STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Greenville County
The Honorable Perry H. Gravely, Circuit Court Judge

The State of South Carolina,

Petitioner,

vs.

Marshell Hill,

Respondent.

Appellate Case No. 2019-000233

Reply to Return to
Petition for Writ of Certiorari

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STATEMENT OF ISSUE ON APPEAL

Because Respondent was not in custody when he made an unwarned admission and he retained a genuine choice to not make any further statements after being provided Miranda warnings, the Court of Appeals erred in finding "insufficient" evidence supported the trial court's ruling admitting the warned and unwarned statements. The Court of Appeals failed to apply the correct standard of review. Further, any error was harmless.

ARGUMENT

Because Respondent was not in custody when he made an unwarned admission and he retained a genuine choice to not make any further statements after being provided Miranda warnings, the Court of Appeals erred in finding "insufficient" evidence supported the trial court's ruling admitting the warned and unwarned statements. The Court of Appeals failed to apply the correct standard of review. Further, any error was harmless.

In making this reply, the State reasserts and would refer to its arguments made in its petition for a writ of certiorari.

Hill argues the Court of Appeals' opinion is correct and the interview turned custodial because "the purpose" of the interview changed. This "change in purpose" analysis in determining whether a person is in custody is erroneous and stands in stark contravention of governing federal law. See Arkansas v. Sullivan, 532 U.S. 769, 772 (2001) (instructing that state courts cannot interpret the Fourth Amendment of the United States Constitution to provide greater protections than those provided by the precedent of the United States Supreme Court"). Merely because the person interviewed is a suspect, the police ask incriminating questions, and the interrogation occurs at a police station, does not render a police interview custodial. All three of those conditions existed in

Oregon v. Mathiason, 429 U.S. 492 (1977).

In Mathiason, an officer investigated a residential theft, and the victim of the theft suggested Mathiason, a parolee and a "close associate" of her son, as a suspect. The officer made several attempts to contact Mathiason, and then asked to meet Mathiason at the police station when Mathiason finally returned the officer's phone call. Mathiason was told he was not under arrest and met the officer in his office with the door closed. Id. at 493.

The United States Supreme Court explained:

> The officer told defendant he wanted to talk to him about a burglary and that his truthfulness would possibly be considered by the district attorney or judge. The officer further advised that the police believed defendant was involved in the burglary and (falsely stated that) defendant's fingerpirnts were found at the scene. The defendant sat for a few minutes and then said he had taken the property.

Id. at 493.

The United States Supreme Court reversed the Oregon Supreme Court's suppression of the incriminating statement, noting "[P]olice officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect." Id. at 495.

The Court further noted, before reversing the Oregon Supreme Court's holding, that:

> The officer's false statement about having discovered Mathiason's fingerprints at the scene was found by the Supreme Court of Oregon to be another circumstance contributing to the coercive environment which makes the Miranda rationale applicable. Whatever relevance this fact may have to other issues in the case, it has nothing to do with whether respondent was in custody for purposes of the Miranda rule.

Id. at 495-96.

Mathiason is on point and the factual distinctions from Mathiason even strengthen the case for admission. In Mathiason, unlike the present case, the defendant was directly accused of being involved and confronted with evidence – false evidence. In the instant case, without reference to any evidence, Hill was asked if he possibly struck Victim because Victim tried to steal his television. That questioning alone is insufficient to cause the interview, as a matter of law, into a custodial interrogation, as is evident from Mathiason. The Court of Appeals' conclusion contradicts Mathiason.

Further, there was no question Mathiason was **the** suspect. In the instant case, while the can was a possible murder weapon, so were any number of items, including a handle procured from an outside shed. In addition, Hill's housemate, Barksdale could be a suspect, and because Victim was found outside the house, so could any roving individuals in the neighborhood. Hill was not the suspect.

Moreover, tn the present case, Hill and the Court of Appeals relies extensively on the investigators' subjective beliefs and undisclosed knowledge to find he was a suspect. This is a substantial misapplication of federal law. The United States Supreme Court found it necessary to reverse and remand the California Supreme Court because "[n]umerous statements in the court's opinion are open to the interpretation that the court regarded the officers' subjective beliefs regarding [defendant's] status as a suspect (or nonsuspect) as significant in and of themselves, rather than as relevant only to the extent they influenced the objective conditions surrounding his interrogation." Stansbury v. California, 511 U.S. 318, 325-26 (1994).

The Stansbury Court advised, "our cases make clear, in no uncertain terms, that any inquiry into whether the interrogating officers have focused their suspicions upon the individual being questioned (assuming those suspicions remain undisclosed) is not relevant for purposes of Miranda." Id. at 326.

Further compounding the Court of Appeals' error is the failure to apply the proper standard of review. The Court of Appeals concluded, "**From our perspective**, however, the trial court's rulings find **insufficient** support in the record." State v. Hill, 425 S.C. 374, 822 S.E.2d 344, 350 (Ct. App. 2018) (emphasis added). This is improper because the standard is not whether evidence is *sufficient* to support the trial court's ruling but whether **any evidence** supports the trial court's ruling. State v. Saltz, 346 S.C. 114, 135, 551 S.E.2d 240, 252 (2001).

Hill erroneously argues that the cases cited by the State for the proper standard of review are inapplicable because they found the statements to be voluntary rather than make a determination as to custody. However, the trial court's rulings on custody must likewise be affirmed if supported by evidence. This Court stated the standard another way, explaining that if it is debatable whether a reasonable person would feel free to leave, the trial court's ruling must be upheld. State v. Navy, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010) ("In our opinion, **it is debatable** whether a reasonable person would have believed himself to be in custody at the time the first statement was given, and thus the trial court's finding that respondent was not in custody should have been upheld as it is supported by the record.").

Miranda warnings were effective

The Court of Appeals also erred in its analysis of whether the midstream Miranda warnings

were effective. The State craves reference and will rely on its arguments advanced in its petition for a writ, but would note the Court of Appeals' derisive analysis of law enforcement's interview that was videotaped and published for the jury, in which the Court of Appeals accuses law enforcement of engaging in "double talk." The State would respectfully suggest a reasonable jurist could find law enforcement made a good faith effort, in response to Hill's comments, to explain that he was not required to talk with law enforcement and that he could assert his right to silence and stop the interview at any point he wished. "Officers cannot be expected to script their interviews with the precision of lawyers drafting a coporate bond indenture." United States v. Tavolacci, 895 F.2d 1423 (D.C. Cir. 1990).

CONCLUSION

For all of the foregoing reasons, this Court should grant the petition for writ of certiorari and affirm the conviction and sentence. Should this Court grant the State's writ, Petitioner respectfully requests permission to brief the issues herein.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

April 18, 2019

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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APR 18 2019
S.C. SUPREME COURT

Appeal From Greenville County
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No: 2019-000333

THE STATE, Petitioner,

v.

MARSHELL HILL, Respondent.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Reply to Return to Petition for Writ of Certiorari on Respondent by delivering two copies of the same addressed to his attorney of record, Kathrine H. Hudgins, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.
This 18th day of April, 2019.

Anne Mueller

Anne A. Mueller
Legal Assistant

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