ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO MILLER,

APPELLANT

Appellate Case No. 2012-208640

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred, thereby violating the Fourth Amendment and appellant's right to privacy, by failing to suppress evidence located within the North Main Street home because the seized cocaine and guns were located in automobiles in the yard of that address, and the search warrant affidavit did not provide the Magistrate with a reliable sufficient nexus to provide probable cause that this was appellant's home and that he was secreting drugs, weapons, or the fruits of the Aiken murder within that home?

2.

Whether appellant's thirty year sentence for kidnapping should be vacated in the interests of judicial economy since that sentence was improper where appellant was also sentenced for murder?

STATEMENT OF THE CASE

Appellant was indicted by the Aiken County Grand Jury for the offenses of murder, kidnapping, burglary in the first degree, and possession of a firearm during the commission of a violent crime. R. *. His case was called to trial on February 14, 2012 before the Honorable Doyet A. Early, III. Ola A. Johnson represented appellant. Elizabeth B. Young and Kevin Molony were the assistant solicitors. Tr. 1.

On February 17, 2012, the jury found appellant guilty as to each charge. Tr. 373, l. 13 – 374, l. 13. Judge Early sentenced appellant to life imprisonment for murder, life imprisonment for burglary in the first degree, thirty years for kidnapping, and five years imprisonment on the firearm offense. Tr. 383, l. 23 - 384, l. 20.

This appeal follows.

ARGUMENT

1.

The court erred, thereby violating the Fourth Amendment and appellant's right to privacy, by failing to suppress evidence located within the North Main Street home because the cocaine and guns located in automobiles in the yard of that address, and the search warrant affidavit did not provide the Magistrate with a reliable sufficient nexus to provide probable cause that this was appellant's home and that he was secreting drugs, weapons, or the fruits of the Aiken murder within that home.

Relevant Facts

Defense counsel filed three separate motions to suppress. The relevant one in this case involved evidence of the drugs, guns, and counterfeit tennis shoes found within the North Main Street residence where a green Taurus rental car, that had not been timely returned, was located. Appellant asserted the search violated his Fourth Amendment right against unreasonable searches and seizures, and his right to privacy under Article I § 10 of the South Carolina Constitution. See Defendant's exhibits 1-3; Defense exhibit 3 at 1-3. R. *. The murder in this case occurred on the morning of September 15, 2008 in Aiken. Co-defendant Cummings was from Aiken, and as will be seen infra there was evidence the decedent was a rather wealthy drug dealer.

A GPS with a "kill switch" was attached to the rental car that had been rented by appellant's girlfriend, Deidre King, off of Two Notch Road. On September 15, 2008, Officer Franklin Ham of the Richland County Sheriff's Department was dispatched to the U-Save Auto Rentals on Two Notch Road. There, he met manager Jeff Day who informed him that a green Taurus he had rented had not been returned. Day told Ham that the GPS

showed the vehicle was in Aiken, South Carolina. Therefore, he did not want to hit the "kill switch" and disable the vehicle while it was in Aiken. Supp. Tr. 7-9.

The GPS revealed that later in the day the car had returned to Trenholm Road in Columbia. This was shortly after noon. The car was then traced to 5520 North Main Street. R. *.

In the motion to suppress, defendant's exhibit #3, the defense argued "the search warrant contained insufficient information for the Magistrate to find probable cause to issue the warrant." Motion at p. 2, R. *. The motion noted that the police had a report that the stolen car - - a rental car rented by Deidra Miller - - was located at 5520 North Main Street. The affidavit to the search warrant stated that appellant was arrested for trafficking in crack cocaine when crack cocaine was discovered in the vehicle. The affidavit also said that appellant had **twelve prior arrests** for illegal narcotics. R. *.

The search of the residence resulted "in the seizure of weapons that the state alleges to be linked to the scene of the murder [in Aiken] through a ballistics match as well as DNA evidence. The state also recovered shoes that the state alleges to be linked to the crime. The state also alleged that money and crack cocaine seized are from the home of the victim." R. *. (Page one of Motion to Suppress, defendant's exhibit #3).

