

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

JOHN WILLIE MACK, SR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001570

SUPPLEMENTAL APPENDIX

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S.C. SUPREME COURT

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TRANSCRIPT DATED SEPTEMBER 12, 20081

ORDER FILED FEBRUARY 1, 201812

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 vs.) TRANSCRIPT OF RECORD
5 John Willie Mack,) 2006-GS-42-1166;1167
6 Defendant.) September 12, 2008
7) Spartanburg, South Carolina

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B E F O R E:

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HONORABLE CLIFTON NEWMAN, JUDGE

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A P P E A R A N C E S:

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ANTHONY C. LEIBERT, ESQUIRE
Attorney for the State

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WILLIAM McPHERSON, ESQUIRE
Attorney for the Defendant

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Linda D. Moffitt
Circuit Court Reporter

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Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 MR. LEIBERT: Your Honor, this is John Willie Mack.
2 It's my bond motion, Your Honor, for D.N.A. testing. May I
3 hand up the motion?

4 THE COURT: Yes.

5 MR. LEIBERT: I think it's the last item typed up on
6 the -- on that list.

7 Your Honor, I'd like to hand this up as well.

8 This is an '06 case, Your Honor, where a lady by the
9 name of Ms. Moss had her home broken into on Victoria Lane
10 when she had been gone at work -- Victoria around
11 Spartanburg. And when she came home the front door was

12 open and there was some blood in certain places, and her
13 television was missing, and her laptop and some jewelry.

14 She called the police and they collected the blood,
15 and there was some blood on a light switch, I believe, and
16 there was some blood, I believe, near the entertainment
17 center where the television was taken.

18 They -- this defendant has an extensive record
19 including a burglary first conviction, two burglary second
20 convictions.

21 They interviewed him and did a match under the codist.
22 As you know, he was in the system because he was a
23 convicted felon, and therefore they went and interviewed
24 him.

25 He said he had never been to ■ Victoria Avenue and

1 had no reason to be there, but that there was a match from
2 his blood sample with SLED through the code system. And
3 they're requesting that we do a confirmatory match
4 essentially. And that's why we're here today.

5 THE COURT: All right. What says the defense?

6 MR. MCPHERSON: Judge, of course we're opposed to them
7 taking any further D.N.A.

8 When he was in prison they took his -- they drew blood
9 and took his D.N.A., so they already have it on file. And
10 we would be opposed to any further intrusions into his body
11 for D.N.A. purposes.

12 THE COURT: The only thing he would have to do is spit
13 in a cup, right?

14 MR. LEIBERT: Yes, sir. How they do it now -- I saw
15 it done a year ago -- they actually take a big Q-tip and
16 wipe on both sides of your mouth.

17 MR. MCPHERSON: We'd still be opposed to that because
18 they already have it on file.

19 THE COURT: All right.

20 MR. LEIBERT: If they'll stipulate that that's a
21 match, we don't need it, but for some reason the way they
22 set it up with codist system they like to have it a
23 confirmatory test from the sample.

24 THE COURT: So he's in jail charged with doing a
25 burglary, or doing a what?

5
1 MR. LEIBERT: A burglary first degree and grand
2 larceny. He's got other pending charges since then as
3 well.

4 THE COURT: And you have -- give me your speech again.
5 You have evidence recovered from the scene -- what?

6 MR. LEIBERT: Yes, sir. There was blood taken from
7 the light switch in the bedroom and then light -- and then
8 blood taken from the entertainment center where the T.V.
9 was missing and his -- and somebody collected that blood.
10 And I know his match is --

11 THE COURT: And you want to see whether it's his
12 blood.

13 MR. LEIBERT: Well, codist -- his blood sample was on
14 the database.

15 THE COURT: Correct.

16 MR. LEIBERT: And the way I understand it from the
17 indictment or the evidence I handed up, shows that they
18 have a hit. But they're saying -- they're recommending
19 that we do a confirmatory test. So whatever sample they
20 keep on -- in the database --

21 THE COURT: Right.

22 MR. LEIBERT: -- they like it confirmed.

23 THE COURT: All right. Yes, sir.

24 MR. McPHERSON: Your Honor, our position is they
25 already have his sample and they don't need another one.

1 THE COURT: Well, they --

2 MR. MCPHERSON: They just don't want to go through the
3 hoop of proving up the chain on that first.

4 THE COURT: He's raising his hand next to you there.

5 THE DEFENDANT: When I got arrested, I got arrested on
6 the 1st of Sep -- Sep -- January of '06 -- 31st. But I
7 went --

8 THE COURT: Why are you sweating so much?

9 THE DEFENDANT: I take medication.

10 THE COURT: All right.

11 THE DEFENDANT: I'm on medication at the jail make me
12 sweat.

13 But anyway I got arrested and went to the hospital
14 because I got -- I got a report over there in my folder
15 right there when I -- when I went to the hospital and
16 everything, right, for I was driving a vehicle. That's
17 what I went to jail for originally, driving a vehicle.

18 They tried to pull me over and I ran. So when I ran
19 and hid they found me and they, you know, took me to jail.
20 So when I got there, I got to jail and everything, you
21 know, I was beaten and stuff. I went to the hospital and
22 the lady gave me some medication when I got to the -- when
23 I got to the jail I was -- I woke up and they were
24 fingerprinting me.

