STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to the Court of Appeals
Appeal From Saluda County
Hon. William P. Keesley, Circuit Court Judge

The State, Respondent,

v.

Jack Harrison, Jr., Petitioner.

Opinion No. 2012-UP-348 (S.C. Ct. App. filed June 6, 2012)

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

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III. The Court of Appeals correctly concluded the trial court did not err in admitting evidence regarding the drugs obtained from Petitioner's vehicle because the State established a chain of custody as far as practicable.

STATEMENT OF THE CASE

The Saluda County Grand Jury indicted Petitioner on charges of possession with intent to distribute methamphetamine, possession of marijuana, and misrepresenting identity to a law enforcement officer. Petitioner pled guilty to the misrepresenting charge during trial. A jury convicted him on the remaining charge and Petitioner was sentenced to a total of eighteen years imprisonment.

Petitioner filed a Notice of Appeal, and, after oral argument, the Court of Appeals affirmed his conviction and sentence. See State v. Harrison, Op. No. 2012-UP-348 (S.C. Ct. App. Filed June 6, 2012). Petitioner filed a Petition for Rehearing on June 20, 2012, which was denied by Order of the Court of Appeals on August 27, 2012. Petitioner then served his Petition for Writ of Certiorari on September 26, 2012. The State's Return to the Petition for Writ of Certiorari follows.

ARGUMENT

I. The Court of Appeals correctly concluded the trial court did not err in admitting evidence obtained during the stop of Petitioner.

The Court of Appeals correctly found the trial court did not err in admitting evidence obtained during the stop of Petitioner because the stop was a valid traffic stop and was a valid investigatory stop. Petitioner contends the trial court erred in admitting evidence resulting from a stop of Petitioner. The traffic stop was valid due to the cracked windshield seen on Petitioner's vehicle. Additionally, the Officers properly stopped Petitioner based on reasonable suspicion he was involved in criminal activity. As a result, the trial court properly admitted the evidence obtained during the stop of Petitioner and the Court of Appeals correctly affirmed the decision.

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 Fourth Amendment search and seizure cases, the appellate court 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 also, 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 in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). 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).

The Officer that performed the traffic stop of Petitioner had proper probable cause to make the stop based on a violation of several motor vehicle statutes. Investigator Byrd received a call from Investigator Shealy to be on the look out for the white Ford Explorer. (T.69-70; R. 32-33). The Officer testified he witnessed Petitioner traveling towards him, and Petitioner's windshield was significantly cracked from the passenger's side and it continued over to the driver's side. (T.70-71; State's Exhibit 4; R. 33-34; 159). He initiated the traffic stop as a result of the information from Investigator Shealy, but also believed the broken windshield provided a basis for the stop. (T.71; 76; 123; R. 34; 39; 61).

Generally, the decision to stop an automobile is reasonable where the police have probable cause to believe a traffic violation has occurred. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). See also, Knight v. State, 284 S.C. 138, 325 S.E.2d 535 (1985) (Officer may stop automobile and briefly detain occupants, even without probable cause to arrest, if he has reasonable suspicion occupants are involved in criminal activity). Pursuant to the motor vehicle statues vehicles must be in a safe condition to operate and must have all equipment in proper condition and adjustment:

> It shall be unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such an unsafe condition as to endanger any person or property or which does not contain those parts or is not at all times equipped with

> lights, brakes, steering and other equipment in proper condition and adjustment as required in this article or which is equipped in any manner in violation of this article or for any person to do any act forbidden or fail to perform any act required under this article.

S.C. Code Ann. § 56-5-4410 (Supp. 2010). Further, the statutes provide:

> 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.

S.C. Code Ann. § 56-5-5310 (Supp. 2010). Finally, specifically in regards to windshields, the motor vehicle statutes provide:

> No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, sidewings or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

S.C. Code Ann. § 56-5-5000 (Supp. 2010).

Petitioner's vehicle was not in proper condition and the windshield was not in proper or safe operating condition because it was cracked from the passenger's side over to the driver's side of the windshield. The testimony of both Investigators regarding the condition of the windshield supports the decision of the trial court and provides the requisite probable cause to stop Petitioner for the traffic violation, whether or not its condition is clearly displayed in the photographs. As a result, the trial court properly

found Investigator Byrd had probable cause to stop Petitioner for the traffic violation. (T.87; R. 50).

