STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2017-000802

THE STATE,

Respondent,

vs.

MICHAEL FRASIER, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

United States Supreme Court Cases:

Other Authorities:

STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly denied Appellant's motion to suppress the large quantity of cocaine found during the course of the traffic stop because, under the totality of the circumstances, the law enforcement officers involved in the stop observed numerous indicators of criminal activity, including Appellant's suspicious behavior at a bus station, the driver's evasive behavior before pulling over, Appellant's display of a heightened level of nervousness, the driver's unzipped pants, and Appellant's and the driver's repeated failure to respond to innocuous questioning about their travel plans, which led them to reasonably and correctly suspect Appellant was involved in criminal activity and which justified an extension of the stop so they could investigate further.

II.

The trial judge properly denied Appellant's motion to suppress the cocaine and other incriminating evidence discovered during the search of Appellant's pockets because the evidence and testimony presented during trial established Appellant freely and voluntarily provided the officer with consent to conduct a search of his person through both his words and actions, including his act of assuming a "search position," and Appellant neither placed any express limits upon his consent, expressly revoked his consent at any point prior to the officer's completion of the search, nor was coerced or threatened into providing his consent.

III.

The trial judge did not abuse her discretion by admitting into evidence statements Appellant made after being informed of and waiving his rights because, under the totality of the circumstances, those statements were not the product of deliberate "question first and warn later" questioning and, instead, were freely and voluntarily made following a valid waiver of rights. However, even assuming Appellant's statements were improperly admitted, any error was entirely harmless in light of the insignificance and immateriality of Appellant's statements when considered in conjunction with the other overwhelming evidence of Appellant's guilt presented during trial.

STATEMENT OF THE CASE

In August of 2013, Appellant Michael Frasier, Jr. was arrested after law enforcement officers discovered a large quantity of cocaine during the course of a traffic stop. In October of 2013, the Charleston County Grand Jury indicted Appellant for one count of trafficking in cocaine. On March 22, 2017, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Deadra L. Jefferson, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of twenty-five years along with a $50,000 fine, and the trial judge suspended the fine upon the completion of the twenty-five-year sentence. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On the morning of August 14, 2013, Sergeant Daniel Pritchard, an experienced narcotics officer with the North Charleston Police Department, responded to a bus station located in North Charleston, South Carolina, along with his partner, Detective Ryan Johnson, in order to conduct drug interdiction.[1] (Tr. pp. 49-50; pp. 178-179). Upon arriving, he parked his unmarked law enforcement vehicle a short distance away from the bus station, and the two began watching the bus station's exit. (Tr. p. 50; pp. 56-57; p. 179). As they did so, Appellant Michael Frasier, Jr. exited the bus station, stopped, and suspiciously scanned the entire parking lot before getting into a vehicle that was parked less than ten yards away from him directly in front of the exit. (Tr. pp. 56-57; p. 60; pp. 179-180; pp. 190-191). Based on his law enforcement experience, Sergeant Pritchard considered Appellant's actions to be suspicious and believed Appellant, who looked "uncomfortable," was scanning the parking lot for law enforcement officers or other threats before he entered the waiting vehicle. (Tr. pp. 50-51; p. 57; p. 60; pp. 179-180). In light of his suspicions, Sergeant Pritchard began following the vehicle as it drove away from the bus station, and, while doing so, he noticed one of the vehicle's brake lights was not functioning. (Tr. p. 52; p. 183). As a result, he and his partner contacted Officer Steve Hall of the North Charleston Police Department, advised him they had just observed a person behaving in a suspicious manner leave the bus station, and asked him to initiate a traffic stop of the vehicle based on the equipment violation. (Tr. pp. 52-53; p. 58; p. 62; p. 64; pp. 76-77; p. 183; pp. 198-200).

Upon receiving that information, Officer Hall located the vehicle, activated his vehicle's blue lights, and moved into position behind it. (Tr. p. 61; p. 201; Court's Ex. # 1 (Recording of

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[1] During trial, Sergeant Pritchard indicated he had fifteen total years of law enforcement experience and had five years of experience as a member of the narcotics division. (Tr. p. 49; pp. 178-179). Relying on that experience, he further indicated commercial buses are commonly known to be used by criminals to transport narcotics and other contraband. (Tr. pp. 180-181).

Traffic Stop)). In response, the driver of the vehicle moved out of the lane the officer was in, the officer followed, the driver again moved to a different lane, and the officer again followed. (Tr. p. 63; Court's Ex. # 1). At that point, the driver shifted back over to the far right lane but continued to drive on despite the fact the officer continued to follow behind in his vehicle. (Tr. p. 63; Court's Ex. # 1). Thereafter, over forty seconds after the officer activated his vehicle's blue lights and only after the officer signaled with his vehicle's siren, the driver of the vehicle pulled over onto a grassy area by the side of the road with the officer following behind.[2] (Tr. pp. 63-64; p. 276; Court's Ex. # 1).

After the driver finally stopped, Officer Hall approached the vehicle at approximately 8:07 a.m., advised Cheryl Jones, who was the vehicle's driver and whom the officer immediately noticed was wearing unzipped pants, about the brake light issue, and requested identification from both Jones and Appellant, who was sweating profusely in the vehicle's front passenger seat and appeared to be trying to avoid making eye contact or interacting with the officer. (Tr. pp. 63-66; p. 201; p. 246; pp. 276-277; Court's Ex. # 1). In response, Appellant, who seemed more nervous to the officer than the average motorist he typically encountered, provided his driver's license, but Jones was not in possession of her driver's license at that time.[3] (Tr. p. 65; Court's Ex. # 1). Officer Hall then asked Appellant and Jones where they were coming from, and he repeated the question three more times without receiving a clear response from either of the pair. (Tr. p. 65; pp. 201-202; Court's Ex. # 1). Over a minute later, Officer Hall still had not received a clear response to his simple innocuous question regarding their travel plans so he asked

[2] Notably, the driver continued to drive past similar grassy areas for some distance before eventually pulling over at the point she finally stopped her vehicle. (Court's Ex. # 1).

[3] During trial, Officer Hall noted he had conducted thousands of traffic stops during his law enforcement career, which had spanned eleven years by that point in time. (Tr. p. 198).

Appellant more specifically if he was coming from New York since he had a New York driver's license. (Tr. p. 66; Court's Ex. # 1). Instead of confirming or denying he was doing so, Appellant responded: "I just got here." (Court's Ex. # 1). Officer Hall then yet again inquired as to where Appellant and Jones were coming from, and, at that time, Appellant finally claimed to be coming from New York.[4] (Court's Ex. # 1). Thereafter, nearly three minutes into the stop, Officer Hall returned to his patrol vehicle to verify the information provided to him and prepare a warning ticket for Jones based on the brake light issue. (Tr. pp. 67; pp. 202-203; Court's Ex. # 1).

Several minutes later, dispatch confirmed Jones's and Appellant's information was "clear."[5] (Tr. p. 86; Court's Ex. # 1). Officer Hall then remained in his vehicle while completing the warning ticket, made contact with another officer, advised the officer Appellant was "nervous as shit," and indicated he had noticed Jones's pants were unzipped. (Tr. pp. 87-88; Court's Ex. # 1). After that, Officer Hall completed the warning ticket, and he decided to ask Jones for consent to search her vehicle instead of simply concluding the traffic stop because he believed something was "amiss" based on the suspicious circumstances he had observed up to that point. (Tr. p. 67; pp. 87-88; p. 203). Officer Hall then returned to Jones's vehicle a few minutes later, asked her to get out of the car, and, when she did, again asked her where she and Appellant were coming from. (Tr. p. 67; p. 88; Court's Ex. # 1). In response, Jones finally provided a clear answer to the question and stated she had just picked Appellant up at a bus

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[4] Although Officer Hall did not know it at the time, Appellant's claim was untrue as the bus ticket recovered from his pocket revealed he had come to the area from Houston, Texas. (Tr. p. 266; State's Ex. # 5 (Bus Ticket)).

