

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2010-158046

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SC Court of Appeals

THE STATE,

Respondent,

vs.

TRAVELL LEVONE HILL,

Appellant.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Any issue regarding the trial judge's denial of Appellant's pre-trial motion to suppress the cocaine discovered during the course of the traffic stop was not preserved for appellate review because Appellant waived any objection he had to the admission of the evidence by affirmatively indicating he had no objection at the time the evidence was introduced during trial. Regardless, the trial judge properly denied Appellant's suppression motion because the officer developed a reasonable articulable suspicion of criminal activity during the course of the traffic stop after observing numerous suspicious factors prior to detaining Appellant for the sniff search of the rental vehicle. Furthermore, the trial judge properly determined Appellant was precluded from challenging the admission of the cocaine discovered during the search of the rental vehicle because Appellant failed to establish he had a reasonable expectation of privacy in the vehicle due to the fact he neither rented it nor had any authorization to drive or possess it.

STATEMENT OF THE CASE

On February 19, 2008, Appellant Travell Levone Hill was arrested following a routine traffic stop that resulted in the discovery of a substantial quantity of cocaine. In October of 2008, the Greenville County grand jury indicted Appellant for trafficking in cocaine in an amount greater than 400 grams. On March 30, 2010, a jury trial was held in the Greenville County court of general sessions with the Honorable G. Edward Welmaker, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of twenty-seven years. Appellant then filed a timely notice of appeal.

Subsequently, Appellant's appellate counsel filed an Anders brief and a petition to be relieved as counsel. Thereafter, on February 3, 2012, the Court of Appeals denied the petition to be relieved as counsel and directed the parties to brief the following issue from trial along with any other issues counsel believed were present and of arguable merit:

“Was the officer's suspicion that Hill was engaged in serious criminal activity reasonable so as to warrant a continued detention after the issuance of a warning ticket for the traffic stop under the Fourth Amendment?”

STATEMENT OF FACTS

Around 3:50 p.m. on February 19, 2008, Trooper Shannon Chasteen, a member of the South Carolina Highway Patrol's Aggressive Criminal Enforcement Unit, was patrolling Interstate 85 in Greenville County when he observed a burgundy Ford Expedition following another vehicle at an unreasonably close distance. (R. pp. 33-35; pp. 56-58). In response, Trooper Chasteen immediately moved to initiate a traffic stop. (R. pp. 35-36; p. 58). When he did so, the driver of the Expedition rapidly shifted to the left lane and slowed his vehicle down to a speed well below the posted speed limit. (R. pp. 35-36; pp. 58-59). Trooper Chasteen then caught up to the Expedition and activated his blue lights, and the driver of the vehicle pulled over and stopped in an emergency lane on the side of the highway. (R. p. 36; pp. 59-60).

After stopping the Expedition, Trooper Chasteen approached from the passenger side and looked into the vehicle. (R. p. 37; p. 41; pp. 60-63). Inside, he observed two occupants, numerous large energy drinks and fast food containers, and a single small shopping bag, but he did not see any luggage. (R. pp. 36-38; p. 41; pp. 60-63). He then greeted the driver of the vehicle, Appellant Travell Levone Hill, and the passenger, Tyra Rodgers, and noticed both Appellant and Rodgers seemed extremely nervous. (R. p. 38; pp. 61-62; pp. 113-114). Trooper Chasteen noted Appellant seemed to be "almost in a state of panic" and was repeatedly fidgeting in his seat like he could not remain still, his hands were visibly and noticeably shaking, and he appeared to be attempting to avoid making eye contact with the officer. (R. p. 38; p. 62). The officer also noticed Rodgers was holding her head like she was sick or had a headache, she would not make eye contact with him, and she had a visibly accelerated heart rate. (R. p. 38; p. 62). Trooper Chasteen then advised Appellant of the reason for the stop, told him he would be

receiving a warning citation, and asked for his driver's license and vehicle registration. (R. p. 37; pp. 41-42; p. 61). Thereafter, Appellant provided the officer with a driver's license and a rental agreement instead of a registration, but he continued to behave in an increasingly nervous manner even though he had been advised he would only be receiving a warning ticket, which Trooper Chasteen believed was unusual. (R. p. 37; p. 42; p. 61). Trooper Chasteen then asked Appellant to step out of the vehicle and returned to his patrol car to review Appellant's documents. (R. p. 39; p. 63).

