STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
J. Cordell Maddox, Circuit Court Judge

Appellate Case No. 2016-000154

THE STATE, ...RESPONDENT,

v.

DETRICK L. STENHOUSE, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The trial judge properly denied Appellant's motion to suppress evidence of the gun seized by officers where it was discovered during a lawful Terry search for weapons where the suspicious actions of Appellant and his passenger along with the circumstances of the traffic stop created a reasonable suspicion that either or both men were armed.

STATEMENT OF THE CASE

On February 24, 2015, the Greenville County Grand Jury indicted Appellant for possession of a pistol by a person convicted of a violent crime and unlawful carrying of a handgun. On January 14-15, 2016, Appellant proceeded to a jury trial before the Honorable J. Cordell Maddox. William Grove, Esquire, represented Appellant; Assistant Solicitor Barbara Tiffin, Esquire, represented the State. The jury found Appellant guilty of the possession of a pistol by a person convicted of a violent crime charge and the trial judge sentenced him to four years' imprisonment.

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 July 24, 2011 at approximately 5:00 a.m. Officer Herron was on patrol in Mauldin, South Carolina when he observed a vehicle travelling approximately 55 miles per hour (mph) in a 40 mph zone. His vehicle's radar unit confirmed the vehicle was travelling 54 mph. The vehicle then turned into a gas station without the driver utilizing a turn signal. As a result of these traffic violations he activated his blue lights and dashboard camera, pulled into the gas station, and initiated a traffic stop. (R.p.2 line 21–Tr.p.20, line 19; State's Exhibit 4).

As Officer Herron approached the driver's door, Appellant, the operator of the vehicle, opened the door and reached his hand down towards the floor of the front seat driver's area. As Officer Herron approached, he asked Appellant to close the door and roll down his window instead. Officer Herron was concerned with Appellant's behavior because the floorboard of the vehicle and under the driver's seat are popular locations for firearms, a threat only magnified by the time of night. Appellant, wearing only boxer shorts, informed him the vehicle's turn signal was not functional. While questioning Appellant and collecting his driver's license, vehicle registration, and proof of insurance, Officer Herron noticed the vehicle's passenger, Brian Rhodes,[2] was "extremely nervous." Particularly, he noted Rhodes had just lit a cigarette, was shaking, rapidly breathing, and noticeably perspiring. As a result, he began questioning Rhodes and also collected his identification card. (R.p.20, line 20–Tr.p.23, line 16; State's Exhibit 4).

While speaking with the men, Officer Herron observed a bulge in Rhodes's right pants pocket. Based on Appellant's initial "furtive moments," the reaching down in front of the driver's seat, and Rhodes's "extreme nervousness" and pocket bulge, Officer Herron believed a weapon and/or drugs were present in the vehicle as Appellant's and Rhodes's actions were typical

[2] Rhodes's full name was not mentioned during the pretrial hearing. His full name was stated by trial counsel during his cross-examination of Officer Herron at trial. (R.p.101, lines 8–14).

indicators of both. Aware he could be in danger, Officer Herron did not return to his patrol car and run the driver's information; instead, he stood at the back of the vehicle, called for backup, and maintained visual contact with the men to make sure they did not reach for anything. He remained at that position until backup arrived. (R.p.23, line 17–R.p.24, line 22; State's Exhibit 4).

Within minutes, Officer Riley Patton arrived on the scene. As Officer Patton approached the driver's door, Appellant again opened the door and attempted to exit the vehicle. Once more, Officer Herron asked him to remain in the vehicle and Officer Patton secured the door. Officer Herron then approached Rhodes and asked him to step out of the car. He performed a brief frisk and discovered the bulge in the Rhodes's pocket was from a rag. Officer Patton asked Appellant to step out of the car and thereafter stood with him near the officers' vehicles. When asked whether any weapons were in the vehicle, Appellant claimed he "did not know." (R.p.24, line 23–R.p.27, line 1; State's Exhibit 4).

Rhodes was asked a similar question and claimed he did not know of any weapons in the vehicle. Based on Appellant's response and the various indicators he had seen, Officer Herron decided to perform a brief search of the vehicle for firearms before proceeding any further with the traffic stop. Officer Herron handcuffed Rhodes and escorted him to Officer Patton's and Appellant's location and searched his seat area of the car, but found nothing. Noting Appellant was not handcuffed and in a position in which he could quickly regain access to the vehicle, Officer Herron shifted his search to the driver's seat area. Before opening Appellant's door, he called dispatch and asked the operator to perform a background search on Appellant, Rhodes, and the vehicle. During his search, Officer Herron uncovered a Hi-Point .380 pistol with a loaded magazine underneath the driver's seat, the same area he had seen Appellant reaching

toward earlier. He placed Appellant under arrest for unlawful carrying of a weapon. A few minutes later, dispatch contacted Officer Herron and notified him Appellant had no outstanding warrants. (R.p.27, line 7–R.p.30, line 4; R.p.50, line 23–R.p.51, line 25; R.p.52, lines 16–19; R.p.55, lines 17–24; State's Exhibit 4).