Once a vehicle has been stopped for a traffic violation, the Officer "'may request a driver's license and vehicle registration, run a computer check, and issue a citation.'" United States v. Sullivan, 138 F.3d 126, 131 (4th Cir.1998) (citation omitted). If the Officer's suspicions are confirmed or are further aroused, the stop may be prolonged and the scope enlarged as required by the circumstances. State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001) (citing Blassingame, 338 S.C. at 248, 525 S.E.2d at 539; State v. Kirkpatrick, 320 S.C. 38, 462 S.E.2d 884 (Ct. App. 1995)).

In this case, after Investigator Byrd properly stopped Petitioner and then had his suspicions further aroused when Petitioner presented him with a false ID. (T.121; 124; R. 59; 62). After determining the first identification he received was not Petitioner, Investigator Byrd determined Petitioner was driving without a valid driver's license. (T.125; R. 63). At this point, Petitioner was properly arrested for driving under suspension.

Further, the stop was a proper investigatory stop based on the Officer's reasonable suspicion Petitioner was involved in criminal activity. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. Pichardo, 367 S.C. at 97, 623 S.E.2d at 847. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991).

"A police Officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the Officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity." State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see also, United States v. Arvizu, 534 U.S. 266, 273 (2002); U.S. v. Sokolow, 490 U.S. 1, 7 (1989); Terry v. Ohio, 392 U.S. 1, 30 (1968). "[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." Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985).

Reasonable suspicion consists of "'a particularized and objective basis' that would lead one to suspect another of criminal activity." State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). "Reasonable suspicion 'is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.'" State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)).

"In this highly fact-specific inquiry, reasonable suspicion 'is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.'" State v. Wallace, 392 S.C. 47, ___, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting Foreman, 369 F.3d at 781). The reasonable suspicion standard "is a less

demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[.]" Illinois v. Wardlow, 528 U.S. 119, 123 (2000). "Reasonable suspicion is more than a general hunch but less than what is required for probable cause." State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) ("Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch."). 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." Foreman, 369 F.3d 776, 781.

When evaluating an investigatory stop's validity, a court must consider the totality of circumstances. Sokolow, 490 U.S. at 8, 109 S.Ct. 1581. 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). Furthermore, an individual's innocent and lawful actions may, in certain situations, combine to suggest criminal activity. State v. Taylor, 388 S.C. 101, 110, 694 S.E.2d 60, 64 (Ct. App. 2010) (citing Illinois v. Wardlow, 528 U.S. 119, 125 (2000)). "Nervous, evasive behavior is also considered a pertinent factor when determining reasonable suspicion. Similarly, evasion

can contribute to reasonable suspicion." Taylor, 388 S.C. at 111, 694 S.E.2d at 65 (internal citations omitted).

In this case, the Officer clearly had a reasonable suspicion to have Petitioner stopped for investigatory purposes. The Saluda County Sheriff's Department received multiple complaints regarding an individual soliciting money up front to allegedly perform paving work. (T.48-49; R. 11-12). Investigator Shealy testified the area from which the calls were received is his hometown area and he knew of no paving being performed. (T.49; R. 12). Investigator Shealy spoke with one of the targets of the solicitation, Ms. Nye. She told him a gentleman in a white vehicle solicited $700 from her to do some paving. She provided the investigator a business card provided by the white male that had approached her about the paving job. Ms. Nye was able to provide Investigator Shealy a description of the vehicle and a description of the individual. (T.50-51; R. 13-14).

Investigator Shealy then called the number on the card and indicated Ms. Nye had changed her mind and wanted to meet about the paving job. While waiting for the individual to return, Investigator Shealy talked with other neighbors who had been solicited. (T.52; R. 15). As a white Ford explored slowed down in front of the house, the other neighbors identified it as the one that had tried to obtain money for paving. (T.52-53; R. 15-16). The vehicle slowed to turn into the house and when it saw the Officer's vehicle, it sped up and went down the road. (T.53; R. 16).

Based on the action of the driver of the white Ford Explorer, the Officers had reasonable suspicion to make an investigatory stop. The driver was soliciting money from elderly individuals promising to do paving work in an area in which no paving was

being done. The Officer was familiar with the area and knew no paving was taking place. Further, when he called the individual back to a victim's house, the individual did not stop when he saw the police. Instead he accelerated off after seeing the Officer's vehicle parked at the residence. These factors created a reasonable suspicion the driver, later identified as Petitioner, was involved in criminal activity warranting an investigatory stop. State v. Morris, 312 S.C. 116, 118, 439 S.E.2d 291, 292 (Ct. App. 1993) (quoting United States v. Hensley, 469 U.S. 221, 234, 105 S.Ct. 675, 683, 83 L.Ed.2d 604, 616 (1985)) (reasonable suspicion of committing a crime justified "a brief stop to check [Petitioner's] identification, pose questions, and inform [Petitioner] that the ... police wished to question him.").

