ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2013-002089

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

STEPHENO JEMAIN ALSTON,

APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

CHRISTINA CATOE BIGELOW
Assistant Attorney General
SC Bar No. 73562

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia Street
Spartanburg, South Carolina 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2013-002089

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

STEPHENO JEMAIN ALSTON,

APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

CHRISTINA CATOE BIGELOW
Assistant Attorney General
SC Bar No. 73562

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia Street
Spartanburg, South Carolina 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

AUTHORITIES CITED

Cases:

Statutes:

STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion to suppress the cocaine found in his car where the officer had reasonable suspicion to stop Appellant's vehicle based upon the car's drifting back and forth in its lane and probable cause to stop the vehicle based upon the car's failure to properly maintain its lane; where the officer had not measurably detained Appellant beyond the normal course of the traffic stop at the time the officer requested consent to search; where, even if there was a prolonged detention of Appellant, it was justified based on the reasonable suspicion acquired by the officer; and where Appellant's consent to search was given freely and voluntarily and was not an exploitation of any unlawful detention.

STATEMENT OF THE CASE

Appellant was indicted in Spartanburg County in June of 2011 for trafficking in cocaine. On March 18, 2013, Appellant's case was called for trial before the Honorable J. Derham Cole and a jury. Appellant was tried in his absence after he failed to appear for trial. On March 19, 2013, the jury found Appellant guilty as charged, and Judge Cole sealed the sentence. On September 19, 2013, the sealed sentence of twenty-five years was opened and read in Appellant's presence. A timely notice of appeal was served and filed.

ARGUMENT

The trial judge properly denied Appellant's motion to suppress the cocaine found in his car where the officer had reasonable suspicion to stop Appellant's vehicle based upon the car's drifting back and forth in its lane and probable cause to stop the vehicle based upon the car's failure to properly maintain its lane; where the officer had not measurably detained Appellant beyond the normal course of the traffic stop at the time the officer requested consent to search; where, even if there was a prolonged detention of Appellant, it was justified based on the reasonable suspicion acquired by the officer; and where Appellant's consent to search was given freely and voluntarily and was not an exploitation of any unlawful detention.

Relevant Facts

In a pre-trial hearing on Appellant's motion to suppress, Sheriff's Deputy Donnie Gilbert testified regarding the facts leading up to Appellant's arrest for trafficking in cocaine. (See R. p. 9-84). Initially, Deputy Gilbert testified that he had been working in law enforcement for approximately fourteen years. (R. p. 9, lines 19-21). Deputy Gilbert started with the South Carolina Highway Patrol in 1999, and in 2004, he was transferred to the Aggressive Criminal Enforcement Team and was assigned to work the Midstate Team as a K-9 officer. (R. p. 9, line 24 – p. 10, line 9). The next year Deputy Gilbert was transferred to the Upstate Team as a K-9 officer, and in 2009, he came to work in Spartanburg County. (R. p. 10, lines 10-16). In 2010, he left Highway Patrol and began working for the Spartanburg County Sheriff's Office in the traffic division as a member of the Interstate Criminal Enforcement Team. (R. p. 10, line 16 – p. 11, line 3). Deputy Gilbert stated he had received approximately 500 to 600 hours of interdiction training through the National Criminal Enforcement Association and "Desert Snow." (R. p. 11, line 16 – p. 12, line 12).

On March 28, 2011, around 1:00 pm, Deputy Gilbert was monitoring traffic on Interstate 85 in Spartanburg County when a Hyundai Santa Fe, which was traveling in the

middle of the three lanes going northbound, passed him and failed to maintain its lane of travel. (R. p. 12-13; p. 19, line 24 – p. 20, line 4). Specifically, the Santa Fe's left tire struck the dotted line dividing the middle lane from the "fast lane," rode on top of the line, and then drifted back into the middle of its own lane. (R. p. 13-14; p. 44, lines 24-25). The Santa Fe repeated this action "several times" in the time it took Deputy Gilbert to catch up to the vehicle. (R. p. 14, lines 2-3). Deputy Gilbert explained that the "drifting" he observed could be a sign of a driver who is sleepy, having a medical condition, under the influence of alcohol or drugs, or on the phone. (R. p. 45, lines 4-11). He also noted that sometimes drifting results when a person notices an officer parked on the side of the road, is concerned about the officer's presence for some reason, and decides to keep an eye on the officer in the rearview mirror. (R. p. 46-47).

Deputy Gilbert activated his blue lights and the Santa Fe pulled over to the right emergency shoulder of the road. (R. p. 14, lines 8-10). When approaching the vehicle, Deputy Gilbert noticed some luggage covered by a blanket in the rear cargo area. (R. p. 16, lines 3-6). This aroused Deputy Gilbert's suspicions because it was "not common with the motoring public that I come into contact with every day" since most people simply place luggage in their vehicles without taking the time to cover it with a blanket. (R. p. 40, line 23 – p. 41, line 2). Deputy Gilbert then made contact with the driver through the passenger side window. (See State's Exhibit #2, DVD, at 00:54:55). The driver, the sole occupant of the vehicle, immediately began asking Deputy Gilbert why he was being stopped.[1] (R. p. 16, lines 8-9; p. 20, lines 16-18). After identifying Appellant

[1] Deputy Gilbert stated this was "not consistent with the innocent motoring public," and that "ninety-nine percent of the time" people allow him to "get to that point" himself of explaining the reason for the traffic stop. (R. p. 17, lines 2-6).

via his driver's license as Stepheno J. Alston from Rome, Georgia,[2] Deputy Gilbert explained that Appellant had been drifting in his lane and driving on the lane marker and that he was checking to be sure Appellant was not impaired or under the influence. (See R. p. 14, lines 11-17; p. 17, lines 12-13; see State's Exhibit #2, DVD, at 00:55:19-52).

Deputy Gilbert next requested the paperwork regarding the vehicle, and Appellant produced a rental contract. (R. p. 18, lines 10-13). A review of the rental contract informed Deputy Gilbert that Appellant's vehicle had been rented two days before near Atlanta, Georgia. (R. p. 19, lines 12-23). The vehicle had been rented by a Tomeka Harris, who was not present in the vehicle with Appellant. (R. p. 20, lines 13-18). Appellant told Deputy Gilbert that Tomeka Harris was his girlfriend. (R. p. 25, lines 18-23). The third-party rental raised Deputy Gilbert's suspicions because in his training and experience, it is "very common when it comes to criminal activity" to use a third-party rental so that if the person is caught, his or her personal vehicle will not be seized. (R. p. 20, line 19 – p. 21, line 2). It further raised a red flag for Deputy Gilbert that the vehicle was rented by a female because in his training and experience, drug trafficking organizations typically rent vehicles to be used in criminal activity in a woman's name to try to throw off suspicion. (R. p. 21, lines 3-11). The rental agreement Appellant produced listed five states in which the vehicle was allowed to be operated. (R. p. 21, lines 12-19). These states included Georgia, Tennessee, Kentucky, Virginia, and West

[2] The fact that Appellant was from an area near Atlanta, Georgia, caused some concern for Deputy Gilbert because it was common knowledge in the "interdiction community" that Atlanta is a "major hub" for criminal activity in the southeast. (R. p. 17, lines 14-25). Deputy Gilbert also pointed out that Interstate 85 is a "major criminal activity corridor" connecting Atlanta to many routes to the south and north of it. (R. p. 18, lines 1-6).

Virginia.[3] (R. p. 21, lines 16-19). South Carolina was not one of the states in which the vehicle was permitted to be driven. (R. p. 21, lines 20-24).

Deputy Gilbert also noticed that two house keys had been placed on the key ring along with the rental car key. (R. p. 22, lines 13-17). Deputy Gilbert found this "very odd" and stated that in his training and experience, Appellant was trying to "personalize" the vehicle by placing his house keys on the same ring as the rental car key. (R. p. 22, line 13-25). Deputy Gilbert also found it odd that an old "mushroom" type air freshener had been placed in the driver's door pocket. (R. p. 23, lines 2-8). Notably, Appellant denied being a smoker. (See State's Exhibit #2, DVD, at 00:56:24). Deputy Gilbert found the placement of the air freshener to be particularly unusual because most people do not rent a vehicle and then immediately place an air freshener in it. (R. p. 24, lines 18-20). Deputy Gilbert stated that in his training and experience, air fresheners are often used as "masking agents" to hide odors of drugs or other things. (R. p. 24, line 21 – p. 25, line 2).

