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May 13 2021
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2019-002107

THE STATE,

Respondent,

vs.

RICKY MANIGO DAWSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

"The trial judge erred in denying the pretrial motion to suppress drugs seized after a search of a backpack that belong to appellant, who was a passenger in a vehicle in this case, because the driver's consent to search was limited in scope and applied not to the search of appellant's backpack that was positioned at appellant's legs and feet as he sat in the passenger's seat in the vehicle, particularly since the driver had no joint possessory interest in or apparent authority over the backpack, and therefore the driver could not consent to the search of appellant's backpack."

COUNTER-STATEMENT OF ISSUE ON APPEAL

Pursuant to the law-of-the-case doctrine, Appellant's challenge to the propriety of the ruling denying his suppression motion cannot be successful on appeal as a matter of law because Appellant has only raised a challenge to one of the multiple stand-alone grounds upon which the ruling was based, which means the unchallenged ground has now become the law of the case regardless of whether it was right or wrong. Furthermore, notwithstanding the applicability of the law-of-the-case doctrine under the circumstances involved, Appellant's suppression motion was properly denied because the officer who conducted the search possessed a probable cause basis to believe narcotics were likely present in the vehicle and, therefore, could validly conduct a search of the vehicle—along with the backpack inside of it—pursuant to the automobile exception to the warrant requirement.

STATEMENT OF THE CASE

In October of 2015, Appellant Ricky Manigo Dawson was arrested after a large quantity of narcotics was discovered during the course of a traffic stop. In January of 2016, the Berkeley County Grand Jury indicted Appellant for one count of trafficking in cocaine, one count of possession of crack cocaine with intent to distribute, and one count of possession of a weapon during the commission of a violent crime. Prior to trial, Appellant filed a suppression motion, and, on March 14, 2018, a pre-trial hearing was held on the matter in the Berkeley County Court of General Sessions with the Honorable Deadra L. Jefferson, circuit court judge, presiding. Subsequent to the hearing, Judge Jefferson denied the suppression motion through a written order filed on July 1, 2019. Thereafter, on December 9, 2019, a bench trial was conducted in the Berkeley County Court of General Sessions with the Honorable G. Thomas Cooper, Jr., circuit court judge, presiding.[1] At the conclusion of the two-day trial, Judge Cooper convicted Appellant as indicted. Following the verdict, Judge Cooper sentenced Appellant to concurrent terms of imprisonment of twenty-five years for trafficking in cocaine, ten years for possession of crack cocaine with intent to distribute, and five years for possession of a weapon during the commission of a violent crime. Appellant then timely filed a notice of appeal.

[1] At the outset of the proceedings, Appellant expressly waived his right to a jury trial. (R. pp. 83-84).

STATEMENT OF FACTS

Around 10:28 p.m. on the evening of October 23, 2015, Officer Alexander Erickson, a canine handler from the Goose Creek Police Department who worked alongside a certified drug detection dog named Kron, stopped a vehicle he observed being operated on a roadway in Goose Creek, South Carolina, with a nonfunctioning headlight and made contact with its driver, Sam Carr. (R. pp. 9-11; pp. 114-116; p. 131; State's Ex. # 1 (Recording)). At that time, Appellant was seated in the stopped vehicle's front passenger seat, and there was a black backpack resting between his legs on the vehicle's floorboard. (R. p. 11; p. 18; p. 28; p. 65; p. 116; pp. 134-135; p. 139; State's Ex. # 1).

Upon making contact with the driver, Officer Erickson almost immediately spotted a small plastic baggie with one end "twisted up" on Carr's lap, and, in light of his training and experience, he recognized that baggie as one that typically contained narcotics.[2] (R. p. 11; pp. 28-29; pp. 116-117; p. 133; State's Ex. # 1). Based on that, he quickly asked Carr about the baggie, and Carr responded by concealing it in an "extremely fast" manner either in his pocket or next to his seat. (R. p. 11; pp. 28-29; p. 117; p. 119; State's Ex. # 1). Carr, who seemed nervous, then provided a number of shifting responses about the identity of the baggie while insisting the officer's suggestion it looked like something containing narcotics was inaccurate.[3] (R. pp. 12-14; p. 30; State's Ex. # 1). Nevertheless, Officer Erickson believed narcotics were present in light of what he had observed, and he requested assistance from another officer, which led

[2] During the suppression hearing, Officer Erickson explained he believed the baggie contained narcotics because "[t]ime and time and time again, again, based on [his] personal experiences and training classes [he'd] been to, that's almost always how [he found] narcotics, rolled up in a sandwich bagg[ie], tied up at one end." (R. p. 12).

