

The Supreme Court of South Carolina

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April 5, 2012

Appellate Defender Elizabeth A. Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: State of SC v. Wallace, Timothy

Dear Counsel:

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before May 7, 2012. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,



CLERK

DES/lda

cc: Assistant Attorney General Deborah R.J. Shupe
The Honorable Jenny Kitchings

The Supreme Court of South Carolina

The State,

Respondent,


v.

Timothy Wallace,

Petitioner.

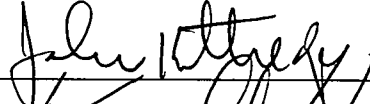
ORDER

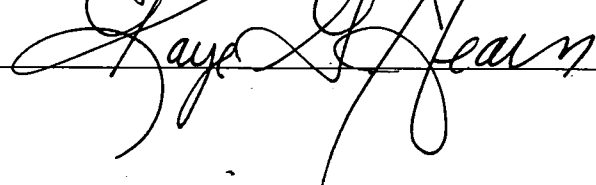
We grant the petition for a writ of certiorari to review the Court of Appeals' decision in *State v. Wallace*, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

 _____ C.J.

 _____ J.

 _____ J.

 _____ J.

 _____ J.

Columbia, South Carolina

April 5, 2012

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

Opinion No. 4800 (S.C. Ct. App. filed 3/2/2011)

06-GS-37-175

RECEIVED

JUN 22 2011

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

TIMOTHY L. WALLACE,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 4/21/2011.

QUESTION PRESENTED

DID THE SOUTH CAROLINA COURT OF APPEALS ERR IN *STATE V. WALLACE* WHEN THEY FOUND LAW ENFORCEMENT HAD REASONABLE SUSPICION TO PROLONG WALLACE'S DETENTION WHEN OFFICERS TESTIFIED TO A NUMBER OF *POST HOC* RATIONALIZATIONS THAT DID NOT SUPPORT AN INFERENCE THAT CRIMINAL ACTIVITY WAS AFOOT?

STATEMENT OF THE CASE

Timothy Wallace was indicted by the Oconee County Grand Jury for Trafficking Cocaine over 400 grams (2006-GS-37-175). He was tried before the Honorable J.C. Buddy Nicholson and a jury on September 17, 2007. He was represented by Suzanne Earle, Esquire. He was convicted and sentenced to 25 years incarceration.

On March 2, 2011, the South Carolina court of appeals affirmed his conviction with a published opinion, State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011). Petitioner then filed a petition for rehearing which was denied on April 21, 2011.

This petition for writ of certiorari timely follows.

ARGUMENT

THE SOUTH CAROLINA COURT OF APPEALS ERRED IN *STATE V. WALLACE* WHEN THEY FOUND LAW ENFORCEMENT HAD REASONABLE SUSPICION TO PROLONG WALLACE'S DETENTION WHEN OFFICERS TESTIFIED TO A NUMBER OF *POST HOC* RATIONALIZATIONS THAT DID NOT SUPPORT AN INFERENCE THAT CRIMINAL ACTIVITY WAS AFOOT.

The South Carolina court of appeals recently decided State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011), and held that law enforcement had reasonable suspicion sufficient to justify the prolonged detention of Timothy Wallace under circumstances nearly identical to the situation in State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010). Indeed, these cases arise in the same county, and at least one officer—Officer Crompton—was involved in both sets of events. The decision promulgated by the court of appeals ignores this Court's recent opinion in *Tindall* and creates confusion at the trial level. This Court should grant certiorari and reverse the court of appeals' decision to provide uniformity in this area of law.

Relevant Facts

Timothy Wallace and his relative, Herman Hood, spent a night in Atlanta and were on their way back to Gastonia, North Carolina when they were pulled over by the Oconee County Sheriff's Department for veering left of center one single time. R. 64, 130. It was a hot September day, and Officer Tommy Crompton pulled them over around noontime. R 115. When Crompton activated his blue lights, Wallace and his passenger drove about 100 yards, and then pulled over on the exit ramp. R. 76-77; 118. Crompton asked for Wallace's driver's license, registration, and proof of insurance. R 119. After about 2 minutes, Wallace provided all of these documents to him. R. 133-134. Crompton then had Wallace get out of the car. Then he had Wallace get into his police cruiser. R 120. Asked how he appeared at that time, Compton said "he wasn't no more nervous

than you'd say a regular stop would have been. I asked him to sit down in the seat and he appeared to be just like anybody else that would have been driving left of center." R. 67. While in the cruiser, and after Crompton finished writing him a ticket for the minor violation, he asked Wallace if he was carrying anything illegal in the car. Apparently Wallace got "real defensive" and then he "automatically threw up a wall when [he] starting asking about if there was anything illegal in the car." R. 70- 71. After Wallace *repeatedly* refused to consent to the search of his vehicle, Crompton proceeded to search it anyway. R 71; 95. Crompton ran his dog around the car. The dog erroneously hit on the trunk of the car. Crompton searched the trunk, did not find any drugs there, and, knowing that his dog made a mistake, proceeded to search the rest of the car nevertheless. In a bag, the drugs were found.