Another issue that caused Deputy Gilbert some concern was that Appellant initially stated that his license had never previously been suspended. (See R. p. 29, lines 11-24; see State's Exhibit #2, DVD, at 00:59:05). However, after receiving information from dispatch indicating the contrary, Deputy Gilbert asked Appellant again whether or not his license had ever been suspended and Appellant then admitted he had been arrested for driving under the influence in the past and that his license had been suspended at that time. (R. p. 29, lines 11-24; see State's Exhibit #2, DVD, at 1:00:03).

---

[3] Deputy Gilbert stated that the fact that these five states were listed on the rental contract raised another big red flag for him because it appeared that "from the beginning of the trip [Appellant] was trying to avoid Interstate 85." (R. p. 26, lines 10-14).

When Deputy Gilbert asked Appellant about where he was headed, Appellant stated he was going to pick up his mother in New Jersey. (R. p. 25, line 24 – p. 26, line 1). This aroused the deputy's suspicions because New Jersey was not listed on the rental contract as a permissible destination. (R. p. 26, lines 2-9). Appellant elaborated that he was going to stay with his mother, who was depressed, for about a week and then bring her home with him for Mother's Day. (R. p. 26, lines 18-25). This raised more red flags for Deputy Gilbert because the car rental was for only seven days and Appellant was already on the third day of the rental; additionally, Mother's Day was approximately a month-and-a-half away. (R. p. 27, lines 2-24). After more casual conversation, during which time Deputy Gilbert called in Appellant's information and filled out a warning ticket, Deputy Gilbert asked if anyone else had access to the vehicle. (R. p. 32, lines 8-9). Appellant said he had "no idea." (R. p. 32, line 10). When asked again, Appellant indicated no one had access to the vehicle and that it was not a good idea "nowadays" to let anybody use your rental car. (R. p. 32, lines 14-19). Deputy Gilbert found both of Appellant's responses to be suspicious. (R. p. 32, line 10 – p. 33, line 6). Deputy Gilbert and Appellant then began discussing what Appellant did for a living and his children. (R. p. 33). When the deputy inquired about the ages of Appellant's children, Appellant said he had six children but then provided the ages of seven children. (R. p. 33, lines 11-23). Deputy Gilbert found Appellant's response odd and stated that he felt the "stress of the situation" was getting to Appellant at that point. (R. p. 33, line 22 – p. 34, line 11).

Approximately sixteen minutes into the stop, Deputy Gilbert requested consent to search Appellant's vehicle. (R. p. 37, lines 1-6; p. 62-66). Although another officer, Sergeant Barnett, had just arrived on the scene to assist if needed, he parked behind

Deputy Gilbert's car and stayed away from Deputy Gilbert and Appellant. (R. p. 65, lines 3-19). Notably, Appellant's back was turned "the whole time" when Sergeant Barnett arrived. (R. p. 65, line 20 – p. 66, line 2). Deputy Gilbert could not recall exactly when he completed writing out the warning ticket, but he believed the warning was not completed until after the other officer arrived. (R. p. 58-66). He testified at one point on cross-examination that after the other officer arrived and he finished writing the citation, but had not given the citation to Appellant, he "basically went straight into consent, asking for consent to search." (R. p. 66, lines 3-7). Deputy Gilbert also stated that he never ended up handing the citation to Appellant or returning any of Appellant's paperwork to him. (R. p. 59, lines 15-16).

Appellant responded to Deputy Gilbert's request for consent to search by saying he was trying to figure out what "all this" was about. (R. p. 37, lines 6-9). Appellant then agreed to a search. (R. p. 37, lines 10-11). However, rather than immediately searching the vehicle, Deputy Gilbert specifically informed Appellant he had the right to refuse consent to search. (R. p. 37, lines 12-23). Deputy Gilbert never pulled out his weapon or coerced Appellant into giving consent, and no other officers were present in the immediate vicinity of Appellant and Deputy Gilbert. (R. p. 38, line 25 – p. 39, line 14). Appellant seemed to have the education necessary to understand what Deputy Gilbert was asking him. (R. p. 39, lines 15-17). After receiving a definite "yes" answer from Appellant, Deputy Gilbert proceeded to search the car. (R. p. 38, lines 18-24). Appellant never withdrew his consent while the search was ongoing. (R. p. 38-39; p. 40, lines 14-18). The search revealed approximately 434 grams of cocaine hidden in the

plastic molding underneath the steering column. (R. p. 133, lines 10-20; p. 169, lines 11-25).

Applicable Law

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 Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see 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 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 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), *overruled in part on other grounds by* State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 457 (2013) (citations omitted).

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. That 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. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). Thus, only unreasonable searches and seizures are 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[.]").

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). 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). The test regarding whether reasonable suspicion exists is an objective assessment of the circumstances, and the officer's subjective motivations are irrelevant. State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 457 (2013) (citations omitted). However, the initiation of 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). A traffic stop is also not unreasonable under the Fourth Amendment when an officer has a reasonable suspicion the occupants are involved in criminal activity. State v. Burgess, 394 S.C. 407, 412, 714 S.E.2d 917, 919 (Ct. App. 2011); see also State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) ("[A] policeman who lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoke that suspicion.") (citations

omitted). A law enforcement officer's subjective intentions generally play no role in a Fourth Amendment analysis. See State v. Corley, 383 S.C. 232, 241, 679 S.E.2d 187, 192 (Ct. App. 2009).

A lawful traffic stop begins at the point an officer stops a vehicle to investigate a traffic violation and "ordinarily continues, and remains reasonable, for the duration of the stop." Arizona v. Johnson, 555 U.S. 323, 333 (2009). Once a lawful traffic stop is initiated, 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." 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 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.

During the course of the stop, an officer can inquire into matters unrelated to the initial justification for the stop without converting the stop into something other than a lawful seizure so long as the unrelated questioning does not *measurably* extend the duration of the stop. Id.; 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). "Notwithstanding that an officer may not lawfully extend the duration of a traffic stop in order to engage in off-topic questioning, this rule does not limit the scope

of the officer's questions to the motorist during the traffic stop." State v. Provet, 405 S.C. at 108-109, 747 S.E.2d at 457.

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."). 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. "The officer's observations while conducting the traffic stop may create reasonable suspicion to justify further search or seizure." Provet, 405 S.C. at 109, 747 S.E.2d at 457 (citation omitted).

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 U.S. v. Cortez, 449 U.S. 411, 417 (1981)). 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." U.S. v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004) (citation omitted). "In this highly fact-specific inquiry, reasonable suspicion 'is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.'" State v. Wallace, 392 S.C. 47, 51-52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting Foreman, 369 F.3d at 781). 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 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 of the traffic stop must not be considered piecemeal or in isolation. See U.S. v. Branch, 537 F.3d 328, 337 (4th Cir. 2008). Instead, all of the circumstances of the stop must be considered as a whole to determine whether the officer's actions were reasonable in light of all of the information available to him at the time. See U.S. 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."). "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 U.S. v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)); see also U.S. v. Arvizu, 534 U.S. 266, 273-78 (2002) (rejecting the lower court's "evaluation and rejection of seven of the listed [reasonable suspicion] factors in isolation from each other" because it failed to take into account the totality of the circumstances, and holding that although "each of these factors alone is susceptible of innocent explanation, and some factors are more probative than others," taken together they

sufficed to form a particularized and objective basis for the stop, "making the stop reasonable within the meaning of the Fourth Amendment."). Thus, courts must look at the cumulative information available to an officer and "may not find a stop unjustified based merely on a piecemeal refutation of each individual fact and inference." State v. Taylor, 401 S.C. 104, 112, 736 S.E.2d 663, 667 (2013) (citations omitted).

