STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2016-002170

THE STATE,

Respondent,

vs.

EVELYN CHRISTINE NIXON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion to suppress the methamphetamine and other incriminating evidence discovered during the course of the traffic stop because the law enforcement officer who conducted the frisk search that led to the discovery of Appellant's drugs and other illegal items reasonably suspected Appellant was armed and dangerous at the time of the search under the totality of the circumstances, which included the facts Appellant had been observed at a known drug house in a well-known high crime area prior to the traffic stop, Appellant was driving a vehicle in a condition that suggested it may have been stolen, Appellant attempted to physically distance herself from her vehicle and bizarrely left her driver's door open with the keys in the ignition after the officer initiated his patrol vehicle's blue lights and siren, Appellant behaved in a combative and abnormal manner during the stop, and Appellant's vehicle contained an item the officer reasonably believed was a meth pipe.

STATEMENT OF THE CASE

In February of 2015, Appellant Evelyn Christine Nixon was arrested after a law enforcement officer discovered methamphetamine and other incriminating evidence in Appellant's possession during the course of a traffic stop. In April of 2016, the Greenville County Grand Jury indicted Appellant for one count of possession of methamphetamine and one count of possession of drug paraphernalia. On October 13, 2016, Appellant waived her right to a jury trial, and a bench trial was conducted in the Greenville County Court of General Sessions with the Honorable Letitia H. Verdin, circuit court judge, presiding. At the conclusion of trial, the trial judge convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a twenty-three-day term of imprisonment for possession of drug paraphernalia along with a two-year term of imprisonment that was suspended to eighteen months of probation for possession of methamphetamine. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On the cold and windy night of February 18, 2015, Deputy Judson Belding and Deputy Joseph Corneroli of the Greenville County Sheriff's Office were patrolling in the high crime area of Poe Mill, Shaw Street, and Buncombe Street located in Greenville County in separate law enforcement vehicles.[1] (R. p. 7; pp. 22-23; p. 32; p. 37; pp. 40-41). During the course of the patrol, Deputy Belding observed a Dodge Caravan with a broken tail light and shattered rear passenger window parked outside of the residence of a known drug dealer called "Dirty."[2] (R. pp. 7-8; p. 25). Upon seeing the vehicle parked outside of the drug dealer's residence in the condition it was in, Deputy Belding became suspicious and believed the vehicle potentially may have been stolen. (R. pp. 9-10). However, the officer did not take any action in regard to the vehicle at that time. (R. pp. 7-8).

Later that night, though, Deputy Belding observed the same Dodge Caravan travelling on Shaw Street around approximately 9:30 p.m., and, when he did, the officer noticed the vehicle had a broken tail light, which constituted a violation of South Carolina law. (R. pp. 8-9; p. 11). Based on the broken tail light, Deputy Belding activated his vehicle's blue lights and siren to initiate a traffic stop, and the driver of the Dodge Caravan responded by "almost abruptly" and immediately pulling into the parking lot of a nearby gas station and convenience store. (R. pp. 9-10). The driver—Appellant Evelyn Christine Nixon—then stopped her vehicle in the parking lot approximately ten feet away from a gas pump, exited the vehicle, and briskly headed towards the store while leaving the driver's door to her vehicle wide open and the vehicle's keys in the

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[1] Specifically, the temperature was eighteen degrees in Greenville County on the night of the incident. (R. p. 11).

[2] During trial, Deputy Belding identified "Dirty" as an individual named Raymond Jordan, and the officer indicated he had personally arrested Jordan for distributing drugs prior to the night of the incident. (R. pp. 7-8).

ignition.[3] (R. p. 8; pp. 10-11). Meanwhile, Deputy Belding followed Appellant into the parking lot, quickly exited his vehicle, and hurriedly intercepted her before she made it into the store. (R. pp. 10-11).

