicle, which it upheld in Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977), was based solely on the countervailing "legitimate and

weighty" interest of officer safety. Id. at 1615. The Court observed that beyond the issuance of a traffic ticket, the ordinary inquiries incident to a traffic stop include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." Id. Those are all related to the objective of "ensuring that vehicles on the road are operated safely and responsibly." Id. Officers can also ask occupants to get out the vehicle during a stop "in order to complete his mission safely." Id. at 1616. "On-scene investigation into other crimes, however, detours from that mission." Id. Thus, the *de minimis* exception does not apply. See id.

The Rodriguez Court, therefore, held that though an officer may conduct certain unrelated checks during an otherwise lawful traffic stop, "he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." Id. at 1615; see also State v. Pichardo, 367 S.C 84, 623 S.E.2d 840 (Ct. App. 2005) (discussing the constitutional limitations on the extension of a traffic stop for investigation beyond the scope of the stop). The Rodriguez Court specifically rejected the government's argument that "by completing all traffic-related tasks expeditiously, an officer can earn bonus time to pursue an unrelated criminal investigation." Id. at 1616. Rather, an officer is always required to be "reasonably diligent." Id. Thus, if the inquiries related to the traffic stop can be completed expeditiously, then that is the amount of time reasonably required to complete the mission of the stop. Id. A traffic stop prolonged beyond that point is unlawful. Id. While the Magistrate Judge found that the detention for the drug dog sniff was not independently supported by individualized suspicion, the Court of Appeals did not review that determination. Id. Thus, the Supreme Court remanded the case to the Eighth Circuit to determine whether reasonable suspicion of criminal activity justified detaining Rodriguez beyond completion of the traffic

infraction. Id. at 1616-17.

Similar to the extension of detention for a drug dog sniff in Rodriguez, the officers in the present case wanted to delay the release of Belt so that other officers could continue collecting information at the police station and provide enough details regarding the third robbery suspect for an arrest. Once Gillespie completed the check on Belt's license, which was within the first five minutes of the stop, he should have diligently prepared and delivered the traffic citation for speeding. See Rodriguez, 135 S.Ct. at 1616; R. 57, ll. 4-23. Absent consent, only a separate reasonable and articulable suspicion that Belt was involved in criminal activity would have allowed for the continued detention of Belt. See Rodriguez, 135 S.Ct. at 1615; United States v. Williams, 808 F.3d 238, 245-46 (4th Cir. 2015) ("[T]o extend the detention of a motorist beyond the time necessary to accomplish a traffic stop's purpose, the authorities must either possess reasonable suspicion or receive the driver's consent." (internal quotations omitted)); Pichardo, 367 S.C at 99, 623 S.E.2d at 848.

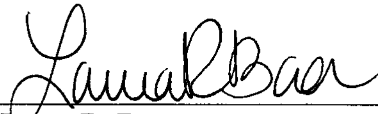
As discussed at length *supra*, the officers in this case did not have reasonable and articulable suspicion to extend the traffic stop. Thus, it was unlawful for the officers to continue to hold Belt while they obtained additional information from co-defendant Parks at the police station. This is not a personal attack on Gillespie or Horton, but they did not have the right to prolong the stop of Belt to go a "fishing expedition" to justify his hunch that because Belt was a black male, alone in the area, he was involved in a robbery that occurred one hour and twenty-two minutes earlier. Even combining the location and timing of the stop, the partial similarity to the limited physical description of the third suspect, and Belt's inability to accurately recount the name of the neighborhood that he was looking for and unable to find, those factors gain little strength. While Belt was indeed a black male with his hair in a braided-cornrow hairstyle, such a

description was hardly distinctive enough to constitute reasonable, articulable suspicion to justify his continued detention. The information gathered from Parks is irrelevant to this analysis because it was not relayed to the officers who were conducting the traffic stop until 2:01 a.m., twenty-four minutes after the stop was initiated, at which point the stop was already unlawful. Therefore, Belt's arrest and the search of the jeep were tainted by the unlawful detention and the book bag and its contents found inside should have been suppressed. See Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1963) (discussing the "fruit of the poisonous tree" doctrine).

CONCLUSION

Based on the foregoing, Appellant Darren Belt respectfully requests that this Court reverse his conviction and remand this case to the Charleston County Court of General Sessions for a new trial.

Respectfully submitted,



Laura R. Baer
Appellate Defender

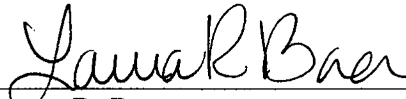
ATTORNEY FOR APPELLANT

This 15th day of December, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

Respectfully Submitted,



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This 15th day of December, 2016.

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