[3] Specifically, at various points, Carr claimed the baggie had actually been a candy wrapper, a cigarette wrapper, and a mint wrapper. (R. pp. 12-14; p. 30; State's Ex. # 1).

Sergeant Ted Davis from the Goose Creek Police Department to quickly respond to the scene. (R. p. 14; p. 117; p. 140; pp. 145-146; State's Ex. # 1; State's Ex. # 2 (Recording)).

Once Sergeant Davis arrived, Officer Erickson removed Carr from the vehicle and conducted a brief frisk search of him that did *not* extend inside his pockets. (R. p. 14; pp. 117-118; p. 120; State's Ex. # 1). After that, Officer Erickson again advised Carr he had seen what looked like a bag of drugs and, based on that, asked for permission to search the "front area" of the vehicle. (R. pp. 14-15; p. 31; pp. 117-118; State's Ex. # 1). Carr promptly responded by agreeing to the limited search requested but asserted he was not going to put his passenger "in a situation like that." (R. p. 14; p. 33; p. 59; p. 118; State's Ex. # 1). However, as they continued speaking, Officer Erickson requested permission to look throughout the "whole car," and Carr immediately responded by agreeing to such a search while assuring the officer the vehicle contained no narcotics. (R. p. 15; p. 17; p. 21; p. 118; State's Ex. # 1).

At that point, Appellant was removed from the vehicle, and Officer Erickson began his search on the vehicle's driver's side.[4] (R. pp. 18-19; p. 119; pp. 146-147; State's Ex. # 1). Upon finding no drugs in that location, Officer Erickson shifted his search to the passenger side, unzipped the backpack that was resting on the floorboard there, looked inside, and found multiple bags of narcotics hidden within it in a green velvet bag.[5] (R. pp. 19-20; pp. 35-36; pp. 119-120; pp. 137-138; p. 141; pp. 146-147; State's Ex. #1).

In light of that discovery, Appellant and Carr were quickly taken into custody, and Officer Erickson approached Appellant to question him about what he had found. (R. pp. 21-22;

[4] After Appellant was removed from the vehicle, Carr quickly explained to him he had granted permission for the car to be searched. (State's Ex. # 1).

[5] In addition to the bags of narcotics, the backpack also contained a digital scale, a box of plastic sandwich bags, and a gun. (R. pp. 22-23; pp. 121-124).

p. 36; p. 63; p. 120; State's Ex. # 1). During the ensuing conversation, Appellant admitted the backpack was his and claimed ownership of the drugs. (R. p. 22; p. 38; pp. 64-65; pp. 120-122; State's Ex. # 1). Following that, Appellant was arrested and indicted for a variety of offenses, including several drug charges. (R. p. 5; p. 24; pp. 244-249; State's Ex. # 1).

Subsequently, before Appellant was brought to trial on the indicted charges, defense counsel submitted a motion seeking suppression of the evidence discovered during the stop, and a hearing was conducted on the matter. (R. p. 6). During the course of that hearing, a recording of the stop was presented to the suppression hearing judge. (R. p. 46; pp. 80-81). In addition to that, Officer Erickson testified about the details of the stop, including about his observation of the baggie with an end "twisted up" on Carr's lap, about Carr's rapid concealment of that baggie, about Carr's shifting explanations regarding the baggie's identity, and about Carr's nervous demeanor. (R. pp. 11-14; pp. 28-30). Officer Erickson further explained he believed the baggie contained narcotics based on his training coupled with his own past experiences with similar baggies, and he confirmed his suspicions were only enhanced by Carr's furtive behavior and responses. (R. pp. 11-13; p. 19). Additionally, Officer Erickson explained he asked Carr for consent for a search as a result of what had occurred and eventually obtained consent to search the entire vehicle.[6] (R. pp. 14-15; p. 17; p. 31; p. 33). Likewise, Officer Erickson discussed his search of the drug-laden backpack he located on the vehicle's passenger-side floorboard, and he noted he neither saw any identifying marks on that backpack nor asked anyone about its ownership prior to the search. (R. pp. 19-20; p. 28; pp. 35-36). Furthermore, Officer Erickson explained Carr never withdrew his consent at any point while the search was being conducted.

[6] Significantly, Officer Erickson also specifically confirmed he unequivocally "would" have deployed his certified drug detection dog, who was already present at the scene and incessantly barked throughout the stop, for a sniff search if Carr had denied consent for a search of the vehicle. (R. p. 24; p. 40; pp. 118-119; State's Ex. # 1).

(R. p. 21). Beyond that, the officer indicated he asked Appellant about the backpack after finding the drugs because he believed the backpack belonged to Appellant due to where it was located in the vehicle, and he confirmed he did not personally believe he had probable cause for a search of the vehicle at the time he requested consent. (R. pp. 38-39; pp. 60-61; pp. 64-65).

