THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
MAY 22 2018
S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2015-001459

Travell L. Hill, ... **Respondent-Petitioner,**

vs

State of South Carolina, ... **Petitioner-Respondent.**

BRIEF OF RESPONDENT-PETITIONER

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
SC Bar #: 006188

Attorney for Respondent-Petitioner

Index

Page:

Table of Authorities ii

Statement of the Facts 1

Argument:

The PCR Court erred in granting Hill a new trial by failing to make the requisite finding that Hill would have prevailed on appeal had the issue been preserved for appellate review as the prejudice prong cannot be satisfied by Hill as he is unable to meet his burden. 2

Conclusion 7

Table of Authorities

Cases: **Page:**

Byrd v. United States, 2018 WL 2186175, (U. S. Sup, Ct. Decided May 14, 2018) 3

Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) 3

Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007) 2

State v. Hewins, 409 S.C. 93, 760 S.E.2d 814 (2014) 3, 4

State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005) 3

State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010) 3, 4

United States v. Digiovanni, 650 F.3d 498 (4th Cir. 2011), as amended (Aug. 2, 2011) 5

Court Rules:

Rule 59(e) of the South Caroline Rules of Civil Procedure 2

Constitutional Provisions:

Article I, § 10 of the Constitution of the State of South Carolina 3

Fourth Amendment of the Constitution of the United States of America 3

Statement of the Facts

The Respondent agrees with the statement of the facts as set forth by the Appellant with the following addition.

In denying the motion to suppress, the trial court found three factors: (1) nervousness, (2) conflicting stories and (3) luggage not being in the back. App. at 50, ll 13-24. In making this finding the trial court noted that each factor "can go both ways." App. at 50, l 17-21.

ARGUMENT

QUESTION

The PCR Court erred in granting Hill a new trial by failing to make the requisite finding that Hill would have prevailed on appeal had the issue been preserved for appellate review as the prejudice prong cannot be satisfied by Hill as he is unable to meet his burden.[1]

Is the issue properly preserved?

Travell Hill first takes the position that this issue is not properly before this Court due to the failure of the state to request the Post Conviction Relief Court to rule upon this precise question. In its Motion to Alter or Amend the Order, the state did not seek to have the PCR judge clarify the order to conclude as to why Mr. Hill would prevail on appeal. Such a finding is implicit in his holding that Mr. Hill is entitled to a new trial. This Court has said " a Rule 59(e) motion must be filed if issues are not adequately addressed in order to preserve the issues for appellate review." *Marlar v. State*, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007). Here the State filed a Rule 59(e) motion but sought only to address the fact that the PCR court did not address several issues that Mr. Hill had raised. App. at 299-300. Mr. Hill filed a similar Motion. App. at 303-304. In its return to Mr. Hill's motion to Alter or Amend, the State again did not raise any issue about the sufficiency of the findings of the PCR court as to Mr. Hill being entitled to a new trial.

As the State has failed to follow the guidance of this Court in *Marlar*, the State has failed

---

[1] For purposes of this appeal and the ease of this Court, Travell Hill in this brief has used the same Statement of the Issue as used by the State. This should not be taken to conclude that Mr. Hill agrees with the Statement of the Issue.

to preserve any issue for review.

Discussion of Issue

The State raises the issue of whether Mr. Hill has standing to question the legality of the search because he was not an authorized driver of the rental vehicle. This issue was recently resolved in *Byrd v. United States,* 2018 WL 2186175, (U. S. Sup, Ct. Decided May 14, 2018). Mr. Hill, as the driver of the rental car with the permission the passenger, had standing to contest the legality of the search.

In reviewing this appeal this Court must decide if there is any evidence to sustain the decision of the PCR court. As this Court has held "The appropriate scope of review of this Court is that 'any evidence' of probative value is sufficient to uphold the PCR judge's findings." *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). With this standard in mind, all the testimony and facts must be reviewed in favor of Mr. Hill. The fact that this Court might have made a different decision based upon the facts is not sufficient to overturn the decision of the PCR court.

