

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
DeAndrea Gist Benjamin, Circuit Court Judge

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Op. No. 5248  
(S.C. Ct. App. filed July 23, 2014)  
Appellate Case No. 2014-002229

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**RECEIVED**

APR - 8 2015

S.C. Supreme Court

Demetrius Mack,.....Respondent,

v.

Leon Lott, in his Official Capacity  
as Sheriff of Richland County.....Petitioner.

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**BRIEF OF RESPONDENT**

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**QUESTION PRESENTED**

- I. DID THE COURT OF APPEALS ERR IN DIRECTING THAT A SUBJECTIVE TEST FOR THE DETERMINATION OF PROBABLE CAUSE BE APPLIED BY THE TRIAL JUDGE ON REMAND?

## COUNTERSTATEMENT OF THE FACTS

This petition stems from a trial involving a Richland County Sheriff's Department deputy's arrest of Respondent Demetrius Mack.

On December 6, 2008, Mack was working for DTH Protective Services. (R. p.138, lines 22-24). That night he was assigned to work security at Club Essence, a nightclub on Two Notch Road in Columbia, South Carolina. (R. p. 139, lines 1-6). Club Essence was a hip-hop club frequented by young people. (R. p. 140, lines 12-14). Mack described the club as a dangerous place, frequented by hostile gang members who drank cheap liquor. (R. p. 140, lines 15-21).

On the night of the incident, Mack came into contact with McKenzie Williamson, who would turn out to be a real troublemaker. Mack's first run-in with Williamson took place in the foyer of Club Essence, where Williamson was trying to get into the club without paying the required fee for entrance. (R. p. 141, lines 15-25). According to Mack's observations when he arrived in the foyer, Williamson tried to walk right past the lady collecting entrance fees without paying. (R. p.141, lines 19-20). The lady pointed Williamson out to Mack and told Mack he had entered without paying. (R. p.141, lines 19-20). Mack told Williamson to leave if he was not going to pay the entrance fee, and he did. (R. p.141, lines 21-25, p.142, lines 1-2).

Later, Williamson tried to enter the club for free again. (R. p.142, lines 3-8). He was caught once again and Mack escorted him off of the premises. (R. p.142, lines 8-13). Failing to get the message, Williamson tried to sneak into the club for free a third time. (R. p.142, lines 17-20). This time, a different security guard caught him and began to escort him out of the club. (R. p.142, lines 18-20).

Williamson became belligerent. (R. p.142, lines 22-24). He stood in the middle of Weir Avenue, a street next to Club Essence, and started throwing gang signs at the security guards. (R. p.142, lines 22-24). Mack was standing at the door to the club with the owner and watched Williamson making a scene. (R. p.143, lines 1-3). In addition to gang signs, Williamson began making threatening gestures about shooting at the club. (R. p.143, lines 6-9).

Williamson was still not done. He would make yet another attempt to sneak into Club Essence. As the night went on, the crowd became increasingly unruly. Eventually, a fight broke out in the club. (R. p.143, lines 13-16). As the security guards, including Mack, tried to assist the club bouncers in breaking up the fight, another employee of the club informed Mack that Williamson was back on the property. (R. p.143, lines 18-25). Mack had warned Williamson earlier that he would arrest him if he came back to Club Essence. (R. p.144, lines 1-3).

Williamson took off running down Weir Avenue. (R. p.144, lines 4-13) Mack saw him change direction when he realized sheriff's deputies were at the end of Weir Avenue. (R. p.144, lines 14-18). As he changed direction, he hit a car, slipped, and fell under the car. (R. p.144, lines 17-18). Williamson fell on the property located at 109 Weir Avenue, which was also under his jurisdiction as a security guard that night. (R. p.145, lines 19-21). Mack was only able to catch Williamson because of the fall. (R. p.145, lines 22-25).

After catching Williamson and handcuffing him, one of the bouncers from Club Essence flagged down Deputy Parish, who was responding as backup to an unrelated scene at the end of Weir Avenue. (R. p.146, lines 11-20). Mack informed Parrish that Williamson had been attempting to sneak into Club Essence, throwing gang signs, and making threatening gestures about shooting up the club. (R. p.146, lines 14-25 ). He told

Parish he wanted Williamson put on trespass notice so he could be arrested if he insisted on returning to the club. (R. p.146, lines 14-18).

