STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
MAY 02 2019
S.C. SUPREME COURT

Certiorari to Lexington County

Honorable George C. James, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL FULWILEY,

PETITIONER

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

S.R. HUBBARD
Solicitor, Eleventh Judicial Circuit
205 E. Main St.
Lexington, SC 29526
(803) 785-8352

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

STATE V. MICHAEL FULWILEY, 2019-UP-052 (S.C.Ct. App. filed February 6, 2019) 1

PETITION FOR REHEARING FILED FEBRUARY 21, 2019 4

ORDER DENYING PETITION FOR REHEARING FILED APRIL 8, 2019 16

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Michael Fulwiley, Appellant.

Appellate Case No. 2017-000774

Appeal From Lexington County
George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2019-UP-052
Submitted January 1, 2019 – Filed February 6, 2019

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Joshua Abraham Edwards, both of Columbia; and Solicitor Samuel R. Hubbard, III, of Lexington, all for Respondent.

PER CURIAM: Michael Fulwiley appeals his conviction for shoplifting, arguing the trial court erred by (1) denying his motion to suppress the good seized following a search of a vehicle in which he was a passenger and (2) admitting into

evidence his statements claiming co-ownership of the goods seized. We affirm[1] pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred by denying Fulwiley's motion to suppress the goods seized: *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."); *State v. Pichardo*, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct. App. 2005) ("In carrying out the stop, an officer may request a driver's license and vehicle registration, run a computer check, and issue a citation."); *Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015) ("Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance."); *United States v. Oliver*, 550 F.3d 734, 738 (8th Cir. 2008) (finding that when law enforcement has probable cause to tow a vehicle, a traffic stop is not completed until the tow is accomplished); *United States v. Sharpe*, 470 U.S. 675, 687 (1985) ("The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it."); *State v. Brown*, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010) ("The inevitable discovery doctrine is an exception to the exclusionary rule and states that if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, the information is admissible despite the fact it was illegally obtained."), *rev'd on other grounds*, 401 S.C. 82, 736 S.E.2d 263 (2012); *id.* at 483-84, 698 S.E.2d at 817 ("If 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.").

2. As to whether the trial court erred by admitting into evidence Fulwiley's statements claiming co-ownership of the goods seized: *State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009) ("The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice."); *State v. Williams*, 405 S.C. 263, 272, 747 S.E.2d 194, 199 (Ct. App. 2013) ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." (quoting *State v. Pagan*, 369 S.C. 201, 208m 631 S.E.2d 262, 265 (2006))); *United States v. Sullivan*, 138 F.3d 126, 130 (4th Cir. 1998) ("Only if the motorist is detained 'to a "degree associated with

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

formal arrest'" will he be entitled to the *Miranda*[2] protections for in-custody interrogations." (quoting *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984))); *Bradley v. State*, 316 S.C. 255, 257, 449 S.E.2d 492, 493 (1994) ("*Miranda* warnings are required for official interrogations only when a suspect 'has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" (quoting *Miranda*, 384 U.S. at 444)); *Berkemer*, 468 U.S. at 440 ("[P]ersons temporarily detained pursuant to [ordinary traffic] stops are not 'in custody' for the purposes of [*Miranda*]."); *State v. Corley*, 383 S.C. 232, 244, 679 S.E.2d 187, 193 (Ct. App. 2009) ("[E]ven though a motorist in a routine traffic stop may be detained and is not free to leave, such a motorist is not 'in custody' for *Miranda* purposes.").

AFFIRMED.

KONDUROS, MCDONALD, and HILL, JJ., concur.

---

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MICHAEL FULWILEY,

APPELLANT

APPELLATE CASE NO 2017-000774

Appeal from Lexington County

Honorable George C. James, Circuit Court Judge

Opinion No. 2019-UP-052

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, counsel for appellant would petition for a rehearing on this Court's holding that the traffic stop in the case did not violate the Fourth Amendment, and also for a rehearing on this Court's holding that the traffic stop did not reach an "in-custody" status level requiring Miranda[1] warnings where there was evidence presented indicating that the traffic stop in this case morphed into a Sikes[2] fishing expedition that ultimately led to police actions that violated the Fourth and Fifth Amendments. The following points are listed in support of this petition.

---

[1] Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994).

[2] 384 U.S. 436 (1966).