[5] While the officer was waiting to hear back from dispatch, Jones opened her vehicle's driver's door and then shut it after a few seconds, which Officer Hall believed to be odd and unusual. (Tr. pp. 73-74; Court's Ex. # 1).

station.[6] (Tr. p. 102; Court's Ex. # 1). Officer Hall then pointed out Jones's pants were unzipped, and Jones claimed they were unzipped because she had just taken a shower. (Tr. p. 85; Court's Ex. # 1). At that point, Officer Hall asked Jones if she minded if he searched her vehicle, and she responded: "No." (Tr. pp. 67-68; p. 100; p. 247; Court's Ex. # 1).

In light of Jones's consent, Officer Hall asked another officer who had arrived at the scene to get Appellant out of the vehicle. (Tr. p. 68; Court's Ex. # 1). When Appellant exited the vehicle, Officer Hall asked him if he had anything on his person he needed to know about, and Appellant responded by inquiring if he had done anything wrong. (Court's Ex. # 1). Officer Hall then repeated his question, and Appellant reached for his pockets while responding in the negative. (Court's Ex. # 1). At that point, Officer Hall asked Appellant if he minded if he "checked" him, and Appellant responded: "I do, but . . ." (Tr. p. 68; p. 260; Court's Ex. # 1). Appellant then shrugged his shoulders and put his hands on the top of Jones's vehicle, which the officer viewed as consent to proceed with the requested search. (Tr. pp. 68-69; p. 93; p. 260; Court's Ex. # 1). Based on that, Officer Hall began a search of Appellant's person, and, as he conducted the search, Appellant stated: "In the pockets, too?" (Court's Ex. # 1). The officer then found a small plastic bag containing a white powdery substance inside Appellant's pocket, and he quickly asked Appellant about the substance.[7] (Tr. pp. 69-70; p. 95; p. 261; Court's Ex. # 1). Immediately after that, Officer Hall started to place handcuffs on Appellant, and, while he was doing so, Appellant tensed up. (Tr. p. 70; p. 95; p. 261; Court's Exhibit # 1). However, the

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[6] Notably, Jones's revelation of their travel plans came in response to Officer Hall's seventh question about that straightforward and uncomplicated subject. (Tr. p. 66; p. 82; p. 102; pp. 201-202; Court's Ex. # 1).

[7] In addition to the bag of cocaine, Officer Hall also found a "cut" straw in Appellant's pocket during the search. (Tr. pp. 268-269).

officer was able to get the handcuffs onto Appellant, and Appellant was taken into custody. (Tr. p. 70; p. 95; p. 261; Court's Ex. # 1).

After Appellant had been detained, Officer Hall again asked about the substance found during the search, and Appellant claimed it was "crushed-up Adderall." (Tr. p. 95; Court's Ex. # 1). Shortly after that, officers began searching Jones's vehicle at approximately 8:25 a.m. (Court's Ex. # 1). Roughly fourteen minutes later, Officer Hall found several more bags containing a white powdery substance hidden inside the pocket of a jacket located on the backseat of the vehicle next to where a toddler had previously been seated.[8] [9] (Tr. p. 70; p. 202; p. 261; p. 270; p. 288; Court's Ex. # 1). He then asked another officer to handcuff Jones, held up the jacket, and asked both Appellant and Jones to whom the jacket belonged at approximately 8:40 a.m. (Tr. pp. 71-72; Court's Ex. # 1). At that point, Appellant quickly claimed ownership of the jacket but did not reveal what was inside when asked if he knew about it contents. (Tr. p. 71; Court's Ex. # 1).

Following the discovery of the cocaine inside the vehicle, Sergeant Pritchard and his partner responded to the scene. (Tr. p. 53; p. 184; Court's Ex. # 1). Thereafter, approximately eight minutes after Appellant claimed ownership of the jacket, Officer Hall advised Appellant, who had been moved to the backseat of the officer's patrol vehicle, of his rights and asked him if the jacket belonged to him. (Tr. p. 98; Court's Ex. # 1). In response, Appellant confirmed it did while further denying Jones had anything to do with "it." (Tr. p. 96; Court's Ex. # 1). Officer

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[8] Notably, the plastic bags recovered from the jacket were the exact same type of plastic bag removed from Appellant's pocket during the search of his person. (Tr. pp. 263-264). Moreover, the jacket containing the additional cocaine appeared to a man's jacket and was found underneath a duffle bag containing men's clothing items. (Tr. p. 270).

[9] In addition to cocaine, the officer also located a bottle containing a dietary supplement commonly used to as a cutting agent for cocaine in the duffle bag. (Tr. p. 99; p. 265).

Hall then asked Appellant what was inside the jacket, and Appellant responded whatever they found inside it was what was inside it. (Tr. p. 189; p. 270; Court's Ex. # 1). After that, Sergeant Pritchard briefly spoke with Appellant about the substance found during the stop, and Appellant claimed responsibility without specifically identifying the substance as cocaine. (Tr. p. 55; p. 59; pp. 184-185; p. 187; p. 189; p. 194; Court's Ex. # 1).

Subsequently, the white powdery substance recovered during the course of the stop was confirmed through laboratory analysis to be cocaine, and Appellant was indicted for trafficking in cocaine.[10] (Tr. p. 25; pp. 286-298; Indictment). Prior to trial, defense counsel moved to suppress the incriminating evidence found during the course of the stop on several different grounds. (Motion to Suppress (Seizure Issue); Motion to Suppress (Consent Issue); Motion to Suppress Statements). In support of the motions, defense counsel contended the traffic stop was unlawfully extended without reasonable suspicion, Appellant did not voluntarily consent to the search of his person, and Appellant's statements were involuntary and obtained by use of an impermissible "question first and warn later" tactic. (Motion to Suppress (Seizure Issue); Motion to Suppress (Consent Issue); Motion to Suppress Statements). As a result, defense counsel asserted the drugs, statements, and other incriminating evidence should be excluded from trial. (Motion to Suppress (Seizure Issue); Motion to Suppress (Consent Issue); Motion to Suppress Statements).

Thereafter, Appellant proceeded forward to trial, and the trial judge conducted an in limine hearing on the suppression motions. (Tr. p. 13; p. 49). During the hearing, Sergeant Pritchard testified about his involvement in the stop and noted Appellant suspiciously scanned

[10] During trial, testimony was presented establishing the total weight of the white powdery substance collected during the stop was 196.4 grams, and the total weight specifically tested and confirmed to be cocaine was 115.1 grams while 81.4 grams remained untested. (Tr. p. 298).

the bus station parking lot before proceeding to a vehicle parked directly in front of him, which he indicated was "significant" to him in light of his training and experience. (Tr. pp. 49-52; p. 60). Likewise, Officer Hall recounted the details of the traffic stop and the discovery of Appellant's cocaine. (Tr. pp. 61-102). In testifying about stop, Officer Hall identified the following factors as arousing his suspicions and leading him to investigate further: (1) Jones made several lane changes and appeared to be trying to avoid him after he activated his vehicle's blue lights; (2) Jones took longer to stop her vehicle than the typical motorist he encountered during the many, many traffic stops he had conducted over the years; (3) Jones's pants were unzipped, which was significant due to the fact criminals routinely attempt to hide contraband in the crotches of their pants; (4) Appellant exhibited nervous behavior, including profuse sweating and avoidance of eye contact, that appeared to be more heightened than he had encountered in the numerous traffic stops he had conducted in the past; (5) both Appellant and Jones repeatedly failed to answer his simple question about where they were coming from, which he considered to be evasive and interesting under the circumstances; (6) Jones opened the driver's door as he was preparing the warning ticket, which he thought was odd and unusual in light of his significant experience; and (7) Appellant and Jones were coming from a bus station at which Appellant engaged in suspicious behavior, which he considered to be significant because drug traffickers commonly use buses to transport contraband. (Tr. p. 61; pp. 63-68; pp. 73-74; pp. 76-77; p. 82; p. 88; p. 102). In addition to that testimony, Officer Hall also testified about Appellant's response to his request to search him during the stop, and he indicated he believed he obtained Appellant's consent for a search based on Appellant's responsive behavior. (Tr. pp. 68-69; pp. 92-93). Furthermore, regarding Appellant's statements, Officer Hall indicated he did not immediately inform Appellant of his rights when he took him into custody due to Appellant

tensing up while being handcuffed, and he acknowledged he briefly questioned Appellant and Jones simultaneously about the cocaine he discovered without them first being informed of their rights.[11] (Tr. pp. 69-72; pp. 95-96). However, Officer Hall stated he did not do so as part of a deliberate "question first and warn later" tactic, and he confirmed he did inform Appellant of his rights approximately eight minutes later before non-threateningly speaking solely to him about the cocaine subsequent to the initial questioning that had been directed at both Appellant and Jones simultaneously. (Tr. pp. 69-73; pp. 95-96; p. 98).

