

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case Tracking No. 2016-001797

The State,

Respondent,

vs.

Ronald Douglas Michaux, JR.,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly denied Appellant's motion to suppress evidence obtained during the constitutional search of the vehicle after a lawful traffic stop. As an additional sustaining ground, Appellant does not have an expectation of privacy in the rental vehicle because he was not on the agreement to drive the vehicle.
- II. The trial court properly allowed the State's expert to testify regarding the value of the cocaine because it directly refuted Appellant's argument the drugs did not belong to Appellant and instead were just left in the rental vehicle.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

Lance Corporal Michael Harrison with the South Carolina Highway Patrol operated as part of the interdiction team in Lexington County. On March 20, 2014, he was stationed on I-20 in Lexington County. (T.6-7; R.6-7). He observed a white sedan travelling in front of a tractor trailer. (T.7-8; R.7-8). When the driver of the white sedan observed Trooper Harrison on the side of the road, he abruptly slowed in a dangerous and noticeable action requiring the tractor trailer to swerve into the other lane to avoid hitting the sedan. (T.8; 113-114; R.8; 83-84). Trooper Harrison indicated he saw the driver "essentially jam on his brakes," which was not a normal course of action for a driver based on the Trooper's 16 years of experience.

As a result of seeing the driver abruptly brake, Trooper Harrison pulled out and followed the driver. As he pulled into the interstate, Trooper Harrison noticed the vehicle unable to maintain the center of his lane driving to the left side of the lane and then to the right side of the lane. Trooper Harrison indicated he was "weaving" within his lane. (T.8; 115; R.8; 85). Trooper Harrison decided to activate his blue lights and pull the driver over because he was concerned about his condition. (T.8; 115-116; R.8; 85-86).

Trooper Harrison approached the vehicle after he pulled it over and noticed it was a newer vehicle with an out-of-state license plate. (T.9; 117; R.9; 87). Trooper Harrison approached on the passenger side and noticed the driver was the only occupant. He also noticed the vehicle had a bar code sticker on the window indicating the car was likely a rental car. (T.117; R.87). He asked the driver for his license and registration, while at the same time noticing two cans of air fresheners inside the vehicle. (T.9; R.9). Trooper Harrison noticed some cigar shavings from the inside of a cigar and immediately smelled the overwhelming smell of marijuana, even over the smell of the air fresheners. (T.10; 119; R.10; 89). He radioed for

backup who ultimately arrived at scene. The driver did not provide a license, and instead provided a North Carolina Identification Card with the name Ronald Douglas Michaux. (T.10-11; 118-119; R.10-11; 88-89). Appellant provided the rental agreement for the vehicle, and the name on the agreement did not match Appellant. The renter of the vehicle was not present. (T.14; 120; R.14; 90).

Trooper Harrison had Appellant exit the vehicle and move beside the Trooper's vehicle to talk. Trooper Harrison asked Appellant where he was coming from and he received a generic response about Appellant coming from his cousins. When Trooper Harrison asked where the cousin lived, Appellant "turned back from the direction he was coming from and basically pointed back down the interstate and said [I'm coming] from that way" instead of giving a specific answer. (T.12-13; 123-124; R.12-13; 93-94). Trooper Harrison also asked Appellant about his license and Appellant admitted it was suspended in North Carolina.¹ (T.13; R.13).

Trooper Harrison gave Appellant a warning for his driving and explained he would be searching the vehicle based on the smell of marijuana. (T.17; R.17). As Trooper Harrison returned to the vehicle to perform the search, Appellant stated "there's no marijuana in the vehicle." (T.17-18; R.17-18). Trooper Harrison located some additional tobacco shavings and cigar packages, which he explained people hollow out and use to smoke marijuana. (T.18; R.18). Additionally, Trooper Harrison found a black plastic bag with a knot tied in it which contained a powdered substance. (T.18-19; R.18-19). He explained the bag likely contained cocaine or heroin. (T.19; R.19). The substance in the bag field tested positive for cocaine. (T.130; R.100).

