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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMECO ABDUL TONEY,

APPELLANT

APPELLATE CASE NO. 2013-002534

INITIAL BRIEF OF APPELLANT

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## **STATEMENT OF ISSUE ON APPEAL**

DID THE TRIAL COURT ERR BY FINDING THAT THE APPELLANT LACKED STANDING TO CHALLENGE BOTH THE SEARCH OF THE RENTAL CAR HE WAS DRIVING AND THE UNREASONABLE LENGTH OF HIS DETENTION AS A 4<sup>TH</sup> AMENDMENT SEIZURE?

## **STATEMENT OF THE CASE**

On or about November 10, 2010, the Appellant was detained for a traffic stop by a Darlington County Sheriff's Department deputy and was arrested for trafficking of more than 10 pounds of marijuana.

On November 18, 2013, the Appellant's case was called for jury trial in Darlington County General Sessions Court before the Honorable R. Ferrell Cothran. On November 20, 2013, the jury returned a verdict of guilty and the trial court imposed a sentence of nine years incarceration. The Appellant timely filed and served a Notice of Appeal from the verdict and sentence of the Court.

## **FACTS**

At approximately 12:19 on November 10, 2010, on Interstate 20 near mile marker 129, Darlington County Sheriff's Office (DCSO) deputy Brad Lawson conducted a traffic stop of the rental car being driven by the Appellant, Jameco Toney. (R.p. 57, lines 11-15, R.p. 58, lines 1-11). Deputy Lawson testified that he initiated this traffic stop when he was sitting in a stationary observation position and observed Appellant change lanes from the right to left lanes with what he believed was insufficient space between Appellant's vehicle and another vehicle in the lane being entered. (R.p. 39, lines 4-12). Deputy Lawson did not testify to the approximate distance

between the Appellant's vehicle and any other vehicle when he changed lanes, only that he was, "not saying [Appellant] was about to run someone off the road . . . [i]t was not enough space to make a safe lane change." (R.p. 39, lines 21-22). According to Appellant, he quickly changed lanes for safety due to the presence of a police vehicle in the emergency lane. (R.p. 15, lines 1-22.) Deputy Lawson testified that Appellant again changed lanes without enough space to make a lane change when he approached Appellant from the rear, travelling at a speed of approximately 107 miles per hour. (R.p. 59, lines 7-17). The Appellant testified that he again changed lanes due to the sudden presence of a police vehicle, this time Deputy Lawson approaching him rapidly from the rear. (R.p. 16, lines 5-20). At trial, Deputy Lawson could not identify the South Carolina statute that governed improper lane change. (R.p. 56, lines 16-25). Deputy Lawson never identified at trial what was a "safe distance" to execute a lane change or how he identified an improper lane change where no other vehicle was actually "cut off." There was no testimony that the Appellant failed to use his turn signal, was speeding, or committed any other violations of South Carolina traffic laws.

Immediately after the initiating the traffic stop, Appellant had provided Deputy Lawson with his driver's license and a rental agreement for the vehicle. (R.p. 57, lines 17-19). Deputy Lawson testified that after getting this information, he began writing out a warning ticket. (R.p. 44, lines 13-18). At trial, Deputy Lawson could not recall when he called dispatch for a license check or the check on the vehicle license plate or when they answered. (R.p. 44, lines 22-25, R.p. 45, lines 1-5). Although Deputy Lawson had all of the information required to complete the traffic stop and issue a ticket for improper lane change at that point, the deputy began asking Appellant about his prior drug convictions at about 8 to 9 minutes into the traffic stop. (R.p. 63,

lines 4-7). Deputy Lawson had Appellant exit his vehicle and he began to repeatedly ask Appellant whether there were illegal drugs in the vehicle at about 11 minutes into the traffic stop. (R.p. 64, lines 4-21). About 12 minutes into the traffic stop and questioning, Appellant told Deputy Lawson that he needed to go to the bathroom, but Deputy Lawson continued his questioning about the presence of drugs in the vehicle. (R.p. 66, lines 3-11). Appellant testified that he did not feel free to end the questioning and leave. (R.p. 19, lines 8-9). After Appellant is questioned again about the presence of drugs in the vehicle and denies they are present, Deputy Lawson requested his consent to search the vehicle and Appellant declines. (R.p. 68, lines 1-12). Deputy Lawson listed the following reasons for requesting to search the vehicle:

The third party rental car where the renter was not present. The rental car was two days past due. From having the windows rolled down while travelling down the highway. His hands shaking nervously. His breathing heavily, his chest rapidly rising and falling. His carotid artery pulsating. Of course him having cotton mouth as we just said with the white crust at the corners of his lips. The arrangement with the rental car from Florence Hartsville made no sense to me. He did not know the location where he said he had been in Columbia. He spoke with his hands kind of nervous speaking with his hands as he talked to me. I noticed while talking to him he kept looking back at the car. So all of those things yeah and at one time he hinted only once he said that he was in a hurry to leave.

