

Pg 1

Petitioner Jonathan M Brown
Pro Se brief For Writ of Certiorari
CASE NO: 2022-001561

The Petitioner wishes to inform the Court that the transcripts from the pretrial hearing to admit out-of-court statements made by the minor children "Forensic interviews" are for some reason not included in the transcripts received from CJD counsel Wanda Carter. These transcripts are referred to in this brief.

The pretrial hearing was held in Dorchester County in front of the Honorable Maite Murphy on 3-4 June 2014. Ruth Mott was the court reporter.

At the pretrial hearing the defendants appointed counsel John Loy raised the issue of warrantless seizure of defendants cell phone during the arrest. Judge Murphy ruled in favor of the state allowing the phone and evidence alleged to come from it into evidence.

RECEIVED

MAY 24 2023

S.C. SUPREME COURT

Pg 2

I. Officer Jason Mosher, who was the lead investigating officer in this case. Committed Perjury before the Court regarding the seizure of the defendant's cell phone during the Arrest on 28 July 2013.

ON Pg 101 L 7 - Pg 102 L 1 of the Pretrial transcripts Mr. Loy states Pg 101 L 10 "... And that law enforcement who have indicated that they knew of this phone, they knew of its potential importance in their investigation (See Pg 84 L 3-15 of Pretrial transcripts). Loy continues Pg 101 L 15-19 of Pretrial transcripts referring to Law Enforcement "... Saw the phone there on the table and said "that's it Get it" And this makes all the sense in the world that it would have transpired that way, and that's his [Brown's] representation as far as what happened in the house that day. (see Brown's testimony Pg 71 L 19 - Pg 74 L 4) Brown continues Pg 74 L 6-20 Pretrial transcripts. "But he began to ask me where my cell phone was... I motioned on the back of the fish tank where my phone was. About three or four feet away from us and he stepped over and grabbed it and Detective Mosher identified or indicated at that point that that was the phone that they were, that the alleged victim described or whatever" Loy questioned

"That's the phone he was looking for" Brown answered "yes"^{Pg 3}

Pg 74 L16-20 pretrial transcripts Brown testifies that he did not know who exactly but one of the officers took possession of the phone at that time.

Pg 75 L1-11 pretrial transcripts LoY asked Brown "Did anyone ask you for permission to search your home"

Brown answered "NO SIR" LoY asked "Did anyone ask for permission to take custody of any of your property." Brown answered "No sir they did not"

LoY asked "Did they say, you know is it ok if we take this phone, we need to look at this phone any thing of that ilk" Brown answered L8 "He did ask me somebody did ask me if they could take the phone and before I could answer Sergeant Masher said well that is the phone in question were talking, it"

On Pg 80 L13-16 pretrial transcripts, Masher testified "Myself and sergeant Jones knocked on the front door Mr Brown answered the door, and I asked him, I identified who I was and that, if he could step out so we could speak with him. At that time he asked if we could step inside" L 23-25 Masher continued "At the time we walked inside the residence after he invited us in he was eating something at that time"

I thought it was like a sandwich, but he also ^{Pg 4}
had a phone in his hand." Mosher continued ^{Pg 81}
L9-13 pretrial transcripts "so I did ask him if
he wanted to take his cell phone and keys with
him. At that point he said Yes. He had his wallet
on him. So we collected the cell phone and keys
off the computer stand and took it at his request
We left the residence" On ^{Pg 89} L19-22 pretrial
transcripts Mosher was being cross examined by Mr. LOY
LOY asked "And what did you do with the phone when
you went back to the station" Mosher answered "We
went back, and the phone was at that point in time
seized"

On ^{Pg 106} L12-25 pretrial transcripts. Judge
Murphy denied Mr. LOY's motion to suppress the phone
and any evidence alleged to come from it. Claiming
"Certainly a warrantless search is Per Se
unreasonable, unless it falls within an exception to the
exclusionary rule. I do find the state has met its
burden in proving that there was proper consent
The officer testified that the phone was in his
hand the defendant consented to bring the telephone
with him to the Police department"

B5

Judge Murphy continues L24-25 "Certainly it was reasonable for them to seize the phone once at the Police department"

Argument

Judge Murphy chose to believe Officer Mosher that Brown consented to him taking the phone and that Brown had the phone in his hand. Mosher testified Pg 80 L13-14 pretrial transcripts "Myself and Sergeant Jones knocked on the door. Mr. Brown answered the door" Mosher continued L24-25 he [Brown] was eating something. At that time I thought it was like a sandwich, but he also had a phone in his hand" SO with a phone in one hand and a sandwich in the other. How does Brown open the door?