¹ Trooper Harrison ultimately explained Appellant's driver's license was revoked in North Carolina, so he was illegally driving without a license. (T.20-21; R.20-21).

ARGUMENT

- I. The trial court properly denied Appellant's motion to suppress evidence obtained during the constitutional search of the vehicle after a lawful traffic stop. As an additional sustaining ground, Appellant does not have an expectation of privacy in the rental vehicle because he was not on the agreement to drive the vehicle.**

Appellant contends the trial court erred in failing to suppress evidence obtained during a search of a vehicle after a traffic stop. The initial traffic stop was properly made based on reasonable suspicion. Once the stop was lawfully made, Trooper Harrison had probable cause to search the vehicle based on the overwhelming smell of marijuana. Also, as an additional sustaining ground, Appellant did not have an expectation of privacy in the rental vehicle and as a result does not have standing to challenge the search of the vehicle.

“In criminal cases, the appellate court sits to review errors of law only.” State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). “When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.” State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011). “The appellate court will reverse only when there is clear error.” State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (quoting State v. Missouri, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004)).

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 also, State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004) (“On appeal from a suppression hearing, this court is bound by the circuit court's factual findings if any evidence supports the findings.”). A trial court's Fourth Amendment suppression ruling must be affirmed

if supported by any evidence, and an appellate court may reverse only when there is clear error. State v. Groome, 378 S.C. 615, 618, 664 S.E.2d 460, 461 (2008). 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).

Reasonable Suspicion for Stop

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. “The touchstone of the Fourth Amendment is reasonableness.” Florida v. Jimeno, 500 U.S. 248, 250 (1991). “A traffic stop and the detention of persons during such a stop constitutes a seizure.” Morris, 411 S.C. at 578, 769 S.E.2d at 858 (citing State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002)). “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. The police, however, may also stop and briefly detain a vehicle if they have a reasonable suspicion that the occupants are involved in criminal activity.” State v. Butler, 343 S.C. 198, 201, 539 S.E.2d 414, 416 (Ct. App. 2000) (internal citations omitted).

“‘Reasonable suspicion’ requires a ‘particularized and objective basis that would lead one to suspect another of criminal activity.’” State v. Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)). “Reasonableness is measured in objective terms by examining the totality of circumstances. A traffic stop is not unreasonable if conducted with probable cause to believe a traffic violation has occurred, or when the officer has a reasonable suspicion the occupants are involved in criminal activity.” State v. Vinson, 400 S.C. 347, 352, 734 S.E.2d 182, 184 (Ct. App. 2012) (internal citations omitted). “Reasonable suspicion ‘is not readily, or even usefully, reduced to a neat set of legal

rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.’ ” State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)).

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. 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 South Carolina, traffic violations are criminal offenses, and as a result, the officer must only have reasonable suspicion to believe a traffic violation has occurred. See S.C. Code Ann. § 56-5-730 (1976).

In the instant case, Trooper Harrison witnessed several actions by Appellant which gave him reasonable suspicion sufficient to warrant the original traffic stop. First, the abrupt braking in the lane of traffic would constitute at minimum reasonable suspicion of a violation of section 56-5-1560 of the South Carolina Code prohibiting someone from impeding the regular flow of traffic. Additionally, it could also constitute reckless driving. See S.C. Code Ann. § 56-5-2920

(Supp. 2016) (“Any person who drives any vehicle in such a manner as to indicate either a wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.”). Trooper Harrison explained Appellant hit his brakes in such a manner that a tractor trailer had to swerve into the other lane. Clearly his actions impeded the regular flow of traffic, and even if Appellant’s speed did not drop below a minimum speed limit, the precise speed he was travelling is not necessary information to allow for reasonable suspicion by Trooper Harrison. See e.g., 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)).

