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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On 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.,

Petitioner.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON CERTIORARI

I.

Did the Court of Appeals err by finding the trial judge properly refused to suppress evidence obtained when the police unlawfully seized Frasier, a passenger in a car stopped for having an inoperable third brake light, by exceeding the scope of the initial traffic stop and lacking a reasonable suspicion of criminal activity to support the extension of the stop?

II.

Did the Court of Appeals err by finding the trial judge properly refused to suppress a bus ticket, a straw, and a small bag of cocaine found on Frasier's person as a result of a nonconsensual search conducted without probable cause?

COUNTER-STATEMENT OF ISSUES ON CERTIORARI

I.

Did the Court of Appeals correctly affirm 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 may be afoot and which justified an extension of the stop for further investigation?

II.

Did the Court of Appeals correctly affirm 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 supported the trial judge's finding 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?

STATEMENT OF THE CASE

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—following briefing and oral argument—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, and that petition was granted in part on August 6, 2021.

STATEMENT OF FACTS

On the morning of August 14, 2013, Sergeant Daniel Pritchard, an experienced narcotics officer with the North Charleston Police Department, responded to a bus station located in North Charleston, South Carolina, along with his partner, Detective Ryan Johnson, in order to conduct drug interdiction.¹ (R. pp. 27-28; pp. 149-150). Upon arriving, he parked his unmarked law enforcement vehicle a short distance away from the bus station, and the two began watching the bus station's exit. (R. p. 28; pp. 34-35; p. 150). As they did so, Frasier exited the bus station, stopped, and suspiciously scanned the entire parking lot before getting into a vehicle that 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 law enforcement experience, Sergeant Pritchard considered Frasier's actions to be suspicious and believed Frasier, who looked "uncomfortable," was scanning the parking lot for law enforcement officers or other threats before he entered the waiting vehicle. (R. pp. 28-29; p. 35; p. 38; pp. 150-151). In light of his suspicions, Sergeant Pritchard began following the vehicle as it drove away from the bus station, and, while doing so, he noticed one of the vehicle's brake lights was not functioning. (R. p. 30; p. 154). As a result, he and his partner contacted Officer Steve Hall of the North Charleston Police Department, advised him they had just observed a person behaving in a "suspicious" or "funny" manner leave the bus station, and asked him to initiate a traffic stop of the vehicle based on the equipment violation. (R. pp. 30-31; p. 36; p. 40; p. 42; pp. 54-55; p. 154; pp. 169-171).

Upon receiving the information relayed by the narcotics officers, Officer Hall located the identified vehicle, activated his vehicle's blue lights, and moved into position behind it. (R. p.

¹ During trial, Sergeant Pritchard indicated he had fifteen total years of law enforcement experience and had five years of experience as a member of the narcotics division. (R. p. 27; pp. 149-150). Relying on that experience, he further indicated commercial buses are commonly known to be used by criminals to transport narcotics and other contraband. (R. pp. 151-152).

39; p. 172; Court's Ex. # 1 (Recording of Traffic Stop)). In response, the driver of the vehicle moved out of the lane the officer was in, the officer followed, the driver again moved to a different lane, and the officer again followed. (R. p. 41; Court's Ex. # 1). At that point, the driver shifted back over to the far right lane but continued to drive on despite the fact the officer continued to follow behind in his vehicle. (R. p. 41; Court's Ex. # 1). Thereafter, over forty seconds after the officer had activated his vehicle's blue lights and only after the officer signaled with his vehicle's siren, the driver of the vehicle pulled over onto a grassy area by the side of the road with the officer following behind.² (R. pp. 41-42; p. 247; Court's Ex. # 1).

Once 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 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.³ (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

² Notably, the driver continued to drive past similar grassy areas for some distance before eventually pulling over at the point she finally stopped her vehicle. (Court's Ex. # 1).

³ During trial, Officer Hall noted he had conducted *thousands* of traffic stops during his law enforcement career, which had spanned eleven years—including four years as a narcotics officer—by that point in time, and, thus, had substantial experience regarding the typical behavior of motorists during the course of traffic stops. (R. p. 39; p. 169).

