THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Honorable Roger L. Couch, Presiding Judge

Case No. 2007-GS-42-2111

State of South Carolina, **Respondent,**

v.

Jeffrey Bernard Falls, **Appellant.**

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal:

(1) Trial Transcript;
(2) Defendant's Motion to Suppress;
(3) State's Exhibit #1 (Traffic Stop Video)
(4) Defendant's Exhibit #1 (Warning Ticket)

I certify that this designation contains no matter which is irrelevant to this appeal.

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Date: MAY 30, 2012

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No. 2007-CS-42-02111

State of South Carolina

Respondent,

v.

Jeffrey Bernard Falls, Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Designation of Matter to be Included in Record on Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on May 30, 2012, addressed to its attorney of record, Salley W. Elliott, Esq., P.O. Box 11549, Columbia, South Carolina 29211.

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May 30, 2012

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INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT OF GENERAL SESSIONS CLEARLY ERR IN DENYING THE APPELLANT'S MOTION TO SUPPRESS?

STATEMENT OF THE CASE

On May 17, 2007, a grand jury sitting in Spartanburg County South Carolina issued an indictment charging the Appellant with one count of trafficking in more than 200 grams, but less than 400 grams, of cocaine powder. Prior to trial, the Appellant filed a motion to suppress evidence discovered as a result of a traffic stop that occurred on February 20, 2007.

The Appellant's jury trial began on August 10, 2011. Prior to the taking of testimony before the jury, the Court conducted an evidentiary hearing on the Appellant's motion to suppress evidence. (Tr. pgs. 25-190). The Court ultimately denied the motion to suppress, finding that the arresting officer had reasonable suspicion to continue the detention of the Appellant after the traffic stop for purposes of having a canine sweep the vehicle. (Tr. pgs. 188-189). The Appellant's jury trial resumed the following day. (Tr. pg. 191).

On August 12, 2011, the Jury returned a verdict of guilty against the Appellant for trafficking cocaine. (Tr. pg. 499). The Appellant was then sentenced to 25 years imprisonment and a fine of $100,000. (Tr. pg. 501). A

timely notice of appeal was served on the Respondent State of South Carolina and the Appellant herewith files his initial brief.

FACTS

On February 20, 2007, at approximately 9:00 p.m., the Appellant was driving a rental car on I-85 in Spartanburg County when he was pulled over by South Carolina Highway Patrol Officer D.G. Wilson. (Tr. pg. 52). The reason for the traffic stop was given by Officer Wilson that the Appellant had driven over the fog line[1] on several occasions as Officer Wilson was observing him. (Tr. pg. 53). Specifically, Officer Wilson testified that he observed the Appellant's vehicle failing to maintain its lane as he was driving beside it for approximately two miles. (Tr. pg. 52-53). Officer Wilson turned on his emergency lights and got behind the Appellant's vehicle at exactly ten seconds before 9:00 pm. (Tr. pg. 63).

At 9:04 pm, Officer Wilson had the Appellant's paperwork in his hand and was having a discussion with the Appellant at the side of the Appellant's vehicle. (Tr. pg. 64). Thirty-seven seconds later, at exactly 9:04:37pm, Officer Wilson informed the Appellant that he was going to get a warning. (Tr. pg. 66). Exactly 4 minutes and 47 seconds had elapsed from the time Officer Wilson initiated the

[1] The white line on the right side of the traffic land between the traffic lane and shoulder of the road.

traffic stop until he informed the Appellant that he was going to receive a warning. (Tr. pg. 63-66). In his report, Officer Wilson wrote that he had been patrolling the highway at 9:57 pm when he encountered the Appellant. (Tr. pg. 66). Officer Wilson explained this discrepancy by testifying that his watch could have been off that evening. (Tr. pg. 66).