Additionally, after Trooper Harrison entered the lane of traffic and followed Appellant, he observed him weaving within his lane. While Appellant did not leave his lane, his inability to maintain center and instead continuously weave from side to side provided Trooper Harrison with reasonable suspicion to believe the driver was either intoxicated or falling asleep while operating the vehicle. Driving while intoxicated or in a reckless manner while falling asleep would both constitute traffic violations and crimes in South Carolina. See S.C. Code Ann. § 56-5-2920 (Supp. 2016) (“Any person who drives any vehicle in such a manner as to indicate either a wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.”); S.C. Code Ann. § 56-5-2930 (Supp. 2016) (“It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired”). Other states have also recognized reasonable suspicion exists to conduct an investigatory stop when a driver is weaving within his own lane. see also People v. Loucks, 135 Ill. App. 3d 530, 533, 481 N.E.2d

1086, 1087 (Ill. App. Ct. 1985) (“Weaving within the lane of traffic in which a vehicle is traveling provides a sufficient basis for an investigatory stop of a motor vehicle”); State v. Ellanson, 293 Minn. 490, 491, 198 N.W.2d 136, 137 (Minn. 1972) (holding an officer had the right to stop Ellanson in order to investigate the cause of his unusual driving where the officer observed Ellanson’s weaving within his own lane of travel); State v. Dorendorf, 359 N.W.2d 115, 117 (N.D. 1984) (“[A] vehicle’s weaving within its own lane of traffic may be caused by a number of reasons, among them: 1) the driver is tired, 2) the vehicle has equipment problems, or 3) the driver is under the influence of alcohol. The officers stopped Dorendorf to determine exactly what was causing the vehicle to weave. . . . We conclude that the circumstances in the instant case justified the initial stop of Dorendorf.”).

Based on Trooper Harrison’s observations of Appellant’s driving supported by Trooper Harrison’s extensive training and experience², there was reasonable suspicion to justify the initial traffic stop. The trial court, in setting forth in great detail his findings of fact and conclusions of law, did not abuse its discretion in finding the traffic stop valid. (T.35; R.35).

Extension of Traffic Stop

Appellant contends Trooper Harrison unconstitutionally extended the stop beyond the scope required for the traffic stop. “A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation.” Arizona v. Johnson, 555 U.S. 323, 333 (2009). “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.” Id. 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

² The trial court detailed and relied upon Trooper Harrison’s extensive training and experience in making his rulings on reasonable suspicion and the search of the vehicle. (T.33; R.33).

measurably extend the duration of the stop. Id.; see Rodriguez v. United States, ___ U.S. ___, 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). “In carrying out a routine traffic stop, law enforcement may request a driver’s license and vehicle registration, run a computer check, and issue a citation; however, any further detention for questioning is beyond the scope of the stop and therefore illegal unless the officer has reasonable suspicion of a serious crime.” State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (citing State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010)).

An initially lawful seizure “can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” Illinois v. Caballes, 543 U.S. 405, 407 (2005). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” Rodriguez, 135 S. Ct. at 1614. However, the duration and scope of the initial seizure can be extended when “the officer has reasonable suspicion of a serious crime.” Tindall, 388 S.C. at 521, 698 S.E.2d at 205.

As discussed above, “[r]easonable suspicion’ requires a ‘particularized and objective basis that would lead one to suspect another of criminal activity.’” Khingratsaipon, 352 S.C. at 69, 572 S.E.2d at 459. “Reasonable suspicion does not entail a set of legal rules, but ‘entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.’” Morris, 411 S.C. at 578, 769 S.E.2d at 858 (citing United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)).

In the instant case, Trooper Harrison had reasonable suspicion to extend the duration and scope of the initial traffic stop. Upon approach to the vehicle, he smelled the odor of marijuana. This fact alone should be sufficient to establish the reasonable suspicion necessary to extend the traffic stop beyond its initial scope because the smell of marijuana in South Carolina has been deemed sufficient to establish probable cause of a crime. See e.g., Morris, 411 S.C. at 581, 769 S.E.2d at 859 (finding probable cause to search a vehicle based on the smell of marijuana); State v. Lane, 271 S.C. 68, 72, 245 S.E.2d 114, 116 (1978) (finding “the odor emanating from the packages alone was a sufficient basis to establish probable cause as to their contents when it is considered that an officer of the law, familiar with the odor of marijuana, believed the odor being emitted was that of marijuana”).