Following the presentation of that testimony, the solicitor conceded the traffic stop was extended when Officer Hall asked Jones for consent to search the vehicle but asserted the extension was supported by reasonable articulable in light of the facts Appellant behaved suspiciously at the bus station, Jones drove in an evasive manner and delayed stopped when the officer activated his vehicle's blue lights, Jones's pants were unzipped, Jones and Appellant were evasive in response to the officer's questions, Appellant exhibited signs of heightened nervousness, and Jones suspiciously opened the driver's door during the course of the stop. (Tr. pp. 103-105; p. 107). Additionally, the solicitor asserted the search of the vehicle and the items in it was conducted with Jones's consent and the search of Appellant's person was conducted with Appellant's consent, which was conveyed through Appellant's actions and words. (Tr. pp. 109-110; p. 139; pp. 146-147). Furthermore, the solicitor conceded Appellant's statements prior to being informed of his rights were inadmissible but contended Appellant's statements after being informed of his rights were admissible because the initial questioning was brief, unspecific, and not conducted as the result of a deliberate "question first and warn later" tactic

[11] In light of Appellant tensing up while being handcuffed, Officer Hall explained he believed informing Appellant of his rights at that time would have escalated the situation, and he noted immediately informing suspects of their rights when they are handcuffed many times results in an increase of tension. (Tr. p. 70).

and because a break occurred and new officers were present for the second phase of questioning. (Tr. p. 129; pp. 141-146).

Meanwhile, defense counsel maintained all the evidence should be suppressed pursuant to the state and federal constitutions. (Tr. p. 113; p. 129). In support of that request, defense counsel asserted the traffic stop was unlawfully extended without reasonable suspicion. (Tr. p. 113; p. 117). Additionally, defense counsel contended Appellant did not consent to the search of his person because his response to the officer was ambiguous and he protested when the officer searched his pockets. (Tr. p. 126; pp. 128-129). Furthermore, defense counsel maintained his statements were inadmissible as the product of a "question first and warn later" tactic and were involuntary because Jones was handcuffed during the course of the stop. (Tr. pp. 134-135; p. 137).

After taking the matter under advisement, considering the arguments of counsel, and viewing the recording of the traffic stop, the trial judge denied the suppression motions. (Tr. p. 159). In denying the motions, the trial judge concluded the traffic stop was extended but determined the extension was supported by reasonable suspicion based on the factors identified in the case.[12] (Tr. pp. 153-157). Additionally, the trial judge determined the search of the vehicle was conducted with Jones's voluntary consent and the search of Appellant's person was conducted with Appellant's consent based on his body language and words, which she found to be clear, unambiguous, and consensual. (Tr. p. 118; p. 151; p. 153; p. 158). Furthermore, the trial judge agreed with the parties Appellant's initial statements made before he was informed of his rights were inadmissible, and she concluded Appellant's statements made after he was

[12] Although the trial judge found the extension of the traffic stop was supported by reasonable suspicion, she indicated she did not consider Jones's evasive driving and delay in pulling over in reaching that conclusion as she believed those actions were appropriate under the circumstances. (Tr. pp. 156-157).

informed of his rights were voluntary and admissible. (Tr. p. 147). In reaching that conclusion, the trial judge noted Appellant was not subjected to a continuous interrogation, the initial questioning was limited, the initial questioning was directed at both Jones and Appellant, the initial questioning could have been exculpatory, the later questioning was different, Appellant was informed of and understood his rights before participating in the later questioning, no threats or coercion were used to extract Appellant's statements, and Appellant's experience with the criminal justice system bolstered a finding he understood what he was doing.[13] (Tr. pp. 129-131; pp. 147-151).

Following the trial judge's ruling, the trial proceeded forward, and the cocaine and other incriminating items found during the course of the traffic stop were admitted into evidence over defense counsel's objection.[14] (Tr. p. 265; pp. 268-269; p. 295). Additionally, a redacted recording of the traffic stop was admitted into evidence over defense counsel's objection and played for the jury, and, through it, the jury heard the statements Appellant made after he was fully informed of his rights without hearing his prior statements. (Tr. p. 198; pp. 269-270; State's Ex. # 6 (Redacted Recording of Traffic Stop)).

Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (Tr. p. 369). Following the verdict, the trial judge sentenced Appellant to a twenty-five-year term of imprisonment along with a suspended fine. (Tr. p. 376).

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[13] At the outset of trial, the solicitor informed the trial judge Appellant had previously been convicted of possession of a controlled substance with intent to distribute, possession of marijuana, and possession of heroin. (Tr. pp. 8-9). Furthermore, the solicitor indicated Appellant had one additional prior conviction for a drug-related offense, but he noted that particular conviction had been reversed on appeal. (Tr. pp. 7-8).

[14] Before the cocaine was admitted into evidence, Jones testified before the jury and specifically denied the cocaine found in her vehicle belonged to her. (Tr. p. 248).

STANDARD OF REVIEW

Standard of Review for Issues I and II

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. State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015). 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.").

Standard of Review for Issue III

In appeals involving a challenge to an evidentiary ruling, an appellate court will not reverse a trial judge's ruling on such a matter absent a clear abuse of discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a

trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("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."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). Likewise, "[w]hen reviewing a trial court's ruling concerning voluntariness [of a statement], [the appellate court] does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by **any evidence**." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (emphasis added). Importantly, "[t]he trial judge's determination of the voluntariness [of a statement] will not be disturbed unless so manifestly erroneous as to show an abuse of discretion amounting to an error of law." State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998).

ARGUMENT

I.

The trial judge properly denied Appellant's motion to suppress the large quantity of cocaine found during the course of the traffic stop because, under the totality of the circumstances, the law enforcement officers involved in the stop observed numerous indicators of criminal activity, including Appellant's suspicious behavior at a bus station, the driver's evasive behavior before pulling over, Appellant's display of a heightened level of nervousness, the driver's unzipped pants, and Appellant's and the driver's repeated failure to respond to innocuous questioning about their travel plans, which led them to reasonably and correctly suspect Appellant was involved in criminal activity and which justified an extension of the stop so they could investigate further.

Appellant contends the trial judge reversibly erred by failing to suppress the evidence discovered during the course of the traffic stop. In support of that contention, Appellant maintains the officer who conducted the stop unlawfully extended it without possessing reasonable suspicion of criminal activity. To the contrary, the officers involved in the traffic stop observed numerous indicators of criminal activity, which included Appellant's suspicious behavior at a bus station, the driver's evasive behavior before pulling over, Appellant's display of a level of nervousness that was more heightened than the level of nervousness exhibited by a typical motorist, the driver's unzipped pants, and Appellant's and the driver's repeated failure to respond to innocuous questioning about their travel plans. Based on their observation of those suspicious factors both prior to and during the traffic stop, the officers possessed reasonable articulable suspicion of criminal activity, which permitted them to extend the stop in order to investigate their suspicions further. Therefore, the consent obtained and evidence discovered during the stop were not the products of an unlawful detention, the trial judge properly denied the suppression motion, and her ruling was supported by the evidence and testimony presented during trial. Accordingly, there is no proper basis upon which to disturb the trial judge's ruling on appeal. Appellant's conviction should be affirmed.

Both the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution protect the right of the people "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; see S.C. Const. art. I, § 10 ("The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated[.]"). Significantly, based on their plain wording, the touchstone of those constitutional provisions 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. 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[.]").

Pursuant to both the state and federal constitutions, "[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his [constitutional] 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)). The reasonableness of a stop or detention "is measured in objective terms by examining the totality of the circumstances." Ohio v. Robinette, 519 U.S. 33, 39 (1996).

For constitutional 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 relevant constitutional provisions 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 the basis for the stop and "ordinarily continues, and remains reasonable, for the duration of the stop." Arizona v. Johnson, 555 U.S. 323, 333 (2009). During the course of a lawful traffic stop, 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. Significantly, 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 v. United States, __ U.S. __, 135 S. Ct. 1609, 1614 (2015) ("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.").

