IN THE

Supreme Court of Virginia

RECORD NO. 090979

RUSSELL MAURICE JONES,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

REPLY BRIEF OF APPELLANT

Cassandra M. Hausrath (VSB No. 74975)
Assistant Public Defender
OFFICE OF THE PUBLIC DEFENDER
701 East Franklin Street, Suite 600
Richmond, Virginia 23219
(804) 225-4330
(804) 371-4908 (Fax)
chausrath@idc.virginia.gov

Counsel for Appellant

LANTAGNE LEGAL PRINTING 801 East Main Street Suite 100 Richmond, Virginia 23219 (804) 644-0477
A Division of Lantagne Duplicating Services

TABLE OF CONTENTS

PAGE NUMBER

TABLE OF AUTHORITIES iii

REPLY ARGUMENT 1

CONCLUSION 5

CERTIFICATE 6

TABLE OF AUTHORITIES

CASES

PAGE NUMBER

Jones v. Commonwealth, Record No. 0968-08-2
(Va. Ct. App. Apr. 21, 2009) (unpublished) 3

Malbrough v. Commonwealth, 275 Va. 163,
655 S.E.2d 1 (2008) 3

Terry v. Ohio, 392 U.S. 1 (1968) 2

IN THE

SUPREME COURT OF VIRGINIA

RECORD NO. 090979

RUSSELL MAURICE JONES,

Appellant,

VS.

COMMONWEALTH OF VIRGINIA,

Appellee.

REPLY ARGUMENT

State Action

The Commonwealth argues that the question of state action is not properly before the Court because the trial court stated that it was not reaching that issue. (Commonwealth's Br. 7, citing J.A. 105). That contention disregards the procedural history of the case. As Jones noted in the Opening Brief, the trial court initially denied the motion to suppress, in part, because it found that the "officers were engaged in [a] private off-duty capacity." (J.A. 92). The court's later ruling, on rehearing of the motion to

suppress, did not expressly overrule that finding; rather, the trial court bypassed consideration of the issue and held only that the encounter was consensual. (J.A. 106). The original ruling, finding no state action, is therefore still part of the record.

More importantly, that finding, as well as the reasoning used by the Court of Appeals and the arguments of the Commonwealth, all implicitly rely on a Fourth Amendment analysis, considering the deputies as state actors. First, at the initial hearing on the motion to suppress, the trial court noted that the deputies "asked for ID, which they are allowed to do" as law enforcement officers. (J.A. 91). The court then analyzed the scope of the intrusion when the deputies took Jones to the rental office, finding that it was a "[v]ery limited intrusion time-wise," (J.A. 92), relying on Fourth Amendment jurisprudence governing police-citizen interactions. *See, e.g.*, *Terry v. Ohio*, 392 U.S. 1 (1968). Finally, the trial court reiterated that the deputies ran a record check and verified Jones's information, both of which involved state action considerably beyond the reach of private citizens.[1] (J.A. 92). The court's finding that the deputies were not state actors

[1] At both the initial motion to suppress and on rehearing, the trial court stated that there was a warrant out for Jones's arrest, implying that his arrest related to that warrant. (J.A. 92, 106). This statement is in error; Deputy Feighner testified that there were no warrants for Jones. (J.A. 67). Jones was arrested solely for driving as a habitual offender.

throughout that encounter therefore belied the very analysis the court had just conducted.

The trial court's findings upon rehearing of the motion to suppress were similarly founded in Fourth Amendment law. (J.A. 105–06). There, the court reviewed the "suspicious" circumstances that led to the deputies approaching Jones, noting that there was "some activity . . . as far as drinking and drugs" that contributed to the deputies' detention of Jones. (J.A. 105). Those circumstances have no bearing on the enforcement of a no-trespassing policy, but are relevant to a determination of a law enforcement officer's reasonable suspicion.[2]

Similarly, the Court of Appeals began its analysis by reciting the familiar Fourth Amendment standard, that "[p]olice officers are free to engage in consensual encounters with citizens." *Jones v. Commonwealth*, Record No. 0968-08-2 (Va. Ct. App. Apr. 21, 2009) (slip op. 3) (citing *Malbrough v. Commonwealth*, 275 Va. 163, 169, 655 S.E.2d 1, 4 (2008).

