

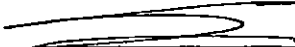
STATE OF SOUTH CAROLINA)	IN THE SOUTH CAROLINA COURT OF APPEALS
)	
COUNTY OF CHARLESTON)	Indictment Nos.: 2021GS1000417-18
)	Warrant Nos.: 2019A1010205164-65
)	Charges: Voluntary Manslaughter; Possession of a Weapon
)	during Violent Crime
)	
STATE OF SOUTH CAROLINA)	
)	
vs.)	
)	REQUEST FOR REPRESENTATION
ROMANE CLARE)	ON APPEAL
)	RECEIVED
Defendant)	FEB 14 2023

SC Court of Appeals

On behalf of the request of the above-named Defendant, to be represented by the South Carolina Commission of Appellate Defense, the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the defendant-appellant in the above captioned case. The defendant has requested to file an appeal with the Clerk of Court and he is filing on his behalf.
2. The defendant-appellant was represented by the Charleston County Public Defender's Office as an indigent, pursuant to the Defense of Indigent Act.
3. The defendant-appellant has been informed that he may request assistance from the South Carolina Commission of Appellate Defense in perfecting his appeal.
4. A timely Notice of Intention to Appeal has been filed on the defendant's-appellant behalf.
5. The defendant-appellant has been informed that nothing requires that office to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the defendant-appellant requests the aid of the South Carolina Commission of Appellate Defense in perfecting his appeal to the South Carolina Court of Appeals.


 Stephen M. Bowden, Appointed Counsel for
 Romane Clare

Charleston, South Carolina

Dated: 2/13/23

ARREST WARRANT

2019A1010205164

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Charleston

THE STATE against

Romane Clare

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED] Sex: M Race: B Height: 6 2 Weight: 180

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0100800

Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Gina E Mussatti - S00567

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010

This warrant is CERTIFIED FOR SERVICE in the [] County/ [] Municipality of [] The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: [REDACTED]

RETURN

A copy of this arrest warrant was delivered to defendant Romane Clare on 10-22-19

[Signature] Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Charleston County Judicial Center 100 Broad Street, Suite 106 Charleston, SC 29401

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Charleston

Personally appeared before me the affiant Gina E Mussatti who being duly sworn deposes and says that defendant Romane Clare did within this county and state on or about 9/26/2019 violate the criminal laws of the

State of South Carolina (or ordinance of [X] County/ [] Municipality of Charleston) in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above [REDACTED] commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

RECEIVED SEP 27 2019 BY: [Signature]

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Charleston

Affiant's Address 2500 City Hall Lane North Charleston, SC 29406 Affiant's Telephone (843)554-5700

RECEIVED

FEB 14 2023

ARREST WARRANT

SC Court of Appeals

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/26/2019 defendant Romane Clare did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [] Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 9/27/2019

[Signature] (L.S.) John C. Kenney Judge Code: 7391

Judge's Address North Charleston, SC 29405- Judge's Telephone (843)746-9822

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

AFFIDAVIT

SCC IN 9/27/19 OPR 831 NCIC 9/27/19 OPR 831 NCIC #W187433589

BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



FILED
2019 OCT 25 PM 2:30
JULIE J. HARRIS-TRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT
Det. G. Mussatti

OCA# 2019029304

J.E. ROBERTS

Personally appeared before me, a magistrate of this county, who first being duly sworn, deposes and says that

ROMANE CLARE

did within this County and State on the 26th day of September, 2019 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

Murder
16-3-10

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on September 26th, 2019 at approximately 2101 hours, while at [REDACTED], which is in the City of North Charleston, County of Charleston and State of South Carolina, one Romane Clare did violate section 16-3-10 of the South Carolina State Code of Laws of 1976 as amended, Murder, in that he did willfully and unlawfully shoot and mortally wound the victim, Ebony Nicole Clare, with a pistol.

The facts to establish the same are that on September 26th, 2019, at approximately 2101 hrs, a call came into Consolidated dispatch about a domestic related shooting that had just occurred at [REDACTED]. When officers responded, they located a black female identified as Ebony Nicole Clare lying on the driveway suffering from multiple gunshot wounds. While rendering aid, responding officers asked the victim who shot her. The victim responded "My husband shot me." When asked who her husband was, she said the defendant's name. The defendant fled the scene in a Nissan Murano bearing SC tag 1961MW. The victim was transported to MUSC in critical condition and succumbed to her injuries during surgery. Upon execution of a search warrant for the residence, a projectile was recovered from the refrigerator inside the residence. While at the hospital, family members alerted detectives to a prior incident in 2014 where the defendant was charged with attempted murder after firing shots during an argument with her.

The aforesaid is based on the investigation of Det. G. Mussatti, Det. S. Riedel and Det. R. Rodriguez. CPL L. Simmons, Ptl. S. Weatherford and Ptl. H. Brown are witnesses to prove the same. All done against the peace, law, and dignity of the state of South Carolina.