While conducting a 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, 135 S. Ct. at 1614 ("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). Importantly though, 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, such a detention 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.

Reasonable suspicion 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)). Significantly, the reasonable suspicion standard "is not a high bar." United States v. Coker, 648 F. App'x 541, 544 (6th Cir. 2016) (citing Navarette v. California, __ U.S. __, 134 S. Ct. 1683 (2014)). To the contrary, it "is a less demanding standard than probable cause" and simply requires a showing of "a minimal level of objective justification" in order for the existence of reasonable suspicion to be established. Illinois v. Wardlow, 528 U.S. 119, 123 (2000); see Kaley v. United States, __ U.S. __, 134 S. Ct. 1090, 1103 (2014) (recognizing probable cause itself "is not a high bar"). The concept of 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)). Stated simply, it is something more than "a general hunch" but something less than what is necessary to establish probable cause, and the question of whether it exists is necessarily highly fact-specific. State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); 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."); see also State v. Wallace, 392 S.C. 47, 51-52, 707 S.E.2d 451, 453 (Ct. App. 2011) ("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.' " (quoting Foreman, 369 F.3d at 781)), cert. dismissed as improvidently granted, 401 S.C. 264, 737 S.E.2d 480 (2012).

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 present must not be considered piecemeal or in isolation. See United States v. Arvizu, 534 U.S. 266, 273 (2002) (instructing courts are precluded from conducting a "divide-and-conquer analysis" when considering the totality of the circumstances); see also 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, 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 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 Arvizu, 534 U.S. at 273 ("[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 innocent travel can establish reasonable suspicion when viewed together in totality. Sokolow, 490 U.S. at 9; see State v. Pope, 410 S.C. 214, 222, 763 S.E.2d 814, 819 (Ct. App. 2014) ("Factors that are alone consistent with innocent travel can, when taken together produce a reasonable suspicion of criminal activity." (citations and internal quotations omitted)).

In the case the sub judice, the key officers involved in traffic stop—Sergeant Pritchard and Officer Hall—were highly-experienced officers with over a decade in law enforcement who had each conducted drug investigations for a number of years as part of the North Charleston Police Department's narcotics division. Equipped with that specialized background and accompanying knowledge, the officers observed numerous indicators of criminal activity both prior to and during the course of the traffic stop that led them to reasonably—and correctly—suspect Appellant was engaged in criminal activity.[15] See Arvizu, 534 U.S. at 273 (recognizing law enforcement officers' experience and specialized training enables them to draw inferences and deductions from cumulative information that could likely be missed by an untrained person).

[15] Although its propriety has not been challenged on appeal, the initial traffic stop itself was unquestionably proper in light of the fact one of the brake lights on Jones's vehicle was not working. See S.C. Code Ann. § 56-5-4730 ("When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition."); S.C. Code Ann. § 56-5-5310 ("No person shall drive or move on any highway any vehicle unless the equipment thereon is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway."); see also State v. Vinson, 400 S.C. 347, 352, 734 S.E.2d 182, 184 (Ct. App. 2012) ("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.").

Specifically, regarding those indicators, Sergeant Pritchard observed Appellant leave a bus station and suspiciously scan the entire parking lot before getting into Jones's vehicle despite the fact it was parked directly in front of him just a few yards away. In light of his narcotics background and knowledge regarding the regular use of buses by drug traffickers, Sergeant Pritchard perceived that behavior to be suspicious as it appeared to his trained eyes Appellant was checking for rivals or law enforcement officers before proceeding forward, which supported a conclusion he may have been transporting drugs or other contraband. See United States v. Garcia, 339 F.3d 116, 119 (2nd Cir. 2003) (recognizing conduct consistent with drug trafficking, such as engaging in what appears to be "counter-surveillance," can support a finding of reasonable suspicion); United States v. Smith, 201 F.3d 1317, 1323 (11th Cir. 2000) (holding officers possessed reasonable suspicion for an investigatory seizure based on a number of facts, including the fact Smith's confederate "scanned and surveilled the terminal, watching every person who passed by him in the bus station"); United States v. Jaramillo, 891 F.2d 620, 627 (7th Cir. 1989) (finding the Jaramillos' act of scanning of the airport in a manner suggestive of counter-surveillance after getting off a plane supported a finding of reasonable suspicion); United States v. Gaviria, 740 F.2d 174, 182 (2nd Cir. 1984) (concluding the suspects' behavior in "cautiously" leaving a building and "looking up and down the block before proceeding" supported a finding of reasonable suspicion); see also Sibron v. New York, 392 U.S. 40, 66 (1968) (recognizing "deliberately furtive actions . . . are strong indicia of mens rea").

Additionally, after Officer Hall subsequently activated his vehicle's blue lights to initiate the traffic stop, the officer observed Jones change lanes multiple times in an apparent effort to move away from his patrol vehicle and fail to stop for over forty seconds even though she was capable of doing so at several locations prior to the one where she finally pulled over. Based on

his experience conducting thousands of traffic stops, Officer Hall was capable of evaluating Jones's behavior in comparison to the behavior of the many other drivers he had stopped in the past, and he believed her evasive driving was unusual in comparison to the typical driving of others and, therefore, may have been an indicator of criminal activity. See Wallace, 392 S.C. at 55, 707 S.E.2d at 455 (considering the fact Wallace abnormally braked after the officer initiated the traffic stop as a factor supporting a finding of reasonable suspicion); see also United States v. Bizier, 111 F.3d 214, 218 (1st Cir. 1997) (finding the fact "it took longer than usual for Bizier to pull over to the roadside" was an appropriate factor justifying the troopers' ensuing actions when considered as part of the totality of the circumstances)

Likewise, immediately after he approached Jones's vehicle, Officer Hall noticed Jones's pants were fully unzipped, and her pants were still unzipped when she subsequently exited her vehicle. In light of his training and experience, Officer Hall was aware criminals regularly attempt to hide contraband in the crotches of their pants to safeguard it, and Officer Hall believed that indicator to be of such significance he advised another officer about it during the course of the stop. Accordingly, due to the fact Jones's pants were unzipped, Officer Hall's suspicions regarding criminal activity were legitimately raised, and they were further raised by Jones's unusual act of opening her car door during the stop. See United States v. Smith, 549 F.3d 355, 360 (6th Cir. 2008) (considering the fact Smith's pants were unzipped, which was consistent with the officer's knowledge drug traffickers commonly hide contraband in the crotch area, as a pertinent factor in concluding a search was supported by probable cause).

Furthermore, upon approaching Jones's vehicle, Officer Hall noticed Appellant was exhibiting signs of heightened nervousness and appeared to be attempting to avoid making eye contact with him, and the officer felt like Appellant's level of nervousness was significant

enough to warrant mentioning it to another officer. In light of the officer's experience from conducting thousands of traffic stops, Appellant's unusual nervousness supported an inference criminal activity may have been afoot. See State v. Moore, 415 S.C. 245, 254, 781 S.E.2d 897, 902 (2016) ("Moore exhibited excessive nervousness in the judgment of the officer, which lends support to a finding of reasonable suspicion to prolong the traffic stop."); see also Milledge v. State, Op. No. 27784 (S.C. Sup. Ct. filed March 14, 2018) (Shearouse Adv. Sh. No. 11 at 46, 52) ("[O]fficers may also draw inferences and conclusions from the 'extreme nervousness' of motorists during traffic stops, particularly where, in the officers' experience, the nervousness is excessive when compared to other motorists who are not engaged in criminal activity.").

Finally, during the course of the traffic stop, Officer Hall repeatedly asked Appellant and Jones where they were coming from, and the pair repeatedly failed to answer that innocuous and easy-to-answer question. In light of the fact Appellant and Jones should obviously have known where they just came from and would not have had a logical or innocent reason to keep that information from the officer unless it was in some way suggestive of wrongdoing, Officer Hall correctly perceived their evasiveness in responding to that particular question the first **six times** he asked it to be a strong indicator something was amiss. See United States v. Tinnie, 629 F.3d 749, 752 (7th Cir. 2011) (recognizing evasiveness or silence in response to simple questions can support a finding of reasonable suspicion).