The motion to suppress also noted that the affidavit failed to "list any information about the relevance of the home at 5520 North Main Street or who resided there." The motion alleged the Magistrate could not make a practical, common sense decision of whether, given the totality of the circumstances put forth in the affidavit, including the veracity and basis of knowledge a person supplying information, that there is a fair

probability that contraband or evidence of a crime will be found in a particular place." Motion at p. 2, R. *.

The motion further argued the affidavit failed to mention any connection between appellant and the car where the crack cocaine was located, and the residence at 5520 North Main Street. It was undisputed that no additional information outside of the affidavit was presented to the Magistrate. Motion at p. 2, R. *.

The motion also argued that the police only made conclusory statements in the affidavit for the search warrant which was improper. The motion argued that pursuant to Fourth Amendment to the United States Constitution, and Article I, § 10 of the South Carolina Constitution, the search was unreasonable and a violation of appellant's right to privacy. R. *.

State's Theory of the Case – an introduction

The state's theory of the case was that appellant and three other men, including the state's star witness, co-defendant Melvin Cummings, who was from Aiken, targeted the decedent because he was a drug dealer. The state tracked the green Taurus, through the rental car agency, to Aiken at about the time the decedent's house was burglarized, and he was killed. The state essentially asserted it was "luck" that the GPS tracked the green Taurus to Aiken, and back to North Main Street.

Once Cummings and appellant arrived back in Columbia in the green rental Taurus, they went by Books a Million in Trenholm Plaza where Cumming's girlfriend worked. From there, Cummings got in his girlfriend's red Taurus and eventually made his way to the North Main Street address. Cummings was stopped as he pulled into the North Main Street driveway where the police knew the green Taurus was already located. Cummings was

arrested for DUS, and removed from the vehicle. Shortly thereafter, a gun was found in the red Taurus during a search. Cummings asserted appellant planted this weapon after he was arrested and while the police were distracted. Crack cocaine was then discovered during search of the green Taurus. During this time, the police only had vague information from a "confidential informant" in Aiken, because Cummings was from Aiken, that the decedent had been killed in Aiken around the same time the green rented Taurus was tracked to Aiken. The police certainly did not have probable cause to believe that appellant or Cummings were involved in the Aiken murder at the time the crack cocaine was found inside the rental vehicle which gave rise to the search warrant for 5520 North Main Street.

The evidence

Deputy Ham testified that Cummings was arrested for driving under suspension when he turned the red Taurus into the yard at 5520 North Main Street where the green rented Taurus was already located. Supp. Tr. 11-15. Ham said appellant gave him the name "Eric Huey" when asked for his identification. Ham later found out was a false name when appellant's girlfriend arrived in the yard, and told him appellant's real name. Ham also said appellant went inside the red Taurus and the police suspected him of planting a gun inside the red Taurus. As stated, crack cocaine was found inside the green Taurus after it was searched as well. Supp. Tr. 17.

Richland County Sheriff's Department Investigator Stephen Dauway testified that on September 15, 2008 he was called to the North Main Street yard after the gun was found inside the red Taurus. Supp. Tr. 22-26. Dauway was asked, on cross-examination during the suppression hearing, if appellant was free to leave when he arrived at the North Main Street where two vehicles cars were located in the yard. Dauway answered: "When I

initially got there, he was free to leave. And as the investigation went on, I found a gun in one car and crack in the other car. At that time, he wasn't free to leave at that time." Tr. 46, ll. 14-19. After the crack cocaine was found Dauway acknowledged: "I called some [other] officers . . . and that led to a search warrant." Dauway estimated the green Taurus was about two feet from the residence they wanted to search. Tr. 46, l. 14 – 47, l. 24.