(R.p. 48, lines 14-25, R.p. 49, lines 1-2). At about 17 minutes into the traffic stop, Deputy Lawson requests permission from the rental company by telephone to search the vehicle, which was granted. (R.p. 69, lines 16-20).

More than 22 minutes into the traffic stop, Deputy Lawson begins a search of the vehicle. (R.p. 71, lines 20-23). During this search, Deputy Lawson discovered a bag containing more than fourteen pounds of marijuana in the trunk of the vehicle. (R.p. 52, lines 15-25, R.p. 53, lines 1-6, R.p. 155, lines 6-15).

At Appellant’s trial, his defense counsel moved to suppress marijuana seized from the rental car driven by Appellant, arguing that Appellant had standing to challenge both the search of the vehicle and his traffic stop and lengthy questioning as an illegal seizure. (R.p. 116, lines 1-25, R.p. 117, lines 1-13, R.p. 118, lines 20-25). The trial court rejected this argument, without distinguishing between arguments relating to search and to seizure, holding:

[Appellant] does not have standing because he does not have any reasonable expectation of privacy in the car.

....

But it appears, you know, I am in the fourth circuit and the Wellons [case] seems to be the law as recorded in the past of '94 in the 2008 case and I have to not seen anything that overturned it. Cert. was denied the Supreme Court and it seems to me it is still the law in this case so I respectfully deny your motion.

(R.p. 121, lines 7-9, R.p. 124, lines 7-12).

## ARGUMENT

DID THE TRIAL COURT ERR BY FINDING THAT THE APPELLANT LACKED STANDING TO CHALLENGE BOTH THE SEARCH OF THE RENTAL CAR HE WAS DRIVING AND THE UNREASONABLE LENGTH OF HIS DETENTION AS A 4<sup>TH</sup> AMENDMENT SEIZURE?

Standard of Review. In Fourth Amendment cases, factual determinations are reviewed under a “clear error” standard. *State v. Brockman*, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). Questions of law are reviewed *de novo*, giving trial courts no particular deference. *Moriarity v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000). This lack of deference includes reviewing the trial judge’s application of the law to stipulated or undisputed facts. *J.K. Const., Inc. v. Western Carolina Regional Sewer Auth.*, 336 S.C. 162, 166-167, 519 S.E.2d 561, 563 (1999).

A. *South Carolina law on searches and expectation of privacy.*

The Fourth Amendment to the U.S. Constitution states, “[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. CONST. amend. IV. Government conduct is a search if it interferes with a person’s reasonable expectation of privacy. *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507 (1967). In order to claim Fourth Amendment protection from an illegal search, a defendant must demonstrate that he personally has an expectation of privacy in the place searched and that his expectation is reasonable. *Minnesota v. Carter*, 525 U.S. 83, 119 S. Ct. 469 (1998). In *United States v. Wellons*, the United States Court of Appeals for the Fourth Circuit held that an unauthorized driver of a rental car had no privacy interest in the car or its contents. *United States v. Wellons*, 32 F.3d 117, 119 (4<sup>th</sup> Cir. 1994).

*B. South Carolina law on seizure and unreasonable detention.*

Under South Carolina caselaw interpreting the protections of the Fourth Amendment, the concepts of illegal searches and illegal seizures are separate and distinct. The legality of warrantless searches are based on a person’s expectation of privacy, while a temporary detention, even if only for a brief and limited purpose, such as a traffic stop, constitutes a seizure under the Fourth Amendment. *State v. Pichardo*, 367 S.C. 84, 97, 623 S.E. 2d 840, 847 (Ct.App. 2005). As applied to traffic stops, when probable cause exists to believe a traffic violation has occurred, the decision to stop an automobile is reasonable *per se*. *State v. Tindall*, 379 S.C. 304, 665 S.E.2d 188 (Ct. App. 2008); *State v. Williams*, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002). However, an officer’s stop is unreasonable if neither the person’s driving nor his vehicle

transgressed any traffic law (even if the officer mistakenly believed he had). *State v. Jihad*, 347 S.C. 12, 553 S.E.2d 249 (2001).

