STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Honorable Roger L. Couch, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEFFREY BERNARD FALLS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DAVID SPENCER
Assistant Deputy Attorney General
Bar # 68571

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

ARGUMENT

The trial court did not err in denying Appellant's motion to suppress and the issue is not preserved for review as Appellant did not renew the objection when the narcotics were admitted into evidence before the jury 8

CONCLUSION 21

TABLE OF AUTHORITIES

Cases:

Arizona v. Johnson, 555 U.S. 323 (2009) 12

Illinois v. Caballes, 543 U.S. 405 (2005) 11

Illinois v. Wardlow, 528 U.S. 119 (2000) 11-12

Ohio v. Robinette, 519 U.S. 33 (1996) 11

State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006) 9

State v. Banda, 371 S.C. 245, 639 S.E.2d 36 (2006) 13

State v. Flowers, 360 S.C. 1, 598 S.E.2d 725 (Ct. App. 2004). 10

State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988) 9

State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000). 9

State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999) 9

State v. Khingratsaiphon, 352 S.C. 62, 572 S.E.2d 456 (2002). 10, 20

State v. King, 349 S.C. 142 , 561 S.E.2d 640 (Ct. App. 2002) 9

State v. Lesley, 326 S.C. 641, 486 S.E.2d 276 (Ct. App. 1997) 12

State v. Maybank, 352 S.C. 310, 573 S.E.2d 851 (Ct. App. 2002) 10

State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005) 10, 11, 12, 20

State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011) 14

State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000) 9

State v. Rivera, 384 S.C. 356 , 682 S.E.2d 307 (Ct. App. 2009) 10

State v. Rogers, 368 S.C. 529, 629 S.E.2d 679 (Ct. App. 2006) 12

State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). 9

State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011).....13, 17

State v. Willard, 374 S.C. 129, 647 S.E.2d 252 (Ct. App. 2007).....12

State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002).....11

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001).....9

United States v. Alexander, 448 F.3d 1014 (8th Cir. 2006).....18

United States v. Allegree, 175 F.3d 648 (8th Cir. 1999).....11

United States v. Arvizu, 534 U.S. 266 (2002).....13

United States v. Branch, 537 F.3d 328 (4th Cir. 1008).....13

United States v. Cortez, 449 U.S. 411 (1981).....12

United States v. Digiovanni, 650 F.3d 498 (4th Cir. 2011).....11

United States v. Foreman, 369 F.3d 776 (4th Cir. 2004).....13, 14, 15

United States v. Jeffus, 22 F.3d 554 (4th Cir. 1994).....19

United States v. Lender, 985 F.2d 151 (4th Cir.1993).....14

United States v. Martinez-Fuerte, 428 U.S. 543 (1976).....10

United States v. Mason, 628 F.3d 123 (4th Cir. 2010).....14, 16, 17, 20

United States v. McCoy, 513 F.3d 405 (4th Cir. 2008).....13

United States v. Mendenhall, 446 U.S. 544 (1980).....10

United States v. Purcell, 236 F.3d 1274 (11th Cir. 2001).....18

United States v. Sokolow, 490 U.S. 1(1989).....13

United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998).....11

United States v. Whitehead, 849 F.2d 849 (4th Cir. 1988).....13

United States v. Williams, 271 F.3d 1262 (10th Cir. 2001).....17

STATEMENT OF ISSUE ON APPEAL

The trial court did not err in denying Appellant's motion to suppress and the issue is not preserved for review as Appellant did not renew the objection when the narcotics were admitted into evidence before the jury.

STATEMENT OF THE CASE

Appellant Falls was indicted for trafficking between 200 and 400 grams of cocaine. The matter was called to trial on August 10, 2011. The Honorable Roger L. Couch heard Falls' *in limine* motion to exclude the seized cocaine and found the cocaine admissible. Falls was then convicted as charged by a jury on August 12, 2011. Judge Couch sentenced Falls to twenty-five years imprisonment and a $100,000 fine.

