STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

THE HONORABLE G. EDWARD WELMAKER CIRCUIT JUDGE

THE STATE
RESPONDENT,
V.
ERICK E. HEWINS
PETITIONER

APPELLATE CASE NO. 2015-000595

Reply Brief of Appellant

S ERICK HEWINS
PRO SE APPELLANT
MCCORMICK C/I F-2-B-244
386 REDEMPTION WAY
MCCORMICK, SOUTH CAROLINA
29899

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CASES

{ARGUMENTS}

1.) OFFICER GARDNER FAILED TO JUSTIFY HIS INITIAL STOP OF APPELLANT BY ARTICULABLE FACTS OF PRESENT CRIMINAL ACTIVITY.

AS APPELLANT ACKNOWLEDGED IN HIS INITIAL BRIEF, NOT ALL PERSONAL ENCOUNTERS BETWEEN POLICEMAN AND CITIZENS INVOLE "SEIZURES" OF PERSONS THEREBY BRINGING THE FOURTH AMENDMENT INTO PLAY. STATE V. RODRIQUEZ 323 S.C 484476 S.E. 2d 161 (1977) AS LONG AS THE PERSON TO WHOM QUESTIONS ARE PUT REMAINS FREE TO DISREGARD THE QUESTIONS AND WALK AWAY THERE HAS BEEN NO INTRUSION UPON THAT PERSON'S LIBERTY OR PRIVACY THAT WOULD REQUIRE CONSTITUTIONAL JUSTIFICATION. U.S. V. MENDENHALL 446 US 544 AT 554 100 S CT 1870 AT 1877 (1980) HOWEVER WHERE IN VIEW OF ALL THE CIRCUMSTANCES SURROUNDING THE INCIDENT, A RESONABLE PERSON WOULD HAVE BELEIVED HE WAS NOT FREE TO LEAVE, "THAT PERSON HAS BEEN SEIZED WITHIN THE MEANING OF THE FOURTH AMENDMENT. Id. HERE THERE IS NO QUESTION THAT APPELLANT WAS SEIZED WITHIN THE MEANING OF THE FOURTH AMENDMENT FROM THE TIME OFFICER GARDNER'S VEHICLE CAME TO A STOP. OFFICER GARDNER AND HALL ENTERED THE CLARION INN PARKING LOT AND PARKED THEIR VEHICLE DIRECTLY IN FRONT OF APPELLANT'S VEHICLE PREVENTING HIM FROM DRIVING AWAY. TR. TR. pg. 106 ll. L 5-21 FURTHER MORE OFFICER GARDNER CAME TO QUESTION APPELLANT IN APPELLANTS DOORFRAME, PREVENTING APPELLANT FROM LEAVING HIS VEHICLE AND WALKING AWAY FROM THE ENCOUNTER.

TR. TR. p. 167 ll 15-25

ADDITIONALLY WITH NO MORE INFORMATION THAN OFFICER GARDNER HAD WHEN HE AND OFFICER HALL ENTERED THE PARKING LOT, OFFICER GARDNER TESTIFIED THAT HAD APPELLANT ATTEMPTED TO DRIVE OFF OFFICER GARDNER WOULD HAVE PURSUED HIM.

TR. TR. p. 219 ll. 13-25

OFFICER GARDNER ALSO CORROBORATED APPELLANT'S TESTIMONY THAT THE POLICE VEHICLE WAS PARKED DIRECTLY IN FRONT OF APPELLANT VEHICLE. TR. TR. pg. 215 ll. 11-14

THUS NO INDIVIDUAL IN APPELLANTS POSITION'S WOULD REASONABLY HAVE THOUGHT THEY WERE FREE TO LEAVE THE PARKING LOT AND DISREGARD OFFICER GARDNER'S QUESTIONS. THEREAFTER OFFICERS GARDNER'S QUESTIONING OF APPELLANT CONTINUED AN INVESTIGATORY DETENTION WITHIN THE MEANING OF THE FOURTH AMENDMENT FROM THE MOMENT HIS VEHICLE CAME TO REST. THE QUESTION THEN BECOMES WHETER, GIVEN THE TOTALITY OF THE CIRCUMSTANCES, AFTER OFFICER GARDNER ENTERED THE PARKING LOT, HE HAD REASONABLE ARTICULABLE SUSPICION THAT APPELLANT WAS PRESENTLY ENGAGED IN CRIMINAL ACTIVITY.