Immediately prior to trial, a hearing was held on Appellant's motion to suppress the gun found during Officer Ryan Herron's traffic stop of Appellant. During his testimony, Officer Herron explained the events necessitating the stop and the search of Appellant's vehicle. Defense counsel argued there was no probable cause or "reasonable, articulable suspicion" justifying the search of the vehicle because Appellant's and Rhodes's observed behaviors were not actually "suspicious," but normal. The trial judge denied the motion, noting Officer Herron's testimony and the recording from the patrol car's dashboard camera indicated Officer Herron had justifiable safety concerns meriting his weapons search.[3] (R.p.57, line 8–R.p.59, line 17).

Officer Herron's trial testimony largely mirrored his pretrial hearing testimony, but did add a few additional details about the traffic stop. He testified: (1) he noticed Rhodes moving suspiciously and reach towards the bulge in his pants pocket area as he began walking back to his vehicle with Appellant's documentation, (2) Rhodes did not look like the picture on his identification card, and (3) he discovered the gun when he opened the vehicle's front driver-side door but retrieved the gun from the back driver-side area because the gun's location was under the far back portion of Appellant's seat. (R.p.81, lines 3–9; R.p.99, lines 9–16; R.p.100, line 7–R.p.101, line 23).

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[3] In his denial of Appellant's motion, the trial judge referenced U.S. v. Digiovanni, 650 F.3d 498 (4th Cir. 2011) as the case upon which he based his ruling. In Digiovanni, the Fourth Circuit found a Maryland State Trooper lacked reasonable suspicion to turn a traffic stop into a drug investigation and a subsequent search of the defendant's vehicle.

ARGUMENT

The trial judge properly denied Appellant's motion to suppress evidence of the gun seized by officers where it was discovered during a lawful Terry search for weapons where the suspicious actions of Appellant and his passenger along with the circumstances of the traffic stop created a reasonable suspicion that either or both men were armed.

Appellant argues the trial judge erred in denying his motion to suppress evidence of the gun seized by police during the Terry search of his car because no probable cause or reasonable suspicion existed for the search and the traffic stop morphed into an extended detention lasting well beyond the scope and purpose of the initial traffic stop. The State disagrees with Appellant's allegations of error: (1) Appellant's and Rhodes's actions created a reasonable suspicion that either or both men were armed; (2) the officer did not discover the gun by extending the detention well beyond the scope and purpose of the traffic stop, rather the officer developed reasonable suspicion the men were armed while investigating Appellant's traffic violations; and (3) the scope of Officer Herron's search was a limited Terry investigation of the areas of the vehicle which could have, and did, contain a concealed weapon.

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.").

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 Michigan v. Long, 463 U.S. 1032 (1983), the United States Supreme Court held a Terry search for weapons can extend to automobiles involved in a traffic stop. In Long, two police officers on patrol observed a car "traveling erratically and at excessive speed" swerve into a ditch. The officers stopped to investigate, and found the defendant, the only occupant of the car, at the rear of the vehicle. He appeared to be "under the influence of something" and failed to respond to initial requests for his license and registration. When he began walking toward the open door of his car, the officers followed him and saw a hunting knife on the floorboard of the driver's side. The officers performed a pat down search of the defendant which revealed no weapons. Officers then shined a light into the car, saw something protruding from the armrest, and saw an open pouch containing marijuana.[4] Id. at 1034–37.

The Court noted "investigative detentions involving suspects in vehicles are especially fraught with danger to police officers" because automobiles contain numerous locations where a person may hide and easily retrieve weapons, and such concerns for officer safety persist when an individual is in the "control" of officers but is not fully restrained pursuant to a complete custodial arrest because suspects may: (1) break away from police control to retrieve a weapon;

[4] After an additional search of the car's interior, the vehicle was impounded. Later, additional marijuana was found in the trunk. The Michigan Supreme Court suppressed this additional, finding it was a fruit of the illegal search of the interior of the automobile. After the United States Supreme Court reversed, finding the search of the interior was a lawful Terry search for weapons, this issue was remanded to the Michigan Supreme Court to determine whether the trunk search was a valid inventory search under the United States Supreme Court's decision in South Dakota v. Opperman, 428 U.S. 364 (1976). Long, 463 U.S. at 1053–54.

