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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2020-001405

THE STATE,

Respondent,

vs.

MICHAEL N. FRASIER, JR.,

Appellant.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I.

Did the Court of Appeals err by affirming the trial judge's ruling denying Frasier's motion to suppress the large quantity of cocaine found during the course of the traffic stop when, under the totality of the circumstances, the officers involved in the stop observed numerous indicators of criminal activity, including Frasier's suspicious behavior at a bus station, Frasier's display of a heightened level of nervousness, the driver's unzipped pants, and Frasier's and the driver's repeated failures to respond to innocuous questioning about their travel plans, which led them to reasonably suspect criminal activity was afoot and which justified an extension of the stop for further investigation?

II.

Did the Court of Appeals err by affirming the trial judge's ruling denying the motion to suppress the cocaine and other incriminating evidence discovered during the search of Frasier's pockets when the evidence and testimony presented during trial established Frasier freely and voluntarily consented to a search of his person through both his words and actions, including his act of assuming a "search position," and Frasier neither placed any express limits upon his consent, expressly revoked his consent at any point prior to the completion of the search, nor was coerced or threatened into providing his consent?

III.

Did the Court of Appeals err by affirming the trial judge's decision to admit statements Frasier made after being informed of and waiving his rights when, under the totality of the circumstances, those statements were not the product of deliberate "question first and warn later" questioning and, instead, were freely and voluntarily made following a valid waiver of rights?

STATEMENT OF THE CASE

Procedural History

In August of 2013, Petitioner Michael N. Frasier, Jr. was arrested after law enforcement officers discovered a large quantity of cocaine during the course of a traffic stop. In October of 2013, the Charleston County Grand Jury indicted Frasier for one count of trafficking in cocaine. On March 22, 2017, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Deadra L. Jefferson, circuit court judge, presiding. At the conclusion of trial, the jury convicted Frasier as indicted. Following the verdict, the trial judge

sentenced Frasier to a term of imprisonment of twenty-five years along with a \$50,000 fine, and the trial judge suspended the fine upon the completion of the twenty-five-year sentence. Frasier then timely filed and perfected an appeal.

On appeal, the Court of Appeals issued a published opinion unanimously affirming Frasier's conviction. State v. Frasier, 431 S.C. 234, 847 S.E.2d 274 (Ct. App. 2020). Thereafter, Frasier petitioned the Court of Appeals for rehearing, and the petition was denied. Frasier then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

On the morning of August 14, 2013, Officer Steve Hall of the North Charleston Police Department activated his vehicle's blue lights to initiate a traffic stop of a vehicle with a non-functioning brake light at the request of several narcotics officers, whom alerted him they had observed a person behaving in a suspicious manner get into that vehicle at a bus station.¹ (R. pp. 27-28; pp. 30-31; p. 36; pp. 39-40; p. 42; pp. 54-55; pp. 149-150; p. 154; pp. 169-172; Court's Ex. # 1 (Recording of Traffic Stop)). Over forty seconds later and only after the officer signaled with his vehicle's siren, the driver of the vehicle responded by pulling over onto a grassy area by the side of the road with Officer Hall following behind. (R. pp. 41-42; p. 247; Court's Ex. # 1).

After the driver finally stopped, Officer Hall approached the vehicle at approximately 8:07 a.m., advised Cheryl Jones, who was the vehicle's driver and whom the officer immediately noticed was wearing unzipped pants, about the brake light issue, and requested identification

¹ Regarding the narcotics officers' observations up to that point, Sergeant Daniel Pritchard, an experienced narcotics officer with the North Charleston Police Department, saw Frasier exit the bus station, stop, and suspiciously scan the entire parking lot before getting into the vehicle, which was parked less than ten yards away from him directly in front of the exit. (R. pp. 34-35; p. 38; pp. 150-151; pp. 161-162). Based on his experience, Sergeant Pritchard believed Frasier, who looked "uncomfortable," was scanning the parking lot for law enforcement officers or other threats. (R. pp. 28-29; p. 35; p. 38; pp. 150-151).

from both Jones and Frasier, who was sweating profusely in the vehicle's front passenger seat and appeared to be trying to avoid interacting with the officer. (R. pp. 41-44; p. 172; p. 217; pp. 247-248; Court's Ex. # 1). In response, Frasier, who seemed more nervous to the experienced officer than the average motorist he typically encountered, provided his driver's license, but Jones was not in possession of her license at that time. (R. p. 43; p. 169; Court's Ex. # 1). Officer Hall then asked Frasier and Jones where they were coming from, and he repeated the question three more times without receiving a clear response from either. (R. p. 43; pp. 172-173; Court's Ex. # 1). Over a minute later, Officer Hall still had not received a clear response to his simple question regarding their travel plans so he asked Frasier if he was coming from New York based on his New York license. (R. p. 44; Court's Ex. # 1). Instead of confirming or denying he was doing so, Frasier responded: "I just got here." (Court's Ex. # 1). Officer Hall then yet again inquired as to where Frasier and Jones were coming from, and, at that time, Frasier finally claimed to be coming from New York. (Court's Ex. # 1). Thereafter, nearly three minutes into the stop, Officer Hall returned to his patrol vehicle to verify the information provided to him and prepare a warning ticket for Jones. (R. pp. 45; pp. 173-174; Court's Ex. # 1).

