

State of South Carolina
In the Court of Appeals

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APR 16 2018

SC Court of Appeals

The State

Respondent,

Mark Lorenzo Blake, Jr.,

Petitioner

Appellate Case No. 2016-00175
Appeal from Charleston County
Honorable Robin B. Stilwell
Circuit Court Judge

Petition for Rehearing/
Hearing en banc

Pursuant to Rule(s) 219, 220(B), 221(A), petitioner Mark Lorenzo Blake, Jr. petitions the court for both Rehearing and Hearing en banc and respectfully submits. There are (5) factors that this court overlooked or misapprehended and in dismissing appeal and affirming the conviction for trafficking cocaine (1) Petitioner respectfully submits that this court overlooked or misapprehended the fact that petitioner's state constitution was breached pursuant to S.C. Const. Art 5 § 4 (E) S.C. Supreme Court holding in State v.

Langford. 400 S.C. 421. 735 S.E. 2d 471 (2012). After
trialing petitioner (4) years he was indicted :

(2) Petitioner respectfully submits that this court overlooked or misapprehended the fact that the indictment of trafficking cocaine did not fit the criteria of state statute documentary and digital evidence. (3) Petitioner respectfully submits that this court overlooked or misapprehended the fact that petitioner's U.S. Const. Amend 4, S.C. Const. Art. 1 & 10 were violated based on "fruit of the poisonous tree" doctrine. (4) Petitioner respectfully submits that this court overlooked or misapprehended the fact that the state failed to meet its "Burden of Proof" by not properly demonstrating actual possession of trafficking in cocaine (5) Petitioner respectfully submits that this court overlooked the "Heightened Privacy Protection" provided by the S.C. Const. Art. 1 & 10.

1. The trial judge erred in not dismissing indictment after petitioner was indicted for (4) years in further breachment of state Supreme Court's holding in State v. Langford 400 S.C. 421, 735 S.E. 2d 471 (2012), S.C. Const. Art. 5 & 4 (E).

When petitioner was arrested on the 15th day of April 2012, indicted the 6th day of August, 2012 and not

tried until (4) years later on the 8TH day of August, 2016. Based on petitioner wasn't responsible for the unreasonable (4) year delay. Petitioner then moved to dismiss indictment of trafficking in cocaine based upon the State's deliberate gross negligence and breachment of petitioner's State Constitution, S.C. Const. Art. 5 § 4 (E), State Supreme Court's holding in State v. Langford 400 S.C. 421, 735 S.E. 2d 471 (2012). The trial judge then denied petitioner's motion to dismiss indictment of trafficking in cocaine based upon trial judge's misapprehension of petitioner did not demonstrate nor articulate petitioner was prejudiced by the (4) year delay.

Pursuant to: The provision of the S.C. Const. Art. 5 § 4 (E)

OLD CASE DISPOSITION:

"Any case, including non-track cases pending four (4) or more years from the date of indictment by the grand jury shall be dismissed by the CJAP unless the solicitor shall show good cause when it should not be dismissed. Such dismissal is without prejudice, unless otherwise specified by the and the solicitor shall have the right to re-present the matter to the grand jury before ordering dismissal. The clerk of court shall notify the solicitor and the defendant of the court's intention to dismiss the case. The solicitor shall: (1) within (10) days of receiving the notice from the

court, notify the victim(s) in writing of the court's intended disposition and invite the victim(s) to file a written response with the solicitor within (10) days. (2) within (30) days file a written response with the court setting forth in detail the reasons, including the response(s) of the victim(s) why the case should not be dismissed and advising the court of the expected time of disposition. The defendant may submit a written response within (30) days of the solicitor's filing. The CJAP may schedule a hearing, dismiss the case without a hearing or take such further action as may be appropriate. Failure to respond as set forth herein will result in the matter being dismissed pursuant to this provision. If the solicitor shows good cause, the case shall automatically be transferred to the Judicial Docket.