Upon reviewing the information, Trooper Chasteen discovered the vehicle was rented at the Norfolk International Airport in Virginia by Lenise Martin, who was the only authorized driver identified in the rental agreement, on February 12, 2008, and was due to be returned on February 17, 2008, which was two days earlier. (R. pp. 39-40; pp. 44-45; pp. 63-65). Based on Appellant's drastic lane change prior to the stop, the nervousness displayed by the occupants of the vehicle, and the fact the vehicle was rented by a third party, Trooper Chasteen became suspicious something unlawful might be occurring and requested assistance from his partner, Trooper Brad Dowis. (R. p. 39; pp. 43-44; p. 66).

After asking Trooper Dowis report to the scene, Trooper Chasteen inquired of Appellant as to who rented the vehicle, and Appellant stated Rodgers did. (R. p. 40; pp. 66-67). The officer then asked Appellant who was responsible for the property in the vehicle, and Appellant stated Rodgers was. (R. p. 42). In response, Trooper Chasteen returned to the rental vehicle, requested Rodgers' information, and discovered she did not actually rent the vehicle. (R. p. 40; pp. 66-67). He then spoke with Rodgers about the purpose of their trip, and she claimed they went to Atlanta to purchase shoes and visit her family. (R. p. 40; p. 67). After speaking with Rodgers, the officer returned to his patrol

vehicle and began writing the warning citation. (R. p. 40; p. 67). While he did so, Appellant continued to exhibit nervous behavior, repeatedly crossed and uncrossed his arms, constantly moved and looked around, exhibited a visibly accelerated heart rate, and would not make eye contact with the officer. (R. p. 42; pp. 67-69). While Trooper Chasteen prepared the warning citation, he asked Appellant about the purpose of their trip, and Appellant claimed they went to Atlanta on the previous day to party and to visit one of his friends. (R. p. 43; pp. 67-68). Appellant further claimed they slept in the vehicle and did not rent a hotel room. (R. p. 43; p. 68). Once again, Trooper Chasteen returned the rental vehicle, checked the vehicle's identification number, and spoke with Rodgers, who the officer noted was still behaving in a nervous manner. (R. p. 43; p. 69). Upon speaking with her again, Rodgers claimed they shopped while in Atlanta but could not name a single store they visited. (R. p. 40; p. 43; p. 69). She further claimed they stayed with her cousin and did not do anything else on the trip. (R. p. 40; p. 43; p. 69).

After he finished speaking with Rodgers and approximately twelve minutes into the stop, Trooper Chasteen returned to his patrol car, completed the warning citation, and presented it to Appellant. (R. p. 70; State's Exhibit # 4 – Recording from Car). Immediately after issuing the warning citation, Trooper Chasteen asked Appellant for permission to search the vehicle, but Appellant refused. (R. p. 70). Meanwhile, approximately five minutes after Trooper Chasteen contacted Trooper Dowis for assistance, Trooper Dowis arrived at the scene with his drug detection dog, Chloe, who was trained to detect marijuana, cocaine, methamphetamines, and heroin. (R. p. 70; pp. 89-90; pp. 94-95). After Appellant denied Trooper Chasteen's request for consent to search, Trooper Chasteen had Rodgers step out of the vehicle so Chloe could perform a sniff search of the vehicle. (R. pp. 70-71; p. 96). Chloe conducted a brief sniff search

and immediately alerted on the front passenger side of the vehicle. (R. p. 71; p. 96). Trooper Dowis then secured Chloe in his patrol vehicle and watched over Appellant and Rodgers while Trooper Chasteen conducted a search of the vehicle based on Chloe's alert. (R. pp. 71-72; p. 97). Several minutes later, another officer arrived at the scene, and Trooper Dowis joined in the search. (R. p. 73; p. 97). He went to the area where Chloe alerted, immediately noticed a bulge underneath the carpet on the front passenger side of the vehicle, pulled the carpet back, and found a rectangular package of cocaine and a plastic bag of cocaine. (R. pp. 73-75; pp. 97-98). Thereafter, Trooper Chasteen arrested Appellant and Rodgers. (R. pp. 73-74; p. 77).