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.⁴ (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."⁵ (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. 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;

⁴ Although Officer Hall did not know it at the time, Frasier's claim was untrue as the bus ticket recovered from his pocket revealed he had come to the area from Houston, Texas. (R. p. 237; State's Ex. # 5 (Bus Ticket)).

⁵ 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 atypical. (R. pp. 51-52; Court's Ex. # 1).

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 handcuffs 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.⁶ (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, Sergeant Pritchard and Detective Johnson responded to the scene. (R. p. 31; p. 155; Court's Ex. # 1). Thereafter, 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.⁷ (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). Amongst the arguments raised, defense counsel contended the traffic

⁶ In addition to cocaine, the officer also located a bottle containing a dietary supplement commonly used to as a cutting agent for cocaine in the duffle bag. (R. p. 77; p. 236).

⁷ During trial, testimony was presented establishing the total weight of the white powdery substance collected during the stop was 196.5 grams, and the total weight specifically tested and confirmed to be cocaine was 115.1 grams while 81.4 grams remained untested. (R. p. 269).

stop was unlawfully extended without reasonable suspicion and Frasier did not voluntarily consent to the search of his person. (R. pp. 350-363). As a result, defense counsel asserted the drugs 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 identifying 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).

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 based on the totality of the circumstances. (R. pp. 131-135). Furthermore, 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).

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. (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 first analyzed the propriety of the extension of the traffic stop, applied the standard of review articulated in—amongst other decisions—this Court’s decision in State v. Moore, 415 S.C. 245, 781 S.E.2d 897 (2016), and affirmed the trial judge’s ruling upon concluding it was supported by the evidence and testimony presented. Id. at 250-251; 847 S.E.2d at 282-283. Next, the Court of Appeals analyzed the propriety of the consent-based search of Frasier’s person and affirmed the trial judge’s ruling on that matter after finding Frasier’s words and conduct “support[ed] a conclusion . . . he voluntarily consented to the search and did not effectively withdraw that consent at any point during the search.” Id. at 252, 847 S.E.2d at 283-284. Finally, the Court of Appeals reviewed the trial judge’s ruling regarding the voluntary nature of Frasier’s post-warning statements and affirmed after concluding that ruling was supported by the evidence. Id. at 254, 847 S.E.2d at 285.

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 a search and seizure case, 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 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

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 may be 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 and, thus, was unconstitutional.⁸ 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

⁸ In challenging the constitutionality of the extension of the stop, Frasier at various points has alleged the stop violated both the Fourth Amendment of the United States Constitution *and* Article I, Section 10 of the South Carolina Constitution. (Pet. Br. p. 4; p. 17). However, in making such an assertion, Frasier has not raised any arguments separate and distinct from his arguments based on the federal constitution. (Pet. Br. pp. 4-22). Likewise, Frasier has not alleged the extension of the stop would have violated his state constitutional rights even assuming it did not violate his federal constitutional rights and has not explained how specifically Article I, Section 10 was violated in his case. (Pet. Br. pp. 4-22). Under such circumstances, Frasier’s appellate references to our state constitution are far too conclusory to validly raise any issues related to it for review by this Court. *See State v. Jones*, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (finding an argument to be abandoned because it was raised in a conclusory manner); *State v. Hiott*, 276 S.C. 72, 86, 276 S.E.2d 163, 170 (1981) (recognizing an issue raised on appeal but not actually argued in the brief will be “deemed abandoned on appeal”); *cf. Burrell v. State*, 207 A.3d 137, 143 (Del. 2019) (finding a state constitutional claim to be waived due to the conclusory nature in which it was advanced on appeal and explaining the “proper presentation” of a state constitutional claim should include “a discussion and analysis of one or more of the following non-exclusive criteria: textual language, legislative history, preexisting state law, structural differences, matters of particular state interest or local concern, state traditions, and public attitudes”).

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 conviction and the decision of the Court of Appeals should both be affirmed.