Based on the above stated in reference to said State Constitution the trial judge both abused his discretion and erred on NOT dismissing the indictment based on his misapprehension of said State Constitution denying Applicant's said motion based upon Applicant didn't demonstrate prejudice amongst (4) year delay of case disposition. In here in plain language of said State Constitution the Applicant doesn't have to demonstrate prejudice in any manner "in whatsoever" and in addition trial judge never established rather the State showed good cause of the (4) year delay of case disposition, in which

Furthermore prejudiced Applicant of said entitled dismissal relief and further causing Applicant to be sentenced to a mandatory (25) year sentence of trafficking in cocaine.

2. The trial judge erred in not dismissing indictment when Applicant's indictment of trafficking cocaine did not fit criteria of State Statute 44-53-370 (G).

Based upon supporting facts of both documentary and digital evidence of the said drugs were seized from arresting officer's squad car and petitioner being put down searched prior and before hand of both drugs and weapons before being placed in arresting officer's vehicle; furthermore digital evidence which was located in the arresting officer's vehicle reveals arresting officer "did not" search the seat of his squad car before placing petitioner within the arresting officer's squad car and therefore the State would lack proving beyond a reasonable doubt possession of any type rather actual or constructive. However trial judge ultimately denied petitioner's motion after initially agreeing with petitioner "that conjecture and speculation are not sufficient to convict a defendant." Petitioner was therefore prejudiced of the denial of motion to dismiss which violates petitioner's

tioner's, both State and Federal Constitutional rights, U.S. Const. Amend. 6 and S.C. Const. Art. 1 § 14 requires and establishes that an accused be informed of the nature and cause of the accusation(s). This in turn has been held to mean that the accusatory instrument filed against the accused is appraised with reasonable certainty of accusation against him. This will enable the accused to know what charge(s), he must be prepared to meet at trial. If an accusatory instrument does not set forth the alleged criminal conduct with sufficient specification it is subject to dismissal, even if the prosecution attempts to supplement it with specifics set forth in a bill of particulars. "This is so because."

Based upon digital evidence both admitted and presented of the trial of August 8-9, 2016. The indisputable fact remained the State both "could not" nor "would not" properly demonstrate and prove the element of possession in any manner of trafficking in cocaine, which does not fit the criteria of state Statute 44-53-370 (E):

"Any person who knowingly sell(s), manufacture(s), deliver(s), purchase(s) or brings into this state or who provides financial assistance or otherwise aid(s), abet(s), attempt(s) or conspire(s) to sell, manufacture, cultivate, deliver, purchase or bring into this state or who is knowingly in actual or

constructive possession or who knowingly attempts to become in actual or constructive possession of.

3. The trial judge erred for failure to suppress evidence based on "fruit of the poisonous tree doctrine."

Petitioner was initially pulled over for an alleged traffic stop violation for speeding. However there was no evidence presented at trial to both support and confirm rather or not the Applicant was never once citationed for said and alleged traffic stop violation. Furthermore, petitioner met all requirements of the stop by properly rendering over sufficient driver credentials and therefore the purpose of the initial traffic stop was accomplished except for the arresting officer's issuance of the traffic citation and therefore arresting officer clearly exceeded the scope of the traffic stop. State v. Tindall, 379 S.C. 304, 665 S.E. 2d 188 (Ct. App. 2008) and therefore violated petitioner's both State and Federal Constitutional rights, U.S. Const Amend 4, S.C. Const. Art. 1 § 10.

"Exclusionary Rule"

It is explicitly clear under the exclusionary rule that and such evidence should be suppressed, because it is constitutionally invalid and if used within trial no matter how

relevant the evidence may be it will violate the petitioner's both State and Federal Constitutional rights, U.S. Const. Amend 6; S.C. Const. Art. 1 §14 (Right to fair trial) Rules 103 (A)(1), 402 SCRE.

