STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2015-002350

THE STATE, ...RESPONDENT,

v.

DARREN KEITH BELT, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN M. WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General
S.C. Bar No. 100073

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

100 Meeting Street
Charleston, South Carolina 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases:

Constitutional Amendments:

RESPONDENT'S STATEMENT OF THE ISSUE ON APPEAL

The trial court did not err in declining to suppress evidence obtained from Appellant's vehicle because the officers had reasonable suspicion to detain him and therefore the seizure and subsequent search did not violate his Fourth Amendment rights.

STATEMENT OF THE CASE

Appellant was indicted for two counts of armed robbery. Appellant proceeded to trial by jury and was found guilty as charged. He was sentenced by the Honorable Kristi L. Harrington to an aggregate of eighteen years' imprisonment. Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief. This Brief of Respondent follows.

STATEMENT OF FACTS

Officer Alex Gillespie of the Mount Pleasant Police Department was on patrol May 7, 2013, a little after midnight when he heard loud voices and observed two white men walking down the street. (R.32, 35.) He intended to go speak with them after he finished checking the locks on one last business; however, when he turned around the two men appeared to be surrounded by three black men. (R.35.) As he walked toward the group, he saw at least one of the victims raise his hands in the air and Officer Gillespie unholstered his weapon and shouted, whereupon the three black men began to flee the scene. (R.35–36.) Officer Gillespie pursued them on foot until finally determining he should return and check on the victims. (R.36–37.) The victims described the men as three young, black males dressed all in black, one wearing a hooded sweatshirt and one wearing a baseball cap. (R.37.) The victims also mentioned one of them had braids. (R.37.)

Officer Gillespie then joined his team to search for the perpetrators. (R.39.) After searching for forty-five minutes, the police had captured two suspects and decided to pull back on their search for the final suspect, hoping he would assume the officers had given up chase. (R.40.) While Officer Gillespie was leaving the area, he observed a green jeep driven by Appellant traveling ten miles an hour over the speed limit. (R.40.) He initiated a traffic stop but waited for his sergeant, who was just up the road, before approaching the vehicle. (R.40.) Upon approaching the vehicle, Officer Gillespie saw dark clothing and a baseball cap in the back seat along with a pair of latex gloves. (R.41.) When he finally spoke with Appellant, he noted that the man's hair was in braids. (R.41.)

Eventually, Appellant was arrested and charged with two counts of armed robbery. Prior to trial, Appellant moved to suppress a backpack and letters recovered from his vehicle, arguing they were obtained through an unconstitutional search and seizure in violation of his Fourth

Amendment rights.[1] At the hearing, in addition to Officer Gillespie, the State called Sergeant Gregory Horton, who testified that he joined Officer Gillespie in performing the traffic stop on Appellant. (R.92.) Sergeant Horton stated he approached the passenger side and spoke with Appellant, asking him for his identification and general questions about where he was going. (R.92.) He described Appellant as evasive. (R.93.) Based on this conversation and the other evidence at his disposal, he called Corporal Eckert, who was at the time interviewing Ricky Hayes and Randi Parks, the suspects who had already been arrested. Corporal Daniel Eckert informed Sergeant Horton the third suspect was described as having cornrows and some deformity of the eye. (R.95.) Sergeant Horton then requested Corporal Eckert come to the scene himself in case there was any additional information about the third suspect. (R.96.)

Corporal Eckert, who was the lead investigator in the case, testified that after an unsuccessful interview with Hayes, he spoke with Parks and invited him to give his story and to describe the third individual. (R.125.) Parks informed him the other man was from North Charleston, wore his hair in cornrows, drove a blue or green jeep or truck, and had a backpack in his backseat. (R.126.) Corporal Eckert explained he ultimately went to the scene, spoke with Appellant, and arrested him. (R.131.)

The trial court subsequently denied Appellant's motion to suppress. Specifically, the trial court stated there was evidence that Appellant matched the description of one of the suspects, and the officers therefore had reasonable suspicion to extend the traffic stop. (R.215.)

---

[1] In his written motion, as well as at the pretrial hearing, Appellant additionally challenged the admission of testimony about the black clothes observed in Appellant's backseat based on an alleged violation of the Confrontation Clause of the Sixth Amendment to the United States Constitution. (Appellant's Mot. to Suppress.1–4; R.198–199.) Although on appeal he attacks the credibility of such testimony, he has abandoned the challenge to its admission and confines his argument to the Fourth Amendment challenge.

The case proceeded to a jury trial. In addition to the testimony of the officers involved in Appellant's arrest, the State presented testimony of Gary Myers, who performed the inventory search of Appellant's vehicle after his arrest. (R.340.) He noted that in the backseat he discovered a backpack containing letters addressed to Ricky Hayes. (R.342.) The letters and backpack were entered into evidence. (R.344–345.)