Several minutes later, dispatch confirmed Jones's and Frasier's information was "clear."² (R. p. 64; Court's Ex. # 1). Officer Hall then remained in his vehicle while completing the warning ticket, made contact with another officer, advised the officer Frasier was "nervous as shit," and indicated he had noticed Jones's pants were unzipped. (R. pp. 65-66; Court's Ex. # 1). After that, Officer Hall completed the warning ticket, and he decided to ask Jones for consent to search her vehicle instead of simply concluding the traffic stop because he believed something was "amiss" based on the suspicious circumstances he had observed. (R. p. 45; pp. 65-66; p.

² While Officer Hall waited to hear back from dispatch, Jones opened her vehicle's driver's door and then quickly shut it, which the officer thought was odd. (R. pp. 51-52; Court's Ex. # 1).

174). Officer Hall then returned to Jones's vehicle a few minutes later, asked her to get out of the car, and, when she did, again—for the seventh time—asked her where she and Frasier were coming from. (R. pp. 44-45; p. 60; p. 66; p. 80; pp. 172-173; Court's Ex. # 1). In response, Jones finally provided a clear answer to the question and stated she had just picked Frasier up at a bus station. (R. p. 80; Court's Ex. # 1). Officer Hall then pointed out Jones's pants were unzipped, and Jones claimed they were unzipped because she had just taken a shower. (R. p. 63; Court's Ex. # 1). At that point, Officer Hall asked Jones if she minded if he searched her vehicle, and she responded: "No." (R. pp. 45-46; p. 78; p. 218; Court's Ex. # 1).

In light of Jones's consent, Officer Hall asked another officer who had arrived at the scene to get Frasier out of the vehicle. (R. p. 46; Court's Ex. # 1). When Frasier exited the vehicle, Officer Hall asked him if he had anything on his person he needed to know about, and Frasier responded by inquiring if he had done anything wrong. (Court's Ex. # 1). Officer Hall then repeated his question, and Frasier reached for his pockets while responding in the negative. (Court's Ex. # 1). At that point, Officer Hall asked Frasier if he minded if he "checked" him, and Frasier responded: "I do, but" (R. p. 46; p. 231; Court's Ex. # 1). Frasier then shrugged his shoulders and put his hands on the top of Jones's vehicle, which the officer viewed as consent to proceed with a search. (R. pp. 46-47; p. 71; p. 231; Court's Ex. # 1). Based on that, Officer Hall began a search of Frasier's person, and, as he conducted the search, Frasier stated: "In the pockets, too?" (Court's Ex. # 1). The officer then found a small green plastic bag containing cocaine inside Frasier's pocket along with a "cut" straw, and he quickly asked Frasier about it. (R. pp. 47-48; p. 73; p. 232; pp. 239-240; Court's Ex. # 1). Immediately after that, Officer Hall started to handcuff Frasier, and, while he was doing so, Frasier tensed up. (R. p. 48;

p. 73; p. 232; Court's Exhibit # 1). However, the officer was able to get the cuffs onto Frasier, and Frasier was taken into custody. (R. p. 48; p. 73; p. 232; Court's Ex. # 1).

After Frasier was detained, Officer Hall again asked about the cocaine, and Frasier claimed it was "crushed-up Adderall." (R. p. 73; Court's Ex. # 1). Shortly after that, officers began searching Jones's vehicle. (Court's Ex. # 1). Roughly fourteen minutes later, Officer Hall found several more green plastic bags containing cocaine hidden inside the pocket of a men's jacket located underneath a duffle bag containing men's clothing items on the backseat of the vehicle next to where a toddler had previously been seated. (R. p. 48; p. 173; p. 232; pp. 234-235; p. 241; p. 259; Court's Ex. # 1). He then asked another officer to handcuff Jones, held up the jacket, and asked both Frasier and Jones to whom the jacket belonged at approximately 8:40 a.m. (R. pp. 49-50; Court's Ex. # 1). At that point, Frasier quickly claimed ownership of the jacket but would not reveal what was inside. (R. p. 49; Court's Ex. # 1).

Following the discovery of the cocaine inside the vehicle, the narcotics officers who observed the suspicious activity at the bus station responded to the scene. (R. p. 31; p. 155; Court's Ex. # 1). Thereafter, approximately eight minutes after Frasier claimed ownership of the jacket, Officer Hall advised Frasier, who had been moved to the backseat of the officer's patrol vehicle, of his rights and asked him if the jacket belonged to him. (R. p. 76; Court's Ex. # 1). In response, Frasier confirmed it did while further denying Jones had anything to do with "it." (R. p. 74; Court's Ex. # 1). Officer Hall then asked Frasier what was inside the jacket, and Frasier responded whatever they found inside it was what was inside it. (R. p. 160; p. 241; Court's Ex. # 1). After that, one of the narcotics officers briefly spoke with Frasier about the substance found during the stop, and Frasier claimed responsibility without specifically identifying the substance as cocaine. (R. p. 33; p. 37; pp. 155-156; p. 158; p. 160; p. 165; Court's Ex. # 1).

Subsequently, the cocaine recovered during the course of the stop was confirmed through laboratory analysis to be a large quantity of that substance, and Frasier was indicted for trafficking in cocaine. (R. p. 25; pp. 257-269; pp. 364-365). Prior to trial, defense counsel moved to suppress the incriminating evidence that had been discovered on several different grounds. (R. pp. 350-363). In support of the motions, defense counsel contended the traffic stop was unlawfully extended without reasonable suspicion, Frasier did not voluntarily consent to the search of his person, and Frasier's statements were involuntarily obtained by use of an impermissible "question first and warn later" tactic. (R. pp. 350-363). As a result, defense counsel asserted the drugs, statements, and other evidence should be excluded. (R. pp. 350-363).