STATEMENT OF FACTS

Sargent Darren Wilson was on patrol on Interstate 85 in Spartanburg County at about 9 p.m. on February 20, 2007, when he observed a vehicle driven by Appellant Falls cross the fog line several times. The vehicle's right side would completely cross the line. Wilson testified at the suppression motion that he considered this a violation of S.C. Code § 56-1-1900. Falls was also driving slowly. Wilson initiated a stop out of concern that the driver was fatigued, intoxicated, or suffering from a medical condition. Falls pulled his vehicle over so that the vehicle was positioned on the fog line, which required Wilson to go over to the passenger side as opposed to the driver side window of the vehicle. Wilson testified that through his training, he was aware that this was a common tactic known as white-lining which is done to keep law enforcement from that side of the vehicle. Wilson would not have been able to walk on the driver's side of the stopped vehicle without stepping into traffic. Falls was wearing a work uniform. Falls initially indicated that he was coming home from work, but then indicated that he was returning from Atlanta.[1] The vehicle was a rental vehicle and Wilson considered it unusually clean and noted there were no items in the vehicle. The vehicle did not look lived-in, even though Falls had the vehicle for almost seven days. There was no luggage in the vehicle. Wilson testified drug traffickers commonly use rental vehicles so their own vehicles are not forfeited. Falls' hands shook uncontrollably when he handed his driver's license and the rental agreement to Wilson. Wilson testified that he asked about

[1] Wilson testified "when I asked him how long he stayed at Atlanta, he looked away from me for a brief moment and paused and then he looked back and then he stated, stated for a few hours." ROA. p. 239, lines 21-24.

and collected the rental agreement to determine whether the vehicle might be overdue. Wilson found Falls more nervous than is typical for a traffic stop. ROA. p. 76; pp. 115-116; p. 119; pp. 225-236; p. 269.

The stop was initiated at 2059:50 (8:59:50 p.m.). ROA. p. 63; State's Exhibit #1 (Video, on file with the Court).

Wilson requested Falls move his vehicle further up the road past the guardrail. Falls repositioned his vehicle accordingly, and Wilson pulled up behind him. Wilson explained that this was for safety reasons, as it was a bad location to pull over because of the guard rail. Wilson wanted more open space. Falls' vehicle came to rest this second time at about 2101:30. ROA. pp 234-235; State's Exhibit #1.

Wilson called in the license number to the dispatcher at 2101:37. ROA. pp. 234-235. Wilson waited a couple of minutes in the patrol car for feedback, but did not receive it. ROA. p. 275. Wilson would not receive a response back during the stop. ROA. p. 258. This may be due to Wilson missing a digit when calling in the license number. ROA. pp. 281-283.

Wilson returned to Falls' vehicle, and as he reached the side window, he saw Falls lean forward and place something under his car seat.[2] Wilson then called English, his partner, for backup at 2104:10. English is also a K-9 handler. Wilson asked Falls to step out of his vehicle at 2104:29, because he wanted to get Falls away from whatever he might have put under the car seat. Wilson advised Falls he was going to give a warning

[2] Falls argues in his brief that this is not visible during the stop, but Wilson was viewing Falls from a different vantage point than the camera, which was positioned directly behind Falls' vehicle.

at 2104:37. He did this to try and put Falls at ease until English arrived; Falls was already getting nervous and typically individuals start to calm down when they are advised they will receive only a warning. Instead, Falls started to engage in nervous chatter[3], an indicator of nervousness. ROA. pp. 119-121; p. 237; p. 248.

Falls seemed to ramble and change topics, which indicated to Wilson he was trying to distract Wilson and take over the traffic stop. Falls indicated that he drove down to Atlanta, visited his cousin for only a couple of hours to plan a birthday party, and then started back to Charlotte.[4] By Wilson's estimation, Falls would have traveled four hours to Atlanta, stay for only two hours, and be three hours into the return trip. Wilson testified that the short turnaround for such a lengthy trip was suspicious. Further, Wilson felt that "it appeared that he was trying to put . . . a story together as we were talking" whereas a normal motorist would know what they had just been doing.[5] Falls indicated that he arrived, shot the breeze with his cousin, they talked with some girls, and he started back to Charlotte. Falls hesitated when asked how long he had been in Atlanta. Wilson testified Atlanta is a source city for narcotics, with large amounts of drugs coming into and out of the city. Wilson asked Falls his cousin's name, Falls initially ignored the direct question, hesitated, and said "Black". He again hesitated

---

[3] Wilson explained: "For people to just come out and just start, youknow, telling their life story so to speak or just start talking without being asked a question, being overly friend[ly], trying to take control of the traffic stop" was in indicator of nervousness. ROA. p. 121, lines 17-23.