Sworn to and Subscribed before me
this _____ day of SEP 27 2019



(AFFIANT)



Signature of Judge

Address: 2500 City Hall Lane
North Charleston, SC 29405
843-554-5700

ARREST WARRANT

2019A1010205165

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Charleston

THE STATE

against

Romane Clare

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 6 2 Weight: 180

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0100800

Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Gina E Mussatti - S00567

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

[] County/ [] Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Romane Clare on 10/22/19

[Signature] J Botney Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Charleston County Judicial Center 100 Broad Street, Suite 106 Charleston, SC 29401

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)

[X] County/ [] Municipality of)

Charleston)

Personally appeared before me the affiant Gina E Mussatti who

being duly sworn deposes and says that defendant Romane Clare

did within this county and state on or about 9/26/2019 violate the criminal laws of the

State of South Carolina (or ordinance of [X] County/ [] Municipality of Charleston)

in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

RECEIVED SEP 27 2019 BY: _____

RECEIVED FEB 14 2023 SC Court of Appeals

Signature of Affiant

STATE OF SOUTH CAROLINA)

[X] County/ [] Municipality of)

Charleston)

Affiant's Address 2500 City Hall Lane

North Charleston, SC 29406-

Affiant's Telephone (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/26/2019 defendant, Romane Clare

did violate the criminal laws of the State of South Carolina (or ordinance of

[X] County/ [] Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 9/27/2019

[Signature] (L.S.)

Signature of Issuing Judge

John C. Kenney

Judge Code: 7391

Judge's Address

North Charleston, SC 29405-

Judge's Telephone (843)746-9822

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
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Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



FILED
2019 OCT 25 PM 2:30
JAMES G. STRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT

OCA#2019029304

J.E. ROBERTS

Personally, appeared before me, a magistrate of this county, one _____ who first being duly sworn, deposes and says that

Romane Clare

did within this County and State on the 26th day of September 2019 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

Possession of a firearm during the commission of a violent crime

16-23-490

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On September 26th, 2019 while at _____, which is located in the City of North Charleston, County of Charleston, State of South Carolina, the defendant **Romane Clare**, did commit the offense of possession of a firearm during the commission of a violent crime, in violation of section **16-23-490** of the South Carolina Code of laws of 1976 as amended. In that the defendant did feloniously and unlawfully have in his possession a firearm and fired upon the victim, **Ebony Nicole Clare**, striking her several times.

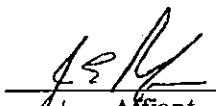
Facts to establish the aforesaid are that patrol officers responded to _____ and upon arrival found the victim, **Ebony Nicole Clare**, lying in the driveway with several gunshot wounds. The victim stated to patrol officers before being transported to the hospital that the defendant shot her with a firearm and fled the scene in a black in color Nissan Murano.

This is based on an investigation conducted by **Detectives Gina Mussatti, Rodrik Rodriguez, and Samuel Riedel of the North Charleston Police Department**. All done against the peace, law, and dignity of the state of South Carolina.

Sworn to and Subscribed before me

This ___ day of SEP 27 2019

Signature of judge



Affiant
Address: 2500 City Hall Ln.
North Charleston SC
Phone: (843)554-5700

JAB/0361458
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2019-029304

ARREST WARRANT NUMBER

2019A1010205164

DATE OF ARREST

10/23/2019

ACTION OF GRAND JURY

APR 21 2021

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2021-GS-10-00417

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
APRIL TERM 2021

THE STATE

VS.

ROMANE CLARE
B/M DOB:

Indictment for

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

FILED

5/5/2021 4:22:49 PM
JULIE J. ARMSTRONG
CLERK OF COURT

RECEIVED
FEB 14 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened April 2021, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County, South Carolina on or about September 26, 2019, the defendant, Romane Clare with malice aforethought did kill and murder Ebony Clare by means of shooting her, and Ebony Clare did die in Charleston County as a proximate result thereof on or about September 27, 2019 in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

/s/Jessica Baldwin
JESSICA BALDWIN
ASSISTANT SOLICITOR

JAB/0361458
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2019-029304

ARREST WARRANT NUMBER

2019A1010205165

DATE OF ARREST

10/23/2019

ACTION OF GRAND JURY

TRUE BILL

APR 21 2021

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2021-GS-10-00418

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
APRIL TERM 2021

THE STATE

VS.

ROMANE CLARE
B/M DOB:

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDR Code: 0549

FILED

5/5/2021 4:22:50 PM
JULIE J. ARMSTRONG
CLERK OF COURT

RECEIVED

FEB 14 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened April 2021, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about September 26, 2019, the Defendant, Romane Clare, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Murder; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

/s/Jessica Baldwin

JESSICA BALDWIN

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

WARRANT/TICKET/

INDICTMENT #'s 2019A1010205164-65

STATE OF SOUTH CAROLINA

-vs-

ROMANE CLARE

DEFENDANT

Solicitor: <u>Jessica Baldwin</u> , Bar No. _____ Address: <u>101 Meeting Street, 4th Floor</u> Phone: <u>843-958-1900</u> E-mail: <u>Baldwinj@scsolicitor9.org</u>	Defendant's Attorney: <u>Stephen Bowden</u> , Bar No. <u>102195</u> Address: <u>101 Meeting Street, 5th Floor</u> Phone: <u>(843) 958-1850</u> E-mail: <u>Sbowden@charlestoncounty.org</u>
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED	
SECTION I: Hearing Information	
Nature of Motion: <u>Motion to Compel</u>	
Estimated Time Needed: <u>1 Hour</u>	Court Reporter Needed: <input checked="" type="checkbox"/> YES/ <input type="checkbox"/> NO
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<u>[Signature]</u> Signature of <input type="checkbox"/> Solicitor <input checked="" type="checkbox"/> Attorney for Defendant	<u>1/31/2023</u> Date submitted

FILED

2023 JAN 31 PM 2:33

JULIE J. ARMSTRONG
CLERK OF COURT

BY ELN

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No(s):
) Warrant No(s): 2019A1010205164;
2019A1010205165

STATE OF SOUTH CAROLINA

vs.