Appellant's Case

Justification for the Initial Stop

In this case, Deputy Gilbert had both reasonable suspicion and probable cause to stop Appellant's vehicle. First, Appellant's drifting back and forth within his lane several times provided Deputy Gilbert with reasonable suspicion that Appellant was impaired or under the influence; consequently, Deputy Gilbert was justified in performing an investigatory stop. See People v. Loucks, 481 N.E.2d 1086, 1087 (Ill. App. Ct. 1985) ("Weaving within the lane of traffic in which a vehicle is traveling provides a sufficient basis for an investigatory stop of a motor vehicle, and in the instant case the evidence was undisputed that the vehicle the defendant was driving was weaving within its own lane of travel continuously for a distance of about two blocks. Such erratic driving provided Officer Cassidy with articulable facts that there was a substantial possibility that the defendant had committed, was committing, or was about to commit an offense. The undisputed evidence showed that Officer Cassidy had sufficient basis for making an investigative stop of the defendant's motor vehicle."); State v. Dorendorf, 359 N.W.2d 115, 116-17 (1984) (after noting that "[c]ourts in other jurisdictions have held that the observation of a vehicle weaving within its own lane of traffic gives rise to probable cause to stop a vehicle for investigation," the court held that "an examination of the facts

in this case leads us to conclude that the officers were justified in stopping Dorendorf for investigation. Officers Fulwider and Clock observed the weaving of the Dorendorf vehicle as it approached them. Fulwider then turned the patrol car around and followed Dorendorf, at which time both Fulwider and Clock observed Dorendorf's smooth, continuous weave within his own lane of traffic."); State v. Bailey, 51 Or.App. 173, 175, 624 P.2d 663, 664 (1981) ("We now hold . . . that the observation of a vehicle weaving within its own lane for a substantial distance gives rise to probable cause to believe that the driver is driving under the influence of intoxicants and justifies a stop for further investigation."); State v. Ellanson, 293 Minn. 490, 491, 198 N.W.2d 136, 137 (1972) (holding that an officer had the right to stop the defendant in order to investigate the cause of his unusual driving where the officer observed the defendant's automobile weaving within its own lane on the highway); State v. Lange, 255 N.W.2d 59, 63 (1977) ("Although [the defendant] places great emphasis on the fact that his vehicle did not at any time cross the center line, we do not think a police officer who has been alerted to a possible DWI suspect and who observes the vehicle wandering in its lane of traffic need wait for the driver to commit a traffic offense or become involved in an accident before he has probable cause to stop the vehicle."); State v. Hodge, 147 Ohio App.3d 550, 559, 771 N.E.2d 331, 338-39 (Ohio App. Ct. 2002) (indicating that officers may have a duty to investigate the cause of weaving or erratic driving in order to protect the public and also the driver against such possible causes as the driver being under the influence, the driver being unduly mentally fatigued or sleepy, or even some mechanical defect of the car); see also Murphy v. State, 392 S.C. 626, 628, 709 S.E.2d 685, 686 (Ct. App. 2011) (stating that the officer pulled the defendant over after noticing her "swerving and weaving"; the

defendant was subsequently arrested for driving under the influence); State v. Knighton, 334 S.C. 125, 127, 512 S.E.2d 117, 118 (Ct. App. 1999) (defendant was stopped by a trooper after the trooper received reports of his erratic driving and then personally observed him weaving between lanes and saw his tire cross over the shoulder of the road; defendant was subsequently charged with driving under the influence). In that vein, Interstate 85 is a large and often busy roadway and officers should be permitted to investigate the cause of erratic driving which could pose a threat to the safety of the motoring public. Notably, Deputy Gilbert clearly expressed his concern about Appellant's possible impairment at the very outset of the traffic stop. (See State's Exhibit #2, DVD, at 00:55:19-52).

Second, Appellant's driving on the lane marker several times provided Deputy Gilbert with probable cause that Appellant violated S.C. Code § 56-5-1900. In pertinent part, this statute states as follows: "Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply: (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety." S.C. Code § 56-5-1900(a). In State v. Vinson, this Court addressed a similar issue under this statute. See State v. Vinson, 400 S.C. 347, 349, 734 S.E.2d 182, 183 (Ct. App. 2012), *cert. denied* Dec. 19, 2013. In Vinson, a trooper observed the defendant's vehicle drift back and forth between the double yellow lines that separated the two opposing lanes of traffic. Id. at 349, 734 S.E.2d at 183. The trooper activated his dash camera and followed the defendant for approximately two-tenths of a mile, but the vehicle did not drift again into the center of

the double yellow lines and it did not completely cross into the opposing lane. Id. This Court held that the defendant's action of crossing into the area between the double yellow lines that separated the opposing lanes of traffic was, in and of itself, a violation of S.C. Code § 56-5-1900(a). Id. at 353-54, 734 S.E.2d at 185. This Court pointed out there was testimony establishing there were no other cars on the road that would have prompted the defendant's decision to cross the center line; consequently, this Court concluded it was practicable for the defendant to remain within his lane of traffic. Id. at 353, 734 S.E.2d at 185. Therefore, this Court found that the trooper's stop of the defendant's vehicle was justified. Id. at 353-54, 734 S.E.2d at 185.

The Vinson court noted that there is a "split of authority" in cases from other jurisdictions regarding the interpretation of similar "failure to maintain a single lane" statutes; however, the court stated it was "persuaded by the line of cases in which courts have found the purpose of the 'as nearly as practicable' language is to keep both drivers and pedestrians safe, not to allow motorists the option of when they will or will not abide by a lane requirement." Id. at 354, 734 S.E.2d at 185 n3 (citing U.S. v. Bassols, 775 F.Supp.2d 1293, 1300–01 (D.N.M.2011); People v. Smith, 172 Ill.2d 289, 216 Ill.Dec. 658, 665 N.E.2d 1215, 1218–19 (1996); State v. Hodge, 147 Ohio App.3d 550, 771 N.E.2d 331, 338 (2002); and State v. McBroom, 179 Or.App. 120, 39 P.3d 226, 228–29 (2002)).

In the first case cited by the Vinson court, the United States District Court addressed the issue of "whether a driver who drives on the line or stripe that divides a lane of traffic from another lane or on the line or stripe that separates a lane from the shoulder of the road violates a New Mexico statute that requires persons to drive 'as

nearly as practicable entirely within a single lane.'" Bassols, 775 F.Supp.2d at 1295-96. More specifically, the New Mexico statute stated as follows: "Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply: A. a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." N.M. Stat. Ann. § 66-7-317. Note that with the exception of one word ("such" instead of "the"), New Mexico's statute is identical to South Carolina's statute. The Bassols court looked to the plain language of the statute and concluded that the purpose of the statute was clearly to promote roadway safety. Bassols at 1300. In rejecting the defendant's argument that a person who drives on top of a dividing lane marker is still "entirely within a single lane," the court pointed out that "if a lane of traffic is defined to include the lane dividing lines, then there would be an overlap between each lane on a roadway and two vehicles could legally occupy the same physical space at the same time despite the fact that the vehicles would collide." Id. at 1300-01. The court concluded that construing the statute in the manner advocated by the defendant would lead to an absurd result and be contrary to the legislature's purpose of promoting roadway safety. Id. at 1301. Thus, the Bassols court held that the "single lane" as contemplated by the New Mexico legislature encompasses only the portion of the roadway that is between the lines or stripes that demarcate the "single lane," and that a driver who drives on a lane marker has necessarily failed to drive entirely within a single lane. Id.

In another case cited by this Court in Vinson, People v. Smith, the defendant argued that two "momentary" drifts into an adjacent lane did not violate the state's failure

to maintain a single lane statute (which is also nearly identical to South Carolina's statute) and that a person could only violate this statute by endangering others while moving from a lane of traffic. People v. Smith, 172 Ill.2d 289, 296, 665 N.E.2d 1215, 1218 (1996). In rejecting this argument, the Illinois Supreme Court found as follows:

> The plain language of the statute establishes two separate requirements for lane usage. First, a motorist must drive a vehicle as nearly as practicable entirely within one lane. Second, a motorist may not move a vehicle from a lane of traffic until the motorist has determined that the movement can be safely made. It follows that when a motorist crosses over a lane line and is not driving as nearly as practicable within one lane, the motorist has violated the statute. Once Officer Charles saw defendant cross over a lane line and drive in two lanes of traffic, Officer Charles had probable cause to arrest defendant for a violation of the Code.

Id. at 296-97, 665 N.E.2d at 1218-19.