Narcotics Investigator Marcus Brown was then called to the North Main Street location. He testified: "Dauway called me and stated they were out with a guy who had a large quantity of crack cocaine and a couple of guns, and they wanted me to see if I could get a search warrant for the residence." Tr. 48, l. 18 – 49, l. 11.

Brown said he when he heard that Cummings was from Aiken, as coincidentally was Brown, "I texted an informer that I had been using on several occasions that knew Mr. Cummings. And they said that they didn't know him, but did I know that Fred Tucker had been killed this morning [in Aiken]." Brown then asked Cummings about Tucker "and he said Fred was after his cousin." Tr. 51, ll. 2-13. Brown recalled that Cummings told him he was in Augusta that morning, and appellant told him that he was in Charleston. Tr. 51, ll. 16-24.

When the weapon was found inside the red Taurus, Brown related that he thought appellant actually planted the weapon in the red Taurus "because we observed him in the back seat." Tr. 53, ll. 1-10. Brown said Cummings denied the weapon was his and he told Brown "he had no idea how it got into the back seat, the other weapon, and he stated it had to be Antonio Miller's weapon." Tr. 53, ll. 16-21.

Brown testified he told appellant at the time that "it's kind of messed up that you're putting this other gun in here on your friend when it's pretty obvious that the gun belonged

to you." Tr. 54, ll. 5-22. Appellant told Brown he was worried about picking up his child at school while all of this was transpiring, and Brown responded that they could call his wife to get the child or "*we'll call DSS to take control of the child* until we get the situation taken care of." Tr. 54, l. 23 – 55, l. 7. (emphasis added). It was at that time that Brown acknowledged appellant agreed to talk to him. Tr. 55, ll. 8-11.

Brown maintained he read appellant his Miranda[1] warnings and appellant admitted he placed the gun in the back seat "of the vehicle while the officer's attention was diverted." When Brown asked appellant about the crack cocaine in the green rented Taurus, he said appellant responded: "Yes, it's mine, too. And that's when I told him at that time that he was being placed under arrest. And someone placed handcuffs on him." Tr. 58, ll. 17-25.

Appellant was charged for possession of the drugs and the weapon. Brown said he learned that Melvin Cummings was a person of interest in the Aiken County murder earlier that day. Tr. 58, l. 17 – 59, l. 20.

Brown remembered Deidre King or Deidre Miller returned to the scene in the North Main Street yard where the two Taurus vehicles were located. Brown said she had some outstanding arrest warrants against her, and Brown told the manager of the rental car lot that as soon as they finished processing the scene they would return the green Taurus to him. Brown recalled: "At that time, a call was made to Richland County Investigator Robert Crane, and I asked him was he still at the office. And I asked him if he would type a search warrant for me." Tr. 61, ll. 8-18. Brown identified the search warrant that Crane signed for him. Tr. 62, ll. 13-15. Forty-five minutes to an hour later Crane returned with the search

[1] Miranda v. Arizona, 384 U.S. 436 (1966)

warrant signed by the Magistrate, "and then we made entry into the residence." Tr. 63, ll. 2-17.

Brown testified that crack cocaine was found in the master bedroom dresser drawer "and some weapons were found in the closet." Tr. 63, ll. 20-24. Two other weapons were found inside the residence and Brown remembered there appeared to be blood on one of the weapons and blood on some tennis shoes inside the residence. Tr. 64, ll. 2-14.

Brown said he told then appellant: "If you don't tell us about the drugs" that he was going to "*charge you and your wife with trafficking in crack cocaine and weapons charges* because it was in the master bedroom." Appellant stated: "Okay, I'll claim it." Brown maintained another investigator told appellant he could not just "claim it," and then appellant stated "that the drugs found in the top dresser drawer and the guns found in the closet" belonged to him. Tr. 65, ll. 2-16. Brown reiterated on redirect examination that three guns were found in the residence as a result of the search warrant. Tr. 73, ll. 15-20.