ROMANE CLARE,

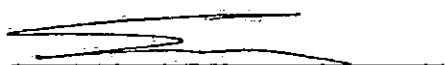
Defendant

NOTICE OF MOTION AND
MOTION TO COMPEL DISCOVERY

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, **Romane Clare**, through his undersigned attorney, will move before the presiding judge for an Order to compel discovery immediately, unless the State can show cause why such materials cannot be provided to Defendant. Specifically, Romane Clare requests the following:

- 1) The identity of a crime scene expert that reviewed and shared opinions with the State before the State decided not to retain the crime scene expert;
- 2) The dates when any employee from the Solicitor's office spoke with Quindella Byrdsong, Nedra Myers, and Sheena Myers and summaries of each of those conversations.

Respectfully submitted,


Stephen M. Bowden
Attorney for the Defendant

Charleston, South Carolina

Dated: January 26, 2023

BY KLN

JULIE J. ARMSTRONG
CLERK OF COURT

2023 JAN 31 PM 2:33

FILED

CERTIFICATE OF SERVICE

I hereby certify that this Motion to Compel Discovery was served on _____ in receipt for of the Solicitor for the Ninth Judicial Circuit on _____

Affiant

FILED

2023 JAN 31 PM 2:34

JULIE J. ANTONIANS
CLERK OF COURT

BY ELN

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No(s):
)
) Warrant No(s): 2019A1010205164;
) 2019A1010205165

STATE OF SOUTH CAROLINA

vs.

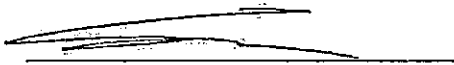
ROMANE CLARE,

Defendant

**MOTION TO SUPPRESS ILLEGALLY
OBTAINED EVIDENCE**

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Romane Clare, will move for an Order suppressing a projectile from a wall in Romane Clare's home that the North Charleston Police Department illegally obtained as a result of an unreasonable seizure in violation of the Fourth Amendment of the United States Constitution and Article 1, Section 10 of the South Carolina Constitution.

Respectfully submitted,


Stephen M. Bowden
Attorney for the Defendant

Charleston, South Carolina

Dated: January 26, 2023

BY KLN
JULIE L. ARMSTRONG
CLERK OF COURT
2023 JAN 31 PM 2:34

1111

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

) WARRANT/TICKET/
) INDICTMENT #'s 2019A1010205164
) 2019A1010205165
) _____
) _____
) _____
) _____
) _____

STATE OF SOUTH CAROLINA

-vs-

ROMANE CLARE
DEFENDANT

Solicitor: Jessica Baldwin, Bar No. _____	Defendant's Attorney: Stephen M. Bowden, Bar No. <u>102195</u>
Address: 101 Meeting Street, 4th Floor	Address: 101 Meeting Street, 5th Floor
Phone: <u>(843) 958-1900</u>	Phone: <u>(843) 958-1850</u>
E-mail: <u>baldwinj@scsolicitor9.org</u>	E-mail: <u>sbowden@charlestoncounty.org</u>

- MOTION HEARING REQUESTED
- FORM MOTION, NO HEARING REQUESTED

SECTION I: Hearing Information

Nature of Motion: Motion to Suppress Illegally Obtained Evidence
Estimated Time Needed: 10 Minutes ~~1 hour~~ Court Reporter Needed: YES/ NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

[Signature]
Signature of Solicitor Attorney for Defendant

1/27/23
Date submitted

FILED
2023 JAN 27 AM 10:05
JULIE J. ARMSTRONG
CLERK OF COURT
RY MSS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

ROMANE CLARE,

Defendant

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

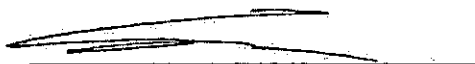
) Case No(s):

) Warrant No(s): 2019A1010205164;
) 2019A1010205165

) **MOTION TO SUPPRESS ILLEGALLY
) OBTAINED EVIDENCE**

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Romane Clare, will move for an Order suppressing a projectile from a wall in Romane Clare's home that the North Charleston Police Department illegally obtained as a result of an unreasonable seizure in violation of the Fourth Amendment of the United States Constitution and Article 1, Section 10 of the South Carolina Constitution.

Respectfully submitted,



Stephen M. Bowden
Attorney for the Defendant

Charleston, South Carolina

Dated: January 26, 2023

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2023 JAN 27 AM 10: 05

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

WARRANT/TICKET/

INDICTMENT #'s

2019A1010205164

2019A1010205165

STATE OF SOUTH CAROLINA

-vs-

ROMANE CLARE

DEFENDANT

Solicitor: Jessica Baldwin, Bar No. _____	Defendant's Attorney: Stephen M. Bowden, Bar No. 102195
Address: 101 Meeting Street, 4th Floor	Address: 101 Meeting Street, 5th Floor
Phone: (843) 958-1900	Phone: (843) 958-1850
E-mail: baldwinj@scsolicitor9.org	E-mail: sbowden@charlestoncounty.org

- MOTION HEARING REQUESTED
- FORM MOTION, NO HEARING REQUESTED

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Compel Discovery

Estimated Time Needed: 10 Minutes

Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Solicitor Attorney for Defendant

1/27/23
Date submitted

FILED
 2023 JAN 27 AM 10:05
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY MSS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No(s):
) Warrant No(s): 2019A1010205164;
2019A1010205165

STATE OF SOUTH CAROLINA)

vs.)