[4] Wilson testified that he was seeing how long Falls was on the road that day in determining whether Falls was tired. ROA. p. 69, lines 3-10.

[5] ROA. 122, lines 14-15.

when asked the cousin's first name, and replied "Antwan". Wilson felt Falls was searching for a fictitious name to provide Wilson. Wilson asked Falls where his cousin lived and Falls did not seem to know. Wilson asked Falls where he met his cousin and Falls pondered the question a moment before replying exit 240, "he believes." Wilson found it suspicious that Falls did not know where his cousin lived. Further, Falls claimed he had to call his cousin to find where to meet him. In Wilson's experience, not arranging the meeting place until the courier is close to arrival is common for drug transactions. ROA. p. 113; pp. 121-122; pp. 133-37; pp. 238-244; pp. 253-54. Wilson felt Falls was being dishonest with him. Wilson testified as follows: ". . . again I believe that he was creating a story as we went along, he just trying to give me an answer that would fit the question that I was asking him and I could see his nervousness continue to grow." ROA. p. 254, lines 13-16. Wilson further noted: "Again, having the look of nervousness in his face. I could visibly see that he was nervous and at one point here he became unsteady on his feet and had to lean on my vehicle." ROA. p. 254, lines 21-24.

Wilson indicated to Falls that he was going to give him a warning ticket at 2105. Falls did not ask anything about the warning, but instead engaged Wilson "about something that wasn't asked." Wilson took several minutes to write and explain the warning ticket because he was engaged in conversation with Falls and had difficulty understanding him over the noise. Wilson was trying to give Falls his attention. They were having trouble understanding each other. Wilson had to ask Falls to repeat himself several times. ROA. p. 82; pp. 93-95; p. 241; p. 255; p. 308 (quote at p. 255, lines

11-21).

Wilson observed Falls develop cotton-mouth and Falls licked his lips as he kept looking back at his vehicle. Wilson testified "his mouth [was] constantly sticking together and trembling, having a nervous look."[6] He was unsteady on his feet, having to lean against the patrol car. Falls asked Wilson for water, something which never happened to Wilson before during a stop. Falls wanted to go back to his vehicle for his hat. Wilson called for backup again at 21:08.[7] ROA. pp. 105-106; p. 128-129; p. 132; pp. 245-247.

Based on his conversations with Falls, Wilson formed the firm belief that Falls was engaged in criminal activity. When Wilson asked for consent to search, Falls stuttered and said he had not been anywhere. Falls asked if he said no, would he be free to leave. Wilson told Falls that a drug dog was coming. Falls was not free to leave at that point. ROA. p. 93-98; p. 259.

During the State's examination in the motion *in limine*, Wilson explained how Falls' travel plans deviated from normal innocent travel:

> . . . [F]irst of all, with the normal motoring public doesn't just make a turnaround trip, and the fact he was going to visit his cousin, had to call him to meet him, didn't know exactly where he lived. Once he got to Atlanta he had called and find someone to meet. Through my training and experience, we see that commonly with drug, drug transactions.

---

[6] Direct quote at ROA. p. 105, line 24 - p. 106, line 2.

[7] Wilson testified he was not going to let Falls go back to his car for safety reasons: ". . . I've already seen him make a movement under the seat and I was not gonna allow him to return to the vehicle without me clearing the vehicle before he reentered." ROA. p. 247, lines 14-25.

ROA. p. 113, lines 15-21.

Wilson explained the warning citation, then about two and a half minutes later, at 2113:32, Trooper English arrived with a drug dog. ROA. p. 260. When walked around the vehicle, the dog promptly alerted at the front passenger side door. State's Exhibit #1. At 2118:52, English found cocaine in a plastic bag. ROA. pp. 262-263. The cocaine recovered weighed 254 grams. ROA. p. 216.

