THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court of General Sessions

Daniel Dewitt Hall, Circuit Court Judge

Appellate Case No. 2020-000184

The State of South Carolina — Respondent

Vs.

Ramona Gales, — Appellant,

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On January 31, 2018, Appellant was arrest and charged with trafficking in cocaine. Appellant was indicted by grand jury on one count of trafficking in cocaine, twenty-eight grams or more, on June 14, 2018.

On January 29, 2020, Appellant's case was called to trial. Before the start of the trial, Appellant moved to suppress drugs and other items seized from her vehicle on the basis that law enforcement lacked reasonable suspicious to detained her prior to the search of her vehicle. The trial judge denied all Appellant's motions to suppress.

On January 30, 2020, the jury returned a verdict on guilty against Appellant on the single count indictment. On February 4, 2020 Appellant filed her notice of appeal.

STATEMENT OF THE FACTS

Detectives Grimsley and Buehler of the Charlotte-Mechlenburg Police Department received general allegations from confidential informants that Appellant continued to sell drugs in the Charlotte, North Carolina area while charges pended against her for conspiracy to trafficking in drugs. (Record on App., p. 13). Detectives Grimsley and Buehler decided to conduct surveillance operations of Appellant's movements, and surveilled Appellant at her home multiple times prior to January 31, 2019. (Record on App., p. 13).

On January 31, 2019 Detectives Grimsley, Buehler, and Carbonaro, along with other uniformed officers, were surveilling Appellant's home, with each detective in separate vehicles and communicating through police radio. (Record on App., pp. 14, 15, 27). The surveillance operation was for observation purposes like the prior operations; Detectives Grimsley and Buehler had no intelligence that a drug transaction would occur. (Record on App., pp. 25-26). The surveillance operation started at Appellant's home at 9707 Holden Court, Charlotte, North

Carolina. (Record on App., p. 14). Detective Grimsley radioed to Buehler and Carbonaro that a black female, suspected to be Appellant, was leaving the residence in a blue Chrysler 300 automobile. (Record on App., pp. 07, 14-15). Detective Carbonaro's vehicle pulled parallel to the Chrysler 300 at the intersection of Watkins Glenn Drive and Community House Drive, and he visual identified Appellant as the driver and sole occupant of the vehicle. (Record on App., pp. 07-08).

Appellant's vehicle was followed by various members of the surveillance team from her home to 5200 Piper Station Driver, a gas station in Charlotte, North Carolina (hereinafter the "gas station"). (Record on App., 15-16). Appellant drove into the parking lot of the gas station and parked closed to a Chevrolet Tahoe occupied by an unidentified white male. (Record on App., pp. 18-19). The unidentified male existed the Tahoe and approached the passenger side window of Appellant's vehicle and lean inward. (Record on App., p. 19). They dialogued for about thirty seconds. (Record on App., p.19). At some point during the communication, the male extended his hand toward appellant. (Record on App., p. 19). Detective Buehler testified that he did not see any hand-to-hand contact between Appellant and the unidentified male, nor did he see any object being exchanged between the two. (Record on App., pp. 29, 32). The unidentified male returned to his vehicle after the dialogue and drove away. (Record on App., p. 29). Appellant also departed the gas station in her vehicle. (Record on App., p. 29).

The surveillance team followed Appellant from the gas station across the border into South Carolina. (Record on App., pp. 19-20, 31-32). Appellant next stop was in the parking lot of an office park at 105 Ben Casey Drive, Fort Mill, South Carolina (hereinafter the "dental office"). (Record on App., pp. 19-20, 31-32). Appellant parked next to a white express van, with another white male occupant. (Record on App, pp. 22-23, 32). The unidentified white male

exited the van and walked to the driver side window of Appellant's vehicle. (Record on App., pp. 22-23, 32). Appellant and the white male had a brief dialogue for approximately thirty seconds or less before the male returned to his vehicle and left the dental office parking lot. (Record on App., 22-23, 32). Detective Buehler testified that he did not see any hand-to-hand contact between Appellant and the unidentified male, nor did Buehler see any object being exchanged between the two. (Record on App., pp., 32-33). Appellant exited her vehicle, walked to and entered a dental office. (Record on App., pp. 22-23, 32).