THE TERM, "REASONABLE SUSPICION" REQUIRES A PARTICULARIZED AND OBJECTIVE BASIS THAT WOULD LEAD ONE TO SUSPECT ANOTHER OF CRIMINAL ACTIVITY. STATE V. BIASSINGAME 338 S.C. 240, 248 525 S.E. 2d 535, 539 (1999) OFFICERS MAY NOT BASE REASONABLE SUSPICION ON A GUT FEELING, ON A "HUNCH" OF ILLEGALITY ACTIVITY. U.S.V. SOKOLOW 490 U.S. 1, 8, 109 S.CT. 1581, 1585 (1989) THE QUERY IS FACT SPECIFIC AND MUST TAKE INTO ACCOUNT THE TOTALITY OF THE CIRCUMSTANCES. Id

IN THE INSTANT CASE, OFFICER GARDNER TESTIFIED THAT THE NIGHT OF THE INCIDENT, HE WAS ON ROUTINE PATROL AND HAD NOT RECEIVED ANY PARTICULAR CALLS ABOUT CRIMINAL ACTIVITY IN THE AREA. TR. TR. pg. 217 ll. 1-21

HE FURTHER TESTIFIED THAT WHEN HE PULLED INTO THE CLARION INN PARKING lot, HE SAW APPELLANT'S CAR PARKED NEXT TO ANOTHER CAR AND OBSERVED THE OCCUPANTS OF THE VEHICLES TALKING TO ONE ANOTHER (Id)

NEVER ONCE DID OFFICER GARDNER TESTIFY THAT HE OBSERVED ANY INDICATION OF ONGOING CRIMINAL ACTIVITY. IN FACT HE ACKNOWLEDGED THAT THE OCCUPANTS OF THE VEHICLES WERE MAKING NO ATTEMP TO EXIT THEIR VEHICLES, NOR DID THEY APPEAR TO HAVE ANY LUGGAGE. TR. TR. pg. 193 ll. 2-7

OFFICER GARDNER FURTHER ACKNOWLEDGED THAT THERE WAS NOTHING ILLEGAL ABOUT BEING IN A hotel PARKING LOT. TR. TR pg. 217 ll. 17-21

FINALLY WHEN OFFICER GARDNER STOOD AT APPELLANT'S WINDOW QUESTIONING HIM, HE OBSERVED NO INDICA OF CRIMINAL ACTIVITY. INDEED OFFICER GARDNER CONFIRMED THAT AT THE TIME HE ENTERED THE PARKING lot, THE ONLY INDICATORS HE HAD TO SUPPORT REASONABLE SUSPICION OF CRIMINAL ACTIVITY WERE THE PURPORTED High CRIME AREA, THAT THE APPELLANT WAS BACKED INTO A SPACE AND THAT IT WAS NIGHTIME. TR. TR. p. 210 ll. 3-11

THESE FACTS FAILS TO CREATE REASONABLE SUSPICION OF CRIMINAL ACTIVITY SUFFICIENT TO SUPPORT OFFICER GARDNER'S INITIAL INVESTIGATORY DETENTION. THUS THIS SEIZURE WAS IMPROPER AND INFECTED THE ENTIRETY OF THE ENCOUNTER AND THE TRIAL COURT SHOULD HAVE SUPPRESSED THE EVIDENCE SEIZED AS A RESULT OF THIS ENCOUNTER.