Trooper Harrison had additional observations which added to the reasonable suspicion criminal activity was afoot. He saw tobacco shavings likely from where a cigar had been hollowed out to use for smoking the marijuana. He saw multiple air fresheners, which is highly unusual in a brand new rental vehicle. Appellant failed to provide a driver’s license, but instead only had an identification card because his license was either suspended or revoked in North Carolina. The vehicle was rented by someone not at the scene and there was no indication Appellant was an authorized driver of the rental vehicle. Finally, Appellant was unable to provide specific answers to simple questions asked by Trooper Harrison. These factors, most especially the smell of the marijuana, provided sufficient reasonable suspicion of criminal activity to allow the prolonging of the stop beyond the time necessary to issue the warrant.

It should also be noted Appellant did not have a valid driver’s license, which is required to operate a motor vehicle in South Carolina. See S.C. Code Ann. § 56-1-20 (Supp. 2016) (“No person, except those expressly exempted in this article shall drive any motor vehicle upon a

highway in this State unless such person has a valid motor vehicle driver's license issued to him under the provisions of this article.”); S.C. Code Ann. § 56-1-30 (“A nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator’s or chauffeur’s license issued to him in his home state or country may operate a motor vehicle.”). Further, it is a crime for a person to drive a vehicle without a valid license or while their license is suspended or revoked. See S.C. Code Ann. § 56-1-440 (“A person who drives a motor vehicle on a public highway of this State without a driver's license in violation of Section 56-1-20 is guilty of a misdemeanor”); S.C. Code Ann. § 56-1-460 (setting forth penalties after conviction for driving with a suspended or revoked license). Because Appellant’s license in North Carolina was revoked, and he had no valid driver’s license to operate the vehicle on the roadways of South Carolina, he could not be free to drive away without further violating the law. As a result, the fact he provided an identification card while driving with a revoked license is sufficient to extend the traffic stop beyond the initial basis for the stop.

Search of the Vehicle

Additionally, the trial court properly concluded the search of the vehicle by Trooper Harrison was constitutional and correctly refused to suppress the cocaine found as a result of the search. “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. The Fourth Amendment requires a warrant for search and seizure. “Therefore, a warrantless search is per se unreasonable and violative of the Fourth Amendment unless the search falls within one of several well-recognized exceptions to the warrant requirement.” Morris, 411 S.C. at 580, 769

S.E.2d at 859. “[B]ecause the ultimate touchstone of the Fourth Amendment is ‘reasonableness,’ the warrant requirement is subject to certain exceptions.” State v. Herring, 387 S.C. 201, 210, 692 S.E.2d 490, 494 (2009) (citing Katz v. United States, 389 U.S. 347, 357 (1967)). Recognized exceptions to the requirement of a warrant include: (1) search incident to a lawful arrest, (2) hot pursuit, (3) stop and frisk, (4) automobile exception, (5) the plain view doctrine, (6) consent, (7) abandonment, and (8) exigent circumstances. See State v. Counts, 413 S.C. 153, 163, 776 S.E.2d 59, 65 (2015).

The United States Supreme Court (USSC) recognized the automobile exception to the warrant requirement over ninety years ago in Carroll v. United States, 267 U.S. 132, 153 (1925).

As the USSC explained:

[P]ractically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Id. The USSC later clarified in cases when probable cause exists to search a vehicle “a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained.” United States v. Ross, 456 U.S. 798, 809 (1982). As the South Carolina Supreme Court articulated: “The automobile exception to the search warrant requirement is based on: (1) the ready mobility of automobiles and the potential that evidence may be lost or destroyed before a warrant is obtained and (2) the lessened expectation of privacy in motor vehicles which are subject to government regulation.” State v. Weaver, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007). “If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without

more.” Pennsylvania v. Labron, 518 U.S. 938, 940 (1996) (per curiam). Therefore, no exigency is required in order to search a vehicle, solely the fact it is a vehicle allows for a search without warrant when based on the existence of probable cause.