Investigator Crane acknowledged he drafted the search warrant for 5520 North Main Street on September 15, 2008 as requested. Crane said he "ran" appellant's criminal history and discovered appellant had "at least twelve occasions for illegal narcotics," and therefore he swore out the search warrant affidavit before Judge Cuff. Crane took the search warrant to 5520 North Main Street and gave it to Investigator Marcus Brown. Tr. 76, l. 14 – 77, l. 12.

On cross-examination Crane admitted the search warrant *did not state* who lived at 5520 North Main Street, nor did it contain any information *about appellant ever entering that house.* Tr. 77, l. 22 – 78, l. 5. The following occurred on cross-examination of Crane:

Mr. Johnson: Is there any information about confidential informants saying that drugs are being sold out of

5520 North Main Street or the presence of illegal drugs within that location?

Mr. Crane: No. sir.

Mr. Johnson: Was the Magistrate informed of any connection all through that search warrant between Antonio Miller or Ms. Miller and that location?

Mr. Crane: Just like the affidavit said, that Mr. Miller, the vehicle he had rented, was at the residence, you know, in the yard of the location.

Mr. Johnson: Is that what it says?

Mr. Crane: It says that the GPS tracking unit put the green Taurus or the said vehicle at 5520 North Main Street.

Mr. Johnson: Does it say that, or does it say to be in the 5520 Main Street area?

Mr. Crane: Deputies responded and observed the said vehicle parked in front of the location, the incident location.

Mr. Johnson: Where are you at?

Mr. Crane: I'm on the third line from the bottom, or second line from the bottom. Deputies respond to location and observed the said vehicle parked in front of the incident location. And upon approaching the said vehicle, deputies made contact with Mr. Miller.

Mr. Johnson: Okay. And it says nothing about Mr. Miller being inside of the vehicle or being inside of the location, correct?

Mr. Crane: That's correct.

Mr. Johnson: Or Ms. Miller, or Deidre King, as she was known?

Mr. Crane: That's correct.

Tr. 78, l. 6 – 79, l. 14.

Investigator Taima Jordan testified that appellant said he would claim the drugs and weapons found inside the house. Jordan said he told appellant that "was not sufficient," and that that "he and his wife both would be charged with those items." In the face of this threat appellant admitted "they're mine." Appellant was then taken to headquarters where he refused to provide a written statement confirming his verbal admission of the contraband. Tr. 89, ll. 9-24.

Investigator Antony Branham remembered helping with the search warrant and finding a pair of counterfeit Nikes with blood on the inside. Tr. 96, l. 12 – 97, l. 14. Aiken County Investigator Jack Sanders assisted in the search of the residence. He testified "the tread pattern on these shoes looks similar to the ones we found on the [Aiken County Murder] scene." Tr. 107, l. 6 – 109, l. 13.

Argument on Suppression

During the argument on suppression of the evidence, defense counsel noted there was "no linkage between that crack cocaine and Fred Tucker's house." The judge observed "the crack cocaine simply is a basis for getting a search warrant." Tr. 122, l. 24 – 123, l. 5. Defense Counsel Johnson argued the law required "a finding of probable cause that some evidence of a crime is located within that location."

> At no point on the search warrant affidavit or anywhere does it say anybody lives at 5520 North Main. It doesn't identify that as anybody's residence.
>
> It also doesn't say anything about Mr. Miller or Ms. Miller entering the green Taurus, which is the breach of trust vehicle, I believe, where they found the suspected crack cocaine.
>
> Now, if there's no linkage to 5520, it's impossible to see how a Magistrate, without additional sworn testimony, could discover that there's probable cause to go into 5520 [they would] locate drugs or some illegal substance or evidence of a crime.

Tr. 123, l. 22 – 124, l. 10.