Detective Buehler was the only member of the surveillance team that observed the conduct at the gas station and the dental office. (Record on App., pp, 34-35, 44-45, 56-57). At some point during the surveillance operation Detective Buehler relayed by radio to Detective Grimsley he had observed what he believed to be a drug transaction at the gas station and a drug transaction at the dental office. (Record on App., pp., 36-37, 40, 53-54, 56-58). Buehler failed to inform Detective Grimsley that he did not see an actual hand-to-hand exchange at the gas station or the dental office, nor did he actually see any object being exchange at the gas station or the dental office. (Record on App., p. 37).

Detective Grimsey contacted Detective Todd of the York County multijurisdictional drug unit. (Record on App., p. 58). Detective Grimsley communicated to Detective Todd that they followed Appellant from her home to a gas station and observed conduct they believed to be indicative of a drug transaction, they followed Appellant from the gas station to the dental office and observed similar conduct that had occurred at the gas station, her driving patterns, and her prior criminal record. (Record on App., pp. 59-60). Detective Buehler was not a party to the conversation between Detectives Grimsley and Todd. (Record on App., p. 33).

Detective Todd did not recall exactly what information he received from Detective Grimsley; however, he remembered being told about events observed at the gas station and the dental office. (Record on App., pp. 89-90). Detectives Grimsley and Todd decided that Todd and South Carolina law enforcement would stop Appellant after she exist the dental office. (Record on App., pp. 60, 102).

Appellant exited the dental office about half an hour after entering. (Record on App., p. 22). Detectives Todd and Holland stopped Appellant in the parking lot of the dental office as she approached her car. (Record on App., p. 102). Appellant was informed about her conduct observed at the gas station and the dental office, and asked permission to search her vehicle. (Record on App., p. 91, 102). Appellant decline the officers' request to search. (Record on App., p. 91, 102). Detective Todd then walked to his vehicle and retrieved his drug dog, MJ, and deployed MJ around Appellant's vehicle. (Record on App., p. 91). The drug dog alerted to the odor of drugs. (Record on App., pp. 97-98). Appellant's vehicle was searched by members of the York County multijurisdictional drug team, and drugs were discovery in the vehicle. (Record on App., pp. 100-101).

ARGUMENT

I. THE TRIAL COURT'S DENIAL OF APPELLANTS MOTION TO SUPPRESS ITEMS SEIZED FROM HER VEHICLE WAS REVERSIBLE ERROR AND AN ABUSE OF DISCRETION BECAUSE THE INTIAL STOP THAT LEAD TO THE SEARCH AND SEIZURE WAS NOT SUPPORTED BY REASONABLE SUSPICION?

"The Fourth Amendment prohibits unreasonable searches and seizures." *State v. Anderson*, 415 S.C. 441, 447, 783 S.E.2d 51 (S.C., 2016). "The Fourth Amendment applies to all seizures of a person, including only a brief detention [to investigate]." *Id.* "'No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others,

unless by clear and unquestionable authority of law.'" *Terry v. Ohio*, 392 U.S.1, 9, 88 S.C. 1868 (1968), *quoting, Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251, 11 S.Ct. 1000 1001, 35 L.Ed. 734 (1891). "This inestimable right of personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs." *Id.* With that be said, "…a police officer with a reasonable suspicion based on articulable facts that a person is involved in criminal activity may stop, briefly detain, and question that person for investigative purposes, without treading upon his [or her] Fourth Amendment rights." *Id.*

"Reasonable suspicion 'is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.'" *State v. Provet*, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (S.C. Ct. App. 2011). "Reasonable suspicion requires a particularized and objective basis that would lead a person to suspect another of criminal activity." *Id.* "Reasonableness is measured in objective terms by examining the totality of the circumstances." *State v. Tindall*, 388 S.C. 518, 527, 698 S.E.2d 203, 208 (2010). While reasonable suspicion is something short of probable cause, "…it does require something more than an 'inchoate and unparticularized suspicion' or 'hunch.'" *U.S. v. Foreman*, 369 F.3d 776, 781 (4th Cir. 2004). "As a result, the nature of the reasonableness inquiry is highly fact-specific." *State v. Tindall*, 388 S.C. at 527.