Wilson agreed with the solicitor that from the time of the initial stop to when Wilson explained the traffic ticket was about ten minutes and fifty-three seconds. Wilson testified that ten minutes was within the average length of a normal traffic stop for him. This time frame included the time taken to reposition the vehicles, the length of time Wilson waited for a result of the license check, and the conversation in which Wilson needed to ask Falls to repeat several of his answers. ROA. pp. 135-139. An average traffic stop, without anything else unusual, typically takes five to seven minutes depending on the speed of dispatch. ROA. p. 136, lines 5-15.

Sargent Wilson testified to being with the South Carolina Highway Patrol for nine years and was a supervisor on the Aggressive Criminal Enforcement Team. He received training and attended seminars throughout the United States, including training in the area of interdiction, trends in the trafficking of illegal drugs and contraband, how narcotics are concealed and also interviewing techniques. Wilson was awarded trooper of the Year in the State of South Carolina in 2003 and Trooper of the Year for the U.S. and Canada in 2004. He estimates he has made thousands of traffic stops in the past nine years.

ROA. pp. 220-223.

ARGUMENT

The trial court did not err in denying Appellant's motion to suppress and the issue is not preserved for review as Appellant did not renew the objection when the narcotics were admitted into evidence before the jury.

Appellant Falls complains that the trial court erred in denying the motion to suppress the seized narcotics, arguing that Falls was detained beyond the time necessary to complete the original purpose of the stop.[8] Falls argues that the time for Sargent Wilson to complete the warning ticket was excessive at ten minutes, and that once he completed the warning ticket, he engaged Falls in a second detention that was unlawful. However, Sargent Wilson saw Falls appear to place something under the seat about two and half minutes after Falls repositioned his vehicle and for safety purposes, was waiting for back up to arrive. Further, Falls' suspicious conduct led Wilson to find reasonable suspicion of criminal activity, justifying continued detention until a drug dog arrived. Finally, the issue is not preserved for review, as Falls did not renew his motion to suppress the narcotics after the trial court made an *in limine* ruling that found the narcotics admissible.

The issue should not be reviewed by this Court because Falls did not renew his objection when the narcotics were admitted into evidence at trial – the defense indicated it had no objection to the contraband being admitted into evidence. See ROA. p. 266.

[8] Falls does not contest the validity of initiating the traffic stop. Brief of Appellant p. 16.

A ruling *in limine* is not a final ruling on the admissibility of evidence. State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000); State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999). Generally, a motion *in limine* seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. See State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). A pre-trial ruling on the admissibility of evidence is preliminary, and is subject to change based on developments at trial. Id. Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). An *in limine* motion to suppress drugs must be renewed at the time drugs are admitted into evidence where court's ruling was not obtained immediately prior to admission. State v. King, 349 S.C. 142, 149-50, 561 S.E.2d 640, 643-44 (Ct. App. 2002). In the instant case, since Falls failed to renew his objection, and instead indicated he had no objection to the narcotics, the issue is not preserved for review.

Further, the trial court's ruling was not erroneous. 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). The reviewing court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

In Fourth Amendment search and seizure cases, the appellate court is limited to

determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004). 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). 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). The appellate court must affirm the trial court if there is any evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005).

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. Pichardo, 367 S.C. at 97, 623 S.E.2d at 847. However, "[t]he purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.' " United States v. Mendenhall, 446 U.S. 544, 553-554 (1980) (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976)).

For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). While the Fourth Amendment requires a stop to be reasonable under the circumstances, a traffic stop is reasonable *per*

se when probable cause exists to believe a traffic violation has occurred. State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002). 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).

Once a lawful traffic stop is initiated, an officer may order the driver out of the vehicle and "may request a driver's license and vehicle registration, run a computer check, and issue a citation." Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); See United States v. Allegree, 175 F.3d 648, 650 (8th Cir. 1999) ("a reasonable investigation following a justifiable traffic stop may include asking for the driver's license and registration, asking the driver to sit in the patrol car, and asking about the driver's destination and purpose"). Such an investigatory 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.

The Fourth Circuit Court of Appeals recently opined as follows:

> While conducting the tasks associated with a traffic stop, a police officer's questions or actions need not be solely and exclusively focused on the purpose of that detention. . . . Rather, a police officer may ask questions unrelated to the purpose of the stop, provided that the unrelated questioning does not extend the encounter beyond the period reasonably necessary to effectuate the purposes of the lawful detention.

