STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of General Sessions

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2004-GS-37-1055
379 S.C. 304, 665 S.E.2d 188 (Ct. App. 2008)

The State .... Respondent,

v.

Terry T. Tindall, ...Petitioner.

BRIEF OF PETITIONER

BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues For Review 1

Statement of the Case 1

Facts 2

Arguments 28

I. The Court of Appeals erred in affirming the trial court's denial of Petitioner's motion to suppress the contraband found in the automobile Petitioner was driving at the time of his arrest 28

II. The Court of Appeals erred in affirming the trial court's denial of Petitioner's motion to suppress a statement Petitioner made to officers at the time of his arrest 48

Conclusion 50

TABLE OF AUTHORITIES

Cases

Alberty v. United States, 162 U.S. 499 (1896)..34

Almeida-Sanchez v. United States, 413 U.S. 266 (1973)..45

Barch v. State, 2004 Wy 79, 92 P.3d 828 (2004) 37

Damato v. State, 2003 Wy 13, 64 P.3d 700 (2003) 37

California v. Acevedo, 500 U.S. 565 (1991)..45, 46

Carroll v. United States, 267 U.S. 132 (1925)..45, 46, 47

Davis v. State, 947 S.W.2d 240 (Tex.Crim.App. 1997) 30

Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)..29, 42

Florida v. Royer, 460 U.S. 491 (1983) 29, 42

Illinois v. Caballes, 543 U.S. 405 (2005) 433, 44, 48

Illinois v. Wardlow, 528 U.S. 119 (2000)..33

Jackson v. Denno, 378 U.S. 368 (1964) 2, 12, 48

Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006) 46

Maryland v. Dyson, 527 U.S. 465 (1999)..45

Miranda v. Arizona, 384 U.S. 436 (1966) 11, 17, 18, 48, 49, 50

New York v. Quarles, 467 U.S. 649 (1984) 48

Ornelas-Ledesma v. United States, 517 U.S. 690 (1996) 46

Pennsylvania v. Labron, 518 U.S. 938 (1996)...45

Pennsylvania v. Mimms, 434 U.S. 106 (1977)...29, 42

People v. Redinger, 906 P.2d 81 (Colo.1995) 30

State v. Butler, 343 S.C. 198, 539 S.E.2d 414 (Ct. App. 2000) 29

State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996) 48

State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995)..46

State v. Jones, 364 S.C. 51, 610 S.E.2d 846 (Ct. App. 2005).........................41, 42, 43, 44

State v. Maybank, 352 S.C. 310, 573 S.E.2d 851 (Ct. App. 2002) 28

State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005) 28, 31, 44, 48

State v. Roderiguez, 323 S.C. 484, 476 S.E.2d 161 (Ct. App. 1996)...............................48

State v. Tindall, 379 S.C. 304, 665 S.E.2d 188 (Ct. App. 2008) 2, 27, 33

State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002).......29, 40, 41, 42, 44, 48

Terry v. Ohio, 392 U.S. 1 (1968) 45

United States v. Andrews, 600 F.2d 563 (6th Cir. 1979) 34, 38

United States v. Beck, 140 F.3d 1129, 1136 (8th Cir. 1998) 30

United States v. Childs, 256 F.3d 559 (7th Cir. 2001)...33

United States v. Erwin, 71 F.3d 218 (6th Cir. 1995) 34

United States v. Hunnicutt, 135 F.3d 1345 (10th Cir. 1998) 30

United States v. Jones, 234 F.3d 234 (5th Cir. 2000) 29

United States v. Mesa, 62 F.3d 159 (6th Cir. 1995)...30

United States v. Rascon-Armendarizi, 2005 WL 2837508 (D.S.D. 2005) 38

United States v. Richardson, 385 F.3d 625 (6th Cir. 2004)...34

United States v. Saperstein, 723 F.2d 1221 (6th Cir. 1983) 33, 38

United States v. Sokolow, 490 U.S. 1 (1989) 39

United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998) 29, 42

United States v. Vasey, 834 F.2d 782, 788 (9th Cir. 1987)...46

Whren v. United States, 517 U.S. 806 (1996)...28

Wyoming v. Houghton, 526 U.S. 295 (1999)..45

STATEMENT OF ISSUES FOR REVIEW

A. Did the Court of Appeals err in affirming the trial court's denial of Petitioner's motion to suppress the contraband found in the automobile Petitioner was driving at the time of his arrest?

B. Did the Court of Appeals err in affirming the trial court's denial of Petitioner's motion to suppress a statement Petitioner made to officers at the time of his arrest?

STATEMENT OF THE CASE

Petitioner was indicted by an Allendale County Grand Jury for trafficking in cocaine in excess of 400 gram

County. Colgrove stopped Petitioner at about 7:00 a.m., asserting Petitioner was speeding and following too closely behind another vehicle. Colgrove wrote a warning ticket for the traffic violations, but continued to talk with Petitioner about a number of things. About 15 to 20 minutes into the traffic stop, Colgrove searched the vehicle. Officers found three packages of cocaine under the rear bumper of the vehicle, and the cocaine had a combined weight of 2,380 grams. (R. p. 147).

Petitioner moved to suppress evidence discovered during the stop, and the trial court held a hearing on that

scene of the arrest. Following a *Jackson v. Denno*, 378 U.S. 368 (1964), hearing the trial court permitted the statement into evidence. The jury convicted Petitioner of trafficking cocaine, and the trial judge sentenced Petitioner to 25 years imprisonment and a

$250,000.00 fine.

Petitioner appealed, and following oral arguments, the Court of Appeals affirmed. *State v. Tindall*, 379 S.C

FACTS

Suppression Hearing Regarding the Contraband

The following evidence was elicited at the suppression hearing regarding the cocaine.

Terry Tindall (Petitioner)

Petitioner was 39 years old and lived in Hampton, Georgia. (R. p. 5, lines 21-24). He is married and has thr

On April 15, 2004, Petitioner was traveling from Georgia to Durham, North Carolina to visit his brother. (R

but planned to call him when he reached Durham and meet up with him. (R. p. 18, lines 8-

18).

Petitioner left Georgia driving a Jeep Cherokee rented in the name of Lee Braggs. (R. p. 6, lines 13-20). Bo

lines 6-9). Braggs rented the vehicle for him because Petitioner did not have a credit card.

(R. p. 11, lines 10-14). Since the time he was laid off by Northwest Airlines in April 2003,

Petitioner's credit became bad and he surrendered his credit cards. (R. p. 11, lines 16-17).