"'[I]n justifying the particular intrusion [of a *Terry* stop] the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *U.S. v. Foster*, 634 F.3d 243, 246 (4th Cir. 2011); "Judicial review of the evidence offered to demonstrate reasonable suspicion must be commonsensical, focused on the evidence as a whole, and cognizant of both context and the

particular experience of officers charged with the ongoing tasks of law enforcement." *U.S. v. Branch*, 537 F.3d 328, 337 (4th Cir. 2008). "[D]ue weight must be given to the officer's experience, training, and common-sense conclusions." *Milledge v. State*, 422 S.C. 366, 376; 811 S.E.2d 796, 802 (S.C. 2018). "A police officer's assessment of the circumstance may include 'various objective observations, information from police reports, if such are available, and considerations of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions – inferences and deductions that might well elude an untrained person.'" *Id.*

Furthermore, in calculating reasonable suspicion, "…individual facts and observations [made by a police officer] cannot be evaluated in isolation from each other." *United States v. Hernandez-Mendez*, 626 F.3d 203, 208 (4th Cir. 2010). "Factors which alone may not serve as proof of any illegal conduct and may appear innocent on their face can, when taken in the aggregate, give rise to reasonable suspicion." *Milledge v. State*, 422 S.C. at 377. For example, a person's presence in a high crime area and extreme nervousness when encountered by law enforcement are factors that an officer assessing reasonable suspicion may considered in conjunction with other particular suspicious conduct. *Id.* "In addition to location, '[t]he lateness of the hour is another factor that may raise the level of suspicion.'" *State v. Taylor*, 388 S.C. 101, 694 S.E.2d 60 (S.C. App., 2010), *quoting, U.S. v. Lender*, 985 F.2d 151, 154 (4th Cir.1993). A person engaging in evasive behavior when encountered by law enforcement. *U.S. v. Foster*, 634 F.3d 243, 246-247 (4th Cir. 2011). Knowledge of a person's prior criminal recorded is also a relevant fact an officer may consider; however, criminal history standing alone is insufficient to create reasonable suspicion. *U.S. v. Foster*, 634 F.3d 243, 246-247 (4th Cir. 2011). "A person's Forth Amendment rights cannot be lessened simply because he or she is 'under

investigation' by the police. Just as an offer's knowledge of a suspect's past arrests or convictions is inadequate to furnish reasonable suspicion…" *Id.*

"Nevertheless, 'a wealth of experience will [not] overcome a complete absence of articulable facts.'" *State v. Taylor*, 694 S.E.2d 60, 68, 388 S.C. 101 (S.C. App., 2010), *quoting*, *U.S. v. McCoy*, 513 F.3d 405, 415 (4th Cir.2008). "[A]n officer and the Government must do more than simply label a behavior as 'suspicious' to make it so. The Government must also be able to either articulate why a particular behavior is suspicious or logically demonstrate, given the surrounding circumstances, that the behavior is likely to be indicative of some more sinister activity than may appear at first glance." *U.S. v. Foster*, 634 F.3d 243, 248 (4th Cir, 2011). "Likewise, the court 'must require the agent to articulate the factors leading to that conclusion.'" *State v. Taylor*, 694 S.E.2d at 64 (S.C. App., 2010), *quoting*, *U.S. v. Sokolow*, 490 U.S. 1, 10, 109 S. Ct. 1581, 104 L.Ed.2d 1 (1989). The reasonable suspicion analysis must take into account all the factors known to the officer at the time of the suspicious conduct. *See, U.S. v. Branch*, 537 F.3d at 339-440). "The articulated factors together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied." *U.S. v. Foreman*, 369 F.3d 776, 781 (4th Cir. 2004). "[T]he Government cannot rely on post hoc rationalizations to validate those seizures that happen to turn up contraband." *U.S. v. Foster*, 634 F.3d 249.

The *Terry* Stop of Appellant and reasonable suspicion calculation was made by Detective Todd. (Record on App., pp. 60, 102). Detective Todd failed to give a list of specific articulable facts he relied upon in concluding that reasonable suspicion existed. On direct examination during the suppression hearing, Detective Todd stated the following when asked what information he relied upon in deciding to stop Appellant for questioning:

"A. Do you recall receiving a phone call from CMPD regarding Ramona Gales on January 31, 2018?

A. Yes.

Q. Who made the phone call?

A. Grimsley of CMPD.

Q. What information did you received from Detective Grimsley?

A. I don't recall exactly everything that was said, but I do remember they advised me what they observed in Charlotte, and what they observed down here in South Carolina, as far as what they believe to be hand-to-hand drug transactions." (Record on App., pp. 89-90).

When asked a similar question on cross-examination, Detective Todd gave a similar response:

Q. Investigator Todd, let's start off by talking about the telephone call you received from Investigator Grimsley.

When you received that call from Investigator Grimsley, I think you testified that the information that he gave you was, basically, that they saw what they believed to be two drug transactions; one occurring in North Carolina and, in course, the other occurring in South Carolina; is that correct?