Following the presentation of that testimony and evidence, defense counsel argued the search that led to the discovery of the incriminating evidence was unconstitutional because Carr's consent was purportedly not sufficient to permit a search of the backpack since it was allegedly only reasonable under the circumstances to believe that item belonged to Appellant. (R. pp. 66-70). In rebuttal, the solicitor argued the search was properly conducted pursuant to Carr's consent for a search of the vehicle, and he noted Officer Erickson did not know to whom the backpack located in Carr's vehicle belonged at the time it was searched. (R. p. 71; p. 79). Upon listening to those arguments, the suppression hearing judge took the matter under advisement. (R. p. 79).

Thereafter, upon considering the matter for more than a year, the suppression hearing judge denied the suppression motion. (R. p. 221; pp. 240-241). In doing so, the suppression hearing judge expressly recognized there were two key questions raised in Appellant's case: (1) whether the search of the backpack was authorized by consent; and (2) whether probable cause existed for the search even if no valid consent had existed. (R. pp. 227-228). As to the first of those questions, the suppression hearing judge found it was reasonable under the circumstances for Officer Erickson to conduct the search pursuant to the general consent provided. (R. pp. 233-234; p. 238). In reaching that particular conclusion, the suppression hearing judge noted the backpack was still in the vehicle at the time of the consent-based search, the backpack had no markings indicating ownership, no inquiries had been made revealing its ownership, no

objections were raised when it was searched, and Appellant did not attempt to remove the backpack or do anything else to alert the officers it could not be searched before the drugs were found. (R. pp. 233-238). Likewise, as to the second question, the suppression hearing judge found the search was proper pursuant to the automobile exception because the totality of the circumstances established a probable cause basis to believe drugs were present in the vehicle. (R. pp. 239-240). In reaching that conclusion, the suppression hearing judge recognized the analysis was an objective one that was not dependent on Officer Erickson's stated beliefs, and she found the officer observing a baggie that appeared to contain drugs based on his training and experience coupled with Carr's furtive attempt to conceal the baggie provided a probable cause basis for a search of the vehicle and its contents. (R. pp. 238-240).

Following the suppression hearing judge's ruling, Appellant proceeded forward to a bench trial.[7] (R. pp. 83-84). During the course of trial, Officer Erickson and Sergeant Davis recounted the circumstances of the stop that led to the discovery of Appellant's cache of narcotics, and the drugs, gun, and other incriminating items found during the search were admitted into evidence over defense counsel's renewed objection. (R. pp. 114-151). Furthermore, by stipulation, the parties agreed the drugs found in the backpack constituted 31.87 grams of cocaine along with 1.31 grams of crack cocaine. (R. p. 179; pp. 242-243).

Towards the conclusion of trial, defense counsel renewed his earlier suppression motion. (R. p. 180). In doing so, defense counsel maintained the search was one conducted purely pursuant to consent, and he again asserted the consent provided was supposedly insufficient to

[7] Early on during the trial, defense counsel moved for a new suppression hearing based on the length of time it took the suppression hearing judge to issue her ruling coupled with the fact there was some confusion that existed in regard to the physical copy of the recording of the stop. (R. pp. 87-113). However, after listening to some testimony related to the recording and considering the arguments of counsel, the trial judge denied that request. (R. p. 113).

allow for a search of Appellant's backpack. (R. pp. 181-187). At that point, the trial judge pointed out the suppression hearing judge also found the search was proper on the basis of probable cause. (R. pp. 187-188). In response, defense counsel argued that particular ruling was erroneous since Officer Erickson had indicated he did not subjectively think he possessed probable cause, and defense counsel further alleged he "objectively" disagreed with the suppression hearing judge's ruling in that regard. (R. p. 188). Ultimately though, after considering the matter, the trial judge denied the suppression motion, and Appellant was convicted of all the indicted offenses. (R. p. 191; p. 201).

STANDARD OF REVIEW

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 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); 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 supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) ("[A]ppellate courts must affirm if there is any evidence to support the trial court's ruling."); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling." (citation omitted and internal quotations omitted)). Critically, 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); see Khingratsaiphon, 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.").

ARGUMENT

Pursuant to the law-of-the-case doctrine, Appellant's challenge to the propriety of the ruling denying his suppression motion cannot be successful on appeal as a matter of law because Appellant has only raised a challenge to one of the multiple stand-alone grounds upon which the ruling was based, which means the unchallenged ground has now become the law of the case regardless of whether it was right or wrong. Furthermore, notwithstanding the applicability of the law-of-the-case doctrine under the circumstances involved, Appellant's suppression motion was properly denied because the officer who conducted the search possessed a probable cause basis to believe narcotics were likely present in the vehicle and, therefore, could validly conduct a search of the vehicle—along with the backpack inside of it—pursuant to the automobile exception to the warrant requirement.