Both the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution provide protections to our citizens against unreasonable searches and seizures. See U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]"); 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[.]"). Significantly, based on their plain wording, the touchstone of those constitutional provisions is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."). As a result, *only* unreasonable searches and seizures are impermissible. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see also Heien v. North Carolina, 574 U.S. 54, 60 (2014) ("To be reasonable is not to be perfect[.]"); Illinois v. Rodriguez, 497 U.S. 177, 185 (1990) ("It is apparent that in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what 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.”).

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, 575 U.S. 348, 354 (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.

As to what “reasonable articulable suspicion” has been recognized to mean, it is a flexible standard grounded in common sense and simply requires a showing of “a *minimal* level of objective justification” in order to be satisfied. Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (emphasis added); see State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (“The term reasonable suspicion requires a particularized and objective basis that would lead one to suspect another of criminal activity” (citation and internal quotations omitted)); see also

Robinson v. State, 407 S.C. 169, 184, 754 S.E.2d 862, 870 (2014) (“[T]he facts and inferences relied on by the officer must be *articulable*, not necessarily *articulated*.”). Significantly, it “is not a high bar.” United States v. Coker, 648 F. App’x 541, 544 (6th Cir. 2016) (citing Navarette v. California, 572 U.S. 393 (2014)); see Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing even the probable cause standard “is not a high bar”). Thus, pursuant to that standard, the presence of factors seemingly consistent with innocent behavior can—and frequently does—suffice to establish the existence of reasonable suspicion to believe criminal activity *may* be afoot when those factors are viewed collectively as required. United States v. Sokolow, 490 U.S. 1, 9 (1989); Wardlow, 528 U.S. at 125-126 (recognizing factors that are “susceptible of an innocent explanation” can establish reasonable suspicion and probable cause); see also 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); United States v. Whitfield, 634 F.3d 741, 744 (3d Cir. 2010) (“It is not necessary that the suspect actually have done or is doing anything illegal; reasonable suspicion may be based on acts capable of innocent explanation.” (citation and internal quotations omitted)); United States v. Pack, 612 F.3d 341, 356 (5th Cir. 2010) (“Requiring police to have particularized facts that support a finding that ‘criminal activity may be afoot’ is different from requiring the police to articulate particularized facts that support a finding that a particular specific crime is afoot.”).

In the case sub judice, the primary officers involved in traffic stop—Sergeant Pritchard and Officer Hall—were highly-experienced officers with over a decade in law enforcement who had each conducted drug investigations for a number of years as part of the North Charleston Police Department’s narcotics division. Moreover, Officer Hall had personally conducted thousands of traffic stop, which provided him with significant practical experience concerning

both typical and atypical behavior engaged in by motorists during the course of such stops. Equipped with that specialized background and accompanying knowledge, the officers observed numerous indicators of criminal activity both prior to and during the course of the traffic stop that led them to reasonably—and correctly—suspect Frasier was engaged in criminal activity.⁹ 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, Sergeant Pritchard observed Frasier leave a bus station and suspiciously scan the entire parking lot before getting into Jones’s vehicle despite the fact it was parked directly in front of him just a few yards away. In light of his narcotics background and knowledge regarding the regular use of buses by drug traffickers, Sergeant Pritchard perceived that behavior to be suspicious as it appeared to his trained eyes Frasier was checking for rivals or law enforcement officers before proceeding forward, which supported a conclusion he may have been transporting drugs or other contraband.¹⁰ See Sibron v. New York, 392 U.S. 40, 66 (1968) (recognizing “deliberately furtive actions . . . are strong indicia of mens

⁹ Although its propriety has not been challenged on appeal, the initial traffic stop itself was unquestionably proper in light of the fact one of the brake lights on Jones’s vehicle was not working. See S.C. Code Ann. § 56-5-4730 (“When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition.”); S.C. Code Ann. § 56-5-5310 (“No person shall drive or move on any highway any vehicle unless the equipment thereon is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.”); see also State v. Vinson, 400 S.C. 347, 352, 734 S.E.2d 182, 184 (Ct. App. 2012) (“A traffic stop is not unreasonable if conducted with probable cause to believe a traffic violation has occurred, or when the officer has a reasonable suspicion the occupants are involved in criminal activity.”).

