State of South Carolina — In the Supreme Court
County of Greenville — of South Carolina
The State — Respondant
V.S.
Erick E. Hewins No:2015-000595 — Petitioner
Pro Se — Motion to Dismiss
Re: Frivolous Appeal

Now comes petitioner, Erick E. Hewins Moves this court to dismiss Respondant Motion to deny petitioner Certiori and vacate court of Appeals decisions of these following reasons.

1. Petitioner has been, incarcerated in violation of constitutional fourth Amendment and fourteenth Amendment.
2. Trial Court and Court of Appeals Judges render a ruling without adequate consideration by the court in without proper information as to all the circumstances affecting it. Assumption misleading information twisted justice to satify themselves for the convience of Attorney General in the police.
3. Respondent argument is without merits. One which from its inception is and forever continues to be absolution frivolous officer Gardner did not testifie

i) it was a verbal consent or non-verbal.

4. Court of appeals ruling has been rejected by United States Supreme Court in is groundless false and unsupported by record fraud upon the court.

5. Public office holder has no right to perform improperly with intention of injuring the offender and without probable cause will-fully, misapplying law causing serious hardship and injustice.

6. (Court of appeals ruling added insult to injury)

In our great State of South Carolina according to chief Justice: It is inept to condone such practices, knowing your a public official choosen to up-hold the law, but not by any means. We South Carolina are the smallest State on the map with the most incarcerated population, Those reasons being done by trial court Assistance solicitor office Defence Public defenders or working together to get a conviction by any means. Appellant Defence and the Assistant Attorney General office add insult to the injury causing more serious hardship and manifest injustice. In the words of Foweth Circuit court of appeals Judge Kenith Hall, a judge who

without proper information as to all the circumstances affecting it. Assumption to lie, cheat or Defraud. Lack of integrity twist justice to satisfy themselves for the convience of the police and Attorney General. Misuse of power possessed by virtue of State law and made possible only because wrongdoer is clothed with authority of State. Fraud on the courts a scheme to interfere with judicial machinery performing task of impartial adjudication. Misconduct directed to the court itself such as undermining the integrity of the judicial process. State official purporting or pertending to act in the performance of his/her official duties bringing an offended to justice without legal justification. Willfully misapplying court process to obtain objects not intened by law. Rendered without adequate consideration by the court without proper information a mistaken assumption or misleading advice given or issued. Public office holder has no right to perform improperly with intention of injuring the offender and without probable cause manufacturing theory of guilt knowingly and deliberately or with reckless disregard for the truth. Justice is not that trial judge solicitor, and Attorney General office is not to win a case by all means, but that justice shall be done. It is as much his/her duty to refrain from

improperly with intention of injuring the offender and without probable cause manufacturing theory of guilt knowingly and deliberately or with reckless disregard for the truth. Justice is not that trial judge solicitory and Attorney General office is not to win a case by all means, but that justice shall be done. It is as much his/her duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about justice. While rule 220(c) of the South Carolina Appellate court rules allows court of appeals to affirm the lower court on any ruling, order, decision or judgment. There is no ruling, decision or judgment regarding consent in this case.

In fact court of appeal opinion is limited to the officers testimony, rather than a totality of the circumstances evaluation. Court of appeals went on to point out that it was "troubled" by Gardner's bare assertion that he received consent for the second reach to justify his actions. Citing Johnson vs. United States, 333 U.S. 10, 13-14 (1948). Yet court of appeals relied on consent. Gardner did not testify if Petitioners consent was verbal or non-verbal. As this court is aware the prosecutor has the "burden of proving that the consent was