Following his arrest, Appellant was indicted for trafficking in cocaine, and he proceeded to trial. (R. p. 10; pp. 183-184). At the outset of trial, Appellant moved to suppress the narcotics discovered during the traffic stop based on the alleged unconstitutionality of the search in which they were discovered. (R. p. 5). In support of the motion, defense counsel argued the officer did not develop a reasonable articulable suspicion of criminal activity during the traffic stop, the stop ended when Appellant was given a warning ticket, and Appellant should not have been asked for consent to search because the vehicle was not rented in his name. (R. p. 6). In response, the State initially asserted Appellant did not have standing to challenge the search because he was not authorized to drive the vehicle. (R. p. 7). Furthermore, the State argued the officer developed a reasonable articulable suspicion of criminal activity during the course of the stop, which warranted Appellant's detention and the use of the drug detection dog for the sniff search on the vehicle. (R. pp. 7-8; pp. 32-33). The trial judge then conducted an in

camera hearing on Appellant's suppression motion, and Trooper Chasteen detailed the circumstances of the traffic stop during the hearing.¹ (R. pp. 34-47).

At the conclusion of the hearing, the trial judge concluded Appellant did not have standing to challenge the search. (R. p. 49). Furthermore, the trial judge determined Appellant's detention was justified under the totality of the circumstances because he found the factors observed by the officer during the traffic stop established a reasonable articulable suspicion of criminal activity. (R. pp. 50-51). Based on those findings, the trial judge denied Appellant's suppression motion. (R. p. 51).

Subsequently, during trial, Trooper Chasteen and Trooper Dowis testified about the circumstances of the traffic stop and their discovery of Appellant's cocaine. (R. pp. 58-75; pp. 94-98). Following their testimony, Rodgers testified about traffic stop and the events leading up to it. (R. p. 100). Rodgers stated Appellant asked her if she wanted to leave Norfolk, Virginia, and go shopping in Atlanta on February 18, 2008, and suggested they begin the trip around midnight or 2:00 a.m. on the morning of February 19, 2008, in the rental vehicle she was driving at the time. (R. pp. 100-102). Rodgers indicated she then met with Appellant at his residence at the agreed-upon time and followed behind him as he drove to another residence to drop off his car. (R. pp. 103-104). After arriving at the other residence, Rodgers testified Appellant went inside, came out with "two knots," which was a substantial quantity of money, and then began driving the rental vehicle to Atlanta. (R. pp. 103-104). Rodgers stated she slept for the majority of the drive to Atlanta, which lasted approximately eight to nine hours, and they went directly to a mall when they arrived between 10:00 a.m. and 12:00 p.m. (R. pp. 104-106). After

¹ During his testimony, he noted Interstate 85 was a well-known drug corridor and Atlanta was a source city for drugs. (R. p. 44).

they arrived, Rodgers testified Appellant borrowed her phone to arrange a drug purchase and told her they were going to purchase some drugs. (R. pp. 106-107). Rodgers claimed she protested and they went into the mall to purchase shoes. (R. pp. 107-108). Rodgers stated Appellant then met with his cousins at the mall and left her for several hours. (R. pp. 107-110). While Appellant was gone, Rodgers indicated the person who rented the rental vehicle called her and told her to immediately return the vehicle. (R. p. 109). Rodgers claimed she then met back up with Appellant, told him the rental vehicle had to be returned, and ate at the mall before returning to the rental vehicle. (R. pp. 109-111). When she returned to the vehicle, Rodgers stated there was a new pair of shoes inside. (R. p. 111). Rodgers testified Appellant then drove them back, she developed a migraine headache, they were stopped by the law enforcement officer, and they both were arrested after the vehicle was searched during the stop. (R. pp. 112-115).

Thereafter, James Armstrong, a forensic drug chemist with the Greenville County Department of Public Safety and a drug identification expert, testified he analyzed the drugs discovered during the traffic stop. (R. p. 127; p. 131). Armstrong testified his analysis revealed the items recovered during the stop were a block of cocaine weighing 971.81 grams and three bags of cocaine weighing 215.98 grams. (R. p. 132). The solicitor then moved to introduce the cocaine into evidence. (R. p. 3; pp. 133-134). In response, defense counsel asserted: "No objection." (R. p. 134). The trial judge then admitted the drugs into evidence without objection. (R. p. 134).