Petitioner had a backpack on the front seat containing books, medicine, a toothbrush, and items he needed c

around Exit 4. (R. p. 7, lines 3-4). The officer, Sergeant Dale Colegrove, advised Petitioner

that he was speeding, that Petitioner swerved, and that he was following a vehicle too

closely. (R. p. 7, lines 12-13; p. 16, lines 20-21). Petitioner advised Colegrove that he did

not think he was speeding or following too closely. (R. p. 17, lines 2-3).

Colegrove asked Petitioner to exit the Jeep and to sit in the front seat of the patrol car. (R. p. 7, lines 19-25)

Colegrove asked Petitioner where he was going, and Petitioner responded hat he was going to the Roxboro

trip. (R. p. 10, lines 12-17; p. 18, lines 20-21). When Petitioner advised Colegrove that he was heading to the Roxboro Exit, Colegrove stated he was familiar with the area but the "Roxboro" Exit did not ring a bell. (R. p. 9, line 24-p. 10, line 4). Petitioner testified, however, that a map of downtown Durham revealed Roxboro Street. (R. p. 14, lines 20-25; Def. Exhibit # 1, filed separately). He agreed that the trip from Hampton, Georgia to Durham, North Carolina took about seven hours, and that the drive from Durham to Wilmington took about two and one-half hours. (R. p. 17, line 25 - p. 18, line 3).

Colegrove called in Petitioner's license, and told Petitioner that if his license came back clear he would get

(R. p. 17, lines 5-14).

Colegrove then began asking Petitioner about what kind of work Petitioner did, and Petitioner stated he ha

and Petitioner answered the questions. (R. p. 9, lines 6-12; p. 11, lines 1-2; p. 12, lines 5-13).

Colegrove also asked Petitioner why Braggs rented the vehicle and Petitioner explained about the credit ca

up seafood. (R. p. 19, lines 9-11). On this occasion, Braggs was flying to Durham and said he needed the car once he got to Durham. (R. p. 19, line 14-25 - p. 20, line 5).

After about 20 minutes Colegrove gave Petitioner his license and information back along with a warning ti

two officers standing beside my door, and Colgrove was still talking to me. So I didn't feel as if I was free to leave." (R. p. 16, lines 10-12). Petitioner added, "I never thought the stop was over." (R. p. 12, line 25).

Colegrove then asked Petitioner if he could search the car, and Petitioner replied "I don't care" or " I don't

(R. p. 20, lines 13-25).

Although Petitioner believed the stop lasted about 20 minutes, he agreed that a videotape from Colegrove's

Sergeant Dale Colegrove

Colegrove has been in law enforcement since July 1994. (R. p. 23, lines 20-22). He has had training in traff

On April 15, 2004, Colegrove was sitting at Exit 1 facing northbound traffic with his radar on. (R. p. 25, lin

closely, and also cross the white line. (R. p. 25, lines 15-19).

Colegrove initiated the stop. (R. p. 25, lines 19-20). He videotaped the stop on his in-car camera. (R. p. 26;

crime was afoot." (R. p. 27, lines 10-11).

Colegrove patted Petitioner down and directed him to the back of the car. (R. p. 27, lines 18-25). Colegrove

the officer intends to give only a warning, they "de-escalate" and become relaxed. (R. p.

28, lines 7-9).

Colegrove stated Petitioner was hesitant to answer questions about his trip. (R. p. 28, lines 11-13). He was

Colegrove stated the "red lights" in the conversation were that the Jeep was rented on April 14 and was dro

going to Durham but did not know where his brother lived (R. p. 28, line 25 - p. 29, line 1),

Petitioner had to have other transportation to get back to Georgia (R. p. 29, lines 12-13),

and the car was bare and had no visible contents. (R. p. 29, line 25 - p. 26, line1).

Colegrove stated, "from past experience, I thought the subject was concealing something

illegal in the car." (R. p. 30, lines 5-7).

A search of the car resulted in the discovery of nearly 3 kilograms (2400 grams) of cocaine in the rear bum

On cross-examination, Colegrove agreed that he wrote a report following the arrest, and did not mention Pe

under stress, they let out the tension by flexing their arms. (R. p. 32, lines 17-21).

Colegrove agreed that since the stop began about 7:00 a.m., then Petitioner must have left

Atlanta at about 5:30 a.m., and had to have awakened between 4:30 and 5:30 a.m. (R. p. 33,

line 23 - p. 34, line 7). He agreed that the stop occurred in the early morning hours. (R. p. 34, lines 13-14).

Colgrove agreed he obtained Petitioner's license and a copy of the rental agreement, and asked Petitioner t

Colgrove stated that usually issuing the warning "de-escalates" the situation, but agreed that sitting in a pol

Regarding the rental agreement, Colgrove agreed Petitioner was an authorized driver of the vehicle and had

rental agreement and why someone else rented the car for him, and Petitioner told him he had no credit cards because he had been laid off by Northwest Airlines in April 2003. (R. p. 38, line 18 - p. 39, line 7). Colgrove had no reason to doubt what Petitioner said. (R. p. 39, lines 8-13). When asked what was suspicious about the rental agreement, Colgrove stated, "By him actually being in possession of a car that he didn't rent personally himself, going on a trip when the car is due back the same day and rented it the day prior, and then him telling me that the car is – basically it's a dead head trip." (R. p. 38, lines 6-12).

Once the identification check came back, Colgrove asked the dispatcher to run Petitioner through NCIC to

Colgrove stated that he did not observe any clothes inside the car, but could not recall the backpack. (R. p.

had no clothes and Petitioner stated he was not spending the night, but if he decided to do so, he would just go to Wal-Mart and get some clothes. (R. p. 212, line 20 - p. 213, line 6).

Colgrove testified he was "a little familiar" with Durham, but did not know the Roxboro exit. (R. p. 41, lin

Roxboro Street or exit in Durham. (R. p. 43, lines 2-18). Petitioner could not be specific about where his brother lived, and Colgrove agreed Petitioner's brother could have moved within Durham. (R. p. 43, line 22 - p. 44, line 11).

Colgrove stated the videotape revealed that the stop took place at 7:05 a.m., and Petitioner was placed in th

got word from the dispatcher that the driver's license was clear. (R. p. 44, lines 24-25).

Colgrove stated that in his conversation with Officer Dana Beaty, Colgrove used a code that indicated anot

safety precaution. (R. p. 46, lines 14-22).

Around 7:16 a.m., Colgrove asked Petitioner if he had ever been charged with a crime. (R. p. 46, line 25 - p

Colgrove waited for a further check from NCIC, which came back clear. (R. p. 47, lines 4-11). He then ask

also stated that the facility had to have about 35 square feet per child, and Colgrove had no

reason to believe Petitioner was not telling the truth about that. (R. p. 48, lines 2-6).

Colgrove stated "it was his behavior of him while I was asking those questions. It wasn't specifically that.

conversation on the tape was "very calm." (R. p. 48, lines 12-16).

