

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**RECEIVED**

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

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JUN 03 2016

**S.C. SUPREME COURT**

Appellate Case No. 2015-001459

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

vs

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

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RESPONDENT-PETITIONER'S  
REPLY BRIEF TO PETITION FOR WRIT OF CERTIORARI

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## INDEX

	Page:
Table of Authorities .....	ii
Question I: .....	1
Question II .....	2
Question III .....	6
Conclusion .....	6

**Table of Authorities**

Cases:	Page:
<i>Finch v. Atlanta and C Airline Ry.</i> , 87 S.C. 190, 69 S.E. 208 (1907) .....	4, 5
<i>Ingle v. State</i> , 348 S.C. 467, 560 S.E.2d 401 (2002) .....	1
<i>Sanchez v. State</i> , 351 S.C. 270, 569 S.E.2d 363 (2002) .....	1
<i>State v. Brown</i> , 303 S.C. 169, 399 S.E.2d 593 (1991) .....	2
<i>State v. Hudson</i> , 277 S.C. 200, 284 S.E.2d 773 (1981) .....	5
<i>State v. Mizzell</i> , 349 S.C. 326, 563 S.E.2d 315 (2002) .....	2
<i>Yarborough v. Southern Ry.</i> , 78 S.C. 103, 58 S.E. 936 (1907) .....	4
Constitutional Provisions:	
Article V, § 21 of The Constitution of the State of South Carolina .....	4

## Question I

**Did the Post Conviction Relief judge err in failing to find trial counsel was ineffective when trial counsel did not cross-examine Tyra Rogers, who testified for the State, as to the possible sentence she was facing?**

In *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) the Court said “Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness.” (emphasis in original); *Sanchez v. State*, 351 S.C. 270, 276, 569 S.E.2d 363, 366 (2002) (“Because the officer's testimony regarding the dolls corroborated the victim's testimony at trial, counsel's strategy was not reasonable given the prejudicial effect this testimony had on Sanchez.’). Because a judge would make a ruling that is contrary to the established law of our State is not an objectively valid reason not to ask the witness about the possible punishment she was facing. The State in their response has simply never articulated a reason why the decision of trial counsel to ask a proper question is a valid trial strategy simply because the trial judge would make an error of law. The reason given may be a valid reason as far as defense counsel maintaining a good relationship with the trial judge, but it is hardly a valid reason as to his representation of his client. An attorney’s loyalty is to his client and not his personal or professional relationship with the judge.

The State further argues that the Applicant was not prejudiced by the failure of trial counsel to properly cross-examine the prosecution witness. As noted in the opening brief, the key witness for the State was Tyra Rogers. Had she not testified the case against the Applicant was very weak. Without her testimony, the jury would have known that a large amount of cocaine was found under the floor mat on the side of the automobile where she was sitting. They

would have also known the Applicant was driving a rental car. In a substantially similar case, this Court held the denial of the right to cross-examine a witness about a mandatory sentence was prejudicial. As this Court said:

The sentence for trafficking in cocaine in the amount in question here is a mandatory one of at least twenty-five years without parole. S.C. Code Ann. § 44-53-370(e) (Supp.1989). The fact Bethel was permitted to avoid a mandatory prison term of more than three times the duration she would face on her plea to conspiracy is critical evidence of potential bias that appellant should have been permitted to present to the jury. Moreover, Bethel's testimony was a crucial part of the State's case since she provided the only evidence of appellant's knowing involvement in the drug transaction.

*State v. Brown*, 303 S.C. 169, 171-72, 399 S.E.2d 593, 594 (1991)

The Applicant was prejudiced in this case just as the Defendant was in *Brown* cited above and *State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315 (2002) cited in the opening brief. This Court should grant the Petition for Writ of Certiorari on this issue and order a new trial for Travell Hill.

## Question II

**Did the trial judge err in not granting the petition for Post Conviction Relief when the State failed to inform the trial attorney for Mr. Hill that Tyra Rogers had a deal with**

**the State to receive a probationary sentence in exchange for her testimony?**

The State has contended this issue is not preserved for review on appeal. In his amended Post Conviction Relief Petition, the Applicant alleged:

The State used testimony of Tyra Rodgers that she did not know the drugs were located in the automobile and subsequently took her plea to possession of cocaine which was contrary to her trial testimony. Amended Post Conviction Relief Petition at \_\_\_

In the opening Brief the Applicant points out the testimony that the Defense counsel did not know of a deal with the witness. The Applicant has argued that this information was withheld from the Defense attorney. This was clearly argued at the post conviction relief hearing. As defense counsel testified:

Q: (By Mr. Wise) And on that issue no one ever told you of any deal that had been made with Ms. Rogers

A. (By Mr. Posey) No, she denied it on the record, and

Q. You specifically asked her?

A. I believe I did.

PCR Hearing at 28, ll 5-9.