In the instant case, probable cause to believe the vehicle contained contraband existed based on the overwhelming odor of marijuana smelled by Trooper Harrison and the tobacco shavings he saw in the passenger compartment when he first encountered Appellant. See e.g., Morris, 411 S.C. at 581, 769 S.E.2d at 859 (finding probable cause to search an entire vehicle, including the trunk, based on the smell of marijuana emanating from the passenger compartment); Lane, 271 S.C. at 72, 245 S.E.2d at 116 (finding “the odor emanating from the packages alone was a sufficient basis to establish probable cause as to their contents when it is considered that an officer of the law, familiar with the odor of marijuana, believed the odor being emitted was that of marijuana”). The Fourth Circuit has agreed the smell of marijuana is sufficient probable cause to search a vehicle without a warrant. See e.g., United States v. Haley, 669 F.2d 201 (4th Cir. 1982) (“Sufficient probable cause arises [to search without a warrant] when the officer smells marijuana inside the vehicle.”); United States v. Scheetz, 293 F.3d 175, 184 (4th Cir. 2002) (“Once the car was properly stopped and the narcotics officers smelled marijuana, the narcotics officers properly conducted a search of the car.”); see also, United States v. Morin, 949 F.2d 297, 300 (10th Cir.1991) (holding that, because marijuana has a distinct smell, “the odor of marijuana alone can satisfy the probable cause requirement to search a vehicle or baggage”); State v. Folk, 238 Ga. App. 206, 208, 521 S.E.2d 194, 198 (Ga. Ct. App. 1999) (holding that an officer’s detection of the odor of burning marijuana alone constituted probable cause for a warrantless vehicle search); People v. Kazmierczak, 605 N.W.2d 667, 669 (Mich. 2000) (“Like the majority of courts in other states and jurisdictions, we are persuaded that

detection of the odor of either fresh marijuana or marijuana smoke, standing alone, provides probable cause for a warrantless search.”); State v. Smith, 666 S.E.2d 191, 194 (N.C. Ct. App. 2008) (“When an officer detects the odor of marijuana emanating from a vehicle, probable cause exists for a warrantless search of the vehicle for marijuana.”). Accordingly, Trooper Harrison conducted a constitutional warrantless search of the vehicle based on the existing probable cause.

Once probable cause exists to conduct the search, the scope of the search is the same as would exist if a warrant was obtained. “The scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause.” United States v. Ross, 456 U.S. 798, 823 (1982). “The scope of a warrantless search of an automobile is defined by the object of the search and the places in which there is probable cause to believe that it may be found.” State v. Perez, 311 S.C. 542, 546, 430 S.E.2d 503, 505 (1993). The officers would be entitled to look anywhere the suspected contraband could be contained, which would include the black plastic bag which contained the cocaine found in this case.

Expectation of Privacy

As an additional sustaining ground, Appellant failed to demonstrate an expectation of privacy in the rental vehicle sufficient to allow him to object to the search by Trooper Harrison. When moving to suppress evidence on the basis of an alleged unreasonable search, the defendant has the burden of showing a legitimate expectation of privacy in the area searched. See United States v. Risher, 966 F.2d 868 (4th Cir. 1992); see also Rawlings v. Kentucky, 448 U.S. 98 (1980) (declaring a legitimate expectation of privacy is necessary to trigger Fourth Amendment protections); State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987) (stating defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate his “own rights”

have been violated by showing he has a legitimate expectation of privacy in connection with the searched premises in order to challenge the search). “Since Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), the touchstone of [Fourth] Amendment analysis has been the question whether a person has a ‘constitutionally protected reasonable expectation of privacy.’” Oliver v. United States, 466 U.S. 170, 177 (1984) (quoting Katz, 389 U.S. at 360 (Harlan, J., concurring)).