ROMANE CLARE,)

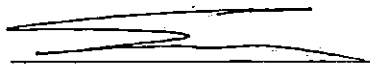
Defendant)

**NOTICE OF MOTION AND
MOTION TO COMPEL DISCOVERY**

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, **Romane Clare**, through his undersigned attorney, will move before the presiding judge for an Order to compel discovery immediately, unless the State can show cause why such materials cannot be provided to Defendant. Specifically, Romane Clare requests the following:

- 1) The identity of a crime scene expert that reviewed and shared opinions with the State before the State decided not to retain the crime scene expert;
- 2) The dates when any employee from the Solicitor's office spoke with Quindella Byrdsong, Nedra Myers, and Sheena Myers and summaries of each of those conversations.

Respectfully submitted,


Stephen M. Bowden
Attorney for the Defendant

FILED
2023 JAN 27 AM 10:05
JULIE J. ARMSTRONG
CLERK OF COURT
RY

Charleston, South Carolina
Dated: January 26, 2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No(s):
)
) Warrant No(s): 2019A1010205164;
) 2019A1010205165

STATE OF SOUTH CAROLINA

vs.

ROMANE CLARE,

Defendant.

)
)
) MEMORANDUM IN SUPPORT OF
) DEFENDANT'S MOTION TO SUPPRESS
) ILLEGALLY OBTAINED EVIDENCE
)
)
)

Romane Clare ("Romane") respectfully asks this Court to issue an order suppressing an illegally obtained projectile that the State later determined to be a bullet because the North Charleston Police Department did not have either (1) a search warrant to retrieve the projectile from the wall cavity of Romane's home, or (2) valid consent that waived the warrant requirement.

FACTS

On September 26, 2019, in an act of self-defense, Romane shot and killed his wife, Ebony Clare ("Ebony").

By the time North Charleston Police responded to Romane and Ebony's home at 4302 Whitney Drive, North Charleston, Romane had fled the house in a panic over whether anyone would believe him. Exhibit 1 (Transcript of Romane Clare's Testimony at *Duncan* hearing). Police learned from Ebony that Romane had shot her, although she was unable to provide details of the incident prior to her death. Police conducted a search pursuant to a valid search warrant on September 26, 2019 ("initial search").

2023 JAN 31 PM 3:31
JULIE L. ARMSTRONG
CLERK OF COURT
BY WLN

FILED

During the initial search, police located a hole in the wall at the bottom of a small staircase that led to Romane and Ebony's living room. Police believed this hole to be caused by a bullet, but were unable to open the wall to search for a projectile during the initial search. Police charged Romane with murder and possession of a weapon during the commission of violent crime on September 27, 2019. Among other things, police also found foreclosure documents that clearly identified Romane and Ebony as the owners of the home. Exhibit 2 (Photo taken by CST Kendra Howell).

On September 29, 2019, Ebony's sister, Sheena Myers ("Sheena"), called police to report that she had found a black revolver in the grass outside Romane and Ebony's house. Police believed that Romane had used a revolver in the shooting, so NCPD obtained a search warrant to seize the revolver from the curtilage of Romane's property. The search warrant authorized police to seize "[a] black in color revolver firearm located in the grass near the fence line on the Adonis Ave side of the residence." Exhibit 3 (September 29 search warrant). The September 29 search warrant described the premises to be searched as 4302 Whitney Drive, which is the correct address of Romane and Ebony's home. However, in its description of the premises to be searched it states:

[t]his search is to include all rooms, attics, basements, closets, cabinets, safes, false walls, and any other location that could conceal firearm, clothing, mobile electronics ie cell phone or any and all evidence of the homicide. Also to include any outbuildings or storage areas located on the property and the grounds within the property's borders. The location has been identified as a place where a suspect in a homicide that occurred at Forrest Hills Drive and Suzanne Drive, also to include any vehicles located at the residence at the time the search is executed.

Id. This paragraph (1) is not necessary to allow police to seize the property that the warrant authorizes them to seize, (2) does not accurately explain the location of 4302 Whitney Drive, and

(3) is evidence that the police used boilerplate language and failed to properly edit before submitting the search warrant for a judge's signature.

Patrol officers initially arrived and secured the scene while Crime Scene Technicians were dispatched to collect the revolver. Those officer stood around the revolver, so there was no question in any officer's mind where crime scene technicians would able to collect it. While waiting for crime scene technicians, Sheena provided her address, which was a different address than 4302 Whitney Drive, and told officers that she had gotten permission from an NCPD detective to come to the property to search for any insurance paperwork that Ebony may have had. Exhibit 4 (Officer Norwood's BWC footage 0:00 - 2:00). Sheena, who did not have a key to the house, informed police that she found the gun while she was looking for an open window that she could climb through to enter the house. *Id.*

According to Crime Scene Technician Kendra Howell ("Howell"), "[u]pon [NCPD's] arrival, [they] observed a black revolver lying in the grass near the gate leading to the back yard." Exhibit 5 (Howell's Report). Therefore, immediately upon arrival, police seized the items that was the subject of the search warrant, so there was no need (or permission) to expand the search any further.

Nevertheless, Howell notes that police continued to search inside Romane's home and "gained permission from family members on scene to cut and remove a portion of the wall in the down stairs den which was previously marked as 'E'. *Id.* During that "consent search," police located a projectile that was lodged in the wall cavity's insulation. *Id.* Police sent the projectile to SLED for forensic testing, which produced a ballistics report that the State will likely seek to introduce at trial against Romane.