Colgrove stated that it would normally take about 2 to 3 minutes to write a warning ticket. (R. p. 49, lines 5

consent to a search of the vehicle. (R. p. 50, lines 3-5; p. 53, lines 12-16). Colgrove never

told Petitioner he was a suspect. (R. p. 52, lines 8-9; p. 53, lines 17-18). Had Petitioner

tried to leave Colgrove would have brought the drug dog out. (R. p. 50, lines 10-12).

Colgrove stated that Atlanta and Durham are "drug hubs." (R. p. 51, lines 2-3). He added that Greenville, C

Colgrove noted that he put the lights on at 7:05 a.m., and began the search of the car at about 7:20 a.m. (R.

Court Exhibits

The trial court took judicial notice of the rules and regulations governing day care centers in Georgia and in

Pre-Trial Ruling

The trial court stated that, although "it is close," the stop was not extraordinarily long and the officer expla

Suppression Hearing Regarding the Statement

The trial court conducted a hearing pursuant to *Jackson v. Denno*, regarding a statement Petitioner made to

Colgrove stated Petitioner was in the patrol car 20 to 25 minutes. (R. p. 106, lines 2-9). Colgrove read Petit

he gave the statement. (R. p. 110, lines 1-6).

Pre-Trial Ruling

The trial court allowed the statement into evidence, even though the court believed it was a "close question

Trial Testimony

Colgrove described his search of the vehicle and the discovery of the cocaine. (R. pp. 144-145). Petitioner

p. 294, line 23).

Petitioner made a contemporaneous objection to the statement based upon the earlier arguments. (R. p. 154

Colgrove stated he gave the Petitioner warnings pursuant to *Miranda*. (R. p. 156, lines 1-2). Petitioner cont

who had rented the car. (R. p. 156, lines 10-12). Braggs was going to fly from Atlanta to Durham and take possession of the vehicle. (R. p. 156, lines 13-16). Petitioner was going to meet with his brother, who would eventually drive him back to Atlanta. (R. p. 156, lines 16-18; p. 159, lines 2-4). Colgrove stated Petitioner said he was being paid $1,500.00 to drive the car from Atlanta to Durham, which are two major drug hubs. (R. p. 157, lines 3-5; p. 158, lines 21-24).

Colgrove stated that, based upon his training he believed there was criminal activity occurring, that is, that

On cross-examination, Colgrove stated that he stopped Petitioner's vehicle because he was speeding, follo

syndrome. (R. p. 174, lines 8 - 15, line; p. 175, lines 13-23). He agreed that Petitioner must have left Atlanta at about 5:30 a.m., and therefore must have gotten up no later than 5:00

a.m., since the stop took place between 7:15 a.m. and 7:30 a.m. (R. p. 174, line 22 - p. 175, line 11).

Colgrove stated that 95% of the time he places a driver in his patrol car. (R. p. 178, line 16 - p. 179, line 10

181, line 20 - p. 182, line 1).

Colgrove stated that he obtained a license, the rental agreement, and an insurance card from Petitioner, and

He agreed that the rental agreement listed as additional drivers Lewis Wilkerson and Petitioner, and that Petitioner had a right to be in the car. (R. p. 182, line 22 - p. 183, line 2). Colgrove also knew that the car was not stolen. (R. p. 183, lines 3-6). Colgrove was also not suspicious about the date of the rental agreement, April 14, 2004. (R. p. 183, lines 7-9). He asked Petitioner about Lee Braggs, but not about Lewis Wilkerson. (R. p. 204, lines 16-20).

Colgrove told Petitioner he would write him a warning ticket because he wanted to relax Petitioner so as to

questions. (R. p. 197, lines 6-9). Colgrove had already asked if Petitioner had any criminal convictions and been told he had not, and had run Petitioner's name through NCIC. (R. p. 185, lines 7-11). When the license and tag came back clear Colgrove had all the information he needed to write a ticket to Petitioner. (R. p. 189, lines 16-19). He had Petitioner in the patrol car, gave him the warning ticket for the 3 violations, and gave him the rental agreement back. (R. p. 213, line19 - p. 214, line 1). He never told Petitioner he was free to leave, or that he was free to refuse consent to search. (R. p. 215, lines 6-10).

Colgrove did not see anything in the Jeep "to be suspicious of," but felt that "there was a possibility by his

morning. (R. p. 197, lines 22-24). Colgrove then told Petitioner that Colgrove looked for narcotics, guns, large sums of money, and asked if he could search the car. (R. p. 214, lines

10-17). Petitioner had been in the patrol car about 10 to 15 minutes at that time. (R. p. 214, lines 18-21). Had Petitioner refused to permit the search, Colgrove would not have let him leave, and would have brought the drug dog out. (R. p. 215, lines 11-17). Colgrove had no intention of permitting Petitioner to get out of the patrol car. (R. p. 215, lines 18-20). Petitioner did not know he could leave. (R. p. 216, lines 19-21). At the time, Petitioner was still confined in the patrol car with Colgrove and the drug dog, and there were two other officers outside the car. (R. p. 219, line 17 - p. 220, line 1).

Colgrove stated "if I don't have reasonable suspicion, to go into that second detention, if he refuses that, I h

a serious crime being committed. (R. p. 217, lines 16-18; p. 221, lines 13-14). Petitioner cooperated, and let Colgrove pat him down for weapons. (R. p. 221, line19 - p. 222, line 3).

Once Petitioner gave consent, Colgrove got out of the car and opened the back door, then the front passeng

then went to the back of the Jeep. (R. p. 187, lines 7-15). He was following a systematic order of front to rear for the videotape record. (R. p. 187, line 19 - p. 188, line 4).

Colgrove got on his knees and then looked underneath the car. (R. p. 189, lines 1-5). He agreed that there w

Colgrove stated "everything I do, sir, is based on reactions. I watch people." (R. p. 216, lines 2-3).

Colgrove agreed that he did not put everything in the report regarding his observations that morning. (R. p.

Colgrove could see Petitioner's pulse in his neck. (R. p. 162, lines 7-25; p. 166, lines 5-9; p. 222, lines 20-22). The report also did not mention the white towel found with the drugs, even though Colgrove turned it into the evidence custodian. (R. p. 223, line 18 - p. 224, line 5). Colgrove stated that the report "is not the 'do-all, tell-all'" but merely shows why an officer arrested someone and "what took place." (R. p. 165, lines 12-14). Colgrove agreed that in other reports he noted when a suspect was nervous or fidgety. (R. p. 167, line 5 - p.

171, line 23). The videotape revealed they discussed dogs, and there was no wavering in Petitioner's voice. (R. p. 176, lines 19-23). The videotape also did not show Petitioner following too closely, traveling over the white line, or speeding. (R. p. 201, lines 9-24).