At the conclusion of trial, the jury convicted Appellant of trafficking in cocaine. (R. pp. 177-178). Defense counsel then moved for a judgment notwithstanding the verdict and for a new trial but did not provide any grounds in support of the motions. (R.

p. 179). The trial judge then sentenced Appellant to a term of imprisonment of twenty-seven years. (R. p. 181).

ARGUMENT

Any issue regarding the trial judge's denial of Appellant's pre-trial motion to suppress the cocaine discovered during the course of the traffic stop was not preserved for appellate review because Appellant waived any objection he had to the admission of the evidence by affirmatively indicating he had no objection at the time the evidence was introduced during trial. Regardless, the trial judge properly denied Appellant's suppression motion because the officer developed a reasonable articulable suspicion of criminal activity during the course of the traffic stop after observing numerous suspicious factors prior to detaining Appellant for the sniff search of the rental vehicle. Furthermore, the trial judge properly determined Appellant was precluded from challenging the admission of the cocaine discovered during the search of the rental vehicle because Appellant failed to establish he had a reasonable expectation of privacy in the vehicle due to the fact he neither rented it nor had any authorization to drive or possess it.

Appellant maintains the trial judge erred in denying his motion to suppress the drugs discovered during a search of the rental vehicle Appellant was driving at the time he was stopped for committing traffic violations. Appellant asserts the traffic stop ended when the warning citation was issued and his continued detention while a drug detection dog conducted a sniff search of the rental vehicle was unlawful because the officer had not developed a reasonable articulable suspicion of criminal activity prior to the completion of the original purpose of the stop sufficient to justify the extension of the stop. Appellant further contends the trial judge erred in finding he did not have standing to challenge the admission of the discovered drugs because he had a reasonable expectation of privacy in the rental vehicle and the State failed to prove he did not. Initially, any issue with Appellant's challenge to the trial judge's pre-trial ruling denying the suppression motion is not preserved for appellate review because Appellant waived any objection regarding the cocaine by indicating he had no objection to the admission of the cocaine when it was introduced during trial. Accordingly, Appellant is precluded from raising the issue on appeal. However, regardless of any issue preservation concerns, the trial judge properly denied Appellant's suppression motion because the officer

developed a reasonable articulable suspicion of criminal activity during the course of the traffic stop and was, thus, authorized to reasonably extend the duration of the traffic stop until his suspicions could be confirmed or dispelled. Furthermore, the trial judge properly found Appellant lacked standing to challenge the admission of the cocaine found during the search of the rental vehicle because Appellant failed to establish he had a reasonable expectation of privacy in the vehicle since he was not authorized to drive or possess it by the owner of the vehicle. For those reasons, Appellant's conviction should be affirmed.

A. Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993). "However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the

introduction of the evidence in question, the aggrieved party does not need to renew the objection.” State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001); see State v. Wiles, 383 S.C. 151, 156-157, 679 S.E.2d 172, 175 (2009) (“This exception is based on the fact that when the trial court’s ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection.”).

In the case at bar, any issue with the admission of the narcotics discovered during the search of the rental vehicle Appellant was driving at the time of the traffic stop was not properly preserved for appellate review. At the outset of trial, Appellant filed a motion in limine seeking the suppression of the narcotics discovered during the search conducted during the stop. Following a pre-trial hearing, the trial judge issued a preliminary ruling denying Appellant’s motion. Thereafter, when the solicitor moved to introduce the narcotics into evidence during trial, Appellant did not renew his pre-trial objection and, instead, affirmatively stated he had no objection to the admission of the cocaine. Cf. State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) (“Dicapua’s sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua’s counsel specifically stated he had ‘no objection.’ We find this amounted to a waiver of any issue Dicapua had with the videotape.”). Accordingly, Appellant’s pre-trial objection to the admission of narcotics was expressly waived, and the issue cannot properly be raised or reviewed on appeal. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) (“When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review.”);

see also State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) (“A party cannot complain of an error which his own conduct induced.”); State v. Burton, 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) (“This testimony was admitted without objection. Because Burton failed to object, he is barred from raising this issue on appeal.”). Appellant’s conviction should be affirmed.

B. Propriety of the Officer’s Search of the Rental Vehicle

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. Khingratsaphon, 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 in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). 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).