Viewing those factors **collectively** as required, the highly-experienced officers involved in Appellant's case possessed the reasonable suspicion necessary to extend the traffic stop and investigate their suspicions further. See District of Columbia v. Wesby, __ U.S. __, 138 S. Ct. 577, 588 (2018) (recognizing "the whole is often greater than the sum of its parts—especially when the parts are viewed in isolation" and explaining even the higher probable cause standard

"does not require officers to rule out a suspect's innocent explanation for suspicious facts"); Cortez, 449 U.S. at 418 ("[A] trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person."). Accordingly, for all the foregoing reasons, Officer Hall's decision to extend the traffic stop was constitutionally reasonable under the totality of the circumstances, the consent obtained and evidence discovered during the search were not the products of an unlawful detention, and the trial judge's decision to deny the suppression motion was entirely proper and supported by the evidence and testimony presented during trial. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (instructing "an appellate court must affirm if there is any evidence to support the ruling" in a case involving a Fourth Amendment issue); see also Moore, 415 S.C. at 253, 781 S.E.2d at 901 (rejecting an analysis in which an appellate court reweighed the facts and substituted its own de novo judgment when considering whether an extension of a traffic stop was supported by reasonable articulable suspicion on criminal activity). As a result, there is no proper basis upon which to reverse the trial judge's decision on appeal. Cf. State v. Jones, 364 S.C. 51, 59, 610 S.E.2d 846, 850 (Ct. App. 2005) ("In the case at hand, there is evidence to support the trial judge's findings and we cannot say his findings are clearly erroneous. We therefore find no abuse of discretion."). Appellant's conviction should be affirmed.

II.

The trial judge properly denied Appellant's motion to suppress the cocaine and other incriminating evidence discovered during the search of Appellant's pockets because the evidence and testimony presented during trial established Appellant freely and voluntarily provided the officer with consent to conduct a search of his person through both his words and actions, including his act of assuming a "search position," and Appellant neither placed any express limits upon his consent, expressly revoked his consent at any point prior to the officer's completion of the search, nor was coerced or threatened into providing his consent.

Appellant contends the trial judge committed reversible error by failing to suppress the evidence discovered during the search of his pockets. In support of that contention, Appellant maintains he did not voluntarily provide consent to the officer for the search. To the contrary, through both his actions and words, Appellant freely and voluntarily consented to a search of his person without being threatened or coerced into doing so, and he neither placed any express limitations on his consent nor expressly revoked his consent once it was provided. Under those circumstances, it was entirely reasonable for Officer Hall to conduct a search of Appellant's person based on the consent provided by Appellant, and that search validly led to the discovery of Appellant's cocaine and other incriminating evidence. Accordingly, the trial judge properly denied the suppression motion, and, since her factual findings in regard to the voluntariness of Appellant's consent were fully supported by the evidence and testimony presented during trial, there is no proper basis upon which to disturb that ruling on appeal. Appellant's conviction should be affirmed.

Both the United States Constitution and the South Carolina Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; S.C. Const. art. I, § 10. For constitutional purposes, a search occurs when "an expectation of privacy that society is prepared to consider reasonable is infringed." United States v. Jacobsen, 466 U.S. 109, 113 (1984). Generally speaking, any evidence seized as the result of an unreasonable search and seizure must

be excluded from trial. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). The well-settled rule is warrantless searches are unreasonable per se **unless** they fall under an exception to the warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978); see Kentucky v. King, 563 U.S. 452, 462 (2011) ("[W]arrantless searches are allowed when the circumstances make it reasonable . . . to dispense with the warrant requirement.").

In South Carolina, several different exceptions to the warrant requirement have been recognized, including the consent exception. State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012). Pursuant to the consent exception, an officer can validly conduct a warrantless search of a constitutionally-protected area when he receives free and voluntary consent. See State v. Adams, 377 S.C. 334, 339, 659 S.E.2d 272, 275 (Ct. App. 2008) (holding warrantless searches and seizures are constitutionally permissible when conducted under the authority of voluntary consent). Factors to be considered when determining whether consent was validly provided include the characteristics of the individual providing consent, which include the individual's age, maturity, education, intelligence, and experience, and the conditions under which the consent was granted, which include the conduct of the officer asking for consent, the number of officers present, and the duration of the encounter. United States v. Boone, 245 F.3d 352, 361-362 (4th Cir. 2001). Significantly, the State bears the burden of establishing the voluntariness of consent, and the voluntariness issue is a question of fact to be determined from the totality of the circumstances. Pichardo, 367 S.C. at 105, 623 S.E.2d at 851.

In the case at bar, Officer Hall possessed reasonable suspicion of criminal activity at the time he requested permission from Appellant to search him for all the reasons previously articulated. See Boone, 245 F.3d at 362 ("If an individual voluntarily consents to a search while justifiably detained on reasonable suspicion, the products of the search are admissible."); see also

Pichardo, 367 S.C. at 105, 623 S.E.2d at 851 ("[W]hen an officer asks for consent to search *after* an unconstitutional detention, the consent procured is per se invalid unless it is both voluntary and not an exploitation of the unlawful detention."); cf. Willard, 374 S.C. at 136, 647 S.E.2d at 256 ("We likewise find the search was not an exploitation of an unlawful detention. As previously discussed, we find reasonable suspicion existed to make the stop and detention. Furthermore, although Willard allegedly noticed the officers' guns when first surrounded, there is no evidence of any threat of force against Willard once he had exited his vehicle. Nor is there evidence of coercion or promises made."). Therefore, Appellant's consent to the search was **not** the invalid product of an unlawful detention since he was not unlawfully detained.

Moreover, prior to the search, Appellant provided consent to Officer Hall in a free and voluntary manner through both his words and actions when asked if he minded if the officer searched him. Specifically, regarding his words, Appellant initially stated he did mind if the officer searched him, but he immediately followed that statement with the word "but," which logically and reasonably expressed an indication he did, in fact, mind **yet** was nonetheless willing to permit the search. Similarly, regarding his actions, Appellant shrugged his shoulders, placed his hands on top of Jones's vehicle, positioned himself in a manner such that the officer could search him, and exposed both his body and his pockets to the officer. Critically, when considered in conjunction with his use of the word "but," Appellant's actions in assuming a "search position" in response to the officer's request for permission to conduct a search logically were designed to convey—and did convey—consent for a search to the officer and would have conveyed such consent to any reasonable person under the circumstances. See United States v. Guerrero, 472 F.3d 784, 789-790 (10th Cir. 2007) ("Consent may . . . be granted through gestures or other indications of acquiescence, so long as they are sufficiently comprehensible to a

reasonable officer."); see also United States v. Vongxay, 594 F.3d 1111, 1120 (9th Cir. 2010) (affirming the district court judge's finding Vongxay impliedly consented to a search of his person where an officer asked Vongxay for permission to search him and Vongxay responded by raising his hands to his head so as to enable a search); Chism v. State, 312 Ark. 559, 569, 853 S.W.2d 255, 261 (Ark. 1993) (finding Chism's act of assuming a search position constituted "overwhelming evidence of [Chism]'s consent to search").