Colgrove stated he did not know whose fingerprints were on the packages he found. (R. p. 198, lines 4-8).

indicate Petitioner ever touched the rear of the Jeep. (R. p. 200, line 3 - p. 201, line 1).

There was also no evidence to connect Petitioner to a white towel that had been found with the drugs. (R. p. 201, lines 2-5; p. 224, line 21 - p. 225, line 11). Petitioner told Colgrove that he had never seen the cocaine before and did not know how much it weighed. (R. p. 207, lines 2-7).

Colgrove testified he has been trained to observe reactions in specific areas of a person's body and to look

was going, although he said he was headed to Durham to see his brother. (R. p. 190, lines 6-17; p. 193, line 16 - p. 194, line 6). Colgrove did not ask Petitioner, however, whether Petitioner's brother had moved in Durham. (R. p. 204, line 21 - p. 205, line 1).

Colgrove also felt the rental agreement was suspicious. (R. p. 190, lines 21-25). He stated this was a "dead

at an airline in April 2003 and was unemployed. (R. p. 194, line 17 - p. 195, line 4).

Petitioner also stated he and his wife owned a day care center. (R. p. 195, lines 5-7). Colgrove told the Peti

about rates in Atlanta and what kind of background checks were done. (R. p. 205, line 18 - p. 206, line 11). Colgrove had no reason to disbelieve what Petitioner told him. (R. p. 196, lines 10-11).

Colgrove stated the destination, Durham, was a "drug hub." (R. p. 191, lines 1-2). He added that Charlotte,

On redirect, Colgrove stated this case stood out because of where the cocaine was discovered. (R. p. 226, li

Colgrove speculated that the cocaine could have been placed in the bumper while the car was on a lift. (R.

Regarding the statement, Colgrove stated:

> He stated that he was traveling to Durham, leaving Atlanta going to Durham for Lee Braggs. He sta
> to return him back to Atlanta and that he was getting $1,500 for driving that
> vehicle from Atlanta to Durham. That's exactly what he said.

(R. p. 227, line 18 - p. 228, line 2).

On recross, Colgrove stated that he arrested Petitioner because Petitioner was in possession of the car, was

Colgrove stated he asked for consent to search the vehicle based upon Petitioner's actions and what Colgro

Dana Beaty

Officer Beaty observed Petitioner while Colgrove was searching the vehicle, looking for changes in behavi

line 22 - p. 240, line 10).

Officer Beaty also stated that Colgrove gave Petitioner his *Miranda* warnings and thereafter Petitioner state

On cross-examination Officer Beaty stated he has been trained to look for body language and "hot spots." (

writes a report if he places a subject under arrest or has interaction with the suspect. (R. p.

244, lines 18-20). Officer Beaty claimed he "absolutely remembers" what happened that

day. (R. p. 243, lines 20-23). However, he could not recall whether he transported

Petitioner to the detention center. (R. p. 245, line 1 - p. 246, line 8).

Michael Miller

Officer Michael Miller is the forensics director of the Anderson/Oconee Regional Forensics Lab. (R. p. 25

On cross-examination, he stated he did not obtain latent fingerprints off of the packages, and in fact, did no

Kenneth Washington (*In Camera*)

Petitioner proffered the testimony of Lt. Kenneth Washington *in camera*. Mr. Washington testified about a

investigator with the solicitor's office. (Tr. p. 271, lines 5-9). Lt. Washington spoke with

Wilkerson alone. (R. p. 271, lines 13-16). Mr. Wilkerson gave Lt. Washington a statement

(R. p. 271, line 17 - 21; Court's Exh. # 3, # 4, filed separately)

Wilkerson told Lt. Washington that he signed the rental agreement. (R. p. 273, lines 13-24; p. 274, lines 15

6-11). Wilkerson told Lt. Washington that he left the car at a parking lot and Braggs was to

have picked it up there. (R. p. 279, line 13 - p. 280, line 3). The statement indicated

Wilkerson picked the car up, drove the car, and had access to the car. (R. p. 279, line 22 - p.

280, line 1; p. 283, lines 2-10, 17-24).

Wilkerson told Lt. Washington that he did not know Petitioner. (R. p. 274, lines 6-10). He also stated he ha

Lt. Washington stated he had been told Wilkerson was in prison for possession of cocaine. (R. p. 274, line

Petitioner offered the two statements into evidence, but the trial court excluded the statements as hearsay ar

Petitioner argued the evidence is admissible to show notice, and to corroborate the fact that Wilkerson sign

Directed Verdict Motion

Petitioner moved for a directed verdict based upon the lack of physical evidence to tie Petitioner to the bacl

Renewed Motion to Suppress

Petitioner renewed his motion to suppress the evidence and statements based upon Colgrove's testimony de

lines 22-23).

Petitioner then presented his case.

Lieutenant Kenneth Washington

Lt. Washington stated he became involved in this case by “interviewing an individual who was on the renta

Lt. Washington identified the statements he typed up. (R. p. 296, line 13 - p. 297, line 7). He testified gener

Patrick Merck

Officer Merck is an evidence technician who processes crime scenes. (R. p. 305, lines 4-9). He looks for ev

At no time did anyone give him a white towel in connection with the case. (R. p. 307, lines 3-5; p. 312, line

1; p. 309, line 19-24; p. 311, lines 3-4). Officer Merck had no evidence to establish

Petitioner handled the packages, or touched the back area of the Jeep. (R. p. 310, lines 5-

19).

Terry Tindall (Petitioner)

Petitioner stated that on the morning of April 15, 2005, he awoke at about 4:15 a.m. (R. p. 316, line 25 - p.

Petitioner was just taking a “day trip.” (R. p. 330, line 23 - p. 331, line 4). He did not take

any clothes with him, but just took things he would need for the day. (R. p. 331, lines 5-

10). This included his medicine, CDs, toothbrush, toothpaste, and driver’s license. (R. p.

331, lines 11-17). The medicine was for his diabetes. (R. p. 331, lines 18-21).

Petitioner stated that the rental agreement had been kept in the glove box, and the first time he really looke

10). The agreement listed Lewis Wilkerson as an additional driver. (R. p. 330, lines 11-17;

p. 335, line 24 - p. 336, line 6). Petitioner stated the rental car was left in the driveway at

his home on April 14, 2004. (R. p. 330, lines 18-22).

At about 7:00 a.m., as he passed Exit 2 on I-85 in South Carolina he saw a police officer coming up pretty

Colgrove indicated to Petitioner that he thought Petitioner was speeding. (R. p. 318, lines 20-22). Petitioner

317, lines 9-11). Petitioner did as he was asked. (R. p. 317, lines 12-16). Colgrove asked

for permission to pat Petitioner down, and Petitioner agreed. (R. p. 317, lines 17-22).

