

No. 19-6696

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2019

BARBARA MYERS-MCNEIL,

Petitioner,

-v-

STATE OF NORTH CAROLINA,

Respondent.

**On Petition for Writ of Certiorari
to the Supreme Court of North Carolina**

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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Petitioner Barbara Myers-McNeil respectfully files this Reply to Respondent's Brief in Opposition, addressing the State's position that Ms. Myers-McNeil's case is not a good vehicle for review.

INTRODUCTION

The State does not contest the underlying merits of Ms. Myers-McNeil's petition for writ of certiorari. Specifically, the State does not contest that this case presents an important issue of federal law on which North Carolina courts have passed but this Court has not, and that is currently pending in this Court in *Kansas v. Glover*, No. 18-556 (argued November 4, 2019).

Instead, the State attempts to portray Ms. Myers-McNeil's case as a procedurally confusing one. Fortunately, the procedural hurdles the State raises are illusory. Ms. Myers-McNeil argued in her pretrial motion to suppress that officers lacked probable cause to stop her. (ROA Add. 2) The trial court denied the motion to suppress (Tp 29), and the Court of Appeals agreed the officers had probable cause to stop Ms. Myers-McNeil under existing North Carolina law. *State v. McNeil*, 822 S.E.2d 317, 322 (N.C. Ct. App. 2018) (quoting *State v. Hess*, 185 N.C. App. 530, 534, 648 S.E.2d 913, 917 (2007)). In the North Carolina Supreme Court Ms. Myers-McNeil challenged that North Carolina precedent and the Court of Appeals' conclusion officers had probable cause to stop Ms. Myers-McNeil, squarely presenting the issue in her amended petition for discretionary review. (Am. Pet. for Discretionary Review 15-18)¹ Accordingly, the North Carolina courts had sufficient opportunity to reconsider established state law concluding it is not a Fourth Amendment violation to stop a motorist based solely on the fact the vehicle is registered to someone whose license has been suspended.

¹ Ms. Myers-McNeil's Amended Petition for Discretionary Review is available at https://www.ncappellatecourts.org/show-file.php?document_id=245825.

ARGUMENT

In support of its argument that Ms. Myers-McNeil's Fourth Amendment claim regarding lack of reasonable suspicion was not properly presented to the North Carolina State courts, the State cites a number of factually incomparable cases. For example, the State cites *Howell v. Mississippi* for the proposition that this Court will not consider a "federal-law challenge to a state-court decision unless the federal claim was either addressed by or properly presented to the state court that rendered the decision [this Court has] been asked to review." (BIO 1 (quoting 543 U.S. 440, 443 (2005))). Similarly, the State cites *Bd. of Dirs. Of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1987), *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969), and *Edelman v. California*, 344 U.S. 357, 358 (1953), for the proposition that an argument must be "adequately presented in the state system," *Rotary Int'l*, 481 U.S. at 550, before this Court will grant review. (BIO 6) Those cases, while supportive of the legal proposition cited, are inapplicable to the facts here.

Unlike the parties in the cases cited by the State, Ms. Myers-McNeil properly presented her reasonable suspicion claim in the state court system, including in the trial court in the first instance. (ROA Add. 2) Indeed, the State acknowledges Ms. Myers-McNeil raised the issue in her pretrial motion to suppress and in her properly amended petition for discretionary review, filed in the North Carolina Supreme Court. (BIO 3, 8) *Contrast Howell v. Mississippi*, 543 U.S. at 441 (lesser

included jury instruction issue not presented to Supreme Court of Mississippi); *Rotary Int'l*, 481 U.S. at 549-50 (constitutional issue not raised until petition for reconsideration in the intermediary appellate court); *Cardinale v. Louisiana*, 394 U.S. at 438 (federal question never raised in any state court); *Edelman v. California*, 344 U.S. at 358 (void for vagueness claim not raised at trial as required by state law).