Furthermore, demonstrating the voluntariness of Appellant's consent, Appellant appeared to be of a sufficient age, maturity, and intellect to provide consent, and his multiple previous convictions for drug offenses during his lifetime established he had prior experience with law enforcement and was not an ingénue in regard to the criminal justice system. Cf. United States v. Watson, 423 U.S. 411, 424-425 (1976) ("There is no indication in this record that Watson was a newcomer to the law, mentally deficient, or unable in the face of a custodial arrest to exercise a free choice." (footnote omitted)). Likewise, the traffic stop had started only thirteen minutes earlier by the time Officer Hall asked Appellant for consent, and, for the vast majority of those thirteen minutes, Appellant had simply been sitting in the front passenger seat of Jones's stopped vehicle. See State v. Mattison, 352 S.C. 577, 584, 575 S.E.2d 852, 855 (2003) ("Custody alone . . . is not enough in itself to demonstrate a coerced consent to search."). Similarly, Officer Hall did not undertake any coercive or threatening actions, such as pulling out his service weapon, in order to obtain Appellant's consent, and only one other officer, who was also not engaging in any threatening or coercive actions, appeared to be present at the scene at the time Appellant consented to the search. Cf. Watson, 423 U.S. at 424 (1976) ("There was no overt act or threat of force against Watson proved or claimed."). Finally, Appellant placed no express limits on his consent precluding a search of his pockets, and, during the course of the search, Appellant did

not expressly attempt to revoke his consent or engage in any actions that would have reasonably indicated to the officer his consent had been revoked. See State v. Trapp, 420 S.C. 217, 242, 801 S.E.2d 742, 755 (Ct. App. 2017) (concluding a search did not exceed the consent provided where "Trapp presented no evidence that he limited the consent he gave to the police in their investigation"); see also Jimeno, 500 U.S. at 251 ("The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?"); cf. United States v. Stinson, 468 F. App'x 285, 288 (4th Cir. 2012) ("A 'typical reasonable person' would have understood the exchange between Edwards and Stinson to mean that Edwards could search Stinson's pockets."). Instead, based on Appellant's actions and words during the search, Appellant merely appeared to seek clarification from the officer as to the whether the officer was going to search his pockets, and, in doing so, Appellant did **not** tell the officer a search of his pockets was not permitted or had not been authorized. See Mattison, 352 S.C. at 587, 575 S.E.2d at 857 ("Conduct falling short of 'an unequivocal act or statement of withdrawal' is not sufficiently indicative of an intent to withdraw consent. Effective withdrawal of a consent to search requires unequivocal conduct, in the form of either an act, statement or some combination of the two, that is inconsistent with consent previously given." (citations omitted)); see also United States v. Alfaro, 935 F.2d 64, 67 (5th Cir. 1991) (explaining hesitancy is not sufficient to constitute revocation of consent); cf. State v. Funderburk, 367 S.C. 236, 240-241, 625 S.E.2d 248, 250 (Ct. App. 2006) ("Because Funderburk gave a general consent to a search of the vehicle and failed to object to Robinson's search, we find the trial court's ruling was supported by the evidence, and, therefore, we find no error.").

Under those circumstances, Appellant's consent was freely and voluntarily given, and Officer Hall's consensual search of Appellant was constitutionally permissible. Cf. Mattison, 352 S.C. at 585, 575 S.E.2d at 856 ("No evidence indicates Mattison gave consent while incompetent. Moreover, the record reveals no overt act, threat of force, or other form of coercion. Mattison claims the fact that he was 'surrounded' by a drug dog and four police officers with squad cars flashing blue lights demonstrated a 'show of force' that indicates coercion. This argument lacks merit, as their presence was necessary at a crime scene. Thus, we cannot say as a matter of law that this activity constituted coercion, because the drug dog was instrumental in finding drugs in the car and the multiplicity of suspects warranted the plethora of law enforcement officers."). As a result, the trial judge properly exercised her discretion by finding the search was supported by consent and denying the suppression motion, and her factual findings on the issue of consent were fully supported by the testimony and evidence presented during trial, which means there is no proper basis to disturb those factual findings on appeal. See id. at 584, 575 S.E.2d at 856 ("A trial judge's conclusions on issues of fact regarding voluntariness will not be disturbed on appeal unless so manifestly erroneous as to be an abuse of discretion."); cf. United States v. Lattimore, 87 F.3d 647, 651 (4th Cir. 1996) ("[E]ven when an appellate court is convinced that it would have reached an opposite conclusion had it been charged with making the factual determination in the first instance, and although the temptation to substitute its judgment is particularly seductive when the encounter was recorded, a reviewing court may not reverse the decision of the district court that consent was given voluntarily unless it can be said that the view of the evidence taken by the district court is implausible in light of the entire record." (citing Anderson v. City of Bessemer City, 470 U.S. 564 (U.S. 1985)). Appellant's conviction should be affirmed.

III.

The trial judge did not abuse her discretion by admitting into evidence statements Appellant made after being informed of and waiving his rights because, under the totality of the circumstances, those statements were not the product of deliberate "question first and warn later" questioning and, instead, were freely and voluntarily made following a valid waiver of rights. However, even assuming Appellant's statements were improperly admitted, any error was entirely harmless in light of the insignificance and immateriality of Appellant's statements when considered in conjunction with the other overwhelming evidence of Appellant's guilt presented during trial.

Appellant contends the trial judge reversibly erred by admitting evidence of the statements he made after he was informed of and waived his rights. In support of that contention, Appellant maintains those statements were not voluntary and were the product of impermissible "question first and warn later" questioning. To the contrary, the officer did not deliberately employ any impermissible questioning tactics when he briefly spoke with Appellant during the course of the traffic stop, and Appellant's post-warning statements were voluntarily made following a valid waiver of his rights under the totality of the circumstances. Therefore, the trial judge did not abuse her broad discretion in finding Appellant's voluntary statements to be admissible. However, even assuming arguendo the trial judge erred by admitting Appellant's statements into evidence, any error was harmless beyond a reasonable doubt in light of the fact Appellant's statements were insignificant and immaterial when considered in conjunction with the other overwhelming evidence of Appellant's guilt presented during trial. Therefore, there are no proper grounds upon which to disturb Appellant's conviction on appeal. Appellant's conviction should be affirmed.

A. Propriety of the Admission of Appellant's Statements

"[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda v.

Arizona, 384 U.S. 436, 444 (1966). Prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, he has a right to an attorney, and an attorney will be appointed to him prior to any questioning if he desires one and cannot afford one. Id. at 479. Once those warnings are given to a suspect and the suspect is afforded an opportunity to exercise his rights, the suspect may knowingly and intelligently waive those rights and make a statement. Id.

In the event a defendant is **not** advised of his constitutional rights before making a statement during custodial interrogation, the statement is presumed to be compelled and may not be used against the defendant during trial. Oregon v. Elstad, 470 U.S. 298, 317 (1985). However, if a defendant is subsequently advised of his constitutional rights and then makes an additional statement, the defendant's additional statement may potentially be admissible during trial if the State establishes by a preponderance of the evidence it was voluntarily made after a effective waiver of rights. See Missouri v. Seibert, 542 U.S. 600, 617 (2004) (plurality opinion) (holding the use of a deliberate "question first and warn later" tactic precludes the admission of a subsequent post-warning statement unless the facts support a conclusion the warnings given could have been effective); Seibert, 542 U.S. at 622 (Kennedy, J., concurring) ("The admissibility of postwarning statements should continue to be governed by the principles of Elstad unless the deliberate two-step strategy was employed. If the deliberate two-step strategy has been used, postwarning statements that are related to the substance of prewarning statements must be excluded unless curative measures are taken before the postwarning statement is made."); Elstad, 470 U.S. at 314 ("[A]bsent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion. A subsequent administration of Miranda warnings to a

suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement. In such circumstances, the finder of fact may reasonably conclude that the suspect made a rational and intelligent choice whether to waive or invoke his rights."); see also Marks v. United States, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds . . . .' "); United States v. Williams, 435 F.3d 1148, 1157-1158 (9th Cir. 2006) (recognizing Justice Kennedy's concurrence in Seibert was the controlling opinion as it was decided on the narrowest grounds upon which a majority of the justices could agree).

In determining whether a valid waiver of rights occurred, the particular facts and circumstances surrounding the case must be examined, including the background, experience, and conduct of the accused. North Carolina v. Butler, 441 U.S. 369, 374-375 (1979); see State v. Navy, 386 S.C. 294, 302, 688 S.E.2d 838, 841-842 (2010) (noting the Seibert plurality opinion identified the following factors as relevant to a determination of whether a "midstream" waiver of rights could be effective: (1) the completeness and detail of the questions and answers in the first round of interrogation; (2) the timing and setting of the different rounds of interrogation; (3) the continuity of police personnel; and (4) the degree to which the interrogator's questions treated the rounds of interrogation as continuous); see also Berghuis v. Thompkins, 560 U.S. 370, 384 (2010) (instructing the prosecution must establish the accused understood his rights in order for the accused's waiver of those rights to be valid). Importantly, a valid waiver of rights can be established through proof of express written or oral statements or can be inferred from the actions and words of the person interrogated. Butler, 441 U.S. at 373; see Berghuis, 560 U.S. at

384 ("An 'implicit waiver' of the 'right to remain silent' is sufficient to admit a suspect's statement into evidence." (citation omitted)); State v. Kennedy, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998) ("An express waiver is unnecessary to support a finding that the defendant has waived the right to remain silent or the right to counsel guaranteed by Miranda.").