The Oregon Court of Appeals reached a similar conclusion in State v. McBroom, 179 Or.App. 120, 39 P.3d 226 (Or. App. Ct. 2002). In McBroom, an officer stopped the defendant after observing him driving on top of the closer of the double yellow dividing lines and staying on that line for at least three-hundred feet. McBroom at 122, 39 P.3d at 227. The statute at issue in that case stated that a person commits the offense of "failure to drive within a lane" if the person operates a vehicle on a roadway that is divided into two or more clearly marked lanes for traffic and the driver does not "(a) operate the vehicle as nearly as practicable entirely within a single lane; and (b) [r]efrain from moving from that lane until the driver has first made certain that the movement can be made with safety." Id. at 123, 39 P.3d at 228. Looking to the statute's text and policy, the court rejected the defendant's argument that he stayed within a single lane even though his tires were on the double yellow line. Id. at 123-24, 39 P.3d at 228. The court reasoned that the text of the statute indicated the legislature intended that drivers stay

"within" the lines that mark the lanes and that "the legislature did not intend to permit opposing motorists to vie for control of the center dividing line." Id. The court also pointed out that the policy of the statute - to provide maximum safety for all persons who travel or otherwise use the public highways of the state - was defeated if the defendant's position was correct. Id.

The McBroom court pointed out that the statutory requirement that a driver stay "entirely within a single lane" is not absolute because it modifies the phrase with "as nearly as practicable." Id. The court stated that "[p]racticable means 'possible to practice or perform,' 'capable of being put into practice, done or accomplished' or 'feasible,'" and that what is practicable or feasible will vary with the circumstances of each case. Id. at 124-25, 39 P.3d at 228. The court then stated that "[t]here is nothing in this record, however, to suggest the defendant failed to stay within his lane because he was responding to an apparent hazard or because he had some other valid reason for leaving his lane. Rather, defendant drove for more than 300 feet on the center line for no apparent reason. Given those facts, the officer reasonably believed that defendant had failed to stay 'within his lane' in violation of subsection (a) of the statute." Id. at 125, 39 P.3d at 228-29. The court then noted that "[t]his is not a case in which the defendant's car tires touched the center line only briefly. We accordingly need not decide whether that act, standing alone, would give an officer probable cause to believe that a driver had failed to operate his or her car 'as nearly as practicable entirely within a single lane.'" Id.

The defendant in McBroom also argued in the alternative that, even if he failed to stay entirely within a single lane, he still did not violate the statute unless he also failed to comply with part (b), which required that a driver refrain from moving from his or her

lane until the driver has first made certain the movement can be made with safety. Id. The court rejected this argument, stating that it disagreed that subsection (b) "permits a driver to stray from his or her lane (or straddle two lanes) as long as he or she can do so safely." Id. The court reasoned as follows:

> Subsection (a) thus states the general rule - a driver should operate his or her vehicle "as nearly as practicable entirely within a single lane." Subsection (b) states when a driver may depart from that rule. By its plain language, however, subsection (b) does not excuse drivers from staying within their lanes unless (1) they are moving from one lane to another and (2) they first make certain that they can do so safely.

Id. at 125-26, 39 P.3d at 229. The court pointed out that the defendant was not claiming he was moving from one lane to another at the time of the alleged violation, and, in any event, "the officer reasonably could have concluded that defendant was not moving from one lane to another when he failed to stay within his lane." Id. Thus, the McBroom court held that the officer had probable cause to believe the defendant violated the statute and that the trial court correctly denied the motion to suppress. Id.

In State v. Hodge, 147 Ohio App.3d 550, 771 N.E.2d 331 (Ohio App. Ct. 2002), the Ohio Court of Appeals also addressed the propriety of a traffic stop for an alleged violation of a nearly identical "failure to maintain a single lane" statute. In Hodge, the officer observed the defendant drifting over into an adjacent lane, although the officer testified this partial crossing posed little danger because there was no other traffic on the road at the time. Hodge at 552-53, 771 N.E.2d at 333. The appellate court first noted that beginning in 1994, the Ohio courts repeatedly held that "insubstantial drifts" across lane lines did not give rise to reasonable and articulable suspicion to make a traffic stop. Id. at 555, 771 N.E.2d at 335. However, the court found that these cases were of limited precedential value in light of the United States Supreme Court's decision in Whren v.

United States, 517 U.S. 806 (1996), which held that even a *de minimis* violation of a traffic law gives rise to a reasonable suspicion to make an investigatory stop of a vehicle. Id. at 555-57, 771 N.E.2d at 335-36. Thus, the court explicitly overruled these pre-Whren cases. Id. at 557, 771 N.E.2d at 337.

The Hodge court then stated that the necessary analysis focuses upon the meaning of "practicable" in reference to maintaining a vehicle within a lane pursuant to the statute. Id. Using the ordinary definition of the word and common sense, the court stated that "practicable" meant "performable, feasible, possible." Id. at 558, 771 N.E.2d at 337. The court noted that other jurisdictions generally agree with this definition. Id. at 558, 771 N.E.2d at 338. The court then ruled that "[w]hen read in this context, the statute without question mandates drivers to maintain their vehicle (sic) within a lane without some kind of exigent circumstance forcing the vehicle operator to do otherwise." Id. The court explained:

> The legislature did not intend for a motorist to be punished when road debris or a parked vehicle makes it necessary to travel outside the lane. Nor, we are quite certain, did the legislature intend this statute to punish motorists for traveling outside their lane to avoid striking a child or animal. We are equally certain the legislature did not intend the statute to give motorists the *option* of staying within the lane at their choosing. Common sense dictates that the statute is designed to keep travelers, both in vehicles and pedestrians, safe. The logical conclusion is that the legislature intended only special circumstances to be valid reasons to leave a lane, not mere inattentiveness or carelessness. To believe that the statute was intended to allow motorists the option of when they will or will not abide by the lane requirement is simply not reasonable.

Id (emphasis in original). The court concluded that "Hodge committed a readily apparent traffic violation: he left the lane in which he was traveling when it was practicable to stay within his own lane of travel." Because of this, and because the officer also witnessed

two other traffic violations, the court concluded the officer had a reasonable and articulable suspicion that a violation of the law occurred. Id. at 560, 771 N.E.2d at 339.

In Appellant's case, Deputy Gilbert had probable cause to stop Appellant's vehicle for a violation of S.C. Code § 56-5-1900(a) based upon Appellant's driving on top of the lane marker "several times." (R. p. 13, line 23 – p. 14, line 3). As noted in Vinson, a motorist cannot be driving "entirely within" a single lane if he or she is driving on top of the lane marker because such an interpretation would lead to the absurd result that two vehicles could both properly occupy the same space at the same time. Vinson at 354, 734 S.E.2d at 185 n3 (citing U.S. v. Bassols, 775 F.Supp.2d 1293, 1300–01 (D.N.M.2011)). Further, as was also noted in Vinson, the purpose of the statute is to keep both drivers and pedestrians safe, "not to allow motorists the option of when they will or will not abide by a lane requirement." Id; cf. State v. Parker, 271 S.C. 159, 161, 245 S.E.2d 904, 905 (1978) (construing S.C. Code § 56-5-1810, which requires, among other things, that vehicles be driven on the right half of the roadway subject to certain exceptions). Therefore, Appellant's driving on top of the lane marker meant he was not "entirely within" a single lane.

Moreover, just as in the Vinson case, there was no evidence it was not "practicable" for Appellant to stay entirely within his lane at the time.[4] "Practicable" has been defined as "reasonably capable of being accomplished, feasible." Black's Law Dictionary (9th ed. 2009). Our Supreme Court has defined it in other settings to mean "reasonably possible" or "that which is possible of reasonable performance" or "capable of and being done or performed." See Woody v. S.C. Power Co., 202 S.C.

[4] Note that Appellant did not argue at trial or on appeal that it was not practicable for him to drive within his lane. (See R. p. 84-88; see Brief of Appellant, p. 13-16).

73, 24, S.E.2d 121 (1943); Fort Sumter Hotel v. S.C. Tax Comm., 201 S.C. 50, 21 S.E.2d 393, 396 (1942). Taken in context, the term "as nearly as practicable" means that a driver must remain in his single lane unless an exigent circumstance makes the operation of the vehicle in the single lane impossible. Other jurisdictions have construed this statutory term similarly. See People v. Smith, 665 N.E.2d 1215 (Ill. 1996); Texas Dep't of Public Safety v. Chang, 994 S.W.2d; State v. Hodge, 771 N.E.2d 331 (Ohio 2002); Unverzagt v. Prestera, 13 A.2d 46 (Pa. 1940); Beech Fork Coal Co. v. Pocahontas Corp., 152 S.E.785 (W.Va. 1930); People. ex rel. Williams v. Errant, 82 N.E.271 (1907).

