STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2016-000529

THE STATE, ...RESPONDENT,

v.

KALVIN ROPEL BROWN, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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The trial judge properly denied Appellant's motion to suppress evidence of the drugs seized by officers because they developed reasonable suspicion Appellant and the driver of his car were in possession of illegal substances while investigating the driver's identity during the course of a lawful traffic stop.

STATEMENT OF THE CASE

On August 20, 2015, the York County Grand Jury indicted Appellant for trafficking in heroin, fourteen grams or more but less than twenty-eight grams. On February 24, 2016, Appellant proceeded to a bench trial before the Honorable Perry H. Gravely. Willie Bradley, Esquire, and Patrick Sharpe, Esquire, represented Appellant; Assistant Solicitors Marina Hamilton, Esquire, and Leslie Robinson, Esquire, represented the State. The trial judge found Appellant guilty as indicted and sentenced him to twenty-five years' incarceration and ordered a fine of $200,000.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On the morning of February 18, 2015, Officer William R. Gibson, II, a deputy sheriff with the York County Sheriff's Office, pulled over a "white-in-color Nissan Maxima" for following too closely to a tractor-trailer. After approaching the passenger-side of the vehicle, he requested the driver, Monique Trappier,[1] to provide her license and the registration for the car. Appellant, the passenger, interjected and explained they were in a rental car and that they were traveling to Morganton, North Carolina. Trappier claimed she was not in possession of her driver's license or any type of identification. Officer Gibson asked Trappier to exit the vehicle so he could collect her information.[2] (R.p.41, line 17–R.p.44, line 8; R.p.44, lines 17–21; Dashcam Video).

Trappier told Officer Gibson her name was "Nyambi Annetta Trappier,"[3] born December 14, 1981,[4] but could not recall her social security number. Using this information, Officer Gibson attempted to find Appellant's license information using his vehicle's computer. He was unable to find Trappier's license and called dispatch to request for assistance in locating her information. (R.p.44, line 9–R.p.45, line 14; Dashcam Video).

While waiting, Officer Gibson asked Trappier for additional information. She told Officer Gibson she and Appellant had known each other for approximately four years, and were travelling to "somewhere" near Asheville, North Carolina. They were in a rental car because

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[1] Trappier's true identity was not ascertained until after her arrest, when she was taken to the Rock Hill Police Department. (R.p.45, lines 11–14).

[2] At the time of the traffic stop, Offiber Gibson was accompanied by State Constable Dan Janeski. Officer Janeksi's sole role during the stop was standing with Trappier and/or Appellant while Officer Gibson separated them and when he searched the vehicle. (R.p.99, line 25–R.p.100, line 24; Dashcam Video).

[3] Officer Gibson testified Trappier identified herself as "Anita Trappier," but the Dashcam Video recording captured the name, and spellings, she provided. (R.p.44, lines 9–14; Dashcam Video).

[4] At trial, it was revealed Trappier also provided a false birthdate: her actual date of birth is May 8, 1974. (R.p.208, line 24–R.p.209,line 7).

Appellant had totaled his own vehicle a few months prior when he collided with a deer. She and Appellant lived in Georgetown, South Carolina, and were heading to North Carolina to visit Appellant's daughter and her family. She was uncertain for how long they would stay, but were probably coming back later that day. Trappier claimed neither she nor Appellant brought a change of clothes or other supplies for an overnight stay. (R.p.71, lines 14–22; Dashcam Video)

After a few minutes, dispatch radioed back to Officer Gibson and informed him it was also unable to find Trappier's license information. Officer Gibson informed Trappier he could not let them leave until he verified her information. Hoping to acquire additional information about Trappier, he asked her to wait by his vehicle while he questioned Appellant. Appellant told Officer Gibson Trappier's name was "Lisa Trappier" and that he had known her for "seven or eight years." Again, he claimed he and Trappier were heading to Morganton, North Carolina, but claimed they were visiting "friends of family" and planned on staying the night in Morganton and returning to Georgetown the following day. When asked whether he had been in a recent accident, he claimed a minor collision with a deer put a "dent" on his car. While conversing with Appellant, Officer Gibson noticed no luggage was visible in the car and that an air freshener was present. Based on Appellant and Trappier's inconsistent statements as well as his observations of the vehicle, Officer Gibson developed a reasonable suspicion drugs were present in the car. (R.p.45, line 15–R.p.46, line 17; R.p.71, lines 2–18; R.p.74, 13–R.p.76, line 23; R.p.79, line 4–R.p.81, line 25; Dashcam Video).