United States v. Digiovanni, 650 F.3d 498, 507 (4th Cir. 2011) (internal quotations and citation omitted).

Even if a traffic stop is initially lawful, the detention "can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." Illinois v.

Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 ("Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."). But, further detention for questioning subsequent to the conclusion of the purpose for the initial stop is not automatically unconstitutional. Pichardo, 367 S.C. at 98-99, 623 S.E.2d at 847-48 . "An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." Arizona v. Johnson, 555 U.S. 323 (2009). Continued questioning beyond the scope of the initial traffic stop is lawful and permissible if: (1) the officer has a reasonable articulable suspicion of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848.

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)). The reasonable suspicion standard "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. . . ." Illinois v. Wardlow, 528 U.S. 119, 123 (2000). "Reasonable suspicion is more than a general hunch but less than what is required for probable cause." 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.").

In order for an officer to have reasonable suspicion regarding the presence of illegal drugs, the officer is required to have a particularized and objective basis arising from the totality of the circumstances that would lead an individual to suspect drugs are located in a lawfully stopped vehicle. State v. Banda, 371 S.C. 245, 254, n. 4, 639 S.E.2d 36, 41 (2006); see, e.g., United States v. Sokolow, 490 U.S. 1, 9 (1989) (finding factors, which might be innocent by themselves, can equate to reasonable suspicion when considered as a whole).

"In applying the concept of reasonable suspicion to the various facts of the case, '[i]t is the entire mosaic that counts not single tiles.'" State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011) (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)); *see also* United States v. Branch, 537 F.3d 328 (4th Cir. 2008) (judicial review of evidence offered to demonstrate reasonable suspicion must be commonsensical, focus on the evidence as a whole, and be cognizant of both context and the particular experience of police officers).

Factors consistent with innocent travel can give rise to reasonable suspicion of criminal activity when considered together and in context. Sokolow, 490 U.S. at 9. While individual factors standing alone may be insufficient to establish reasonable suspicion, in concert they may raise more than a simple hunch that criminal activity is afoot. United States v. Arvizu, 534 U.S. 266, 277 (2002) ("A determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct"); Branch, 537 F.3d at 339; United States v. McCoy, 513 F.3d 405 (4th Cir. 2008); United States v. Foreman, 369 F.3d 776, 785 (4th Cir. 2004). The Fourth Circuit recently noted

the following:

> . . . But just 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. Indeed, it is often noted that the existence of reasonable suspicion is a case-specific inquiry, based on the totality of circumstances. Thus, each factor contributing to reasonable suspicion might be consistent with innocent travel but when taken together, might give rise to reasonable suspicion.

United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) (internal quotations and citations omitted). In State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011), this Court noted: "the combination of the commonplace items (i.e., numerous air fresheners, fast food bags, and several receipts) together with the surrounding circumstances (i.e., traveling two days without any luggage and inconsistent stories about where he was coming from and going to) eliminate a substantial portion of innocent travelers." Id., 391 at 505, 706 S.E.2d at 519.

"Courts are not remiss in crediting the practical experience of officers who observe on a daily basis what transpires on the street." Foreman, 369 F.3d at 782 (*quoting* United States v. Lender, 985 F.2d 151, 154 (4th Cir.1993)).

In the instant case, Wilson, an experienced and highly successful patrolman, articulated a number of factors which led Wilson to formulate reasonable suspicion of criminal activity: (1) Falls parked the vehicle on the fog line preventing Falls from gaining access to the driver side of the vehicle; (2) Falls originally claimed to have just left work, but then said he was coming from Atlanta; (3) the car was unusually clean and barren of any items including luggage; (4) Falls was driving a rental vehicle, which