Appellant contends the trial judge reversibly erred by denying the motion to suppress the incriminating evidence discovered through Officer Erickson's search of his backpack. In support of that contention, Appellant *solely* maintains Carr's consent was allegedly insufficient to permit a search of the backpack and, based on that and that alone, asserts the search was an unconstitutional one. Importantly though, Appellant's suppression motion was *not* denied based solely on a finding of valid consent. Instead, that motion was *also* denied based on a finding of probable cause, which—if present—would have independently permitted a search of the vehicle along with all the containers inside of it pursuant to the automobile exception to the warrant requirement regardless of whether the consent obtained had been sufficient. Thus, since the ruling denying the suppression motion was based on multiple independent grounds, Appellant was required to appeal all those grounds in order for his appellate challenge to be conceivably valid, and he has failed to do so. As a result, the ruling denying the suppression motion must be affirmed because the unchallenged portion of it upholding the search based on the automobile exception has now become the law of the case. However, even if the law-of-the-case doctrine was somehow not applicable, Appellant's suppression motion was nevertheless properly rejected because—under the totality of the circumstances—Officer Erickson possessed a valid probable

cause basis to believe narcotics were likely contained in Carr's vehicle, and, therefore, the search of that vehicle along with the backpack found inside of it was properly carried out pursuant to the automobile exception. Accordingly, both the suppression hearing judge and the trial judge correctly denied the suppression motion, and there are no legitimate grounds upon which to reverse that ruling on appeal since it was supported by the testimony and evidence presented during the circuit court proceedings. Appellant's convictions should be affirmed.

A. Correctness of the Ruling Denying Appellant's Suppression Motion Pursuant to the Law-of-the-Case Doctrine

Pursuant to the law-of-the-case doctrine, a ruling becomes the law of the case regardless of whether it is right or wrong when it is not appealed. State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012). In light of that doctrine, an appellant is necessarily required to appeal *all* the grounds upon which a ruling is based when one is based on multiple independent grounds. State v. Hicks, 387 S.C. 378, 379, 692 S.E.2d 919, 920 (2010). Significantly, "should the appealing party fail to raise all of the grounds upon which a [circuit court judge]'s decision was based, those unappealed findings—whether correct or not—become the law of the case." Dreher v. S.C. Dep't of Health & Env't Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015). Therefore, when an appellant only *partially* appeals a circuit court judge's ruling based on more than one ground, the ruling automatically must be affirmed on appeal regardless of its actual correctness. Hicks, 387 S.C. at 379, 692 S.E.2d at 920; see Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case." (citation and internal quotations omitted)); Weeks v. McMillan, 291 S.C. 287, 292, 353 S.E.2d 289, 292 (Ct. App. 1987) ("Where a decision is based on alternative grounds, either of which independent of

the other is sufficient to support it, the decision will not be reversed even if one of the grounds is erroneous.").

In the case sub judice, Appellant contends on appeal the trial judge erred by denying his motion to suppress the drugs discovered during the search of his backpack. (App. Br. pp. 1-9). In raising that particular contention, Appellant asserts the trial judge's ruling denying the suppression motion was based on a finding of consent. (App. Br. p. 6). Appellant then attacks the propriety of that ruling *exclusively* on the basis the consent provided was purportedly not sufficient to authorize a search of the backpack. (App. Br. p. 1; pp. 5-9).

Importantly though, neither the suppression hearing judge's nor the trial judge's ruling denying the suppression motion was based exclusively on a finding of valid consent. Instead, in declining to suppress the incriminating evidence found during the search of the backpack, the suppression hearing judge *also* analyzed the issue of whether the search was independently proper pursuant to the automobile exception, and, after conducting such an analysis, she ultimately found the search was, in fact, proper irrespective of consent due to the existence of probable cause. Likewise, when the challenge to the search was again raised during the trial itself, the trial judge expressly acknowledged the suppression hearing judge's pre-trial ruling on the suppression motion had been based on multiple grounds—including probable cause—before declining to change or overrule that ruling.

Under such circumstances, the ruling denying Appellant's suppression motion was unquestionably based on more than just a finding of valid consent for the search. Contrastingly, Appellant's appellate challenge to that ruling has solely been raised on the issue of the validity of consent alone.