Under the facts of this case, the record contains facts sufficient to sustain the decision of the PCR court. In *State v. Hewins*, 409 S.C. 93, 760 S.E.2d 814 (2014) this Court held that the continued detention of a driver after the warning ticket had been issued constituted a seizure within the meaning of the Fourth Amendment of the Constitution of the United States of America and Article I, § 10 of the Constitution of the State of South Carolina. *Accord, State v. Tindall*, 388 S.C. 518, 698 S.E.2d 203 (2010), *State v. Pichardo,* 367 S.C. 84, 98, 623 S.E.2d 840, 848 (Ct. App. 2005) ("An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop and the scope of the detention must

be carefully tailored to its underlying justification.")

In this case the officer had elected to give Mr. Hill a warning ticket. Br. of App. at 6. App. at 70, ll 7- 10. At this point the traffic stop was over. All paper work was completed and Mr. Hill and his passenger should have been free to leave. But at this point the officer elected to prolong the stop. He asked permission to search the automobile. This was denied. App. at 70, ll 11-16. At the point Mr. Hill should have been free to leave. He was not. Then, instead of simply terminating the traffic stop as it had been completed, he ordered Mr. Hill to remain while a drug dog searched the automobile. The original arresting officer further testified that he called for the drug dong early in his investigation. App. at 43, l 22 to 44, l 5. At that point a decision had been made not to release Mr. Hill until the drug dog had searched the automobile Mr. Hill was driving. Among the various reasons for calling for a drug dog was that Mr. Hill was nervous, he "drastically" changed lanes, the car was a third party rental and he had observed no luggage. The latter reason was very suspect as at that point the officer had not seen inside the trunk. Based upon these few facts there is no reason to believe any crime was or had been committed.

The fact of this case are on all fours with *Hewins* and *Tindall* cited above. In *Tindall* this Court found the following facts as the basis for the continued detention of the driver:

> (1) Tindall was driving to Durham to meet his brother; (2) Tindall was driving a rental car rented the previous day by another individual which was to be returned to Atlanta on the day fo the stop; (3) Tindall did a "felony stretch" on exiting the vehicle; and (4) Tindall seemed nervous. *Id.* at 523, 698 S.E.2d at 523.

In *Hewins* the facts found as the basis for the continued detention of the driver were:

> (1) earlier in the evening he [the arresting officer] had seen Hewins

> drive in a known drug area; Hewins remained nervous despite being given a warning citation rather than a traffic ticket; and (3) when questioned, Hewins quickly responded that he did not have any drugs. *Id.* at 116, 760 S.E.2d at 826.

Both of these cases are very similar to the present case. At the least, there is evidence in the record for the PCR judge to conclude that the two cases cited above apply to the facts of this case and the evidence would have been suppressed. Similarly , the Fourth Circuit Court of Appeals has found no basis to extend the traffic stop in a case which has more factors than the present case. In affirming the suppression of the evidence by the lower court, the Fourth Circuit said "Nevertheless, we agree with the district court that reasonable suspicion was not present to turn this routine traffic stop into a drug investigation." *United States v. Digiovanni*, 650 F.3d 498, 513 (4th Cir. 2011), as amended (Aug. 2, 2011). In this case the totality of the facts would not be as strong as the facts in *Digiovanni.* Here the officer decided early on not to conduct a routine traffic stop but to bring in the drug dog and search the automobile driven by Mr. Hill. This is exactly what the Constitutions prohibit.