As the USSC stated in Alderman v. United States, 394 U.S. 165, 174 (1969): “Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.” A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of his Fourth Amendment rights infringed. Id. “And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, United States v. Calandra, 414 U.S. 338, 347, 94 S.Ct. 613, 619, 38 L.Ed.2d 561 (1974), it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule’s protections.” Rakas v. Illinois, 439 U.S. 128, 133-134 (1978).

Thus,

in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; i.e., one that has “a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.”

Minnesota v. Carter, 525 U.S. 83, 88 (1998) (emphasis added) (quoting Rakas, 439 U.S. 128, 143–44 n. 12). As the South Carolina Supreme Court explained:

One who seeks to have evidence suppressed on this basis must establish that his *own* Fourth Amendment rights were violated.

These are personal rights which may not be asserted vicariously. The defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate a legitimate expectation of privacy in connection with the searched premises in order to have standing to challenge the search.

McKnight, 291 S.C. at 114-115, 352 S.E.2d at 473 (internal citations omitted) (italics in original).

In this case, Appellant was not listed on the rental agreement; instead, a female who was not present at the scene was listed. Appellant could not have been an authorized user on the agreement because he did not possess a valid driver's license which would have been required to be on the agreement.³ Because Appellant was an unauthorized driver of the rental vehicle, he had no legitimate claim to the vehicle, no lawful right to control the vehicle, and no right whatsoever to possess the vehicle. See United States v. Hargrove, 647 F.2d 411, 412 (4th Cir. 1981) (“[O]ne who can assert no legitimate claim to the car he was driving cannot reasonably assert an expectation of privacy in a bag found in that automobile.”). Moreover, since he did not personally rent the vehicle and was not listed or identified in the rental agreement, Appellant had no connection of any kind to the actual owner of the rental vehicle. See United States v. Kennedy, 638 F.3d 159, 165 (3rd Cir. 2011) (“An authorized driver on the rental agreement has lawful possession of the vehicle and, within the scope of the rental agreement, may legitimately exclude others from using it. In contrast, an unauthorized driver has no cognizable property interest in the rental vehicle and therefore no accompanying right to exclude. The lack of such an interest supports the position that it is objectively unreasonable for an unauthorized driver to expect privacy in the vehicle.” (citations omitted)). As a result, Appellant did not have an expectation of privacy in the rental vehicle society accepts or recognizes as legitimate and could

³ Appellant's counsel at trial during opening statements acknowledged Appellant was not the authorized driver and indicated he had no interest in the vehicle. He stated: “It's a rent-a-car. Mr. Michaux doesn't own it. Mr. Michaux's name is not on the rental agreement.” (T.104; R.74).

not properly claim his own constitutional rights were violated by the search of the vehicle's trunk. See Kennedy, 638 F.3d at 165 (“[A]s a general rule, the driver of a rental car who has been [l]ent the car by the renter, but who is not listed on the rental agreement as an authorized driver, lacks a legitimate expectation of privacy in the car unless there exists extraordinary circumstances suggesting an expectation of privacy.”); United States v. Luster, 324 F. App’x 224, 225 (4th Cir. 2009) (“An unauthorized driver of a rented car has ‘no legitimate privacy interest in the car’ and, therefore, a search of the car ‘cannot have violated his Fourth Amendment rights.’ This conclusion is not altered where the authorized lessee allows the unauthorized driver to drive the rental vehicle, as an unauthorized driver still does not have permission of the rental company, the owner of the vehicle.” (citations omitted)); United States v. Wellons, 32 F.3d 117, 119 (4th Cir. 1994) (“[A]ppellant, as an unauthorized driver of the rented car, had no legitimate privacy interest in the car and, therefore, the search of which he complains cannot have violated his Fourth Amendment rights.”). Accordingly, Appellant had no right to challenge the search of any of the contents of the vehicle because he had no expectation of privacy in a vehicle he was not authorized to use.

