

The Supreme Court of South Carolina  
Mr. Daniel E. Shearouse  
Clerk of Court  
Post Office Box 11330  
Columbia, South Carolina, 29211

**RECEIVED**

JUN 22 2012

S.C. SUPREME COURT

RE: Petition for writ of Certiorari

Dear: Mr. Shearouse

Please find enclosed the original petition for writ of Certiorari in this case addressed and served the Clerk of Court of the Supreme Court of South Carolina, to be submitted to the Court for consideration on petitioner's behalf.

Thank you for your time and attention!

Date 6/19/12

Respectfully Submitted  
Sl Alonzo Key  
Alonzo Key #192814  
W.R.C.I. W-3-43  
Post Office Box 189  
Rembert, S.C. 29128

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JUN 22 2012

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Aiken County

Jame R. Barber, III Circuit Court Judge

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Alonzo Key,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION FOR WRIT OF CERTIORARI

---

WANDA H. CARTER

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S.C. 29211-1589

(803) 734-1343

ATTORNEY FOR PETITIONER

PETITIONER

Pro Se

Sl. Alonzo Key

Alonzo Key #192814

W.R.C.J. W-3-43

Post Office Box 189

Rembert, S.C. 29128

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## ISSUE PRESENTED

Trial counsel erred when he advised petitioner to plead guilty without securing petitioner's indictment before the grand jury when officers used warrantless hash pull to develop evidence and establish probable cause to obtain a warrant to search the premises and the house on the premises.

## STATEMENT

Petitioner Alonzo Key pled guilty to possession with intent to distribute Crack Cocaine within proximity of a school during the March 2010 term of the Aiken County General Sessions Court before Judge Doyel A. Early.

Petitioner was sentenced to imprisonment of a period of twelve years, suspended upon the service of eight years and the ~~three~~ years probation. Charles David Hayes represented petitioner at the guilty plea proceedings.

Petitioner did not appeal his conviction and sentence App. 1-17.

On September 3, 2010, petitioner filed a PCR application with the Aiken County Office of the Clerk of Court. App. 19-28. The respondent filed a return dated March 24, 2011, requesting that a hearing be held in the case. App. 49-52. An amended PCR application was filed on June 30, 2011. App. 53-59.

A PCR hearing was held on July 13, 2011, at the Aiken County Courthouse before Judge James R. Barber. App. 60-101. Bret H. Lancer represented petitioner at the PCR hearing. On August 17, 2011, Judge Barber issued an order of dismissal in the case. App. 102-108.

Petitioner appealed. This petition follows.

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Trial Counsel erred when he advised petitioner to plead guilty without securing petitioner's indictment before the grand jury. When officers used warrantless trash pull to develop evidence and establish probable cause to obtain a warrant to search the premises and the house on the premises.

Petitioner contended that Warrantless trash pulls are unlawful, unconstitutional and violates the Fourth, Fifth, and Fourteenth Amendment. U.S.C.A. 4<sup>th</sup>, 5<sup>th</sup>, 14<sup>th</sup>.

Petitioner contended that at the plea proceeding, the Solicitor summarized the facts in the case. Pursuant to complaints from petitioner's neighbors regarding drug sales in the area narcotics investigators looked through trash cans sitting outside petitioner's residence and found residue inside baggies that tested positive for marijuana and cocaine. There after, a search warrant was issued for and later executed at petitioner's residence. Petitioner was present during the search of his residence. Per the search, the officers found digital scales, rolling papers, and two bags of crack cocaine. App. 14, 11- p. 15, 12. Petitioner was arrested at the scene.

Petitioner contended that his case is similar to if not identical to California v. Greenwood 108 S.Ct. 1625 (1988), police acting on information that respondent Greenwood might be engaged in narcotics trafficking. Police twice obtained from his regular trash collector garbage bags left on the curb in front of his house, on the basis of items

in the bags which were indicative of narcotics use, the police obtained warrants to search the house discovered controlled substances during the search and arrested respondent on felony narcotics charges. Finding that probable cause to search the house would not have existed without the evidence obtained from the trash searches, the State Superior Court dismissed the charge under Peoples v. Krivda, 5 Cal. 3d 357, 96 Cal. Rptr. 62, 486 P.2d 1262, which held that warrantless trash searches violated the Fourth Amendment and California Constitution.

Although noting a post-Krivda State Constitutional Amendment eliminating the exclusionary rule for evidence seized in violation of State, but not Federal Law, the State Court of Appeals affirmed on the ground that Krivda was based on Federal, as well as State Law.