II). OFFICER GARDNER FAILED TO JUSTIFY HIS TERRY FRISK OF APPELLANT BY ARTICULABLE FACTS TO SUPPORT REASONABLE SUSPICION THAT APPLICANT WAS ARMED AND DANGEROUS

BY VIRTUE OF THE FACTS THAT RESPONDENT ARGUES OFFICER GARDNER PERFORMED A TERRY FRISK IN THIS CASE, THE RESPONDENTS CONCEDES THAT, AT SOME POINT, A SEIZURE WITHIN THE MEANING OF THE FOURTH AMENDMENT OCCURED TERRY V. OHIO 392 U.S. 1, 88 S.CT. 1868, (1968)

APPELLANT MAINTAINS THAT THE RESPONDENT HAS PRESENTED INSUFFICIENT GROUNDS TO SUPPORT HIS INITIAL INVESTIGATORY DETENTION OF APPELLANT HOWEVER RESPONDENT ALSO MAINTAINS THAT GIVEN THE TOTALITY OF THE CIRCUMSTANCES OF THE FRISK, RESPONDENT FAILED TO ARTICULATE A REASONABLE BASIS TO BELEIVE APPELLANT WAS ARMED AND DANGEROUS AT THE TIME OF THIS INCIDENT, SUFFICIENT TO SUPPORT A TERRY FRISK TERRY (SEE FOOTNOTE 18: "THIS DEMAND FOR SPECIFICITY IN THE INFORMATION UPON WHICH A POLICE ACTION IS PREDICATED IS THE CENTRAL TEACHING OF THIS COURT'S FOURTH AMENDMENT JURISPRUDENCE." TO DETERMINE WHETHER THE OFFICER ACTED REASONABLY IN PERFORMING A WEAPON PAT DOWN OF THE APPELLANT THE COURT MUST CONSIDER " NOT OFFICER GARDNER INCHOATE AND UNPARTICULARIZED SUSPICION.... BUT.... THE SPECIFIC REASONABLE INFERENCES WHICH HE IS ENTITLED TO DRAW FROM THE FACTS IN LIGHT OF HIS EXPERIENCE.

TERRY AT 24, 88 S.CT. 1868 AT 1882

THIS SEARCH IS A LIMITED SEARCH, JUSTIFIED SOLEY FOR THE PROTECTION OF THE OFFICER AND OTHERS NEARBY, AND MUST

THEREFORE BE CONFINED IN SCOPE TO "AN INTRUSION REASONABLY DESIGNED TO DISCOVER GUNS, KNIVES, CLUBS, OR OTHER HIDDEN INSTRUMENTS FOR THE ASSAULT OF A POLICE OFFICER. TERRY AT 28, 88 S.CT. AT 1884 FURTHERMORE HIS RIGHT TO SEARCH FOR WEAPONS MUST BE INCIDENT TO A LEGAL INVESTIGATORY STOP PRECIPITATED BY ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY. Id. AT 30-31, 88 S.CT AT 1884-1885

HERE THE INITIAL DETENTION OF APPELLANT IS NOT REASONABLE THUS NO TERRY FRISK CAN FOLLOW. ADDITIONALLY OFFICER GARDNER TESTIFIED DIRECTLY TO THE FACTS THAT HIS SEARCH OF APPELLANT WAS NOT LIMITED TO A SEARCH FOR WEAPONS. INDEED HE TESTIFIED THAT DURING THIS ENCOUNTER, THE APPELLANT TOUCHED HIS POCKET AND THAT THIS CAN INDICATE THAT AN INDIVIDUAL EITHER HAS WEAPONS OR THAT THEY HAVE CONTRABAND OR DRUGS INSIDE THEIR POCKET.

TR. TR. pg. 51 ll. 9-20

OFFICER GARDNER TESTIFIED THAT THE FOLLOWING PROVIDED REASONABLE SUSPICION THAT THE SUSPECT WAS ARMED:

1) THAT WHEN OFFICER GARDNER QUESTIONED APPELLANT HE APPEARED NERVOUS 2) THAT THE APPELLANT TOUCHED HIS POCKET DURING THE ENCOUNTER.