Upon intercepting Appellant, Deputy Belding advised her he needed to speak with her about a traffic violation, and Appellant responded by becoming "combative" and acting in a "less than pleased" manner. (R. p. 11; pp. 14-15; p. 41). As they interacted, Deputy Belding observed through the open door of Appellant's vehicle what appeared to him to be the bowl part of a bowl-shaped pipe commonly used to smoke methamphetamine.[4] (R. p. 12; p. 28; p. 30). Based on that observation coupled with Appellant's efforts to distance herself from her vehicle, Appellant's failure to close her vehicle's door or remove the keys from the vehicle's ignition when she left it, and the shattered window suggesting the vehicle may have been stolen, Deputy Belding decided to investigate further while he completed the initial purpose of the traffic stop.[5] (R. p. 14). However, in light of the fact he believed he had observed evidence of a crime inside Appellant's vehicle, he determined he could not let Appellant back into her vehicle while he completed his investigation. (R. p. 14). Therefore, Deputy Belding advised Appellant he was detaining her, placed her in handcuffs, moved to secure her inside his patrol vehicle, and conducted a brief pat-down frisk search of Appellant for weapons before doing so. (R. pp. 14-15; pp. 33-35).

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[3] Based on her vehicle's distance from the gas pump, Deputy Belding indicated Appellant would have been unable to pump gas into her vehicle. (R. p. 10; p. 26).

[4] When he was eventually able to examine the object inside Appellant's vehicle, Deputy Belding discovered upon closer inspection it was not, in fact, a meth pipe but, instead, was a small plastic bowl-shaped container. (R. p. 12; p. 29).

[5] At that point, Deputy Belding had not yet been able to verify Appellant's information. (R. pp. 30-31). Ultimately, when he was able to do so, Deputy Belding discovered Appellant has a valid driver's license and was authorized to drive the Dodge Caravan. (R. p. 15).

During the frisk search, Deputy Belding felt what he instantly recognized was a glass meth pipe in Appellant's pocket, and Appellant responded by turning, screaming her rights were being violated, and violently kicking the officer. (R. p. 16; p. 36). Appellant then began to exclaim nothing in her pockets belonged to her while asserting she did not do drugs and had a job. (R. p. 17). Eventually, Deputy Belding was able to restrain and calm Appellant, and, when she was calm, he asked her if he could remove the items in her pockets. (R. pp. 16-17). At that point, Appellant consented to the request, and Deputy Belding removed a glass meth pipe, a razor blade, a plastic "corner baggie," and a small bag containing a clear substance that field testing suggested was methamphetamine.[6] (R. p. 17). Deputy Belding then placed Appellant under arrest, and she was later indicted for possession of methamphetamine and possession of drug paraphernalia. (R. p. 4; p. 20; pp. 88-89; pp. 91-92).

Subsequently, Appellant proceeded forward to trial, and, at the outset of trial, defense counsel moved for the evidence discovered during the course of the traffic stop to be suppressed based on an alleged violation of Appellant's Fourth Amendment rights. (R. p. 4). Appellant then waived her right to a jury trial, and the trial judge proceeded forward with a combined bench trial and suppression hearing. (R. pp. 4-6).

During the proceedings, Deputy Belding testified about the events of the night of the incident that culminated in Appellant's arrest. (R. pp. 7-37). Specifically, the officer noted he observed Appellant's vehicle at a known drug house that night in a condition that suggested it may have been stolen, later initiated a traffic stop of that vehicle after noticing it had a broken tail light, and ultimately identified the vehicle's driver as Appellant. (R. pp. 7-10). As the stop

[6] Specifically, during trial, Deputy Belding identified the following items as coming from Appellant's pocket: "one razor blade, folding knife, a pack of razor blades, an empty pill container, a glass meth pipe and a plastic corner bag." (R. pp. 18-19).

proceeded forward, Deputy Belding indicated he observed what appeared to be a meth pipe in Appellant's vehicle and noted Appellant behaved in a suspicious manner, including by acting combative during the course of the stop, making efforts to distance herself from her vehicle and get into the convenience store before he could interact with her, and failing to close her vehicle's door or remove her keys from the ignition despite the fact it was very cold at the time and her vehicle had been stopped in a high crime area.[7] (R. pp. 10-15). Deputy Belding further noted he suspected Appellant may have been armed based on all the suspicious factors he had observed coupled with the fact he knew women in the area to always carry knives based on his past experiences. (R. pp. 15-16; pp. 33-35). In light of that fact coupled with the departmental policy of his agency to frisk suspects before putting them into a patrol vehicle, Deputy Belding indicated he frisked Appellant, which ultimately led to her arrest following the discovery of her methamphetamine, razor blade, and other incriminating items. (R. pp. 15-16; pp. 33-35).

