STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Honorable Robert J. Bonds, Circuit Court Judge

Op. No. 2026-UP-010 (SC Ct. App. filed January 14, 2026)

THE STATE,

RESPONDENT,

V.

RONALD L. LYONS, JR.,

APPELLANT

APPELLATE CASE NO. 2022-000169

PETITION FOR REHEARING

On January 14, 2026, this Court affirmed the trial court's denial of Appellant's motion for specific performance, holding:

> To the extent Lyons argues SLED promised not to arrest him or that he would not be prosecuted, we hold the trial court did not err in finding SLED did not have the authority to enter into such an agreement because law enforcement officers do not have the authority to promise not to arrest or prosecute a defendant.
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> To the extent Lyons argues solely that SLED only promised not to obtain arrest warrants for Lyons, we hold the trial court did not err in denying Lyons's motion for specific performance because an arrest warrant was not necessary for Lyons to be indicted and prosecuted; therefore, granting specific performance in this circumstance would have no practical effect.

> Finally, we hold Lyons's argument that fundamental fairness should dictate that SLED's promise be enforced was not preserved for appellate review because he did not raise this argument to the trial court.

State v. Ronald Lee Lyons, Op. No. 2026-UP-010 (SC Ct. App. filed January 14, 2026). Pursuant to Rule 221(a), SCACR, Petitioner respectfully requests this Court rehear the matter considering the significant points overlooked and/or misapprehended by this Court discussed below.

The enforcement of an agreement between a defendant and an agent of the state is subject to two conditions: 1) the agent must be authorized to make the promise; and 2) the defendant must rely to his detriment on the promise. State v. Peake 345 S.C. 72, 77-78, 545 S.E.2d 840, 842-843 (2007). The trial court ruled that the agents had made a promise not to obtain arrest warrants for Appellant, and Appellant relied on that promise to his detriment. R. 123, l. 19 – 125, l. 3. The trial court, and ultimately this Court, found itself constrained by the language of Peake and held that the SLED officers lacked the authority to make the promise. However, as the United States Court of Appeals for the Fourth Circuit decided in United States v. Bailey, 74 F.4th 151 (2023), a police officer's promise not to arrest can be enforceable against the government.

In Bailey, on August 30, 2019, North Carolina police executed a search warrant at Bailey's home during which a small bag of cocaine base was found on the floor of his bedroom. His girlfriend claimed responsibility for the narcotics. Bailey expressed an interest in helping the police in exchange for leniency for his girlfriend, and he subsequently exchanged phone numbers with an Officer Page. Roughly a month later, Page observed an individual he knew to have a

suspended license leaving the defendant's house. Page conducted a traffic stop and discovered .1 grams of cocaine base in the vehicle. Id. at 153.

After the search, Page sent a text message to Bailey asking to speak with him and returned to Bailey's home. Bailey met Page on the front porch, and the two had a discussion during which Bailey admitted to selling drugs because he was suffering financial hardship due to an inability to find employment. Page instructed Bailey to provide him with any other drugs in his possession, that it would be squared away, and he would help Bailey find employment. The two then went inside Bailey's home where Bailey produced an additional .7 grams of cocaine base. Id. at 153-54.

After that encounter, Page assisted Bailey with employment information, and Bailey assisted Page in locating and arresting someone with an outstanding warrant. Then, on November 7, 2019, Page obtained two arrest warrants for Bailey for the .1 and .7 grams of cocaine base. During a search incident to arrest of Bailey, officers discovered 17.8 grams of cocaine base in his pocket. The federal government indicted Bailey for PWID cocaine base for the 17.8 grams of cocaine found on his person during the arrest. After unsuccessfully moving to have the drugs suppressed, Bailey entered a conditional guilty plea. Id. at 154-55.