(1.) On appeal, the following question presented was the first issue raised in the case:

> The trial court erred in denying appellant's motion to suppress the CVS goods seized by police following a search of the vehicle that led to a shoplifting charge because the search that followed the traffic stop was the equivalent of a fishing expedition that morphed into an improper extended detention that lasted well beyond the scope and purpose of the stop, which was for appellant's seatbelt violation, and went on illegally after the discovery of charges against the driver, who police detained (as he was a wanted suspect), when appellant, who was a mere passenger, should have been simply ticketed and released.

(2.) Prior to the in camera hearing, defense counsel raised a pretrial motion referencing a motion to suppress the videotape of the stop (state's exhibit #1 and #6) and the testimony form Officer Lawler regarding the same, and most importantly, the bags of items located in the car that were allegedly contained items taken from CVS, and the statement given to police by appellant on the ground that all of the above constituted fruit of the poisonous tree per the illegal seizure that resulted from an extended traffic stop (one hour and ten minutes) that went beyond the scope of the stop, which was for a seatbelt violation. Counsel argued during pretrial motions and after the in camera hearing that appellant was seized illegally when he was told to get back in the vehicle after he got out to smoke a cigarette, and after he had given up his identification card as required immediately after the car was stopped, and when placed into the patrol car, and while the CVS bags were recovered. Appellant's detention time went beyond the Officer's goal of ticketing appellant for the seatbelt violation. The driver (Butler) had charges that led to his detention, but appellant had no charges and therefore he should have been ticketed and released and not searched beyond what was relevant to the seatbelt violation. Appellant was seized unlawfully in violation of the Fourth Amendment. The inventory search exception argument was

inapplicable in this case because the items were assignable to driver Butler as he possessed the car and had pending charges against him. R. 14, l. 23 R. 30, l. 15; R. 82, l. 4 – 13.

The trial judge ruled that the items would not be suppressed, and that the stop was not unreasonably extended, and the that the items would have been discovered ultimately during the inventory search. R. 79, l. 18 – R. 85, l. 3.

(3.) During an in camera hearing held in the case regarding the motion to suppress, Officer Lawler recalled the traffic stop as follows:

> 1.) Officer Lawler stated that he made a traffic stop of the vehicle in question on Columbia Avenue in Lexington due to a seatbelt violation by the passenger, who was later identified as appellant. Officer Lawler asked for identification from the driver and the passenger (appellant). The driver (Butler) had no identification but offered the registration and insurance indicating that the car belonged to his mother. The passenger, i.e. appellant, presented his identification card.
>
> 2.) Officer Lawler went to his vehicle to research the identity of Butler who had no identification and attempted to write up a ticket at the same time (presumably for the seatbelt violation). The driver (Butler) was identified as having his driver's license suspended and he (Butler) had active charges from Charleston. At this point, 15 minutes had passed. Then, appellant, who wore loose pants, exited to smoke a cigarette, but was told by Officer Lawler to get back in the car. When the information came back that appellant was not "wanted" on charges like Butler was wanted", nonetheless, Officer Lawler stated that he got both men out of the car because it is obvious that Butler would be arrested.
>
> 3.) Officer Lawler then walked around to the front of the vehicle and looked through the window to make sure there was no "loot" property. Officer Lawler knew that the car would be towed because neither of the men could drive the car. Officer Lawler stated that he knew "[appellant] was not gonna (sic) be getting back in the car," so Butler was arrested and put in the patrol car and appellant was asked if anything in the car belonged to him (appellant) because the car had to be inventoried before it was towed. According to Officer Lawler, appellant answered that the

> items belonged to Butler, and then said the items were theirs together and that they were selling the items.
>
> 4.) Officer Lawler inspected the car and saw that the items in the car were BC powders and medicines and razors still in hard plastic cases tucked underneath the front seat. Officer Lawler took the items out, and also claimed prior to the stop that appellant was moving something under the seat of the car. Officer Lawler found a receipt (with the same date and afternoon) from CVS in the car for a pepsi, connected the dots by calling the nearby CVS store, and had a cashier describe the two men who were just in the store to check for missing razors. Appellant was then handcuffed and his Miranda rights were read to him.
>
> 5.) Ultimately, after an hour and ten minutes passed, Officer Lawler released appellant from the arrest, and took him out of the car, took off the handcuffs, and drove him ten minutes away to get a ride to wherever, but he told them that they were both going to be charged. Tr.109, l. 24 - p. 143, l. 21. Tr. 95, l. 1 – p. 103, l. 3.