Beyond Deputy Belding's testimony, Deputy Corneroli, who arrived on the scene after Deputy Belding initiated the traffic stop to provide support, also testified about his observations on the night of the incident. (R. pp. 38-42). During his testimony, Deputy Corneroli confirmed he was present on the night of the incident, identified the area where the traffic stop occurred as "the center of crime in Greenville County," and noted he "absolutely" had made drug arrests in that area. (R. pp. 38-40). Additionally, the officer indicated he observed Appellant's behavior during the course of the traffic stop, and he characterized that behavior as inconsistent with the normal motoring public. (R. p. 41). Furthermore, Deputy Corneroli noted the entire traffic stop was not very long in duration. (R. p. 41).

[7] During his testimony, Deputy Belding asserted a suspect's efforts to distance himself or herself from a vehicle supported a conclusion the vehicle contained contraband or other evidence of a crime. (R. p. 13).

Following the presentation of that testimony, defense counsel conceded the initial traffic stop of Appellant vehicle was valid but asserted no reasonable suspicion existed for an investigative detention. (R. p. 44). In raising that assertion, defense counsel argued the high crime nature of the area where the stop occurred was not alone sufficient to establish reasonable suspicion while contending no evidence was presented to definitively establish Appellant's vehicle was the same vehicle Deputy Belding saw at the known drug dealer's house earlier in the evening. (R. pp. 45-46). Additionally, defense counsel conceded it was possible to interpret Appellant's actions as not stopping for the officer's blue lights but asserted the officer's act of observing the meth pipe was not conducted in good faith. (R. pp. 48-51). Defense counsel further asserted the frisk search was problematic. (R. p. 51). Specifically, in arguing the frisk was invalid, defense counsel asserted the officer did not have a probable cause basis to place Appellant into his patrol vehicle and contended the recognized nexus between drug activity and weapons was inapplicable to Appellant's case because nothing suggested she was a drug dealer or trafficker. (R. pp. 52-54; p. 68). Furthermore, Appellant alleged the frisk search could not be conducted based on departmental policy, Appellant's nervousness and belligerence were not significant to the analysis, and Deputy Belding could not properly rely on his own mistakes when he incorrectly believed he had observed a meth pipe in Appellant's vehicle. (R. pp. 56-57; pp. 64-67). For all those reasons, Appellant maintained the frisk search should be found to be unconstitutional pursuant to the Fourth Amendment and the evidence discovered as a result of it should be suppressed. (R. p. 69; p. 73).

In rebuttal, the solicitor contended he was not asserting Deputy Belding had probable cause to arrest Appellant for failing to stop for the officer's blue lights. (R. p. 53). However, the solicitor maintained the frisk search of Appellant was supported by a number of factors,

including the facts Appellant's vehicle was observed earlier at a known drug house, the incident occurred at nighttime in a high crime area that was the "epicenter of crime" in Greenville County, Appellant's vehicle had both a broken tail light and a broken window that led the officer to believe the vehicle may have been stolen, Appellant responded to the initiation of the traffic stop in a bizarre and suspicious manner by not stopping in a parking spot and ignoring the blue lights and siren, Appellant left her vehicle's driver's door open and the keys in the ignition in a high crime area on a very cold night, Appellant behaved in a nervous manner, the officer observed what he reasonably believed was a meth pipe inside Appellant's vehicle, and a known nexus exists between drugs and weapons. (R. pp. 58-63; p. 70). Based on all those factors, the solicitor argued it was necessary under the totality of the circumstances for Deputy Belding to conduct the frisk search and place Appellant into his patrol vehicle. (R. p. 61; pp. 71-72).