Deputy Gore then arrived on the scene and asked what was happening. (R. p.147, lines 7-13). Gore immediately told Mack that he and the sheriff's department were tired of private security guards not showing up for court hearings. (R. p.147, lines 14-18). Mack was confused about Gore's attitude and told Gore he was just trying to let them know what happened with Williamson. (R. p.147, lines 19-24). Mack described Williamson's earlier behavior to Gore. (R. p.146, line 25, p.147, lines 1-2). Mack told Gore he did not want Williamson arrested, but did want him placed on trespass notice so that he could be arrested immediately if he returned to the property. (R. p.148, lines 7-9).

As the scene calmed down, Gore walked off to talk privately with Parish. (R. p.148, lines 16-17). He returned and told Mack it was Mack who was going to be arrested. (R. p.148, lines 18-19). Obviously surprised, Mack asked what he had done to result in him being the one under arrest, rather than Williamson. (R. p.148, lines 20-25, p.149, lines 1-5). Gore claimed Mack was out of his jurisdiction and had committed a simple assault when he handcuffed Williamson. (R. p.148, lines 20-25).

Mack was shocked at this turn of events, in light of the fact he detained Williamson on property over which he had jurisdiction as a private security guard. (R. p.149, lines 6-8). Mack attempted to have Gore talk with someone from his company, but Gore refused. (R. p.149, lines 9-16). Mack called his supervisor, who wanted Gore to wait until he arrived before arresting Mack and taking him to jail. (R. p.149, lines 17-25, p.150, lines 1-2). After talking to Williamson, Gore handcuffed Mack and placed him in the back of a patrol car. (R. p.150, lines 13-24)

Mack was taken to jail, where he remained for the night and most of the rest of the day. (R. pp. 152-154).

## ARGUMENT

### I. DID THE COURT OF APPEALS ERR IN DIRECTING THAT A SUBJECTIVE TEST FOR THE DETERMINATION OF PROBABLE CAUSE BE APPLIED BY THE TRIAL JUDGE ON REMAND?

The Court of Appeals ruled correctly in this case. Petitioner Lott is mistaken in arguing a subjective test has been ordered. Rather, the Court of Appeals ordered the trial court to determine whether the facts supporting a finding of probable cause were reasonable, which is exactly what the Supreme Court of the United States has directed. The officer's state of mind in making an arrest is irrelevant *except for the facts he knows*. *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004)(emphasis added).

Probable cause exists when facts within the officer's knowledge would lead a reasonable person to believe the individual arrested has committed a crime. *State v. George*, 323 S.C. 496, 509 (1996). In its opinion, the Court of Appeals correctly recognized the issue in this case is Gore's probable cause to arrest Mack. Without probable cause, the arrest is unlawful. The lawfulness of the conduct, as the Court of Appeals discusses, is the location of Mack at the time he arrested Williamson.

The Petitioner claims the Court of Appeals erred in directing the trial court to determine the subjective beliefs of Gore. This contention is not supported by the opinion. The Court of Appeals remanded the case for further factual findings to support the trial court's ruling there was no probable cause for the arrest.

The Court of Appeals correctly stated the law of probable cause. "Probable cause to arrest depends upon whether . . . the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information [were] sufficient to warrant a prudent man in believing that the suspect had committed . . . an offense." *Robinson v. State*, 407 S.C. 169, 190 n.11 (2014) (App. 3).

The Court of Appeals also noted the trial court order “correctly recited the definition of probable cause.” (App. 4). In the trial court’s conclusions of law, it stated “probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induced an ordinary, prudent, and cautious man under the circumstances to believe likewise.” (R. 2). This definition of probable cause is supported in *Jones v. City of Columbia*, 301 S.C. 62, 65 (1990).

The Petitioner believes, despite the correct law defining probable cause, the Court of Appeals has directed the trial court to determine if Gore subjectively believed he had probable cause to arrest Mack. Lott’s concern about the instruction to the trial court is unwarranted by the opinion.

The opinion states “Mack was required to prove as a matter of fact that Gore did not reasonably believe Mack was arrested in the road.” To argue the Court of Appeals was stating the case hinged on Gore’s subjective interpretation of the facts is to strike the word ‘reasonably’ directly out of the opinion. If the petitioner is arguing that it does not matter if Gore personally believed he had probable cause or not to arrest Mack, Respondent agrees, as does the Court of Appeals. Though at trial, Petitioner was clear the court should have focused on Gore’s beliefs. “And here is what is key, Your Honor... [t]he Supreme Court stated the question is not what the actual facts were, but what the police officer honestly believed them to be.” (R.246-47).