The Officers had reasonable suspicion to stop Petitioner for investigatory purposes due to their suspicion he was involved in criminal activity regarding the circumstances surrounding the paving scheme. Further, the traffic stop was valid due to the visible broken windshield testified to by several officers. Finally, Petitioner was properly detained as a result of his presentation of a false identification and the subsequent discovery he was driving on a suspended license. As a result, the Court of Appeals correctly found the trial court did not err in allowing evidence into the record obtained from the valid stop.

II. The Court of Appeals correctly concluded the trial court did not err in admitting the evidence obtained during the inventory search of the vehicle. Further, the issue is not preserved for review on appeal.

The Court of Appeals correctly found no error in the trial court's admission of the drug evidence obtained during the inventory search of Petitioner's vehicle. Additionally, the Court of Appeals should have found the issue not preserved instead of merely finding it questionable. Petitioner contends the trial court erred in admitting the drugs and evidence found in the Desenex can with a false bottom because the search conducted by the Officers exceeded the scope of a proper inventory search. The Officers properly conducted an inventory search once Petitioner was arrested for driving under suspension. Further, the search authorized them to collect and catalog the Desenex can, which simply fell apart during the inventory search.

Preservation

First, the issue as raised on appeal is not properly preserved for review. An issue must be raised to and ruled on by the trial court in order for it to be preserved for review on appeal. See State v. Moore, 357 S.C. 458, 593 S.E.2d 608 (2004) (to be preserved for appeal, issue must be raised to and ruled on by trial court). Additionally, a party cannot argue one ground below and then argue a different ground on appeal. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (defendant may not argue one ground below and another on appeal); State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (same); State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995) (same).

At trial, Petitioner argued the Officer should have obtained a search warrant in order to open the Desenex can. On appeal, Petitioner maintains the State failed to present

evidence of a standard policy governing the practice of inventory searches. He further contends because no policy was articulated, the search of the Desenex can exceeded the permissible scope of the inventory search. Petitioner never raised this issue to the trial court. Further, the trial court's ruling indicated the drugs would not be suppressed because when the Desenex can was first confiscated, it "basically fell apart" revealing the drugs. The court clearly did not rule on any issue regarding whether the State demonstrated a policy for opening an unopened container and Petitioner attempts to raise a different theory on appeal. Accordingly, the issue is not preserved for review on appeal.

Merits

On the merits, the Officers did not violate Petitioner's Fourth Amendment rights by exceeding the scope of a valid inventory search. The testimony supported the trial court's conclusion and established the Desenex can simply fell apart when it was originally found by Investigator Byrd. The contents then fell out of the can and no further "search" was required. Further, the Officers testified their practice was to catalog everything in conducting an inventory search and this is what Investigator Byrd was doing at the time the drugs were located. As a result, the Court of Appeals correctly concluded there is evidence in the record sufficient to support the trial court's ruling and that ruling was not an abuse of discretion.

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). "[W]hen the police take custody of any sort of container (such as) an automobile . . . it is reasonable to search the container to itemize the property to be held by the police.

(This reflects) the underlying principle that the fourth amendment proscribes only Unreasonable searches." S. Dakota v. Opperman, 428 U.S. 364, 371, 96 S. Ct. 3092, 3098, 49 L. Ed. 2d 1000 (1976) (citing United States v. Gravitt, 484 F.2d 375, 378 (5th Cir. 1973)). The United States Supreme Court (USSC) has found "[i]f the police are following standard procedures, they may inventory impounded property, including closed containers, to protect an owner's property while it is in police custody." State v. Brown, 389 S.C. 473, 483, 698 S.E.2d 811, 817 (Ct. App. 2010) (citing Colorado v. Bertine, 479 U.S. 367, 372–73, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987)).

The USSC explained: "Our view that standardized criteria, or established routine, must regulate the opening of containers found during inventory searches is based on the principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." Florida v. Wells, 495 U.S. 1, 4, 110 S. Ct. 1632, 1635, 109 L. Ed. 2d 1 (1990) (internal citations omitted). The Court continued:

> A police Officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself. Thus, while policies of opening all containers or of opening no containers are unquestionably permissible, it would be equally permissible, for example, to allow the opening of closed containers whose contents Officers determine they are unable to ascertain from examining the containers' exteriors.

Id. at 4.