However, even if a defendant validly waives his rights and makes a statement, a confession or statement by a defendant is nonetheless inadmissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). When analyzing the voluntariness of a defendant's statements, the trial judge should examine the totality of the circumstances under which the statements were made, including the characteristics of the accused and the details of the interrogation, to determine whether voluntariness has been demonstrated. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). Factors to be considered in the totality of the circumstances analysis include: (1) the age of the accused; (2) the educational level and intelligence of the accused; (3) the accused's knowledge of his constitutional rights; (4) the length of the accused's detention; (5) the nature of the questioning and whether it was repeated and prolonged; and (6) the presence or absence of the use of punishment, including deprivation of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). Ultimately, the voluntariness analysis hinges upon whether the confession was "the product of an essentially free and unconstrained choice by its maker" or was the product of an overborne will and critically-impaired capacity for self-determination. Id. at 225-226; see State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996) ("The question is whether the defendant's will was overborne when he confessed."); see also Miller v. Fenton, 796 F.2d 598, 604 (3rd Cir. 1986) ("We emphasize that the test for voluntariness is not a but-for test: we do not ask whether the

confession would have been made in the absence of the interrogation. Few criminals feel impelled to confess to the police purely of their own accord, without any questioning at all.").

In Appellant's case, Appellant's pre-warning statements were unquestionably inadmissible in light of the fact those statements were elicited through custodial interrogation that was conducted before Appellant was informed of and waived his rights. See Elstad, 470 U.S. at 317 ("When police ask questions of a suspect in custody without administering the required warnings, Miranda dictates that the answers received be presumed compelled and that they be excluded from evidence at trial in the State's case in chief."); see also State v. Miller, 375 S.C. 370, 379, 652 S.E.2d 444, 449 (Ct. App. 2007) ("A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights."). Accordingly, the trial judge properly excluded those statements during trial.

However, despite the fact Appellant's initial statements were inadmissible, the statements Appellant made after he was informed of his rights were nonetheless properly admitted into evidence for a variety of different reasons. Initially, as demonstrated by Officer Hall's testimony, Appellant's post-warning statements were **not** the product of the deliberate use of a "question first and warn later" questioning tactic. See United States v. Mashburn, 406 F.3d 303, 309 (4th Cir. 2005) ("Justice Kennedy's opinion . . . represents the holding of the Seibert Court: The admissibility of postwarning statements is governed by Elstad unless the deliberate 'question-first' strategy is employed."); see also United States v. Moore, 670 F.3d 222, 230 (2nd Cir. 2012) ("If [the officer did not deliberately engaged in a two-step questioning process], the defendant's post-warning statement is admissible so long as it, too, was voluntary[.]"). Instead, Officer Hall briefly questioned Appellant without informing him of his rights during the course of the stop in order to avoid escalating an already tense situation, which was excusable under the

circumstances and was not indicative of a deliberate intent to circumvent any constitutional requirements. See Elstad, 470 U.S. at 315-316 (excusing an officer's failure to initial advise a suspect of his rights where the failure may have resulted from confusion or may "simply have reflected . . . reluctance to initiate an alarming police procedure"); see also Moore, 670 F.3d at 229 ("[I]f it is found, after weighing the investigator's credibility, that the investigator's intent was not 'calculated . . . to undermine Miranda,' delay will not require exclusion of the later, warned statement even if the court finds that the delay was for an illegitimate reason and even in the absence of curative measures." (citation omitted)).

Beyond the absence of deliberate police misconduct, under the totality of the circumstances of Appellant's case, Appellant's post-warning statements were voluntary and only made after a valid waiver of his rights. Demonstrating the voluntariness of Appellant's statements, the initial pre-warning questioning was exceedingly brief and was limited to just a few questions.[16] Cf. Navy, 386 S.C. at 303, 688 S.E.2d at 842 (finding a Seibert violation where the officers questioned [Navy] at headquarters for **almost three hours before giving the warning**" (emphasis added)). Similarly, not only was the questioning scant, Appellant provided limited, undetailed, and incomplete responses to the officer's questions while also demonstrating an understanding of his rights by **refusing** to reveal anything beyond the fact the jacket belonged to him. See United States v. Street, 472 F.3d 1298, 1314 (11th Cir. 2006) (finding no Seibert violation where the officer did not deliberately elicit Street's statement through a "question first and warn later" tactic and where "[t]he questioning of Street before he was given full Miranda warnings was brief and general"); cf. Seibert, 542 U.S. at 616 (plurality opinion) ("When the

[16] Notably, after finding the cocaine in the jacket, Officer Hall collectively questioned Appellant and Jones about the jacket and its contents for roughly **one minute** before subsequently informing Appellant of his rights several minutes later. (Court's Ex. # 1).

police were finished there was little, if anything, of incriminating potential left unsaid."). Likewise, as the trial judge noted, the nature of the initial pre-warning questioning was very different than the post-warning questioning as the initial questioning was directed at both Jones and Appellant collectively on the side of the road while the post-warning questioning was conducted in Officer Hall's patrol vehicle and directed solely at Appellant approximately eight minutes after the joint questioning had concluded. See State v. Medley, 417 S.C. 18, 28, 787 S.E.2d 847, 852-853 (Ct. App. 2016) (finding no Seibert violation where the pre-warning questioning occurred in Medley's parent's yard while the post-warning questioning occurred in a patrol car roughly twenty-two minutes later). Furthermore, Sergeant Pritchard, a narcotics detective, was present at the scene for the post-warning questioning and also spoke with Appellant about the cocaine discovered during the stop, which demonstrated the law enforcement personnel involved in the questioning changed to some degree between the rounds of questioning. See Seibert, 542 U.S. at 615 (plurality opinion) (instructing "the continuity of police personnel" is a factor to consider in determining voluntariness). Finally, Appellant was fully informed of his rights prior to the post-warning questioning, and, significantly, Appellant again demonstrated an understanding of his rights by once again refusing to provide a complete and detailed confession to the officers. See Elstad, 470 U.S. at 318 ("[T]here is no warrant for presuming coercive effect where the suspect's initial inculpatory statement, though technically in violation of Miranda, was voluntary. The relevant inquiry is whether, in fact, the second statement was also voluntarily made. As in any such inquiry, the finder of fact must examine the surrounding circumstances and the entire course of police conduct with respect to the suspect in evaluating the voluntariness of his statements. The fact that a suspect chooses to speak after being informed of his rights is, of course, highly probative." (footnote omitted)).

Critically, when those circumstances are considered in conjunction with Appellant's substantial prior criminal justice experience, Appellant's age and maturity, and the lack of any threats, coercion, or prolonged questioning, Appellant's post-warning statements were voluntarily, knowingly, and intelligently made after a valid waiver of his rights.[17] See State v. Rochester, 301 S.C. 196, 201, 391 S.E.2d 244, 246 (1990) (finding Rochester's statement was properly admitted where sufficient evidence was presented to show he "was not worn down by improper interrogation tactics such as lengthy questioning, trickery, or deceit"); see also State v. Mahatha, 157 N.C. App. 183, 196, 578 S.E.2d 617, 625 (N.C. Ct. App. 2003) ("A defendant's prior experience with the criminal justice system, even where the experience consists of a single prior arrest, is 'an important consideration in determining whether an inculpatory statement was made voluntarily and understandingly.' " (citation omitted)); cf. United States v. Morgan, 729 F.3d 1086, 1092 (8th Cir. 2013) (finding Morgan's post-warning statements were admissible despite the fact an officer elicited substantively-similar pre-warning statements from Morgan by

