

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**S.C. SUPREME COURT**

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APPEAL FROM CHESTERFIELD COUNTY  
Court of General Sessions

The Honorable Paul M. Burch, Circuit Court Judge

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Appellate Case No. 2019-001274

JAMES DAVID BUSBY.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether the trial court erred in not suppressing evidence found during the search of Busby's truck, nor the admission of other items that were obtained based on that search, because Chesterfield County's search violated Busby's rights under the Fourth Amendment and the South Carolina Constitution, Article I, §10.

## STATEMENT OF THE CASE

James David Busby, Petitioner, was indicted by the Chesterfield County grand jury for murder, armed robbery, and possession of a weapon during the commission of a violent crime. 2018-GS-13-00408, -409, and -410. He was tried before the Honorable Paul M. Burch and a jury between July 15-19, 2019. The State was represented by Mary Thomas Johnson-Lee and Kenard E. Redmond. Petitioner was represented by Tonya Copeland-Little.

Petitioner was convicted of voluntary manslaughter, armed robbery, and possession of a weapon during the commission of a violent crime. He was sentenced to 30 years for voluntary manslaughter. He was sentenced to a consecutive 15 years for armed robbery, and another consecutive 5-year sentence for the weapons charge.

Petitioner timely filed his appeal which was denied by the South Carolina Court of Appeals by an unpublished opinion on June 8, 2022. *State v. James David Busby*, No. 2022-UP-239. Petitioner then filed a petition for rehearing on June 9, 2022 which was denied on June 22, 2022.

This petition for a writ of certiorari timely follows.

## RELEVANT FACTS

Petitioner was convicted of voluntary manslaughter in the death of Mickey Short, a drug user, with whom he had a dispute regarding Short's alleged purchase of a shotgun from him. Apparently Short paid Petitioner for the gun but did not receive it. App. 79, 196, 354. In the late hours of June 18, 2017, in rural Chesterfield County, Short was shot in the face with buckshot and died. When first responders arrived, it appeared that someone had rifled through Short's pockets. App. 259. No drugs or money were located at the incident location. Tire tracks which appeared to law enforcement to be consistent with the tires on Petitioner's truck were present. The State's expert, however, testified those tires were mass produced and that she did not detect any random characteristics or wear patterns. App. 252. According to one witness—also a heavy drug abuser—Ppetitioner indicated he shot Short after Short attacked him with a machete.

During what the court concluded was a “consensual” search of Petitioner's truck, law enforcement located items belonging to Short inside a cowboy boot located in the truck. Once these items were recovered, law enforcement obtained a search warrant. App. 200.

On June 21, 2017, Petitioner gave his first statement to law enforcement after he was arrested on an outstanding warrant from another jurisdiction. He had been up for days because he had been ingesting crystal methamphetamine. He spoke to law enforcement again on June 22, 2017. During both encounters, Petitioner denied responsibility for the death of Short. During his second statement, he indicated that

another person committed the murder. Petitioner did, however, indicate to law enforcement that he knew where the murder weapon, and some items from the scene, were located. The State's expert however, testified that she was unable to tell what firearm fired the buckshot that killed Short. App. 275.

Petitioner took law enforcement to Lake Terry where a Department of Natural Resources (DNR) dive team recovered items relating to the crime from the bottom of the lake. App. 286. Later, the State obtained a buccal swab from Petitioner. App. 225- 234. With the DNA, the State was able to show that Short's DNA was located on a Maglite found in Petitioner's car and on a pair of blue jeans that belonged to Petitioner. Petitioner's DNA was found in the interior waistband of those jeans.

In its case-in-chief, the State also heavily relied on cell phone data to show that Kenneth Parker, who Petitioner claimed actually shot Short, was not in the area when Short was killed. That data also showed that Petitioner and Short had been in communication shortly before Short's death. The State also introduced evidence tending to show that Petitioner tried to convince others that he had not been with Short that evening. App. 345.

The defense presented a witness who testified that about a week before Short was killed, Petitioner, in an act of kindness, assisted Short when he was injured due to an accident with a horse. App. 488.