Parks also testified. He described how he, Hayes, and Appellant decided to drive to Charleston during the afternoon of May 6, 2013, to "probably rob" somebody. (R.429.) They eventually ended up at a lady friend's house until around 11:00 p.m. or 12:00 a.m. (R.432.) Parks explained they drove in Appellant's truck until Hayes handed him a pistol and indicated he wanted them to rob two white males on the street. (R.435.) All three men went and surrounded the victims and Parks demanded "what [they] got." (R.437.) He then heard a police officer yelling and ran away, eventually hiding under a truck, which is where the police found him. (R.439, 441.) Parks identified Appellant in the courtroom as one of his accomplices in the robbery. (R.433.)

The State rested and Appellant presented no evidence in his defense. After closing argument and jury charges, the jury began its deliberations, ultimately finding Appellant guilty as charged. (R.725.) The trial court delayed sentencing to allow time for Appellant to file a post-trial motion. (R.729.) In his post-trial motion, Appellant requested a new trial, again arguing the admission of testimony on the presence of black clothing in the back of Appellant's car violated the Confrontation Clause and also alleging the jury's verdict was against the weight of the evidence. (R. 730-732.) At the hearing, Appellant made an oral motion for a new trial, arguing "there was no probably [sic] cause" to lengthen the duration of the traffic stop. (R. 737.)

The trial court denied his motion and proceeded to sentence him to concurrent terms of eighteen years' imprisonment for the two charges. (R. 739,750.)

ARGUMENT

The trial court did not err in declining to suppress evidence obtained from Appellant's vehicle because the officers had reasonable suspicion to detain him and therefore the seizure did not violate his Fourth Amendment rights.

The Fourth Amendment to the United States Constitution secures the right of the people to be secure against unreasonable search and seizure. U.S. Const. amend. IV. "As the text makes clear, the ultimate touchstone of the Fourth Amendment is reasonableness." *State v. Cardwell*, 414 S.C. 416, 425, 778 S.E.2d 483, 488 (Ct. App. 2015) (quoting *Riley v. California*, 134 S. Ct. 2473, 2482 (2014)). "Temporary detention of an individual in the course of a routine traffic stop constitutes a Fourth Amendment seizure, but where probable cause exists to believe that a traffic violation has occurred, such a seizure is reasonable per se." *State v. Tindall*, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). However, detention for questioning outside of issuance of the citation "is beyond the scope of the stop and therefore illegal unless the officer has reasonable suspicion of a serious crime." *Id.*

"Reasonable suspicion is something more than an 'inchoate and unparticularized suspicion' or hunch." *Terry v. Ohio,* 392 U.S. 1, 27 (1968). Rather, considering "the totality of the circumstances, reasonable suspicion requires there be an objective, specific basis for suspecting the person stopped of criminal activity." *Robinson v. State*, 407 S.C. 169, 182, 754 S.E.2d 862, 868 (2014). "Reasonable suspicion does not entail a set of legal rules, but 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. Morris*, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (internal quotation marks omitted). 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). "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." *Robinson*, 407 S.C. at 182, 754 S.E.2d at 869.

"On appeal from a motion to suppress on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse only if there is clear error." *Id.* at 180–81, 754 S.E.2d at 868. "The 'clear error' standard means that an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently." *State v. Pichardo*, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). Instead, the Court will "affirm if there is any evidence to support the ruling." *State v. Brockman*, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000).

At the outset, Appellant's argument on appeal is unpreserved. Throughout the proceedings, Appellant's Fourth Amendment challenge was premised on a successful Sixth Amendment challenge to the evidence of the black clothing and hat observed by Officer Gillespie. His counsel repeatedly framed the argument in this manner, asserting: "If [the black clothing] is suppressed, as prayed for supra, the entire detention of the Defendant beyond [the length required to effectuate the traffic stop] must be found unreasonable as a matter of law, as no other articulable basis for 'reasonable suspicion exists,'" (Appellant's Mot. to Suppress.5); "[I]f there is [sic] no black clothes and there is no black hat there is no reasonable suspicion," (Tr.226); and "Without that black shirt and without that black hat there simply is not reasonable suspicion to have held [Appellant] for [an extended period of time.]" (R.204). Furthermore, at the post-trial hearing, he only argued there was no probable cause for the extended detention. (R. 737.) By limiting the challenge to whether officers had reasonable suspicion to detain him *if*

the court declined to consider the testimony about the clothing, Appellant all but directly conceded that if the court *did* consider the clothing, his Fourth Amendment challenged should fail. Appellant now argues that *considering* the clothing and hat in the backseat in addition to the other evidence presented, the officers nevertheless lacked reasonable suspicion to detain him. A party is precluded from asserting an argument on appeal that was conceded below. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) ("An issue conceded in a lower court may not be argued on appeal."). Moreover, this is not the argument presented to the trial court. Accordingly, the issue is unpreserved. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."). However, even if the Court chooses to address the arguments, Appellant's challenge fails on the merits.