(4.) This Court held as follows on the Fourth Amendment issue:

> As to whether the trial court erred in denying Fulwiley's motion to suppress the goods seized: *State v Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."); *State v. Pichardo*, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct. App. 2005) ("In carrying out the stop, an officer may request a driver's license and vehicle registration, run a computer check, and issue a citation."); *Rodriguez v. United States*, 135 S.Ct. 1609, 1615 (2015) ("Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance."); *United States v. Oliver*, 550 F.3d 734, 738 (8th Cir. 2008) (finding that when law enforcement has probable cause to tow a vehicle, a traffic stop is not completed until the tow is accomplished); *United States v. Sharpe*, 470 U.S. 675, 687 (1985) ("The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it."); *State v. Brown*, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010).

(5.) However, the scope of the traffic stop went beyond driver's license check and vehicle registration check and computer check as stated in this Court's opinion. To the contrary, this scenario morphed instead into a Sikes fishing expedition that led to the Fourth Amendment

violation. In the case at bar, Officer Lawler detained driver Butler due to the fact that he was sought on charges. However, appellant was not wanted on charges and should not have been detained on this fishing expedition. Clearly, appellant should have been ticketed for the seatbelt violation and allowed to move on while Butler's car was towed and he (Butler) was saddled with the items inside his (Butler's) car. The prolonged detention of appellant for no apparent reason violated the Fourth Amendment.

(6.) Also, note that although the scope of the stop may be enlarged, the scope and duration of the seizure must be strictly tied to and justified by the circumstances which rendered its initial undertaking proper, a lawful traffic stop can become unlawful if it is prolonged beyond the time reasonably required to complete its mission. State v. Morris, 395 S.C. 600, 720 S.E2d 468 (2011); Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994); State v. Adams, 397 S.C.481, 725 S.E.2d 523 (2012), citing to State v. Morris, supra, and Illinois v. Caballes, 543 U.S. 405 (2005). Once the purpose of that stop has been fulfilled, the continued detention of the vehicle and occupants would result in a second detention. State v. Morris, supra, citing to State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (2005). The encounter can only continue if the police have a reasonable suspicion that other criminal activity would be afoot. State v. Adams, supra; State v. Morris, supra, State v. Pichardo, supra.

In Sikes, a vehicle was stopped because the paper tags aroused suspicion of it being stolen, but after receiving the requested identification information from the driver and the passenger; nonetheless, the passenger was taken from the car while police ran a warrant check on him. The Court reversed in Sikes and held that the officer's further detention of the passenger while going "fishing" for evidence of a crime, i.e., looking for warrants, was unlawful because the scope and duration of the initial seizure must be **tied to and justified by the circumstances which rendered**

its initiation proper. In Sikes, the belief that the car was stolen ended upon the receipt of proper identifications. Therefore, there was no reasonable suspicion in existence thereafter to extend the seizure of the passenger by detaining him any further. Also, the Sikes Court cited to State v. Johnson, 805 P.2d 761 (Utah 1991), where the Court held that the leap from asking a passenger's name and date of birth to running warrant checks on the passenger was unlawful as such was an attempt to gather information in support of an unparticularized suspicion or hunch. Compare, State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (2003), where the Court held that since the officer had written the traffic ticket and the traffic stop was complete, it was error for the officer to continue to question the defendant until he (officer) believed the answers were inconsistent as a basis to search the vehicle because there was no prior reasonable suspicion that criminal activity had been afoot.

Going on a "fishing" expedition to find evidence in support an unparticularized hunch of inchoate criminal activity is unlawful because reasonable suspicion is an objective assessment of the circumstances at trial. See State v. Provet, 405 S.C. 101, 747 S.E. 2d 453 (2013), citing to Whren V. United States, supra. Reasonable suspicion is more than an inchoate or unparticularized hunch, but rather it is an objective basis that would lead to a suspicion of criminal activity under the probability of the circumstances. State v. Rogers, 368 S.C. 529, 6219 S.E. 2d 679 (2006) citing to State v. Butler, supra. Moreover, once the purpose of the traffic stop has ended, the officer may not extend the duration of the traffic stop without reasonable suspicion that would justify an additional or prolonged seizure. State v. Provet, 405 S.C. 101, 747 S.E. 2nd 453 (2013) citing to Pennsylvania v. Morris, 403 U.S. 106 (1977) and Arizona v. Johnson, 555 U.S. 323 (2009).