Since the ruling denying the suppression motion was based on more than one stand-alone ground, Appellant was fundamentally required to appeal all the grounds upon which the ruling was based in order for it to be conceivably possible for his appellate challenge to the ruling to be a viable one. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a trial court's decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case."), abrogated on other grounds by Repko v. County of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018). However, Appellant has not done so on appeal and, instead, has only challenged *one* of the multiple discrete grounds upon which the ruling was based. Cf. Hicks, 387 S.C. at 379, 692 S.E.2d at 920 ("In this case, the Court of Appeals erred in addressing the merits of petitioner's argument regarding the revocation of probation based on [one ground] because the probation revocation judge revoked petitioner's probation on two additional grounds, *which petitioner did not challenge*." (emphasis added)). As a result, the unchallenged portion of the ruling upholding the search based on the automobile exception has become the law of the case, and, thus, there can be—and is—no proper basis upon which to reverse the ruling on appeal since at least one of the independent grounds upon which it was based must be treated as correct pursuant to the law-of-the-case doctrine. See Black, 400 S.C. at 28, 732 S.E.2d at 890 (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); cf. Anderson v. Short, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996) ("[T]he trial judge ruled against Paul on two grounds. . . . Paul has only challenged the second ground. Because he has not appealed on all grounds, the trial court's decision is affirmed."); State v. Galloway, 305 S.C. 258, 263, 407 S.E.2d 662, 665 (Ct. App. 1991) ("[T]he unappealed alternative ruling that the motion was untimely constitutes an independent ground for upholding

the judgment."). Accordingly, Appellant's partial appellate challenge to the suppression ruling must be rejected. See Hicks, 387 S.C. at 379, 692 S.E.2d at 920 ("Where the ruling of a trial judge is based on more than one ground, an appellate court must affirm unless the appellant appeals all grounds upon which the ruling was based."); cf. Sheppard v. State, 357 S.C. 646, 662, 594 S.E.2d 462, 471 (2004) ("[T]he trial court ruled the statement was admissible under Rule 803(3), SCRE. Because [Sheppard] does not appeal the trial court's ruling that the statement is a Rule 803(3) exception to the hearsay rule, that ruling is the law of the case. Accordingly, the trial court did not err by admitting Lynch's testimony." (citation and footnote omitted)). Appellant's convictions should be affirmed.

B. Propriety of the Ruling Denying the Suppression Motion on the Merits

The Fourth Amendment of the United States Constitution 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. Similarly, the South Carolina Constitution provides its own protections to the state's citizens against unreasonable searches and seizures. State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); see S.C. Const. art. I, § 10 ("The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated[.]"). Furthermore, primarily in order to guard against invasive technological advancements, the South Carolina Constitution also includes additional language protecting our citizens from "unreasonable invasions of privacy." S.C. Const. art. I, § 10; see Forrester, 343 S.C. at 647, 541 S.E.2d at 842 ("[T]he drafters of our state constitution's right to privacy provision were principally concerned with the emergence of new electronic technologies that increased the government's ability to conduct searches.").

Importantly, based on the express language of the United States Constitution and the South Carolina Constitution, only *unreasonable* searches, seizures, and invasions of privacy are constitutionally forbidden. S.C. Const. art. I, § 10; see State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) ("It is only unreasonable searches and seizures that are prohibited."); see also Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]"). As a result, the touchstone of the search and seizure protections afforded by both the federal constitution and state constitution is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."); see also Heien v. North Carolina, 574 U.S. 54, 60-61 (2014) ("To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.' " (citation omitted)); Illinois v. Rodriguez, 497 U.S. 177, 185 (1990) ("[W]hat is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable.").

Generally speaking, warrantless searches are considered to be unreasonable per se unless they fall under an exception to the warrant requirement, and any evidence seized as the result of an unreasonable search typically must be excluded from trial. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007); see State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978) (instructing searches conducted without a warrant are per se unreasonable unless an exception to the warrant requirement is applicable). However, "warrantless searches are allowed when the circumstances make it reasonable . . . to dispense with the warrant requirement." Kentucky v. King, 563 U.S. 452, 462 (2011). Regarding the situations where a warrantless

search is considered to be constitutionally reasonable, South Carolina courts have recognized several exceptions to the warrant requirement, including: (1) the search incident to lawful arrest exception; (2) the hot pursuit exception; (3) the stop and frisk exception; (4) the automobile exception; (5) the plain view exception; (6) the consent exception; (7) the abandonment exception; and (8) the exigent circumstances exception. State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012); see State v. Herring, 387 S.C. 201, 209, 692 S.E.2d 490, 494 (2009) ("A fairly perceived need to act on the spot may justify entry and search under the exigent circumstances exception to the warrant requirement.").