The Court further stated that Affidavit in support of warrant to search premises must show that information was reliably obtained by informant. Where affidavit merely contained bald statement the officers received numerous phone calls from the neighborhood, without any showing of source of suspicion that such illegal activity, such failure to reveal how informant obtained information was not cured by affidavit recital of past history and is insufficient to support probable cause findings. See Stole v. Johnson, 302 S.C. at 247, 395 S.E. 2d at 169 (1990), Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 76 L.Ed.2d 527 (1963). See also App. p. 34, 35, and 36.

During the PCR hearing, petitioner complained that he did not receive a copy of the Search Warrant until an hour at the earliest after he was detained and that he should have been shown the search warrant "at the time of the entrance of his home"; and that the drugs seized constituted "fruit of the poisonous tree." App. 66, 1. 3-24, App. 67, 1. 1-p68, 1. 7. App. 68 lines 13-14. Petitioner stated that he was housed in the detention center. the Warrant was still not presented to him, but rather been dropped "in the detention center as property." App. 68, 1. 3-10.

Petitioner contend that officers performed a forced entrance into his home on the date of 9/21/2009, approximately 8:30 a.m. that he was home at 824 Barnwell Ave N.E. Aiken, S.C. 29801, when officers executed the search of his home, that he was asleep in bed when officers broke in his front door, seconds later broke in his bedroom door. Petitioner was immediately demanded by the officers to put your hands where I can see them. Petitioner was immediately put in hand cuffs. Petitioner was then escorted to his front porch area and seated in a chair. App. 33.

Petitioner contend that officers performed a warrantless entrance of his home, and bedroom without presenting a warrant to him, the homeowner.

Petitioner contends that officers should not have crossed that threshold without presenting a warrant to the homeowner, "absent exigent circumstances."

Petitioner contend that he was not served a warrant prior

to officers entrance of his home, or being booked or fingerprinted more than one hour later. See App. 89. 1. 21-p. 90. 1. 3. App. 91 lines 13-19, App. 94. 1. 11-p. 95. 1. 7. App. 90. lines 17-p. 91. 1. 7.

Petitioner contend that the purpose for serving the warrant is to authorize the officers to make the search and inform the one named and suspected, if he be on the premises, of what is being done and why. Petitioner contend that in Payton v. New York, 445 U.S. 578, 585-590, 100 S. Ct. 1371, 1379-1382, 63 L. Ed. 2d 639 (1980), privacy interest that generally forbid warrantless intrusions of home. United States v. Reed, 592 F.2d 412 (1976), The United States Court of Appeals for the District of Columbia Circuit sitting en-banc. Dorman v. United States, 440 U.S. App. D.C. 313, 435 F.2d 385 (1970). All three above cases having reached the same conclusion, as discussed in the text, Dorman stands for the proposition that a warrantless arrest of a suspect in the home is unconstitutional in "absence of exigent circumstances."

Petitioner contend that officers performed a warrantless entrance of home and bed room, seizure of person, arrest of person, search for contraband and drugs in undi's closed areas, that he was rearrested without probable cause to arrest. See Sibron v. New York, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968). The fruits of such a search, however, cannot be used to justify the arrest. See also App. p. 37-38.

Petitioner contend that according to S.C. Code Ann. § 17-13-150 mandates that: When any person is served with a search warrant, such person shall be furnished

With a copy of the Warrant along with the affidavit upon which such Warrant was issued.

Also according to Rule 41 of the Federal Rules of Criminal Procedures require that: Which implements the Fourth Amendment by requiring that an impartial magistrate determine from an affidavit showing probable cause whether information possessed by Law enforcement officers justifies the issuance of a Search Warrant. The question is, were officers free to search without a Warrant merely upon probable cause to believe that certain articles were within a home, the provisions of the Fourth Amendment would become empty phrases, and the protection it affords largely nullified. See Payton v. New York, 100 S.Ct. 1382, also Jones v. United States, 357 U.S. at 497-498, 77 S.Ct. at 1256 (footnote omitted).

Petitioner contend that affidavit in support of Search and Search Warrant failed to describe in particular the things intended to be seized, also failed to include the name of petitioner. Wherefore petitioner contend that the Search of his home was unlawful and unconstitutional.

Petitioner contend that the purpose of serving the Warrant is to authorize the officers to make the Search and inform the one named and suspected, if he be on the premises, of what is being done and why. See Goodman v. State, 178 Md. 111 A.2d 635 (1940). also Giroh v. Ramirez 540 U.S. 551 (2004). Where the Supreme Court found the Search unreasonable under the Fourth Amendment

because petitioner did not have in his possession a warrant particularly describing the things intended to be seized. Clearly, in the case at bar.