ARGUMENT

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath of Affirmation, and particularly describing the place to be searched, and the persons or things to be seized." US Const. Amend. 4. The South Carolina Constitution expands on these protections, providing that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained."

The SC Supreme Court has explained that:

The specific requirement that a search warrant particularly describe the person, place, or thing to be searched is aimed at preventing general warrants—those authorizing a general, exploratory rummaging in a person's belongings. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.

State v. Thompson, 363 S.C. 192, 200, 609 S.E.2d 556, 560-61 (Ct. App. 2005) (citations and quotations omitted). Evidence seized in violation of the Fourth Amendment is inadmissible in state court. *State v. Gentile*, 373 S.C. 506, 512, 646 S.E.2d 171, 174 (Ct. App. 2007).

It is clear that the September 29 search warrant did not provide authority for police to enter Romane's house. The sole purpose of the search warrant was to allow police to seize a gun from grass within the curtilage of Romane's home. Police secured the scene and confirmed the

location of the revolver before crime scene technicians arrived to collect it. Therefore, even if the remainder of the search warrant allowed police to search other areas of the property for the revolver, that was completely unnecessary because there was absolutely no doubt about where they would find the revolver. Any other interpretation would render superfluous the United States and South Carolina Constitutions' requirements that the warrant particularly describe the thing to be seized and authorize a general warrant.

Further, it is clear from the factual and grammatical errors in the final paragraph of the "premises to be searched" section that the language is simply boilerplate language that the police forgot to edit out. A magistrate would not have been justified in allowing a search of the entire property because the limited reason for the search was to seize a revolver that was laying in the grass outside of the residence.

Next, police suggest that they searched the wall cavity due to consent given by one of Ebony's family members. However, Romane and Ebony owned the home as Joint Tenants with a Right of Survivorship. Therefore, Romane would be the only person who would have actual legal authority to give police valid consent to search his home.

The only question remaining is whether Ebony's family members had apparent authority to give police consent to search the wall cavity.

The South Carolina Supreme Court as explained that:

The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched. *U. S. v. Matlock*, 415 U.S. 164, 39 L. Ed. 2d 242, 94 S. Ct. 988 (1974); *State v. Middleton*, 266 S.C. 251, 258-259, 222 S.E.2d 763, 766 (1976). Common authority is defined as mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable for officers to believe the person granting consent has the authority to do so. *Matlock*, 415 U.S. at 171, note 7. Accord *State v. Cannon*, 336 S.C. 335, 520 S.E.2d 317 (1999)(noting that any person with an equal

right to use or occupy property may consent to its search).

State v. Laux, 344 S.C. 374, 376-77, 544 S.E.2d 276, 277 (2001). Officers are entitled to rely on a third-party's apparent authority over the premises if "the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had authority over the premises." *Laux*, 344 S.C. at 377, 544 S.E.2d at 277 (quoting *Illinois v. Rodriguez*, 497 U.S. 177, 188, 111 L.Ed. 2d 148, 110 S. Ct. 2793 (1990)).

In *Laux*, the SC Supreme Court considered whether a temporary resident in Bernard Laux's apartment had apparent authority to consent to a search of his home. *Laux*, 344 S.C. at 376, 544 S.E.2d at 277. The temporary resident had been living with Laux for about a week, had a key, and told police she lived there. *Id.* At a suppression hearing, "she testified that a number of her personal items were in the bedroom and bathroom." *Id.* The Court held that "it was objectively reasonable for officers to conclude [the temporary resident] had apparent authority to consent to the search of the residence." *Id.* at 379.

This case is the polar opposite of the consent search allowed in *Laux*. As an initial matter, it's not clear that police would have been entitled to rely on apparent authority because they had already conducted a search of a residence and seen mortgage foreclosure documents that left no doubt about who had a legal right to the residence. It was also clear from that search that no other individuals lived at 4302 Whitney Drive besides Romane and Ebony. So, there would have been no reason to believe that anyone other than Romane or Ebony would be able to provide legitimate consent to waive Romane's constitutional rights.

Even if the police would have been entitled to rely on apparent authority, no reasonable officer would have believed that Ebony's family had the right to provide consent. Sheena

provided a separate address where she lived and told police that she was going to try to enter the house through an open window rather than using a key to open the door. Further, she told police that she had asked an NCPD detective for permission to enter the residence. She did not provide any evidence that she even had a right to be there, much less provide police consent to cut open Romane's wall to dig for evidence in the wall cavity.

Therefore, Ebony's family member's consent was invalid to waive the warrant requirement, and any evidence seized from inside Romane's wall during the September 29 search and any resulting forensic testing must be suppressed.

CONCLUSION

For the foregoing reasons, Romane respectfully requests an order suppressing illegally obtained evidence.

Respectfully Submitted,



Stephen M. Bowden.
Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 1/31/23

FILED

2023 JAN 31 PM 3:31

JULIE J. HUNTER
CLERK OF COURT

BY ELN

EXHIBIT 1

1 Q And so if two cars were in the driveway, would
2 somebody have been able to pull into the yard?

3 A No.

4 Q When you started moving the car, what did you
5 see?

6 A When I pulled the car -- pulled the car
7 like -- there's a baseball field right across. I
8 pulled to the grass right across the road. It
9 was, like, two, three minutes. --Then I see a
10 police car pull up. It was a police car. I
11 thought it would be the ambulance, but it was a
12 police car pulled up on the scene.