Wilson testified was common for traffickers because they do not want to risk their own vehicles being seized by law enforcement; (5) Falls' hands shook uncontrollably as he handed Wilson the rental agreement and driver's license; (6) Wilson observed Falls move forward as if placing something under the car seat; (7) Falls would ramble, discuss things Wilson did not ask about, and change topics, indicating to Wilson an attempt to distract Wilson or control the stop; (8) Falls indicated he drove from Charlotte to Atlanta and stayed only two hours before returning – Wilson found the short turn around time highly suspicious and not well explained; (9) Falls routinely hesitated when asked questions, appearing to make items up as he went along; (10) Atlanta is a major drug hub; (11) Falls appeared to give a fictitious name for the cousin he was allegedly visiting in Atlanta; (12) Falls did not know where his cousin lived; (13) Falls did not seem to remember where he met his cousin during the visit; (14) Falls had to call when he arrived in Atlanta to find where to meet his cousin, which Wilson testified was a common method of transacting narcotics; (15) Falls was unsteady on his feet and had an extremely nervous look on his face; (16) Falls had dry mouth or cotton mouth, licked his lips nervously while looking back at his vehicle, and asked for water; (17) Falls repeatedly attempted to return to his vehicle by asking to retrieve a hat.

In Foreman, the Fourth Circuit reversed the district court's suppression of evidence based on a lack of reasonable suspicion to perform a drug dog sniff. Foreman found the following factors supported reasonable suspicion: (1) Foreman explained he traveled from Norfolk, Virginia to New York City (a major drug source) and back in a single day to visit a brother purportedly evicted; (2) Foreman had a tense position while

driving; (3) Foreman displayed physical signs of extreme nervousness throughout the stop; (4) there were multiple air fresheners hung from the rearview mirror; and (5) in the officer's experience, the highway had become a frequented corridor for illegal narcotics from New York City and other northern points to the Tidewater area of Southeastern Virginia. Id., at 784-85. The Fourth Circuit concluded: "In our opinion, the factors cited by the United States eliminate a substantial portion of innocent travelers and, therefore, amount to reasonable suspicion that Foreman was engaged in drug trafficking." Id., at 785.

In Mason, the Fourth Circuit upheld the search and seizure where Mason did not pull over his vehicle immediately when the officer activated his blue lights, but drove erratically as he engaged in conversation with the passenger suggesting they were contemplating whether or not to comply with a traffic stop. The officer was immediately struck with the strong odor of air fresheners when he approached Mason's vehicle. He observed only one key on Mason's key ring and also noted the men were coming from the direction of Atlanta, which the officer testified was the third largest distributor of drugs in the country. He noted that day's newspaper on the car seat with a Radisson Hotel sticker. Based on his observations, the officer believed that the two men were on a "turn-around" trip to Atlanta, which the court noted was a known source city for drugs. The officer noted Mason was unusually nervous and his nervousness only became more pronounced as the stop continued. Finally, the two men were asked separately about their travel plans and gave conflicting answers. Mason, at 129. The Fourth Circuit concluded that the officer articulated a reasonable suspicion because "all

of the factors coming together at a single place and point in time to create a suspicion that each individual factor might not have created." Id.

In United States v. Williams, 271 F.3d 1262 (10th Cir. 2001), the Tenth Circuit found law enforcement had sufficient reasonable suspicion where the officer determined the car was rented, where he observed a walkie-talkie type of short range radio, where Williams indicated unusual travel plans, and where he exhibited extremely nervous behavior that never dissipated. The Officer determined that the rental agreement was in another individual's name and the car was rented from Phoenix, Arizona, even though Williams was a resident of Chicago, and was purportedly driving to Kansas City to pick up his sister to go to an Easter gathering in Denver. Id., at 1262-1265.

Williams argued that the district court erred in relying on the officer's observations of nervousness. The Tenth Circuit disagreed, noting the following:

> The district court found that the specific and detailed testimony of the officer regarding Mr. Williams' trembling hands, shaky voice, and twitching lip displayed uncommon and extreme nervousness. We have held consistently that nervousness is of limited significance in determining whether reasonable suspicion exists. . . . Extreme and continued nervousness, however, is entitled to somewhat more weight. . . .

Williams, at 1268 (internal quotations and citations omitted).

In Wallace, the Court of Appeals noted Wallace appeared to get progressively more nervous instead of relaxing, and when the officer discussed a prior alcohol related violation, Wallace went into detail about the event and engaged in "nervous chatter". Wallace, 392 S.C. at 53, 707 S.E.2d at 454.