AS A PRELIMINARY MATTER, APPELLANT HAS A STUTTER, WHICH CAN BE EXACERBATED BY NERVOUSNESS. FURTHERMORE IT IS IMPORTANT THAT FOR THE PURPOSE OF THE INVESTIGATORY STOP AND FRISKS NOT TO OVER PLAY A SUSPECT NERVOUS BEHAVIOR IN SITUATION WHERE CITIZENS WOULD NORMALLY EXPECT TO BE UPSET. U.S.V. GLOVER 662 F. 3d 688 (4th CIR 2011) CITING STATE V. MASSENBURG 654 F. 3d 480, 490 (4th CIR 2011) HERE OFFICER GARDNER WAS NOT AWARE OF ANY ONGOING CRIME IN THE AREA, HAD NOT OBSERVED APPELLANT

ENGAGED IN ANY CRIMINAL BEHAVIOR OTHER THAN SITTING IN HIS VEHICLE IN A PARKING lot, AND OBSERVED ONLY NERVOUS BEHAVIOR FROM APPELLANT ONCE GARDNER APPROACHED HIM.

OFFICER GARDNER'S JUSTIFICATION FOR A TERRY FRISK FRISK ARE FURTHER DETERMINED BY THE EXTENSIVE DELAY BETWEEN WHEN HE PULLED APPELLANT FROM HIS VEHICLE AND WHEN HE ACTUALLY CONDUCTED THE TERRY FRISK. AS OFFICER GARDNER ARRIVED ON THE SCENE APPROXIMATELY (12) MINUTES AFTER OFFICER GARDNER INITIATED THE INVESTIGATORY DETENTION, APPELLANT HAD ALREADY BEEN REMOVED FROM HIS VEHICLE, BUT had NOT BEEN FRISKED. TR. TR. pg. 95-100

FURTHER MORE OFFICER GARDNER/ OFFICER COTHRAN TESTIFIED THAT ONLY AFTER HE AND OFFICER GARDNER BRIEFLY CONFERRED CONFERRED ABOUT THE STOP AND OFFICER COTHRAN CHECKED ON APPELLANT'S STORY WITH THE HOTEL FRONT DESK, DID HE WATCH OFFICER GARDNER ADMINISTER A PAT DOWN OF APPELLANT TR. TR. pg. 358-363

THE GENERAL PURPOSE OF A TERRY FRISK IS TO BRIEFLY PAT DOWN A SUSPECTED CRIMINAL WHEN THERE IS REASON TO BELEIVE THE SUSPECT IS ARMED AND DANGEROUS AND POSES A THREAT TO AN OFFICER SAFETY. TERRY SUPRA. NOT ONLY DID OFFICER GARDNER FAILED TO SUPPORT HIS FRISK WITH REASONABLE SUSPICION THAT APPELLANT WAS ARMED, BUT THE GENERAL TIMING OF THE ENCOUNTER IS FATAL TO THE CREDIBILITY OF THE INVITED FRISK FOR WEAPONS. THE RECORD OF THE CASE INDICATES THAT A YOUNG OFFICER OBSERVED APPELLANT PARKED IN HIS VEHICLE, AND BASED UPON A HUNCH, DETAINED THE APPELLANT. OFFICER GARDNER FAILED TO ARTICULATE ANY

SUSPECTED ONGOING CRIMINAL ACTIVITY AT THE CLARION, NOR COULD HE PROVIDE MORE THAN A RECITATION OF DISPARATE CRIME WHEN ASKED WHAT HE SUSPECTED OF APPELLANT. ONCE THE DETENTION BEGAN, THE OFFICER OBSERVED NOTHING MORE THAN NERVOUS BEHAVIOR FROM APPELLANT, CONSISTENT WITH POLICE-CITIZEN ENCOUNTERS. OFFICER GARDNER THEN ATTEMPTED TO USE APPELLANT NERVOUS BEHAVIOR AS HIS SOLE BASIS TO JUSTIFY A TERRY FRISK, HOWEVER WHATEVER THE SEARCH WAS IN THIS MATTER, IT WAS NOT THE LIMITED SEARCH AUTHORIZED UNDER TERRY THEREFORE THE COURT should HAVE SUPPRESSED ALL EVIDENCE THAT RESULTED FROM THIS SEARCH.