Thereafter, Frasier proceeded forward to trial, and the trial judge conducted an in limine hearing on the suppression motions. (R. p. 13; p. 27). During the hearing, testimony from the officers was presented establishing the following factors that aroused the officers' suspicions: (1) Frasier and Jones were coming from a bus station at which Frasier engaged in suspicious behavior; (2) Jones made several lane changes and appeared to be trying to avoid Officer Hall after he activated his vehicle's blue lights; (3) Jones took longer to stop her vehicle than the typical motorist Officer Hall encountered during the many, many traffic stops he had conducted; (4) Jones's pants were unzipped, which was consistent with common attempts to hide contraband; (5) Frasier exhibited nervous behavior, including profuse sweating and avoidance of eye contact, that appeared to be more heightened than Officer Hall typically encountered; (6) both Frasier and Jones repeatedly failed to answer his simple question about where they were coming from; and (7) Jones opened the driver's door as Officer Hall was preparing the warning ticket. (R. pp. 27-30; pp. 38-39; pp. 41-46; pp. 51-52; pp. 54-55; p. 60; p. 66; p. 80). In addition to that testimony, Officer Hall also testified about Frasier's response to his consent request, and

he indicated he believed he obtained Frasier's consent for a search based on Frasier's responsive behavior. (R. pp. 46-47; pp. 70-71). Furthermore, regarding Frasier's statements, Officer Hall indicated he did not immediately inform Frasier of his rights when he took him into custody due to Frasier tensing up while being handcuffed, and he acknowledged he briefly questioned Frasier and Jones simultaneously about the cocaine he discovered without them first being informed of their rights. (R. pp. 47-50; pp. 73-74). However, Officer Hall stated he did not do so as part of a deliberate "question first and warn later" tactic, and he confirmed he did inform Frasier of his rights approximately eight minutes later before speaking solely to him about the cocaine subsequent to the initial joint questioning. (R. pp. 47-51; pp. 73-74; p. 76).

Ultimately, at the conclusion of the hearing, the trial judge denied the suppression motions. (R. p. 137). In denying the motions, the trial judge concluded the traffic stop was extended but determined the extension was supported by reasonable suspicion. (R. pp. 131-135). Additionally, the trial judge determined the search of the vehicle was conducted with Jones's voluntary consent and the search of Frasier's person was conducted with Frasier's consent. (R. p. 96; p. 129; p. 131; p. 136). Furthermore, the trial judge agreed with the parties Frasier's initial statements made before he was informed of his rights were inadmissible, and she concluded Frasier's statements made after he was informed of his rights were voluntary and admissible. (R. p. 125). In reaching that conclusion, the trial judge noted Frasier was not subjected to a continuous interrogation, the initial questioning was limited, the initial questioning was directed at both Jones and Frasier, the initial questioning could have been exculpatory, the later questioning was different, Frasier was informed of and understood his rights before participating in the later questioning, no threats or coercion were used to extract the statements, and Frasier had prior experience with the criminal justice system. (R. pp. 7-9; pp. 107-109; pp. 125-129).

Following the trial judge's ruling, the trial proceeded forward, the cocaine and other incriminating items found during the course of the traffic stop were admitted into evidence over defense counsel's objection, and Jones expressly denied the cocaine belonged to her. (R. p. 219; p. 236; pp. 239-240; p. 266). Additionally, a redacted recording of the traffic stop was admitted into evidence over defense counsel's objection and played for the jury, and, through it, the jury heard Frasier's brief post-warning statements. (R. p. 169; pp. 240-241).

At the conclusion of trial, the jury convicted Frasier as indicted, and Frasier quickly initiated a timely appeal of that conviction. (R. p. 340). On appeal, the Court of Appeals unanimously affirmed. State v. Frasier, 431 S.C. 234, 255-256, 847 S.E.2d 274, 286 (Ct. App. 2020). In doing so, the Court of Appeals concluded: (1) the trial judge's ruling regarding the propriety of the extension of the stop was supported by the evidence; (2) the trial judge's ruling finding Frasier voluntarily consented to the search of his person was supported by the evidence; and (3) the trial judge's conclusion regarding the voluntary nature of Frasier's post-warning statements was supported by the evidence. Id.

STANDARD OF REVIEW

Standard of Review for Issues I and II

In search and seizure cases, an appellate court in South Carolina is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence supporting the ruling and will not reverse merely because it would have reached a different

conclusion. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaphon, 352 S.C. at 70, 572 S.E.2d at 459 (“In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge’s ultimate determination de novo but, rather, would apply a deferential standard of review.”).

Standard of Review for Issue III

In appeals involving a challenge to an evidentiary ruling, an appellate court will not reverse a trial judge’s ruling on such a matter absent a clear prejudicial abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). Likewise, “[w]hen reviewing a trial court’s ruling concerning voluntariness [of a statement], [the appellate court] does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court’s ruling is supported by any evidence.” State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). Importantly, a voluntariness determination “will not be disturbed unless so manifestly erroneous as to show an abuse of discretion amounting to an error of law.” State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998).

ARGUMENT

I.

The Court of Appeals correctly affirmed the trial judge’s ruling denying Frasier’s motion to suppress the large quantity of cocaine found during the course of the traffic stop because, under the totality of the circumstances, the officers involved in the stop observed numerous indicators of criminal activity, including Frasier’s suspicious behavior at a bus station, Frasier’s display of a heightened level of nervousness, the driver’s unzipped pants, and Frasier’s and the driver’s repeated failures to respond to innocuous questioning about their travel plans, which led them to reasonably suspect criminal activity was afoot and which justified an extension of the stop for further investigation.