At the hearing below Defendant's exhibit 2, a transcript of the plea of Tyra Rogers, was introduced by the Applicant. This plea transcript establishes that Ms. Rogers' testimony at trial was different on two key issues. One she admitted she knew the drugs were in the automobile and second the record reflects that she had a plea deal that she denied on cross examination. A plea deal was established during the testimony at the post conviction relief hearing. The ground in this appeal, therefore, is not different from the one established at the post conviction relief

hearing. Her testimony was in fact inconsistent and one of the inconsistencies was the plea deal. This issue is preserved for review by this Court. Surely the State cannot now argue they did not know at the hearing below that the applicant was contending that Ms. Rogers's testimony concerning her plea deal was not truthful.

### Question III

**Did the Post Conviction Relief Judge err in failing to find that trial counsel was ineffective in his failure to object to the charge by the trial judge to the jury "The Defendant's knowledge and possession may be inferred when a substance is found on the property under the Defendant's control" as the charge is not supported by the case law of the State of South Carolina and is a comment on the facts in violation of Article V, § 21 of the Constitution of the State of South Carolina?**

At the hearing below and in his opening brief, the Applicant has relied upon *Yarborough v. Southern Ry.*, 78 S.C. 103, 58 S.E. 936 (1907) for the proposition that telling a jury they may infer a fact is a charge on the fact in violation of the Constitution of the State of South Carolina.<sup>1</sup> In discussing this issue, the State mentions Article V, § 21 and some seven cases. Not once does the State discuss the *Yarborough* case or *Finch v. Atlanta and C Airline Ry.*, 87 S.C. 190, 69 S.E. 208 (1907) which is cited in the opening brief. Both cases hold telling a jury they may infer a fact from the proof of a certain fact is a charge on the facts in violation of the Constitution of the State of South Carolina. Both cases stand for the proposition that the charge in this case as to an inference is constitutionally incorrect.

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<sup>1</sup> At the hearing below, the case was improperly referred to as "State v. Yarborough." A copy of the decision, however, was passed up to the PCR judge. PCR hearing at 9, 22-24.

The State has argued that the charge to the jury did not incorporate any specific facts from the case. This is simply not correct. The trial judge told the jury “The Defendant’s knowledge and possession may be inferred when a substance is found on the property under the Defendant’s control.” App. at 167. This charge tells the jury they may infer the Applicant’s guilt from his controlling the property, which in this case is the automobile. The fact that the Applicant was controlling the automobile was a fact beyond dispute in this case. The trial judge took one single fact - who was controlling the automobile - and gave it special emphasis. To say this is not a charge on the facts in this case is a distinction without a difference.

As this Court said:

What inferences may be drawn from the circumstances appearing on the trial, from the direct evidence, from the manner of the witnesses, the introduction of evidence, or the failure to introduce it-all are for the jury. The Constitution does not allow the presiding judge to state the evidence, much less does it allow him to single out any particular act or omission of the defendant, and instruct the jury that, if that appears, then they may infer that the defendant was negligent.

*Finch*, at \_\_\_, 69 S.E. at 209.

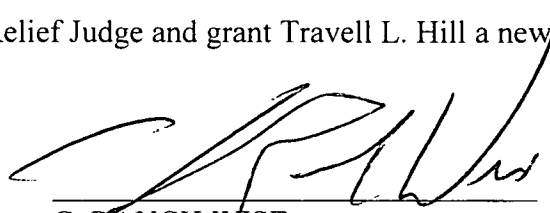
The State apparently attempts to get around the problem with distinguishing *Finch* and *Yarborough* by saying look at the more recent cases. But, as discussed in the opening brief, the more recent cases are not sound logically. *See*, Petition for writ of Certiorari at 10-11. The State has not questioned or argued against misapplication of *State v. Hudson*, 277 S.C. 200, 284 S.E.2d 773 (1981) as discussed in the brief. Nor has the State discussed why telling a jury they may infer guilt when a person is driving an automobile that does not belong to them is a rational fact and does not violate due process. This Court should grant the Writ of Certiorari on this issue

and reverse the lower court

**CONCLUSION**

For the foregoing reasons this Court should grant the Writ of Certiorari and reverse the decision of the Post Conviction Relief Judge and grant Travell L. Hill a new trial in this matter.

May 31, 2016



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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on May 31, 2016, she did deposit in the United States Mail with proper postage affixed thereto two copies of the Respondent-Petitioner's Reply Brief to Petition for Writ of Certiorari in the above case addressed to Karen Christine Ratigan, Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina.

SWORN to and Subscribed

Sandy Traynham

before me this 31 day

of May, 2016.

Mary Jane Hexter (L.S.)  
Notary Public for South Carolina  
My Commission expires: 11/30/22

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May 31, 2016

Daniel E. Shearouse, Clerk  
SC Supreme Court  
P.O. Box 11330  
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**RECEIVED**

JUN 03 2016

Re: Travell L. Hill vs. The State (2015-001459)

**S.C. SUPREME COURT**

Dear Mr. Shearouse:

Enclosed herewith is the original and six copies of the Respondent-Petitioner's Reply Brief to Petition for Writ of Certiorari concerning the above referenced matter, together with the original Affidavit of Service.

With kindest regards, I am

Very truly yours,



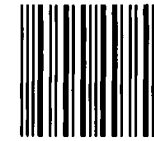
C. Rauch Wise

CRW/mjh

cc: Karen Chrstine Ratigan



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