in fact, freely and voluntarily given cannot be discharged by showing no more than acquiescence to a claim of lawful authority. While petitioner knew he had the right to refuse consent Tr. page 353-354. Government need not prove that, Schneckloth vs. Bustamonte 412 U.S. 218, 93 sct. 2041, 36 L.Ed. 2d 854 (1973) see citing in Bumper vs. North Carolina 391 U.S. 543, 548-549, 88 S.ct. 1788, 1792, 20 L.Ed-2d 797 (1968) It cannot rely solely on acquiescence to the officers wishes to establish the requisite to the officers wishes to establish the requisite consent. This is a notion that we have squarely rejected. Proved, supra "the existence of voluntary consent is determined from the totality of the circumstances" A warrantless search is reasonble with the meaning of the fourth Amendment when voluntary consent is given for the search" Palacio v. State, 333 S.C. 506, 514, 511 S.E. 2d 62, 66 (1999). To determine voluntary consent, a trial court must engage in a totality of the circumstances evaluation, with the burden on the state to demonstrate voluntary consent. Id. Here the petitioner disputed the existence of consent in general, not just the existance of voluntary consent. Furthermore trial court committed error in refusing to submit the question to the jury. Additionally the trial

court did not give petitioner a reliable determination of the voluntariness of consent. A rule that jury is not to hear unless and until the trial judge has determined that it was freely and voluntary given. Violating Jackson vs. Denno, Supra. Since trial court never made a Reliable determination regarding Voluntariness of consent court of appeals cannot justify ignoring our "precedent requiring an issue be preserved before an appellate court will address the merits of the issue. See State v. Dunbar, 356 S.C. 138, 587 S.E. 2d 691 (2003) "In order for an issue to be preserved for appellate review, it must have raised to and ruled upon by the trial judge." Issues not raised and ruled upon in the trial court will not be considered on appeal." Because the trial court did not rule on this argument, it is not preserved for appellate review and we do not reach it. State v. Brockmeyer, 406 S.C. 324, 336 N-8, 751 S.E. 2d 645, 651 N-8 (2013). form the moment the officers parked their vehicle in front of petitioner, they were showing force that would lead a reasonable man to believe he was not free to go. Thus, from that time forward, petitioner had been seized within the meaning of the fourth Amendment. In the instant

case, officers Gardner pointed to the parked position of petitioner's vehicle as one reason that they approached. Specifically, officer Gardner testified that backing into a spot violated a city ordinance, and was a ticketable offence. Once Gardner approached petitioners vehicle, however, it was immediately clear that officer Gardner was not concerned about how petitioners vehicle was parked. Officer Gardner did not testify that he asked petitioner a single question about the position of the vehicle, nor did officer Gardner attempt to ticket petitioner for this violation. Because officer Gardner's underlying traffic stop was improper, every question thereafter exceeded the limited scope and duration of questions allowed under Terry and its progeny. See State v. Pichardo, 367 S.C. 84, 623, S.E. 2d 840 (ct. App. 2009) However, when an officer ask for consent to search after an unconstitutional detention, the consent is procured per se invalid unless it is both voluntary and not an exploitation of the unlawful detention Id. At 105, 623 S.E. 2d At 851. Finally, in determining of a consent is voluntary, whether an individual is told of their right to refuse consent is highly relevant to the factual inquiry. Mendenhall supra. In

officer vehicle approached they noted that petitioner was an African American male, and that two (2) white females were in the Toyota camry. Before backup arrived petitioner relayed to officer Gardner that he was at the Clarion Inn to visit his "baby mama" who was staying in (room 237). (Trip. 95, 11-10-25, p 96, 11-1-3.) Approximately twelve (12) minutes after officer Gardner and officer Hall arrived and began their investigation of petitioner, officer Cochran arrived. Officer Gardner relayed to officer Cochran what petitioner had told officer Gardner about why he was at the Clarion Inn, and officer Cochran went to check on these statements with the front desk. After officer Cochran had verified petitioner story, and was coming back towards the vehicle, he saw officer Gardner perform a pat down of petitioner. (Tr. p 97, 11-19-25, p. 98, 11-1-25, p. 99, 11-1-8) The CAD reports demonstrates that officer Gardner and Hall was fabricating about what really happen also that they arrived on the scene at 12:36 A.M., and officer Cochran arrived on the scene at 12:48 A.M. At which time petitioner was standing outside of his vehicle, but officer Gardner had not yet performed the pat-down. Petitioner Trial