In Tindall, supra, the Court reversed and held that the officer lacked reasonable suspicion of a crime to continue detaining the defendant beyond the scope of the traffic stop where the officer stopped the defendant for speeding, obtained his license and registration and proof of

insurance, did a "felony stretch," and pulled the defendant out and ordered him to sit in the patrol car, and continued to question him for 6 to 7 minutes, despite the fact that the report returned that there were no problems with the license or vehicle, and extended the process until backup arrived for a dog sniff due to his (defendant's) nervousness because "the purpose of the traffic stop was accomplished" after the report returned confirming all was well with the defendant's license and insurance, which meant the ticket should have been issued rather than engage in the continued detention of the defendant since this exceeded the scope of the traffic stop and constituted a seizure in violation of the Fourth Amendment.

Compare State v. Rivera, 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009), where the Court upheld the trial judge's ruling that the defendant was unlawfully detained on a continued detention when the defendant was stopped for following too closely and asked to exit the car and asked a series of questions even though there was no evidence of criminal activity, and when the defendant was told he would receive a ticket, because this fishing expedition went on until back-up police arrived. Lengthening the detention for further questioning beyond that related to the initial stop is acceptable only if the officer has an objectivity reasonable and articulable suspicion that illegal activity has occurred. State v. Provet citing to State v. Pichardo, supra. In State v. Rodriguez, 323 S.C. 484, 476 S.E.2d 161 (1997).

(7.) As for the Court's ruling on the inevitable discovery doctrine[3] is concerned, note that appellant was a passenger and the car belonged to the driver and the driver owned the goods.

---

[3] ("The inevitable discovery doctrine is an exception to the exclusionary rule and states that if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, the information is admissible despite the fact it was illegally obtained."), *rev'd on other grounds*, 401 S.C. 82, 736 S.E.2d 263 (2012); *id* at 483-84, 698 S.E.2d at 817 ("If the police are following standard procedures, they may inventory impounded property, including closed containers, to protect an owner's property while it is still in police custody.").

(8.) Also, on appeal, the following question was the second issue raised in the case:

> The trial judge erred in allowing into evidence appellant's statement wherein he identified the goods in the car that were allegedly stolen as belonging to the driver and/or both of them because this admission was given pursuant to circumstances that constituted the equivalent to a custodial interrogation before the Miranda warnings had been given to him, and therefore should have not been admissible at trial

(9.) This Court addressed the issue as follows:

> As to whether the trial court erred by admitting into evidence Fulwiley's statements claiming co-ownership of the goods seized: *State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009)("The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice."); *State v. Williams*, 405 S.C. 263, 272 747 S.E.2d 194, 199 (Ct. App. 2013) ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." (quoting *State v. Pagan*, 369 S.C. 201, 208m 631 S.E.2d 262, 265 (2006))); *United States v. Sullivan*, 138 F.3d 126, 130 (4th Cir. 1998) ("Only if the motorist is detained 'to a degree associated with formal arrest'" will he be entitled to the *Miranda* protections for in-custody interrogations." (quoting *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984))); *Bradley v. State*, 316 S.C. 255, 257, 449 S.E.2d 492, 493 (1994) ("*Miranda* warnings are required for official interrogations only when a suspect 'has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" (quoting *Miranda*, 384 U.S. at 444)); *Berkemer*, 468 U.S. at 440 ("[P]ersons temporarily detained pursuant to [ordinary traffic] stops are not 'in custody' for the purposes of [*Miranda*]."); *State v. Corley*, 383 S.C. 232, 244, 679 S.E.2d 187, 193 (Ct. App. 2009) ("[E]ven though a motorist in a routine traffic stop may be detained and is not free to leave, such a motorist is not 'in custody' for *Miranda* purposes.").

(10.) Clearly, the traffic stop resulted in the detention of appellant to the degree that it was akin to a formal arrest and appellant was deprived of his freedom of action. The traffic stop went beyond a driver's license check, and vehicle registration check, and computer check as it morphed into a custodial interrogation based on the Sikes fishing expedition status of the traffic stop; and this Court may have overlooked the evidence indicating that the traffic stop morphed

into an interrogation because of the Sikes fishing expedition nature of the stop and that appellant's initial non-custodial status was elevated to an in-custody status.