Wallace's counsel made a motion to suppress the drugs based on law enforcement's improperly extending the scope of the traffic stop. R 47-56. After a hearing on the matter, the judge denied the motion:

THE COURT: Okay. All right. Thank you very much. All right. Taking the evidence, in looking at the totality of the circumstances, I'm going to deny your motion to suppress the drugs.

R. 98.

"Reasonable Suspicion"

The officers, at trial, testified to a series of *post hoc* rationalizations they used to justify illegally prolonging the detention of appellant's car. Officer Compton testified he was concerned because the vehicle did not immediately pull over to the side of the road, but rather pulled off on the next available exit ramp. He also stated that that was a safer alternative. R. 64-65—"Him taking that exit ramp, that's fine, I would prefer that anyway." R. 77. Crompton was concerned because Wallace fumbled to get paperwork while the passenger looked straight ahead. R. 65-66. Per the

video, it only took two minutes to provide the paperwork. R. 133-134. The officer was “suspicious” because the passenger was not helping him find the paperwork. R. 66. Crompton was “suspicious” because, although he asked about appellant's prior alcohol violation, he did not want to hear the details. R. 68. Crompton was suspicious because the cell phone rang. R. 69. Crompton was suspicious because a car, completely unrelated to appellant, pulled over on the side of the road. R. 72. Crompton was “suspicious” because the driver would not look at him. R. 69. He was suspicious because the driver's hands were shaking. R. 69. Even though Compton testified that the passenger's actions were “suspicious” he allowed him to remain in the car unattended. *Cf. Thornton v. United States*, 541 U.S. 615, 626 (2004) (“If an officer leaves a suspect unrestrained nearby just to manufacture authority to search, one could argue that the search is unreasonable *precisely because* the dangerous conditions justifying it existed only by virtue of the officer’s failure to follow sensible procedures.” (italics in original)). Crompton was “suspicious” because the driver told them they had been at a baby shower when appellant never mentioned being at the baby shower-- even though there is no evidence that Crompton asked appellant whether he had been at a baby shower. R. 69, 122. Crompton was “suspicious” because he couldn't tell whether they had been in Atlanta for one or two days. R. 69-70. Crompton was “suspicious” because they had actually been in Livonia (a suburban area of Atlanta) and not “Atlanta.” R. 83. Crompton was concerned because appellant looked out the police cruiser window. R. 70. And then, unsurprisingly, Crompton was “suspicious” because appellant was on I-85 (a “drug corridor”) and Atlanta is a “source city.” R. 72-73; 84. Crompton was “suspicious” because a female was the registered owner of the vehicle. R. 74.

The court of appeals’ recitation of the “fourteen points” submitted by the State does not accurately reflect the character of the purported “reasons” for the officers’ determination of

“reasonable suspicion.” For example, it ignores the fact that Crompton believed turning of the exit ramp was safer than pulling off the side of the road; appellant “fumbled” for only 2 minutes to retrieve the necessary paperwork in a car that did not belong to him; appellant and the passenger did not give materially differing accounts of where they had been, or for how long they had been there; appellant only became nervous as Crompton continued to detain and question him beyond the purpose of the initial stop; or the fact that the black BMW was totally unrelated to appellant or driver. This opinion offers nothing by way of guidance to law enforcement officers, and is irreconcilable with this Court’s opinion in Tindall.

These facts did not amount to reasonable suspicion that a serious crime was afoot when the purpose of the initial stop was completed. Tindall at 206. A review of the videotape is instructive in determining the reasonableness of the officer's actions. This tape was transported to the court of appeals for its review prior to oral argument. It has now being transported to this Court. According to the videotape, appellant was pulled over between 12:10-12:11. At 12:17 the officer informed him that he would write a ticket for passing over the center lane. At 12:21, the ticket was written and the officer informed appellant that his court date was October 11th. Appellant was detained for an additional 18 minutes after the officer informed him he would issue him a citation. Law enforcement lacked reasonable suspicion to believe any criminal activity was afoot. The prolonged detention was illegal, and the trial court should have suppressed the fruits of the illegal search. Wong Sun v. United States, 371 U.S. 471 (1963).