---

[2] The trial court also stated that the deputies took Jones to the rental office to "check[] the list of those barred and giv[e Jones] a notice" of his barment, and that "[t]hat was all the action that they intended to take." (J.A. 106). This statement directly contravenes Deputy Feighner's testimony that while Deputy Mannes processed the paperwork to bar Jones from the property, Feighner himself contacted the Richmond Sheriff's Office to determine if Jones had any warrants and to check his DMV record. (J.A. 67–68). Obviously if the deputies reached out to their state employer to obtain this information, it was because they intended to do so, and the trial court erred in finding otherwise.

The entire reasoning relied on by the Court of Appeals assumed, as the trial court did, that the deputies were state actors.

Finally, the Commonwealth's arguments are based firmly in the Fourth Amendment. For example, in its brief, the Commonwealth begins its recitation of "Applicable Law" by describing "three categories of *police*-citizen confrontations." (Commonwealth's Br. 9) (emphasis added). Jones asks that this Court explicitly find that Deputies Mannes and Feighner were acting in their official law enforcement capacity when they seized Jones, so that the Fourth Amendment analysis can be squarely addressed.

Jones's Seizure

The Commonwealth states that Jones "contends he was unlawfully seized from the outset of the encounter." (Commonwealth's Br. 7). Jones does not argue that his seizure began when he was first approached; rather, it was the deputies' instruction to Jones to accompany them to the rental office that marked the beginning of the seizure. (*See* Opening Br. 11). The Commonwealth argues that the encounter was consensual, or alternatively, that the deputies had reasonable articulable suspicion to justify detaining Jones. These arguments both fail as argued in the Opening Brief of Appellant.

CONCLUSION

For the foregoing reasons, Appellant respectfully prays that the trial court's denial of his motion to suppress, along with his conviction, be reversed.

Respectfully submitted,
Russell Maurice Jones

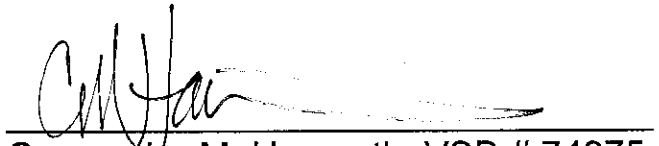
By _____
Counsel for Appellant

Cassandra M. Hausrath, VSB # 74975
Assistant Public Defender
Appellate Counsel for Russell Maurice Jones
Office of the Public Defender
701 East Franklin Street—6th Floor
Richmond, Virginia 23219
Telephone: (804) 225-4330
Facsimile: (804) 371-4908
Email: chausrath@idc.virginia.gov

CERTIFICATE

Counsel for the Appellant certifies as true the following information:

a. The Appellant is **Russell Maurice Jones**; the Appellee is the Commonwealth of Virginia; appellate counsel for the Appellant is Cassandra M. Hausrath, Assistant Public Defender, Richmond Public Defender's Office;
b. Counsel for the Appellant was appointed by Order of the Circuit Court of the City of Richmond;
c. Counsel submits Appellant's case on his Reply Brief with a request for oral presentation;
d. On this 11th day of December, 2009, a copy of this Reply Brief was mailed to the Appellant and three true copies were mailed to Leah A. Darron, Esq., Senior Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, VA 23219 (804) 786-2071 and an electronic copy was sent in PDF format by email to the Clerk of the Supreme Court of Virginia;
e. Rule 5:26(d) of the Rules of the Supreme Court of Virginia has been complied with.



Cassandra M. Hausrath, VSB # 74975
Assistant Public Defender
Appellate Counsel for Russell Maurice Jones
Office of the Public Defender
701 East Franklin Street—6th Floor
Richmond, Virginia 23219
Telephone: (804) 225-4330
Facsimile: (804) 371-4908
Email: chausrath@idc.virginia.gov