During pre-trial hearing, defense counsel moved to exclude appellant's statement made claiming coownership of the items from CVS in the vehicle on the grounds that the statements were not given voluntarily because the answers given by appellants were submitted during a custodial interrogation where he was not free to leave and where he had not been given his Miranda[4] warnings as this violated the privilege against self-incrimination found under the Fifth Amendment and article 1, §12 of the South Carolina State Constitution. R. 88, l. 22 – R. 89, l. 9.

A Jackson v. Denno[5] hearing was held prior to trial in the matter. Officer Lawler sated that appellant was not free to leave at the time of the initial approach at the beginning of the traffic stop, and that he (appellant) was not free to leave when he got out to smoke a cigarette and was told to get back in the car, and that he (appellant) was not free to leave when he investigated the CSV items in the car before he was arrested and placed in the patrol car and then given his Miranda warnings at that time. R. 89, l. 24 – R. 97, l. 1. After the dispatch showed Butler was a wanted suspect (R. 91, l. 18), appellant was soon arrested, but Officer Lawler admitted in effect previously asking appellant if he had something illegal in the car and what he was doing leaning over in the vehicle (presumably prior to the Miranda warnings), and that appellant responded to the effect that (it's Butler's) and then (it's both of ours). R. 97, l. 4 – R. 105, l. 24. Defense counsel argued that appellant was not free to leave from the time he was "pulled over until the time he was permitted to leave with the ticket," and thus the statements in question were

---

4 384 U.S. 436 (1966).
5 378 U.S. 368 (1964).

inadmissible and involuntarily given. R. 106, l. 13 – R. 107, l. 2. The trial judge ruled as follows:

> This was a routine traffic stop. The questions asked of the officer, whatever they may have been, did not rise to the level and the situation involved did not rise to the level to a degree associated with a formal arrest....[appellant] was obviously not free to leave, but Miranda is nonetheless not triggered based on my review of the circumstances. R. 109, l. 24 – R. 110, l. 5.

A suspect may not be subjected to a custodial interrogation absent an explanation of his rights under Miranda v. Arizona, 384 U.S. 436 (1966). The rule is that Miranda warnings are required for interrogations when the suspect has been taken into custody, i.e, "custodial interrogations." See State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997), citing to Minnesota v. Murphy, 465 U.S. 420 (1984), and Rhode Island v. Innis, 446 U.S. 291 (1980). The term "in custody" is defined as one who has been deprived of his freedom (not free to leave) per Minnesota v. Murphy, supra; and an "interrogation" has been defined as questions reasonably likely to elicit a response per Rhode Island v. Innis; supra. In Easler, the Court held that since the officers knew an accident had occurred and someone fitting Easler's description left the scene, then any questioning of Easler after learning he left the scene of an accident were such that were likely to elicit an incriminating response. Nonetheless, although Easler was in custody without having been given his Miranda warnings, the issue of "in custody" was resolved in Easler to the extent of overwhelming evidence of Easler's guilt otherwise.

In the case at bar, appellant was not free to leave during the entire stop and was not given his Miranda warnings until after the bag had been seized from the car and questions asked regarding ownership of the bag. Therefore, appellant's statement regarding co-ownership of the items in the vehicle should not have been admitted into evidence in violation of the Fifth Amendment as his status became "in custody" since the stop was extended and morphed into a

Sikes fishing expedition that resulted in a custodial interrogation of appellant due to the character and nature of the stop.

Clearly, the fishing expedition that occurred in the case sans probable case or reasonable suspicion led to an illegal detention of appellant and the illegal search of his vehicle based on an extended detention beyond the scope of the stop violated the Fourth and Fifth Amendments to the United States Constitution.

WHEREFORE, based on the forgoing points, counsel for appellant would request a rehearing on the issues raised above regarding this Court's holding on appeal.

Respectfully Submitted,

WANDA H. CARTER
Deputy Chief Appellate Defender

This 21st day of February, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable George C. James, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL FULWILEY,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Joshua A. Edwards, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Michael Fulwiley, at Alston Wilkes Veterans Home, 3519 Medical Drive, Columbia, SC 29203, this 21st day of February, 2019.

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 21st day of February, 2019.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.

The South Carolina Court of Appeals

The State, Respondent,

v.

Michael Fulwiley, Appellant.

Appellate Case No. 2017-000774

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Wanda H. Carter, Esquire
Joshua Abraham Edwards, Esquire
Samuel R. Hubbard, III, Esquire
Lisa M. Comer