The Eighth Circuit Court of Appeals examined the propriety of canine sniffs during traffic stops, finding as follows:

> A canine sniff of the exterior of the car conducted during a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner does not infringe upon a constitutionally protected interest in privacy. . . . Such a dog sniff may be the product of an unconstitutional seizure, however, if the traffic stop is unreasonably prolonged before the dog is employed. . . . Once an officer has decided to permit a routine traffic offender to depart with a ticket, a warning, or an all clear, the Fourth Amendment applies to limit any subsequent detention or search. . . . We recognize, however, that this dividing line is artificial and that dog sniffs that occur within a short time following the completion of a traffic stop are not constitutionally prohibited if they constitute only de minimus intrusions on the defendant's Fourth Amendment rights.

United States v. Alexander, 448 F.3d 1014, 1016 (8th Cir. 2006) (citations omitted).

The Eighth Circuit concluded that the appellant's detention was at most extended four minutes from the time he was notified he would receive a warning ticket to the time the dog sniff was completed, and found that the search was lawful. Id., at 1017. In the instant case, Falls complains that the stop was extended four minutes from the time the warning was issued. The stop was approximately fourteen and a half minutes to the time the sniff dog arrived. However, by this point, Wilson had reasonable suspicion of criminal activity to continue detention for the de minimus amount of time before the sniff dog arrived. See also, United States v. Purcell, 236 F.3d 1274, 1279 (11th Cir. 2001) (Fourteen minute stop was not an unreasonable length of detention during the traffic stop and the three minutes that the stop was prolonged while the officer waited for a computer check on the defendant's criminal history was de minimus under the totality of

circumstances); United States v. Jeffus, 22 F.3d 554, 556-557 (4th Cir. 1994) (fifteen minutes was not an unreasonable length of traffic stop).

In the instant case, the stop was not unreasonably prolonged. The stop lasted only fourteen and a half minutes from the initial stop to when the dog sniff began. In the meantime: (1) Wilson required Falls to reposition his vehicle for safety purposes, which took approximately two minutes; (2) Wilson waited two and a half minutes on a license check, before exiting his patrol car a second time; (3) Wilson saw Falls make a movement as if he was placing something under the car seat, which led Wilson to request backup for safety reasons; (4) Falls rambled and engaged in nervous chatter once he was told he would be given a warning, so much of the conversation consisted of volunteered information; and (5) Wilson had difficulty understanding Falls due to the noise on the highway and asked Falls to repeat several answers. The dog sniff occurred only four minutes after Falls was handed his warning.

Further, Wilson articulated a number of factors that amounted to reasonable suspicion to believe criminal activity was afoot. Falls positioned his vehicle on the fog line, consistent with a tactic Wilson knew as white lining, done to limit an officer's ability to access the driver side of the vehicle. Falls' nervousness did not dissipate, but instead continued to grow and was uncommon and extreme. Contrary to Falls' assertions in the brief, Falls appears quite nervous in the video and Wilson several times asks him if he is alright or if he has something on his mind. Falls appeared to place something under the car seat. He hesitated when asked questions and seemed to be telling a story when he explained why he was making a turn-around trip to Atlanta, a

large drug source; and he was in an unusually clean rental vehicle. Wilson testified that Falls' arrangement with his cousin, in which Falls called as he arrived to Atlanta to find out where to meet his cousin, was typical of how drug transactions are arranged. As discussed above, a number of factors distinguished him from the majority of innocent travelers. Therefore, Wilson had reasonable suspicion to detain Falls for the short time that it took a sniff dog to arrive.

Once the sniff dog alerted, law enforcement had probable cause to search the vehicle. Mason, at 130 (finding dog's alerts "indicated that the dog perceived a narcotics odor while outside the car, thereby creating probable cause to believe that narcotics were present even prior to the dog's entry into the vehicle").

Accordingly, evidence supports the trial court's ruling and therefore, the denial of the suppression motion should be affirmed. Khingratsaiphon; Pichardo.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Assistant Deputy Attorney General
Bar # 68571

BY: _____
DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 29, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE, Respondent,

vs.

JEFFREY BERNARD FALLS, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

By: _____
DAVID SPENCER

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 29, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEFFREY BERNARD FALLS,

Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

James P. Craig, Esquire
2001 Assembly St., Ste. 201
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.

This 29th day of March, 2013

NORMA BIGBEE
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727