There was a dog in the back seat and Colgrove sat in the driver's seat of the car. (R. p. 318, lines 1-2). Colg

clean, he would give Petitioner a warning ticket. (R. p. 318, lines 17-19). Colgrove ran the

license check, which came back clean. (R. p. 319, lines 11-15).

Colgrove then asked Petitioner where his brother lived, and Petitioner told him he did not know exactly wh

lines 7-13). Petitioner identified a map of downtown Durham which revealed that there is a

"Roxboro" exit in Durham. (R. p. 320, line 18 - p. 321, line 16). Petitioner stated he

inadvertently said "Roxbury" at first, but then quickly corrected himself. (R. p. 321, lines

18-21).

Colgrove asked Petitioner why he had to get someone else to rent a car for him. (R. p. 322, lines 22-25). Pe

Petitioner drew unemployment and started a pressure washing business after being laid off.

(R. p. 324, lines 9-12).

Colgrove then began questioning Petitioner about what he does for a living. (R. p. 321, lines 22-24). At the

day care business, such as ratios of staff to children and square footage requirements. (R. p.

322, lines 14-21). Colgrove questioned him as to how he could open a day care center

without a credit card, but Petitioner stated that was not an issue. (R. p. 325, lines 1-4). The

only issue was going through a background check. (R. p. 325, lines 5-6). Petitioner and his

wife eventually opened the day care center. (R. p. 325, lines 7-8).

Colgrove kept telling Petitioner that his answers did not seem right and "things were not adding up." (R. p.

of South Carolina. (R. p. 327, line 24 - p. 329, line 1; Court's Exh. No. 1, 2, filed

separately).

Colgrove asked Petitioner about the prices of day care, and when Petitioner gave the price, Officer Beaty sa

After the license came back clear, Colgrove ran a background check on Petitioner. (R. p. 325, lines 9-11). C

Colgrove then told Petitioner he was going to write Petitioner a warning ticket. (R. p. 325, lines 14-16). Co

eternity" because he was sitting in the police car with two officers standing right beside the

car, Colgrove in the driver's seat, and the dog in the back seat. (R. p. 325, line 21 - p. 326,

line 2).

Colgrove then returned the documents to Petitioner, and introduced himself as a narcotics officer who patro

Petitioner stated that if he does not take his insulin, he gets nervous and sweaty. (R. p. 331, lines 22-25). He

Petitioner stated that Officer Beaty spoke with him at the scene and transported Petitioner to the detention c

close to the rear of the car. (R. p. 333, lines 1-4).

Petitioner did not just get up and leave because he did not feel free to do so. (R. p. 333, lines 17-22). He did

Petitioner stated that when he got into the Jeep that morning, he just threw his items on the front seat and n

9).

On cross-examination, Petitioner stated that his personal vehicle in April 2004 was a 1978 GMC truck that

key in the car. (R. p. 338, line 25 - p. 339, line 1).

Petitioner stated that the prior time he had been to Durham, his brother lived on Roxboro but by April 2004

brother was going to stay in Atlanta for the weekend with Petitioner after they drove back.

(R. p. 344, lines 1-8).

Petitioner stated he had taken his insulin that morning before heading out. (R. p. 344, lines 14-20). He chec

Petitioner stated that he told Colgrove that everything in the front seat of the Jeep was Petitioner's. (R. p. 3

Petitioner stated that Braggs was going to fly to Durham on a "buddy pass," an inexpensive fare he obtains

Petitioner a car because Petitioner needed to get to Durham. (R. p. 353, lines 13-15). Braggs called Petitioner back and asked Petitioner if he could get a ride back from Durham because Braggs needed a car in Durham. (R. p. 353, lines 15-17). Petitioner asked Braggs if he could just ride with Petitioner, but Braggs said he could not because he needed to be in Durham early that morning. (R. p. 353, lines 17-20). Petitioner then needed to get to Wilmington to help his mother, and his brother wanted to come to Atlanta for the weekend, so it was not a problem for Petitioner not to ride back with Braggs. (R. p. 354, lines 2-8). Petitioner denied that Braggs offered to give him $1,500.00 to drive the car. (R. p. 354, lines 20-21; p. 358,

Renewed Motion

At the end of the evidence Petitioner renewed his motion to suppress the evidence, as well as his motion fo

Court of Appeals Ruling

Petitioner appealed his conviction and sentencing. Following oral argument the Court of Appeals affirmed this matter.

ARGUMENTS

I. The Court of Appeals Erred in Affirming the Trial Court's Denial of Petitioner's Motion to Suppress the Contraband Found in the Automobile Petitioner Was Driving at the Time of His Arrest

Petitioner moved to suppress the drugs found in the vehicle, asserting the continued questioning of Petition

officer had "reasonable suspicion" to support lengthening the traffic stop in this case.

Petitioner asserts first that the officer did not have objectively reasonable and articulable suspicion illegal a

"reasonable suspicion" but must, instead, have probable cause, which was lacking in this case.

Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief

2005); *State v. Maybank,* 352 S.C. 310, 573 S.E.2d 851 (Ct. App. 2002). Thus, an automobile stop is "subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." *Whren,* 517 U.S. at 810.

Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automo

App. 2000).

Once a motor vehicle is detained lawfully for a traffic violation, the police may order the driver to exit the

out the stop, an 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 (4th Cir. 1998). However, any further detention for questioning is beyond the scope of the stop and therefore illegal unless the officer has a reasonable suspicion of a serious crime. *Id.*

An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose

roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning. *Ferris v. State,* 355 Md. 356, 735 A.2d 491 (1999). Once the purpose

of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention. *Id.*; see also *United States v. Jones*, 234 F.3d 234, 241 (5th Cir. 2000) ("The basis for the stop was essentially completed when the dispatcher notified the officers about the defendants' clean records, three minutes before the officers sought consent to search the vehicle. Accordingly, the officers should have ended the detention and allowed the defendants to leave. And the failure to release the defendants violated the Fourth Amendment."); *United States v. Mesa,* 62 F.3d 159, 162 (6th Cir. 1995) ("Once the purposes of the initial traffic stop were completed, there is no doubt that the officer could not further detain the vehicle or its occupants unless something that occurred during the traffic stop generated the necessary reasonable suspicion to justify a further detention."); *United States v. Beck,* 140 F.3d 1129, 1136 (8th Cir. 1998) ("Because the purposes of [the officer's] initial traffic stop of Beck had been completed ... [the officer] could not subsequently detain Beck unless events that transpired during the traffic stop gave rise to reasonable suspicion to justify [the officer's] renewed detention of Beck."); *People v. Redinger,* 906 P.2d 81, 85-86 (Colo. 1995) ("When, as here, the purpose for which the investigatory stop was instituted has been accomplished and no other reasonable suspicion exists to support further investigation, there is no justification for continued detention and interrogation of citizens."); *Davis v. State,* 947 S.W.2d 240, 243 (Tex.Crim.App. 1997) ("[O]nce the reason for the stop has been satisfied, the stop may not be used as a 'fishing expedition for unrelated criminal activity.' ") (citations omitted).