After listening to the arguments of counsel, the trial judge took the matter under advisement. (R. pp. 74-75). Thereafter, following a recess, the trial judge denied Appellant's suppression motion. (R. p. 77). In denying the motion, the trial judge indicated she believed the matter was a "close call." (R. p. 75). However, based on the totality of the circumstances, the trial judge found the officer's frisk search of Appellant was supported and justified by reasonable suspicion. (R. pp. 75-77). Specifically, in finding reasonable suspicion existed for the frisk search, the trial judge noted: (1) the officer saw Appellant's vehicle at a house connected to drugs earlier on the night of the stop; (2) Appellant left her vehicle in an unusual manner after stopping it; (3) the officer saw what he believed to be drug paraphernalia inside the vehicle during the stop; (4) the officer believed the vehicle may have been stolen under the circumstances present; (5) the area where the stop occurred was a high crime area; (6) the stop occurred at night; and (7) a well-known nexus exists between drug activity and weapons. (R. pp.

75-76). Furthermore, the trial judge noted the officer "probably" could have validly arrested Appellant for committing the offense of failure to stop for a blue light, but she indicated she did not base her ruling on that particular ground in light of the fact the solicitor elected not to rely upon it. (R. p. 76).

Subsequently, the bench trial proceeded forward, Deputy Belson confirmed the substance discovered in Appellant's pocket was 0.22 grams of methamphetamine, and Appellant's drugs and drug paraphernalia were admitted into evidence over objection. (R. p. 78). Thereafter, at the conclusion of the trial, the trial judge convicted Appellant as indicted. (R. p. 82). The trial judge then sentenced Appellant to an aggregate two-year term of incarceration and suspended that sentence upon the completion of eighteen months of probation. (R. p. 87).

ARGUMENT

The trial judge properly denied Appellant's motion to suppress the methamphetamine and other incriminating evidence discovered during the course of the traffic stop because the law enforcement officer who conducted the frisk search that led to the discovery of Appellant's drugs and other illegal items reasonably suspected Appellant was armed and dangerous at the time of the search under the totality of the circumstances, which included the facts Appellant had been observed at a known drug house in a well-known high crime area prior to the traffic stop, Appellant was driving a vehicle in a condition that suggested it may have been stolen, Appellant attempted to physically distance herself from her vehicle and bizarrely left her driver's door open with the keys in the ignition after the officer initiated his patrol vehicle's blue lights and siren, Appellant behaved in a combative and abnormal manner during the stop, and Appellant's vehicle contained an item the officer reasonably believed was a meth pipe.

Appellant contends the trial judge erred by denying her motion to suppress the drugs and other incriminating evidence discovered during the traffic stop. In support of that contention, Appellant maintains the frisk search that led to the discovery of that evidence was unconstitutional because the circumstances known to the officer at the time of the search were allegedly insufficient to support a reasonable suspicion she was armed and dangerous. To the contrary, Deputy Belding's decision to conduct the frisk search was entirely justified and reasonable because the circumstances known to him at the time of the search, which included the facts Appellant had been observed at a known drug house in a well-known high crime area prior to the traffic stop, Appellant was driving a vehicle in a condition that suggested it may have been stolen, Appellant attempted to physically distance herself from her vehicle and bizarrely left her driver's door open with the keys in the ignition after the officer initiated his patrol vehicle's blue lights and siren, Appellant behaved in a combative and abnormal manner during the course of the stop, and Appellant's vehicle contained an item the officer reasonably believed was a meth pipe, led him to reasonably suspect Appellant was armed and dangerous. Accordingly, the trial judge properly denied Appellant's suppression motion, and her ruling was fully supported by the evidence and testimony presented during trial. Appellant's convictions should be affirmed.

STANDARD OF REVIEW

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 search and seizure cases, an appellate court in South Carolina 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)). Critically, 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.").

ANALYSIS

The Fourth Amendment of the United States Constitution 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. Significantly, based on the plain language of that constitutional provision, the touchstone of the Fourth Amendment is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."). As a result, **only** unreasonable searches and seizures are constitutionally prohibited, and law enforcement officers are not required to be perfect or mistake-free in order to be in compliance with the constitutional requirements regarding searches and seizures. 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[.]"); see also Heien v. North Carolina, __ U.S. __, 135 S. Ct. 530, 536 (2014) ("To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.' " (citation omitted)).

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 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."); see also 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)). 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). Significantly, 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 matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.").