Frasier contends the Court of Appeals erred by affirming the trial judge’s ruling declining to suppress the evidence discovered during the course of the traffic stop. In support of that contention, Frasier maintains the stop was unlawfully extended without reasonable suspicion of

criminal activity. To the contrary, the officers involved in the traffic stop observed numerous indicators of criminal activity, which included Frasier's suspicious behavior at a bus station, Frasier's display of a level of nervousness that was more heightened than the level of nervousness exhibited by a typical motorist, the driver's unzipped pants, and Frasier's and the driver's repeated failure to respond to innocuous questioning about their travel plans. Based on the suspicious factors detected both prior to and during the traffic stop, the officers possessed reasonable suspicion of criminal activity, which permitted an extension of the stop in order for those suspicions to be investigated further. Under such circumstances, the trial judge properly denied Frasier's suppression motion, and, since her ruling was supported by the evidence and testimony presented during trial, the Court of Appeals properly affirmed that ruling on appeal. Frasier's petition for a writ of certiorari should be denied.

For constitutional purposes, a traffic stop of a vehicle is reasonable per se when either probable cause exists to believe a traffic violation has occurred *or* reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) (“[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity.”); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) (“Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable *per se*.”). Ordinarily, such a stop must be temporary and last no longer than necessary to effectuate its purpose. State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 848 (Ct. App. 2005); see Rodriguez v. United States, ___ U.S. ___, 135 S. Ct. 1609, 1614 (2015) (“Authority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.”). However, the

scope of a lawfully-initiated traffic stop can be extended when: (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)). Significantly though, the reasonable suspicion standard “is not a high bar.” United States v. Coker, 648 F. App’x 541, 544 (6th Cir. 2016) (citing Navarette v. California, __ U.S. __, 134 S. Ct. 1683 (2014)). To the contrary, it “is a less demanding standard than probable cause” and simply requires a showing of “a minimal level of objective justification” based on the totality of the circumstances in order for the existence of reasonable suspicion to be established. Illinois v. Wardlow, 528 U.S. 119, 123 (2000); see Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing even the higher probable cause standard “is not a high bar”); United States v. Arvizu, 534 U.S. 266, 273 (2002) (instructing courts are precluded from conducting a “divide-and-conquer analysis” when considering the totality of the circumstances). Accordingly, pursuant to that standard, the presence of several factors seemingly consistent with innocent travel can—and frequently does—establish reasonable suspicion when those factors are viewed collectively. United States v. Sokolow, 490 U.S. 1, 9 (1989).

In the case the sub judice, the officers involved in the traffic stop observed numerous indicators of criminal activity both prior to and during the course of the stop that led them to reasonably—and correctly—suspect Frasier was engaged in criminal activity. See Arvizu, 534 U.S. at 273 (recognizing law enforcement officers’ experience and specialized training enables them to draw inferences and deductions from cumulative information that could likely be missed

by an untrained person). Specifically, regarding those indicators, one of the narcotics officers observed Frasier engaged in suspicious behavior suggestive of counter-surveillance at the bus station directly before Frasier got into Jones's vehicle, and the officer relayed his suspicions to Officer Hall. See Sibron v. New York, 392 U.S. 40, 66 (1968) (recognizing "deliberately furtive actions . . . are strong indicia of mens rea"); United States v. Jaramillo, 891 F.2d 620, 627 (7th Cir. 1989) (finding the Jaramillos' act of scanning the airport in a manner suggestive of counter-surveillance after getting off a plane supported a finding of reasonable suspicion); United States v. Gaviria, 740 F.2d 174, 182 (2nd Cir. 1984) (concluding the suspects' behavior in "cautiously" leaving a building and "looking up and down the block before proceeding" supported a finding of reasonable suspicion). Likewise, upon stopping Jones's vehicle after that, Officer Hall noticed Jones's pants were fully unzipped, which the officer knew to be a potential indicator of an attempt to hide contraband, and he also observed Jones oddly open her vehicle's door during the course of the stop.³ See United States v. Smith, 549 F.3d 355, 360 (6th Cir. 2008) (considering the fact Smith's pants were unzipped, which was consistent with the officer's knowledge drug traffickers commonly hide contraband in the crotch area, as a pertinent factor in concluding a search was supported by probable cause). Additionally, Officer Hall noticed Frasier was exhibiting signs of an atypically heightened level of nervousness. See State v. Moore, 415 S.C. 245, 254, 781 S.E.2d 897, 902 (2016) ("Moore exhibited excessive nervousness

³ Beyond that, Officer Hall also believed Jones's acts of repeatedly changing lanes and failing to stop for over forty seconds after he activated his vehicle's blue lights were atypical and, therefore, may have been an indicator of criminal activity. See State v. Wallace, 392 S.C. 47, 55, 707 S.E.2d 451, 455 (Ct. App. 2011) (considering the fact Wallace abnormally braked after the officer initiated the traffic stop as a factor supporting a finding of reasonable suspicion), cert. dismissed as improvidently granted, 401 S.C. 264, 737 S.E.2d 480 (2012); see also United States v. Bizier, 111 F.3d 214, 218 (1st Cir. 1997) (finding the fact "it took longer than usual for Bizier to pull over to the roadside" was an appropriate factor justifying the troopers' ensuing actions when considered as part of the totality of the circumstances)

in the judgment of the officer, which lends support to a finding of reasonable suspicion to prolong the traffic stop.”). Finally, during the course of the traffic stop, Officer Hall repeatedly asked Frasier and Jones where they were coming from, and the pair repeatedly failed to answer that innocuous and easy-to-answer question, which was a strong indicator to the officer something was amiss. See United States v. Tinnie, 629 F.3d 749, 752 (7th Cir. 2011) (recognizing evasiveness or silence in response to simple questions can support a finding of reasonable suspicion).