13 Q Okay. Did you expect to see blue lights or
14 ambulance lights?

15 A I expected to see ambulance, because I was
16 trying to get her help.

17 Q Did you stop the car?

18 A The police car?

19 Q No. Your car.

20 A The car that I was in, yeah, I pulled to the
21 grass. It was stopped in the grass.

22 Q Okay. Did you stay on the scene when you saw the
23 police cars?

24 A When the police car pulled up, I started to
25 panic. I feel like I was panicking. I'm like,

1 I'm about to go to jail. Ain't nobody going to
2 believe me, what happened. Like I started
3 thinking all kinds of, like...

4 Q Why did you not think anybody was going to believe
5 you?

6 A Because -- I don't know. I just -- I
7 wouldn't know specifically what -- why anybody
8 wouldn't. I just -- like stuff was just running
9 through my head.

10 Q Were you thinking clearly at this point?

11 A I was panicked. I was panicked. I was
12 panicked. I wasn't thinking clearly. I'm
13 thinking, like, oh, man. I'll probably get hit
14 out there, or something like that. Ain't nobody
15 going to believe me, like, my story.

16 Q You're saying if you stopped and told your story,
17 nobody would believe you?

18 A Right.

19 Q You were scared nobody was going to believe you?

20 A Right.

21 Q Looking back, do you think you would have done
22 things differently if you could do it over?

23 A Looking back, I don't know. Looking back --
24 like, this happened like just -- if they happened
25 to see me that night, I don't think I have a

EXHIBIT 2

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CA NO. 2019 CP 10

COPY

Are Home III, C.

Plaintiff,

Ebony Green aka Ebony N. Green aka Ebony Nicole Green aka Ebony Nicole Clara aka Ebony Myers Green (Romane) Clere, and The United States of America by and through its agency the Internal Revenue Service,

Defendants.

NOTICE OF RIGHT TO FORECLOSURE INTERVENTION

PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01 you have a right to be considered for foreclosure intervention.

Throughout this foreclosure action and any foreclosure intervention process, you also have the right to communicate with and otherwise deal with the Plaintiff through its law firm, Riley Pope & Laney, LLC.

Riley Pope & Laney, LLC represents the Plaintiff in this action. We do not represent you. The South Carolina Rules of Professional Conduct prohibit our firm from giving you any legal advice.

Please communicate your request for foreclosure intervention to Riley Pope & Laney, LLC by returning the attached Request for Foreclosure Intervention form within 30 days from your receipt of this Notice. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, THE FORECLOSURE ACTION MAY PROCEED.**

RILEY POPE & LANEY, LLC

Aime L. Shy

Aime L. Shy, SC Bar #1951E
2438 Devine Street
Columbia, South Carolina 29205
(803) 729-9891
Attorney for Plaintiff

EXHIBIT 3

STATE OF SOUTH CAROLINA

County of Charleston

City of North Charleston

SEARCH WARRANT

OCA: 2019029304

**Location: 4302 Whitney Dr
North Charleston SC, 29415**

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON

Personally appeared before me, one J Butler who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

A black in color revolver firearm located in the grass near the fence line on the Adonis Ave side of the residence.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

The location to be searched is located at 4302 Whitney Dr. The residence is described as a single family dwelling. The residence is has tan in color siding on the top and red in color brick bottom. The residence has a set of cement steps leading up to a black in color door. The numbers 4302 in black are located to the right of the door.

When one makes a left onto Mall drive from North Charleston City Hall and get onto I-26 WB for approximately 0.6 mile. Take I-26 W for approximately 3.1 miles and take the Dorchester Rd. Continue for 1.1 miles until you reach 4302 Whitney Dr.

This search is to include all rooms, attics, basements, closets, cabinets, safes, false walls, and any other location that could conceal firearm, clothing, mobile electronics ie cell phone or any and all evidence of the homicide. Also to include any outbuildings or storage areas located on the property and the grounds within the property's borders. The location has been identified as a place where a suspect in a homicide that occurred at Forrest Hills Drive and Suzanne Drive, also to include any vehicles located at the residence at the time the search is executed.

REASON FOR AFFIANTS BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On September 26, 2019 at approximately 2103 hours officer with North Charleston Police Department responded to 4302 Whitney Dr in reference to a shooting. When officers responded, they located a black female identified as Ebony Nicole Clare lying on the driveway suffering from multiple gunshot wounds. While rendering aid, responding officers asked the victim who shot her. The victim responded, "My husband shot me." When asked who her husband was, she said the defendant's name. The defendant fled the scene in a Nissan Murano bearing SC tag 1961MW. The victim was transported to MUSC in critical condition and succumbed to her injuries during surgery. While at the hospital, family members alerted detectives to a prior incident in 2014 where the defendant was charged with attempted murder after firing shots during an argument with her. On September 29, 2019 Charleston County Consolidated Dispatch advised they received a call that they located a fire arm outside of the victim's residence. Based on these facts it is this detective's belief that evidence of the crime of Murder will be found in the residence.

Sworn to and Subscribed before me

This 25th day of September 2019.

J Butler (L.S.)
Signature of Judge

[Signature]
Affiant
Address: 2500 City Hall Lane,
North Charleston, SC 29418
Phone: 554-5700

STATE OF SOUTH CAROLINA

SEARCH WARRANT

COUNTY OF CHARLESTON

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF NORTH CHARLESTON.

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

-See Attached Affidavit-

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

-See Attached Affidavit-

This Search Warrant shall not be valid for more than ten days from date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to Issuing Judge within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of premises searched at the time of such search if practicable, and if not, to such person as soon thereafter as is practicable; in the event the identify of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to prominent place on such premises.