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. That guarantee protects against unreasonable searches and seizures,

including those involving only a brief detention. Pichardo, 367 S.C. at 97, 623 S.E.2d at 847. “The touchstone of the Fourth Amendment is reasonableness.” Florida v. Jimeno, 500 U.S. 248, 250 (1991). Thus, only unreasonable searches and seizures are prohibited. 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[.]”).

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). 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). However, the initiation of a traffic stop is reasonable per se when probable cause exists to believe a traffic violation has occurred. State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002).

A lawful traffic stop begins at the point an officer stops a vehicle to investigate a traffic violation and “ordinarily continues, and remains reasonable, for the duration of the stop.” Arizona v. Johnson, 555 U.S. 323, 333 (2009). Once a lawful traffic stop is initiated, an officer may order the driver and any passengers out of the vehicle pending completion of the stop and “may request a driver’s license and vehicle registration, run a computer check, and issue a citation.” Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); see Maryland v. Wilson, 519 U.S. 408, 415 (1997) (“[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop.”). “Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave.” Johnson, 555 U.S. at 333.

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

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

Reasonable suspicion consists of “ ‘a particularized and objective basis’ that would lead one to suspect another of criminal activity.” State v. Lesley, 326 S.C. 641,

644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). “Reasonable suspicion ‘is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.’ ” State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)). “In this highly fact-specific inquiry, reasonable suspicion ‘is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.’ ” State v. Wallace, 392 S.C. 47, 51-52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting Foreman, 369 F.3d at 781). The reasonable suspicion standard “is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[.]” Illinois v. Wardlow, 528 U.S. 119, 123 (2000). “Reasonable suspicion is more than a general hunch but less than what is required for probable cause.” State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); see State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) (“Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch.”).

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 104, 623 S.E.2d at 85. In reviewing the totality of the circumstances, the individual factors of the traffic stop must not be considered piecemeal or in isolation. See Branch, 537 F.3d at 337 (“Courts must look at the ‘cumulative information available’ to the officer . . . and not find a stop unjustified based merely on a ‘piecemeal refutation of each individual’ fact and inference[.]” (citations omitted)). Instead, all of the circumstances of the stop 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.”). “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)).

In several recent cases, South Carolina courts have addressed what constitutes reasonable suspicion of criminal activity in the context of a traffic stop. 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 of Appeals 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.

However, in a sharply-divided opinion, the Supreme 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). The majority of the Supreme Court determined the officer completed the initial purpose of the traffic stop when he informed Appellant he would issue a warning ticket and learned from dispatch Appellant's license and registration were problem-free. Id. at 522, 698 S.E.2d at 205. The majority 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.

More recently, 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 observation, 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 that was later discovered to be 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 the factors present 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.

Most recently, in State v. Wallace, Wallace was stopped on Interstate 85 for committing a traffic violation. Id., 392 S.C. at 50, 707 S.E.2d at 452. The officer took twelve minutes to complete the traffic stop and issued Wallace a citation. Id. However, based on his observations during the stop, the officer continued to question Wallace after

issuing the ticket and requested consent to search the vehicle. Id. Wallace refused consent, and the officer walked a drug-sniffing 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. 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's abnormal braking after the officer initiated the stop; (2) Wallace's fumbling of his paperwork for an unusually long period of time; (3) the fact the passenger stared straight ahead and did not acknowledge the officer; (4) Wallace and the passenger's inconsistent responses about the trip; (5) Wallace's increasing nervousness throughout the stop; (6) the fact an unknown car pulled up behind Wallace's vehicle for several minutes during the stop; (7) Wallace's cell phone ringing during the stop; (8) the fact drug dealers frequently use decoy cars and communicate via cell phones; (9) the fact the passenger would not look at the officer while they were talking; (10) the fact the passenger was sweating and visibly nervous on a mild day; (11) the fact Wallace changed his story after the officer spoke with his passenger; (12) the fact the car was owned by a third-party, which is common in drug cases; (13) Interstate 85's status as a known drug corridor; and (14) Atlanta's status as 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.

In the case sub judice, the trial judge properly denied Appellant's suppression motion because the officer observed numerous indicators of criminal activity during the course of the traffic stop before he extended the duration of the stop. Much like in Wallace and Provet, Trooper Chasteen detected multiple suspicious signs of criminal activity during the course of the traffic stop before he issued the warning citation. After observing those indicators, the officer elected to detain Appellant and have a drug detection dog perform a sniff search of the rental vehicle Appellant had been driving before permitting Appellant to leave the scene. 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. Therefore, the trial judge committed no error in denying Appellant's pre-trial suppression motion.