[17] Although Officer Hall directed another officer to handcuff Jones prior to the initial pre-warning questioning, such an act was reasonable in light of the fact a large quantity of cocaine had just been discovered inside Jones's vehicle and could not properly be construed as something rendering Appellant's subsequent statements involuntary under the circumstances. See United States v. Holmes, 670 F.3d 586, 591 (4th Cir. 2012) ("Even where 'threats, violence, implied promises, improper influence, or other coercive police activity' exist, a confession is not necessarily rendered involuntary."); see also United States v. Taylor, 692 F. App'x 114, 117 (4th Cir. 2017) ("[A]n officer's truthful statement that Taylor's son could be arrested was not an unduly coercive threat that rendered Taylor's statement involuntary."); United States v. Mitchell, 514 F. App'x 319, 322 (4th Cir. 2013) (holding Mitchell's statement was not involuntary even if the officers had actually made comments related to his girlfriend's children potentially being removed without a confession because "given the presence of drugs, firearms, and evidence of drug manufacturing in the home, [the girlfriend] could have lost custody of her children had the activity been attributed to her"); cf. United States v. Williams, 336 F. App'x 376, 378 (4th Cir. 2009) (concluding Williams's statements was **not** rendered involuntary as the product of a threat after an officer ordered the arrest of Williams's girlfriend and noting "[t]he evidence does not indicate that the officer threatened to arrest Williams' girlfriend in order to elicit any sort of admission from Williams, but rather that he ordered her arrest as a logical result of her presence at the apartment where a large quantity of cocaine base was discovered").

asking about the identity of an item he removed from Morgan's vehicle where the officer did not engage in deliberate "question first and warn later" questioning and "[n]o evidence suggest[ed] that [Morgan's] postwarning statements were coerced, compelled, or otherwise involuntary"). Accordingly, the trial judge did not abuse her broad discretion in finding Appellant's post-warning statements to be admissible, and, in light of the deferential standard of review, there are no proper grounds upon which to overturn her decision on appeal.[18] See Saltz, 346 S.C. at 136, 551 S.E.2d at 252 (recognizing a trial judge's ruling regarding the voluntariness of a statement will be affirmed on appeal if supported by **any** evidence); see also State v. Arrowood, 375 S.C. 359, 369, 652 S.E.2d 438, 443 (Ct. App. 2007) ("The trial judge's determination is not in error if there is any evidence in the record to support it."). Appellant's conviction should be affirmed.

B. Harmlessness of Any Error in the Admission of Appellant's Statements

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223 (2006); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). The harmlessness of an error in the admission of evidence generally depends on the

[18] Supporting the trial judge's findings on the issue of voluntariness, Appellant elected not to testify during the suppression hearing and, thus, never presented any testimony suggesting his post-warning statements were the involuntary product of the initial questioning that occurred during the stop. See State v. Breeze, 379 S.C. 538, 545, 665 S.E.2d 247, 251 (Ct. App. 2008) ("Conversely, Breeze did not contradict [the officer]'s testimony with respect to the issue of whether the statement was voluntary. . . . Faced with [the officer]'s undisputed testimony the trial court concluded the State had showed that Breeze voluntarily made the statement. Based on [the officer]'s testimony, we cannot conclude the trial court's ruling is unsupported by any evidence.").

materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). Ultimately, if an error does not contribute to the verdict, that error is harmless beyond a reasonable doubt. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). Moreover, "[w]hen guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); see United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]").

In the case sub judice, notwithstanding consideration of the statements Appellant made after being informed of his rights, overwhelming evidence of Appellant's guilt was presented during trial. Specifically, testimony was presented establishing Appellant behaved in a suspicious manner after getting off a bus, which was identified as a mode of transportation frequented by drug traffickers, and subsequently behaved in an unusually nervous manner while seated in the passenger seat of Jones's vehicle during the course of a traffic stop conducted on the basis of a simple equipment infraction. Similarly, through the evidence presented, the jury heard Appellant falsely claim to be coming from New York, which was directly contradicted by the information reflected on his bus ticket from Texas. Additionally, testimony and evidence was presented establishing Appellant was in **actual** possession of a plastic bag containing cocaine along with a "cut" straw at the time of the traffic stop. Furthermore, testimony and

evidence was presented establishing additional plastic bags of cocaine were located hidden in a **men's** jacket resting on the backseat of the female driver's vehicle underneath a duffle bag containing **men's** clothing, and, significantly, the plastic bags hidden in the jacket were of the exact same type as the plastic bag removed from Appellant's pocket. Finally, during trial, Jones, the only other adult aside from Appellant in the vehicle at the time of the traffic stop, testified before the jury and directly denied ownership of the drugs found by the officers.

Based on the evidence of Appellant's actual possession of cocaine, Appellant's suspicious and deceptive behavior after using a method of transportation frequented by drug traffickers, the discovery of identically-packaged cocaine hidden inside a men's jacket in close proximity to a duffle bag containing men's clothing, and Jones's denial of ownership of the drugs, Appellant's guilt for possessing all the cocaine found during the course of the traffic stop, including in the jacket located in the vehicle Jones used to pick Appellant up from the bus station, was overwhelmingly established even without any consideration being given to Appellant's statements. See State v. White, 410 S.C. 56, 60, 762 S.E.2d 726, 728 (Ct. App. 2014) (finding any error in the trial judge's failure to suppress White's statement placing White at the scene of a murder as the product of impermissible "question first and warn later" questioning was harmless beyond a reasonable doubt because, "notwithstanding White's statement, cell phone evidence clearly placed [the victim] and White together at the time and place of the murder" and further finding any error to be harmless in light of the witness testimony linking White to the murder); see also State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt."). Considering that overwhelming evidence of guilt in conjunction with the highly limited nature of Appellant's

statements, any error resulting from the admission of those statements, which solely revealed the jacket was Appellant's and did not reveal Appellant had any knowledge of the items found inside, was entirely harmless, insignificant, and could not have had any impact on the outcome of Appellant's case. See Medley, 417 S.C. at 30, 787 S.E.2d at 853 ("[N]otwithstanding the erroneous admission of Medley's statements regarding his alcohol consumption, we find the record contained ample evidence from which a jury could have concluded Medley was guilty, beyond a reasonable doubt, of second-offense DUI. Thus, to the extent the court erred in admitting such statements, we find the error, if any, was harmless beyond a reasonable doubt."); see also State v. Easler, 327 S.C. 121, 129, 489 S.E.2d 617, 621-622 (1997) ("[A]ny error in the failure to suppress his statements was harmless beyond a reasonable doubt. . . . The overwhelming evidence of Easler's guilt renders any Miranda violation harmless."); State v. Lynch, 375 S.C. 628, 636, 654 S.E.2d 292, 297 (Ct. App. 2007) ("The overwhelming evidence of Lynch's guilt renders any possible Miranda violation harmless."); State v. Newell, 303 S.C. 471, 477, 401 S.E.2d 420, 424 (Ct. App. 1991) ("Although the trial judge erred in not suppressing Sergeant Canty's testimony regarding Newell's in-custody statement because of his failure to advise Newell of her rights under Miranda, we deem the admission of this testimony harmless beyond a reasonable doubt. The record contains overwhelming evidence of Newell's guilt independent of her statements to Sergeant Canty." (citation omitted)); cf. White, 410 S.C. at 60, 762 S.E.2d at 728 ("[W]e find the entire record on appeal establishes beyond a reasonable doubt that any error in the admission of White's statement did not contribute to the verdict obtained."). Appellant's conviction 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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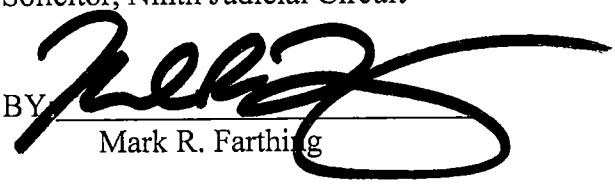
BY: 
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ATTORNEYS FOR RESPONDENT

March 28, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2017-000802

THE STATE,

Respondent,

vs.

MICHAEL FRASIER, JR.,

Appellant.

PROOF OF SERVICE

I, Mark R. Farthing, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Kathrine H. Hudgins, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 28th day of March, 2018.

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RE: State v. Michael Frasier, Jr. – Appellate Case No. 2017-000802

Dear Ms. Hudgins:

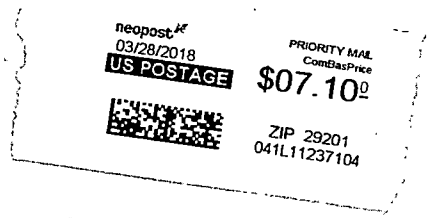
I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Services



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