In the instant case, Petitioner vehicle was impounded because he was arrested for driving under suspension. The Investigators testified they conduct an inventory of the vehicle before it is towed. (T.56-57; 126-127; R. 19-20; 64-65). Specifically,

Investigator Shealy testified they always inventory the contents of a vehicle before it is towed as "department policy." (T.56-57; R.19-20). Investigator Byrd explained: "We inventory the vehicle, everything in the vehicle and what compartments or what area the vehicle is in, that way nothing takes missing out the vehicle and they've got a true and accurate record." He indicated the reason for the inventory was because "[p]eople's belongings are in vehicles and wanting them to get back everything that's theirs." (T.127; R. 65).

The Investigators identified the policy of the department was to conduct the inventory search prior to a vehicle being towed when its driver has been arrested. Further, they testified "everything" in the vehicle is examined and inventoried so that it could be returned to its owner. As a result, the Investigators conducted the inventory search in accordance with the standardized practice and policy of their department when they located and examined the Desenex can.

Further, the nature of the can raised the Investigator's suspicion. The can when picked up did not sound like it had liquid in it to spray. (T.57; 74; R.20; 37). The fact the can did not sound like a typical spray can would entitle the Investigators to examine it more closely. See Wells, 495 U.S. at 4.

In this case, no further examination was necessary because when the bottle was examined, the bottom came apart. The Officer who located the Desenex can indicated he did not take apart the can. He testified: "Picked it up, shook it, it didn't sound right. Just one screw in the bottom come off of it, you just more or less touched it and the bottom come off of it and there was meth in the container." (T.74; 166-167; R.37; 85-86).

Accordingly, even if the issue is preserved for review on appeal, the issue is without merit. Investigator Byrd conducted a valid and proper inventory search of Petitioner's vehicle when he was arrested. As a result of the search he located the Desenex can. The Investigators had the right to more closely examine the can because it was suspicious as it did not contain liquid and did not sound right. In this case, no further examination was necessary as the bottom of the can fell off and its contents, including the meth and marijuana, were exposed. The proper inventory search in this case, conducted pursuant to department policy, did not turn into "a purposeful and general means of discovering evidence of crime" as is precluded by the Fourth Amendment. See Wells, 495 U.S. at 4 (citing Bertine, 479 U.S., at 376 (Blackmun, J., concurring)). Therefore, the trial court properly admitted into evidence the drugs and other items found as a result of the inventory search.

III. **The Court of Appeals correctly concluded the trial court did not err in admitting evidence regarding the drugs obtained from Petitioner's vehicle because the State established a chain of custody as far as practicable.**

The Court of Appeals correctly found no error in the trial court's admission of the drugs because the State established a chain of custody as far as practicable. Petitioner contends trial court erred in admitting the methamphetamine because the State failed to establish a complete chain of custody. The State established the chain of custody as far as practicable, with all individuals identified and the means of transporting the substance as well as its storage explained. Any conflict in the testimony, just as with any weak link in the chain of custody, does not go to the admissibility of the drugs, but to the weight given by the jury.

"[A] party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." See State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007) (citing Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957)).

> Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility. Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness.

State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (citing Sweet, 374 S.C. at 6, 647 S.E.2d at 205). In other words, where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility

State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). Further, the proof of the chain of custody need not negate all possibility of tampering but must establish a chain as far as practicable. State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989).

In South Carolina Dep't of Soc. Servs. v. Cochran, this Court stated "we have never held the chain of custody rule requires every person associated with the procedure be available to testify or identified personally, depending on the facts of the case." South Carolina Dep't of Soc. Servs. v. Cochran, 364 S.C. 621, 629, 614 S.E.2d 642, 646 (2005). The Court in Cochran found: "Generally, we will uphold the chain of custody if the safeguards instituted ensure the integrity of the evidence, even if every person associated with the procedure is not personally identified." Id.

In Hatcher, this Court found the chain of custody was sufficiently established even though no testimony linked the Officers who transported the drugs to SLED and the agent who analyzed the drugs. The Court found the failure to personally identify the technician at SLED that received the evidence as well as the exact handling of the evidence while in SLED's custody was not required to establish a chain of custody as far as practicable. See Hatcher, 392 S.C. at 95, 708 S.E.2d at 755. The Court concluded: "The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be. The record here indicates the drugs received for testing were in fact, those taken from Hatcher without any alteration, tampering, or substitution." Id.