The Fourth Circuit noted that Bailey was not challenging his case under the Fourth Amendment but rather on the violation of due process that arose when Page "breached a promise not to arrest Bailey for either the .7 grams of cocaine Bailey turned over *or* the .1 grams of cocaine found [in the vehicle]." Thus, the Court looked to cases where it had considered other, analogous, promises made by the government to a defendant such as United State v. Carter, 454 F.2d 426, 427-28. (4th Cir. 1972), which dealt with an oral promise from a prosecutor where the court explained "if the promise was made to defendant as alleged and defendant relied upon it in

incriminating himself and others, the government should be held to abide by its terms." Id. at 157. After reviewing Carter, the Court wrote:

> Carter thus stands for the proposition that if the government "utilize[s] its discretion to strike bargains with potential defendants," those bargains can be enforced against the government. Carter, 454 F.2d at 428. And while Carter concerned a plea agreement, we have since recognized that a non-prosecution agreement "invokes the same constitutional due process concerns as a plea agreement." United States v. Gerant, 995 F.2d 505, 508 (4th Cir. 1993). We have also noted that, when certain conditions are met, "courts may enforce informal grants of transactional immunity." United States v. McHan, 101 F.3d 1027, 1034 (4th Cir. 1996) (citation omitted), *abrogated on other grounds by* Honeycutt v. United States, 581 U.S. 443 (2017).
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> ...
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> In those cases, as here, the fact that the government may have learned of a defendant's wrongdoing prior to making an agreement does not place the government's promise of leniency beyond the scope of the agreement. Quite the opposite, it is the government's knowledge of wrongdoing that so often serves as consideration for such agreements. As a result, the government's promise not to act on that knowledge cannot be deemed categorically unenforceable. So, while the proper remedy for a breached agreement will vary on a case-by-case basis, enforcement of the agreement is one remedy the district court has in its relief-fashioning arsenal.

Id., at 158 (4th Cir. 2023).

The federal government argued that any promise made by the officers was outside of the scope of their authority, and even if there was an unauthorized non-prosecution promise which was then breached, the only remedy would be suppression of any evidence obtained in detrimental reliance on the promise. The Court found this argument failed because Bailey did not allege that Page promised not to prosecute him but that Page promised not to *arrest* him – a power which undisputedly belonged to police officers. Id., at 159. The Court held:

> To be sure, Carter and its progeny do not address the precise promise Bailey alleges occurred here: *a promise not to arrest*. Yet we see no reason to treat a non-arrest agreement any differently than the non-prosecution and plea agreements we have previously held enforceable against the government. *In non-arrest agreements, as in non-prosecution and plea agreements, the government wields its vested authority to extract cooperation from a potential defendant in exchange for a promise of leniency.* A police officer is not entitled to arbitrarily breach these agreements, which have become a central feature of the many drug-related prosecutions that occupy our criminal legal system each year. *In all such contexts, therefore, where an individual fulfills his obligations under the agreement, settled notions of fundamental fairness may require the government to uphold its end of the bargain, too.* To hold otherwise would rubberstamp a police practice that stands to undermine the honor of the government and public confidence in the fair administration of justice.

Id., at 159–60 (emphasis added). The Court remanded the matter back to the lower court to determine whether the non-arrest promise was made, relied upon, and breached as Baliey alleged, and directed the court to "determine whether specific performance or other equitable relief is appropriate to remedy that breach." Id. at 160.

In South Carolina, the *only* official in the state with the power to obtain arrest warrants is a certified law enforcement officer pursuant to S.C. Code Ann. § 22-5-110(B)(1) ("[a]n arrest warrant may not be issued for the arrest of a person **unless sought by a law enforcement officer acting in their official capacity**") (emphasis added). Here, the SLED officers clearly had the authority to enter into an agreement not to arrest Appellant or gather arrest warrants for Appellant. Under the holding in Bailey, *supra*, Appellant is entitled to relief. As the circuit court held,

> [T]he evidence is that there certainly, most probably was a promise, I think that he relied upon the promise, and I think that that reliance to his detriment. I do believe that those things happened. However, I believe that law enforcement, SLED in this case, did not have the authority to enter into the agreement.

R. 243, ll. 1-9.

A cooperation agreement is analogous to a plea bargain agreement. United States v. Garcia, 519 F.2d 1343, 1345 n. 2 (9th Cir.1980). "[I]f, after having utilized its discretion to strike bargains with potential defendants, the Government seeks to avoid those arrangements by using the courts, its decision so to do will come under scrutiny." United States v. Carter, 454 F.2d 426, 428 (4th Cir. 1972) *citing* United States v. Paiva, 294 F.Supp. 742 (D.D.C.1969) at 747. "If it further appears that the defendant, to his prejudice, performed his part of the agreement while the Government did not, the indictment may be dismissed." Id.