Once the underlying basis for the initial traffic stop has concluded, it does not automatically follow that any

Lengthening the detention for further questioning beyond that related to the initial stop is permissib

> further questioning unrelated to the initial stop is permissible if the initial detention has become a consensual encounter. *United States v. Hunnicutt,* 135 F.3d 1345, 1349 (10th Cir. 1998) (citations omitted). Thus, a law enforcement officer's continued questioning of a vehicle's driver and passenger outside the scope of a valid traffic stop passes muster under the Fourth Amendment either when the officer has a reasonable articulable suspicion of other illegal activity or when the valid traffic stop has become a consensual encounter.

State v. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848.

Hence, the issue in this case is whether Colgrove had <u>objectively</u> reasonable and articulable suspicion illeg

and asserts in this review that he did not.

A. Officer Cosgrove Lacked Objectively Reasonable Suspicion to Question Petitioner I

In this case, there was no objective evidence to give rise to **any** suspicion, much less an articulable suspicio

to believe the car was stolen or that there was any reason to detain Petitioner. Colgrove also stated that although he began to interrogate Petitioner beyond the stop, he had no reason to believe the answers Petitioner gave to the questions were not truthful. The original traffic stop was over once the warnings were issued and the paperwork was returned to Petitioner.

Colgrove did not rely on any <u>objectively</u> reasonable or articulable suspicion as is required by the law, but u

(which in this case consisted of Petitioner stretching his back and arms after driving for over two hours early in the morning) as well as the manner in which someone breathes or acts nervous is simply not the type of objective suspicion required by the Fourth Amendment.

There was simply no physical evidence linking Petitioner to the drugs, nor was there any evidence establisl

been up since 4:30 a.m., had been on the road nearly two and one-half hours into a seven-hour trip, was sitting in the front seat of a patrol car with a dog in the back seat, and there

were two other officers who had arrived and were standing beside the car.

Both Colgrove and Officer Beaty testified that they observed physiological changes in Petitioner during the

apparent on the videotape of the arrest which is on file with the Court.

In affirming the trial court's decision to deny Petitioner's motion to suppress the evidence, the Court of Ap

traffic violations. The Court of Appeals specifically stated:

> Colegrove testified he further detained Tindall because he believed something illegal was occurring
>
> Tindall was driving only one way and then dropping the car off; 4) Tindall planned on driving approximately eighteen hours in one day; and, 5) the cities involved were both "drug hubs."

State v. Tindall, 379 S.C. 304, 311, 665 S.E.2d 188, 192 (Ct. App. 2008). In holding these things Colegrove allegedly observed or believed sufficed to provide an objectively reasonable and articulable suspicion that illegal activity had occurred, the Court of Appeals ignored the following regarding each point:

(1) "**Tindall was nervous even after receiving the warning**."

The fact that someone is nervous during any traffic stop is not objectively suspicious or abnormal behavior

had a low tone of voice, and the officer knew defendant had a prior drug violation, including one just three days prior to the arrest; Seventh Circuit held these factors did not rise to the level of reasonable suspicion, adding the officer's "observation of nervousness and knowledge of [defendant's] criminal history did not add up to reasonable suspicion"); *United States v. Saperstein*, 723 F.2d 1221 (6th Cir. 1983) (noting **nervousness is "inherently unsuspicious"** and entitled to no weight in the calculation) (emphasis added).

In fact, courts have recognized that the mere presence of police officers can be unpleasant to ordinary citize
police can itself be dangerous, apart from any criminal activity associated with the officer's
sudden presence"); *Alberty v. United States*, 162 U.S. 499, 511 (1896) (citizens have all
manner of reasons to prefer to avoid contact with police); *United States v. Richardson*, 385
F.3d 625, 630-31 (6th Cir. 2004) (holding that nervousness is "an unreliable indicator" of
illegal activity, because many citizens become nervous when stopped by police "even when
they have nothing to fear or hide"); *United States v. Erwin*, 71 F.3d 218, 221 (6th Cir.
1995) *rev'd on other grounds* (not unusual for man to be sweating and nervous when
stopped by police in summer); *United States v. Andrews*, 600 F.2d 563, 566 (6th Cir.1979)
(refusing to consider nervousness in the reasonable-suspicion calculation because
nervousness is entirely consistent with innocent behavior among travelers, and holding that,
without additional evidence of wrongdoing, nervousness is entitled to no weight).

Even Colgrove agreed that asking a person to sit in the patrol car would increase a person's anxiety. (R. p.
Being nervous under the circumstances of this early morning traffic stop on a rural stretch
of Interstate Highway is simply <u>not</u> sufficient to trigger an officer's objectively reasonable
and articulable suspicion that criminal activity has occurred or is occurring, even after the
officer has written the warning tickets. This is further buttressed by the fact that Colegrove
did not mention <u>any</u> nervousness or "fidgety" behavior in his written report at the time of
the arrest. (R. p. 30, line 17 - p. 32, line 11).

This Court should follow those authorities that find nervousness during a traffic stop to be "inherently unsu

(2) "**Tindall was driving a rental car that he had not rented.**"

In relying upon this fact, the Court of Appeals failed to consider that although Petitioner had not rented the

2). Colegrove testified he was not suspicious about the date of the rental agreement. (R. p. 204, lines 16-20). Driving a rental vehicle, even coupled with the fact that an early morning traffic stop to which multiple officers responded caused the driver to appear nervous (a subjective description by the officer fourteen (14) months later, and a reasonable character trait during a traffic stop) does not sufficiently trigger an officer's objectively reasonable and articulable suspicion that criminal activity has occurred or is occurring. In fact, Colegrove testified there was nothing suspicious about Petitioner being in the car. (R. p. 38, lines 1-5).

This Court should reject the Court of Appeals's reliance upon this fact in affirming the circuit court's refus

(3) "**Tindall was driving only one way and then dropping the car off**."

In relying upon this factor, the Court of Appeals overlooked that Petitioner explained that both he and Lee

back to Atlanta, while Petitioner planned to ride back to the Atlanta area with his brother (who lived in Durham) after they drove to Wilmington to visit their mother. Colegrove did not indicate that anything about the trip being a one-way trip for Petitioner gave him objectively reasonable suspicion that criminal activity had occurred or was occurring; he simply found it *subjectively* suspicious that it was a "dead head" trip. (R. p. 38, lines 6-15; p. 191, lines 5-7).