## ARGUMENT

The trial court erred in not suppressing evidence found during the search of Petitioner's truck, nor the admission of other items that were obtained based on that search, because Chesterfield County's search violated Petitioner's rights under the Fourth Amendment and the South Carolina Constitution, Article I, §10.

The State, lacking probable cause to search Petitioner's truck, improperly enlisted the help of a neighboring jurisdiction to manufacture Petitioner's "consent to search" during which law enforcement located items connecting Petitioner to Short's death. Prior to the start of trial, the trial court held a suppression hearing.

The State called Jason Catoe of the Lancaster County Sheriff's Office. Catoe testified that he received a call from Wayne Jordan of the Chesterfield County Sheriff's Office, asking about Petitioner. App. 65. Catoe told Jordan that Lancaster County was investigating Petitioner for a robbery and stolen pistol. Importantly, Lancaster County *had already retrieved the stolen pistol at the time of this conversation*. App. 66. Jordan asked Catoe to get a warrant on Catoe's charges in Lancaster County. At the time of this request, Catoe had not already received approval to obtain a warrant. App. 66. After its discussions with Chesterfield County, Lancaster County then obtained warrants for breach of trust, obtaining goods under false pretenses, and receiving stolen goods. App. 70. Jordan, with Chesterfield County, did not receive copies of the warrants. App. 70.

With Lancaster County's warrants issued, Jordan located Petitioner at Nicole Deese's house. App. 75. Jordan told Petitioner that he had warrant for him from Lancaster County and that he needed the pistol. He told Petitioner that he needed to

search Petitioner's truck to search for the pistol, even though Jordan knew he would not locate the pistol in the truck since it was already in police custody. App. 76. Petitioner consented to that limited search. App. 76. According to Jordan's testimony, Petitioner gave him the keys to his car. Then Petitioner was handcuffed. Sergeant Burns and Jordan then searched Petitioner's truck and found the victim's identification cards located inside of a cowboy boot. App. 76. Law enforcement then secured Petitioner's truck and took it to the police station. App. 77. Jordan admitted during trial that he has been denied a search warrant before. App. 84. Jordan's search of Petitioner's truck was improper because it was not based on probable cause and because it exceeded the limited scope of Petitioner's consent (which was improperly obtained because the pistol Jordan claimed he needed to search for was already in the possession of Lancaster County).

The fruit of the poisonous tree doctrine holds that 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, the evidence must be excluded. *State v. Plath*, 277 S.C. 126, 284 S.E.2d 221 (1981); see *Wong Sun v. United States*, 371 U.S. 471 (1963).

Consent to search, by itself, is not sufficient to purge the taint of a previous unlawful search or seizure. "When a consensual search is preceded by a Fourth Amendment violation, ... the government must prove not only the voluntariness of the consent under the totality of the circumstances, but the government must also 'establish a break in the causal connection between the illegality and the evidence

thereby obtained.” *United States v. Melendez-Garcia*, 28 F. 3d 1046, 1053 (10<sup>th</sup> Cir. 1994) (citation and footnote omitted); see *State v. Robinson*, 306 S.C. 399, 412 S.E.2d 411 (1991) (holding consent to search procured during unlawful stop invalid unless State proves consent is voluntary and that sufficient attenuating circumstances remove taint of unlawful stop so that search is not an exploitation of unlawful stop). See also *State v. Greene*, 330 S.C. 551, 499 S.E.2d 817 (Ct. App. 1997).

Petitioner did not provide voluntary consent to Jordan to search his car. As Jordan testified:

We knock on the door. Nicole Deese answers the door and we ask her if Mr. Busby is in the residence. She said he is. She pointed to—she said he was in the back bedroom.

I walked through the hall, went through the living room, down the hall, and I met Mr. Busby face-to-face in the back bedroom and told him—I said—I asked him who he was. He said his name was David Busby. I said, man, you’ve got a warrant out on you out of Lancaster County. Where’s the pistol? He said I don’t have a pistol. **I said, man, I need to search your car for a pistol.** He said, okay, no problem, I don’t have a pistol.

App. 75-76 (emphasis added).

Petitioner was then handcuffed while his car was searched. App. 76. The State did not provide any evidence Petitioner signed a waiver. Petitioner clearly only “consented” to Jordan’s search of his car for the pistol because Jordan told him he had an arrest warrant out for him.