Officer Wilson wrote in his report that the Appellant's hands were shaking and he had a nervous look on his face when he handed over his driver's license and rental agreement. (Tr. pg. 69). Officer Wilson did not smell alcohol or marijuana on the Appellant. (Tr. pg. 70). After informing the Appellant that he would receive a warning at exactly 9:04:37, Officer Wilson did nothing for a substantial period of time, at least several minutes, in the way or actually writing the warning. (Tr. pg. 71-72). At 9:07 pm, Officer Wilson was still writing the warning citation. (Tr. pg. 81). At 9:07:25 pm, Officer Wilson issued the warning citation. (Tr. pg. 82). Officer Wilson did not hand the warning citation over to the Appellant at that time, 8 minutes into the traffic stop, although he had completed it,. (Tr. pg. 83). There were a total of nine actual words on the citation. (Tr. pg. 83). At exactly 9:07:27pm, Officer Wilson returned to his cruiser, possibly to get the GPS coordinates of their location, and still had not handed the warning citation to the Appellant. (Tr. pg. 85). While back at his cruiser, Officer Wilson asked over the

radio about other units in the area. (Tr. pg. 86). Almost 10 minutes into the stop, at approximately 9:10 pm, Officer Wilson had not finished writing out the warning ticket. (Tr. pg. 93).

Officer Wilson then told the Appellant to "drive careful and to be safe out there", and put the warning citation into the Appellant's hand. (Tr. pg. 94). Then Officer Wilson asked the Appellant for permission to search his car. (Tr. pg. 94). Officer Wilson had his hand on one side of the warning citation, and the Appellant had his hand on the other. (Tr. pg. 95). When the Appellant declined to give consent to search the vehicle, Officer Wilson took the warning citation back. (Tr. pg. 95). The Appellant asked if he said no to the search, could he leave. (Tr. pg. 96). At that point, Officer Wilson informed the Appellant that he had a K-9 unit coming. (Tr. pg. 96). Officer Wilson testified that he called for backup, which he knew to be a K-9 unit, at 9:07 pm (Tr. pg. 96-97). Officer Wilson testified that the Appellant was not free to leave. (Tr. pg. 98).

Officer Wilson then informed the Appellant that he was going to have the K-9 run around the car, and if the dog alerted to the car he would not need the Appellant's permission to search it. (Tr. pg. 99). This conversation about the dog and the permission to search took place at 9:11 pm. (Tr. pg. 99). Officer Wilson testified that by this point he had decided he was going to search the Appellant's

car. (Tr. pg. 99-100). Officer Wilson then testified that he had made up his mind to search the car in the first three or four minutes of the stop. (Tr. pg. 101). Although Officer Wilson later testified that the totality of the circumstances of the stop and the conversation he had with the Appellant led him to believe something was not right, (Tr. pg. 101-108). Officer Wilson testified that during the initial minute or so of the traffic stop as he approached the vehicle that he saw the Appellant's head drop from view as if he had leaned over to hid something under the seat. (Tr. Pg.70, 92, 100, 237 & 276). The video of the traffic stop does not support Officer Wilson's testimony and at no point during the video does the Appellant's head disappear from view or appear to hide something under the seat.

The K-9 unit arrived at 9:13:28 p.m., exactly 13 minutes and 38 seconds after the stop was initiated, and approximately 3 minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (Tr. pg. 110). The K-9 sniff began at exactly 9:14:18 pm., which was exactly 14 minutes and 28 seconds after the stop was initiated, and approximately four minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (Tr. pg. 111). The canine alerted to the presence of contraband in the vehicle, and Officer Wilson and the canine officer searched the vehicle and discovered just over 200 grams of

cocaine powder. (Tr. pg. 111).

The video of the traffic stop recorded on Officer Wilson's dash camera which was introduced into evidence in its entirety as the State's Exhibit #1 provides the most clear and accurate depiction of the facts of the traffic stop and such video is submitted by the Appellant as part of the record in this appeal and is incorporated herein by the Appellant as part of the facts of the case and the Appellant urges the Court to view the video in its entirety. Reference to testimony in the trial transcript highlighting testimony of witnesses will never be as clear and accurate as the depiction of the facts of the traffic stop as shown on Officer Wilson's dash camera video.