¹⁰ Notably, because Jones’s vehicle was directly in front of him as soon as he exited the bus station, Frasier certainly was *not* scanning the parking lot to spot the person who was picking him up. (R. p. 38).

rea”); United States v. Garcia, 339 F.3d 116, 119 (2d Cir. 2003) (recognizing conduct consistent with drug trafficking, such as engaging in what appears to be “counter-surveillance,” can support a finding of reasonable suspicion); United States v. Smith, 201 F.3d 1317, 1323 (11th Cir. 2000) (holding officers possessed reasonable suspicion for an investigatory seizure based on a number of facts, including the fact Smith’s confederate “scanned and surveilled the terminal, watching every person who passed by him in the bus station”); 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 (2d 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). And, based on that, Sergeant Pritchard quickly alerted Officer Hall his suspicions had been raised by what he had observed after Frasier exited the bus station. See United States v. Ventresca, 380 U.S. 102, 111 (1965) (recognizing an officer can rely upon the observations of a fellow officer engaged in a common investigation even when seeking to establish probable cause for a warrant).

Additionally, upon stopping Jones’s vehicle a short time later, Officer Hall, who was personally aware an experienced fellow officer had just observed Frasier engaging in behavior perceived to be “suspicious” or “funny” at a bus station, immediately noticed Jones’s pants were fully unzipped, and Jones’s pants were still unzipped when she subsequently exited her vehicle. In light of his training and experience, Officer Hall was aware criminals regularly attempt to hide contraband in the crotches of their pants to safeguard it, and Officer Hall believed that indicator to be of such significance he advised another officer about it during the course of the stop. Accordingly, due to the fact Jones’s pants were unzipped, Officer Hall’s suspicions that criminal

activity may be afoot were legitimately raised, and they were further raised by Jones's unusual act of opening her car door during the stop, which constituted abnormal behavior from the behavior he ordinarily observed during the typical stop.¹¹ 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); see also United States v. Brignoni-Ponce, 422 U.S. 873, 885 (1975) (recognizing the presence of unusual behavior may be relevant to a finding of reasonable suspicion).

Furthermore, upon approaching Jones's vehicle, Officer Hall noticed Frasier was exhibiting signs of heightened nervousness and appeared to be attempting to avoid making eye contact with him, and the officer felt like Frasier's level of nervousness was significant enough to warrant mentioning it to another officer. In light of the officer's experience from conducting thousands of traffic stops, Frasier's unusual nervousness supported an inference criminal activity may have been afoot. See Moore, 415 S.C. at 254, 781 S.E.2d at 902 ("Moore exhibited excessive nervousness in the judgment of the officer, which lends support to a finding of reasonable suspicion to prolong the traffic stop."); 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

¹¹ 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).

the pertinent factors a reasonable law enforcement officer would analyze in investigating possible crimes, and should not be completely disregarded.”).

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 despite it being a simply query anyone who had just left one place bound for another should have had no trouble answering without any difficulty. Cf. State v. Alston, 422 S.C. 270, 290, 811 S.E.2d 747, 757 (2018) (plurality opinion) (Few, J., concurring) (characterizing as suspicious Alston’s inability to be consistent on “a subject anybody ought to be able to speak consistently about—the number and ages of his children”). In light of the fact Frasier and Jones should obviously have known where they just came from and would not have had a logical or innocent reason to keep that information from the officer unless it was in some way suggestive of wrongdoing, Officer Hall correctly perceived their evasiveness in responding to that particular question the first *six times* he asked it to be a strong indicator something was amiss. See United States v. Riley, 684 F.3d 758, 764 (8th Cir. 2012) (explaining “difficulty in answering basic questions about [the individual’s] itinerary” can support a finding of reasonable suspicion); 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); 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.”).