The court of appeals decision in *Wallace* does not comport with either United States Supreme Court precedent, or this Court’s precedent. In Reid v. Georgia, 448 U.S. 438 (1980), the United States Supreme Court overturned a conviction where the basis for the search included: (1) the petitioner had arrived from Fort Lauderdale, which the agent testified is a principal place of

origin of cocaine sold elsewhere in the country, (2) petitioner arrived in the early morning, when law enforcement activity is diminished, (3) he and his companion appeared to the agent to be trying to conceal the fact that they were traveling together, and (4) they apparently had no luggage other than their shoulder bags. Id. at 441. Even noting the agent's belief that the petitioner and his companion were attempting to conceal the fact they were together, the Court stated that these circumstances describe a "very large category of presumably innocent travelers, who would be subject to virtually random seizures." In the case *sub judice*, there is even more "slender a reed" to support the search.

And consider the court of appeal's holding in State v. Gentile, 373 S.C. 506, 646 S.E.2d 171 (Ct. App. 2008). There, this Court held that the following was insufficient to support a finding of probable cause to issue a search warrant for a defendant's home: (1) narcotics' officers decision to obtain the warrant was based on citizens' tips regarding high volume of traffic at defendant's residence, which was not necessarily indicative of illegal activity at the residence, (2) citizen claim regarding the smell of marijuana in vicinity of defendant's residence was vague and not corroborated by officers' surveillance, and (3) officers' arrest of visitor to defendant's residence added nothing to probable cause determination. Id. at 175-76. And see Tindall.

Crompton's collection of seemingly random aspects of Wallace and his passenger's journey from Gastonia to Atlanta and back again simply does not amount to a reasonable suspicion that anything illegal was occurring or had occurred. With so low a standard of reasonable suspicion as was applied by the trial court judge in this case, virtually every single traveler on I-85 is subject to an intrusive prolonged detention based on nothing more than an officer's "hunch" or inchoate suspicions. It did not amount to "reasonable suspicion."

Particularly telling are three specific assertions made by Crompton during his testimony that underscore the pretextual nature of this search: (1) that he was immediately “suspicious” even before he pulled Wallace’s car over (*Cf. Tindall, supra*, where the suspicions arose *after* the car was stopped), (2) that Wallace never acted suspicious until Crompton started questioning him about illegal activity which occurred *after* he returned his driver’s license to him (ROA page 144, lines 5-16), and (3) that he *repeatedly* asked for consent before he ran the dog search, illustrating his belief that he did not have legal justification for the search.

Additionally, since the publication of Wallace and Tindall, the Fourth Circuit Court of Appeals has visited this issue and supports this Court’s holding in Tindall, United States v. Foster, No. 09-5161 (filed March 2, 1011). The Court’s remarks in that case are instructive for an analysis of this case:

We . . . note our concern about the inclination of the Government towards using whatever facts are present, no matter how innocent, as indicia of suspicious activity. We recognize that we must look to the totality of the circumstances when evaluating the reasonableness of a stop. However, an officer and the Government must do more than simply label a behavior as “suspicious” to make it so. The Government must also be able to either articulate why a particular behavior is suspicious or logically demonstrate, given the surrounding circumstances, that behavior is likely to be indicative of some more sinister activity than may appear at first glance. . . .

[W]e are deeply troubled by the way in which the Government attempts to spin these largely mundane acts into a web of deception. Although these matters generally only come before this Court where a police seizure uncovers some wrongdoing, we would be remiss if we did not acknowledge that the exclusionary rule is our sole means of insuring that you police refrain from engaging in the unwarranted harassment or unlawful seizure of anyone-- whether he or she is one of the most affluent or most vulnerable members of our community. . . We appreciate that police are often called upon to make very difficult decisions about when to conduct Terry stops, and, for that reason, we give them leeway to make these determinations. Nonetheless, the Government cannot rely upon post hoc rationalizations to validate those seizures that happen to turn up contraband.

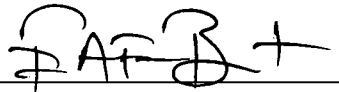
Foster (internal citations omitted).