III) RESPONDENTS ARGUMENT THAT APPELLANT VOLUNTARILY CONSENTED TO A SEARCH IS NOT PROPERLY PRESERVED FOR THIS COURT, AND EVEN IF PROPERLY PRESERVED, THERE IS NO EVIDENCE IN THIS MATTER TO INDICATE THAT APPELLANT COULD HAVE OR WOULD HAVE PROVIDED VOLUNTARY CONSENT TO A SEARCH OF HIS PERSON.

SEE TR. TR. pg. 353 - 354

APPELLANT TESTIMONY REFLECTS HE KNEW HIS CONSTITUTIONAL RIGHT AND did NOT CONSENTED TO A SEARCH.

THE TRIAL COURT did NOT MAKE ANY RULING AS TO CONSENT IN THIS MATTER, FURTHERMORE THE SOLICITOR WITHDREW HER JURY CHARGE REGARDING CONSENT. THEREFORE CONSENT IS NOT AN ISSUE BEFORE THIS COURT AND should BE DISREGARDED, HOWEVER WERE THE ISSUE OF CONSENT PROPERLY BEFORE THIS COURT, NO COURT COULD FIND THAT APPELLANT CONSENTED TO THE

SEARCH OR THAT ANY CONSENT GRANTED WAS VOLUNTARY AND NOT COERCED BY THE CIRCUMSTANCES.

A WARRANTLESS SEARCH IS REASONABLE WITHIN THE MEANING OF THE FOURTH AMENDMENT WHEN VOLUNTARY CONSENT IS GIVEN FOR THE SEARCH. STATE V. PROVET 405 S.C. 101 747 S.E. 2d 459 (S.C. 2013) CITING PALACIO V. STATE 338 S.C. 506, 514 511 S.E. 2d 62, 66 (S.C. 1999) THE EXISTENCE OF VOLUNTARY CONSENT IS DETERMINED FROM THE TOTALITY OF THE CIRCUMSTANCES. PROVET AT 114, 747 S.E. 2d AT 460 A LAW ENFORCEMENT OFFICER MAY REQUEST PERMISSION TO SEARCH AT ANY TIME. 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 PROCURED IS 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 DETERMING IF A CONSENT IS VOLUNTARY WHETER AN INDIVIDUAL IS TOLD OF THEIR RIGHT TO REFUSE CONSENT IS HIGHLY RELEVANT TO THE FACTUAL INQUIRY. MENDENHALL SUPRA. U.S. V. MENDENHALL DEATT IN PART WITH THE ISSUE OF WHETER THE DEFENDANT VOLUNTARILY CONSENTED TO A SEARCH OF HER PERSON. 466 US 544 100 S.CT. 1870 (1980)

IN MENDENHALL THE RESPONDENT WAS ARRIVING FROM A LOS ANGELES FLIGHT AND WAS APPROACHED BY DEA AGENTS BECAUSE SHE ALLEGEDLY MET A DRUG COURIER PROFILE. Id AT 500 US 100 S.CT AT 1875 AFTER SHE WAS APPROACHED SHE CONSENTED TO ACCOMPANY THE AGENTS FOR QUESTIONING AND THEN CONSENTED TO A SEARCH OF HER PERSON AFTER BEING TOLD ON TWO OCCASSIONS THAT SHE HAD THE RIGHT TO REFUSE. THE COURT DETERMINED FIRST THAT THE RESPONDENT'S CONSENT WAS PROCURED NOT AS A RESULT

OF AN ILLEGAL SEIZURE.