Defense counsel further argued "the search warrant affidavit says nothing about anybody going into 5520, coming out of 5520, or living there. And it's impossible - - in my argument, I would say *it's impossible to have that linkage that's required for just basic probable cause.*" Tr. 125, ll. 3-8. (emphasis added). Defense counsel also noted there was no confidential informant saying that anybody was inside the residence or had contraband which would support a search warrant, and that "it's just a bad search warrant, and basically all the items should be excluded as a result." Tr. 125, ll. 9-16.

Defense counsel also noted that the report reflected *Aiken County investigators participated in the search* where three guns and the shoes were discovered and there was no probable cause to believe that fruit of that murder would be found inside and because "they didn't get a special search warrant" for the items involving the murder scene, and they had to be suppressed. Tr. 125, l. 3 – 126, l. 8.

The solicitor argued that appellant was present in the yard with the rental car. The police wanted to give the rental car back to "the rightful owner, they found these drugs, and things proceeded from there." Tr. 128, ll. 14-23.

Defense counsel repeated there was no confidential informant providing information to the police and the state's argument was simply if someone was *"arrested and they're near a car that has drugs in it, well, you can go search that house. And that's basically what they're arguing, because there's nothing left. There's nothing else in addition to the affidavit."* Tr. 129, ll. 1-24. (emphasis added).

The judge stated he believed the Magistrate had a substantial basis for concluding probable cause existed to search the residence, and he denied the motion to suppress. Tr. 129, l. 25 – 130, l. 6.

Repeated trial objections to the fruit of the search

The defense would repeatedly object to evidence of the shoes that were found inside the residence with blood on them, that the state's expert, SLED DNA analyst Stephanie Stanley, testified was a match to the decedent's blood. Supp. Tr. 1. 238, l. 1 – 246, l. 25.

The defense would also repeatedly object to the fruits of the search, or any item bearing any resemblance to it. Supp. Tr. 1. 5, l. 11 – 6, l. 14 (reference to the crack cocaine); Supp. Tr. 1. 41, l. 3 – 42, l. 18 (photographs of 5520 North Main Street); Supp. Tr. 1. 59, ll. 2-14 (purported paraphernalia found in the house); Supp. Tr. 1. 72, l. 14 – 74, l. 9 (the shoes with the blood stain); Supp. Tr. 1. 174, l. 3 – 175, l. 17 (photographs and other evidence about the shoes): Supp. Tr. 1. 259, l. 23 – 261, l. 8 (gun evidence); Supp. Tr. 1. 266, ll. 1-18 (gun evidence); Supp. Tr. 1. 272, l. 6 – 273, l. 22 (gun evidence); Supp. Tr. 1. 275, l. 21 – 276, l. 23 (gun evidence); Supp. Tr. 1. 282, l. 18 – 283, l. 8 (gun evidence); Supp. Tr. 1. 283, l. 16 – 284, l. 11 (gun evidence); Supp. Tr. 1. 287, ll. 16-25 (gun evidence).

Melvin Cummings was allowed to plead guilty to involuntary manslaughter, armed robbery, and possession of a weapon during a violent crime for his role as the driver in the death of the decedent. He received a twenty year prison term even though he was originally charged with murder. Supp. Tr. 1. 78, l. 22 – 79, l. 3.

Cummings maintained he was involved in the decedent's murder in Aiken with appellant, Marquise Redfield, and Ronald Grooms. Supp. Tr. 1. 79, l. 25 – 80, l. 4. Cummings said he was living on Fairfield Road in Columbia on September 15, 2008 while

appellant was living on North Main Street at the time of the Aiken crime. Supp. Tr. 1. 80, ll. 17-22. Cummings said the men began talking about the robbery of the decedent drug dealer "a couple of months before it happened." Supp. Tr. 1. 80, l. 23 – 81, l. 1.

Over an objection, and a motion for a mistrial, Cummings claimed appellant said he knew the decedent because they had done time in the federal prison system together. Supp. Tr. 1. 82, 19 – 84, l. 21.