What happened in Foster is what happened in this case-- Law enforcement used a series of *post hoc* rationalizations at trial to support their unwarranted intrusion into the car appellant was riding in. The “reasons” offered by the officers were not sufficient to eliminate a substantial portion of innocent travelers. See U.S. v. Foreman, 369 F.3d 776 (4th Cir. 2004). See also U.S. v. McCoy, 513 F.3d 405 (4th Cir. 2008) and United States v. Brugal, 209 F.3d 353 (4th Cir. 2000). This was also the lesson in Tindall. The court of appeals opinion in State v. Wallace does not respect the Supreme Court’s opinion in Tindall, and creates confusion at the trial level because the cases are irreconcilable. Respectfully Wallace asks this Court to grant his petition for writ of certiorari and reverse the court of appeals.

CONCLUSION

For these reasons, Wallace respectfully asks this Court to grant his petition for writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EAFB +', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER.

This 22nd day of June, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Oconee County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

Opinion No. 4800 (S.C. Ct. App. filed 3/2/2011)
06-GS-37-175

THE STATE,

RESPONDENT,

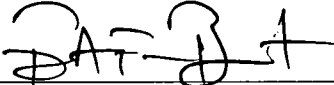
V.

TIMOTHY L. WALLACE,

PETITIONER.

CERTIFICATE OF SERVICE

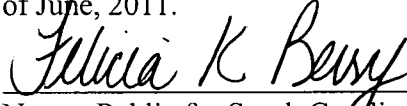
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Deborah R.J. Shupe, Esquire, and the S.C. Court of Appeals this 22nd day of June, 2011.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22nd day
of June, 2011.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: June 21, 2020

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUN 29 2011

Appeal from Oconee County
On Petition for Writ of Certiorari to the Court of Appeals
The Honorable J. C. "Buddy" Nicholson, Circuit Court Judge

S.C. Supreme Court

THE STATE,

Respondent,

vs.

TIMOTHY L. WALLACE,

Petitioner.

**RETURN TO PETITION FOR WRIT OF
CERTIORARI TO THE COURT OF APPEALS**

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QUESTION PRESENTED

Did the Court of Appeals err in concluding the evidence supported the circuit court's finding the police officer articulated reasonable suspicion to believe Wallace and/or his passenger were engaged in illegal activity at the time he extended the traffic stop?

STATEMENT OF FACTS

The Oconee County Grand Jury indicted Petitioner Timothy L. Wallace ("Wallace") on one count of trafficking over 400 grams of cocaine. The matter was called for a jury trial on September 17, 2007, before the Honorable J. C. "Buddy" Nicholson, Jr., Circuit Court Judge.

Prior to trial, Wallace moved to suppress the drug evidence on the ground it was the result of an unconstitutional roadside search without reasonable suspicion of criminal activity. Wallace did not dispute the legitimacy of the initial traffic stop, but asserted police officers unreasonably prolonged the stop into a second detention. (Record on Appeal [R.], pp. 47-61).

Corporal Thomas Crompton ("Cpl. Crompton") of the Oconee County Sheriff's Office testified *in camera* he had been in law enforcement for ten years, during which he received training and education involving drug interdiction. On September 14, 2005, he was patrolling Interstate 85 ("I-85") in Oconee County and saw a car cross the center lane. (R., pp. 62-64).

When Cpl. Crompton activated his blue lights, the driver hit the brakes, let off the brakes until the car was right at an exit ramp, and then hit the brakes again and drove halfway up the exit ramp before pulling to the side of the road. Cpl. Crompton testified this aroused his suspicions because in a normal traffic stop, the driver immediately hits the brakes and pulls off the road, and it seemed the driver in this case was contemplating not stopping at all. (R., pp. 64-65, 77-78).

Cpl. Crompton approached the driver's door and asked the driver, identified as

Wallace, for his license, registration and proof of insurance. Wallace “started just kind of fumbling around with paperwork,” and “it seemed like it took for, you know, a good while, longer than what a normal stop would have taken.” (R., p. 65).

The passenger in the car, identified as Herman Hood (“Hood”), also aroused Cpl. Crompton’s suspicions because he “just sat in his seat and just looked straight ahead.” He stated Hood “didn’t really know that [Cpl. Crompton] was there,” or “even acknowledge that [Cpl. Crompton] was there.” Hood did not even attempt to assist Wallace in locating the documentation for the car, which Cpl. Crompton testified was unusual in his experience. (R., pp. 65-66).