Further, any discrepancy as to the dates items were placed into the secure evidence locker does not go to its admissibility, but again merely affects the weight of the evidence. In State v. Johnson, 318 S.C. 194, 456 S.E.2d 442 (Ct. App. 1995), two Officers testified to a different sequence of events and dates for how evidence was

deposited into the secure evidence storage. The Court of Appeals correctly found "Although a discrepancy existed as to the dates Dailey received the evidence, no evidence was presented to indicate the drugs were not within the control of identifiable people during the entire time. A reconciliation of this discrepancy was not necessary to establish the chain of custody, but merely reflected upon the credibility of the evidence rather than its admissibility" State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 444 (Ct. App. 1995).

This case presents a factual scenario very similar to those found in Johnson and Hatcher. While there is a discrepancy as to who and when the evidence was placed into the secure evidence locker, both individuals were identified and testified. Any issue regarding whether Investigator Byrd or Deputy Cockrell placed the evidence into the drop box only goes to its weight and not its admissibility under Johnson.

Further, the State presented a complete chain of custody as far as practicable. Investigator Byrd indicated he placed the evidence into a Best Evidence Kit with number B-175444, which was sealed and was tamper proof. (T.141-142; R.79-80). Investigator Shealy testified he retrieved the Kit from the evidence drop box and gave it to Deputy Cockrell to deliver to SLED. He testified it was sealed at the time he retrieved it and when given to Deputy Cockrell. (T.217; R.116). Deputy Cockrell testified he received the Kit, number B-175444, from Investigator Shealy and transported it to SLED on May 17, 2006. He testified it was sealed and never tampered with when he delivered it to Coronda Williams at SLED. Coronda Williams testified she received the Kit from Deputy Cockrell on May 17, 2006. She indicated it was in the best kit and not tampered with when she placed it into SLED's secure evidence storage. (T.173-174; R. 88-89).

Agent Stanley testified she retrieved the best kit with number B-175444 for testing of a substance. (T.236; R. 126). She indicated there was no evidence of any tampering and it was still properly sealed. (T.253; R. 143). Agent Stanley opened the packaging and after analysis determined it was 9.69 grams of methamphetamine. (T.265; R. 148).

As in Hatcher, the failure to personally identify any technician who may have had contact with the drugs in SLED's evidence storage or retrieved them for Agent Stanley is not fatal to the chain of custody in this case. The chain was completed as far as practicable, identifying the custodians of the evidence as well as the condition of the Best Evidence Kit from the time it was initially sealed by Investigator Byrd until it was opened for testing by Agent Stanley. There was no evidence of tampering and as in Hatcher, the "ultimate goal" was satisfied in that the State demonstrated the substance seized by Investigator Byrd was the same substance tested by Agent Stanley.

The State presented a complete unbroken chain of custody from the time the drugs were seized until they were analyzed. Any discrepancy in who actually placed the drugs into the evidence locker merely inures to the credibility and weight of the evidence and not its admissibility. The State presented a continuous chain of custody, identifying all who handled the drugs as well as the condition of the best evidence kit when handled, from the time Investigator Best took possession until Agent Stanley tested them. Accordingly, the Court of Appeals correctly affirmed the trial court's decision admitting the drugs and the test results demonstrating the substance was approximately 9.69 grams of methamphetamine.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

November 26, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Jack Harrison, Jr., Petitioner.

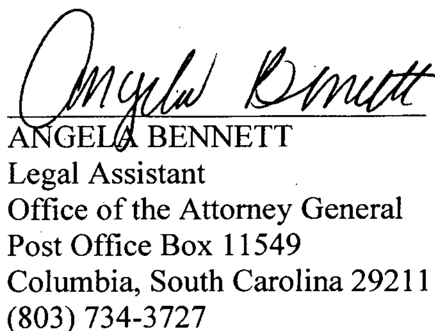
Opinion No. 2012-UP-348 (S.C. Ct. App. filed June 6, 2012)

PROOF OF SERVICE

I, ANGELA BENNETT, certify that I have served the within Return to Petition For Writ of Certiorari to the Court of Appeals by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jack B. Swerling, Esquire
1720 Main Street, Suite 301
Columbia, South Carolina 29201

I further certify that all parties required by Rule to be served have been served. This 26th day of November, 2012.



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RECEIVED
NOV 26 2012
S.C. Supreme Court

November 26, 2012

Jack B. Swerling, Esquire
1720 Main Street, Suite 301
Columbia, South Carolina 29201

Re: State v. Harrison

Dear Mr. Swerling:

I am enclosing two (2) copies of the Return to Petition for Writ of Certiorari to the Court of Appeals in the above-referenced case.

If you have any questions concerning this matter, please contact me.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General
S.C. Bar No. 15608

WMB:erd

cc: Honorable Daniel E. Shearouse (original and six enclosed)
Honorable Jenny A. Kitchings
Victim Services (enclosure)