Charles [Signature], S.C.
29 Sept 2019

[Signature] (L.S.)
Signature of Judge 12:30

RETURN

9-29

I received the attached Search Warrant _____, 2019, and Have executed it as follows:

On 9-29, 2019 at 347 o'clock P M, I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with @ Place of search (Name of person searched or "at the place of search") with. Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Property	Recovered by	Location Recovered
Black revolver	Howell	bill fence outside
Box of ammo w/ missing	Howell	under bathroom sink
Unique wave kitchen knife	Howell	back porch
projectile (wall)	Howell	downstairs room wall

This inventory was made in the presence of Powell, Mitchell, Pickett, Resner AND Howell Stanley

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this day of October 1, 2019

(Signature of Officer Executing Warrant)

(L.S.)

Form Approved by S. C. Attorney General Section 17-13-160

EXHIBIT 4

EXHIBIT 5



On September 29, 2019 officers were called back out to 4302 Whitney Drive regarding a firearm being located outside on the property near the gate leading to the back yard. Another search warrant was obtained and executed by Detective Butler.

Upon our arrival, we observed a black revolver lying in the grass near the gate leading to the back yard. The wooden handle grips were off the gun and lying beside it. One was split in two pieces, suggesting that it was dropped or thrown to sustain this damage. The gun and grips were collected and placed in a sterile gun box. There were five spent casings in the cylinder with Winchester .38 SPL+P on the headstamp. This also matched a box of Winchester Super X .38 SPL +P rounds with five missing that were located hidden inside of an Andis clippers box. The box was found under the sink in the master bedroom. All above mentioned items were photographed in detail, collected, and submitted to evidence.

We gained permission from family members on scene to cut and remove a portion of the wall in the down stairs den which was previously marked as "E". We recovered the projectile which was found to have terminated within the insulation inside the wall. Damages sustained to the wall after recovery were photographed as well.

All items collected were then transported back to the FSU to be packaged, labeled, and submitted to evidence. All photos were downloaded to a CD-R as well as the K-drive.

A handwritten signature in black ink, appearing to read "Pfc. K. Howell" with a circled "7552" to the right.

Pfc. K. Howell



User Name: Stephen Bowden

Date and Time: Tuesday, January 31, 2023 11:00:00AM EST

Job Number: 189160764

Document (1)

1. *State v. Thompson, 363 S.C. 192*

Client/Matter: -None-

Search Terms: fourth amendment and describing the place to be searched

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by
Court: State Courts > South Carolina

State v. Thompson

Court of Appeals of South Carolina

November 1, 2004, Submitted ; January 31, 2005, Filed

Opinion No. 3937

Reporter

363 S.C. 192 *; 609 S.E.2d 556 **; 2005 S.C. App. LEXIS 20 ***

The State, Respondent, v. Napoleon Thompson, III,
Appellant.

Subsequent History: [***1]

Rehearing denied by State v. Thompson, 2005 S.C. App. LEXIS 80 (S.C. Ct. App., Mar. 17, 2005)

Prior History: Appeal From Cherokee County, J. Derham Cole, Circuit Court Judge.

Disposition: AFFIRMED.

Core Terms

search warrant, probable cause, invalid, crack cocaine, seized, suppression, portions, searched, authorization, intrusion, narcotics, overbroad, valid portion, trial court, circumstances, luggage, seizure, severed, courts, mouth, items seized, particularity, informant, warrants, ongoing, stale

Case Summary

Procedural Posture

The Cherokee County Circuit Court (South Carolina) convicted defendant of possession of crack cocaine after it denied his motion to suppress. Defendant appealed.

Overview

Defendant challenged the validity of a search warrant executed against him. The appeals court first held that while some portions of the warrant were overbroad, this fact did not render the entire warrant void. First, the warrant did not grant law enforcement unlimited discretion to search defendant wherever or whenever they desired. There was no basis upon which the magistrate could conclude that probable cause existed to search any vehicle defendant was traveling in, or

within any luggage that he had in his possession. The warrant was properly severable, eliminating those parts rendered invalid from the authorization relating to the search of defendant's person. Second, the information contained within the warrant was not stale, as an informant had observed defendant in possession of crack cocaine within 72 hours prior to his report, the affidavit was sworn on the same day the magistrate issued the warrant, execution occurred the day after the warrant was issued, and the information received from the informant was not an isolated incident. Finally, the search of defendant's mouth was authorized under the law, and his undergarments were searched incident to a lawful arrest.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Miranda Rights > Self-Incrimination Privilege > Custodial Interrogation

Criminal Law & Procedure > Commencement of Criminal Proceedings > Arrests > General Overview

Criminal Law & Procedure > Commencement of Criminal Proceedings > Interrogation > General Overview

HN1 [↓] Self-Incrimination Privilege, Custodial Interrogation

The determination of whether an individual is under arrest is measured objectively, and the subjective view of the particular officer is not controlling. The initial determination of custody depends on the objective

Stephen Bowden

circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. The test for determining whether an individual is in custody or under arrest is whether, under the totality of the circumstances, the suspect's freedom of action is curtailed to a degree associated with formal arrest.