In Appellant's case, it is clear from the record and the video of the traffic stop that there were no exigent circumstances or adverse driving conditions making in impracticable for Appellant to stay entirely within his lane of travel. It was early afternoon on a clear day and Appellant was driving on a well-maintained, normal interstate. (See State's Exhibit #2, DVD, at 00:54:20-30). Significantly, after the officer explained the reason for the stop, i.e., Appellant's driving on top of the lane marker several times, Appellant made no claim that some emergency or road condition made it impracticable for him to stay within his lane. (See State's Exhibit #2, DVD, at 00:55:17-52). Accordingly, since Appellant failed to stay entirely within his lane despite the fact that it was "practicable" for him to do so, Deputy Gilbert had probable cause to stop Appellant's vehicle. See, e.g., State v. Williams, 351 S.C. at 598, 571 S.E.2d at 707 (the initiation of a traffic stop is reasonable *per se* when probable cause exists to believe a traffic violation has occurred).

Appellant argues for the first time on appeal that because he "could have legally and safely changed lanes at the time he allegedly struck the white dotted line dividing the middle lane and the far left lane, [he] did not violate § 56-5-1900(a)." (Brief of Appellant, p. 15-16). (See R. p. 84-88). In addition to not being preserved for review, this argument is without merit. As explained in the Smith and McBroom cases discussed above - which were both cited in this Court's opinion in Vinson - the failure to maintain a single lane statutes generally state two distinct requirements for lane usage. The first part requires that a motorist drive a vehicle as nearly as practicable entirely within one lane. The second part states that a motorist may not *move* a vehicle from a lane of traffic - i.e., change lanes - until the motorist has determined the movement can be safely made. The second part of the statute does not, however, excuse drivers from staying within their lanes as required by first part unless they are actually moving from one lane to another and they first make certain that they can do so safely. In Appellant's case, the second part of the statute does not apply because Appellant was not performing a lane change. At the very least, Deputy Gilbert could have reasonably concluded Appellant was not changing lanes at the time he failed to stay entirely within his lane. See McBroom at 125-26, 39 P.3d at 229. Therefore, Appellant's argument that he could have legally changed lanes is of no avail.

The two Texas cases Appellant cites in support of his position are, in the State's view, poorly reasoned, and are in any event distinguishable. (See Brief of Appellant, p. 16). In both cases, the Texas Court of Appeals construed a statute that required drivers to drive "as nearly as *practical*" entirely within a single lane. See State v. Cerny, 28 S.W.3d 796, 800 (Tex. App. Ct. 2000) & Hernandez v. State, 983 S.W.2d 867, 871 (Tex. App.

Ct. 1998) (emphasis added). Our South Carolina statute requires motorists to drive "as nearly as *practicable*" entirely within a single lane. See S.C. Code § 56-5-1900(a) (emphasis added). The terms "practical" and "practicable" have different meanings and the distinction was not lost on the Texas Court of Appeals. In Hernandez, the Texas Court of Appeals explained the difference in the two terms as follows: the term "practicable" has "a somewhat more definite meaning: 'capable of being accomplished; feasible; possible,'" while the term "practical" "is more ambiguous: manifested in practice; capable of being put to good use." Hernandez at 871 (citation omitted). Since the statute discussed in Appellant's Texas cases contains language meaningfully different than the language in South Carolina's statute, this Court should give little or no weight to these cases as persuasive authority.

In sum, the initial stop of Appellant was justified because Appellant's drifting back and forth within his lane several times provided Deputy Gilbert with reasonable suspicion that Appellant was impaired or under the influence, and because Appellant's driving on top of the lane marker several times provided Deputy Gilbert with probable cause that Appellant violated S.C. Code § 56-5-1900(a).

Detention of Appellant

Discussion of Recent Cases

In State v. Provet, an officer stopped the defendant on I-85 in Greenville County for following another vehicle too closely and driving with a burned-out tag light. 405 S.C. 101, 105, 747 S.E.2d 453, 455 (2013). As the defendant produced his license and registration, the officer - who had fourteen years of experience with the South Carolina Highway Patrol and four years of experience in the Aggressive Criminal Enforcement

("ACE") unit - noticed that the defendant's hands were shaking excessively and that his breathing was accelerated. Id. at 105-106, 747 S.E.2d at 455-56. After discovering that the vehicle was registered to a third party, the officer asked the defendant to step to the rear of the car and he performed a pat-down search which did not yield any weapons. Id. at 106, 747 S.E.2d at 455-56. As the officer prepared a warning citation for the traffic violations, he asked the defendant where he was coming from, and the defendant stated he had been visiting a girlfriend at a nearby Holiday Inn; however, the officer had just observed the defendant pass the exit at which the only Holiday Inn in Greenville was located. Id. at 106, 747 S.E.2d at 456. The defendant was unable to tell the officer the exit number of the Holiday Inn he had just left and denied having gone anywhere else after leaving the Holiday Inn. Id. In response to further questions, the defendant explained that the car he was driving belonged to a different girlfriend than the one he had just visited; that he had recently graduated from technical college and was unemployed; and that he had been in Greenville for two days but did not have any luggage. Id. At that point the officer called for a canine drug detection unit and also called dispatch to check on the status of the defendant's license and the vehicle's registration. Id.

When the officer approached the car to check the vehicle identification number, he noticed that the car contained several air fresheners, several fast food bags, a cell phone, some receipts, and a bag on the rear seat. Id. The canine unit arrived prior to the officer's receipt of the dispatcher's return call regarding the status of the license and registration; however, when dispatch reported no problems with either the license or registration, the officer returned the license and registration papers to the defendant and

issued him a warning citation. Id. After doing so, the officer requested permission to search the defendant's vehicle, and the defendant consented. Id. As another officer prepared the drug detection dog to perform a search, the defendant fled the scene on foot but was apprehended. Id. The dog alerted to a fast food bag in the car, and the subsequent search of the bag yielded a substance that field tested positive for cocaine. Id.

At trial, the defendant moved to suppress the cocaine found in the fast food bag, arguing that the cocaine was obtained as a result of an illegal detention and search. Id. The trial court found that the second detention of the defendant, which began when the officer requested permission to search the vehicle, was justified by the officer's reasonable suspicion that the defendant was involved in criminal activity and also found that the defendant voluntarily consented to the search. Id. at 106-107, 747 S.E.2d at 456. The Court of Appeals affirmed. See State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011). Regarding the initial detention, the Court found the stop was proper as the officer's questioning was tangentially related to the traffic stop. Id. at 499, 706 S.E.2d at 516. The Court further found the questioning did not unreasonably extend the traffic stop because the officer had not completed the initial purpose of the stop and the stop was only eleven minutes long. Id. at 499-500, 706 S.E.2d at 516.

Regarding the extension of the traffic stop after the warning was issued, the Court determined the officer possessed reasonable suspicion to extend the stop based on the presence of the following factors: (1) Provet's nervous behavior; (2) the fact third-party vehicle registration is common in drug trafficking; (3) Provet's inconsistent or deceptive responses to several questions; (4) the presence of numerous fast food bags, a cell phone, and some receipts; and (5) the presence of numerous air fresheners. Id. at 504-505, 706

S.E.2d at 518-519. Based on the factors present coupled with the officer's considerable experience, the Court of Appeals concluded the trial court did not err in finding an extension of the stop was justified under the circumstances. Id. at 506, 706 S.E.2d at 519-520.

The South Carolina Supreme Court also upheld the denial of the defendant's motion to suppress. Provet at 109-13, 747 S.E.2d at 457-59. The Supreme Court held that the officer's off-topic questioning did not **measurably** extend the duration of the stop, where the time from initial seizure up until the point the officer requested consent to search the defendant's vehicle was only approximately ten minutes.[5] Id. at 109, 747 S.E.2d at 457-58. Importantly, the Supreme Court also took the opportunity to clarify that, to the extent that State v. Rivera, 384 S.C. 356, 682 S.E.2d 307 (Ct.App. 2009), suggested that police questioning must bear some relationship to the purpose of the stop in order to withstand Fourth Amendment scrutiny, it was incorrect. Id. at 110, 747 S.E.2d at 458. The Provet court also stated that "[t]o the extent Rivera suggests that shifting the conversation to another topic marks the end of the lawful seizure even though the citation has not been issued, regardless whether such off-topic conversation measurably extends the duration of the initial seizure, it is also incorrect." Id. Further, "[t]o the extent other South Carolina cases contain similar language, we note that language has likewise been superseded." Id. at 111, 747 S.E.2d at 458.