The Court of Appeals also ignored that the fact that Petitioner was driving the car to a destination and anot

This is so even against the backdrop of a rental agreement in someone else's name where Petitioner was an authorized driver, and Colegrove's subjective description fourteen (14)

months later of Petitioner as "nervous" even after receiving the warning tickets.

(4) "**Tindall planned on driving approximately eighteen hours in one day.**"

The Court of Appeals simply misapprehended Colegrove's testimony on this point. Colegrove stated that P

4). Colegrove *did not* testify that he based his suspicions on his subjective belief that

Petitioner planned to drive eighteen (18) hours in one day.

In fact, there is simply *no* evidence in this record to support this statement by the Court of Appeals. Hence,

(5) "**The cities involved were both 'drug hubs.'**"

In relying upon this "fact," the Court of Appeals failed to consider that Colgrove had <u>no</u> objective reason fo

hubs"! (R. p. 51, lines 4-18; p. 191, lines 1-17). It was Colgrove's *subjective* belief that

these cities were something he labeled "drub hubs."

There was no evidence that Colegrove's belief that *nearly every moderately-sized city* in the Southeastern U

2004 Wy 79, 92 P.3d 828 (2004) (Court noted nearly all large areas can be called "known

drug hubs," and traveling from a "known drug source area" is consistent with innocent

conduct and does not provide reasonable suspicion of illegal conduct); *Damato v. State*,

2003 Wy 13, 64 P.3d 700 (2003), fn. 2 (officer stated both San Diego, where defendant

rented vehicle, and Omaha, Nebraska, where defendant would be leaving the vehicle, were

both "known drug hubs"; Court noted this was, at best, a "weak factor in finding suspicion

of criminal activity," adding that "[i]n this Circuit alone, police testimony has identified an

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[1] As noted above, Petitioner is actually not from Atlanta but from Hampton, Georgia, a small community of about 5,000 residents thirty miles from Atlanta.

extremely broad range of known 'drug source areas'"); *United States v. Rascon-Armendarizi*, 2005 WL 2837508 (D.S.D. 2005), fn. 1 (United States District Court in South Dakota noted "nearly every major city in the United States is regarded as a 'drug hub' by law enforcement...[t]his observation adds nothing to the probable cause determination").

Other courts likewise give little weight, if any, to the fact that a certain point of origin is known as a "sourc

citizens); *United States v. Andrews*, 600 F.3d 563, 566-567 (such a "flimsy factor" should not be allowed to justify or help justify the stopping of travelers; Court added, "our experience with DEA agent testimony in other cases makes us wonder whether there exists any city in the country which a DEA agent will not characterize as either a major narcotics distribution center or a city through which drug couriers pass on their way to a major narcotics distribution center").

This Court should hold that labeling an origin or a destination as a "drug hub" provides nothing to the obje

In sum, although a reviewing court must view "the whole picture" in judging "reasonable suspicion," *Unite*

"whole picture" lacks the necessary objective basis to support the second detention and related search. Hence, *every* factor stated above upon which the Court of Appeals affirmed the trial court's decision either is based in Colgrove's <u>subjective</u> *post hoc* trial testimony (not supported by his written report prepared fourteen (14) months earlier at the time of the arrest) or an erroneous view of the trial testimony.

The Court of Appeals further overlooked Colegrove's own testimony that he did <u>not</u> objectively see anythi

that would justify a reasonable suspicion of criminal activity so as to legally support the

second detention and subsequent search.

Accordingly, Petitioner requests that the Court find that the record did not support the trial court's determi

Petitioner further requests that this Court reverse the trial court's decision to deny

Petitioner's motion to suppress the evidence Colgrove found in the vehicle Petitioner was

driving, and remand the matter for further proceedings consistent therewith.

B. Petitioner Was Not Free to Leave and Therefore He Was in Custody and the Stop E

As noted above, the Petitioner in this case was clearly not free to leave after Colgrove issued him the warni

Amendment. Furthermore, Colgrove made it clear he would not have permitted Petitioner

to leave.

The facts of this case are on all fours with *State v. Williams*, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002)

his driving record was clean at that time, the driver's license had previously been

suspended for a controlled substance violation. The officer asked the driver to step outside

the vehicle while he issued a citation for the tag violation. The officer wrote and explained

the ticket to the driver and returned the license and registration to the driver stating,

"Before you leave, let me ask you a few questions." The officer then proceeded to ask the

driver a series of questions, including where he was coming from and where he was

headed. He also asked the driver the name of his passenger and what their relationship was.

As the officer was speaking with the driver, a K-9 officer arrived after a request for backup

was made. The officer who made the traffic stop then began to question the passenger,

Williams. When Williams gave inconsistent answers to that of the driver, these

inconsistencies, along with knowledge of the driver's previous license suspension, led the

officer to request consent to search the vehicle. The officers ultimately found a twenty-five

pound block of marijuana in a suitcase to which Williams had acknowledged ownership. At a pretrial hearing, the officer admitted he did not follow his normal procedure when issuing a traffic citation of returning the driver's license, explaining the ticket, asking the driver if he has any questions, and allowing the driver to then leave. The officer further agreed his only basis for questioning the driver further was the driver's previous license suspension for a drug violation. *Id.* at 595-96, 571 S.E.2d at 705-06.

The trial judge in *State v. Williams* granted the motion to suppress, finding the search was illegal because t

found in Williams' suitcase was discovered through an illegal detention accompanied by a lack of valid consent." *Id.* at 605, 571 S.E.2d at 711.

In the subsequent case of *State v. Jones*, 364 S.C. 51, 610 S.E.2d 846 (Ct. App. 2005), the Court of Appeal

detained beyond the scope of the traffic stop. There, the officer had written and explained the ticket to the driver and had returned his license and registration before he began questioning the driver. The Court further noted in *Williams* that the driver and passenger had been detained between twenty-five and forty minutes as opposed to the officer's normal stop time of nine to eleven minutes, and the officer there did not otherwise follow his normal procedure for a traffic stop. *Id.* at 602, 571 S.E.2d at 709. In *Williams*, the Court held:

> Once a motor vehicle is detained lawfully for a traffic violation, the police may order the driver to e
> 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). However, "[a]ny further detention for questioning is beyond the scope of the [] stop and therefore illegal unless the officer has a reasonable suspicion of a serious crime." Id. (emphasis added); *see Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) (plurality opinion) ("[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the

> purpose of the stop."); *Ferris v. State*, 355 Md. 356, 735 A.2d 491, 499 (1999) ("Once the purpose of [the] stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."). The question, then, is whether [Officer] Blajszczak detained, i.e. "seized" Williams anew, thereby triggering the Fourth Amendment and possibly rendering his consent invalid, or simply initiated a consensual encounter invoking no constitutional scrutiny. *See Ferris*, 735 A.2d at 500 (stating the difficult question was whether the trooper's questioning of Ferris after he issued a citation and returned his driver's license and registration "constituted a detention, and hence raise[d] any Fourth Amendment concerns, or was merely a 'consensual encounter[]' . . . implicating no constitutional overview").