Trooper Harrison’s traffic stop of Appellant was proper and based upon reasonable suspicion. To the extent the stop was extended, the extension was allowable based on the smell of marijuana, the failure of Appellant to produce a valid driver’s license, and numerous factors explained by Trooper Harrison. Finally, the search of the vehicle pursuant to the automobile exception was constitutional based on the existence of probable cause from the moment Trooper Harrison smelled marijuana emanating from the passenger compartment. As an additional sustaining ground, even if this Court could conclude the search was invalid, Appellant has no expectation of privacy in the contents of the vehicle and cannot challenge the propriety of the

search. Accordingly, the trial court did not abuse its discretion in denying Appellant's motion to suppress the properly seized cocaine found during the lawful and constitutional search of the rental vehicle.

II. The trial court properly allowed the State's expert to testify regarding the value of the cocaine because it directly refuted Appellant's argument the drugs did not belong to Appellant and instead were just left in the rental vehicle.

Appellant maintains the trial court erred in allowing the testimony of Corporal Rogers, who was qualified as an expert in drug and narcotics trafficking, regarding the value of the drugs located in Appellant's possession. The evidence was highly probative and relevant because it disputed any argument the drugs were in the vehicle by happenstance or that they were left by some other third party and not brought into the vehicle by Appellant.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). Qualification of a witness as an expert and the subsequent admission of that witness's testimony are matters within the sound discretion of the trial court. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Pagan, 369 S.C. at 208, 631 S.E.2d at 265.

"A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

Rule 702, SCRE, provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness

qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” “To be competent to testify as an expert, a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.” Risher v. S. C. Dep't of Health & Env'tl. Control, 393 S.C. 198, 205, 712 S.E.2d 428, 432 (2011).

Pursuant to Rule 401, SCRE: “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Additionally, under Rule 402, SCRE: “All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible.” Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE. “A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in ‘exceptional circumstances.’ . . . If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.” State v. Hamilton, 344 S.C. 344, 357-58, 543 S.E.2d 586, 593-94 (Ct. App. 2001) (internal citations omitted), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

In the instant case, Appellant’s attorney argued to the jury that ownership of the cocaine found in the rental vehicle was a central question in the case. During opening statement Appellant’s counsel stated:

Constructive possession is where basically they want you to guess from the facts they’re presenting that whatever they found

belonged to the defendant and when you view the facts, you have to determine beyond a reasonable doubt whether or not Mr. Ronald Michaux had dominion and control over the item and **most importantly, number two, whether he knew it was there.**

(T.103; R.73) (emphasis added). Counsel continued in a similar argument arguing the State will only be able to show what took place during the meeting between Appellant and Trooper Harrison and cannot prove what took place prior to their meeting. He opines: "It's a rent-a-car. Mr. Michaux doesn't own it. Mr. Michaux's name is not on the rental agreement. We don't have that point in time before the frozen moment or frozen several minutes **to know what happened in that car before the encounter with the police.**" (T.104; R.74) (emphasis added).

During cross-examination of Trooper Harrison, counsel continued to raise the issue of the possession of the drugs and the inference they were left in the car by someone else. The following colloquy is insightful:

Q. Now, you testified that the rental agreement did not have Mr. Michaux's name on it; is that correct?

A. That's correct.

Q. It was a female's name you testified?

A. Yes.

Q. **Did you ever investigate that person or contact them regarding the items found in the car?**

A. I did not.

(T.147-148; R.117-118) (emphasis added). All questions clearly intended to raise doubt regarding Appellant's possession of the drugs and whether the drugs could have belonged either to the renter of the vehicle or someone else that used the rental vehicle.