For safety reasons, Cpl. Crompton asked Wallace to get out and step to the back of the car. The traffic noise made it difficult for them to hear, so Cpl. Crompton asked Wallace to sit in the passenger seat of the patrol car. Cpl. Crompton testified this was also a safety issue because it protected them from traffic and allowed him to observe Hood, who was still seated in Wallace’s vehicle. (R., pp. 66-67).

While they were seated in the patrol car, Cpl. Crompton asked Wallace where he and Hood had been and where they were going. Wallace said they were returning to North Carolina from Hood’s brother’s house in Atlanta, and initially stated they had been there one day, but then changed it to two days. Cpl. Crompton noticed Wallace became increasingly nervous as they talked, which he stated was not normal because most people calm down once they know why they were pulled over. (R., pp. 67-68).

The check on Wallace’s license revealed a prior alcohol related violation. When Cpl. Crompton mentioned it, Wallace “started going into a detailed event that happened, why he

doesn't drink anymore, that he was probably on the phone and that's why he was left of center, that he didn't drink anymore because he blew a point 09." Cpl. Crompton described it as "nervous chitter," and stated it sparked his interest. (R., p. 68).

While Cpl. Crompton and Wallace were sitting in the patrol car, a black BMW with a hispanic male driver pulled up behind the car, sat there for a couple of minutes, and pulled back on I-85 when Cpl. Crompton got out of the patrol car to go speak with Hood. As Cpl. Crompton approached the passenger door, a cell phone on the seat next to Hood rang, but he did not answer it. Cpl. Crompton testified this was consistent with drug trafficking because the traffickers sometimes use decoy cars, and call each other on cell phones during the trip. (R., pp. 68-69).

Cpl. Crompton noticed Hood was sweating even though it was a mild day, and he was visibly shaking when he handed his identification to Cpl. Crompton. Hood said he and Wallace were returning from a baby shower at his brother's house in Atlanta, and stated they were there one day. (R., pp. 69, 90).

When Cpl. Crompton returned to his patrol car, Wallace told him they were in Livonia rather than Atlanta, and he could not remember how many days they were there. Cpl. Crompton again noticed Wallace was increasingly nervous. (R., pp. 69-70, 86-87).

The car Wallace was driving was registered to a female who was not traveling with him and Hood. Cpl. Crompton testified it is common in drug cases for a third party to rent or own a car used to transport drugs. (R., p. 74). He also testified I-85 is a "drug corridor," and Atlanta is considered a drug "source" or "hub" city. (R., pp. 72-73).

Cpl. Crompton wrote Wallace a ticket for driving left of the center lane and explained

the ticket to him. While Cpl. Crompton was talking to him, Wallace looked out the window rather than at Cpl. Crompton. (R., p. 70). Approximately twelve minutes elapsed between the initial traffic stop and when Cpl. Crompton presented the ticket to Wallace. (State's Exhibit 1 [Videotape]; R., pp. 45, 92).¹

Due to his observations and his conversations with Wallace and Hood prior to presenting the ticket to Wallace, Cpl. Crompton asked Wallace if there was anything illegal in the car, and requested consent to search it. Wallace would not look at Cpl. Crompton, and said he could not consent to a search of the car because it did not belong to him. After explaining Wallace could give consent because he was in control of the car, Cpl. Crompton again asked for consent to search, and Wallace again refused. Cpl. Crompton then told Wallace "just to hang tight," and got his canine partner out of the back seat to go around the vehicle. (R., pp. 70-71). The canine alerted on the car, and the cocaine at issue was discovered in a black bag belonging to Wallace. (R., pp. 125-128, 189).

Based on the totality of the circumstances, the circuit court denied Wallace's motion to suppress the drug evidence. (R., pp. 95-98). Cpl. Crompton then testified before the jury regarding the circumstances of the traffic stop, the canine alert, and discovery of the cocaine. (R., pp. 113-126).

The jury convicted Wallace of trafficking cocaine, and the circuit court sentenced him to the mandatory minimum twenty-five year prison term. (R., pp. 244-247). This appeal followed.

The South Carolina Court of Appeals affirmed Wallace's conviction, holding the

¹State's Exhibit 1 has been transported to the Court for consideration.

totality of the circumstances established reasonable suspicion to extend the traffic stop for further investigation. (Op. No. 4800, filed March 2, 2011; Appendix, pp. 1-6). The Court denied Wallace's Petition for Rehearing by Order filed April 21, 2011, and Wallace filed a Petition for Writ of Certiorari on June 22, 2011, asking this Court to review and reverse the Court of Appeals decision.