One of the recognized exceptions to the warrant requirement is the consent exception. See Birchfield v. North Dakota, __ U.S. __, 136 S. Ct. 2160, 2185 (2016) ("It is well established that a search is reasonable when the subject consents[.]"); Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999) ("The constitutional immunity from unreasonable searches and seizures may be waived by valid consent."). Pursuant to the consent exception, an officer can validly conduct a warrantless search of a constitutionally-protected area when he or she receives consent from an individual with authority *or* apparent authority to grant such consent and the consent is provided freely and voluntarily. See State v. Laux, 344 S.C. 374, 377, 544 S.E.2d 276, 277 (2001) (recognizing consent may be valid if the person granting consent reasonably appeared to have the apparent authority to grant the consent); State v. Adams, 377 S.C. 334, 339, 659 S.E.2d 272, 275 (Ct. App. 2008) (holding warrantless searches and seizures are constitutionally permissible when conducted under the authority of voluntary consent). Significantly, when analyzing whether consent was valid, the circumstances must be evaluated objectively to determine whether the facts available to the officer at the time of the search would have led a reasonable person to believe the consenting party had authority to provide consent for

the search conducted. Laux, 344 S.C. at 377, 544 S.E.2d at 277; see Rodriguez, 497 U.S. at 186 ("Whether the basis for . . . authority [to consent] exists is the sort of recurring factual question to which law enforcement officials must be expected to apply their judgment; and all the Fourth Amendment requires is that they answer it reasonably."); State v. Moultrie, 271 S.C. 526, 529, 248 S.E.2d 486, 488 (1978) (instructing law enforcement officers should be permitted to rely on "the general appearances of the situation" when deciding whether to act upon consent that has been provided).

Likewise, another of the recognized exceptions to the warrant requirement is the automobile exception, which is based on the ready mobility of automobiles coupled with the lessened expectation of privacy in such vehicles. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981); see State v. Cox, 290 S.C. 489, 491, 351 S.E.2d 570, 571 (1986) ("The two bases for the exception are: (1) the ready mobility of automobiles and the potential that evidence may be lost before a warrant is obtained; and (2) the lessened expectation of privacy in motor vehicles which are subject to governmental regulation."). Pursuant to the automobile exception, law enforcement officers can conduct a warrantless search of an automobile based solely on the existence of probable cause, which simply means a fair probability contraband or evidence of a crime will be found. State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995); see Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as "a fair probability that contraband or evidence of a crime will be found"); United States v. Ortiz, 669 F.3d 439, 446 (4th Cir. 2012) ("Probable cause requires an officer to have a '*reasonable ground* for belief of guilt'—'more than bare suspicion.' A 'reasonable ground' for belief is less demanding than a standard requiring a preponderance of the evidence for the belief." (citations omitted)); see also Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing the probable cause standard "is

not a high bar"). Critically, when probable cause exists for a vehicle search, the search can be extended to every part of the vehicle—*and its contents*—potentially containing the search's object. Bultron, 318 S.C. at 332, 457 S.E.2d at 621; see Wyoming v. Houghton, 526 U.S. 295, 307 (1999) ("We hold that police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search.").

In the case sub judice, Officer Erickson observed a plastic baggie with one end twisted up in plain view on Carr's lap almost immediately after he approached the vehicle at the outset of the stop, and, based on both his training and his own personal experiences, he recognized such a baggie as one that typically contained narcotics. See United States v. Sandifer, 188 F.3d 992, 993 (8th Cir. 1999) (recognizing "[p]lastic sandwich bags with the corners torn" are "commonly used to distribute crack"); United States v. Fisher, 912 F.2d 728, 731 (4th Cir. 1990) ("Baggies and baggie corners are well-known tools of the narcotics distribution trade."); State v. Carter, 696 N.W.2d 31, 38 (Iowa 2005) (explaining "courts have found that a plastic baggie is a commonly used container for narcotics and when seen in an unusual setting can tip the scales in favor of probable cause for a search"); People v. Hilt, 698 N.E.2d 233, 235 (Ill. App. Ct. 1998) (concluding an officer's observation of a torn plastic baggie with a knotted corner in plain view during the course of a traffic stop gave him probable cause to search the vehicle pursuant to the automobile exception). Likewise, when confronted about the baggie, Carr rapidly moved to conceal it, which strongly supported a conclusion the baggie contained something illicit since Carr clearly did not want it to remain in the officer's view. See Sibron v. New York, 392 U.S. 40, 66 (1968) (explaining the existence of "deliberately furtive actions" in response to the presence of law enforcement can be an important factor in a probable cause analysis); United States v. Jenkins, 680 F.3d 101, 106 (1st Cir. 2012) (recognizing "furtive movements consistent