The circuit court determined that a promise was made to Appellant, that he performed actions for the state in reliance on that promise, that the promise was breached, and that Appellant suffered harm due to his reliance on the promise. State v. Peake 345 S.C. 72, 77-78, 545 S.E.2d 840, 842-843 (2007). The only instance where the court ruled against Appellant was in finding that SLED officers lacked the authority to make that promise. However, the promise not to arrest or not to obtain arrest warrants was within the scope of the SLED agent's authority. United States v. Bailey, *supra.* SLED entered into an enforceable cooperation agreement with Appellant which was subsequently breached.

This Court held that the granting of Appellant's motion would have no practical effect because the state could indict Appellant without an arrest or arrest warrant. However, when officers or agents are shown to have acted within the proper scope of their authority the State may be subject to estoppel. Goodwine v. Dorchester Dep't of Soc. Servs., 336 S.C. 413, 418–19, 519 S.E.2d 116, 118–19 (Ct.App.1999). "The doctrine of estoppel applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." Rushing v.

McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct. App. 2006) (internal citations removed). "In its broadest sense, equitable estoppel is a means of preventing a party from asserting a legal claim or defense that is contrary or inconsistent with his or her prior action or conduct." Mac Papers, Inc. v. Genesis Press, Inc., 426 S.C. 393, 403, 826 S.E.2d 874, 880 (Ct. App. 2019). Estoppel would prevent the government from seeking or prosecuting any indictments in Appellant's cause because the government was bound by the promises of the SLED agents.

Lastly, this Court held that Appellant had not preserved his argument regarding fundamental fairness for appellate review. Admittedly, nowhere in the lower court record do the words "fundamental fairness" or "due process" appear regarding the motion for specific performance. However, the case law underpinning the issue – whether an agent made a promise he was authorized to make that could be enforced against the government if relied upon to the determent of a defendant – inherently considers whether the actions of the government agent involved violated due process. See United States v. Williams, 780 F.2d 802, 803 (9th Cir.1986) (*per curiam*) (In general, a promise made by a government employee other than the United States Attorney to recommend dismissal of an indictment cannot bind the United States Attorney. An exception has been recognized where, although the United States Attorney was not a party to a cooperation agreement, breach of the agreement rendered a prosecution fundamentally unfair.); United States v. Rodman, 519 F.2d 1058, 1059–60 (1st Cir.1975) (per curiam) (upholding dismissal of an indictment where defendant gave "substantial information, including self-incriminating statements" based on an unfulfilled promise from the Securities and Exchange Commission ("SEC") to recommend non-prosecution because "the unfairness to the [defendant] warranted dismissal"). The concepts are intertwined and necessarily considered together if this Court were to determine that the SLED officers were not acting within their authority.

Appellant has shown that the SLED agent was authorized to make the promise, that the agent in fact made a promise, and that Appellant relied on that promise to his detriment. This Court should find the state is bound to the promises of its agents in this case and dismiss the indictments against Appellant.

Jessica M. Saxon
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ATTORNEY FOR APPELLANT

This 3rd day of February, 2026.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
Feb 03 2026
SC Court of Appeals

Appeal from Hampton County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONALD LYONS,

APPELLANT

APPELLATE CASE NO. 2022-000169

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Ronald Lyons, #310014, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 3rd day of February, 2026.

Jessica M. Saxon
Appellate Defender

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Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

Warren, Kaylynn

From: Warren, Kaylynn
Sent: Tuesday, February 3, 2026 2:52 PM
To: Mark Farthing
Cc: Saxon, Jessica; Caroline Collins
Subject: 2022-000169 The State v. Ronald Lee Lyons, Jr.
Attachments: 2022-000169 The State v. Ronald Lee Lyons, Jr. Petition for Rehearing.pdf

Good Afternoon,

Attached for service in the above-referenced case is the Petition for Rehearing which will be filed today, February 3, 2026, with the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren
Administrative Assistant
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