During the course of the traffic stop, Trooper Chasteen noticed numerous indicators of criminal activity. Based on those observations, Trooper Chasteen decided to further detain Appellant after confirming Appellant's license was clear and issuing a warning citation. Trooper Chasteen's decision to extend the stop was based on his detection of the following indicators of criminal activity while he was preparing the warning citation and completing the initial purpose of stop: (1) Appellant rapidly changed lanes and slowed down well below the speed limit after the officer moved to initiate the traffic stop, which the officer perceived as unusual and a sign Appellant was trying to distance himself from the officer; (2) Appellant and the passenger avoided making eye contact with the officer during the stop; (3) Appellant appeared to be "almost in a state of panic" and could not remain still; (4) Appellant's hands were noticeably and visibly shaking; (5) the passenger also behaved in a nervous manner even though the traffic stop

was initiated for a driving violation committed by Appellant; (6) Appellant continued to display increasing signs of nervousness even after he was advised he would only receive a warning citation, which the officer believed was an abnormal and unusual response; (7) Appellant was driving a rental vehicle that he was not authorized to drive, that was not rented by anyone in the vehicle, and that was overdue; (8) Appellant repeatedly crossed and uncrossed his arms and looked around after being asked to step out of the rental vehicle while Trooper Chasteen was preparing the warning citation; (9) both the passenger and Appellant's heart rates were accelerated to the point of being visibly detectible; (10) Appellant and the passenger offered inconsistent stories about their trip, with Appellant claiming they went to Atlanta to party, visited a friend, and slept in the rental vehicle the night before and the passenger claiming they went to shop, visited her family, and stayed with her cousin; (11) the passenger was unable to name a single store they visited during the trip even though she claimed the purpose of the trip was to shop for shoes; (12) the vehicle did not contain any luggage even though Appellant and the passenger claimed to have travelled from Chesapeake, Virginia, to Atlanta, Georgia; (13) the city Appellant claimed to have visited for a single day was a known source city for narcotics; (14) Interstate 85 is a known drug corridor; (15) Appellant and the passenger claimed they drove eight or nine hours and were then returning the same distance in one day; and (16) there were numerous fast food bags and energy drinks in the vehicle.

Based on Trooper Chasteen's training and experience, the factors he observed during the course of the traffic stop led him to believe Appellant was involved in criminal activity, and his suspicions of criminal activity were entirely reasonable when considering those factors are considered together under the totality of the circumstances.

See Wallace, 392 S.C. at 55, 707 S.E.2d at 455 (finding the following factors observed by

an 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 his paperwork for an unusually long period of time; (3) the passenger stared straight ahead and did not acknowledge the officer; (4) Wallace 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) drug dealers frequently use decoy cars and communicate via cell phones; (9) the passenger would not look at or make eye contact with 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); Provet, 391 S.C. at 504-505, 706 S.E.2d at 518-519 (holding an officer possessed reasonable suspicion to extend the duration of a traffic stop after detecting the following factors during the course of stop: (1) Provet was behaving in a nervous manner; (2) the vehicle Provet was driving was registered to a third party, which is common in drug trafficking; (3) Provet provided inconsistent or deceptive responses to several questions; (4) numerous fast food bags, a cell phone, and some receipts were in Provet's vehicle; and (5) there were numerous air fresheners in the vehicle); see also Mason, 628 F.3d at 129 (“[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. Mubdi, 691 F.3d 334, 344 (4th Cir. 2012) (“The district court also correctly determined that the following suspicious behavior supported York's decision to extend the

investigation: (1) Mubdi took an excessive amount of time to pull over; (2) he was exceedingly nervous; (3) he kept his foot on the car brake instead of shifting the transmission into park; (4) he could not provide details as to his destination or the family member he intended to visit; (5) he did not rent the car, contrary to what he told York; (6) he was not authorized to drive the rental car; and (7) the car was beyond the bounds authorized by the rental contract.”). Thus, Trooper Chasteen was justified in extending the traffic stop after issuing the warning citation, and that proper extension of the stop ultimately led to the discovery of Appellant’s cocaine.