The Supreme Court also concluded that the officer had reasonable suspicion to detain the defendant in order to request his permission to search the vehicle. Id. at 111-

[5] The Court also noted that "the proper inquiry is not whether an officer 'unreasonably' extended the duration of the traffic stop with his off-topic questions but whether he 'measurably' extended it. This is a temporal inquiry, not a reasonableness inquiry." Provet at 111, 747 S.E.2d at 458 (citation omitted).

12, 747 S.E.2d at 459. The following factors were relevant to the reasonable suspicion determination: (1) the officer's testimony that the defendant exhibited extreme nervousness, as evidenced by shaking hands and accelerated breathing, which was excessive in comparison to people he pulled over who were not involved in criminal activity other than a traffic violation; (2) the vehicle's registration to a third party; (3) the defendant's apparent deception regarding where he was coming from; (4) the defendant's claim that he was unemployed yet was able to afford to stay in a hotel and buy large quantities of gasoline for his large vehicle; (5) the presence of numerous air fresheners in the vehicle, which indicated to the officer that the defendant was seeking to mask odors; (6) the presence of numerous fast food bags, receipts, and the cell phone, which the officer testified were all consistent with the tight schedule maintained by drug traffickers; and (7) the fact that the defendant claimed to have no luggage but the officer observed a bag on the rear seat that could have been a luggage bag. Id. at 111-12, 747 S.E.2d at 459. The Supreme Court held that the officer had reasonable suspicion supported by articulable facts that criminal activity was afoot, justifying a second seizure, and that because the record contained evidence supporting the trial court's finding of reasonable suspicion, the Court was required to affirm due to the deferential standard of review. Id. at 112, 747 S.E.2d at 459.

In State v. Wallace, Wallace was stopped on Interstate 85 for committing a traffic violation. Wallace, 392 S.C. at 50, 707 S.E.2d at 452. The officer took twelve minutes to complete the traffic stop and issued Wallace a citation. Id. However, based on his observations during the stop, the officer continued to question Wallace after issuing the ticket and requested consent to search the vehicle. Id. Wallace refused consent, and the

officer walked a drug-sniffing dog around the vehicle. Id. The dog alerted on Wallace's car, and a substantial quantity of cocaine was discovered inside. Id. During trial, Wallace moved to suppress the drugs found in his vehicle, and the trial judge denied the motion. Id.

On appeal, the Court of Appeals affirmed the trial judge's ruling. Id. The Court determined the following factors observed by the officer during the traffic stop established a reasonable articulable suspicion to extend the duration of the stop: (1) Wallace's abnormal braking after the officer initiated the stop; (2) Wallace's fumbling of his paperwork for an unusually long period of time; (3) the fact the passenger stared straight ahead and did not acknowledge the officer; (4) Wallace and the passenger's inconsistent responses about their trip; (5) Wallace's increasing nervousness throughout the stop; (6) the fact an unknown car pulled up behind Wallace's vehicle for several minutes during the stop; (7) Wallace's cell phone ringing during the stop; (8) the fact drug dealers frequently use decoy cars and communicate via cell phones; (9) the fact the passenger would not look at the officer while they were talking; (10) the fact the passenger was sweating and visibly nervous on a mild day; (11) the fact Wallace changed his story after the officer spoke with his passenger; (12) the fact the car was owned by a third-party, which is common in drug cases; (13) Interstate 85's status as a known drug corridor; and (14) Atlanta's status as a known drug hub. Id. at 55, 707 S.E.2d at 455. While noting none of the factors taken in isolation established a reasonable articulable suspicion of criminal activity, this Court held the presence of all of the factors established a reasonable suspicion when examined in totality as required. Id.

Similarly, in State v. Jones, Jones was stopped for speeding on I-85 in Spartanburg County. 364 S.C. 51, 53, 610 S.E.2d 846, 847 (Ct. App. 2005). While in the process of issuing a traffic ticket, the officer, as a part of his routine procedure, asked Jones where he had been coming from. Id. Jones indicated he and the other two occupants of the vehicle had been in Greenville visiting his cousin and stated that they had stayed in a hotel. Id. However, Jones was unable to provide the name or location of the hotel. Id. Jones then changed his story and told the officer he stayed with his cousin, but was unable to provide his cousin's name or the location of his cousin's residence. Id. at 53-54, 610 S.E.2d at 847. Jones appeared "very nervous" and was sweating profusely despite the fact that it was a cool day. Id. at 54-55, 610 S.E.2d at 847-48.

Although Jones had provided his driver's license, he did not produce the vehicle's registration; therefore, the officer requested the passenger's assistance in locating the registration. Id. As the passenger fumbled through some paperwork looking for the registration, the officer asked him where they were coming from. Id. The passenger responded that they had been in Spartanburg for the last two days but could not remember specifically where they had been. Id. Then the backseat passenger stated that they had been in Atlanta that morning, not Spartanburg. Id. At that point, the officer asked Jones if there were any weapons in the vehicle or any other items he needed to know about; Jones responded that there were not. Id. The officer then asked for permission to search the vehicle and Jones consented. Id. at 54, 610 S.E.2d at 847-48. Immediately thereafter, approximately seven minutes into the stop, the officer made a call requesting backup. Id. It took three to four minutes for the backup officer to arrive, and during this time, the initial officer continued to fill out paperwork related to the speeding

ticket. Id. at 54, 610 S.E.2d at 848. About the time the backup officer arrived, the front seat passenger jumped out of the vehicle with a white towel in his hand. Id. The officers gave chase and observed the passenger throwing objects in the bushes as he ran. Id. at 55, 610 S.E.2d at 848. These objects were subsequently retrieved and were determined to contain more than 230 grams of crack cocaine. Id.

Jones moved to suppress the crack cocaine, arguing it was found as a result of an unconstitutionally prolonged detention. Id. He further argued that the questioning of Jones and the passengers was a deliberate ruse so the officer could eventually search the car. Id. The trial judge denied the motion, finding that the traffic stop lasted a reasonable amount of time; that any prolonging was due to the fact that Jones did not immediately produce the car's registration; and that there was no constitutional violation with regard to the officer's casual conversation with Jones and the passengers regarding where they had been coming from. Id. Finally, the trial judge determined that whether or not Jones gave valid consent to search was irrelevant where no search was carried out pursuant to the consent because the passenger jumped out and fled with the drugs after being detained no more than eleven minutes. Id. at 55-56, 610 S.E.2d at 848.

On appeal, Jones relied on this Court's decision in State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002), arguing that Williams mandated reversal of the trial judge. Jones at 56, 610 S.E.2d at 848. This Court disagreed and held that the Williams case was "easily distinguishable" because in Williams, the driver and passenger were clearly detained beyond the scope of the traffic stop where the officer did not begin to question them until after he had completed the ticket and returned the driver's license and registration. Id. at 57, 610 S.E.2d at 849. In other words, only **after** completing the

purpose of the traffic stop did the officer begin to ask questions that led to his becoming suspicious. See Williams, 351 S.C. at 595-96, 571 S.E.2d at 705-706; cf. State v. Tindall, 388 S.C. 518, 522, 698 S.E.2d 203, 205 (2010) (pointing out that, although at this point, the purpose of the traffic stop was accomplished except for the issuance of the warning ticket, rather than issue the ticket, the officer continued to question the defendant for an additional six to seven minutes). The Jones court found no Fourth Amendment violation where the officer did not question Jones and his passenger after returning Jones's license and registration; the questions the officer asked during the traffic stop did not exceed the scope of the traffic stop such as would convert the stop into an illegal detention, particularly where the detention was not for an unreasonably long time; and the purpose of the traffic stop had not yet been completed at the time Patterson ran with the drugs. Id. at 58, 610 S.E.2d at 850. In conclusion, this Court stated: "[i]n 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." Id. at 59, 610 S.E.2d at 850.