COUNSEL RELIED ON SEVERAL FACTORS IN HIS ARGUMENT INCLUDING THE LENGTH OF TIME THAT PASSED BETWEEN WHEN OFFICER GARDNER ASK PETITIONER TO STEP OUT OF HIS VEHICLE AND WHEN OFFICER GARDNER ACTUALLY INITIATED THE PAT-DOWN. (TR. p 147, 11-9 p. 148, 11-1-14) THE INSTANT CASE ALIGNS MORE CLOSELY WITH U.S. V. SPRINKLE, 106 F. 3d 613 (1997) THAN LENDER. PETITIONER WAS MERELY SITTING IN HIS VEHICLE, SPEAKING TO THE OCCUPANTS OF ANOTHER VEHICLE WHEN OFFICERS GARDNER AND HALL ARRIVED. THE OFFICER HAD NOT BEEN ALERTED TO ANY POTENTIAL CRIMINAL ACTIVITY IN THE AREA. BOTH OFFICERS TESTIFY THAT IT APPEARED THE VEHICLES OCCUPANTS WERE MEETING "FOR A PURPOSE" THAT NEITHER THE PETITIONER NOR THE WOMAN IN THE CAMRY APPEARED TO BE MOVING FROM THEIR VEHICLES, AND THAT THEY WERE TALKING ACROSS THE CARS. ONCE OFFICER GARDNER PARKED AND APPROACH PETITIONER TO STAND IN THE A-FRAME OF PETITIONER'S CAR PREVENTING PETITIONER FROM EXITING HIS VEHICLE. OFFICER GARDNER POSITION IN THE DOOR FRAME, HE WAS ABLE TO SEE INTO PETITIONERS VEHICLE AND DID NOT OBSERVE ANY DRUGS, DRUG PARAPHERNALIA, MONEY, GUNS. AIR FRESHER, OR HAND TO HAND CONTACT OR OTHER INDICIA OF ILLEGAL ACTIVITY. SOUTH CAROLINA

LAW RECOGNIZES THAT FOR AN OFFICER TO PROPERLY CONDUCT A PAT-DOWN, OR TERRY FRISK "AN OFFICER MUST BE ABLE TO SPECIFY THE PARTICULAR FACTS ON WHICH HE OR SHE BASED HIS OR HER BELIEF THE SUSPECT WAS ARMED AND DANGEROUS." STATE V. BUTLER, 353 S.C. 383. 577 S.E. 2d 498, QUOTING, SIBRON V. NEW YORK, 392 U.S. 40, 88 S.Ct 1889 (1968) MERE KNOWLDGE OF THE SUSPECT BEING A KNOWN NARCOTICS DEALER WHO PUT HIS OR HER HAND INTO A POCKET AS THE POLICE APPROACHED DOES NOT PROVIDE JUSTIFICATION FOR A TERRY FRISK. DELIBERATELY FURTIVE ACTIONS AND FLIGHT AT THE APPROACH OF STRANGERS OR LAW OFFICER ARE STRONG INDICIA. MORE SUCH SUSPICION WAS CREATED BY OFFICER GARDNER THROUGH HIS UNLAWFUL INVESTIGATIVE DETENTION OF DEFENDANT. FINALLY, IN THE INSTANT CASE. GARDER'S TESTIMONY IS MADE LESS CREDIBLE BY THE AMOUNT OF TIME THAT PASSED BETWEEN ASKING PETITIONER TO EXIT HIS VEHICLE AND WHEN OFFICER GARDNER ACTUALLY PERFORMED THE PAT-DOWN FOR WEAPONS THROUGH "CAD" REPORT EXHIBIT 1-1 TR. PAGES 228, 249, IN TRIAL TESTIMONY FROM OFFICER COCHRAN CREATES A PERIOD OF ROUGHLY (20) MINUTES. GIVEN THE TOTALITY OF THE CIRCUMSTANCES OF TIME THAT PASSED BETWEEN ASKING PETITIONER TO EXIT HIS VEHICLE AND WHEN OFFICER GARDNER ACTUALLY PROFORMED

