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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Op. No. 5248
(S.C. Ct. App. filed July 23, 2014)

Demetrius Mack, Respondent,

v.

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

REPLY BRIEF OF PETITIONER

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ARGUMENTS

In seeking further review by way of his petition for writ of certiorari filed in this Court, the Petitioner Leon Lott expressed concern that the Court of Appeals' phrasing of the dispositive issue and remand instructions suggested that the factfinder must assess what Deputy James Gore's subjective beliefs were and then whether those beliefs were reasonable. In response, the Respondent Demetrius Mack agrees that the probable cause test is an objective standard. Furthermore, Mack appears to agree that, on remand, the trial court should determine whether an objectively reasonable police officer in Gore's position would believe that Mack was off the Club Essence property at the time he arrested McKenzie Williamson.

Despite ostensibly agreeing with Sheriff Lott's position, Mack nonetheless argues that Lott has raised a "red herring" and that the remand instructions from the Court of Appeals were clear. However, this Court apparently agrees with Sheriff Lott, at a minimum, that the remand instructions were not clear given the fact that a writ of certiorari was indeed issued.

At any rate, Mack makes additional comments that warrant further discussion. For instance, at the close of his brief, Mack writes: "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." *See*, Respondent's Brief, p. 12. That is not Sheriff Lott's argument at all.

Instead, Sheriff Lott reiterates that the appropriate probable cause analysis is the "two step process" articulated by the United States Supreme Court in *Ornelas v. United States*, 517 U.S. 690 (1996). That analysis was re-affirmed in *Maryland v. Pringle*, 540 U.S. 366 (2003), where the Supreme Court explained: "To determine whether an officer has probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable officer, amount to probable cause." 540 U.S. at 371.

Therefore, the first step of the objective test requires the trial court to determine the "historical facts." As the Supreme Court explained in the landmark case of *Beck v. Ohio*, 379 U.S. 89 (1964), "[w]hen the constitutional validity of an arrest is challenged, it is the function of a court to determine whether *the facts available to the officers at the moment of arrest* would warrant a man of reasonable caution in the belief that an offense has been committed." 379 U.S. at 96. (Emphasis added) That test was reiterated in another landmark case: "[I]t is imperative that the facts be judged against an objective standard: would *the facts available to the officer at the moment of the seizure* or the search warrant a man of reasonable caution in the belief that the action taken was appropriate?" *Terry v.*

Ohio, 392 U.S. 1, 21-22 (1968). (Emphasis added) The Supreme Court has described this as a "flexible, common sense standard" which "does not demand any showing that such a belief be correct or more likely true than false." *Texas v. Brown*, 460 U.S. 730, 742 (1983).

The appellate courts of this State are in accord: Citing *Texas v. Brown*, the Court of Appeals has explained that "[i]n regard to the lawfulness of an arrest, probable cause merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that an offense has been committed and the accused committed it." *In the Matter of the Care and Treatment of Brown*, 372 S.C. 611, 643 S.E.2d 118 (Ct. App. 2007). *See also, State v. Geer*, 391 S.C. 179, 705 S.E.2d 441 (Ct. App. 2010).

Therefore, in determining the "historical facts" as part of the "two step process" established in *Ornelas* and *Pringle*, a court must look at the "facts available to the officer." Contrary to Mack's assertions, Sheriff Lott does not contend that those "historical facts" must be based solely on the testimony of the arresting officer or that the arresting officer's testimony may not be subject to the credibility determinations of the factfinder. However, in cases where the arresting officer's testimony is disbelieved in whole or in part, that likewise does not relieve the court of determining the "historical facts." In effect, the court is still required to determine those facts that were available to the arresting officer or, put another

way, the facts within the officer's knowledge. Once those "historical facts" are determined by the factfinder, the court must then proceed to the second prong of the analysis and decide "whether [those] historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." *State v. Morris*, 2015 WL 340805, *4 (S.C. 2015), citing *Ornelas*, 517 U.S. at 696.

In the case at bar, Mack claims that "[t]he 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." See, Respondent's Brief, p. 9. That is not entirely accurate. In actuality, the Court of Appeals remanded "for more detailed findings as to whether Mack met his burden of proving Gore did not have probable cause to arrest him." (App. 4). To make that determination, this Court is respectfully requested to instruct the trial court to apply an objective test, namely the "two step process" established in *Ornelas* and *Pringle* and followed in *State v. Morris*, *supra*. The trial court should be directed to first determine the "historical facts" based on the evidence. The court may determine those facts by considering the competing versions of the witnesses, including the arresting officer. If the court does not believe the arresting officer's version of the facts, in whole or in part, that does not automatically mean however that there was no probable cause for the arrest. Instead, the court must determine what facts were reasonably available to the officer at the time of arrest, those being the "historical facts," and it is those facts

that must then be viewed from the standpoint of an objectively reasonable police officer to determine whether those facts give rise to probable cause.

In sum, using this analysis, the trial court should be directed on remand to determine whether an objectively reasonable police officer, based on the "historical facts," would believe that Mack was off the Club Essence property at the time he arrested Williamson. That is the dispositive issue in this case which requires appropriate factfinding by the trial court.

CONCLUSION

Based on the foregoing discussion, the Petitioner Leon Lott respectfully renews his request that the Court clarify that the dispositive issue to be remanded for proper findings of fact is whether an objectively reasonable police officer in the position of Deputy Gore would have believed that Demetrius Mack was off Club Essence property at the time he arrested McKenzie Williamson.

Respectfully submitted,

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April 27, 2015

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Petitioner, does hereby certify that service of the **Reply Brief of Petitioner** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 27th day of April 2015:

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APR 30 2015

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
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Columbia, South Carolina 29211

RE: Demetrius Mack v. Richland County Sheriff Leon Lott, in his Official Capacity
Appellate Case Number: 2014-002229
Civil Action Number: 2010-CP-40-5214
Our File Number: 314.8515

Dear Mr. Shearouse:

Please find enclosed for filing the original and fifteen copies of the **Reply Brief of Petitioner** with regard to the above referenced matter. Please file the brief and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving a copy on respondent's counsel.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

cc: Neal M. Lourie, Esquire (w/ Enclosure)
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