On the other hand, if Petitioner is now suggesting that it is not the role of the trial judge, as fact finder, to determine what facts where within the officer’s knowledge, then petitioner is incorrect. “Probable cause is determined as of the time of the arrest, based on facts and circumstances--objectively measured--*known to the arresting officer.*” *Jackson v. City of Abbeville*, 366 S.C. 662, 667 (S.C. Ct. App. 2005) (Emphasis added).

The Court of Appeals directed the trial court to support the conclusion of law that Officer Gore's determination of probable cause was unreasonable within his knowledge of the facts. The determination of reasonableness safeguards that it is not Gore's subjective belief of Mack's location at the time he arrested Williamson, but that his belief of probable cause is supported by facts that would induce an "ordinary, prudent and cautious man," i.e. a reasonable man, to believe likewise.

Petitioner spends much of his argument stating why the Court of Appeals should not have directed a subjective test to determine probable cause. This issue is a red herring, as the opinion is clear that the actual focus is Gore's 'reasonable' belief. The remaining portion of Petitioner's argument notes this Court's favorable use of the "two step process" for determining probable cause as used in *Ornelas v. United States*, 517 U.S. 690 (1996). The first step is for the court to "determine the events which occurred leading up to the search." It is this first step that created the need for a remand in this case. The Court of Appeals stated Rule 52(a) required the trial court to "find the facts specifically." The opinion states there is simply not enough factual support for any determination of probable cause other than merely conclusory statements. The Court of Appeals is not concerned with Gore's subjective beliefs, it just directs the trial court to make a more specific determination of facts.

Petitioner's argument the Court of Appeals erred in its instructions to the trial court is unsound. A remand to determine if an "objectively reasonable police officer in Gore's position would find probable cause," as requested by petitioner, is no different than a determination of whether "Gore reasonably believed" there were facts supporting probable cause as ordered by the Court of Appeals (App. 4). Reasonableness is the standard found in the Fourth Amendment's constitutional protection from unlawful

seizures. The case law is well-settled the test is ultimately an objective standard. *Jackson* at 659. This opinion does not hold otherwise. Both the trial court and Court of Appeals applied the correct definition of probable cause to this case.

The Petitioner is asking this Court to take the unprecedented step of mandating the facts found by the factfinder. Under Lott's argument, testimony of a police officer would be unimpeachable, because a trial court would be bound to believe them, no matter how unreasonable. This is simply not the law.

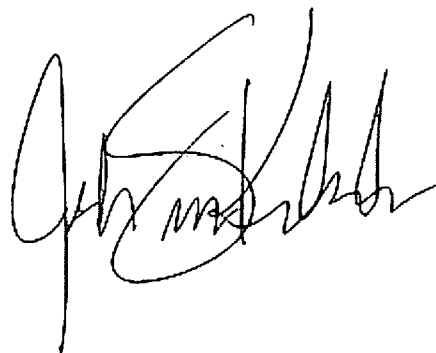
### **CONCLUSION**

Petitioner has tried to create an issue out of the Court of Appeals' instructions to the trial court, but a clear reading of the opinion shows it is directly in step with well-settled case law on probable cause and should be affirmed.

The Court of Appeals has ordered that the trial court make a factual finding as to the arresting officer's reasonable belief as to the facts. This is exactly what the law requires. If the trial court, sitting as a factfinder, does not believe the testimony of the officers or finds their beliefs unreasonable, it should be free to disbelieve that testimony. Any other decision from this Court would effectively create a special class of witnesses that are not subject to the credibility determinations of a factfinder.

This Court should affirm the opinion of the South Carolina Court of Appeals in this matter.

Respectfully submitted,



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April 6, 2015  
Columbia, South Carolina

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In The Supreme Court

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Court of Common Pleas

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PROOF OF SERVICE

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I certify that I have served the **Brief of Respondent** on Richland County Sheriff Leon Lott by depositing a copy of it in the United States Mail, postage prepaid, on April 8, 2015 addressed to his attorney of record, Andrew Lindemann, Esq., P.O. Box 8568, Columbia, SC 29202.



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