the pat-down for weapons. Through "CAN" report exhibit J-1 Tr. pgs 228, 249 in trail testimony from officer Cuthran creates a period of roughly (20) minutes. Given the totality of the circumstances, a reasonable man in officer Gardner's position would not have believed that petitioner 4th Amendment right. The central witness in most fourth Amendment determinations is the officer effectuating the traffic stop. Thus, it is incumbent upon the court to ensure that a reasonable and objective basis existed to support the officers actions. At the outset, the officer's in the instant case has a substantial credibility problem. Furthermore office Gardner's characterization of the petitioner Nervousness "greatly increasing" over the course of the stop is fabrication to be nothing more but to validate a seizure that happend to turn up contraband. In this case the lower courts failed to take note of the fact that no testimony presented during trail provided any evidence that the petitioner's vehicle contained any air freshener's, fast food bags, odor of drugs or alcohol, or other indicia of potential criminal activity previously recognized by South Carolina appellate court nevertheless

GARDNER quickly ABANDON THE REASON for to stop, AND MOVED forward with AN obvious drug INVESTIGATION. GARDNER TESTIFIED THAT he believed THE PETITIONER WERE ACTIVELY INVOLVED IN CRIMINAL ACTIVITY AND THAT he had REASONABLE suspicion. HOWEVER GARDNER could NOT provide sufficient objective facts to justify this suspicion. IN short. MR. GARDNER WAS SIMPLY playing to a "hunch" based ON NO MORE THAN inchoate AND unparticularized. FAR from providing REASONABLE SUSPICION THE factors listed by officer GARDNER CAN only be REASONABLY VIEWED AS ATTEMPTS to justify his unsupported "gut instinct after-the-fact" PETITIONER counsel AT trial repeatedly CASE doubt ON officer GARDNER TESTIMONY counsel provide two (2) WITNESSES to REBUTTAL GARDNER TESTIMONY officer COCHRAN CONTRADICTED his fellow officers ALSO WITNESS MEGAN NEWMAN REFUTED his TESTIMONY. PETITIONER TESTIMONY WAS CORROBORATED by officer COCHRAN AND MEGAN NEWMAN. PETITIONER counsel during closing STATEMENT STATED officer COCHRAN REPORT flat out say THAT GARDNER IS NOT being truthful. TR. p. 319 LINE 17.

Conclusion

The lower courts sit in judgement with a great sense of inadequacy for the last act hand passing Judgement on another person with serious life consequences. Respondant argument is sham frivolous for delay and officer Gardner is without merits in Mapp vs. Ohio, 376 U.S. 643 at 655 (1961) Supreme court of the U.S. made nation/ policy Abuse of unfettered police authority is greater danger to society than the contraband in these cases. For the reasons herein Petitioner request should be granted not to would be a serious Miscarriage of justice, and fraud upon the court. See State v. Green 330 S.C. 551, 559, 499 S.E. 2d 817, 821 (Ct. App. 1999) The fruit of the poisonous tree doctrine holds that where evidence would not have come to light, but for the evidence has been obtained by the exploitation of that illegality, the evidence must be excluded.

State of South Carolina
in the Supreme Court

Appeal from Greenville County
Court of General Sessions
The Honorable G. Edward Welmaker, Circuit
court Judge:

The State, Respondant

vs.

Erick E. Hewins Petitioner

Appellate Case No. 2015-000595

Certificate of Service

I certify that I have served Petitioner's motion to dismiss upon counsel for the Respondant, that the State, by delivering a copy via United States will postage perpaid on July 17, 2015, to the States Attorneys of record Mary Williams Deddon, Sussannah R. cole at South Carolina officer of Attorney General, Rembert Dennis Building, 1000 Assembly steet. Rm 519, Clumbia, S.C. 29201

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