The PCR Judge ruled the petitioner failed to prove by a preponderance of the evidence that counsel was ineffective with respect to the handling of the suppression hearing issue and that "counsel gave petitioner all the information and advise to make an intelligent and voluntary decisions as to whether to enter the plea rather than proceed to a suppression hearing and subsequent trial." App. 107.

Petitioner contend that he should not have been denied relief at PCR because his Federal claim had not been considered by a competent and unbiased state tribunal. That the court should recognize, however, that the state had failed to provide adequate "corrective process" for the full and fair litigation of Federal claims, whether or not "jurisdictional;" the court could inquire into the merits to determine whether a detention was lawful, under the Fourth, Fifth, Sixth, and Fourteenth Amendment.

Petitioner contend that the drug evidence found in his home should have been excluded as well as drug evidence found in his trash cans as the tainted fruit of an affidavit, search warrant and arrest warrant that should not have been issued but for the unlawful search of his trash cans and unlawful search of his home. 388 F. Supp. at 202-207. See Won Sung V. United States, 371 U.S. 471, 83 S.Ct. 407, 9 LEd 2d 441 (1963); Silverthorne Lumber Co. V. United States, 251 U.S. 385, 40 S.Ct. 182, 64 LEd. 319 (1920).

Petitioner contend that trial counsel erred in allowing petitioner to plead guilty in this case because had counsel properly advised petitioner of the defects in the ~~arrest~~ <sup>arrest</sup> and the Search Warrant, and the Warrantless search of his home, petitioner would not have plead guilty but would have insisted on going to trial on the premises that the court lacked jurisdiction to bring him to court in violation of Fourth, Fifth, Sixth, and Fourteenth Amendment. U.S.C.A. 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments.

Petitioner contend that Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L.Ed.2d 637 (1969); Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L.Ed.2d 723 (1964). The purpose of the "two-pronged" test thus enunciated in Aguilar and Spinelli is, of course, to assure that the magistrate will not function merely as a rubber stamp but will issue search warrants only when the facts are sufficient to satisfy a reasonably prudent detached and neutral person that a crime is being committed or evidence of it kept on the premises to be searched and that the informant's information has been obtained by him in a reasonably reliable way rather than through neighborhood gossip, conjecture, or mere suspicion. Then only is a limited invasion of a person's privacy sanctioned by the Fourth Amendment.

Petitioner contend that absent exigent circumstances even if probable cause existed officers must not cross that threshold without a warrant. Dorman v. United States, 140 U.S. App. D.C. 313, 435 F.2d 385 (1970).

### CONCLUSION

Petitioner request for Writ of Certiorari be granted.

Petitioner contend that in support of all the above alleged facts and Law, pursuant to the affidavit in support of the Search Warrant, the affidavit is defective and no Search Warrant should have been issued.

Based on the foregoing argument, petitioner request that the Court grant the petition for writ of Certiorari, and grant petitioner relief in his favor and release petitioner from his unconstitutional confinement.

Thank you for your time and attention!

Date 6/19/12

Respectfully Submitted  
S/ Alonzo Key  
Alonzo Key #192814  
W.R.C.I. W-3-43  
Post Office Box 189  
Rembert, S.C. 29128

STATE OF SOUTH CAROLINA }  
COUNTY OF Aiken

AFFIDAVIT

 COPY

Personally appeared before me, Detective John C. Medlin  
one

who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

All illegal narcotics, to include but not limited to marijuana, cocaine, crack cocaine, methamphetamines, heroin, and ecstasy. All paraphernalia that may be used in the manufacturing, storage, use, or distribution of illegal narcotics. All monies in close proximity to illegal narcotics. Any documentation showing activity of drug use or distribution.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED

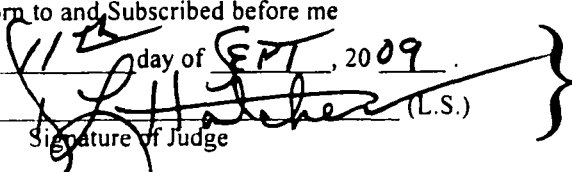
The location to be searched is a single-story, site-built dwelling with blue-gray siding and white trim. The residence has a wide, covered front porch and a green screen door with a concrete sidewalk leading to it. There is no formal driveway. The residence has the address of 824 Barnwell Avenue NW, Aiken, SC and is located on the Northwest corner of the intersection of Barnwell Avenue and Williamsburg St in the City and County of Aiken, SC.