Individually, none of those factors may have been sufficient to rise to level of reasonable suspicion. Cf. Sokolow, 490 U.S. at 9 (“Any one of these factors is not by itself proof of any illegal conduct and is quite consistent with innocent travel. But we think taken together they amount to reasonable suspicion.”). However, when those factors are viewed *collectively* as

required, together they provided the highly-experienced officers involved in Frasier’s case with the minimal level of objective justification necessary to satisfy the reasonable suspicion standard’s low bar, which permitted an extension of the traffic stop to allow 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. Kansas v. Glover, ___ U.S. ___, 140 S. Ct. 1183, 1190 (2020) (concluding an officer possessed “more than reasonable suspicion” to initiate a seizure based on his knowledge of just three facts: (1) someone was driving a truck with a specific license plate; (2) the truck’s registered owner had a revoked driver’s license; and (3) the vehicle linked to the registered owner based on the observed license plate’s information matched the observed vehicle); 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, in light of the deferential standard of review that was applicable, the Court of Appeals correctly affirmed the trial judge’s ruling on appeal as it was supported by the evidence and testimony presented during trial.¹² See Moore, 415 S.C. at 253, 781 S.E.2d at 901 (“The question before

¹² As part of his appellate challenge to the trial judge’s ruling on the suppression motion, Frasier throughout his brief faults the trial judge for the purported “general” nature of her ruling. (Pet. Br. p. 9; p. 19). Importantly though, Frasier did *not* raise any issues concerning the sufficiency of the ruling to the trial judge and did *not* ask the trial judge for a more detailed ruling, including after the trial judge followed her ruling by asking defense counsel if she had “miss[ed]

the court of appeals was whether there was any evidence to support the trial court’s finding of reasonable suspicion—not the court of appeals’ independent view of the facts.”); 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 Glover, 140 S. Ct. at 1190 (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 conviction and the decision of the Court of Appeals should both be affirmed.

anything.” (R. pp. 134-135; p. 137). As a result, Frasier cannot now validly raise a complaint on appeal concerning the adequacy of the trial judge’s ruling since he did not raise any issue with the adequacy of that ruling to the trial judge during trial despite unquestionably having a full and fair opportunity to do so. See State v. Vang, 353 S.C. 78, 85, 577 S.E.2d 225, 228 (Ct. App. 2003) (finding any issue resulting from the trial judge’s failure to take a particular action was not preserved for appellate review because Vang did not ask the trial judge during trial to take the action Vang contended on appeal should have been taken).

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 supported the trial judge’s finding 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 his pockets. In support of that contention, Frasier maintains his words and actions should not have been construed as extending voluntary consent for the search of his person.¹³ To the contrary, evidence and testimony was presented during trial that supported a conclusion 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 the evidence and testimony further supported a conclusion he neither placed any express limitations on his consent nor expressly revoked his consent once it was provided. Under those circumstances, the trial judge had a valid basis upon which to conclude Officer Hall’s search of Frasier’s person was conducted with Frasier’s voluntary consent, and, therefore, her ruling reaching just such a conclusion was neither lacking in evidentiary support nor clearly

¹³ Similar to what he did when challenging the constitutionality of the extension of the stop, Frasier has briefly referenced Article I, Section 10 of the South Carolina Constitution as part of his challenge to propriety of the consent-based search of his person. (Pet. Br. p. 23). However, in doing so, Frasier has not even directly argued the search violated the state constitution and, instead, has simply noted his suppression motion at the trial level alleged a violation of both the federal constitution and state constitution. (Pet. Br. pp. 23-27). Under such circumstances, Frasier’s conclusory reference to Article I, Section 10 without supporting argument cannot be and is not sufficient to legitimately present any issues concerning our state constitution to this Court for review. See Prudential Ins. Co. of Am. v. Murphy, 207 S.C. 324, 329, 35 S.E.2d 586, 587 (1945) (“It is also alleged in the petition that the tax violates a section of our State Constitution, but the point was not argued and is, therefore, deemed to have been abandoned in accord with the established rule.”), overruled on other grounds by McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985).

erroneous. Accordingly, the trial judge did not reversibly err by denying the suppression motion, and the Court of Appeals correctly affirmed her factually-supported ruling on appeal pursuant to the applicable standard of review. Frasier’s conviction and the decision of the Court of Appeals should both be affirmed.