(2) retrieve a weapon when officers permit them to return to the vehicle before a Terry investigation is concluded; or (3) retrieve the weapon when permitted to go back to their vehicles after the investigation is concluded. Thus, the Court found an officer may search areas of the vehicle in which a weapon may be placed or hidden from which the occupant may gain immediate control of the weapon(s), provided the investigating officer possesses a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" a search of those readily accessible locations. Id. at 1047–52.

The Court also noted several facts supported the officers' reasonable suspicion: (1) the stop occurred late at night in a rural area; (2) Long had been driving his vehicle at an excessive speed and swerved into a ditch; (3) Long appeared to be "under the influence" of some intoxicant; (4) officers had to repeat their questions to Long; and (5) officers observed the long knife in the interior of the car into which Long was about to reenter. The Court found the scope of the search was proper, as it was limited to "those area to which Long would generally have immediate control, and could contain a weapon." Id. at 1050–51.

Reasonable Suspicion

Initially, the State notes Appellant labels his argument as one challenging the probable cause for Officer Herron's search of his vehicle. However, throughout Appellant's brief he appears to argue Officer Herron lacked probable cause **and** reasonable suspicion for the search, much as he asserted before and during trial. As noted throughout this brief, the correct analysis for Officer Herron's actions is a reasonable suspicion standard. Moreover, this was the standard upon which the trial judge based his ruling. Should this Court determine Appellant's appeal is based solely on a probable cause analysis, Appellant's issues with the trial judge's ruling are not

preserved for Appellate review. See Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

In crafting his argument, Appellant predicates his claim that the search was illegal based on case law involving reason suspicion of a serious crime. However, Appellant's reliance is misguided. As noted by the trial court, the legality of the stop is properly analyzed under Terry, which expressly permits an officer who has a reasonable belief that the "suspicious" individual he is investigating "is armed and presently dangerous to the officer or to others . . . to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." 392 U.S. at 24.

Officer Herron testified at the hearing both Appellant and Rhodes acted suspiciously while he investigated Appellant's traffic violations. Appellant: (1) opened his car door and attempted to exit the vehicle multiple times, with officers having to halt his attempts; (2) the first time Appellant opened his car door, he reached down towards the driver's seat floor area, a popular location for firearms; and (3) stated he did not know whether any weapons were present in the vehicle. Rhodes also acted suspiciously, as he was: (1) shaking; (2) breathing rapidly with an apparent heightened heart rate; (3) heavily perspiring; and (4) constantly touching a bulge in his right pocket, particularly when Officer Herron began walking back to his patrol car. Additionally, when Officer Herron began questioning Rhodes, he observed he did not resemble the picture on his identification card. Additionally, much like in Long, the traffic stop occurred late at night and Appellant was driving at an excessive speed. Thus, the actions of both men combined with the facts of the situation gave Officer Herron such reasonable suspicion that any objective, reasonably prudent person in his situation would believe his safety was in danger.

Length of the Detention

Further, Officer Herron did not unlawfully extend the traffic stop. His premilminary interactions with Appellant and Rhodes gave him reasonable suspicion to search the parts of the vehicle immediately in their reach. Notably, Officer Herron had seen Appellant open his car door and reach towards the floorboard—a common location for weapons—before he had even reached the driver's-side door. Officer Herron witnessed the remainder of the suspicious behavior before he could return to his vehicle and contact the dispatch operator.

Appellant attempts to compare the facts of his case to those of State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010), Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994), and Rivera, cases in which officers found evidence of criminal activity through "fishing expeditions" performed after the initial purpose of the traffic stops were concluded and without officers possessing reasonable suspicion serious crimes were committed. Here, Officer Herron developed a reasonable suspicion one or both people in Appellant's car were armed while he was investigating Appellant's traffic offenses. Such observations justified his search of the men and the vehicle. See State v. Provet, 405 S.C. 101, 109, 747 S.E.2d 453, 457 (2010) (stating an officer's observations while conducting a traffic stop may create reasonable suspicion to justify further search or seizure); also Pennsylvania v. Mimms, 434 U.S. 106, 111–12 (1977) (finding officer was justified in conducting a pat-down search after officer asked motorist to exit vehicle and observed bulge in motorists' jacket).

Scope of Search

Finally, the scope of Officer Herron's search was proper under Terry given the facts of the case and established precedent. In Long, the United States Supreme Court found that a Terry search involving a traffic stop includes not only the people within an automobile, but also "areas

in which a weapon may be placed or hidden" because "roadside encounters between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect." Long, 463 U.S. at 1049–50. Officer Herron's search was limited to the two men and the portions of the passenger compartment in which weapons could be hidden. Notably, he witnessed Appellant reaching around the floorboard of his seat, and his search of that area led to the discovery of the gun. Accordingly, the scope of Officer Herron's search was well within the boundaries discussed in Long.

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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CERTIFICATE OF COUNSEL

The undersigned certifies 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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