Officer Gibson asked Appellant for permission to search the car. He declined and defended his decision by claiming: (1) he was not the driver of the vehicle; (2) it was a rental; and (3) they were stopped for a simple traffic violation. Officer Gibson informed Appellant that he and Trappier's stories were not "adding up," noting they provided differing information on

their destination, the extent of their stay in North Carolina, and even Trappier's name. Officer Gibson, suspicious of Trappier and Appellant, asked whether he could have his drug-detection K-9 sniff around the perimeter of the vehicle. Appellant protested claiming the dog was going to alert, and that "the dog always alerts," which would create probable cause for a vehicle search. Over Appellant's objections, Officer Gibson allowed his dog to sniff around the vehicle. The dog "alerted" outside the driver's side of the car. (R.p.46, line 19–R.p.47, line 15; Dashcam Video).

Officer Gibson searched the car and found an air freshener, and multiple phones. He discovered a jacket, which Appellant identified as his, inside of which was heroin.[5] After this discovery, Officer Gibson arrested Appellant and Trappier. Officer Gibson subsequent search of the car uncovered two crack pipes, a small amount of crack, and additional cell phones (for a total of four). At the police station, Officer Gibson determined approximately 16.5 grams of heroin had been in Appellant's coat. Appellant confessed to ownership of the drugs and claimed he purchased them for one-thousand dollars.[6] (R.p.54, line 13–R.p.65, line 21; R.p.112, lines 2–19; R.p.115, line 9–R.p.116, line 23; R.p.124, lines 5–15; Dashcam Video).

At trial, Officer Gibson testified he developed reasonable suspicion of drug activity after hearing Trappier's and Appellant's inconsistent statements regarding the location, scope, and purpose of their trip to North Carolina as well as Trappier's name. His suspicion only deepened when Appellant claimed the drug K-9 would alert outside of the vehicle. (R.p.101, line 18–R.p.112, line 1; R.p.125, line 8–R.p.126, line 12).

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[5] At the scene, without the benefit of testing, Officer Gibson misidentified the drugs as some crack/cocaine mixture. (R.p.82, line 13–R.p.83, line 8; R.p.137, line 15–R.p.138, line 2).

[6] Appellant did not specifically identify the drugs as heroin. Rather, Officer Gibson asked him whether the crack/cocaine was his, and, without mentioning the name of the drugs, admitted purchased them. (R.p.55, line 18–R.p.56, line 7; R.p.122, line 21–R.p.124, line 15).

ARGUMENT

The trial judge properly denied Appellant's motion to suppress evidence of the drugs seized by officers because they developed reasonable suspicion Appellant and the driver of his car were in possession of illegal substances while investigating the driver's identity during the course of a lawful traffic stop.

Appellant argues the trial judge erred in denying his motion to suppress the drug evidence discovered during the traffic stop because the evidence was discovered during an "unreasonably and immeasurably delayed traffic stop," claiming Officer Gibson should have merely issued a ticket for following too closely and concluded the stop because he did not have reasonable suspicion justifying his continued investigation of the vehicle and its occupants. The State disagrees with Appellant's allegation of error. Officer Gibson developed reasonable suspicion of criminal activity during while attempting to discern Trappier's identity, a necessary step in the investigation of the original traffic violation. As a result, Officer Gibson had reasonable suspicion to utilize his drug K-9, with the K-9's alert providing probable cause for his search of the 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. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However,

the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) ("[A]ppellate courts must affirm if there is any evidence to support the trial court's ruling."); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) ("'When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.' "(citation omitted)). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 ("In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge's ultimate determination de novo but, rather, would apply a deferential standard of review.").