State v. Williams,351 S.C. at 598-99, 571 S.E.2d at 707-08.

In *State v. Jones*, the Court stated there was no question but that the vehicle was detained lawfully for a tra

was no further detention for questioning beyond the scope of the stop in *Jones*. Trooper Elrod did not question Jones and his passengers after he had returned Jones' license and registration. To the contrary, Trooper Elrod had not completed the issuance of the traffic ticket, and the purpose of the original stop had not yet been fulfilled when the other occupant, Patterson, jumped from the car and ran, throwing objects to the ground. Although Jones alluded in his argument to the trial judge that Trooper Elrod essentially extended the stop beyond a reasonable time by going on a "fishing expedition" prior to the issuance of the ticket, the Court noted there was evidence to support the trial judge's determination that the detention was not for an unreasonably long time, the extension of time was attributable to the additional time required in obtaining the car registration, and the questions asked of Jones and the passengers did not exceed the scope of the traffic stop such as would convert the stop into an illegal detention.

The *Jones* Court also found further support for its decision in *Illinois v. Caballes*, 543 U.S. 405 (2005). In

narcotics-detection dog. The first trooper had Caballes in his patrol car and was in the process of writing a warning ticket when the second trooper walked the dog around Caballes' vehicle and the dog alerted at the trunk. A subsequent search of the trunk resulted in the discovery of marijuana. The trial judge, finding the officers had not unnecessarily prolonged the stop, denied a motion to suppress the evidence, and Caballes was convicted of a narcotics offense. The Appellate Court affirmed, but the Illinois Supreme Court reversed the conviction finding the use of the dog unjustifiably enlarged the scope of a routine traffic stop. The U.S. Supreme Court vacated and remanded, noting they "accept[ed] the state court's conclusion that the duration of the stop . . . was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop." *Id.*, 543 U.S. at 408 (emphasis added).

Like *Williams*, the officer in the case *sub judice* had completed his traffic stop and returned the documents

certainly not "ordinary inquiries incident to" the original traffic stop. *Caballes*.

There is **no** question that Petitioner in this case was "seized" within the meaning of the Fourth Amendment

is not 'seized' within the meaning of the Fourth Amendment." *State v. Pichardo*, 367 S.C. 84, 100, 623 S.E.2d 840, 848-849 (Ct. App. 2005). The **undisputed** testimony in this case is that Petitioner did not feel free to leave, and that Colgrove was not going to permit him to leave the scene. Accordingly, this case did **not** involve a consensual encounter.

Even the trial judge below viewed the question as a "close" one before denying Petitioner's motion to supp

Accordingly, this Court should reverse the trial court's denial of Petitioner's motion to suppress the eviden

C. Colgrove was Required to Establish Probable Cause Before Engaging in the Search of Petitioner's Vehicle

Apart from the lack of any evidence upon which to base a finding of an objectively reasonable and articula

suppressed the evidence.

In *Carroll v. United States*, 267 U.S. 132 (1925), the United States Supreme Court established the "automo

requirement, probable cause was nonetheless required:

> [T]hose lawfully within the country, entitled to use the public highways, have a right to free passag

Id. at 154.

Over the course of seventy years, the U.S. Supreme Court has refined the automobile exception in determi

warrant requirement, probable cause is needed to search the car for contraband. *See* *California v. Acevedo*, 500 U.S. 565 (1991); *Pennsylvania v. Labron*, 518 U.S. 938 (1996); *Wyoming v. Houghton*, 526 U.S. 295 (1999); *Maryland v. Dyson*, 527 U.S. 465 (1999). In *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973), the Supreme Court stated:

> [T]he *Carroll* doctrine does not declare a field day for the police in searching automobiles. Automo
>
> requirement for reasonable search permitted by the Constitution."

Id. at 269. The Supreme Court has made explicit the distinction between the justification for an investigatory traffic stop and the search of a car:

> An investigatory stop is permissible under the Fourth Amendment if supported by reasonable suspi

Ornelas-Ledesma v. United States, 517 U.S. 690, 693 (1996).

"Mere suspicion" does not give rise to probable cause. *United States v. Vasey*, 834 F.2d 782, 788 (9th Cir.1

that contraband or evidence of a crime will be found, reasonable suspicion is less demanding and can arise from information that is less reliable than that require to show

probable cause. See *Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 629 S.E.2d 642 (2006) (probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise); *State v. Dupree*, 319 S.C. 454, 462 S.E.2d 279 (1995) (the experience of a police officer is a factor to be considered in the determination of probable cause, but the relevance of the suspect's conduct should be sufficiently articulable that its import can be understood by the average reasonably prudent person); *Carroll v. United States*, 267 U.S. 132, 149 (1925) (holding "the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid.").

In this matter, Colgrove lacked any semblance of probable cause to justify searching the vehicle following

court should have suppressed the contraband subsequently discovered in the vehicle, and the Court of Appeals should have reversed the trial court's failure to do so.

Accordingly, this Court should review the record and conclude there is no evidence to support finding Col

II. The Court of Appeals Erred in Affirming the Trial Court's Denial of Petitioner's Motion Pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966) to Suppress a Statement Petitioner Made to Officers at the Time of His Arrest

Petitioner objected to the admission of an alleged statement he made the Mr. Braggs was paying Petitioner

There is no question that Petitioner was in custody at the time the alleged statement was made. *State v. Roa*

New York v. Quarles, 467 U.S. 649 (1984) (someone who is handcuffed and surrounded by law enforcement is "in custody" for purposes of *Miranda*).

Petitioner asserts that the statement, like the contraband discovered in the car, should have been suppressed

been suppressed. *State v. Pichardo* (where evidence would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality, then under the "fruit of the poisonous tree" doctrine the evidence must be excluded); *State v. Copeland*, 321 S.C. 318, 468 S.E.2d 620 (1996) (same).

Furthermore, although the statement was considered a crucial factor in the arrest of Petitioner, neither of th

Finally, although there was evidence the officers gave Petitioner the warning required by *Miranda*, those w

Accordingly, this Court should hold that the trial court erred in refusing to suppress the statement, and shou

CONCLUSION

For the reasons stated the Court should reverse Petitioner's conviction, and remand the matter with instruct

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May 7, 2009