Cummings said on the day of the robbery he parked in an Aiken cemetery and fell asleep. The other men, including appellant, were all dressed in black, and returned to the green Taurus. They drove to the decedent's house, and Cummings maintained that appellant knocked on the decedent's door but no one answered. He claimed appellant stated: "We're not going back empty-handed." Cummings said the other men got out of the car, and he drove to a nearby neighbor's house "Mrs. Jennifer's house." Cummings said when he was knocking on her door "I heard a shot." Supp. Tr. 1. 89, l. 16 – 92, l. 13.

Cummings maintained he saw co-defendant Grooms shoot out the back window and Cummings claimed: "I went and got back in the car. And as I was pulling off, Mrs. Glover came out the back door and flagged me down. I backed up, got out of the car, and we started talking about the cars that was in her front yard. While me and her was talking about the cars that was in her yard we heard gunshots, me and Mrs. Glover heard a gunshot. I heard someone yell. I didn't know who was yelling or anything, but I heard someone yell. I got in the car and I pulled off. I rode around for a little while trying to figure out what was going on." Supp. Tr. 1. 89, l. 16 – 92, l. 25.

Cummings said he saw appellant, Redfield, and Grooms running through the bushes and they jumped into the green Taurus. Cummings claimed appellant said: "Drive, drive, mother fucker, drive, drive. So I pulled off, you know." Supp. Tr. 1. 93, ll. 1-14.

Cummings testified that he drove the men back to Columbia, and they went by the Books A Million on Trenholm Road where his fiancé worked. Supp. Tr. 1. 95, l. 11 – 96, l. 7. Once they left the book store, Cummings got into his girlfriend's red Taurus and they went to lunch at Wendy's. He said appellant and the other men followed him in the green Ford Taurus. Appellant told Cummings to come by his North Main house so he could go with him to return the rental car. Supp. Tr. 1. 96, l. 1 – 98, l. 4.

Cummings testified while he was pulling into the driveway at 5520 North Main Street "Richland County pulled in behind me. Richland County pulled in behind me, Miller, Redfield, and some other guy was sitting on the back porch." Cummings said the deputy asked him "Where was Antonio Miller?" and asked for his ID. Cummings was then arrested for driving under suspension. Supp. Tr. 1. 97, l. 1 – 98, l. 22.

Cummings maintained while he was talking with police, appellant got into the red Taurus and the police officer later told him they found a gun. Cummings protested that the gun did not belong to him. He said appellant admitted putting the gun in his red Taurus and he said appellant told the police "that the guns and the drugs and everything was his." Supp. Tr. 1. 99, l. 19 – 101, l. 19.

Cummings claimed the men had targeted the decedent's house for a robbery and drove by it Friday, Saturday and Sunday before the Monday burglary and armed robbery which ended in the decedent being murdered. Supp. Tr. 1. 102, ll. 18-23.

Narcotics agent Stephen Dauway and Marcus Brown essentially recounted their suppression hearing testimony on finding the cocaine and a gun in the green Taurus and the red Taurus, and obtaining a search warrant for the residence which resulted in the discovery of three more weapons, the counterfeit shoes with the decedent's blood on them, and more narcotics. Tr. 215 – 239; Supp. Tr. 1. 5

Discussion

The search warrant may only issue upon a finding of probably cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). The duty of the reviewing court to ensure that the issuing Magistrate had a substantial basis upon which to conclude that probably cause existed. State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987). The determination by the Magistrate is governed by the "totality of the circumstances test." State v. King, 349 S.C. 142, 148, 561 S.E.2d 640, 643 (Ct. App. 2002), *citing* State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000).

In South Carolina, search warrants may only be issued "upon affidavits sworn to before the Magistrate . . . establishing the grounds for the warrant." S.C. Code § 17-13-140 (2003); See also, State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). In this case it is undisputed the affidavit was not supplemented by any oral testimony from investigator Crane or otherwise. See, e.g. State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975).