The State argues in its brief argues that there was sufficient evidence of criminal activity to justify the detention and search of the automobile. The State lists several of these factors. But the State never explains how the factors either individually or collectively support the conclusion of any criminal activity nor what the general criminal activity would be. No small or trace amounts of drugs were observed on either person nor were any visible in the automobile itself. There was no odor of drugs. There was no excessive amount of cash. What existed was simply two nervous people driving a rental car in another person's name. There was no report the car was requested to be held by the rental company. More telling is even before the officer had fully

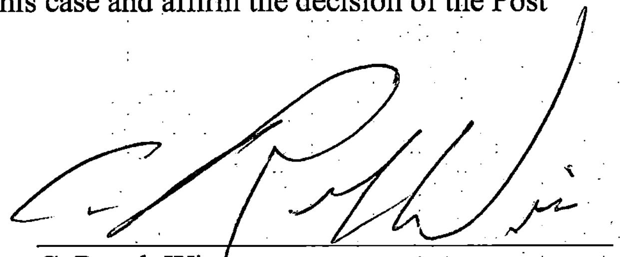
interviewed the female passenger or had Mr. Hill about the trip, he had made the determination to call in the drug dog to search the automobile. App. at 66, ll 2 - 15.

The trial court conceded that each factor he found could go "both ways" in making the determination of whether there is articulable suspicion . App. at 50, ll 13-24. Based upon this finding by the trial court, the Post Conviction Relief court had some evidence in the record to support his conclusion that Mr. Hill would have prevailed on appeal had the issue been properly preserved.

In analyzing the facts of this case to determine if sufficient facts exist to sustain the granting of the Post Conviction Relief petition, this Court should not look at the result of the search. This is true for two reasons. First, a search without probable cause cannot be justified by what was found. Second, this Court is unable to determine how many cars are stopped and searched under the exact same facts with no drugs being found. The reason is simple - such cases are simply not reported. The record is devoid of any evidence to establish how reliable is the hunch of the officer in this case. As the facts in the record establish that there is some evidence to concluded that the PCR Court properly concluded that the officer did not have a basis to extend the traffic stop, this Court should affirm the order granting a new trail fro Travell Hill.

CONCLUSION

This Court should rule that the issue as to whether the Post Conviction Relief judge properly held Travell Hill is entitled to a new trial is not preserved as the State never asked the judge to clarify its ruling in a Rule 59e Motion and affirm the decision of the lower court. In the alternative, this Court should hold that the record in this case contains sufficient facts to sustain the ruling of the Post Conviction Relief court that the detention of Travell Hill beyond the writing of the warning ticket was not justified in this case and affirm the decision of the Post Conviction Relief court.



May 18, 2018

C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 06188

Attorney for Travell Hill

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
MAY 22 2018
S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Daniel D. Hall, Circuit Court Judge

Appellate Case № 2015-001459

Travell L. Hill, ... Respondent-Petitioner,

vs.

State of South Carolina .... Petitioner-Respondent.

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me, Sandy Traynham who, after being duly sworn, deposes and says that she is the Secretary for C. Rauch Wise, Attorney for the Respondent-Petitioner in the above entitled case. That on May 18, 2018, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Brief of Respondent in the above case addressed to DeShawn Herman Mitchell, Senior Asst. Deputy Attorney General, P.O. Box 11549, Columbia, SC 29211.

Sandy Traynham

Sworn to and Subscribed
before me this 18th day
Of May, 2018

Notary Public for South Carolina
My Commission Expires: 12/7/2018

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauchwise@gmail.com

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

May 18, 2018

Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

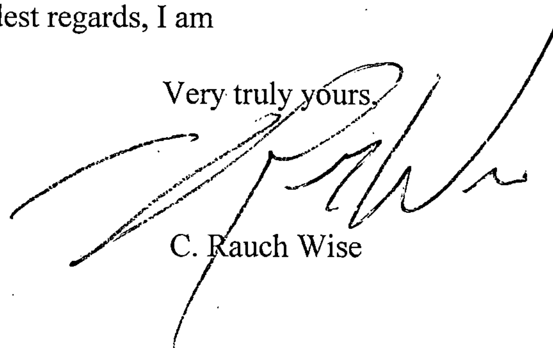
Re: Travell L. Hill, Respondent-Petitioner vs. State of South Carolina, Petitioner-Respondent, Appellate Case No. 2015-001459

Dear Mr. Shearouse:

I am enclosing herewith for filing the original and fourteen copies of the Brief of Respondent-Petitioner together with the original Affidavit of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/slt
Enclosure

cc DeShawn H. Mitchell