No Measureable Extension of the Traffic Stop

The State first submits that there was no unlawful detention beyond the scope of the traffic stop. As the Supreme Court stated in Provet, off-topic questioning by the officer is permissible where it does not **measurably** extend the traffic stop. See Provet, 405 S.C. at 108-111, 747 S.E.2d at 457-59; see also Arizona v. Johnson, 555 U.S. 323, 333 (2009); Muehler v. Mena, 544 U.S. 93, 100-101 (2005). In his Brief, Appellant indicates that the purpose of the traffic stop was completed around fifteen minutes and ten seconds into the stop, when Deputy Gilbert puts away his pen, rips the warning off the pad, and places the warning in his right hand. (See Brief of Appellant, p. 19).

Assuming Appellant's interpretation of the video is correct,[6] the additional minute of discussion before Deputy Gilbert requested consent to search did not **measurably** extend the stop so as to render it an unlawful second detention. See Provet, Johnson, Mena; see also U.S. v. Mason, 628 F.3d 123, 131-32 (4th Cir. 2010) (stating that brief discussion about matters unrelated to the traffic violation does not violate the Constitution and finding that one to one and a half minutes of questioning on matters unrelated to the traffic stop did not measurably extend the traffic stop); U.S. v. Olivera–Mendez, 484 F.3d 505, 510 (8th Cir.2007) ("[A]n officer does not violate the Fourth Amendment by asking a few questions about matters unrelated to the traffic violation, even if this conversation briefly extends the length of the detention" (citing U.S. v. Alcaraz–Arellano, 441 F.3d 1252, 1259 (10th Cir.2006); U.S. v. Burton, 334 F.3d 514, 518–19 (6th Cir.2003); U.S. v. Childs, 277 F.3d 947, 951–54 (7th Cir.2002) (en banc))); U.S. v. Everett, 601 F.3d 484, 492–94 (6th Cir.2010) (relying on Mena and Johnson in holding that brief questioning unrelated to the purpose of a traffic stop does not violate the Fourth Amendment); U.S. v. Derverger, 337 F. App'x 34, 36 (2nd Cir. 2009) (concluding that five minutes of additional questioning did not significantly extend the time the defendant was detained); U.S. v. Harrison, 606 F.3d 42, 45 (2nd Cir. 2010) (finding that an officer who had all of the information necessary to issue a traffic ticket after speaking with the driver did not measurably extend the traffic stop by subsequently speaking with the passengers for several minutes in an attempt to corroborate the driver's story); cf. State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010) (holding that an officer's continued questioning of the defendant for "an additional six to seven minutes," as the defendant sat in a patrol car

[6] It is not entirely clear what is occurring in the video because Deputy Gilbert is mostly off-camera at this point. (See State's Exhibit #2, DVD, at 01:09:30).

with a police dog in the back and two other officers standing outside the patrol car, exceeded the scope of the traffic stop and constituted a second seizure).

In fact, at the time Deputy Gilbert requested consent to search, only about sixteen minutes had elapsed since the commencement of the traffic stop. Cf. Provet, 405 S.C. at 109, 747 S.E.2d at 457-458 (approving a ten-minute detention as reasonable and not measurably extended); U.S. v. Sharpe, 470 U.S. 675, 683 (1985) (concluding that a twenty-minute detention during an investigatory traffic stop was objectively reasonable); Branch, 537 F.3d at 338 (stating that a thirty-minute detention was justified by the ordinary inquiries incident to a routine traffic stop); U.S. v. Jeffus, 22 F.3d 554, 557 (4th Cir. 1994) (finding a fifteen-minute traffic stop to be reasonable); U.S. v. Jones, 44 F.3d 860, 872 (10th Cir. 1995) (approving of a thirty-minute traffic stop); U.S. v. Hardy, 855 F.2d 753, 761 (11th Cir. 1988) (finding a fifty-minute investigatory stop to be reasonable); U.S. v. Jeffus, 22 F.3d 554, 557 (4th Cir.1994) (approving fifteen-minute traffic stop); U.S. v. Mincey, 321 Fed.Appx. 233, 240–42 (4th Cir.2008) (approving a thirty-five-minute stop); U.S. v. Jones, 289 Fed.Appx. 593, 598–600 (4th Cir.2008) (twenty minute stop); U.S. v. Ramirez, 29 Fed.Appx. 111, 113–14 (4th Cir.2002) (fifteen minute stop); U.S. v. Purcell, 236 F.3d 1274, 1279 (11th Cir. 2001) (fourteen minutes); U.S. v. Olivera–Mendez, 484 F.3d 505, 510 (8th Cir. 2007) (fifteen minutes).

Although Deputy Gilbert acknowledged he waited for another officer to arrive before he asked for consent to search Appellant's vehicle, any questioning of Appellant that was unrelated to the traffic stop, including the officer's request for consent to search, did not measurably extend the traffic stop. Further, the overall detention length of sixteen

minutes was also reasonable. Accordingly, there was no unlawful detention of Appellant beyond the scope of the traffic stop.

Reasonable Suspicion Supported a Continued Detention

However, even assuming there was a detention beyond the scope of the traffic stop, a continued detention was permissible because, prior to the time Deputy Gilbert requested permission to search Appellant's car, he had acquired reasonable suspicion of criminal activity. Specifically, Deputy Gilbert's decision to extend the stop was supported by the following factors: (1) Deputy Gilbert's fourteen years of experience in law enforcement and his extensive interdiction training; (2) the fact that as soon as Appellant passed Deputy Gilbert, who was parked on the side of the road, he began weaving in his lane, suggesting he was looking back at the officer in his rearview mirror and was concerned about his presence; (3) the fact that the cargo area of Appellant's vehicle contained luggage covered by a blanket, which could be viewed as a tactic to divert attention to the luggage and away from other areas in the vehicle;[7] (4) the fact that Appellant immediately questioned Deputy Gilbert about the reason he was being stopped, which suggested Appellant was nervous and which Deputy Gilbert testified was unusual in his experience because ninety-nine percent of the time people allow him to reach that point on his own; (5) the fact that Appellant had placed an air freshener in the driver's door pocket of his rental vehicle despite the fact that he denied being a smoker; (6) the fact that Appellant had placed two house keys on the same ring as the rental car key, which Deputy Gilbert stated he had not seen in his fourteen years of experience and

[7] This diversionary tactic worked well in Appellant's case as illustrated by the fact that Deputy Gilbert began his search with the luggage covered by a blanket and continued searching this area for an extended period. (See State's Exhibit #2, DVD, at 01:12:55 – 01:19:48).

which he interpreted as Appellant attempting to "personalize" the vehicle; the fact that Appellant's house keys were on the rental car key ring was especially suspicious where Appellant was, according to his story, not going home but was instead going to visit his mother in New Jersey; (7) the fact that Appellant was traveling in South Carolina, a state not permitted in the rental contract, and that Appellant stated he was going to New Jersey, another state not listed in the rental contract; (8) the fact that Appellant's stated travel plans did not match up with the information in the car rental contract, and that his story about bringing his mother back for Mother's Day, which was more than a month away, further conflicted with his previously-stated travel plans; (9) the fact that Appellant initially lied about the fact that his license had been suspended in the past and only admitted the previous suspension after Deputy Gilbert ran the license check; (10) the fact that Appellant was coming from the Atlanta area (a well-known drug hub) and was traveling on Interstate 85 (a major crime corridor); (11) the fact that the vehicle was rented by a third party who was not present in the vehicle, and that this third party rental was done in a female's name inasmuch as Deputy Gilbert stated that in his training and experience, many drug trafficking organizations rent vehicles using female names in an attempt to throw off suspicion; (12) the fact that Appellant stated he had six children but then gave the ages for seven children, which Deputy Gilbert stated indicated to him that the "stress of the situation" was affecting Appellant.