Once a lawful traffic stop is initiated, an officer "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). Additionally, based on "the inordinate risk" an officer faces to his or her safety while conducting a traffic stop, the officer may order the driver and any passengers to exit the vehicle pending the completion of the stop. Pennsylvania v. Mimms, 434 U.S. 106, 110 (1977); 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."); see also United States v. Sakyi, 160 F.3d 164, 168 (4th Cir. 1998) ("[E]very traffic stop poses a meaningful level of risk to the safety of police officers. . . . [T]he substantial risk to police officers during traffic stops is 'too plain' for argument." (citations omitted)).

Beyond those measures, an officer may also conduct a frisk search of the driver or any passenger in a vehicle during the course of a stop if the officer harbors "reasonable suspicion that the person subjected to the frisk is armed and dangerous." Arizona v. Johnson, 555 U.S. 323, 327 (2009); see State v. Adams, 397 S.C. 481, 492, 725 S.E.2d 523, 529 (Ct. App. 2012) ("An officer conducting a lawful traffic stop may conduct a pat-down search for weapons if the officer 'has reason to believe that the person is armed and dangerous.' " (citations omitted)); State v. Odom, 376 S.C. 330, 335, 656 S.E.2d 748, 751 (Ct. App. 2007) ("[P]olice may briefly detain and conduct a reasonable search for weapons where the officer has reason to believe the person is armed."). For a frisk search to be reasonable and justified, "[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Terry v. Ohio, 392 U.S. 1, 27 (1968); see also United States v. Swann, 149 F.3d 271, 274 (4th Cir. 1998) (recognizing "the standard justifying a frisk is not onerous"). "Among the circumstances to be considered in connection with [the] issue [of the propriety of a stop and frisk] are the 'characteristics of the area' where the stop occurs, the time of the stop, whether late at night or not, as well as any suspicious conduct of the person accosted such as an obvious attempt to avoid officers or any nervous conduct on the discovery of their presence." United States v. Bull, 565 F.2d 869, 870-871 (4th Cir. 1977).

Reasonable suspicion is something more than a general hunch and 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)); see State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007) ("Reasonable suspicion is more than a general hunch but less than what is

required for probable cause."); 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."). Importantly, it " '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). Furthermore, 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).

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 101, 623 S.E.2d at 849. In reviewing the totality of the circumstances, the individual factors establishing suspicion must not be considered piecemeal or in isolation. See United States v. Branch, 537 F.3d 328, 337 (4th Cir. 2008) ("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, 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. 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."); see also 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)). "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)). Thus, the presence of several factors seemingly consistent with innocence can establish reasonable suspicion when viewed together in totality. Sokolow, 490 U.S. at 9; see United States v. Moore, 817 F.2d 1105, 1107 (4th Cir. 1987) ("While these factors, viewed in isolation, may point to [Moore]'s innocence, 'it must be rare indeed that an officer observes behavior consistent only with guilt and incapable of any innocent interpretation.' " (citation omitted)).

In the case sub judice, Appellant contends Deputy Belding violated her constitutional rights by conducting the frisk search because the officer allegedly did not have a particularized and objective basis to suspect she was armed and dangerous at the time of the search. Contrary to Appellant's contentions, the circumstances known to the officer at the time of the search coupled with the officer's training and experience led the officer to harbor a reasonable suspicion Appellant was armed and dangerous.[8] Therefore, under the totality of the circumstances, Deputy Belding's decision to conduct the frisk search was a reasonable one, and the trial judge properly

[8] Notably, those suspicions proved to be entirely correct as Appellant was, in fact, armed with a razor blade on the night of the incident. (R. pp. 17-19).

denied Appellant's motion to suppress the methamphetamine and other incriminating evidence discovered during the search.

