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Jan 12 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Alex Kinlaw, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRAYLON L. MORRIS,

APPELLANT

APPELLATE CASE NO. 2022-000898

ANDERS BRIEF OF APPELLANT

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by failing to quash the search warrant of the residence for lack of probable cause and suppress all evidence found as a result of the search?

STATEMENT OF THE CASE

Appellant Braylon Lamar Morris was indicted by the Pickens County Grand Jury on July 11, 2019, for the following five offenses: trafficking heroin (more than 28g); trafficking methamphetamine (10g-28g), 1st offense; possession with intent to distribute (PWID) cocaine, 1st offense; possession of an unlawful firearm (sawed-off shotgun); and possession of a deadly weapon during the commission of a violent crime. R. 8, line 15—R. 10, line 9; R. 288-297. The charges arose from contraband discovered as a result of a search by police of the mobile home where Appellant and his girlfriend were found on November 15, 2018.

Appellant's case was called for trial before the Honorable Alex Kinlaw, Jr., and a jury from June 15th through 16th, 2022. Appellant was represented by Randall Lee Chambers, while Katrina Bevis Owens represented the State. R. 1. The jury found Appellant guilty as charged, and he was sentenced to concurrent terms of imprisonment as follows: 28 years for trafficking heroin; 10 years for Trafficking methamphetamine, 1st office, 10 years for PWID cocaine, 1st offense; five years for possession of a deadly weapon during the commission of a violent crime; and five years for possession of an unlawful firearm (sawed-off shotgun). R. 266, line 15—R. 267, line 14; R. 274, line 1—R. 275, line 11; R. 298-307.

STANDARD OF REVIEW

“[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis.” State v. Frazier, 437 S.C. 625, 633, 879, S.E.2d 762, 766 (2022). The trial court’s factual findings are reviewed for any evidentiary support, while the ultimate legal conclusion is a question of law subject to *de novo* review. Id. 437 S.C. at 634, 879, S.E.2d at 766.

ARGUMENT

The trial court erred by failing to quash the search warrant of the residence for lack of probable cause and suppress all evidence found as a result of the search.

As the State indicated in both its opening statement and closing argument, this case is about the search of a mobile home located at 200 Glenda Lane, and the fruits of its execution. R. 67, line 9-22; R. 222, lines 13-17. In pertinent part, the affidavit underlying the search warrant in question provides the following information in paragraph 6 of Attachment “C”:

That within the last seventy-two (72) hours, Agents with Pickens County Sheriff’s Office (PCSO), Greenville County Sheriff’s Office (GCSO), and the South Carolina Law Enforcement Division (SLED) supervised the controlled purchase of Heroin from [Appellant]. Agents conducted surveillance on [Appellant] at 200 Glenda Ln., in Easley. The suspect was observed leaving the residence in a red Lexus SUV and traveling to an address just off Old Easley Bridge Rd. inside Greenville County. The suspect then met with a Confidential Informant (C/I) and exchanged a quantity of Heroin for documented funds. The suspect then left the incident location and traveled back in the direction of the residence on Glenda Lane. See GCSO Case #: 01-2018-148237 for details.

R. 277-287. As indicated at trial, the fruits of the search included multiple firearms, and assorted substances of various weights, such as 39.99g of heroin mixed with fentanyl, 6.98g of methamphetamine, and 2.7g of cocaine. R. 202, line 18—R. 205, line 10; R. 227, line 8.

The defense moved to suppress the evidence found as a result of the search due to a defect in the warrant. Specifically, Appellant asserted the affidavit did not contain information sufficient to support probable cause where the only link law enforcement had of Appellant to the mobile home at 200 Glenda Lane was as follows: (1) police briefly surveilled 200 Glenda Lane on November 8, 2018; (2) Appellant entered his car; and (3) Appellant then left again to Greenville for what authorities allege was to consummate a drug deal with a confidential

informant (CI). R. 50, line 14—R. 52, line 21. During the suppression hearing, Appellant argued *inter alia* that his residence was actually at 124 Donna Lane located about a half-mile away in the same subdivision of Powdersville, and he was merely surveilled by police at his girlfriend's who lived at 200 Glenda Lane. He supported this contention with an incident report from Greenville County listing Appellant's address as 124 Donna Lane, and highlighted the fact that there was no information that the CI even knew where 200 Glenda Lane was, let alone whether illicit items would be at that address. R. 52, line 1-18; R. 55, lines 20-23; R. 56, lines 8-24; R. 58, line 13—R. 59, line 7.

However, citing State v. Dupree,¹ the State insisted the fact that Appellant left from an address shortly before consummating an alleged drug deal in another county was sufficient to support probable cause that the drugs involved in the Greenville County CI transaction “stemmed directly from this residence” in Pickens County. R. 54, lines 1-21; R. 57, line 2—R. 58, line 12. The court briefly discussed Dupree, as well as other case law, and ruled “the probable cause standard utilized by the magistrate . . . was sufficient.” R. 60, lines 13-14. Accordingly, the trial court ultimately upheld the search warrant, and allowed the evidence seized as the fruits therefrom. R. 59, line 8—R. 60, line 15.