Reasonableness of Deteneion

Pursuant to the Fourth Amendment, "[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity." State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see United States v. Sokolow, 490 U.S. 1, 7 (1989) ("[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." (citation omitted)); State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) ("To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity."). "Reasonable suspicion" requires a particularized and objective basis leading one to suspect another of criminal activity. See State v. Moore, 415 S.C. 245, 252, 781 S.E.2d 897, 900 (2016).

The reasonable suspicion standard is less demanding than probable cause, and requires a showing considerably less than preponderance of the evidence. Illinois v. Wardlow, 528 U.S 119, 123 (2000).

For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). While the Fourth Amendment requires a stop to be reasonable under the circumstances, the initiation of an automobile stop is reasonable per se when either probable cause exists to believe a traffic violation has occurred **or** reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) ("[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity."); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) ("Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se."); see also Whren v. United States, 517 U.S. 806, 810 (1996) ("An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general mater, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.").

A lawful traffic stop begins at the point an officer stops a vehicle to investigate a traffic violation and "ordinarily continues, and remains reasonable, for the duration of the stop." Arizona v. Johnson, 555 U.S. 323, 333 (2009). Once a lawful traffic stop is initiated, an officer may order the driver and any passengers out of the vehicle pending completion of the stop and "may request a driver's license and vehicle registration, run a computer check, and issue a

citation." State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); see Maryland v. Wilson, 519 U.S. 408, 415 (1997) ("[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop."). "Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave." Johnson, 555 U.S. at 333.

During the course of the stop, an officer can inquire into matters unrelated to the initial justification for the stop without converting the stop into something other than a lawful seizure so long as the unrelated questioning does not **measurably** extend the duration of the stop. Id.; see Rodriguez v. United States, 135 S. Ct. 1609, 1614 (2015) ("An officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop."); see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation). Such an investigatory traffic stop must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848; see Rodriguez, 135 S. Ct. at 1614 ("Authority for the seizure . . . ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.); see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) ("The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.").

Even if a traffic stop is initially lawful, the detention "can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." Illinois v. Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 ("Once the purpose of

that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, continued questioning beyond the duration of an initial traffic stop is lawful and permissible where: (1) the officer has a **reasonable articulable suspicion** of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Id.

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. 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. Branch, 537 F.3d at 337 ("Courts must look at the 'cumulative information available' to the officer . . . and not find a stop unjustified based merely on a 'piecemeal refutation of each individual' fact and inference[.]" (citations omitted)). Instead, all of the circumstances of the stop, including the officer's own experience and specialized training, must be considered as a whole to determine whether the officer's actions were reasonable in light of all of the information available to him at the time. See United States v. 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)); 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.'" State v. Wallace, 392 S.C. 47, 52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)). Thus, the presence of several factors seemingly consistent with innocent travel can establish reasonable suspicion when viewed together in totality. Sokolow, 490 U.S. at 9.

In the instant case, Officer Gibson developed reasonable suspicion of illegal activity during his investigation of Trappier's identity. Officer Gibson's trial testimony and the Dashcam Video show Trappier repeatedly provided him with false information. Without knowledge of Trappier's true identity, Officer Gibson was unable to complete the purpose of the traffic stop: issuing a citation for Trappier's traffic violation. See Rodriguez, 135 S. Ct. at 1614 (stating an officer's authority for a seizure related to a stop ends only when the tasks tied to issuing the traffic citation are, or reasonably should have been, completed). Officer Gibson made multiple attempts at finding Trappier's driver's license information using his cruiser information, and when that failed solicited help from dispatch. When dispatch was also unable to locate her information, he did the most reasonable and practical thing he could do at that point: speak to Appellant and attempt to solicit information which would help him discover Trappier's true identity. It was during this conversation in which Appellant provided information contradicting Trappier's, disagreeing with: (1) statements about the length of their friendship; (2) their destination; (3) the purpose and length of their trip; (4) the reason for the rental car; and (5) Trappier's first name. Given the vast disparity between Trappier's and Appellant's statements, Officer Gibson reasonably suspected criminal behavior on the part of Trappier and/or Appellant. See Arvizu, 534 U.S. at 273 (stating the "totality of the circumstances" surrounding a traffic stop must be considered when evaluating whether an officer reasonably suspected legal wrongdoing).

