

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
DeAndrea Gist Benjamin, Circuit Court Judge

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Appellate Case No. 2022-000506  
Case No. 2010-CP-40-5214

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Demetrius Mack, ..... Respondent,

v.

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

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**PETITIONER'S REPLY IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI**

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**TABLE OF CONTENTS**

Arguments ..... 1

    I.    The Court of Appeals erred in failing to require the trial court to consider the evidence supporting probable cause from the perspective of an objectively reasonable officer on the scene as required by the *Ornelas* test. .... 1

Conclusion ..... 6

## ARGUMENTS

**I. The Court of Appeals erred in failing to require the trial court to consider the evidence supporting probable cause from the perspective of an objectively reasonable officer on the scene as required by the *Ornelas* test.**

In his return, the Respondent Demetrius Mack agrees 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). However, in then applying that analysis, Mack takes the position that probable cause was lacking for his arrest simply because Circuit Court Judge DeAndrea Benjamin concluded that Deputy James Gore's description of the incident was not credible. Mack argues that Judge Benjamin determined that Gore did not see Mack's detention of McKenzie Williamson, and as a result, "[t]here is no further inquiry," and hence there was not probable cause supporting Gore's arrest of Mack. *See*, Respondent's Return, p. 10.

That is a misapplication of the *Ornelas* test in that it fails to consider the "historical facts" that were nonetheless *available* to the arresting officers. The *Ornelas* test was re-affirmed in *Maryland v. Pringle*, 540 U.S. 366 (2003), where the United States Supreme Court further 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. (Emphasis added). Similarly, in *State v. George*, 323 S.C. 496, 476 S.E.2d 903 (1996), this Court explained that "[w]hether probable cause exists depends on the totality of the circumstances surrounding the information at the officer's disposal." 476 S.E.2d at 911. (Emphasis added). See also, *Beck v. Ohio*, 379 U.S. 89, 96 (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"). (Emphasis added). 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." It is not required that the officer actually knew or perceived those facts – that is precisely why they are referred to as "historical facts" and why the standard under the Fourth Amendment is purely an objective one.

To reiterate, Mack insists that what was available for the objectively reasonable officer to see "is not the test." See, Respondent's Return, p. 10. But, contrary to Mack's position, the "historical facts" are based on the totality of the information available to the officer or at his disposal and are not limited to what the officer actually perceived. Therefore, in cases where the arresting officer's

testimony is disbelieved in whole or in part, that does not relieve the court of determining the "historical facts" and applying both prongs of the *Ornelas* test, which is well established as being an objective rather than a subjective test. 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. The court may determine those facts by considering the competing versions of the witnesses.

Because the probable cause test is an objective one based upon an analysis of the "historical facts," probable cause is not deemed absent simply because the court chooses to believe the arrestee instead of the arresting officer. If the arrestee's version of the facts supports a finding of probable cause, then the arrest is still lawful. That is precisely what has been lost or ignored by the lower courts as well as *Mack* in this case at every stage of the litigation. In short, the court must determine what facts were reasonably available to the officer at the time of arrest, those being the "historical facts," which may be based on the arrestee's version or account of the facts. It is then those facts that must be viewed from the standpoint of an objectively reasonable police officer to determine whether those facts give rise to probable cause.

In sum, the simple fact that Judge Benjamin did not find Deputy Gore's explanation of the events to be credible does not excuse her failure to apply the second prong of the *Ornelas* test. Mack states in his return that "[t]he trial court

found that the evidence supported Mack's version of events." *See*, Respondent's Return, p. 9. Thus, if Mack's version supplies the "historical facts," Judge Benjamin was still required to make findings and conclusions on the second prong. She was required to take the "historical facts" of what occurred leading up to the arrest and to then view those facts from the perspective of an objectively reasonable officer to determine whether those facts give rise to probable cause. Judge Benjamin failed to engage in that analysis, and in so doing, committed reversible error.

In close, Sheriff Lott submits that, while this case may not involve a lot of money, the proper application of probable cause using the *Ornelas* test is very much at stake. The very different analyses by the courts below and the litigants themselves demonstrate the need for this Court to weigh in. In his return, Mack goes so far as to say that the use of the language "from the standpoint of an objectively reasonable police officer" is "entirely unnecessary." *See*, Respondent's Return, p. 11. But what is absolutely necessary and should not be overlooked or minimized is an analysis of the historical facts from the standpoint of an objectively reasonable police officer. This Court has said just that: "The principle components of a determination of ... probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police

officer, amount to ... probable cause.” *State v. Morris*, 411 S.C. 571, 769 S.E.2d 854, 859 (2015). Yet, that analysis did not occur in this case. It is apparent that this Court needs to further educate the bar and bench on how the *Ornelas* test is to be applied. That is why this is an appropriate case for the issuance of a writ of certiorari.

**CONCLUSION**

Based on the foregoing discussion, the Petitioner Leon Lott, in his official capacity as Sheriff of Richland County, respectfully renews his request that this Court grant its petition for a writ of certiorari.

Respectfully submitted,

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