Establishing the reasonableness of the officer's suspicions, the traffic stop itself occurred in a high crime area, and Appellant's vehicle was observed at the home of a known drug dealer prior to the stop. See Wardlow, 528 U.S. at 124 (recognizing a person's presence in a high crime area is one relevant contextual consideration in a reasonable suspicion analysis); see also State v. Banda, 371 S.C. 245, 254, 639 S.E.2d 36, 41 (2006) ("Given the frequent association between drugs and guns, Lawson's safety concerns were justified based on the vehicle's apparent connection to a known drug dealer."); see generally Marks v. Criminal Injuries Comp. Bd., 196 Md. App. 37, 70, 7 A.3d 665, 684 (Md. Ct. Spec. App. 2010) ("There can be no serious dispute that there is an intimate relationship between violence and drugs."). Additionally, Appellant behaved in a bizarre and highly unusual manner immediately after the traffic stop was initiated by abruptly stopping her vehicle, ignoring the patrol vehicle's activated blue lights and siren, and rapidly leaving her vehicle with the driver's door open and the keys in the ignition, which Deputy Belding recognized to be a sign the vehicle potentially was stolen or contained contraband in light of the fact Appellant clearly appeared to be attempting to distance herself from it. See United States v. Moody, 485 F.2d 531, 535 (3rd Cir. 1973) (finding the defendant's act of fleeing from his car while leaving the keys in the ignition reasonably supported the officers' suspicions the car contained contraband); see also United States v. Brignoni-Ponce, 422 U.S. 873, 885 (1975) ("The driver's behavior may be relevant, as erratic driving or obvious attempts to evade officers can support a reasonable suspicion."); Bull, 565 F.2d at 870-871 (recognizing an obvious attempt to avoid a law enforcement officer can support the existence of reasonable suspicion justifying a stop and frisk). Similarly, during the course of the stop, Deputy

Belding observed a small bowl-shaped object in Appellant's car that, based on the officer's knowledge regarding drug paraphernalia, reasonably appeared to the officer to be a meth pipe, which further raised his suspicions Appellant was involved in drug activity. See Banda, 371 S.C. at 253, 639 S.E.2d at 40 ("This Court has recognized that because of the 'indisputable nexus between drugs and guns,' where an officer had reasonable suspicion that drugs are present in a vehicle lawfully stopped, there is an appropriate level of suspicion of criminal activity and apprehension of danger to justify a frisk of both the driver and the passenger in the absence of other factors alleviating the officer's safety concerns." (citations and footnotes omitted)); see also Heien, 135 S. Ct. at 536 ("Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground."); Illinois v. Rodriguez, 497 U.S. 177, 185 (1990) ("It is apparent that in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable."); Brinegar v. United States, 338 U.S. 160, 176 (1949) ("Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability."). Furthermore, during the course of the stop, Appellant behaved in a suspicious and combative manner that Deputy Corneroli characterized as inconsistent with the normal motoring public. See Wardlow, 528 U.S. at 124 ("[N]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion."); cf. State v. Smith, 329 S.C. 550, 557, 495 S.E.2d 798, 801-802 (Ct. App. 1998) (finding a frisk search for weapons was properly conducted during the course of a traffic stop where the officer

possessed reasonable suspicion to believe Smith might be armed and dangerous in light of the fact the stop occurred late at night on a deserted road coupled with the fact Smith behaved in an "edgy" manner and was looking around throughout the stop).

In light of Appellant's unusual behavior, Appellant's efforts to distance herself from her vehicle, Appellant's presence in both a high crime area and at the home of a known drug dealer on the night of the incident, the circumstances surrounding Appellant's vehicle suggesting it may have been stolen and may have contained drug paraphernalia, and the well-known connection between drugs and guns, Deputy Belding was fully justified in believing Appellant might have either stolen the vehicle she was driving or have actively been involved in drug activity and, thus, was also armed and dangerous. See Banda, 371 S.C. at 254, 639 S.E.2d at 41 ("Their reasonable suspicion arose directly from the presumption of weapons when there is reasonable suspicion that drugs are present."); see also United States v. Braxton, 456 F. App'x 242, 246 (4th Cir. 2011) ("[A]s the District of Columbia Circuit has emphasized, 'car theft is a crime that often involves the use of weapons and other instruments of assault that could jeopardize officer safety, and thus justifies a protective frisk under Terry. **The cases to this effect are legion.**" (emphasis added and citations omitted)); Sakyi, 160 F.3d at 169 ("[I]n connection with a lawful traffic stop of an automobile, when the officer has a reasonable suspicion that illegal drugs are in the vehicle, the officer may, in the absence of factors allaying his safety concerns, order the occupants out of the vehicle and pat them down briefly for weapons to ensure the officer's safety and the safety of others. . . . The indisputable nexus between drugs and guns presumptively creates a reasonable suspicion of danger to the officer."); cf. State v. Abrams, 322 S.C. 286, 288, 471 S.E.2d 716, 717 (Ct. App. 1996) ("In this case, the officers had a reasonable suspicion which justified their stop of Abrams. They saw him leaving an area known for drugs, where there had been a civil