ARGUMENT

I. THE COURT OF GENERAL SESSIONS CLEARLY ERRED IN DENYING THE APPELLANT'S MOTION TO SUPPRESS.

In Fourth Amendment cases, the trial court's factual rulings are reviewed under the "clear error" standard. State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). "[T]his deference does not bar this Court from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence." State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). The Appellant submits that his conviction directly resulted from an illegal seizure and vehicle search that was accomplished in violation of the United States Constitution and the Constitution of the State of South Carolina. The Appellant contends that the Spartanburg County Court of General Sessions clearly erred in denying his motion to suppress evidence, which was based on a legitimate violation of his Fourth Amendment rights. The Fourth Amendment to the United States Constitution provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause,

supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

U.S. Const. amend. IV. "The basic purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." Michigan v. Tyler, 436 U.S. 499, 504; 98 S.Ct. 1942, 1947 (1978). The reach of this Amendment "extends beyond the paradigmatic entry into a dwelling by a law enforcement officer in search of fruits or instrumentalities of crime. Id. The Fourth Amendment:

> Protects two types of expectations, one involving 'searches,' the other 'seizures.' A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A 'seizure' of property occurs where there is some meaningful interference with an individual's possessory interests in that property.

United States v. Jacobsen, 466 U.S. 109, 113; 104 S.Ct. 1652, 1660 (1984). Similarly, the South Carolina Constitution provides protection against unlawful searches and seizures. *See* S.C. Const. art. I, §10. Evidence seized in violation of the Fourth Amendment is excluded in both state and federal court. *See* Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001).

If evidence is seized illegally by the police, the exclusionary rule will generally apply and any evidence obtained as a result of such search will be barred

from admission at a defendant's trial. The Supreme Court has held that even evidence *indirectly* obtained through an illegal search or an illegal arrest may be excludable "as fruit of the poisonous tree." Wong Sun v. United States, 371 U.S. 471, 484-87, 83 S.Ct. 407, 415-17, 9 L.Ed.2d 441 (1963); *see also* State v. Greene, 330 S.C. 551, 559, 499 S.E.2d 817, 821 (Ct. App. 1997) ("The fruit of the poisonous tree doctrine holds that where evidence would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality, the evidence must be excluded."). The *Wong Sun* Court stated:

> We need not hold that all evidence is 'fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has come at by exploitation of that primary illegality or instead by means sufficiently distinguishable to be purged of primary taint.

Id. at 487-88, 83 S.Ct. at 417-18.

The Supreme Court has often observed that searches and seizures "'conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment--subject only to a few specifically established and well delineated exceptions.'" Thompson v. Louisiana, 469 U.S. 17, 20, 105 S. Ct. 409, 410, 83 L. Ed. 2d 246, 250 (1984)(per

curiam)(quoting Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576, 585 (1967)); *see also* Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978)(Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that searches conducted outside judicial process, without prior approval by magistrate or judge, are per se unreasonable, subject only to specifically established exceptions); State v. Woodruff, 344 S.C. 537, 545, 544 S.E.2d 290, 295 (Ct. App. 2001).

One of the circumstances in which a warrantless search will be held valid is under the automobile exception, provided the automobile is readily mobile and the law enforcement officials have probable cause to believe that the vehicle contains contraband. Pennsylvania v. Labron, 518 U.S. 938, 940 (1996). Under the automobile exception to the warrant requirement, a vehicle may be searched without a warrant, so long as officers have probable cause to believe the vehicle contains contraband or evidence of criminal activity. Chambers v. Maroney, 399 U.S. 42, 52 (1970). Under the doctrine of Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884-85, 20 L.Ed.2d 889 (1968), police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articularly facts that criminal activity "may be afoot," even if the officer lacks probable cause. In Terry, the Court recognized the precarious balance between a

citizen's right to privacy and law enforcement's personal safety interests. Terry, 392 U.S. at 21. However, the Court explained that harassment carried out indiscriminately based on social stereotypes, race, gender or other irrelevant personal characteristics must be discouraged. Therefore the detaining officer must be able to point to specific articularly facts which, when taken together with rational inferences from those facts, reasonably warrant the detention. Id. The Terry Court emphasized that these facts must amount to something more than an "inchoate and unparticularized suspicion or hunch." Id. at 27.