ARGUMENT

The Court of Appeals correctly found there was sufficient evidence establishing the police officer had reasonable suspicion to believe Wallace and/or his passenger were engaged in illegal activity.

Wallace contends Cpl. Crompton's articulated reasons for prolonging the detention in this case were "*post hoc* rationalizations," and did not sufficiently eliminate a substantial portion of innocent travelers as to rise to the level of reasonable suspicion of illegal activity. Wallace asks this Court to consider certain reasons articulated by Cpl. Crompton individually and in a vacuum, rather than as a whole. He mischaracterizes and takes out of context the evidence he does cite, and ignores significant portions of the evidence, including Cpl. Crompton's extensive knowledge and experience gleaned from ten years as a law enforcement officer.²

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). The appellate standard of review in Fourth Amendment search and seizure cases is limited to determining whether there is evidence supporting the trial judge's finding. State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010); State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000); State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005).

²One example of Wallace's mischaracterization of the evidence is his assertion Cpl. Crompton relied on the fact Wallace pulled off on the next available exit ramp, but then testified stopping on the exit ramp was a safer alternative. This characterization ignores Cpl. Crompton's testimony about the driver first hitting the brakes, then driving forward and waiting until he was right at the exit ramp before making a move to pull over, all of which led Cpl. Crompton to believe the driver might not even stop. The fact pulling off on the exit ramp was a safer alternative did not obviate the suspicious manner in which the driver approached the ramp.

Generally, seizures of persons, including brief detentions, require probable cause to arrest, but investigative detentions are a limited exception to the probable cause requirements. Terry v. Ohio, 392 U.S. 1 (1968). In such situations, the balance between the public interest and the individual's right to personal security tilts in favor of a standard less than probable cause. *Id.*; United States v. Arvizu, 534 U.S. 266, 273 (2002); United States v. Sokolow, 490 U.S. 1, 7 (1989).

Investigative detentions are justifiable under the Fourth Amendment if there is a reasonable and articulable suspicion the person is involved in criminal activity. United States v. Cortez, 449 U.S. 411, 417 (1981); Pichardo, 623 S.E.2d at 847. For Fourth Amendment purposes, a police officer with reasonable suspicion a particular person has committed, is committing or is about to commit a crime, may detain the person briefly in order to investigate the circumstances that provoked suspicion. *See* Arvizu, 534 U.S. at 273; Berkemer v. McCarty, 468 U.S. 420, 439 (1984).

Generally stated, reasonable suspicion is a standard that requires more than a "hunch," but less than probable cause. State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct.App. 2007); *see also* Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (reasonable suspicion standard is less demanding than probable cause, and requires a showing considerably less than preponderance of the evidence). Reasonable suspicion "is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act." United States v. Foreman, 369 F.3d 776, 781 (4th Cir.2004).

Therefore, courts must “consider the totality of the circumstances” and “give due weight to common sense judgments reached by officers in light of their experience and training.” United States v. Perkins, 363 F.3d 317, 321 (4th Cir.2004); *see also* United States v. Branch, 537 F.3d 328 (4th Cir. 2008) (judicial review of evidence offered to demonstrate reasonable suspicion must be commonsensical, focus on the evidence as a whole, and be cognizant of both context and the particular experience of police officers); Foreman, 369 F.3d at 782 (“Courts are not remiss in crediting the practical experience of officers who observe on a daily basis what transpires on the street.”) (*quoting* United States v. Lender, 985 F.2d 151, 154 [4th Cir.1993]); State v. Provet, 391 S.C. 494, 706 S.E.2d 513, 516 (Ct. App. 2011). The nature of the reasonableness inquiry is highly fact-specific. State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (Ct.App. 2005).

In this case, it is undisputed the initial traffic stop was justified. Therefore, the issue is whether Cpl. Crompton had sufficient reasonable suspicion to justify detaining Wallace after presenting him with the traffic ticket. *See* State v. Tindall, 388 S.C. 518, 698 S.E.2d 203, 206 (2010) (issue is whether the officer reasonably suspected a serious crime at the point he chose to continue the traffic stop).