Viewing those factors *collectively* as required, the highly-experienced officers involved in Frasier’s case possessed the minimal level of objective justification necessary to satisfy the reasonable suspicion standard’s low bar, which permitted an extension of the traffic stop for purposes of allowing them to investigate their suspicions further. See District of Columbia v. Wesby, ___ U.S. ___, 138 S. Ct. 577, 588 (2018) (recognizing “the whole is often greater than the sum of its parts—especially when the parts are viewed in isolation” and explaining even the higher probable cause standard “does not require officers to rule out a suspect’s innocent explanation for suspicious facts”); cf. Terry v. Ohio, 392 U.S. 1, 28 (1968) (holding an officer’s actions, which were based on the officer observing Terry and his confederate simply walk by and look in a store window several times, in effectuating a detention and frisk search were constitutionally reasonable because they were not “the product of a volatile or inventive imagination” or “undertaken simply as an act of harassment” and, instead, were reasonably tempered). Accordingly, the trial judge properly denied the suppression motion, and the Court of Appeals correctly affirmed that ruling on appeal as it was supported by the evidence and testimony presented during trial. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (instructing “an appellate court must affirm if there is any evidence to support the ruling”

in a case involving a search and seizure issue); see also Kansas v. Glover, ___ U.S. ___, 140 S. Ct. 1183, 1190 (2020) (rejecting an interpretation of what is required to satisfy the reasonable suspicion standard because the rejected interpretation “would considerably narrow the daylight between the showing required for probable cause and the ‘less stringent’ showing required for reasonable suspicion”). Frasier’s petition for a writ of certiorari should be denied.

II.

The Court of Appeals correctly affirmed the trial judge’s ruling denying the motion to suppress the cocaine and other incriminating evidence discovered during the search of Frasier’s pockets because the evidence and testimony presented during trial established Frasier freely and voluntarily consented to a search of his person through both his words and actions, including his act of assuming a “search position,” and Frasier neither placed any express limits upon his consent, expressly revoked his consent at any point prior to the completion of the search, nor was coerced or threatened into providing his consent.

Frasier contends the Court of Appeals erred by affirming the trial judge’s ruling declining to suppress the evidence discovered during the search of Frasier’s pockets. In support of that contention, Frasier maintains he did not voluntarily provide consent to the officer for the search. To the contrary, Frasier—through both his actions and words—freely and voluntarily consented to a search of his person without being threatened or coerced into doing so, and he neither placed any express limitations on his consent nor expressly revoked his consent once it was provided. Under those circumstances, it was entirely reasonable for Officer Hall to conduct a search of Frasier’s person based on the consent provided by Frasier, and that search validly led to the discovery of Frasier’s cocaine and other incriminating evidence. Accordingly, the trial judge properly denied the suppression motion, and, since her factual findings on the voluntariness of Frasier’s consent were fully supported by the evidence and testimony, the Court of Appeals correctly affirmed on appeal. Frasier’s petition for a writ of certiorari should be denied.

In the context of searches and seizures, several different exceptions to the general warrant requirement have been recognized, including the consent exception. State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012). Pursuant to the consent exception, an officer can validly conduct a warrantless search of a constitutionally-protected area when the officer receives free and voluntary consent. State v. Adams, 377 S.C. 334, 339, 659 S.E.2d 272, 275 (Ct. App. 2008). Factors to be considered when determining whether consent was validly provided include the characteristics of the individual providing consent, such as the individual's age, maturity, education, intelligence, and experience, along with the conditions under which the consent was granted, such as the conduct of the officer asking for consent, the number of officers present, and the duration of the encounter. United States v. Boone, 245 F.3d 352, 361-362 (4th Cir. 2001).

In the case at bar, Officer Hall possessed reasonable suspicion of criminal activity at the time he requested permission from Frasier to search him for all the reasons previously articulated, which meant Frasier's consent was not the product of an unlawful detention. See id. at 362 ("If an individual voluntarily consents to a search while justifiably detained on reasonable suspicion, the products of the search are admissible."). Likewise, prior to the search, Frasier provided consent to Officer Hall in a free and voluntary manner through both his words and actions when asked if he minded if the officer searched him. Regarding his words, Frasier initially stated he did mind if the officer searched him, but he immediately followed that statement with the word "but," which logically and reasonably expressed an indication he did, in fact, mind *yet* was nonetheless willing to permit the search. Regarding his actions, Frasier shrugged his shoulders, placed his hands on top of Jones's vehicle, positioned himself in a manner such that the officer could search him, and exposed both his body and his pockets to the officer. Critically, when considered in conjunction with his use of the word "but," Frasier's

actions in assuming a “search position” in response to the officer’s request logically were designed to convey—and did convey—consent for a search to the officer and would have conveyed such consent to any reasonable person under the circumstances. See United States v. Vongxay, 594 F.3d 1111, 1120 (9th Cir. 2010) (affirming the district court judge’s finding Vongxay impliedly consented to a search of his person where an officer asked Vongxay for permission to search him and Vongxay responded by raising his hands to his head so as to enable a search); United States v. Guerrero, 472 F.3d 784, 789-790 (10th Cir. 2007) (“Consent may . . . be granted through gestures or other indications of acquiescence, so long as they are sufficiently comprehensible to a reasonable officer.”); Chism v. State, 312 Ark. 559, 569, 853 S.W.2d 255, 261 (Ark. 1993) (finding Chism’s act of assuming a search position constituted “overwhelming evidence of [Chism]’s consent to search”).