When police lawfully detain a motor vehicle for a traffic violation, they may order the driver and passengers to exit the vehicle without violating the Fourth Amendment. *Maryland v. Wilson*, 519 U.S. 408, 117 S. Ct. 882 (1997); *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S. Ct. 330 (1977). In carrying out a traffic stop, the police may request the driver's license and vehicle registration, run a computer check, and issue a ticket or citation. *State v. Tindall, supra*. However, an investigative detention must be brief and last no longer than is necessary to carry out the purpose of the stop, and the scope of the detention must be carefully tailored to its underlying justification. *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319 (1983); *State v. Pichardo*, 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005). Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention which is only permissible in two situations:

1. The officer has a reasonable, articulable suspicion that other illegal activity has occurred, is occurring, or is about to occur; or
2. The initial detention has become a consensual encounter

*State v. Tindall, supra*; *State v. Pichardo, supra*. See also *State v. Rivera*, 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009) (minimal amount of time between illegal detention and consent, lack of intervening circumstances, and no legal basis for officer prolonging detention rendered consent to search given after traffic stop invalid as product of unlawful detention).

C. *Applying South Carolina Search and Seizure law to the facts of this case.*

While noting that no South Carolina appellate decision has stated whether the 4<sup>th</sup> Circuit holding in *Wellons* applies to state cases involving non-authorized rental car drivers, assuming,

*arguendo*, that it does, the trial court in this case nonetheless erred by extending the holding of *Wellons*, relating to privacy interest in rental car, to hold that Appellant had no standing to challenge either the search of the vehicle *or* his unreasonably extended detention as a seizure under the Fourth Amendment. The three-page decision in *Wellons* never specifically mentions the standing of Mr. Wellons or the reasonableness of his traffic stop detention, only that Mr. Wellons had no “legitimate privacy interest in the car and, therefore, the search of which he complains cannot have violated his Fourth Amendment rights.” *United States v. Wellons*, 32 F.3d at 119.

The trial court’s error in holding that Appellant had no standing under *Wellons* to challenge his traffic stop and the reasonableness of his detention materially prejudiced the rights of Mr. Toney, as he had raised meritorious issues that were not ruled upon by the trial court that the arresting officer had no probable cause to believe that a traffic violation had occurred, that the stop extended far beyond what was required to run a check on Appellant’s license and vehicle, and that the officer’s stated reasons to extend the traffic stop and request to search the vehicle did not amount to a “reasonable suspicion” of a serious crime. The facts of this case are similar to those in *State v. Tindall*, where that appellant was pulled over for a traffic stop for speeding, following too closely, and failing to maintain his lane. *Tindall*, 388 S.C. at 520, 698 S.E.2d at 204. Mr. Tindall was questioned for approximately six or seven minutes after the purpose of the traffic stop was completed about whether he had ever been charged with a drug crime, the purpose of his trip, and various questions about his business. *Tindall*, 388 S.C. at 522, 698 S.E.2d at 205. Similar to the facts of this case, and not discussed by the Court of Appeals in *Tindall* as affecting that appellant’s Fourth Amendment interests, Mr. Tindall was also driving a


rental car rented to another individual which may have been overdue when he was stopped. This case is also similar to that of *State v. Moore*, where a traffic stop was conducted on a vehicle for speeding and failing to maintain his lane. *State v. Moore*, 404 S.C. 634, 637, 746 S.E.2d 352, 354 (Ct.App. 2013). The arresting officer in that case also extended the traffic stop based, in part, on the nervousness and heavy breathing of the driver and his third-party rental car agreement. *Moore*, 404 S.C. at 640, 746 S.E.2d at 355. As in *Tindall*, the Court of Appeals held in *Moore*, without addressing standing to challenge the search of the rental vehicle, that Mr. Moore's traffic stop detention was unreasonably extended, requiring the suppression of the drugs discovered incident to a search of the vehicle. However, in this case, since the trial court denied the defense suppression motion based on the standing of the Appellant, it made no findings of fact which this Court can review to determine whether, as in *Tindall* and *Moore*, Mr. Toney's traffic stop detention was based on probable cause and/or was unreasonably extended.

### **CONCLUSION**

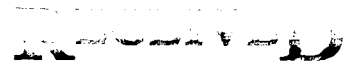
At trial, the Appellant moved to suppress the marijuana discovered in the rental car he was driving based both on the illegality of the search conducted and the unreasonableness of his traffic stop "seizure", from the initial stop through the extension of the stop to question him about his prior drug history. The trial court denied the motion based simply on Appellant's lack of standing to challenge the search of his vehicle. Since the trial court erred by misapplying the law as to standing to challenge unlawful search *and* seizure, and made no findings of fact which this Court can review, reversal of the case is required.

WHEREFORE, Appellant respectfully requests that this Court reverse this case and remand for a new trial.

Respectfully submitted,

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