THE COURT THEN AFFIRMED RESPONDENT CONSENT BASED UPON THE TOTALITY OF THE CIRCUMSTANCES. Id THE COURT NOTED THE RESPONDENT AGE AND EDUCATION LEVEL AND ALSO FOUND IT highly RELEVANT THAT THE RESPONDENT WAS INFORMED TWICE THAT SHE WAS FREE TO DECLINE CONSENT. Id AT 559 100 S.CT. 1870 AT 1879 - 1880 IN LIGHT OF THESE FACTORS THE COURT AFFIRMED THE LOWER COURTS DETERMINATION THAT RESPONDENT'S CONSENT WAS FREELY AND VOLUNTARILY GIVEN. Id. THE FACTS OF THE INSTANT CASE DIVERGE MARKEDLY FROM THE FACTS IN MENDENHALL. FIRST NO COURT ENGAGED IN A CONVERSATION ABOUT APPELLANT'S AGE OR LEVEL OF EDUCATION OR ANY OTHER FACTORS INDICATIVE OF APPELLANTS ABILITY TO PROVIDE CONSENT. HOWEVER APPELLANT'S OWN TESTIMONY IS THAT HE did NOT PROVIDED CONSENT FOR OFFICER GARDNER TO GO INTO HIS POCKET. TR. TR. pg. 113 - 114 11. 1 - 23 TR. TR. pg. 353 - 354 FURTHERMORE OFFICER GARDNER PRODUCED NO VIDEO OR CORROBORATING EVIDENCE OF THE ENCOUNTER TO SUPPORT HIS RENDITION OF THE EVENT. FINALLY HAD OFFICER GARDNER ASKED APPELLANT TO CONSENT TO AN IN THE POCKET SEARCH AT THE POINT IN TIME THAT HE FELT A LUMP ON THE OUTSIDE OF APPELLANTS POCKET ANY CONSENT should BE deemed COERCIVE And pursuant TO THE CIRCUMSTANCES OF THE CONSENT WAS NOT VOLUNTARY. IN ADDITION THAT CONSENT Would BE LIMITED TO THE REMOVAL OF THE LUMP ONLY BASED UPON OFFICER GARDNER OWN TESTIMONY THAT ALL HE FELT DURING HIS OVER THE CLOTHES PAT DOWN WAS THE LUMP. THE COURT Should DISREGARD RESPONDENT POSITION THAT APPELLANT CONSENTED TO A SEARCH

BECAUSE THIS ARGUMENT WAS NOT PRESERVED FOR APPELLATE REVIEW, HOWEVER EVEN IF THE COURT CONSIDERS WHETER APPELLANT CONSENTED IN THIS MATTER, THE COURT MUST FIND THAT CONSENT WAS THE PRODUCT OF AN ILLEGAL DETENTION, AND THAT NO VOLUNTARY CONSENT EXISTED SUFFICIENT TO JUSTIFY A WARRANTLESS SEARCH OF APPELLANT ABSENT PROBABLE CAUSE.

IV.) THE TRIAL COURT ERRED BY ADMITTING EVIDENCE WHERE THE ORIGINAL CUSTODIAN WAS NEVER IDENTIFIED AND THERE WAS NO INDICATION ABOUT THE CONDITION OF THE EVIDENCE AT THE TIME IT WAS LOGGED IN.

APPELLANT STRONGLY ENCOURAGES THIS COURT TO REVIEW ITS INITIAL ARGUMENT REGARDING THE EVIDENTIARY ISSUE PRESENTED. IT IS UNDISPUTED THAT AT THE INITIAL TRIAL OF THIS MATTER, THE EVIDENCE CUSTODIAN WHO INITIALLY LOGGED THE EVIDENCE INTO THE EVIDENCE INTO PROPERTY AND EVIDENCE DIVISION NEVER APPEARED TO TESTIFY NOR WERE THEY IDENTIFIED BY SWORN AFFIDAVIT WHILE AT TRIAL THE STATE ATTEMPTED TO IDENTIFY MR. ISRAEL FLOUNDERS AS THE INITIAL EVIDENCE CUSTODIAN THE STATE PRESENTED NO PROOF OF IDENTIFICATION, NOR DID THE STATE PRESENT A SINGLE WITNESS WHO COULD POSITIVELY IDENTIFY MR. FLOUNDERS AS THE INITIAL CUSTODIAN. THUS THE IDENTITY OF THE INITIAL EVIDENCE CUSTODIAN ALONG WITH THE CONDITION OF THE EVIDENCE WHEN LOGGED IN REMAINS UNKNOWN AND THE COURT ERRED IN ADMITTING THE EVIDENCE AT APPELLANT TRIAL.