Furthermore, demonstrating the voluntariness of Frasier’s consent, Frasier appeared to be of a sufficient age, maturity, and intellect to provide consent, and his multiple previous convictions established he was not an ingénue in regard to the criminal justice system. Cf. United States v. Watson, 423 U.S. 411, 424-425 (1976) (“There is no indication in this record that Watson was a newcomer to the law, mentally deficient, or unable in the face of a custodial arrest to exercise a free choice.” (footnote omitted)). Likewise, the traffic stop had started only thirteen minutes earlier by the time Officer Hall asked for consent, and, for the vast majority of those thirteen minutes, Frasier had simply been sitting in the front passenger seat of a vehicle. See State v. Mattison, 352 S.C. 577, 584, 575 S.E.2d 852, 855 (2003) (“Custody alone . . . is not enough in itself to demonstrate a coerced consent to search.”). Similarly, Officer Hall did not undertake any coercive or threatening actions, such as pulling out his service weapon, in order to obtain Frasier’s consent, and only one other officer, who was also not engaging in any

threatening or coercive actions, appeared to be present at the scene at the time Frasier consented to the search. Cf. Watson, 423 U.S. at 424 (1976) (“There was no overt act or threat of force against Watson proved or claimed.”). Finally, Frasier placed no express limits on his consent, and, during the course of the search, Frasier did not expressly attempt to revoke his consent or engage in any actions that would have reasonably indicated to the officer his consent had been revoked. See State v. Trapp, 420 S.C. 217, 242, 801 S.E.2d 742, 755 (Ct. App. 2017) (concluding a search did not exceed the consent provided where “Trapp presented no evidence that he limited the consent he gave to the police in their investigation”). Instead, based on Frasier’s actions and words during the search, Frasier merely appeared to seek clarification from the officer as to the whether the officer was going to search his pockets, and, in doing so, Frasier did *not* tell the officer a search of his pockets was not permitted or had not been authorized. See Mattison, 352 S.C. at 587, 575 S.E.2d at 857 (“Conduct falling short of ‘an unequivocal act or statement of withdrawal’ is not sufficiently indicative of an intent to withdraw consent. Effective withdrawal of a consent to search requires unequivocal conduct, in the form of either an act, statement or some combination of the two, that is inconsistent with consent previously given.” (citations omitted)); see also United States v. Alfaro, 935 F.2d 64, 67 (5th Cir. 1991) (explaining hesitancy is not sufficient to constitute revocation of consent). Under those circumstances, Frasier’s consent was freely and voluntarily given, and Officer Hall’s consensual search of Frasier was constitutionally permissible.

Accordingly, the trial judge properly exercised her discretion by finding the search was supported by consent, and the Court of Appeals correctly affirmed that factually-supported determination on appeal. See Mattison, 352 S.C. at 584, 575 S.E.2d at 856 (“A trial judge’s conclusions on issues of fact regarding voluntariness will not be disturbed on appeal unless so

manifestly erroneous as to be an abuse of discretion.”); cf. United States v. Lattimore, 87 F.3d 647, 651 (4th Cir. 1996) (“[A]lthough the temptation to substitute its judgment is particularly seductive when the encounter was recorded, a reviewing court may not reverse the decision of the district court that consent was given voluntarily unless it can be said that the view of the evidence taken by the district court is implausible in light of the entire record.” (citation omitted)). Frasier’s petition for a writ of certiorari should be denied.

III.

The Court of Appeals correctly affirmed the trial judge’s decision to admit statements Frasier made after being informed of and waiving his rights because, under the totality of the circumstances, those statements were not the product of deliberate “question first and warn later” questioning and, instead, were freely and voluntarily made following a valid waiver of rights.

Frasier contends the Court of Appeals erred by affirming the trial judge’s decision to admit evidence of the statements Frasier made after he was informed of and waived his rights. In support of that contention, Frasier maintains those statements were involuntary under the circumstances involved and were the product of impermissible “question first and warn later” questioning. To the contrary, the officer did not deliberately employ any impermissible questioning tactics when he briefly spoke with Frasier during the course of the traffic stop, and Frasier’s post-warning statements were voluntarily made following a valid waiver of his rights. Accordingly, the trial judge did not abuse her broad discretion by finding Frasier’s voluntary statements to be admissible, and the Court of Appeals correctly affirmed that ruling on appeal.⁴ Frasier’s petition for a writ of certiorari should be denied.

⁴ Significantly, during Frasier’s trial, testimony and evidence was presented establishing Frasier—who engaged in suspicious, nervous, and deceptive behavior—was in *actual* possession of a green plastic bag containing cocaine at the time of the traffic stop, additional green plastic bags of cocaine were located hidden in a *men’s* jacket resting on the backseat of Jones’s vehicle underneath a duffle bag containing *men’s* clothing, the plastic bags hidden in the jacket were of