On appeal, Appellant contends Trooper Chasteen improperly extended the duration of the traffic stop after the warning citation was issued because the factors observed by the officer during the course of the stop allegedly did not establish a reasonable articulable suspicion of criminal activity. Appellant further appears to contend Officer Chasteen did not question Appellant until after issuing the warning citation, which Appellant maintains makes his case similar to the situation in Tindall. However, contrary to Appellant’s contentions, the factors observed during the course of the traffic stop, which were highly similar to the factors observed by the officers in Provet and Wallace, established a reasonable articulable suspicion of criminal activity. Furthermore, no testimony or evidence was presented during trial suggesting Officer Chasteen conducted the questioning that led to his reasonable articulable suspicion of criminal activity after issuing the warning citation. Instead, the testimony and evidence established Officer Chasteen began observing the suspicious and concerning indicators of criminal activity at the outset of the stop, detected more indicators when he questioned Appellant and Rodgers while preparing the warning citation, and then issued the warning citation approximately twelve minutes into the stop before detaining Appellant while a

sniff search of the rental vehicle could be performed based on the indicators the officer detected during the course of the stop. Thus, unlike in Tindall, Trooper Owens observed all of the indicators of criminal activity prior to requesting Appellant's consent to search and detaining him further during the course of the canine sniff search of his vehicle. Compare Tindall, 388 S.C. at 522, 698 S.E.2d at 205 ("At this point, the purpose of the traffic stop was accomplished except for the issuance of the warning ticket. However, rather than issue the ticket, the officer continued to question Tindall for an additional six to seven minutes[.]") with 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."). As Trooper Chasteen developed a reasonable articulable suspicion during the course of the initial traffic stop, his decision to extend the duration of the stop after its initial purpose was completed was objectively reasonable under the totality of the circumstances.

During the course of the traffic stop, Trooper Chasteen observed numerous indicators of criminal activity after properly stopping Appellant for committing traffic offenses. Although some of the factors observed by the officer could potentially appear to be consistent with innocent travel to a person without the officer's training and experience, all of the factors taken together established a reasonable articulable suspicion Appellant was involved in criminal activity. See United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[W]e have said repeatedly that [reviewing courts] must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. The process allows officers to draw on their own experience and specialized training to make inferences from

and deductions about the cumulative information available to them that ‘might well elude an untrained person.’ ” (citations omitted)); see also Mason, 628 F.3d at 129 (“[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.”). Based on the existence of a reasonable articulable suspicion, Trooper Chasteen was justified in extending the traffic stop and having a drug detection dog conduct a sniff search on the rental vehicle Appellant had been driving, and his actions during the course of the stop were entirely reasonable. See Segura v. United States, 468 U.S. 796, 806 (1984) (“By its terms, the Fourth Amendment forbids only ‘unreasonable’ searches and seizures.”); see, e.g., Branch, 537 F.3d at 338 (“[W]ithin minutes of detaining Branch, Officer White had observed enough ‘specific and articulable facts’ to generate a ‘reasonable suspicion’ of illegal activity.”). Therefore, the trial judge properly denied Appellant’s suppression motion, and his ruling was supported by the evidence and testimony presented during trial. Therefore, the trial judge’s ruling should not be overturned on appeal. See 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.**” (emphasis added)). Appellant’s conviction should be affirmed.

C. Appellant’s Lack of Standing to Challenge the Search of the Rental Vehicle

A criminal defendant asserting a challenge to an allegedly unreasonable search and seizure must establish his own personal Fourth Amendment rights were violated by that search or seizure. State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987). “[C]apacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the

protection of the Amendment has a legitimate expectation of privacy in the invaded place.” Rakas v. Illinois, 439 U.S. 128, 143 (1978) (citing Katz v. United States, 389 U.S. 347, 353 (1967)). A subjective expectation of privacy can be considered legitimate if it is one society accepts and recognizes as reasonable. Minnesota v. Olsen, 495 U.S. 91, 95-96 (1990).