{CONCLUSION}

FOR THE REASON PROVIDED HEREIN AS WELL AS THOSE REASONS ENUNCIATED IN APPELLANTS INITIAL BRIEF, THE TRIAL COURT ERRED BY FAILING TO SUPPRESS EVIDENCE SEIZED IN VIOLATION OF APPELLANT FOURTH AMENDMENT RIGHTS, BY ADMITTING EVIDENCE WHERE THE INITIAL EVIDENCE CUSTODIAN WAS NEVER PROPERLY IDENTIFIED NOR WAS THE CONDITION OF THE EVIDENCE IDENTIFIED AT THE TIME THE EVIDENCE WAS logged. IN THE TRIAL COURT Should THEREFORE BE REVERSED AND THIS CASE REMANDED FOR FURTHER DECISION.

THIS 4 DAY OF DECEMBER 2015

RESPECTFULLY SUBMITTED

s/ Eric Stevens

PRO SE APPELLANT

MCCORMICK C/I F-2-B-244

386 REDEMPTION WAY

MCCORMICK, SOUTH CAROLINA

29835

{STATE OF SOUTH CAROLINA
IN THE SUPREME COURT}

RECEIVED
DEC 08 2015
S.C. SUPREME COURT

THE STATE,

RESPONDENT,

APPELLATE CASE NO. 2015-000595

V.

{ATTACHMENT TO BRIEF OF APPELLANT}

ERICK E. HEWINS

APPELLANT

{UNITED STATES V. SPRINKIE} 106 F. 3d 613 (4th CIR 1997)
WAS ARGUE IN {STATE V. BURGESS} 714 S.E. ad 917, (2011)
WE ARE MINDFUL OF CONCERNS REGARDING THE STATE USING WHATEVER FACTS ARE PRESENT NO MATTER HOW INNOCENT, AS INDICIA OF SUSPICIOUS ACTIVITY AND THAT THE STATE MUST DO MORE THAN SIMPLY LABELING A BEHAVIOR AS SUSPICIOUS TO MAKE IT SO.
{U.S. V. FOSTER} 634 F. 3d 243, 248, (4th CIR 2011)
THE STATE MUST BE ABLE TO ARTICULATE WHY A PARTICULAR BEHAVIOR IS SUSPICIOUS OR LOGICALLY DEMONSTRATE GIVEN THE SURROUNDING CIRCUMSTANCES, THAT THE BEHAVIOR IS LIKELY TO BE INDICATIVE OF SOME MORE SINISTER ACTIVITY THAN MAY APPEAR AT FIRST GLANCE.
HERE IN THE INSTANT CASE THERE WAS A lot OF SPECULATION OF WHAT WAS GOING ON IN THE PARKING lot.

{JOHNSON} 599 F. 3d AT 345
RELYING ON OFFICER'S CONCLUSION BASED ON HIS TRAINING AND EXPERIENCE, THAT HAND TO HAND CONTACT BETWEEN THE DEFENDANT AND SEVERAL MEN IN RAPID SUCCESSION IN A LOCATION KNOWN FOR DRUG SALES WAS INDICATIVE OF A DRUG TRANSACTION IN FINDING REASONABLE SUSPICION EXISTED.
FURTHERMORE PETITIONER OBJECTED TO OFFICER GARDNER GOING INTO HIS POCKET.
PETITIONER FURTHER ASKED THE OFFICER WHY WERE THEY HARRASSING HIM.
PETITIONER KNEW HIS CONSTITUTIONAL RIGHTS AND REFUSED SUCH REQUESTS AND MS. NEWMAN, AND SGT. COTHRAN AND PETITIONER CONTRADICTED OFFICER GARDNER TESTIMONY.
THIS IS NOT CONSISTENT WITH VOLUNTARY CONSENT TO SEARCH IN LIGHT OF THE TOTALITY SURROUNDING THE CIRCUMSTANCES.
{STATE V. FORRESTER SUPRA}
IF CONSENT WAS GIVEN OFFICER GARDNER EXCEEDED THE SCOPE.