The officer in the instant case had no reasonable facts to warrant the continued detainment of the vehicle beyond the point when he handed the Appellant the warning citation. The K-9 unit arrived at 9:13:28 p.m., exactly 13 minutes and 38 seconds after the stop was initiated, and approximately 3 minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (Tr. pg. 110). The K-9 sniff began at exactly 9:14:18 pm., which was exactly 14 minutes and 28 seconds after the stop was initiated, and approximately four minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (Tr. pg. 111).

The video, which has been made part of the record in this matter, is very

informative, and the trial transcript does not do it justice. Nothing in the video would lead the viewer to believe that the Appellant was making any movements that would or could indicate that he was attempting to hide something within the vehicle. Likewise, nothing in the video would lead the viewer to believe the Appellant was acting nervously in any way. In fact, the only thing the video leads the viewer to believe is that Officer Wilson unnecessary delayed the traffic stop to insure the K-9 would be able to sweep the vehicle, when there was no actual reason for Officer Wilson to believe a crime was being committed. What the video portrays is a text book case of an officer purposefully delaying a traffic stop and preventing a driver from leaving the scene after the purpose of the traffic stop had concluded, so that a K-9 sweep of the vehicle could be conducted in violation of the driver's Fourth Amendment rights.

The video shows that the traffic stop was initiated at 8:59:33 pm. (Video 20:59:33). The Appellant's head remains in view throughout this part of the video, and there is nothing that would indicate the Appellant was moving around the vehicle like he was concealing something. (Video 20:59:33- 21:01:00). At 9:01, Officer Wilson asks the driver to pull the car farther forward passed a guard rail, so that the stop can be conducted further off the roadway away from traffic. (Video 21:01:00). At 9:01:28, the vehicle stops exactly where Officer Wilson instructed,

and it sounds like Officer Wilson calls in either a license plate number or driver's license number. (Video 21:01:28). At 9:04, Officer Wilson returns to the passenger side of the vehicle, and notably, the driver's head is in clear view, as it has been for the entire video, and does not appear to move in a way that would indicate the driver is moving around inside the vehicle, again as it has been for the entire video. (Video 21:04:06). About thirty seconds later, the driver exits the vehicle at Officer Wilson's request, and Officer Wilson informs the Appellant that he is writing him a warning. (Video 21:04:30). Notably, the Appellant did not appear nervous at all. (Video 21:04:30). At exactly 9:11, Officer Wilson hands the Appellant the warning citation and simultaneously asks if he can search the Appellant's vehicle, to which the Appellant responds "If I say no can I leave?" (Video 21:11:00). Again, the Appellant does not appear nervous during this exchange, but does clearly appear as if he is being unnecessarily inconvenienced by the officer. (Video 21:11:00). Also during this exchange, Officer Wilson informs the Appellant that he is not free to leave because a K-9 officer is coming to run a dog around the vehicle. (Video 21:11:00-21:11:50). At exactly 9:11 and 50 seconds, Officer Wilson tells the Appellant to "hang on a second I got a K-9 coming". (Video 21:11:50). Almost a minute later, Officer Wilson tells the Appellant "just a second the officer is coming". (Video 21:12:45). A minute and

15 seconds later, the K-9 officer finally arrives on the scene and begins the sweep. (Video 21:14:00).