The affidavit must set forth particular facts of circumstances underlying the existence of probable cause to allow the Magistrate to make an independent evaluation of the matter. Franks v. Delaware, 438 U.S. 154 (1978).

In this case, as seen, the defense argued that there was not a sufficient nexus found between the drugs or weapon found in the car in the yard of the residence, to show there was

probable cause to believe that drugs and weapons, or fruits of the Aiken murder would be found inside the residence. Further, the defense argued there was no showing tying the residence to appellant even if there was such a nexus between the weapons and drugs found in the car and the residence. Moreover, the affidavit and search warrant contained conclusory statements that were not supported by a showing of reliability.

Mere conclusory statements which give the Magistrate no basis to make the judgment of probable cause are insufficient. State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990). In Smith, the Court held the affidavit defective because it contained no facts as to why the police believed Smith robbed the Master Host Inn. Rather the search warrant affidavit contained a conclusory statement that Smith had robbed the Inn. See, also, State v. Baccus, 367 S.C. 41, 52, 625 S.E.2d 216, 222 (2006).

There must be a sufficient nexus, described in the affidavit, between the items to be seized and the criminal behavior. State v. McGuinn, 268 S.C. 112, 232 S.E.2d 229 (1977). As defense counsel argued in this case, the state failed to demonstrate the reliability of any information leading the Magistrate to make an independent determination that fruits of a crime or drugs or weapons would be found inside the residence on North Main Street. See State v. Johnson, 302 S.C. 243, 247-248, 395 S.E.2d 167, 169, 170 (1990); State v. Gentile, 373 S.C. 506, 514-516, 646 S.E.2d 171, 174-176 (Ct. App. 2007).

In sum, the affidavit did not reveal probable cause to believe that weapons, drugs, or fruits of the Aiken murder would be found inside the residence even if it was tied to appellant. Further, there was no proof of the reliability of the scant information that was provided. Moreover, the affidavit and search warrant were defective because they were grounded in conclusory language. The evidence seized from the North Main Street

residence should have been suppressed. See Wong Sun v. United States, 371 U.S. 471 (1963). Finally, defense counsel also correctly argued under Article I, § 10 of the State Constitution that appellant had the right to privacy under the State Constitution that went above the protections provided by the Fourth Amendment to the United States Constitution. See State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001).

The evidence in this case shows that the Aiken County investigators were at the scene of the search. This was merely a fishing expedition for fruits of the Aiken County murder. The search and seizure in this case was unreasonable under the Fourth Amendment to the United States Constitution for all of the reasons argued above. It independently violated appellant's right to privacy under the State Constitution. See Article I, § 10, South Carolina Constitution.

2.

Appellant's thirty year sentence for kidnapping should be vacated in the interests of judicial economy since that sentence was improper where appellant was also sentence for murder.

Relevant Facts

As seen, appellant was sentenced to life imprisonment for murder and thirty years imprisonment for kidnapping.

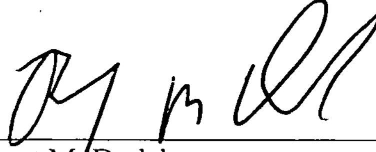
Discussion

It is error to sentence a defendant for the kidnapping of a victim when he is also convicted of murdering the victim, and any sentence for kidnapping of the victim should be vacated with those circumstances. See State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (2009). In State v. Vick, the Court noted that our Supreme Court in State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999) had granted relief and vacated a sentence absent objection to the sentence at the trial level. This Court in State v. Vick also said in the interest of judicial economy it would vacate the sentence for kidnapping since forcing a defendant to file an application for post-conviction relief, and go through PCR, where it was foregone conclusion the kidnapping sentence would be vacated was a waste of judicial resources. The same is true here and appellant's kidnapping conviction and sentence should be vacated.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed and this case remanded to the Richland County Court of General Sessions for a new trial. Appellant's sentence for kidnapping should also be vacated.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of June, 2013.