In analyzing the circumstances in this case, it must be noted the facts on which Cpl. Crompton premised his decision to prolong the detention occurred **prior** to issuance of the traffic ticket. *Compare* State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002) (officer issued ticket and then asked driver and passenger questions about their itinerary and relationship) *with* State v. Jones, 364 S.C. 51, 610 S.E.2d 846 (Ct. App. 2005) (no constitutional violation when officer asked questions while in the process of checking

driver's license and writing ticket, and did not deviate from his normal procedures). "[M]ere police questioning does not constitute a seizure," and questioning on a matter unrelated to the purpose of a detention does not constitute a "discrete Fourth Amendment event." Muehler v. Mena, 544 U.S. 93, 101 (2005); *see also* Schneckloth v. Bustamonte, 412 U.S. 218 (1973)(upholding a request to search made during a traffic stop); *cf.* Florida v. Bostick, 501 U.S. 429, 434 (1991) (mere police questioning does not constitute a seizure).

As in Jones, Cpl. Crompton's questioning during the course of the stop did not convert the traffic stop into an unlawful detention. He did not prolong the traffic stop or exceed its scope by asking brief, general investigative questions, such as those related to travel itinerary and ownership of the car, and in light of his observations, it was reasonable for him to question Hood to verify Wallace's answers. Such questions were appropriate to any traffic investigation, and did not unreasonably prolong the traffic stop's duration.³ Berkemer, 468 U.S. at 439; United States v. Purcell, 236 F.3d 1274, 1279-80 (11th Cir. 2001); United States v. Allegree, 175 F.3d 648, 650 (8th Cir. 1999) ("a reasonable investigation following a justifiable traffic stop may include asking for the driver's license and registration, asking the driver to sit in the patrol car, and asking about the driver's destination and purpose"); United States v. Jeffus, 22 F.3d 554, 556-557 (4th Cir. 1994).

Factors consistent with innocent travel can give rise to reasonable suspicion of criminal activity when considered together and in context. Sokolow, 490 U.S. at 9. While individual factors standing alone may be insufficient to establish reasonable suspicion, in

³As noted above, approximately twelve minutes elapsed between initiation of the traffic stop and presentation of the ticket to Wallace.

concert they may raise more than a simple hunch that criminal activity is afoot. Arvizu, 543 U.S. at 277; Branch, 537 F.3d at 339; United States v. McCoy, 513 F.3d 405 (4th Cir. 2008); Foreman, 369 F.3d at 785.

Wallace asks this Court to ignore much of the evidence, and engage in the type of individual factor analysis soundly rejected in prior cases. See Arvizu; Branch; Foreman. Considered individually, each of the facts Cpl. Crompton articulated as the basis for his suspicions are certainly susceptible of innocent explanation. In fact, Cpl. Crompton testified he would not have proceeded on the basis of any one single fact. (R., pp. 62-92). The analysis, however, cannot stop there.

Cpl. Crompton, an experienced law enforcement officer with extensive training, testified he considered the following facts, all of which occurred, or were known, **prior** to him issuing the traffic ticket: 1) after he activated his blue lights, Wallace hit the brakes, let off the brakes, got right to the exit ramp, then hit the brakes again and drove halfway up the exit ramp before pulling off the road, all of which was outside the normal behavior for traffic stops and made him think the car was not going to stop at all; 2) Wallace fumbled around for his license and the car paperwork longer than the normal time in routine traffic stops; 3) the passenger (Hood) stared straight ahead and did not even acknowledge Cpl. Crompton's presence; 4) Wallace and Hood gave different accounts of their travel time and itinerary; 5) rather than calming down, Wallace became increasingly nervous during his discussions with Cpl. Crompton, even though Cpl. Crompton told him he was pulled over for crossing the center line; 6) a black BMW pulled up behind Cpl. Crompton's patrol car on the side of the exit ramp, sat there for a couple of minutes and then drove away when Cpl. Crompton got

out of his patrol car to go talk with Hood; 7) just after the black BMW pulled off, as Cpl. Crompton approached the passenger door to talk with Hood, a cell phone on the seat next to Hood started ringing but he did not answer it; 8) drug dealers frequently use decoy cars and communicate via cell phones when transporting drugs; 9) Hood would not look at Cpl. Crompton when they were talking; 10) Hood was sweating even though it was a mild day, and he was visibly nervous; 11) after Cpl. Crompton spoke to Hood, Wallace changed his story about where they had been and how long they were there; 12) the car Wallace was driving belonged to a third party who was not present, which is common in drug cases; 13) I-85 is a known drug corridor; and 14) Atlanta is a known drug source/hub city. (State's Exhibit 1; R., pp. 62-92). The combined impact of all these facts, considered in light of Cpl. Crompton's knowledge and experience, provided ample basis for his suspicion of illegal activity, and justified further detention for investigation. *See e.g., Arvizu* (similar facts constituted sufficient basis for reasonable suspicion of illegal activity); *Branch* (same); *Foreman* (same).