The officer did not have a basis for believing that the Appellant was engaged in criminal activity even if he appeared nervous, notwithstanding that the video clearly shows the Appellant does not appear nervous. Likewise, the officer did not have a basis for believing that the Appellant was engaged in criminal activity simply because he was driving a rental car, had been to Atlanta, and was suffering from dry mouth (if in fact Officer Wilson could detect such a condition as "dry mouth"). Notably the video does not make it seem as if the Appellant is suffering from dry mouth. Two of these justifications provided by the officer are completely irrelevant. People rent cars and travel to and from Atlanta every day. While Atlanta may be a city that is a source of drugs, so is every other city in the country with a population in excess of 5000 residents. The drugs in question were not grown and cultivated in Atlanta. They came from South America. Since these justifications provided by the officer are both red herrings, we must look to the Appellant's alleged nervousness and the alleged dry mouth that was probably caused by the alleged nervousness. It should be noted that the Appellant contends, and the video makes clear, that the Appellant was not nervous and not suffering from "dry mouth" or "cotton mouth". Nervousness alone is not sufficient to

support reasonable suspicion of "some other crime." State v. Pichardo, 367 S.C. 84, 104, 623 S.E.2d 840, 851 (Ct. App. 2005) (citing United States v. Sullivan, 138 F.3d 126, 131 (4th Cir. 1998)).

An automobile stop is considered a seizure of persons, making the Fourth Amendment applicable. Whren v. United States, 517 U.S. 806, 809 116 S.Ct. 1769 (1996). Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose constitutes a seizure of persons within the meaning of the Fourth Amendment. Delaware v. Prouse, 440 U.S. 648, 653, 99 S.Ct. 1391 (1970). "An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." Id. at 810. The burden is on the state to demonstrate that the detention was sufficiently limited in scope and duration. Florida v. Royer, 460 U.S. 491 (1983). Of course, it has been held that a drug dog sniff is not a search for Fourth Amendment purposes. United States v. Cortez Foreman, 369 F.3d 776, 781 (4th Cir. 2004). This idea has developed as the canine sniff of the *exterior* of personal property, in and of itself, is "so limited both in the manner in which the information is obtained and in the content of the information revealed" that no search can be deemed to have occurred. United States v. Place, 462 U.S. 696, 707, 77 L.Ed.2d 110, 103 S.Ct. 2637 (1983). Still, the United States Supreme Court has

held that "[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." Illinois v. Caballes, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005); *see also* 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."); *and* Tindall, 388 S.C. at 522, 698 S.E.2d at 205 (2010) (because officer did not gain a reasonable suspicion of criminal activity during the stop to further detain Tindall for questioning, Tindall's subsequent consent to search the vehicle was held to be invalid as part of the unlawful second detention).

The Appellant submits that there were two detentions that occurred as a result of the traffic stop in question. The first detention was arguably justified based on the alleged traffic violation, and the Appellant does not dispute the validity of that first detention in this appeal. However, that first detention concluded when the warning citation was written and handed to the Appellant at approximately 9:10 pm and lasted just over ten minutes. Notwithstanding the fact that the first detention was concluded when the warning ticket was handed to the Appellant at approximately 9:10 p.m., the Appellant contends that even that period of time was excessive for the purpose of Officer Wilson writing a warning citation

that contained only nine words entered on it. In any event, the first dentention clearly ended when the warning citation was presented by Officer Wilson to the Appellant. The second detention began when the Officer Wilson asked to search the Appellant's vehicle and jerked the warning citation back from the Appellant and advised him that he was not free to leave. The second detention, which began when the Appellant was handed the warning citation, was unlawful and accomplished for the sole purpose of delaying the Appellant's departure so a canine could be brought in to do a sweep of the vehicle's exterior. This second stop lasted approximately four and a half minutes, which is the time between the Appellant being handed the warning citation and the K-9 being driven in to the scene and brought over to the vehicle to conduct the sweep.