Taking into account Deputy Gilbert's extensive experience and training, his observation of the above indicators, considered together under the totality of the circumstances, provided him with reasonable suspicion that Appellant was involved in drug activity, and this reasonable suspicion was sufficient to justify a brief continued

detention to allow Deputy Gilbert to request voluntary consent to search Appellant's car. See Wallace, 392 S.C. at 55, 707 S.E.2d at 455 (finding inconsistent stories, third-party vehicle ownership, and Atlanta's status as a drug hub to be relevant factors in establishing a reasonable articulable suspicion of drug activity); Provet, 391 S.C. at 504, 706 S.E.2d at 518 (considering the fact that third-party vehicle ownership is commonly connected with drug trafficking in finding that an officer had reasonable suspicion to extend a traffic stop); United States v. Davis, 636 F.3d 1281, 1291 (10th Cir. 2011) ("our cases note drug traffickers often use rental vehicles to transport narcotics"); see also Robinson v. State, 407 S.C. 169, 184, 754 S.E.2d 862, 870, n. 9 (2014) ("[T]he facts and inferences relied on by the officer must be articul*able,* not necessarily articula*ted.*") (emphasis in original); cf. State v. Tindall, 388 S.C. 518, 523, 698 S.E.2d 203, 206 (2010) (finding that the following four factors were insufficient to establish reasonable suspicion: (1) Tindall was driving to Durham to meet his brother; (2) Tindall was driving a rental car rented the previous day by another individual which was to be returned to Atlanta on the day of the stop; (3) Tindall did a "felony stretch" on exiting the vehicle; and (4) Tindall seemed nervous).

Although some of the factors observed by Deputy Hines might appear to be consistent with innocent travel to a person lacking the officer's experience and training, all of the factors **taken together** established a reasonable articulable suspicion Appellant was involved in drug activity. See Robinson v. State, 407 S.C. 169, 185, 754 S.E.2d 862, 870 (2014) (referencing the Provet opinion and pointing out that "[*d*]*espite the fact that the Court agreed with the defendant that the existence of several factors were indicative of innocent travel,* the Court noted, "we must affirm when *any evidence* in the record

supports" the trial court's finding.") (emphasis in original), citing Provet at 112, 747 S.E.2d at 459; U.S. v. Arvizu, 534 U.S. 266, 277-78 (2002) ("A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct. Undoubtedly, each of these factors alone is susceptible of innocent explanation, and some factors are more probative than others. Taken together, we believe they sufficed to form a particularized and objective basis for Stoddard's stopping the vehicle, making the stop reasonable within the meaning of the Fourth Amendment.") (citation omitted); Illinois v. Wardlow, 528 U.S. 119, 130 n4 (2000) (noting that in Terry v. Ohio, "reasonable suspicion was supported by a concatenation of acts, each innocent when viewed in isolation, that when considered collectively amounted to extremely suspicious behavior"); U.S. v. Sokolow, 490 U.S. 1, 10 (1989) (reiterating that in making a determination regarding probable cause, the relevant inquiry is not whether particular conduct is innocent or guilty but the degree of suspicion that attaches to particular types of *noncriminal acts*; that principle applies equally well to the reasonable suspicion inquiry) (citations omitted); see State v. Taylor, 401 S.C. at 113, 736 S.E.2d at 667 (reiterating the "well-settled principle that courts must give due weight to common sense judgments reached by officers in light of their experience and training"); State v. Burgess, 394 S.C. 407, 414, 714 S.E.2d 917, 920 (Ct. App. 2011) (failing to afford the proper weight to an officer's inferences stemming from his experience would be to fail to consider the totality of the circumstances) (citation omitted); Taylor at 108, 736 S.E.2d at 665 (instructing that courts must consider the cumulative information available to the officer and pointing out that each individual factor might not alone give rise to reasonable suspicion) (citations omitted); see also Mason, 628 F.3d at 129 ("[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."). Accordingly, Appellant's detention for the brief period of time it took to request consent to search his car was not unlawful, and the trial judge's denial of Appellant's suppression motion should be affirmed. See Provet, 405 S.C. at 107, 747 S.E.2d at 456 ("South Carolina appellate courts review Fourth Amendment determinations under a clear error standard. We affirm if there is any evidence to support the trial court's ruling." (citations omitted)); State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."). Because reasonable suspicion justified a second detention of Appellant, this Court should affirm the trial court's denial of Appellant's suppression motion.

Consent to Search

"Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent." Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999). "Undoubtedly, a law enforcement officer may request permission to search at any time. However, when 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." State v. Pichardo, 367 S.C. 84, 105, 623 S.E.2d 840, 851 (Ct. App. 2005) (emphasis in original). Whether consent to a search is voluntary is a question of fact to be determined from the totality of the circumstances. State v. McKnight, 352 S.C. 635, 656, 576 S.E.2d 168, 179 (2003).

In Appellant's case, since Deputy Gilbert possessed reasonable suspicion of criminal activity at the time he requested permission to search Appellant's vehicle, Appellant's subsequent consent to the search was not the product of any unlawful detention. See Provet at 114-15, 747 S.E.2d at 460 (where the officer had reasonable suspicion for an additional seizure and the defendant's consent was voluntary, there was no Fourth Amendment violation); State v. Willard, 374 S.C. 129, 135-36, 647 S.E.2d 252, 256 (Ct. App. 2007) (same); see also U.S. v. Boone, 245 F.3d 352, 362 (4th Cir. 2001) ("If individual voluntarily consents to a search while justifiably detained on reasonable suspicion, the products of the search are admissible.") (citing Florida v. Royer, 460 U.S. 491, 502 (1983)).

The record also supports that Appellant's consent was freely and voluntarily given. Deputy Gilbert requested permission to search Appellant's vehicle only sixteen minutes into the stop. (R. p. 37, lines 1-6; p. 62-66). Appellant appeared to have the education necessary to understand what Deputy Gilbert was asking of him. (R. p. 39, lines 15-17). Deputy Gilbert had given no indication to Appellant that he was not free to leave and did not suggest Appellant would be detained if he declined to provide consent. Further, even though Appellant initially agreed to the search after asking what "all this" was about, rather than immediately searching Appellant's vehicle, Deputy Gilbert instead specifically informed Appellant that he had the right to refuse consent to search. (R. p. 37). Deputy Gilbert never pulled out his weapon or coerced Appellant into giving consent, and no other officers were present in the vicinity at the time Deputy Gilbert

requested consent.[8] (R. p. 38, line 25 – p. 39, line 14). After receiving a definite "yes" answer from Appellant, Deputy Gilbert proceeded to search the car, and Appellant never withdrew his consent while the search was ongoing. (R. p. 38-39; p. 40, lines 14-18). Notably, Appellant did not testify during the pre-trial hearing and there was no testimony or evidence indicating Appellant's will was overborne or that his giving consent was anything other than the independent product of his free will.

The record supports that Appellant's consent was voluntary and that it was not the product of an unlawful detention. Accordingly, the trial judge's finding that Appellant's consent was valid should be upheld. (See R. p. 98, lines 16-20). See State v. Adams, 377 S.C. 334, 339-40, 659 S.E.2d 272, 275 (Ct. App. 2008) (finding the circuit court did not abuse its discretion in finding the defendant gave consent to search his vehicle and that the consent was voluntary in nature); State v. Mattison, 352 S.C. 577, 584–85, 575 S.E.2d 852 (2003) (applying a deferential standard of review to the trial court's findings on issues of fact regarding the voluntariness of consent).

---

[8] There was no evidence refuting Deputy Gilbert's testimony that Appellant's back was completely turned when a second officer arrived on the scene. (R. p. 65, line 20 – p. 66, line 2). See State v. Dye, 384 S.C. 42, 48-49, 81 S.E.2d 23, 27 (Ct. App. 2009) (citation omitted) (because no competing testimony was introduced to contradict the officer's statements, the circuit court was free to accept the officer's version of events in making a voluntariness determination); State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (pointing out that the appellant did not testify at the Jackson v. Denno hearing and his attorney's questions did not constitute evidence; therefore, there was no evidence in the record to contradict the officers' version of events).

CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTINA CATOE BIGELOW
Assistant Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

CHRISTINA CATOE BIGELOW
S.C. Bar No. 73562

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

October 16, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2013-002089

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

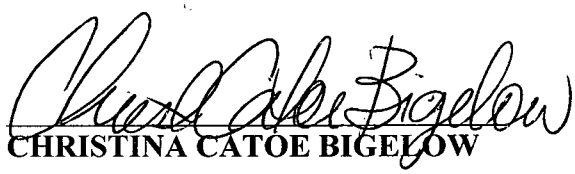
v.

STEPHENO JEMAIN ALSTON,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's most recent **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.



CHRISTINA CATOE BIGELOW

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

October 16, 2014