Appellant argues the prolonged seizure and subsequent search were unconstitutional because the officers lacked reasonable suspicion to extend the traffic stop past the issuance of a citation for his speeding violation.[2] However, the substance of Appellant's argument disputes the *weight* of the evidence; on appeal, the Court need only consider whether there is any evidence supporting the ruling. Here, there is evidence supporting the trial court's finding. Officer Gillespie testified Appellant was coming from the search area of the crime, he matched the physical description of the third suspect, and his car contained items of clothing similar to those described the victims had offered. Furthermore, he was speeding and traveling at a very late hour. *See United States v. Lender*, 985 F.2d 151, 154 (4th Cir. 1993) (recognizing "[t]he lateness of the hour" is a "fact that may raise the level of suspicion"). Sergeant Horton further observed Appellant acted evasive and confused as to where he was going, giving the name of a

[2] Appellant has consistently acknowledged Officer Gillespie had probable cause to initiate the traffic stop based on his speeding violation. (R.214, Appellant's Br.17, 21.)

neighborhood that did not exist. Relying on the officers' experience and training in light of the information available to them, there is evidence supporting the trial court's conclusion that the officers had reasonable suspicion to extend the stop long enough to investigate whether probable cause existed to arrest Appellant.

Nevertheless, Appellant invites the Court to improperly reweigh the evidence and consider alternative interpretations of the testimony. These considerations are outside the province of appellate review. *See State v. Provet*, 405 S.C. 101, 112, 747 S.E.2d 453, 459 (2013) ("Petitioner points out several factors that he contends were indicative of innocent travel: the address petitioner gave for his girlfriend was confirmed as a valid address; petitioner had no arrest record; and no negative information about the vehicle or petitioner was reported by the dispatcher. While we agree these facts could be found to weigh against Officer's reasonable suspicion, that determination was for the trial court, and we must affirm when any evidence in the record supports its finding."). Although multiple inferences could arise from Appellant's presence in the area, his comments to police, the length of time between his detention and the commission of the crime, and the credibility of the officers' testimony, the trial court is afforded discretion in considering that evidence. It may adjudge the weight and credibility of the evidence and base its decision on its own conclusions.

Accordingly, Appellant's attempts to discredit the finding of reasonable suspicion based on his analysis of *Robinson v. State*, 407 S.C. 169, 754 S.E.2d 862 (2014), are unpersuasive. In that case, the Supreme Court held the officer had reasonable suspicion to extend a detention of four men parked in a dark church parking lot in an area not readily accessible to the public based on his knowledge 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.* at 183, 754 S.E.2d at 869. Additionally, when the backup officers approached the vehicle, "the four men's sudden 'nervous[ness] and silen[ce]' and their 'look[ing] straight forward' further aroused the officers' suspicions." *Id.* at 184, 754 S.E.2d at 870.

Again, Appellant improperly urges the Court to draw favorable inferences as opposed to looking at whether the evidence supports the trial court's finding. Initially, the facts are not as distinct as Appellant suggests. Here, as in *Robinson*, the officers observed Appellant in the vicinity of the crime, he matched the physical description of the suspect, and he behaved suspiciously, giving evasive answers to the officers' inquiries. There are of course factual distinctions as to how the vehicle came to be detained. Appellant may not have been parked in a dark church parking lot, but he was speeding away from the vicinity at 1:39 a.m. However, Fourth Amendment jurisprudence is crafted to allow the trial court to tailor its considerations to the facts of the specific case. *Ohio v. Robinette*, 519 U.S. 33, 39 (1996) (noting that in determining whether a violation of the Fourth Amendment has occurred, the Supreme Court has "consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry" with the recognition of "the endless variations in the facts and circumstances implicating the Fourth Amendment" (internal quotations omitted)). As noted above, the conclusions are based on the totality of the circumstances and whether under those circumstances an objective, specific basis for reasonable suspicion exists.

Finally, although Appellant limits his challenge to the length of the detention as unreasonable *absent* reasonable suspicion, the record demonstrates the officers were not dilatory in their investigation and the length of the seizure leading to Appellant's arrest was reasonable under the circumstances. Once the officers had reasonable suspicion to detain Appellant, which was immediately upon talking to him and viewing the contents of the vehicle, Sergeant Horton called Corporal Eckert to obtain more information about the suspect at large to discern whether it matched Appellant. The length was furthered by Corporal Eckert's decision to come to where Appellant was stopped and talk to Appellant in person prior to the arrest.

Furthermore, any error in the admission was harmless. The letters were by no means the linchpin of the case. The officers testified he was speeding away from the vicinity of the crime in the middle of the night and he matched the description given by the victims. Additionally, although Parks' credibility was heavily attacked, the testimony presented is that without suggestion on the part of the officers, he described his third confederate as a young black man with cornrows and an eye deformity who drove a blue or green truck that had a backpack in the rear seat. He would require clairvoyance to so aptly describe Appellant unless he had been with him that night. Accordingly, based on the other evidence submitted at trial, the letters did not contribute to the verdict and therefore their admission was harmless. *State v. Tapp*, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) ("The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." (internal quotation marks omitted)).

CONCLUSION

Based on the foregoing, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

ALAN M. WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: _____
Ranee Saunders
S.C. Bar No. 100073

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
December 5, 2016

RECEIVED
DEC 05 2016
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2015-002350

THE STATE,.....RESPONDENT

v.

DARREN KEITH BELT, ...APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN M. WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: _____
Ranee Saunders
S.C. Bar No. 100073

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
December 5, 2016