His questioning of Appellant and Trappier was part of his effort to discover the latter's true identity, without which he could not issue the traffic citation and complete intended purpose of the stop. See Pichardo, 367 S.C. at 98, 623 S.E.2d at 847.

Officer Gibson's reasonable suspicion was only furthered by Appellant's statements about the drug dog. Officer Gibson, still unable to complete the original purpose of the traffic stop and suspecting illegal activity, asked Appellant for permission to allow his drug detection K-9 to sniff around the outside of the vehicle. Even without the reasonable suspicion he possessed, Officer Gibson had the authority to request such permission. See Rodriguez, 135 S. Ct. at 1614 (stating officers may question a vehicle's occupants on matters unrelated to the purpose of the traffic stop, provided such questioning does not measurably extend the duration of the stop). Appellant's answer was not a polite refusal; rather, Appellant claimed Officer Gibson's K-9 would alert outside of the vehicle. Such a statement, separate and apart from Officer Gibson's earlier observations, would lead any officer to reasonably suspect the presence of illegal drugs in a vehicle and justify a drug K-9 sniff search around said vehicle.

The State further notes Officer Gibson did not need reasonable suspicion or Appellant's permission to use his drug detection K-9 outside of Appellant's car. In Illinois v. Caballes, 543 U.S. 405 (2005), the United State Supreme Court found an officer's use of a trained drug-detection dog, one that "does not expose non-contraband items that otherwise would remain hidden from public view," during a traffic stop does not, by itself, "implicate legitimate privacy interests." Id. at 409. Thus, allowing the dog to sniff around the exterior of a defendant's car while he was lawfully seized for a traffic violation was not a "constitutionally cognizable infringement" on his privacy expectations. Id.

This Court directly acknowledged precedential value of Caballes to South Carolina law in State v. Jones, 364 S.C. 51, 610 S.E.2d 846 (Ct. App. 2005). In Jones, the defendant argued the trial court erred in failing to suppress drug evidence because the officer's request that defendant exit the vehicle during traffic stop was a "fishing expedition" which prolonged his detention and violated his Fourth Amendment rights. Id. at 56, 610 S.E.2d at 848. Noting the request and subsequent questioning occurred before the officer returned the defendant's license and registration and issued the traffic ticket, the Court found the evidence supported the trial court's conclusion that the officer's actions occurred as result of his casual conversation with the vehicle's occupants which occurred while defendant looked for the car's registration, an event within the scope of the original traffic stop. Id. at 58, 610 S.E.2d at 849–50. The Court supported its decision with Caballes and its approval of the use of drug dogs during routine traffic stops when such use does not "unjustifiably enlarge the scope" of said stops. Id. at 58–59, 610 S.E.2d at 850.

Accordingly, Officer Gibson had reasonable suspicion of criminal activity when he ordered his K-9 to sniff the perimeter of the vehicle. Further, even if Officer Gibson did not have reasonable suspicion at the time he requested permission for the K-9 sniff, Appellant's statement that the dog would alert provided additional reasonable suspicion meriting use of the K-9. After the K-9 alerted Officer Gibson, he had probable cause to search the vehicle. The trial judge did not err in denying Appellant's motion to suppress the evidence.

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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July 28, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

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Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2016-000529

THE STATE, ...RESPONDENT,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served. This 28th day of July, 2017.

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RE: State v. Kalvin Brown
Appellate Case No. 2016-000529

Dear Mr. Gilliam:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

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Enclosures

cc: Honorable Jenny A. Kitchings (original and 9 copies enclosed)
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