with hiding contraband" can contribute to the existence of probable cause for a search); State v. Hunt, 514 P.2d 1363, 1365 (Or. Ct. App. 1973) (holding "the combination of a highly suspicious object and a gesture which could reasonably be interpreted as an attempt to remove the object from his view" justified a search and seizure). Furthermore, Carr, who seemed to be nervous, provided a variety of shifting responses about the baggie's identity, which only further supported a conclusion the baggie contained something unlawful since Carr could not even consistently state what the baggie was despite it having just visibly been in his immediate possession. See United States v. Koshnevis, 979 F.2d 691, 695 (9th Cir. 1992) (finding "nervousness" and "inconsistent statements" contributed to the existence of probable cause for a vehicle search); State v. Bonilla, 429 S.C. 253, 279, 838 S.E.2d 1, 14 (Ct. App. 2019) (finding the fact various inconsistent statements were made contributed to the existence of probable cause for a vehicle search); see also United States v. Johnson, 364 F.3d 1185, 1192 (10th Cir. 2004) ("[N]ervousness, even if it may be a normal reaction, is still among the pertinent factors a reasonable law enforcement officer would analyze in investigating possible crimes, and should not be completely disregarded."); Milledge v. State, 422 S.C. 366, 378, 811 S.E.2d 796, 803 (2018) (recognizing nervousness is a factor that can contribute to an officer's suspicions under the totality of the circumstances).

Considering the totality of those circumstances in conjunction with the officer's training and experience, the factors that were present objectively established a basis to believe there was a fair probability narcotics were present inside Carr's vehicle. 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 the probable cause standard—which is not a high bar—"does not require officers to rule out a suspect's

innocent explanation for suspicious facts"); Ortiz, 669 F.3d at 446 ("[The probable cause] standard is not particularly demanding, and the evidence need not provide the officers with an air-tight case, nor even a case satisfying the preponderance standard. Rather, the probable cause standard is recognized to be a flexible, common sense standard by which reasonable officers can conclude that what they see, in light of their experience, supports an objective belief that contraband is in the vehicle."); Wortman v. City of Spartanburg, 310 S.C. 1, 4, 425 S.E.2d 18, 20 (1992) ("Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise."); see also United States v. Cortez, 449 U.S. 411, 418 (1981) ("[A] trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person."); cf. Texas v. Brown, 460 U.S. 730, 742-743 (1983) (plurality opinion) (concluding an officer's observation of a knotted balloon during the course of a routine checkpoint stop established a probable cause basis to believe narcotics were present). As a result, Officer Erickson—regardless of what he might have *subjectively* thought—possessed a valid probable cause basis to search anywhere in the vehicle where narcotics might have been hidden, which necessarily included the backpack that was resting in the vehicle's passenger compartment.[8] See United States v. Ross, 456 U.S. 798, 825 (1982) ("If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."); see also Brighton City, Utah v. Stuart, 547 U.S. 398, 404 (2006) ("An action is reasonable under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances,

[8] Although some of his later responses seemed to demonstrate a subjective misunderstanding of the meaning of "probable cause," Officer Erickson specifically confirmed he "believed" the baggie he had observed during the stop contained narcotics based on the circumstances involved. (R. p. 14).

viewed *objectively*, justify the action. The officer's subjective motivation is irrelevant." (citations, brackets, and internal quotations omitted)); Devenpeck v. Alford, 543 U.S. 146, 153 (2004) ("As we have repeatedly explained, the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." (citations and internal quotations omitted)); State v. Shelton, 741 So. 2d 473, 477 (Ala. Crim. App. 1999) (instructing "because the test for determining probable cause is an objective and not a subjective test, this court may find probable cause in spite of an officer's judgment that none exists" (citations, brackets, and internal quotations omitted)).

Accordingly, because probable cause justified the search of the vehicle and its contents under the totality of the circumstances, the search that led to the discovery of Appellant's cache of narcotics was constitutionally proper regardless of whether it was authorized by consent, and the incriminating items discovered through the search could properly be admitted into evidence during trial.[9] See Houghton, 526 U.S. at 302 ("When there is probable cause to search for contraband in a car, it is reasonable for police officers—like customs officials in the founding

[9] Moreover, based on the testimony presented during trial, Officer Erickson inevitably *would have* retrieved his certified drug detection dog from his vehicle and conducted a sniff search if Carr had not stopped him from doing so by providing consent for the search. Cf. United States v. Hammons, 152 F.3d 1025, 1030 (8th Cir. 1998) (finding Hammons's cocaine would have inevitably been discovered because "if Hammons did not consent, the officer was prepared to walk back to his patrol car and radio the drug-canine unit" and "the only event that stopped the officer from calling the drug-canine unit before the officer opened the envelope was [Hammons]'s consent"). Under such circumstances, Appellant's drugs would have inevitably been uncovered through lawful means, and, thus, there would have been no legitimate basis upon which to exclude them from evidence during trial even if the search through which they were found was somehow improper. See Nix v. Williams, 467 U.S. 431, 444 (1984) ("If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense.").