In order to be admissible, the statements a criminal defendant made to law enforcement during custodial interrogation must have been voluntary in nature. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). When analyzing the voluntariness of a defendant's statements, the trial judge should examine the totality of the circumstances under which the statements were made, including the characteristics of the accused and the details of the interrogation, to determine whether voluntariness has been demonstrated. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). Factors to be considered in the totality of the circumstances analysis include: (1) the age of the accused; (2) the educational level and intelligence of the accused; (3) the accused's knowledge of his constitutional rights; (4) the length of the accused's detention; (5) the nature of the questioning and whether it was repeated and prolonged; and (6) the presence or absence of the use of punishment, including deprivation of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). Ultimately, the voluntariness analysis hinges upon

the exact same type as the plastic bag removed from Frasier's pocket, and Jones—a female and the only other adult in the vehicle with Frasier—denied ownership of the drugs. Considering that overwhelming evidence of guilt in conjunction with the highly limited nature of Frasier's statements, any error resulting from the admission of those statements, which solely revealed the jacket was Frasier's and did not reveal Frasier had any knowledge of the items found inside it, was entirely harmless, insignificant, and could not have had any impact on the outcome of Frasier's case, which would *not* have otherwise been a "whodunit"-style mystery if the statements had been excluded, even if Frasier's post-warning statements were somehow improperly admitted. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result."); cf. State v. Easler, 327 S.C. 121, 129, 489 S.E.2d 617, 621-622 (1997) ("[A]ny error in the failure to suppress his statements was harmless beyond a reasonable doubt. . . . The overwhelming evidence of Easler's guilt renders any Miranda violation harmless."), overruled on other grounds by State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018); State v. White, 410 S.C. 56, 60, 762 S.E.2d 726, 728 (Ct. App. 2014) (finding any error in the trial judge's failure to suppress White's statement placing White at the scene of a murder as the product of impermissible "question first and warn later" questioning was harmless beyond a reasonable doubt because, "notwithstanding White's statement, cell phone evidence clearly placed [the victim] and White together at the time and place of the murder" and further finding any error to be harmless in light of the witness testimony linking White to the murder).

whether the confession was “the product of an essentially free and unconstrained choice by its maker” or was the product of an overborne will and critically-impaired capacity for self-determination. Id. at 225-226; see State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996) (“The question is whether the defendant’s will was overborne when he confessed.”).

If a defendant is *not* advised of his constitutional rights before making a statement during custodial interrogation, the statement is presumed to be involuntary and may not be used against the defendant during trial. Oregon v. Elstad, 470 U.S. 298, 317 (1985). However, if a defendant is subsequently advised of his constitutional rights and then makes an additional statement, the defendant’s additional statement may potentially be admissible during trial if the State establishes by a preponderance of the evidence it was voluntarily made after an effective waiver of rights. See Missouri v. Seibert, 542 U.S. 600, 617 (2004) (plurality opinion) (holding the use of a deliberate “question first and warn later” tactic precludes the admission of a subsequent post-warning statement unless the facts support a conclusion the warnings given could have been effective); Seibert, 542 U.S. at 622 (Kennedy, J., concurring) (“The admissibility of postwarning statements should continue to be governed by the principles of Elstad unless the deliberate two-step strategy was employed. If the deliberate two-step strategy has been used, postwarning statements that are related to the substance of prewarning statements must be excluded unless curative measures are taken before the postwarning statement is made.”); Elstad, 470 U.S. at 314 (“[A]bsent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion. A subsequent administration of Miranda warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement.”); see also United States v. Williams, 435 F.3d

1148, 1157-1158 (9th Cir. 2006) (recognizing Justice Kennedy’s concurrence in Seibert was the controlling opinion as it was decided on the narrowest grounds upon which a majority of the justices could agree). In determining whether a valid waiver of rights occurred, the particular facts and circumstances surrounding the case must be examined, including the background, experience, and conduct of the accused. North Carolina v. Butler, 441 U.S. 369, 374-375 (1979); see State v. Navy, 386 S.C. 294, 302, 688 S.E.2d 838, 841-842 (2010) (noting the Seibert plurality opinion identified the following factors as relevant to a determination of whether a “midstream” waiver of rights could be effective: (1) the completeness and detail of the questions and answers in the first round of interrogation; (2) the timing and setting of the different rounds of interrogation; (3) the continuity of police personnel; and (4) the degree to which the interrogator’s questions treated the rounds of interrogation as continuous).

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

any constitutional requirements. See Elstad, 470 U.S. at 315-316 (excusing an officer’s failure to initially advise a suspect of his rights where the failure may have resulted from confusion or may “simply have reflected . . . reluctance to initiate an alarming police procedure”).

Beyond the absence of deliberate police misconduct, Frasier’s post-warning statements were voluntary and only made after a valid waiver of his rights. Demonstrating the voluntariness of those statements, the initial pre-warning questioning was exceedingly brief and was limited to just a few questions. Cf. Navy, 386 S.C. at 303, 688 S.E.2d at 842 (finding a Seibert violation where the officers questioned [Navy] at headquarters for *almost three hours before giving the warning*” (emphasis added)). Similarly, not only was the questioning scant, Frasier provided limited, undetailed, and incomplete responses to the officer’s questions while also demonstrating an understanding of his rights by *refusing* to reveal anything beyond the fact the jacket belonged to him. See United States v. Street, 472 F.3d 1298, 1314 (11th Cir. 2006) (finding no Seibert violation where the officer did not deliberately elicit Street’s statement through a “question first and warn later” tactic and where “[t]he questioning of Street before he was given full Miranda warnings was brief and general”); cf. Seibert, 542 U.S. at 616 (plurality opinion) (“When the police were finished there was little, if anything, of incriminating potential left unsaid.”). Likewise, as both the trial judge and the Court of Appeals recognized, the nature of the initial pre-warning questioning was very different than the nature of the post-warning questioning as the initial questioning was directed at both Jones and Frasier collectively on the side of the road while the post-warning questioning was conducted in Officer Hall’s patrol vehicle and directed solely at Frasier approximately eight minutes after the joint questioning had concluded. See State v. Medley, 417 S.C. 18, 28, 787 S.E.2d 847, 852-853 (Ct. App. 2016) (finding no Seibert violation where the pre-warning questioning occurred in Medley’s parent’s yard while the post-