25 THE COURT: All right.

1 THE DEFENDANT: So when I got fingerprinted I went to
2 the back.

3 THE COURT: What does any of this have to do with
4 whether or not your blood is in the light switch -- where
5 was it -- on the light switch in this person's house?

6 THE DEFENDANT: Because they came. When got -- they
7 got -- I went to the hospital. I was in jail. I wasn't in
8 jail for that. They brung it to me while I was in jail.

9 THE COURT: Well, they're trying to clean up all of
10 the crimes in town or in the county.

11 THE DEFENDANT: Na. See, what I'm trying to make you
12 understand --

13 THE COURT: All right. Go ahead. I don't mind
14 listening. I just want to stay on point. Seems like
15 you're off to another crime or some place.

16 THE DEFENDANT: What I'm saying I'm trying to relate
17 this together because when I went to the hospital I didn't
18 have this charge. See, I went to the hospital after, you
19 know, I had a force, a use-of-force warrant.

20 THE COURT: You think they already have your D.N.A.

21 THE DEFENDANT: I thought they -- I don't think, you
22 know --

23 MR. MCPHERSON: Yes, sir. They do have his D.N.A.
24 They took it while he was in prison.

25 THE DEFENDANT: They took it while I was in prison.

1 THE COURT: But isn't a D.N.A. sample -- is not that
2 intrusive. It's not like taking his blood or anything like
3 that, you know.

4 So the standards now, it's not like it used to be. I
5 mean, technology is such that, as I said, you can spit in a
6 cup and they can figure out whether it's your D.N.A.

7 I've had cases where the police bring in a suspect and
8 they ask him whether he's thirsty and he says yeah and they
9 give him a Mountain Dew and after he drinks and throws the
10 can in the trash can they get that and get the D.N.A. off
11 of it. So it's not a -- it's not such an imposition.

12 If that's what they want to do, I don't see anything
13 wrong with it, so I'm going to grant the motion.

14 MR. LEIBERT: Thank you, Your Honor.

15 THE COURT: Yes, sir. I can't hear your whole case.
16 I'm just hearing about whether or not --

17 THE DEFENDANT: Said arrested in '06. They said this
18 happened in '05, this, this, this --

19 THE COURT: When did this crime happen, the burglary?

20 THE DEFENDANT: I got, I got -- can I get my work?

21 THE COURT: Yes, sir. All right. I mean, yes, sir.

22 THE DEFENDANT: This happened in '0 (sic) -- he said
23 it happened in '06.

24 THE COURT: All right. Well, let's hear him again.
25 Let's give him another shot at it.

1 MR. LEIBERT: This crime occurred September the 6th of
2 2005.

3 THE COURT: Okay.

4 MR. LEIBERT: He also has another burglary second
5 pending from September 28th of 2005, as well as a burglary
6 from December 15th of 2005.

7 He additionally has possession of stolen vehicle in
8 2006, and failure to stop. So all three of his pending
9 burglaries are 2005, about three weeks apart for three
10 burglaries.

11 THE COURT: All right. Do you disagree with what he
12 just said?

13 THE DEFENDANT: Well, yeah. They brought me warrants
14 for, for I was in for, for driving a stolen vehicle. They
15 brought me warrants after that. They know that I --

16 THE COURT: What is it you're disagreeing about?

17 THE DEFENDANT: I'm saying they, they feel that I had
18 a record so they feel, you know, just say that I did this,
19 know what I'm saying, when I had nothing to do with it.

20 THE COURT: Well, they have got to prove it. That's
21 what the trial is all about, and you have your lawyer.

22 They -- you know, whatever your defense is to the
23 case, that's your defense to the case. I'm not dealing
24 with that. I'm just dealing with whether or not they can
25 get some D.N.A., because that's what SLED wants to get

1 to --

2 THE DEFENDANT: Well, what if they got that D.N.A.
3 from blood when I got arrested and got forced on, on the
4 6th and --

5 THE COURT: Well, they may check into everything that
6 you all are saying today to decide that they'll get it.

7 THE DEFENDANT: I got a record over here where --

8 THE COURT: But they may check into all of that and
9 say, fine, we're not going to bother you about more D.N.A.
10 But if they decide to bother you about more D.N.A., I'm
11 granting the motion. But I'm going to tell them to first
12 check into everything you all are saying to see if they
13 already have it. How about that?

14 MR. MCPHERSON: You'll put that in the order, if they
15 already have D.N.A. not to take it again?

16 MR. LEIBERT: Yes, sir. That will be fine with us.

17 THE COURT: All right. We'll put that in the order.

18 END OF REQUESTED TRANSCRIPT OF RECORD
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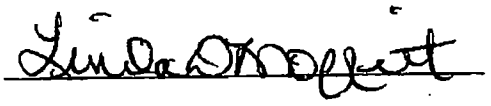
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 12th day of September 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 14, 2011



Linda D. Moffitt
Circuit Court Reporter

The Supreme Court of South Carolina

John Willie Mack, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-000820

Lower Court Case No. 2013-CP-42-02063

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Beatty, C.J., not participating

Columbia, South Carolina

February 01, 2018

cc:

Wanda H. Carter, Esquire

Valerie Garcia Giovanoli, Esquire

John Willie Mack, #257219

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FEB 01 2018

APPELLATE DEFENSE