This second detention was illegal, and resulted directly in the discovery of the contraband in the Appellant's vehicle. Since the continued detention of the Appellant for four and half minutes to accomplish the K-9 sweep was unlawful, and was undertaken for the sole purpose of sweeping the car with a canine without probable cause to believe a crime was being committed, any subsequent search of the vehicle was also illegal and in violation of the Fourth Amendment to the United States Constitution and the parallel provision of the South Carolina Constitution.

The officer who issued the Appellant a warning citation delayed the completion of that citation for as long as possible in order to give the canine unit time to arrive on the scene. (Tr. pgs. 70-76, 80-88, 92-95). Not only did he take ten minutes to write a warning citation that contained less than ten words, he delayed the Appellant's departure an additional four and a half minutes so the K-9 sweep of the Appellant's vehicle could be accomplished. When his attempts to delay the Appellant's departure by slowly filling out the warning citation proved insufficient to allow the canine unit to arrive, he handed the Appellant the citation and simultaneously asked the Appellant for consent to search the vehicle. (Tr. pgs. 95-96). When the Appellant failed to affirmatively give consent to search, the officer pulled the warning citation back from the Appellant, and detained him an additional four and a half minutes until the canine unit arrived and performed its sweep. (Tr. pgs. 95-99, 108-09).

There cannot be a more clear case of an unreasonably prolonged or extended traffic stop for purposes of conducting a canine sweep than this one. The K-9 unit arrived at 9:13:28 p.m., exactly 13 minutes and 38 seconds after the stop was initiated, and approximately 3 minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (Tr. pg. 110). The K-9 sniff began at exactly 9:14:18 pm., which was exactly 14 minutes

and 28 seconds after the stop was initiated, and approximately four minutes after Officer Wilson handed the Appellant the warning citation and told him to drive carefully and be safe out there. (Tr. pg. 111). The officer did not snatch the citation back from the Appellant and prolong the roadside detention until it became clear that the Appellant would not consent to a search and the canine unit would not arrive in time to perform a sweep of the vehicle before the Appellant lawfully left the scene. Furthermore, the officer had not yet developed a reasonable suspicion or probable cause to believe that contraband was in the car or that the Appellant was in the process of committing a crime. Such suspicion must be supported by some minimal level of objective justification. United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989).

"The moment at which a traffic stop concludes is often a difficult legal question, not readily discernible by a layperson. It is not sound to categorically impute to all drivers the constructive knowledge as to the precise moment at which, objectively, an initially lawful traffic stop terminates, i.e., the time at which the driver may depart." State v. Williams, 351 S.C. 591, 601, 571 S.E.2d 703, 709 (Ct. App. 2002)(quoting Ferris v. State, 355 Md. 356, 735 A.2d 491, 503 (Md. 1999)). The traffic stop "ends" when the "purpose" of the stop has ended. *See* State v. Rivera, 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009). The issuance of the

citation and return of driver's documentation are factors the court should consider. Id.; *see also* State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011) (holding initial stop ended when the officer issued the ticket); Tindall, 388 S.C. 518, 698 S.E.2d 203 (holding the initial stop ended when the officer had finished running the registration and informed the occupant he would receive a ticket). In this case, the Appellant was told he would receive a warning citation 4 minutes and 37 seconds after the stop was initiated. (Tr. pg. 66). He was then detained an additional ten minutes by the police so that a K-9 nose could be brought within smelling distance of his vehicle. (Tr. pg. 111). He was asked for consent to search the vehicle and clearly indicated he would rather leave than have to stay at the scene of the traffic stop any longer. (Tr. pg. 96).

Extending the traffic stop for further questioning or other investigation beyond that tangentially related to the initial stop is permitted in two situations: "(1) the officer may detain the driver for questioning unrelated to the initial stop if he has an objectively reasonable and articulated suspicion illegal activity has occurred or is occurring or (2) the initial detention has become a consensual encounter." Provet, 391 S.C. at 494, 706 S.E.2d at 516 (citing Pichardo, 367 S.C. at 99, 623 S.E.2d at 848). Neither of these situations occurred during the Appellant's traffic stop. The officer was operating on nothing more than a mere

hunch or suspicion and there was not an objective justification for detaining the Appellant longer for the sole purpose of accomplishing the dog-sniff. Therefore, applying the totality of the circumstances analysis, the evidence discovered should be suppressed. Here, there was no evidence or any indications, whatsoever, of any observations by the officer made during the stop that would have provided a basis for a reasonable articularly suspicion.