era—to examine packages and containers without a showing of individualized probable cause for each one. A passenger's personal belongings, just like the driver's belongings or containers attached to the car like a glove compartment, are 'in' the car, and the officer has probable cause to search for contraband *in* the car."); cf. Foster, 269 S.C. at 379, 237 S.E.2d at 592 (concluding an officer possessed probable cause to arrest after he "spotted what looked to be heroin" inside an automobile while describing what the officer specifically saw as fifteen glassine bags that looked like stamp-collectors' bags). Therefore, even assuming Appellant's appellate argument is correct and the consent provided by Carr did not validly extend to the backpack, both the suppression hearing judge and the trial judge nonetheless properly denied the suppression motion, and there are no legitimate grounds upon which to reverse that ruling on appeal as it was fully supported by the testimony and evidence presented during trial.[10] See Moore, 415 S.C. at

[10] Indisputably, Officer Erickson—prior to initiating his search—obtained consent from Carr to search Carr's *entire* vehicle for narcotics, and no objections were raised to Officer Erickson's search while it was being conducted even though Appellant was still present at the scene and aware Carr had provided consent for a search. (R. pp. 14-19; p. 21; p. 33; pp. 118-119; pp. 143-144; p. 147; State's Ex. # 1). Under such circumstances, Officer Erickson arguably could properly search anything inside the vehicle that might contain narcotics—including a container such as the backpack—based on the consent provided unless it was withdrawn or otherwise limited, and, notably, no objections were raised to the search until *after* the incriminating evidence in the backpack had been located. See Jimeno, 500 U.S. at 251 ("The question before us . . . is whether it is reasonable for an officer to consider a suspect's general consent to a search of his car to include consent to examine a paper bag lying on the floor of the car. We think that it is. . . . Respondent granted Officer Trujillo permission to search his car, and did not place any explicit limitation on the scope of the search. . . . We think that it was objectively reasonable for the police to conclude that the general consent to search respondent's car included consent to search containers within that car which might bear drugs."); Frazier v. Cupp, 394 U.S. 731, 740 (1969) (refusing to engage in "metaphysical subtleties" in determining whether third-party consent was valid and finding the petitioner assumed the risk the third party would have allowed someone to look inside his bag by leaving it in the third party's house); State v. Jones, 589 S.E.2d 374, 377 (N.C. Ct. App. 2003) (holding a person in possession of a vehicle "had the authority to consent to a search of his vehicle which encompassed items found lying around in the car, such as [another individual]'s jacket"); see also State v. Funderburk, 367 S.C. 236, 240, 625 S.E.2d 248, 250 (Ct. App. 2006) ("A suspect's failure to object (or withdraw his consent) when an officer exceeds limits allegedly set by the suspect is a strong indicator that the search

251, 781 S.E.2d at 900 (explaining an appellate court reviewing a trial judge's ruling on a search and seizure issue must affirm "if there is any evidence to support the trial court's ruling"); State v. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013) ("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)). Appellant's convictions should be affirmed.

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was within the proper bounds of the consent search."); State v. Mattison, 352 S.C. 577, 587, 575 S.E.2d 852, 857 (Ct. App. 2003) ("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."); cf. United States v. Barber, 777 F.3d 1303, 1305-1306 (11th Cir. 2015) (finding a search of Barber's bag during the course of a traffic stop was constitutionally proper in light of consent provided by the driver even though the officer testified he believed—but did not know—the bag was Barber's prior to the search and instructing: "The bag's placement on the passenger-side floorboard, within easy reach of [the driver] coupled with Barber's silence during the search, made it reasonable to believe [the driver] had common authority over the bag. Drivers do not ordinarily place their bags on the driver-side floorboard, but drivers sometimes use the passenger-side floorboard to store their belongings. The officers could have reasonably believed [the driver] had common authority over the bag.").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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May 13, 2021

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2019-002107

THE STATE,

Respondent,

vs.

RICKY MANIGO DAWSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Final Brief of Respondent on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

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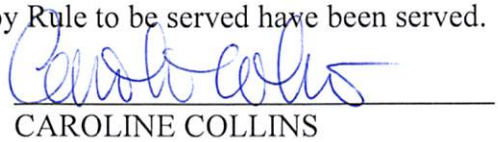
I further certify all parties required by Rule to be served have been served.
This 13th day of May, 2021.



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To: Carter, Wanda
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Subject: The State v. Ricky Manigo Dawson (2019-002107)
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Good Afternoon Ms. Carter,

Attached please find a copy of the Final Brief of Respondent in The State v. Ricky Manigo Dawson (2019-002107). This brief will be submitted to the Court of Appeals today via the AIS One Drive System.

If you will, please reply to this email to confirm receipt.

Thank you!

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