Furthermore thereafter arresting officer obtained and ran all petitioner's driver credentials through the database system. In the event arresting officer testified and alleges while in the midst of running petitioner's driver credentials, arresting officer then observed and witnessed from his squad car petitioner's "making suspicious movements." within petitioner's vehicle. Thereafter arresting officer then approached petitioner's vehicle and while making his (officer) reapproachment, arresting officer then testified and alleges observing petitioner put something onto petitioner's driver seat. Thereafter he subsequently "sat on it." Arresting officer then summed up his conjecture and theory of probable cause as good faith to abandon the initial traffic stop and further extend the stop into a more investigatory stop bleeding into a furthered prolonged second detention. However, the State of South Carolina must do more than simply label a behavior as suspicious to make it so the state must be able to either articulate why a particular behavior is suspicious or logically demonstrate giving the surrounding circumstances that the behavior is likely to be indicative of some more sinister activity than may appear at first glance without ambiguously making innocent cir-

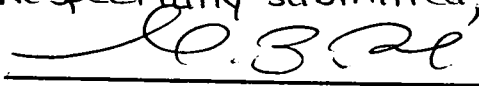
circumstances appear suspicious. Furthermore, inarticulate hunches or generalized suspiciousness are both insufficient; State v. Moore, 404 S.C. 634, 746, S.E. 2d 352 (2013) HN.4

Petitioner continued detention was unlawful, because the State did not present sufficient evidence to establish arresting officer's reasonable and articulable suspicion of a serious crime, see Knight v. State, 284 S.C. 138, 325 S.E. 2d 535 (1983)

4. The trial judge erred for denying directed verdict Rule 19 SCRCRIMP

The State failed to meet its burden based upon no supporting evidence that exigent circumstances ever existed pertaining to the alleged rock powder substance that arresting officer testified and alleged he seized from petitioner's vehicle which were the initial probable cause, but never once sanctioned or charged petitioner with an additional drug charge to support arrest and furthermore seizure within indictment. Furthermore probable cause would be based on theory if there is nothing in support, "and theory or conjecture is not sufficient to convict a defendant." "Quote on quote" by said trial judge Therefore petitioner's both State and Federal Constitutional rights; U.S. Const. Amend 5 and 14 and S.C. Const. Art. 1 § 3 requires that the prosecution prove beyond a reasonable doubt every element of a crime charged in RE Winship, 397 U.S. 358 at 364, 25 L.ED 2d 368, 90 S.C. 2319 (1970)

Additionally, the decision overlooks all said and cited
State and Federal Constitution violated herein, based on the
above arguments, petitioner seeks rehearing.

Respectfully submitted,


Mark L. Blake, Jr. #368687
Petitioner

This 12 day of APRIL
2018;

State of South Carolina
in the Court of Appeals

Appeal from Charleston, County
Honorable Robin B. Stilwell, Circuit Court Judge

The State,

Respondent,

v.

Mark Lorenzo Blake, Jr.,

Petitioner.

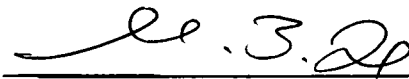
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SC Court of Appeals

Certificate of Service

The undersigned Petitioner hereby certifies that a copy of the petition for Rehearing in the above entitled case has been served upon: S.C. Court of Appeals, P.O. Box 11629, Columbia, S.C. 29211; This 12 day of APRIL, 2018.



Mark L. Blake, Jr., #368687

Petitioner

Subscribed and Sworn to before
me, this 12 day of April, 2018

Notary Public of South Carolina

My Commission Expires - 12-16-2019

APRIL 12 20 18
CLERK OF COURT
S.C. APPELLATE COURT
P.O. Box 1129
COLUMBIA, S.C. 29211

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APR 16 2018
SC Court of Appeals

Re: Petition for Rehearing and Hearing en banc
Appellate Case No. 2016-001715
Opinion No. 2018-op-113

Attention Honorable Clerk:

Enclosed please find a Petition for Rehearing and
Hearing en banc. Please file and docket the said
petition and submit it to the Honorable Justice(s)
for en banc hearing.

Thank you for your most prompt and profess-
ional attention in regards to this request.

Respectfully submitted,
Mark L. Blake, Jr.

Mark L. Blake, Jr.

SCDC# 368687

386 Redemption Way

McCormick, S.C. 29899