In State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011), this Court of Appeals held that the continued detainment of a vehicle for purposes of a canine sniff was justified because the officer had reasonable suspicion that a crime was being committed. However, the officer in that case had many more reasons to be suspicious of Mr. Wallace. Id. at 55, 707 S.E.2d at 455. Like the Appellant in this case, Wallace was traveling from Atlanta and appeared nervous during the stop. Id. That is where the similarities between the Appellant's case and that of State v. Wallace end. Wallace also: (1) drove erratically when pulling over, (2) fumbled with his paperwork for an excessive amount of time, (3) had a passenger that sweated on a cool day who stared straight ahead and refused to acknowledge the officer's presence all while appearing visibly nervous, (4) gave a different account of their trip than his passenger, (5) changed his story about where he was and for how long, and (6) was traveling with another vehicle that appeared to be acting as

a "decoy" vehicle. Id. There can be little doubt that the officer in Wallace had reasonable suspicion to extend the stop for a canine sniff. The same cannot be said about the extension of the Appellant's traffic stop.

The officer involved in the Appellant's traffic stop had returned the Appellant's documentation and handed him his citation. Clearly the traffic stop ended at that point. The traffic stop then was extended and developed into a second detainment when the Appellant declined to consent to a search. The Appellant, like a reasonable person, did not and could not have felt free to leave at that point, because the officer specifically indicated he was not. When the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen, we may we conclude that a seizure has occurred. State v. Rodriquez, 323 S.C. 484, 491, 476 S.E.2d 161 (S.C. App. 1996) (citing Terry, 392 U.S. at 19 n. 16).

Since the officer in this case prolonged the detainment of the Appellant beyond the time necessary to issue the warning citation, and indeed beyond the time it actually took to issue the citation, and did so without first developing reasonable suspicion, the evidence found as a result of the subsequent dog sniff should have been suppressed. As was noted by the Sixth Circuit in United States v. Richardson, 385 F.3d 625, 631 (6th Cir. 2004), the temptation "'to let the end

justify the means'" must be resisted, even though drugs were ultimately found in this case. Evidence which was discovered as a result of the extended traffic stop, second detainment for a canine sweep, and impermissible search of the Appellant's vehicle, should have been suppressed as fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. at 487-488.

For the foregoing reasons, the Appellant submits that the evidence obtained as a result of a search of his vehicle should have been suppressed as having been obtained in violation of the Fourth Amendment to the United States Constitution and the Constitution of the State of South Carolina. In denying his motion to suppress, the Spartanburg County Court of General Sessions erred, resulting in great prejudice to the Appellant. This error affected the Appellant's substantial Fourth Amendment rights. This in turn certainly affected the fairness and integrity of the judicial proceedings, as well as the public reputation thereof, as the courts must not permit such violations of individuals' constitutional rights. Therefore, the Appellant respectfully requests that this Court vacate the convictions which directly resulted from this violation. Without the illegal search of his vehicle, there is no evidence to uphold the conviction. Without the illegal second detainment and the illegal search of the vehicle that followed, the Appellant would not have been convicted.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Court of General Sessions, and remand this matter for further proceedings.

Respectfully submitted:

Date: May 30, 2012

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CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No. 2007-CS-42-02111

State of South Carolina

Respondent,

v.

Jeffrey Bernard Falls, Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Initial Brief of Appellant on State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on May 30, 2012, addressed to its attorney of record, Salley W. Elliott, Esq., P.O. Box 11549, Columbia, South Carolina 29211

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May 30, 2012