In Appellant’s case, the trial judge properly found Appellant had no constitutional standing to challenge the admission of the cocaine discovered during a search of the rental vehicle because Appellant failed to establish he had a reasonable expectation of privacy in the area that was searched. During the course of the traffic stop, Trooper Chasteen spoke with Appellant about the rental vehicle he was driving at the time of the stop, and Appellant denied renting the vehicle while incorrectly claiming the passenger was responsible for doing so. Appellant further informed the officer everything inside of the vehicle was the property of the passenger. Subsequently, Trooper Chasteen discovered neither Appellant nor the passenger rented the vehicle or was authorized to drive the vehicle based on the information contained in the rental agreement. The officer further discovered the rental vehicle was due to be returned two days earlier to the rental company in Virginia from which it was rented.

Despite the fact Appellant was driving the rental vehicle at the time of the traffic stop, Appellant’s statements to the officer that he did not rent the vehicle and was not responsible for the property inside of the vehicle demonstrated Appellant did not have a subjective expectation of privacy in the vehicle.² See State v. Missouri, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004) (“A legitimate expectation of privacy is both subjective

² Notably, during trial, Appellant demonstrated he did not believe he had a legitimate expectation of privacy in the rental vehicle by asserting he should not even have been asked for consent to search the vehicle since his name was not listed in the rental agreement. (R. p. 6).

and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable.”). Furthermore, as Appellant did not rent the vehicle he was driving or have any authorization from the owner of the vehicle to drive it or be in possession of it, Appellant did not have an expectation of privacy in the rental vehicle that would be recognized or accepted by society as a reasonable one. See United States v. Wellons, 32 F.3d 117, 119 (4th Cir. 1994) (“[A]ppellant, as an unauthorized driver of the rented car, had no legitimate privacy interest in the car and, therefore, the search of which he complains cannot have violated his Fourth Amendment rights.”); see also Rakas, 439 U.S. at 134 (“A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.”). Instead, Appellant’s possession of a rental vehicle he had no authority to possess and which should have been returned to its owner several days earlier established he did not have a legitimate or reasonable expectation of privacy in the vehicle. See, e.g., United States v. Luster, 324 Fed. App’x 224, 225 (4th Cir. 2009) (“An unauthorized driver of a rented car has ‘no legitimate privacy interest in the car’ and, therefore, a search of the car ‘cannot have violated his Fourth Amendment rights.’ This conclusion is not altered where the authorized lessee allows the unauthorized driver to drive the rental vehicle, as an unauthorized driver still does not have permission of the rental company, the owner of the vehicle.” (citations omitted)). Under those circumstances, Appellant could not challenge the search of the vehicle as a violation of his own constitutional rights. See United States v. Salvucci, 448 U.S. 83, 85 (1980) (“[D]efendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth

Amendment rights have in fact been violated.”). Because Appellant failed to meet his burden of establishing he had a legitimate expectation of privacy in the rental vehicle, the trial judge properly found Appellant had no standing to challenge the evidence recovered in a search of that vehicle. See Rawlings v. Kentucky, 448 U.S. 98, 104 (1980) (“Petitioner, of course, bears the burden of proving not only that the search of Cox's purse was illegal, but also that he had a legitimate expectation of privacy in that purse.”); McKnight, 291 S.C. at 114, 352 S.E.2d at 473 (“One who seeks to have evidence suppressed on this basis must establish that his *own* Fourth Amendment rights were violated.” (italics in original)); see also State v. Robinson, 396 S.C. 577, 583, 722 S.E.2d 820, 823 (Ct. App. 2012) (“For Robinson to establish a Fourth Amendment violation, he must show a legitimate expectation of privacy on the porch.”). Appellant’s conviction should be affirmed.

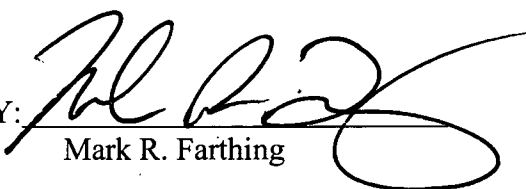
CONCLUSION

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

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

November 1, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2010-158046

RECEIVED

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THE STATE,

SC Court of Appeals

Respondent,

vs.

TRAVELL LEVONE HILL,

Appellant.

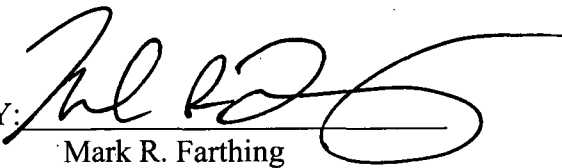
CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

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

Kathrine H. Hudgins, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 1st day of November, 2012.

Ellen R. DuBois

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