Jordan continued to describe the encounter:

**I said I need to search your truck for the pistol.** He said, okay, I don’t have a pistol in my truck. **I said, well, I need to search it.** He said okay. I said where’s your keys, because we saw—we knew the vehicle was locked because you can see where the vehicle was locked. He said they

were in his pocket. I said I need your keys. He reached in his pants pocket and handed me his keys. When I had them in my possession, I handcuffed him.

App. 77, ll. 13-20.

Jordan then testified that, had Petitioner denied him consent to search the car, he would have “obtained a search warrant for the vehicle for the tires...”

Those tires were very—they were very unique. I say unique because they were a mud grip tire. They were a big tire. They wasn’t a standard street tire. They had mud grips to them, and that it very similar, very, very close in similarity to what we found on our scene.

App. 78, ll. 14-18.

Okay. So if he had not given you consent to search or said no, you are not searching the vehicle, you would have gotten a search warrant, towed it, based on the fact that the tires appeared similar to the tracks at the scene?

That is correct. If he would have told us no at the onset, we would seize—we were going to seize the vehicle. **That was our intent going there, seizing the vehicle for the tire impressions.**

App. 78, l. 19- App. 79, l. 1.

First of all, Jordan did not seek consent to search Petitioner’s truck so much as informed him that *he was going to search it* to find the pistol that was then sitting in an evidence locker in Lancaster County. Jordan then implicitly threatened to arrest Petitioner on the Lancaster warrant. Petitioner was then immediately placed in handcuffs after Jordan told him he needed to search the truck and Petitioner handed him his keys. Petitioner was not informed of his right to refuse consent. *Cf. State v. Adams*, 337 S.C. 334, 659 S.E.2d 272 (Ct. App. 2008) (defendant found to have voluntarily consented when defendant asked officer if he could refuse consent

and officer told him he could). It was error for the trial court to find that Petitioner voluntarily consented to the search of his truck.

Additionally, Jordan's testimony during the suppression hearing does not make sense. If Jordan had believed the tire impressions were such strong evidence against Petitioner for murder, then why did he reach out to another jurisdiction to have Lancaster County swear out warrants against *his* suspect? In other words, if he was so confident in his case, why did not appear before a magistrate judge and obtain his own warrant for murder? The fact that Jordan knew the tire impressions did not constitute probable cause for a search warrant is underscored by the State's expert witness who testified during the State's case-in-chief that the tires on Petitioner's truck were mass produced and that she could not conclude, based on those tracks, that Petitioner's truck was the source of the tracks found at the scene. The tire tracks would not have constituted probable cause for a search warrant, as Jordan must have known, and Jordan's actions were calculated to evade his responsibility for complying with the warrant requirement and Petitioner's Fourth Amendment rights.

It is further proof of Jordan's search of Petitioner's truck was a sham that his pretext—to search for the stolen pistol—was rendered null by the fact that Lancaster County *already had the pistol in their custody*. Jordan certainly was not going to find any evidence of that “stolen pistol” in Petitioner's car since it was, at the time of the search, located in Lancaster County, most likely in an evidence locker.

Law enforcement's actions in this case were an egregious violation of Petitioner's rights to be free from unreasonable searches and seizures. Chesterfield County, unwilling to obtain its own warrant because it lacked probable cause to search Petitioner's truck, had a neighboring jurisdiction obtain warrants in its jurisdiction solely to assist Chesterfield County. Chesterfield County then coerced Petitioner into "consenting" by threatening to arrest him on a stolen pistol charge when that pistol had already been recovered and was in Lancaster County's custody. Chesterfield County searched Petitioner's truck without probable cause and without valid consent in violation of Petitioner's rights under the federal and state constitutions. U.S.C. Amend. IV; S.C. Constitution, Article I, §10. This Court should find the search was invalid and suppress the fruits of the poisonous tree. *United States v. Najjar*, 300 F.3d 466 (4<sup>th</sup> Cir. 2002); *Wong Son v. United States*, 371 U.S. 471, 484-85 (1963) (Generally, evidence derived from an illegal search or arrest is deemed fruit of the poisonous tree and is inadmissible.").

## CONCLUSION

This Court should grant the writ.

Respectfully submitted,

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