warning questioning occurred in a patrol car roughly twenty-two minutes later). Furthermore, some of the post-warning questioning was conducted by one of the narcotics officers, which demonstrated the personnel involved in the questioning changed to some degree between the rounds of questioning. See Seibert, 542 U.S. at 615 (plurality opinion) (instructing “the continuity of police personnel” is a factor to consider in determining voluntariness). Finally, Frasier was fully informed of his rights prior to the post-warning questioning, and, significantly, Frasier again demonstrated an understanding of his rights by once again refusing to provide a complete or detailed confession to the officers. See Elstad, 470 U.S. at 318 (“[T]here is no warrant for presuming coercive effect where the suspect’s initial inculpatory statement, though technically in violation of Miranda, was voluntary. The relevant inquiry is whether, in fact, the second statement was also voluntarily made. . . . The fact that a suspect chooses to speak after being informed of his rights is, of course, highly probative.” (footnote omitted)).

Critically, when those circumstances are considered in conjunction with Frasier’s substantial prior criminal justice experience, Frasier’s age and maturity, and the lack of any threats, coercion, or prolonged questioning, Frasier’s post-warning statements were voluntarily, knowingly, and intelligently made after a valid waiver of his rights.⁵ See State v. Rochester, 301

⁵ Although Officer Hall directed another officer to handcuff Jones prior to the initial pre-warning questioning, such an act was reasonable in light of the fact a large quantity of cocaine had just been discovered inside Jones’s vehicle and, thus, could not properly be construed as something rendering Frasier’s subsequent statements involuntary under the circumstances. See United States v. Holmes, 670 F.3d 586, 591 (4th Cir. 2012) (“Even where ‘threats, violence, implied promises, improper influence, or other coercive police activity’ exist, a confession is not necessarily rendered involuntary.”); cf. United States v. Mitchell, 514 F. App’x 319, 322 (4th Cir. 2013) (holding Mitchell’s statement was not involuntary even if the officers had actually made comments related to his girlfriend’s children potentially being removed without a confession because “given the presence of drugs, firearms, and evidence of drug manufacturing in the home, [the girlfriend] could have lost custody of her children had the activity been attributed to her”); United States v. Williams, 336 F. App’x 376, 378 (4th Cir. 2009) (concluding Williams’s statements was *not* rendered involuntary as the product of a threat after an officer

S.C. 196, 201, 391 S.E.2d 244, 246 (1990) (finding Rochester’s statement was properly admitted where sufficient evidence was presented to show he “was not worn down by improper interrogation tactics such as lengthy questioning, trickery, or deceit”); cf. United States v. Morgan, 729 F.3d 1086, 1092 (8th Cir. 2013) (finding Morgan’s post-warning statements were admissible despite the fact an officer elicited substantively-similar pre-warning statements from Morgan by asking about the identity of an item he removed from Morgan’s vehicle where the officer did not engage in deliberate “question first and warn later” questioning and “[n]o evidence suggest[ed] that [Morgan’s] postwarning statements were coerced, compelled, or otherwise involuntary”). Accordingly, the trial judge did not abuse her broad discretion by finding Frasier’s post-warning statements to be admissible, and the Court of Appeals correctly affirmed that ruling on appeal.⁶ See Saltz, 346 S.C. at 136, 551 S.E.2d at 252 (recognizing a trial judge’s ruling regarding the voluntariness of a statement will be affirmed on appeal if supported

ordered the arrest of Williams’s girlfriend and noting “[t]he evidence does not indicate that the officer threatened to arrest Williams’ girlfriend in order to elicit any sort of admission from Williams, but rather that he ordered her arrest as a logical result of her presence at the apartment where a large quantity of cocaine base was discovered”).

⁶ Supporting both the trial judge’s voluntariness determination and the decision of the Court of Appeals, Frasier elected not to testify during the suppression hearing and, thus, never presented any testimony suggesting his post-warning statements were the involuntary product of the initial questioning that occurred during the stop, which—contrary to Frasier’s appellate assertions—was an entirely appropriate consideration for purposes of evaluating the voluntariness of his statements. See Saltz, 346 S.C. at 137, 551 S.E.2d at 252 (“[Saltz] did not testify at the Jackson v. Denno hearing and his attorney’s questions do not constitute evidence. There is therefore no evidence in the record to contradict the officers’ version of events.” (footnote omitted)); State v. Dye, 384 S.C. 42, 48-49, 681 S.E.2d 23, 27 (Ct. App. 2009) (“Because no competing testimony was introduced to contradict Officer Cantrell’s statements, the circuit court was free to accept Officer Cantrell’s version of events in making its voluntariness determination.”); State v. Breeze, 379 S.C. 538, 545, 665 S.E.2d 247, 251 (Ct. App. 2008) (“Conversely, Breeze did not contradict [the officer]’s testimony with respect to the issue of whether the statement was voluntary. . . . Faced with [the officer]’s undisputed testimony the trial court concluded the State had showed that Breeze voluntarily made the statement. Based on [the officer]’s testimony, we cannot conclude the trial court’s ruling is unsupported by any evidence.”).

by *any* evidence); State v. Arrowood, 375 S.C. 359, 369, 652 S.E.2d 438, 443 (Ct. App. 2007) (“The trial judge’s determination is not in error if there is any evidence in the record to support it.”). Frasier’s petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be denied.

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