Wallace's reliance on *Tindall* as mandating reversal in this case is unavailing. In *Tindall*, the majority opinion listed four factors the officer articulated as support for his suspicion: 1) defendant was traveling to Durham [a drug hub]; 2) defendant did a "felony stretch" when he exited car; 3) a third party had rented the car; and 4) the defendant seemed nervous). *See Tindall*, 698 S.E.2d at 206. In contrast, as listed above, Cpl. Crompton articulated at least fourteen facts, combined with his knowledge and experience, underlying

his suspicion of illegal activity and decision to extend the traffic stop.⁴

Taken to its logical conclusion, Wallace's contention Cpl. Crompton's articulated facts were nothing more than "*post hoc* rationalizations" would preclude a finding of reasonable suspicion in every case, because an officer's subsequent recitation of facts giving rise to a suspicion of illegal activity is necessarily "*post hoc*." As discussed above, the issue is whether the articulated facts, as a whole, would lead a person with similar knowledge and experience to believe someone has committed, is committing, or is about to commit a crime. The Court of Appeals properly analyzed the evidence, and found the facts articulated in this case supported the circuit court's determination Cpl. Crompton reasonably suspected illegal activity at the time he extended the traffic stop. Therefore, Wallace's Petition for a Writ of Certiorari should be denied.

⁴Wallace's reliance on United States v. Foster, 634 F.3d 243 (2011), is also misplaced. Initially, Foster involved an investigative detention without a valid traffic stop. Further, unlike Cpl. Crompton, the officer in Foster gave minimal evidence as the basis for the investigative detention at issue. *Id.* at 246-247.

CONCLUSION

Based on the foregoing, Respondent respectfully submits the Petition for Writ of Certiorari to the Court of Appeals should be denied.

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Deputy Attorney General

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit

BY: 
DEBORAH R.J. SHUPE

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Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 29, 2011

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Oconee County
On Petition for Writ of Certiorari to the Court of Appeals
The Honorable J. C. "Buddy" Nicholson, Circuit Court Judge

THE STATE,

Respondent,

vs.

TIMOTHY L. WALLACE,

Petitioner.

PROOF OF SERVICE

I, Ellen R. DuBois, certify I served the Return to Petition for Writ of Certiorari to the Court of Appeals on Petitioner by depositing two copies in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 29th day of June, 2011.



ELLEN R. DUBOIS
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

June 29, 2011

RECEIVED

JUN 29 2011

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: State v. Timothy L. Wallace
Case Tracking No. 2011-192266

Dear Mr. Shearouse:

Enclosed herewith for filing are the original and seven copies of Respondent's Return to Petition for Writ of Certiorari to the Court of Appeals, with proof of service, in the above-referenced case.

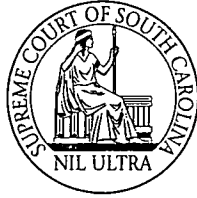
Sincerely,

Deborah R.J. Shupe
Assistant Deputy Attorney General

DRJS/erd

Enclosures

cc: Elizabeth A. Franklin-Best, Esquire (2 copies)
Victim Services (with enclosure)



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

June 23, 2011

Appellate Defender Elizabeth A. Franklin-Best
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: State of SC v. Wallace, Timothy
Case Tracking No. 2011-192266

Dear Counsel:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/lda

Enclosure

cc: Assistant Attorney General Deborah R.J. Shupe
The Honorable Tanya Gee

The Supreme Court of South Carolina

State of South Carolina, Respondent,

v.

Timothy Wallace, Petitioner.

The Honorable J. C. Nicholson, Jr.
Oconee County
Trial Court Case No. 2006-GS-37-00175

ORDER

The request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until June 22, 2011.

Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

May 24, 2011

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Deborah R.J. Shupe
The Honorable Tanya Gee



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 23, 2011

RECEIVED

MAY 23 2011

S.C. Supreme Court

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Timothy Wallace v. State of South Carolina

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed today. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter to Assistant Attorney General Deborah R. J. Shupe, I am informing her of this request.

Thank you for your assistance in this matter.

Sincerely,

Elizabeth A. Franklin-Best
Appellate Defender

EAF/fkb

cc: Deborah R. J. Shupe, Esquire