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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2023-000274
Opinion No. 2026-UP-058

The State, Appellant,

vs.

Jonathan C. Dawkins, Respondent.

PETITION FOR REHEARING

Through an unpublished opinion issued on February 11, 2026, this Court affirmed the trial judge's ruling suppressing fentanyl that was found in Respondent Jonathan C. Dawkins's pocket after he was stopped, handcuffed, and searched by multiple law enforcement officers just before he was advised he was under arrest. In affirming, this Court recognized—quite correctly—the trial judge made some statements that supported the State's appellate arguments seeking a reversal of his ruling. Nevertheless, this Court affirmed the trial judge's decision to suppress the evidence for two reasons: (1) even the trial judge found the officers had a right to arrest Dawkins and could have done so, this Court "d[id] not see an objective basis supporting probable cause for an arrest"; and (2) the State failed to "consistently" identify the offense or offenses for which Dawkins supposedly could have been arrested. More specifically, in its opinion in Dawkins's case, this Court stated:

> We do not see abundant probable cause in this record like there was in Moultrie. Respondent was unarmed when the officers approached him and they acknowledged that Respondent was 'minding his own business.' The officers testified their suspicion only arose after

> Respondent stated he believed he was going to be searched—an assertion later characterized as 'giving himself away.'

State v. Dawkins, Op. No. 2026-UP-058 (S.C. Ct. App. filed Feb. 11, 2026).

Importantly though, the trial judge—before suppressing the evidence—*did* find what occurred to be a valid search incident to arrest. In particular, he expressly affirmed that if the testimony from Officer Coulombe had been "I had made up my mind to arrest him, I was gonna cuff him and take him down and book him, then it's *game over*. You've got search incident to arrest and the pill bottle is fair game regardless of where it was located, regardless of how the pat down played out." (R. 84-85) (emphasis added). He later reiterated that "if this was a straight search incident to arrest, then it would be game over." (R. 95). Based on what he said in his discussions, the trial judge had no issues whatsoever as to whether the officers, prior to searching Dawkins and finding his drugs, **could** have been validly arrested for the various crimes he had already committed. But he still suppressed. That decision was erroneous, and this Court should grant rehearing and reverse it.

As to the trial judge's error, he incorrectly believed a single search could not be justified in multiple ways. He applied a subjective analysis rather than the objective analysis that should have been applied. There was testimony presented from officers that the search was both a valid Terry frisk search *and* a valid search incident to arrest. In the trial judge's incorrect view, "it [couldn't] be both" (R. 85). In suppressing the evidence, the trial judge pointed to the fact that Officer Coulombe personally characterized the seizure as "investigative detention" as opposed to arrest and therefore determined that the sole applicable analysis was Terry.

Contrary to the trial judge's view, the search absolutely and unequivocally can be justified in multiple different ways. "[T]he fact that the officer did not believe there was probable cause and proceeded on a consensual or Terry-stop rationale would not foreclose the State from justifying

Royer's custody by providing probable cause and hence removing any barrier to relying on Royer's consent to search." Florida v. Royer, 460 U.S. 491, 507, 103 S.Ct. 1319, 1329 (1983). Both the United States Supreme Court and our courts have emphasized that we apply objective standards to search and seizure issues with few exceptions. "The fact that an arresting officer improperly based a search of an individual on a Terry stop rational does not prevent the State from otherwise justifying the search by proving probable cause to make a warrantless arrest of the individual prior to the search." State v. Moultrie, 316 S.C. 547, 551, 451 S.E.2d 34, 37 (Ct. App. 1994). This Court held that, unlike in Moultrie, probable cause was not abundant in this record. Respectfully, just as the trial judge himself recognized and found, that is not correct as there was ample probable cause to arrest Dawkins prior to and at the time of the search that led to the discovery of his fentanyl.

More specifically, the officers—prior to the search—had received a non-anonymous report from two individuals that Dawkins was making threats that very night to "shoot up a house, a car, and several subjects." (R. 13). While not specifically argued in the brief, the record itself further established there was probable cause to believe Dawkins was guilty of, at a minimum, third-degree assault and battery and possibly a higher degree of assault and battery since the threat involved threat of use of deadly force. Further still, the victims described disturbance to the neighborhood which could have constituted breach of peace. Moreover, as argued during the briefing stage, there was testimony from victims and multiple officers that Respondent was intoxicated, and he had an open container of alcohol on him. Based on all that, the officers—just as the solicitor argued below and the trial judge found—had probable cause to believe Dawkins had committed multiple arrestable offenses.

The proper analysis that should have been used in this case was an objective analysis. In determining whether a search is proper search incident to arrest, there are two things to determine: (1) was there a legitimate basis for an arrest prior to the search being conducted?; and (2) did the arrest follow shortly after? The answer to both those questions in Dawkin's case was "yes," so the search that led to discovery of Dawkins's fentanyl was constitutionally reasonable.

Here, had the trial judge recognized the proper analysis to apply and applied it, he would have denied the suppression motion since he believed—correctly—a probable cause basis existed to arrest Dawkins. But he did not do so because he believed—incorrectly—he could not consider two separate bases for upholding a single search since "it can't be both." The trial judge's ruling was wrong, and, therefore, it should be reversed.

For all the foregoing reasons coupled with the reasons articulated in the State's brief and during oral argument before this Court, the State respectfully asks this Court to reconsider the matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion reversing the trial judge's ruling and remanding for trial. Notably, by doing so, this Court will afford the trial judge an opportunity to apply the correct analysis, issue a ruling on the issue of whether a valid search incident to arrest had been establish, and decide whether there was—as he previously found there was—probable cause for Dawkins to be arrested prior to and at the time of the search conducted.

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: _____

Ambree M. Muller
S.C. Bar No. 104213

ATTORNEYS FOR APPELLANT

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the State's Petition for Rehearing on Kathrine H. Hudgins, Esquire, counsel of record for the Respondent, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 26th day of February, 2026.

GRACE SOMMER
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727