A. Yes.

Q. I know I'm paraphrasing. In course, if you can remember, I would like for you to tell The (sic) Court specifically. What did Grimsley tell you about the general basis of it?

A. I couldn't tell you the basis of what exactly was said. It was too long ago.

Q. Okay. All right. I think - - as a result of that, did you-all make a determination that you-all would conduct a tarry (sic) stop or do an investigative stop on Ms. Gales when she exited the business that she was at?

A. With the information I received from Investigator Grimsley, yes. Myself and Investigator Holland made the decision to get out with Ms. Gales and detain her. (Record on App., pp. 91-92).

An officer employing a *Terry* stop must be able to point to each factor justifying the conclusion that reasonable suspicion exist, and must be able to articulate why the behavior is suspicious, or demonstrate, given the surrounding circumstances, that the behavior is likely to be indicative of some more sinister activity. *U.S. v. Foster*, 634 F.3d at 246 (4th Cir. 2011). Detective Todd's testimony consisted of general observations and conclusory statements, void of a specific list of individual factors that cumulatively lead to his conclusion. If a law enforcement officer is allowed to simple present conclusory statements in support of his or her rationale for conducting a *Terry* stop, judicial oversight of an officer's conduct in the field would be thwarted, and the Fourth Amendment protections against unreasonable government intrusion into the lives of private citizens would be greatly diminished, if not lost.

Respondent may argue that ever if Detective Todd could not specifically list the factors he relied in concluding the existence of reasonable suspicion, Detective Grimsley testified to information he communicated to Detective Todd prior to the *Terry* stop.

Q. That's all I want to know. That was a voice phone call you made. In course - - what specifically did you say to Detective Todd when you called?

A. I explained to him the events that we actually just went over here; that we had followed Ms. Gales from her residence. She had made a transaction, what we

believed was indicative of a drug transaction in charlotte. We followed her to Ben Casey Driver. We observed the same thing and her driving patterns.

* * *

Q. In course - - what you communicated to Detective Todd, did you put that in your report?

A. Yes

Q. You have your report. I'm going to read what you have in your report. You tell me whether or not I am reading this correctly. I'm on, I think, the paragraph that says: Buehler positioned himself.

A. Okay.

Q. In course, it says: Buehler positioned himself in an area to observed Gales' vehicle. While positioning himself, Buehler believed Gales entered one of the businesses nearby. As detectives kept surveillance on Gales' vehicle, Grimsley made contact with Investigator Josh Todd of the Fort Mill Police Department/York County Jurisdictional Drug Task Force and informed him of Gales' criminal history along with observations made prior to her arrival on Ben Casey Drive.

* * *

That's consistent with what you told him?

A. Yes.

Q. Did you tell him anything else that's not included in this report?

A. Not that I recall. It could be a word or two, but only related to observations made. Then it was up to him - - we always - - the terminology here,

voluntary contact, is something we always pursue first with basis information.

The officers can do otherwise. (Record on App., pp. 59-60).

Although Detective Grimsley was not the officer making the reasonable suspicion assessment, and had no power to do so because he was outside of his jurisdiction and there was no cooperation or mutual aid agreement between the North Carolina law enforcement agency Detective Grimsley was employed and the South Carolina law enforcement agency Detective Todd was employed. (Record on App., pp. 30-31, 62), he also failed to specifically identify the factors that he communicated to Detective Todd. His testimony likewise consisted of conclusory statements, void of any specific factors relied upon and an explanation of why Appellant's conduct was suspicious or indicative of sinister activity given the surrounding circumstances. However, giving Detectives Grimsley and Todd the benefit of doubt, both collectively referenced in their testimony Appellant's pending criminal history; Appellant driving at high speeds; and their impressions of a hand-to-hand exchange between Appellant and an unidentified male at the gas station and the dental office. (Record on App., pp. 59-60, 91-92).

In *U.S. v. Sprinkle*, the Fourth Circuit court found conduct with some similarities to the facts in Appellant's case failed to rise to reasonable suspicion. 106 F.3d 613 (4th Cir. 1997). Officer Riccio identified five factors he relied upon in conduct a *Terry* stop on a vehicle occupied by Sprinkle and Poindexter: (1) Officer Riccio knew that Poindexter had a criminal record and was recently released from prison for a drug conviction; (2) the subjects were in a neighborhood known to be a high drug distribution area; (3) Sprinkle and Poindexter were huddle together toward the center console of the car with their hands closed together; (4) Poindexter put his hands up to his face as to avoid identification as Officer Riccio passed

Poindexter's car; and (5) Poindexter immediately drove off after Officer Riccio and his partner walked by his parked car. *U.S. v. Sprinkle,* 106 F.3d at 617.