This is obviously a lie by Mosher attempting to place the phone as incident to arrest. Pg 81 L9-13 pretrial transcripts Mosher testified that Brown's keys and wallet went to jail with him.

The Property Form from the Jail (A copy has been provided for the court) shows Brown's Property as 1, SCDL, 1 shirt gray, 1 shirt tan, 1 visor Camo No wallet or keys. Showing Mosher lied

Pg 6

Finally OFFICER Masher own written report from the Arrest on Pg 4 of 7 marked with a X. Masher stated "Due to the statements made by Abigail that Jon utilized his cell phone to take pictures of her genitalia the phone was seized from Jonathan Brown during the Arrest." This proves that OFFICER Masher knowing and willing committed perjury to the Court. The phone was seized from Brown "during the Arrest" inside his living room without a warrant Not when they got back to the station. Brown never consented to the OFFICERS taking his phone. The phone was seized without a warrant and is inadmissible.

Masher's report, the Property Form from the Jail were in the rule 5 Mr Loy should have been familiar with those and should have challenged these False statements

Further more Mr Loy, cross examination of Masher Pg 84 L3-15 pre trial transcript Loy questioned Masher "After meeting with the children... what I'm saying is you became aware of the allegations that had been made against Mr Brown" Masher answered that's correct. Mr Loy continued L8

P37

"And you became aware of the allegations that a cell phone would produce evidence of these crimes" Mosher answered L10 "That's correct" Mr LoY continued "And while you were in possession of this information you went, not prior to making contact with Mr Brown you went back to the Summerville Police Department and prepared warrants" Mosher answered L15 "That's correct" After some questions to Mosher regarding his experience and knowledge of the warrant procedures P384 L16 - P386 L10 pretrial transcripts. Mr LoY asked Mosher P386 L11 "Now when you went back to the court house or the police department, and I understand you all work in close proximity and you prepared the affidavit for the arrest of Mr Brown which did you not also prepare a search warrant?" Mosher answered L15 "Well at that point in time I felt that the apprehension of the subject was more important than obtaining that particular cell phone at that particular moment" Mosher continued L 20 - 22 "The importance of the cell phone was definitely in fact there, but his custody was more important to me at that time"

Pg 8

Sergeant Jones who was not at the Pretrial testified at the trial 14-17 July 2014 on Pg 129 L16-21 of the trial transcripts

Jones testified "Sergeant Mosher contacted me and advised me that they were going to get a warrant for Jonathan Brown for his arrest. He advised me that - he gave me a description of Mr Brown a physical description and advised me that he should be the only one at home. At that point, I went over to the subdivision, and sat down the street from the residence. On cross examination by Mr Loy Pg 132 L23-25 of the trial transcripts Mr Loy questioned Jones "Approximately how long did you sit up the road" Jones answered "I would imagine close to an hour I would think" Pg 133 L1-15 of trial transcripts Jones testifies that Brown is in and out around the house Mr Loy questioned Jones "I mean nothing terribly nefarious that just jumped out at you that you felt like you needed to intervene at that point?" Jones answered L 20 "NO SIR"

Argument

Officer Masher testified to having prior knowledge of the cell phone and that he felt it important to the case. While he was preparing and obtaining the two arrest warrants for Mr. Brown, Sergeant Jones testified at the trial that he was down the road watching Mr. Brown. Had Brown attempted to leave Jones would have stopped him. So sergeant Masher's haste to arrest Brown is really of no worry compared to the time it would have taken to get another warrant for the cell phone. Officer had prior knowledge of the phone intended to seize it. Had time and opportunity to obtain a warrant. Chose not to then seized the phone ANY way. This is a direct violation of UNITED STATES Code Annotated Constitution Amendment 4 NOTE 1566 Inconvenience or delay? Where Police know in advance the location of evidence and intend to seize it Requirement of warrant to seize imposes NO inconvenience, or at least none which is constitutionally Conizable

Also Note 3171 Exigency caused by officer. ^{Pg 10} If
Police had Probable Cause to believe they would find
evidence or contraband before making seizure they
had opportunity to obtain warrant and any exigency
which results was of their own making and could not
serve as ground for warrantless seizure of such
evidence or contraband. Mr. Loi seemed to lay
the ground work to make this claim but never did
Even if you chose to believe Mosher that Brown
consented to him bringing the phone to the station
it was still a warrantless seizure once at the
station. As it was the officer took possession of
the phone inside of Mr. Brown's house therefore
the seizure took place there. The phone was
illegally seized and is inadmissible.