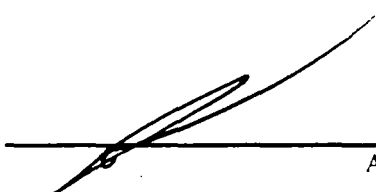
REASON FOR AFFIANT'S BELIEF THAT THE  
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Detective Medlin has received numerous complaints of drug sales and use at 824 Barnwell Ave <sup>NEED</sup> NW. Det. Medlin instructed Bill Martin, Solid Waste Supervisor for the Aiken Department of Public Works, to collect the trash cans from 824 Barnwell Ave on Tuesday, September 8, 2009. This day was the scheduled day for trash collection from this residence due to the Labor Day holiday. Mr. Martin collected the two trash cans from the roadside in front of the house which is the normal location for the cans to be placed when they are ready for pickup. Mr. Martin transferred the cans to Det. Medlin at ADPS HQ. Detective Medlin and Detective Sawyer searched the contents of the cans and found evidence of the use or sale of illegal narcotics. The items found include mail that indicates that the trash was from 824 Barnwell Ave <sup>NEED</sup> NW addressed to Angelina Pollard and Alonzo Key at 824 Barnwell Ave <sup>NEED</sup> NW, a baggie that contained a quantity of green, plant material that was tested and found to be marijuana, a baggie that contained crumbs of white rock-like material that was field tested and found to be cocaine, and numerous twisted and torn baggies that indicate the packaging of narcotics for distribution. This officer verily believes that probable cause exists as to the presence of illegal narcotics at this residence.

Sworn to and Subscribed before me

this 11<sup>th</sup> day of SEPT, 2009.

 (L.S.)  
Signature of Judge

  
\_\_\_\_\_  
Affiant

Address 251 Laurens St NW Aiken, SC 29081

Phone 803-293-7863

[EXHIBIT 1]

STATE OF SOUTH CAROLINA

County of Aiken

\_\_\_\_\_

\_\_\_\_\_

**SEARCH WARRANT**

\_\_\_\_\_

Date September 11, 2009


Officer Detective John C. Medlin

EXHIBIT 27

CR-11

STATE OF SOUTH CAROLINA }  
COUNTY OF Aiken

Search Warrant

Form approved by  COPY  
S.C. Attorney General  
Section 17-13-160  
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF  
Aiken County

It Appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED

The location to be searched is a single-story, site-built dwelling with blue-gray siding and white trim. The residence has a wide, covered front porch and a green screen door with a concrete sidewalk leading to it. There is no formal driveway. The residence has the address of 824 Bamwell Avenue NW, Aiken, SC and is located on the Northwest corner of the intersection of Bamwell Avenue and Williamsburg St in the City and County of Aiken, SC.

Now, therefore, you are hereby authorized to search the subject premises described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

All illegal narcotics, to include but not limited to marijuana, cocaine, crack cocaine, methamphetamines, heroin, and ecstasy. All paraphernalia that may be used in the manufacturing, storage, use, or distribution of illegal narcotics. All monies in close proximity to illegal narcotics. Any documentation showing activity of drug use or distribution.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such persona as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Aiken, S.C.  
SEPTEMBER 11, 20 09

J. L. Halcher (L.S.)  
Signature of Judge

SCCA/513  
(3-78)

[EXHIBIT 2]

STATE OF SOUTH CAROLINA **RECEIVED**  
IN THE SUPREME COURT JUN 22 2012

Certiorari to Aiken County ~~SC~~ SUPREME COURT  
James R. Barbar, III, Circuit Court Judge

ALONZO KEY.

PETITIONER

v.

STATE OF SOUTH CAROLINA.

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true original of the petition for writ of certiorari in this case have been served on the Supreme Court of South Carolina, by mailing in the U.S. mail, to the below address on the below notarized date.

The Supreme Court of South Carolina  
Mr. Daniel E. Shearouse  
Clerk of Court  
Post Office Box 11330  
Columbia South Carolina, 29211

Sworn or affirmed to and subscribed  
before me this 19<sup>th</sup> day of  
June, 2012

Notary Public Pamela D. Hatfield  
My Commission Expires 3/31/2011

PETITIONER

SL Alonzo Key  
Alonzo Key #1928114  
W.R.C.J. W-3-43  
Post Office Box 189  
Rembert, S.C. 29128