For constitutional purposes, warrantless searches are typically considered to be unreasonable per se *unless* they fall under an exception to the general warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978); see Kentucky v. King, 563 U.S. 452, 462 (2011) (“[W]arrantless searches are allowed when the circumstances make it reasonable . . . to dispense with the warrant requirement.”). In South Carolina and throughout the nation, several different exceptions to the warrant requirement have been recognized, including the long-accepted and well-established consent exception. State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012); see Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (“It is . . . well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.”). Of the recognized exceptions, consent has long been accepted because “it is no doubt reasonable for the police to conduct a search once they have been permitted to do so.” Jimeno, 500 U.S. at 250-251; see Foster, 269 S.C. at 378, 237 S.E.2d at 591 (“It is only unreasonable searches and seizures that are prohibited.”).

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, which can be provided either by words, actions, or a combination of the two. State v. Adams, 377 S.C. 334, 339, 659 S.E.2d 272, 275 (Ct. App. 2008); see State v. Forrester, 343 S.C. 637, 649, 541 S.E.2d 837, 843 (2001) (concluding Forrester granted consent for a limited visual inspection search—

and nothing further—through her *act* of holding her purse open for the officer to see inside in response to the officer’s request for permission to search the purse); 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). Significantly, whether voluntary consent has been provided is a question of *fact* for the *trial judge*, and it is a matter to be determined from the totality of the circumstances. Pichardo, 367 S.C. at 105, 623 S.E.2d at 851; see United States v. Winston, 444 F.3d 115, 121 (1st Cir. 2006) (“The existence of consent and the voluntariness thereof are questions of fact to be determined from all the circumstances surrounding the search.” (citation and internal quotations omitted)); State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981) (recognizing the issue of whether consent for a search was validly given constitutes “a question of fact for the trial judge”). 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 sought permission from Frasier to search him for all the reasons previously articulated. 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.”); see also Pichardo, 367 S.C. at 105, 623 S.E.2d at 851 (“[W]hen an officer asks for consent to search *after* an unconstitutional detention, the consent procured is per se invalid unless it is both voluntary and not an

exploitation of the unlawful detention.”); cf. State v. Willard, 374 S.C. 129, 136, 647 S.E.2d 252, 256 (Ct. App. 2007) (“We likewise find the search was not an exploitation of an unlawful detention. As previously discussed, we find reasonable suspicion existed to make the stop and detention. Furthermore, although Willard allegedly noticed the officers’ guns when first surrounded, there is no evidence of any threat of force against Willard once he had exited his vehicle. Nor is there evidence of coercion or promises made.”). Based on that, Frasier’s consent to the search could not properly be characterized as the invalid product of an unlawful detention since he was not, in fact, unlawfully detained.

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 and qualified 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. Meanwhile, 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, 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”); cf. United States v. Sabo, 724 F.3d 891, 893-894 (7th Cir. 2013) (“To be sure, one does not consent to the government entering his home by simply answering the door. Here, however, Sabo did not simply answer the door. He stepped back and to the side so that McCune could enter. What is more, Sabo’s actions came in direct response to McCune’s request to enter. In other words, McCune asked and Sabo answered, albeit nonverbally.” (citation omitted)); United States v. Smith, 30 F.3d 568, 571 (4th Cir. 1994) (concluding Smith consented to a search of his vehicle when he responded to an officer’s request for permission to search it by unlocking the vehicle’s door).

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.¹⁴ 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)). Beyond that, the traffic stop had started only thirteen minutes earlier by the time Officer Hall sought 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

¹⁴ Toward the outset of the trial, the solicitor advised the trial judge Frasier had previously been convicted of drug offenses on a number of different occasions, including on one occasion in which the conviction was later reversed on appeal. (R. pp. 7-9).

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.” (emphasis added and 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’s person was constitutionally permissible just as the trial judge found.

In arguing to the contrary, Frasier—accurately recognizing words and actions are nearly always open to at least some debate about how they could be interpreted—contends his words and actions should not have been construed as voluntary consent and, instead, should have been construed as demonstrating mere begrudging submission to a search without consent. See generally Broadrick v. Oklahoma, 413 U.S. 601, 608 (1973) (“Words inevitably contain germs of uncertainty[.]”). Functionally, by advancing that particular argument, Frasier seeks for this Court to accept the interpretation of the evidence already advanced by defense counsel and rejected by the trial judge, substitute its judgment for the trial judge’s on a *question of fact*, and reevaluate the evidence in a manner more to his liking due to his ability to articulate another way in which his words and actions could have conceivably been construed.