II. Petitioner wishes to bring to the court an issue
of wrongful seizure of the cell phone during his
arrest on 28 July 2013

Officer Mosher met with Abigail Stimler referred
to as (Minor 2) in the transcripts. On Pg 2 of 7 of
Mosher's written report (a copy has been provided for the court)

Abigail Stimler referred to as (Minor^{cc}) in the ^{Pg 11} transcripts described the phone as being multi-colored on the back. She initially told officer Jordan they "were inside the living room with the lights off inside the residence." A copy of PFC Jordan's written statement Pg 3 of 5 has been provided for the court.

Argument

Abigail described the phone as being multi-colored. The phone seized from Brown during his arrest was black and would not be seen as multi-colored in the dark room. It is therefore a wrongful seizure and should not have been allowed into evidence.

III. Petitioner wishes to bring to the court the issue of evidence tampering by Summerville PD Detective Rick Gebhardt.

On Pg 1 of 2 of Gebhardt's written statement (a copy has been provided to the court) Gebhardt claimed that he placed the phone into airplane mode to prevent any data from going to or coming from the device.

Pg 12

On Pg 2 of Gebhardt's written statement. (a copy has been provided for the court) Gebhardt describes having to "Allow installation of Non-market APPs" to the phone. Those APPs would have had to be downloaded to the phone. The phone would have had to be taken out of airplane mode. Opening the phone to ANY other manipulations or images/data to be sent to/placed on the phone at that time. The images the detective has alleged to come from the phone have no date or time stamp. The phone itself was not used at the trial instead a "CD" alleged to contain the phone's information. There is no telling when these images were made, who made them, or even if they were taken with this phone or even by the dependent As Lindsey Brown (minor 1) who was alleged to be the primary subject in these images did not testify to ANY abuse or sexual battery it is only an assumption that it is Mr Brown in these images. These images should not have been allowed at the trial.

Pg 13

IV Petitioner wishes to bring to the court the issue of misshandling of evidence Also a significant gap in chain of custody of a G2 one cell phone seized during his arrest 28 July 2013

On Pg 96 L 24 pretrial transcripts Gebhardt testifies "He [Brown] was brought to the booking room where his property was brought" Pg 97 L 1-2 pretrial transcript Gebhardt continued "At that time I was directed to take custody of the phone and provide Mr Brown with a receipt" Pg 97 L 7-10 Gebhardt testified to placing the CASIO G2 one phone into an airplane mode Pg 97 L 18 Gebhardt testified "I secured it in the desk draw of my office,

Previously Mosher testified Pg 93 L 25 - Pg 94 L 2 pretrial transcripts "At that point in time it was the weekend, so as far as securing it in a locker or obtaining an evidence tag, that was not possible" That is why Gebhardt placed the phone in his desk draw on Sunday 28 July 2013 According to the Evidence and Chain of Custody Report from Sumnerhill P.D. (A copy has been provided to the court)

Pg 14

There is no record until 2 Aug 2013, six days later. So there was no way to secure the phone properly in evidence until Friday? Where was the phone?

On Pg 233L3-25 of the trial transcripts, Mosher testified to collecting a buccal swab from Mr Brown. Mr Jatis asked Mosher "OKAY AND what did you do - when you stuck it in that envelope, what did you do at that point with it?" Mosher answered.

"After placing it in the envelope. I logged that into evidence through the computer system and then stuck it in the - our evidence locker, lock it up and drop the key so the evidence custodian can pick it up at a later time."

So why was the phone not handled the same way? These officers mishandled evidence testified to it and no one questioned it. The phone is completely unaccounted for for an entire week. These 4th Amendment violations render the phone and any evidence alleged to come from it inadmissible.

Pg 15

The Petitioner Also wishes To bring To The Court the Fact that there was never a Preliminary hearing in this case. The Dorchester County Clerk of Court has no record of the hearing because there never was one. Not because As Judge Brown claimed there was no Court reporter Present the Petitioner was denied this due Process right

Due to these Arguments the Petitioner request that Court reverse the convictions AND sentences AND release Jonathan M Brown From SCDC custody