THE INSTANT CASE WOULD APPLY THIS SAME PRINCIPLE IN {STATE V. FORRESTER SUPRA}

{FLORIDA V. ROYER} 460 U.S. 491
THE SUPREME COURT OF THE UNITED STATES WHEN VALIDITY OF CONSENT REST ON CONSENT, STATE HAS THE BURDEN OF PROVING THAT NECCESSARY CONSENT WAS OBTAINED AND THAT IT WAS FREELY AND VOLUNTARILY GIVEN, A BURDEN THAT IS NOT

SATISFIED BY MERE SUBMISSION TO A CLAIM OF LAWFUL AUTHORITY.

{STATE V. ELLEFSON} 242 S.E.2d 666

IF STATE RELIES UPON CONSENT TO SEARCH IT HAS THE BURDEN OF PROVING THE VOLUNTARINESS OF THE CONSENT AND COURTS CANNOT ASSUME THERE WAS CONSENT

CITING {PEOPLE V. HENRY} 65 CAL 2d 842 36 CAL RPTR 485, 483 P.2d 557 (1967)

COURTS FAILURE TO DETERMINE QUESTIONS OF CONSENT WAS HIGHLY PREJUDICIAL ERROR REQUIRING REVERSAL OF CONVICTION.

{STATE V BAILEY} S.C. 274 S.E. 2d 913 (1981)

THE DETERMINATION OF VOLUNTARINESS OF CONSENT IS A QUESTION OF FACT FOR THE TRIAL JUDGE.

PETITIONER RELIES UPON

{RIOS V. U.S.} 364 US 253 80 S.CT. 1431 4 L.Ed 2d 1688 (1960)

{JONES V. U.S.} 362 US 257 80 S.CT. 725 4 L.Ed. 2d 697 (1960)

{MCDONALD V. U.S.} 335 U.S. 451 69 S.CT. 191, 93 L.ed 153 (1948)

{JOHNSON V. U.S.} 333 US 10 68 S.CT. 367 92 L.Ed 436 (1948)

{STATE V. FORRESTER} 343 S.C. 637, 648, 541 S.E. 2d 837, 843 (2001)

ALL THESE CASES DEAIT WITH THE EXCLUSION OF EVIDENCE THAT HAD BEEN FORCIBLY SEIZED AGAINST THE SUSPECT DESIRES AND WITHOUT THE AUTHORIZATION CONFERRED BY THE SEARCH.

THE RESPONDENTS CONTINUES TO DISREGARD PETITIONER'S ARGUMENT THAT OFFICER GARDNER "TERRY FRISK" WAS CONDUCTED AFTER OFFICER SGT. COTHRAN HAD ARRIVED ON THE SCENE AND HAD WALKED TO THE FRONT OFFICER DESK AND WENT TO ROOM 237 AND VERIFIED PETITIONER'S STORY WHICH WAS APPROXIMATELY TWENTY MINUTES.

RESPONDENT ALSO DISREGARDS THE SECOND SEARCH ARGUMENT EXCEEDED THE SCOPE.

{STATE V. FORRESTER SUPRA}

RESPECTFULLY SUBMITTED

S. Erick Harris

PRO'SE APPELLANT

MCCORMICK % F-2-B-244

386 REDEMPTION WAY

MCCORMICK, SOUTH CAROLINA

29899

DATED December 4 12015

{STATE OF SOUTH CAROLINA
IN THE SUPREME COURT}

{APPELLATE CASE NO. 2015-000595}

THE STATE
RESPONDENT
V.
ERICK E. HEWINS
APPELLANT

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S.C. SUPREME COURT

Affidavit

{PROOF OF SERVICE}

I do Hereby CERTIFY THAT I HAS THIS 4 day OF December 2015 SERVED OPPOSSING WITH A COPY OF APPELLANT PRO'SE Reply BRIEF By DEPOSITING A COPY OF THE SAME IN THE UNITED STATES MAIL POSTAGE PREPAICIED AND ADDRESSED TOO: ALAN McCOMY WILSON
ATTORNEY GENERAL FOR S.C.
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA
29899

Respectfully Submitted
S Erick Hewins
PRO'SE APPELLANT
MCCORMICK C/I E-2-B-244
386 REDEMPTION WAY
MCCORMICK, S.C.
29899

SWORN OR AFFIRMED BEFORE THIS 4th
DAY OF December 2015
Michael Camare
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES July 9, 2025