Finally, the theme of the drugs belonging to someone else continued during closing argument. Counsel argued: "there's a real possibility that Mr. Michaux is not guilty, that there's

a real possibility that someone **either left or put those drugs in the car**, a real possibility that he did not know that they were there.” (T.240-241; R.210-211)(emphasis added). His closing continued to argue that people leave things all the time, whether it was the drugs or a pocketbook. He made the further argument someone placed the drugs there. He asserted: “It’s also a real possibility the person that rented the car knew Mr. Michaux, knew where he was going, maybe knew his friends or knew people that he was going to see and used him as a dupe and just placed that in the car and knew he would drive it and wherever he was going . . .” (T.241-242; R.211-212). He argued there were no fingerprints found on the plastic bag so there was nothing tying Appellant to the drugs. (T.244; R.214). Appellant’s counsel closed by saying:

Ladies and gentlemen, they have not excluded the real possibility that **somebody could have left those drugs** in the car or that **they could have placed those drugs** in the car. There is a real possibility that Mr. Michaux is not guilty of this crime and you should find him not guilty.

(T.245; R.215) (emphasis added).

Throughout trial, the defense asserted by Appellant was that the drugs were not his, he did not know they were there, and someone else must have either left the drugs or put them there. The testimony by Corporal Rogers was highly probative to establish the unlikelihood that the drugs belonged to anyone other than Appellant. His testimony established the drugs had a value between \$4,000 and \$14,000. As the Solicitor argued, it is illogical a third party left something that valuable in a car they were lending out to Appellant or in a rental they were turning in. As the Solicitor argued, the drugs value made it much more likely the owner was staying close to the drugs, and the only person in the vehicle was Appellant.

Significantly, this Court has already dealt with nearly identical testimony in State v. Jamison, 372 S.C. 649, 643 S.E.2d 700 (Ct. App. 2007). In Jamison, the defendant was charged

with trafficking cocaine and trafficking crack cocaine. The drugs were found in a truck he was driving and Jamison asserted at trial the drugs belonged to someone else that used the truck. This Court specifically held: “We agree with the trial court that jurors typically do not know the current street prices of illegal drugs. Grounsell’s valuation of the drugs, based on his years of law enforcement experience, allowed the jury to better determine whether a person would reasonably leave expensive narcotics unguarded and disguised as trash in a truck allegedly used by numerous people.” Id. at 653, 643 S.E.2d at 702. This Court concluded: “If the jury did not believe Jamison’s assertion that an unknown individual left thousands of dollars worth of drugs disguised as garbage in an area where other people had access to the drugs and might even throw them away, it reinforced the State’s case that Jamison was knowingly in actual or constructive possession of the drugs at the time of his arrest, a key element of the trafficking charges.” Id.

Appellant attempts to distinguish Jamison by arguing the cases cited by this Court involved charges other than trafficking, such as conspiracy or possession with intent to distribute. What he fails to note is that Jamison itself involved trafficking cocaine and trafficking crack cocaine and not a charge requiring an intent element. This Court correctly determined the testimony of the value of the drugs was probative and relevant to establishing **possession** and not intent. Jamison, 372 S.C. at 653, 643 S.E.2d at 702 (“We agree with the trial court that jurors typically do not know the current street prices of illegal drugs. Grounsell’s valuation of the drugs, based on his years of law enforcement experience, allowed the jury to better determine whether a person would reasonably leave expensive narcotics unguarded and disguised as trash in a truck allegedly used by numerous people.”).

The same rationale set forth in Jamison applies in the instant case for why the testimony was relevant and probative and not unduly prejudicial. Appellant, whether during opening

statements, throughout his questioning of Trooper Harrison, or in closing argument, asserted the drugs were not his and the State failed to establish possession by Appellant. In demonstrating the drugs had a value between \$4,000 and \$14,000 dollars, the State demonstrated how unlikely and illogical it is to believe the drugs were just left in the car or placed by someone hoping that Appellant would drive them unknowingly to their destination. The testimony by Corporal Rogers was clearly probative and relevant and clearly not unduly prejudicial. Accordingly, the trial court did not err in allowing the testimony before the jury.

CONCLUSION

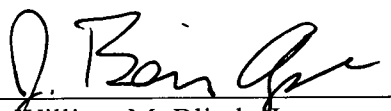
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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