disturbance potentially involving drug activity, at 3:45 in the morning. The officers were therefore justified in frisking Abrams for weapons to ensure their safety."). As a result, Deputy Belding's decision to conduct the brief protective frisk search was entirely prudent and reasonable to ensure Appellant did not pose a risk to him, his fellow officer, or anyone else in the vicinity at the time of the stop. See Terry, 392 U.S. at 23 ("Certainly it would be unreasonable to require that police officers take unnecessary risk in the performance of their duties."); see also Braxton, 456 F. App'x at 247 ("Proper adherence to the standards of Terry does not require us to gamble with the lives of police officers who exercise reasonable judgment in fulfilling their duty in the trying situation presented by a roadside car stop."). Accordingly, the trial judge properly denied Appellant's suppression motion, and her ruling was fully supported by the evidence and testimony presented during trial.[9] See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."); see also State v. Butler, 353 S.C. 383,

[9] Moreover, in light of the frigid temperature at the time of the traffic stop coupled with the fact Deputy Belding needed to investigate the object he thought was a meth pipe before allowing Appellant to regain access to her vehicle, it was reasonable and necessary for Deputy Belding to secure Appellant inside his patrol vehicle while he completed his investigation, and, therefore, it was entirely reasonable for him to conduct a brief frisk search before doing so. See State v. Evans, 67 Ohio St. 3d 405, 410, 618 N.E.2d 162, 167 (Ohio 1993) ("[I]t is reasonable that the officer, who has a legitimate reason to so detain that person, is interested in guarding against an ambush from the rear. . . . [W]e can only conclude that the driver of a motor vehicle may be subjected to a brief pat-down search for weapons where the detaining officer has a lawful reason to detain said driver in the patrol car."); State v. Varnado, 582 N.W.2d 886, 891 (Minn. 1998) ("[W]e agree that officer safety is a paramount interest and that when an officer has a valid reasonable basis for placing a lawfully stopped citizen in a squad car, a frisk will often be appropriate without additional individual articulable suspicion."); People v. Tobin, 219 Cal. App. 3d 634, 641, 269 Cal. Rptr. 81, 85 (Cal. Ct. App. 1990) ("[T]he need to transport a person in a police vehicle in itself is an exigency which justifies a pat-search for weapons."); see also In re Kelsey C.R., 243 Wis. 2d 422, 456, 626 N.W.2d 777, 793 (Wis. 2001) ("[W]e conclude that a reasonable basis to place someone inside a police vehicle is a factor to be considered in the totality of the circumstances, when deciding the reasonableness of a pat-down search."); see generally State v. Jones, 27 F. App'x 198, 200 (4th Cir. 2001) ("Neither use of drawn weapons nor briefly handcuffing necessarily converts a stop into an arrest.").

393, 577 S.E.2d 498, 503 (Ct. App. 2003) ("The appellate court . . . does not review the trial court's determination *de novo*, but applies a deferential standard of review, and will reverse only if there is clear error in its ruling. Thus, this court will affirm if there is any evidence to support the decision, regardless of the basis of the trial court's ruling." (citations omitted)). Appellant's convictions 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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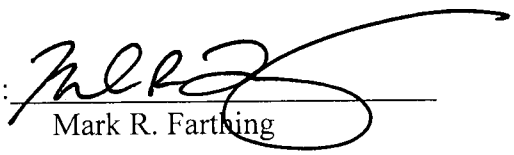
BY: 
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December 11, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2016-002170

THE STATE,

Respondent,

vs.

EVELYN CHRISTINE NIXON,

Appellant.

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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