The *Sprinkle* Court found that reasonable suspicion was lacking to conduct a *Terry* stop. Addressing Poindexter's criminal history, the court reasoned Poindexter's prior criminal record and recent release from prison, standing along, was insufficient to create reasonable suspicion. *Id.* "Nevertheless, an officer can couple knowledge of prior criminal involvement with more concrete factors in reaching a reasonable suspicion of current criminal activity." *Id.*

In addressing the impression of a drug transaction created by Poindexter and Sprinkle huddled together toward the center console with their hands together, the *Sprinkle* Court stated that, "[b]ut it would take more of this impression to qualify as a reasonable suspicion." *Id.* The court reasoned that when the officers walked by Poindexter's car, they could see no drugs, no money, no weapons and no drugs paraphernalia. *Id.* "Nor did he see either man try to conceal any object." *Id.*

Addressed the fact that Poindexter drove off immediately after the officers walked passed his car, the *Sprinkle* Court stated that, "[e]vasive conduct can, of course, assist an officer in forming reasonable suspicion." *Id.* The court reasoned that Poindexter conduct was not unusual considering that he drove off after this passenger entered the car and he drove off in a normal, unhurried manner. *Id.*

In *U.S. v. Foster*, the Fourth Circuit court found reasonable suspicion to conduct a Terry stop was absent where Detective Ragland relied upon the following specific articulable facts: (1) Foster had been arrested in the past by Detective Ragland for a drug related crime; (2) Detective Ragland believed that Foster was currently under investigation for drug crimes; (3) Foster, a passenger in a parked vehicle, sat up from a crouching positon after the driver seemed to speak

with Foster after seeking Detective Ragland walked pass the vehicle; and (4) Detective Ragland described Foster's arm as going "haywire" after seeing Detective Ragland. 634 F.3d at 245. The Foster court separately evaluated each factor relied upon by Detective Ragland. *Id*. at 46.

The Court reasoned although Detective Ragland had some knowledge of Foster's prior drug history and he was currently under investigation, "'[a] prior criminal record 'is not, standing alone, sufficient to create reasonable suspicion.'" *Id.* (Emphasis added). "Ragland was required to pair his prior knowledge of Foster's criminal record with some more 'concrete factors' to demonstrate that there was a reasonable suspicion of current criminal activity.'" *Id.* at 247. (Emphasis added). Furthermore, the *Foster* Court stated in response to Detective Ragland's knowledge that Foster was currently under investigation for drug trafficking, … "a person's Fourth Amendment rights cannot be lessened simply because he or she is 'under investigation' by the police. Just as an officer's knowledge of a suspect's past arrests or convictions is inadequate to furnish reasonable suspicion…" *Id.*

In response to Foster siting up from a crouched positon after the driver seem to speak to him after seeing Ragland, and Foster's arms going "haywire" after seeing Ragland himself, the court reasoned that "there are an infinite number of reasonable explanations, unrelated to any criminal behavior, to explain why the passenger would not immediately be visible in a car." *U.S. v. Foster*, 634 F.3rd at 247. "We therefore are extremely wary of accepting the Government's argument that an officer may acquire a reasonable suspicion of criminal wrongdoing simply because a person suddenly becomes observable." *Id.* Although the sudden shifting of defendant's arms is an evasive behavior is a pertinent factor in determining reasonable suspicion, it must be considered in light of the other counter balancing factors. *Id.* The *Foster* Court reasoned that Foster was not noticeable nervous and did not hastily flee the area once he

recognize Detective Ragland. *U.S. v. Foster*, 634 F.3d at 247. Foster and the driver of the SUV remained parked approximately fifteen minutes after encountering Detective Ragland. *Id.* The Court further reasoned the encounter occurred during the middle of the day and Detective Ragland did not see Foster in possession of any drugs, money, weapons or paraphernalia. *Id.*

The *Foster* Court further expressed a concern about law enforcement's interpretation of otherwise innocent conduct into suspicious criminal behavior. The court, stated that, "[w]e also note our concern about using whatever facts are present, no matter how innocent, as indicia of suspicious activity." *U.S. v. Foster*, 634 F.3rd at 248. "Moreover, we are deeply troubled by the way in which the Government attempts to spin these largely mundane acts into a web of deception." *Id.* at 249.