First, in her pretrial motion to suppress, Ms. Myers-McNeil argued the evidence was “inadequate to support a finding that [the officers] had reasonable suspicion to stop the Defendant,” and “[t]herefore, the Defendant’s detention violated her rights under the Fourth Amendment of the United States Constitution.” (ROA Add. 2) At the suppression hearing, an officer testified the fact the vehicle owner’s license was suspended was the sole reason Ms. Myers-McNeil was stopped. (Tp 20) During post-testimony arguments at the suppression hearing, the State argued “the case law is clear in North Carolina about stopping a person who when officers run the plate and find out the owner of that vehicle is suspended, they’re able to stop that vehicle.” (Tp 22-23) The State then cited *Hess*, 185 N.C. App. 530, 648 S.E.2d 913. (Tp 23) In response, defense counsel acknowledged that existing case law, namely *Hess*, says the officers had reasonable suspicion to stop Ms. Myers-McNeil. (Tp 25) After the parties’ argument, the trial court summarily denied the motion to suppress. (Tp 29)

On appeal, the Court of Appeals reaffirmed its binding precedent on the owner-is-driver presumption: “We have held that ‘when a police officer becomes aware that a vehicle being operated is registered to an owner with a suspended or revoked driver's license . . . reasonable suspicion exists to warrant an investigatory stop.’” *State v. McNeil*, 822 S.E.2d 317, 322 (N.C. Ct. App. 2018) (quoting *Hess*, 185 N.C. App. at 534, 648 S.E.2d at 917). As the Court of Appeals indicated, it had previously considered the same issue in *Hess*, where the issue was fully litigated and resolved by the court in the State’s favor. *See Hess*, 185 N.C. App. at 534-35, 648 S.E.2d at 917. In Ms. Myers-McNeil’s case, the Court of Appeals was bound by its own prior precedent. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (“Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.”).

Finally, as the State concedes, Ms. Myers-McNeil presented this issue to the North Carolina Supreme Court (BIO 8), the only court in the State with the power to change established law and reject the owner-is-driver reasonable suspicion presumption adopted in *Hess*. In *State v. Hess*, the North Carolina Supreme Court granted discretionary review, 362 N.C. 90, 656 S.E.2d 593 (2007), received briefing, heard oral argument, and then dismissed the appeal as improvidently granted, 362

N.C. 283, 658 S.E.2d 657 (2008).² In Ms. Myers-McNeil’s case, the North Carolina Supreme Court simply declined discretionary review when it was again squarely presented with the Fourth Amendment owner-is-driver presumption issue. The North Carolina Supreme Court had in this case, as well as in *Hess*, an adequate opportunity to address the issue and chose not to do so for one indeterminate reason of many possible reasons. *See* N.C.G.S. § 7A-31(c) (describing broad categories of cases in which the North Carolina Supreme *may* grant discretionary review); *accord* *Brown v. Allen*, 344 U.S. 443, 492 (1953) (“[A] denial of certiorari means only that, for one reason or another which is seldom disclosed . . . there were not four members of the Court who thought the case should be heard.”) Under these circumstances, review by this Court is wholly appropriate. *See* 28 U.S.C. § 1257; Sup. Ct. R. 10(c);

Despite the State’s efforts to sow procedural complexity into this case, there is none. North Carolina’s owner-is-driver presumption has been settled state law for more than a decade. As discussed in Ms. Myers-McNeil’s Petition, North Carolina has reached the wrong conclusion on this important issue of federal law. The isolated fact that a car being driven on the road is owned by a driver with a

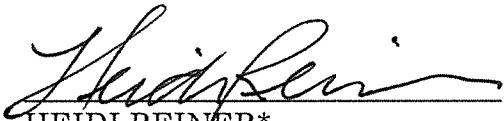
² The docket sheet in *State v. Hess*, N.C. Sup. Ct. Case No. 465PA07, is available at <http://appellate.nccourts.org/dockets.php?court=1&docket=1-2007-0465-001&pdf=1&a=0&dev=1>. Other *Hess* case documents are available at <https://www.ncappellatecourts.org/search-results.php?sDocketSearch=465PA07&exact=1>.

suspended license does not establish reasonable suspicion that the driver of that car is engaged in illegal activity. *But see McNeil*, 822 S.E.2d at 322 (holding the opposite); *Hess*, 185 N.C. App. at 534, 648 S.E.2d at 917 (same). Ms. Myers-McNeil respectfully requests that this Court grant certiorari to determine whether the Fourth Amendment guarantee against unreasonable searches and seizures forbids the type of bright-line rule adopted by North Carolina in *Hess* and applied in this case.

CONCLUSION

For the reasons set forth in this Reply and in her Petition for Writ of Certiorari, this Court should grant certiorari to hear Ms. Myers-McNeil's case.

Respectfully submitted, this the 20th day of February, 2020.



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