“A search warrant may issue only upon a finding of probable cause.” State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997) (citing State v. Owen, 275 S.C. 586, 274 S.E.2d 510 (1981)). The South Carolina General Assembly “has imposed stricter requirements than federal law for issuing a search warrant. Both the Fourth Amendment of the United States Constitution and Article I, § 10 of the South Carolina Constitution require an oath or affirmation before probable cause can be found by an officer of the court, and a search warrant issued.” State v. Jones, 342 S.C.

¹ 354 S.C. 676, 583 S.E.2d 437 (2003).

121, 128, 536 S.E.2d 675, 678 (2000). Further, “the South Carolina Code mandates that a search warrant ‘shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record. . . .’” Id.

The totality of the circumstances test is used to assess whether the information offered in an affidavit is a sufficient basis for probable cause. See State v. Johnson, 302 S.C. 243, 247, 395 S.E.2d 167, 169 (1990). As noted by our Supreme Court, the standard for magistrates to use in making probable cause determinations is as follows:

[t]he task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the “veracity” and “basis of knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Weston, 329 S.C. at 290-91, 494 S.E.2d at 802-03 (quoting Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983)). Additionally, “[i]n determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched.” United States v. Laylor, 996 F.2d 1578, 1582 (4th Cir. 1993) (holding the search warrant defective where the affidavit failed to explain the geographic relationship between the area where the drug sales occurred and the defendant’s residence). Specifically, “the nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence.” Id. (internal quotations omitted).

In the case at bar, the search warrant signed by the magistrate was based solely on the information provided in the affidavit. Yet, the affidavit itself failed to provide information crucial to establish probable cause for searching 200 Glenda Lane because it failed to establish a sufficient nexus between the alleged illegal activity of Appellant and the address to be searched.

Contrary to the State’s interpretation of Dupree, in that case probable cause was present in an affidavit to search the defendant’s mobile home because the police officer independently corroborated the statement that “the *confidential informant* was observed *entering the mobile home* with no crack cocaine in his possession, *exiting the mobile home*, and *then turning over the crack cocaine* to Deputy Mullineaux.” Dupree, 354 S.C. at 691, 583 S.E.2d at 445. Thus, where the affidavit clearly satisfied the nexus requirement in Dupree, it is equally clear that it is lacking in Appellant’s case. No one saw the CI enter into 200 Glenda Lane on November 15, 2018 to purchase drugs because nothing illegal was witnessed whatsoever at that residence by the CI or police that day. In other words, based upon the information at the time the warrant was secured, it was pure suspicion and speculation that 200 Glenda Lane in Pickens County was involved with an alleged CI drug transaction in Greenville County later that day. As such, the trial court erred in failing to suppress the search warrant because it was unreasonable to believe the items to be seized would be found in the place to be searched due to the scant evidence—if any—in the warrant of a nexus between that address and Appellant’s alleged subsequent criminal activity.

Finally, Appellant was prejudiced by the trial court’s failure to suppress the evidence that was discovered as a result of the defective search warrant. For example, multiple firearms (including one sawed-off shotgun), and assorted substances of various weights, such as 39.99g of heroin mixed with fentanyl, 6.98g of methamphetamine, and 2.7g of cocaine, were found as a result of executing the search warrant. The State could not have proven Appellant trafficked heroin or methamphetamine, or possessed cocaine with intent to distribute it, or was in possession of any firearms—lawfully or otherwise—without this evidence. R. 202, line 18—R. 205, line 10. Therefore, Appellant was undeniably prejudiced by the trial court’s failure to quash the search warrant and suppress the evidence obtained as tainted fruit.

CONCLUSION

For the foregoing reasons, Braylon Lamar Morris respectfully requests reversal of his convictions, and remand for a new trial.

A handwritten signature in blue ink, appearing to read "Breen R. Stevens", written over a horizontal line.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of January, 2023.

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APPELLATE CASE NO. 2022-000898

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Braylon L. Morris states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Alex Kinlaw, Jr., which was held on June 15-16, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Braylon L. Morris.

Respectfully Submitted,



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of January, 2023.

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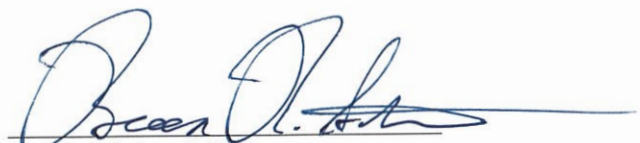
APPELLATE CASE NO. 2022-000898

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Sentence Sheets (5);
- (3) Court's Exhibit #3 (Search Warrant);
- (4) Trial Transcript (pp 1-276).

I certify that this designation contains no matter which is irrelevant to this appeal.


Breen Richard Stevens
Appellate Defender

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(803) 734-1330

ATTORNEY FOR APPELLANT

This 12th day of January, 2023.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Green Richard Stevens
Appellate Defender

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APPELLATE CASE NO. 2022-000898

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blicht, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Braylon L. Morris, #347230, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 12th day of January, 2023.



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ATTORNEY FOR APPELLANT

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Subject: Morris, Braylon - Anders Brief of Appellant & Record on Appeal - 2022-000898
Date: Thursday, January 12, 2023 10:39:00 AM
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[Morris, Braylon - Anders Brief of Appellant - 2022-000898.pdf](#)
[Morris, Braylon - Record on Appeal - 2022-000898.pdf](#)

Mr. Blitch,

Please find attached for service the Anders Brief of Appellant, Designation of Matter and Record on Appeal for Braylon L. Morris's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

Chris Stock
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