In this case, Detective Todd's knowledge of defendant prior criminal record was insufficient, standing alone, to created reasonable suspicion, and the fact that Appellant drove at speeds exceeding 100 between the gas station and the dental office, was likewise not evidence of evasive conduct supporting reasonable suspicion, because Appellant's driving pattern could not have been motivated by the presence of law enforcement. The surveillance of Appellant was clandestine. Logic dictates had Appellant known she was being followed by law enforcement on January 31, 2018 she would have behaved differently; she would have avoid attention by driving below the speed limit and would have aborted meetings to exchange drugs.

Finally, the impression that drugs were exchanged because Detective Buehler testify that both unidentified males extended their hands toward Appellant during their meeting did not rise to reasonable suspicion. Here, as in *Sprinkle* and *Foster*, Detective Buehler testified that he saw no items being exchanged: drugs, large sums of money, weapons, or other items that might suggest illegal behavior. (Record on App., pp.) The conduct observed by Detective Buehler

was not inconsistent with a person making two stops to collect money from customers for Girl Scout cookie orders while running late for a dental appointment. "The articulated factors together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied." *U.S. v. Foreman*, 369 F.3d 776, 781 (4th Cir. 2004).

Furthermore, the surrounding circumstances weigh against sinister activity. The meeting at the gas station and the dental office occurred between 2:33 pm and 2:51 pm in the middle of the day, opposed to dark of night. (Record on App., pp. 37, 52). The gas station and dental office are very public places, opposed to a secluded ally or drive. (Tr. pp. 16, 18, 31- 32, 44-46). Moreover, there was no testimony that the gas station or dental office were high crime areas regularly used for drug distribution, or that Appellant or the unidentified males took any actions to conceal their meetings at the gas station or dental office, or their conduct during the meetings.

II. THE TRAIL COURT'S DENIAL OF APPELLANT'S MOTION TO SUPPRESS ITEMS SEIZED FROM HER VEHICLE WAS AN ABUSE OF DISCRETION WHERE THE TRIAL JUDGE BASED HIS CONCLUSION TO DENY APPELLANT'S MOTION TO DISMISS ON FACTS NOT TESTIFY TO OR FOUND IN THE RECORD.

Explaining his rationale for finding that Detective Todd had reasonable suspicion to *Terry* stop Appellant, the trial judge supported his decision with facts that were not testify to or otherwise found in the record. The trail judge states:

> Here it appears that Officer Grimsley indicated that what he communicated to Officer Todd - - well, South Carolina officer, Officer Grimsley, in his testimony stated that he – Detective Grimsley stated that he relayed information to Todd. He gave the Defendant's criminal history, which included a conviction for trafficking crack cocaine and a pending charge for trafficking crack

cocaine, trafficking crack cocaine in Charlotte-Mecklenburg. (Record on App., p. 35).

Detective Grimsley stated generally that he informed Detective Todd of Appellant's "prior criminal history," without any further explanation. (Record on App., p. 60). Detective Grimsley never testified what Appellant's prior criminal recorded consisted. (Record on App., p. 60). When the trial judge found that Todd was informed that Appellant had a prior criminal conviction for trafficking crack cocaine and a pending charge for trafficking crack cocaine in Charlotte-Mecklenburg, he abused his discretion in assuming specifically what was communicated. The trial judge further reasoned that:

> The officer also indicated – Detective Grimsley indicated that he relayed to Detective Todd that they had surveilled her, followed her, from Charlotte down into Fort Mill. She was driving an Enterprise rental car with Missouri tags. She approached speeds somewhere near 100 miles an hour on I-77 heading toward Rock Hill.

Again, the trial judge abused his discretion when he based his decision on evidence that was never testified to or present in the record. Detective Grimsley nor Detective Todd ever testify that Detective Todd was informed that Appellant was driving an Enterprise rental car with Missouri tags. Furthermore, Detective Grimsley never testify that he informed Detective Todd that Appellant approached speed somewhere near 100 mile an hour on I-77 toward Rock Hill. Specifically, Detective Grimsley generically stated that he inform Detective Todd of Appellant's "driving patterns." (Record on App., p. 59). The trial judge's definition of what Detective Grimsley meant by "driving patterns" was an abuse of Discretion.

CONCLUSION

For the reasons stated, this Court should reverse Appellant's conviction on the ground that reasonable suspicion was lacking to *Terry* stop Appellant prior to searching her vehicle.

Respectfully submitted,

January 16, 2021

Florence, SC

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