Importantly though, the issue *on appeal* hinges not on whether Frasier was or is capable of conceiving of some alternative manner in which his words and actions could have been interpreted but on whether the trial judge’s resolution of the question of fact involved in such an interpretation was a clearly erroneous one. See United States v. Weidul, 325 F.3d 50, 53 (1st Cir. 2003) (“Our rule has been that voluntariness of consent is a factual matter that is subjected to the clear error standard of review, and we adhere to that rule. Under this standard, a district court’s choice between two plausible competing interpretations of the facts cannot be clearly erroneous. Instead, the only real question for appellate review is whether the evidence presented at the suppression hearing fairly supports the district court’s finding.” (citations, internal quotations, and brackets omitted)). Thus, even if other judges—appellate or trial—might have reached a different conclusion than the one reached by the trial judge had they been tasked with deciding the question of fact involved in the first instance, the trial judge’s ruling—just at the Court of Appeals correctly recognized—had to be affirmed on appeal if fairly supported by the

evidence due to the deferential nature of the applicable standard of review. See State v. Spears, 429 S.C. 422, 433, 839 S.E.2d 450, 455 (2020) (“The clear error standard means that an appellate court will not reverse a trial court’s finding of fact simply because it would have decided the case differently.” (citations and internal quotations omitted)). And, for the reasons already identified, the trial judge’s interpretation of Frasier’s words and actions constituted a plausible and factually-supported conclusion that could reasonably be drawn from the evidence and testimony presented. See 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)); cf. Weidul, 325 F.3d at 54 (“The Magistrate Judge’s factual findings on the voluntariness of Malloch’s consent are fairly supported by the record. The government merely offers evidence from which an alternative conclusion can be drawn. This is not enough under the clearly erroneous standard of review.”).

Accordingly, because her fact-based ruling on the matter of consent was supported by the evidence and testimony presented, the trial judge did not clearly err by finding the search was constitutionally proper based on the consent provided, and the Court of Appeals correctly affirmed that factually-supported determination on appeal in light of the deferential standard of review applicable to such matters. See Spears, 429 S.C. at 436, 839 S.E.2d at 457 (“When facts in the record support the trial court’s decision, an appellate court cannot reweigh the facts to support its own conclusions.”); 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.”); see also State v. Makins, 433 S.C. 494, ___, 860 S.E.2d 666, 670 (2021) (stressing the “critical” nature of the standard of review on appeal); State v. Robinson, 426 S.C. 579, 607, 828 S.E.2d 203, 217 (2019) (recognizing it is conceivable the discretionary rulings of two different trial judges who reached opposite conclusions from the same set of circumstances will both be affirmed on appeal when a deferential standard of review is involved). Frasier’s conviction and the decision of the Court of Appeals should both be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the decision of the Court of Appeals and the judgment and conviction of the trial court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 1, 2021

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On 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.,

Petitioner.

CERTIFICATE OF COUNSEL

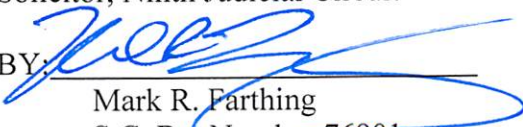
The undersigned certifies this Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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October 1, 2021

Caroline Collins

From: Caroline Collins
Sent: Friday, October 1, 2021 4:25 PM
To: Hudgins, Kathrine
Cc: Mark Farthing; William Blich; Stock, Chris
Subject: The State v. Michael N. Frasier, Jr. (2020-001405)
Attachments: Frasier.BOR (02728534xD2C78).PDF

Good Afternoon Ms. Hudgins,

Attached please find a copy of the Brief of Respondent in The State v. Michael N. Frasier, Jr. (2020-001405). This brief will be submitted to the South Carolina South Carolina Supreme Court today via the AIS One Drive System.

If you will, please reply to confirm receipt.

Thank you!

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