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Findings of Fact

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > General Overview

HN2 [↓] Clearly Erroneous Review, Findings of Fact

In criminal cases, the appellate court sits to review errors of law only. The appeals court is bound by the trial court's factual findings unless they are clearly erroneous. A deferential standard of review likewise applies in the context of a Fourth Amendment challenge to a trial court's fact-driven affirmation of probable cause.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

HN3 [↓] Search & Seizure, Scope of Protection

Whether a search violates the parameters of the Fourth Amendment depends upon a number of antecedent determinations, each of which is inherently fact-specific and entails an inquiry into the totality of the circumstances, and the appellate court must affirm if there is any evidence to support the ruling.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Probable Cause

Criminal Law & Procedure > ... > Search Warrants > Affirmations & Oaths > General

Overview

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > Issuance by Neutral & Detached Magistrate

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > Particularity Requirement

Criminal Law & Procedure > Search & Seizure > Seizure of Things

Governments > Courts > Judges

HN4 [↓] Search & Seizure, Probable Cause

Under both the United States and South Carolina constitutions, search warrants may not be issued except upon probable cause, supported by an oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Following these constitutional requirements, S.C. Code Ann. § 17-13-140 (2003) requires a search warrant be issued only upon affidavit sworn to before the magistrate or other judicial officer and only if the magistrate is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist. The magistrate issuing the search warrant must make a practical, common sense decision whether, given all the circumstances set forth in the affidavit there is a fair probability that contraband or evidence of a crime will be found in a particular place. In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention.

Criminal Law & Procedure > Search & Seizure > Search Warrants > Particularity Requirement

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

HN5 Search Warrants, Particularity Requirement

The specific requirement that a search warrant particularly describe the person, place, or thing to be searched is aimed at preventing general warrants or those authorizing a general, exploratory rummaging in a person's belongings. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the framers of the Constitution intended to prohibit.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Probable Cause

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > Scope of Search Warrants

HN6 Search & Seizure, Probable Cause

The propriety of warrants authorizing the search of persons is well settled in the law. S.C. Code Ann. § 17-13-140 (2003), which governs the issuance and execution of search warrants, clearly authorizes the search of a person. This section provides that the property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control. Warrants authorizing the search of a person are constitutional provided that a search or seizure of a person must be supported by probable cause particularized with respect to that person.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > Scope of Search Warrants

Governments > Legislation > Overbreadth

HN7 Search & Seizure, Warrants

Overbroad portions of a search warrant may be severed from the portions for which probable cause is found to exist, thus permitting the admission of evidence properly obtained. If there is probable cause to issue a search warrant describing particular items to be seized, and such items are found and those items alone constitute the basis of the criminal charge, there is no reason why some additional unsupported language in the search warrant, while to be avoided, should not be severable, particularly where no items seized thereunder are included as a basis for the criminal charge.

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > General Overview

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Good Faith

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Reasonable Reliance Upon Warrant

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > ... > Search Warrants > Affirmations & Oaths > Examination Upon Application

Criminal Law & Procedure > Search & Seizure > Search Warrants > Issuance by Neutral & Detached Magistrate

HN8 Search Warrants, Probable Cause

Admission of evidence will not be barred where the evidence was obtained by officers who manifested objective good faith in relying on a search warrant issued by a detached, neutral magistrate even though the warrant was ultimately found to be invalid. This good faith exception, however, may not be employed to validate a warrant that is based on an affidavit that does not provide the magistrate with a substantial basis for determining the existence of probable cause.

Criminal Law & Procedure > Search & Seizure > Search Warrants > Execution of Warrants

Criminal Law & Procedure > ... > Controlled Substances > Continuing Criminal Enterprises > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

HN11 Search Warrants, Execution of Warrants

Narcotics conspiracies are the very paradigm of the continuing enterprises for which the courts have relaxed the temporal requirements of non-staleness of a search warrant.

HN9 Search Warrants, Probable Cause

In order for a search warrant affidavit to support probable cause, it must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time. An affidavit which fails altogether to state the time of the occurrence of the facts alleged is insufficient.

Criminal Law & Procedure > Search & Seizure > Search Warrants > Scope of Search Warrants

Evidence > ... > Scientific Evidence > Bodily Evidence > Blood & Bodily Fluids

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > Execution of Warrants

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

HN12 Search Warrants, Scope of Search Warrants

S.C. Code Ann. § 17-13-140 provides for the involuntary submission of non-testimonial identification evidence, and guidelines and procedures exist for obtaining samples of blood and saliva, along with head and pubic hair from suspects who are not under arrest in criminal investigations. The search of a suspect's mouth is appropriate in order to prevent a suspect's attempts to destroy evidence by swallowing it, because he cannot consider the mouth a sacred orifice in which contraband may be irretrievably concealed from the police.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > General Overview

HN10 Search Warrants, Execution of Warrants

There is no fixed standard or formula establishing a maximum allowable interval between the date of events recited in an affidavit and the date of a search warrant. The acceptable length of time between the establishment of probable cause and the execution of the warrant depends on a variety of case-specific factors. While the lapse of time involved is an important consideration and may in some cases be controlling, it is not necessarily so. There are other factors to be considered, including the nature of the criminal activity involved, and the kind of property for which authority to search is sought.

Criminal Law & Procedure > Search &
Seizure > Search Warrants > General Overview

Criminal Law & Procedure > ... > Warrantless
Searches > Search Incident to Lawful
Arrest > General Overview

Criminal Law & Procedure > ... > Warrantless
Searches > Search Incident to Lawful
Arrest > Extent & Manner of Search

Criminal Law & Procedure > ... > Warrantless
Searches > Search Incident to Lawful
Arrest > Necessity That Arrest Be Valid

HN13 Search & Seizure, Warrants

In the case of a lawful custodial arrest, the full search of a person does not require a search warrant and is considered reasonable under the Fourth Amendment.

Counsel: Trent Neuell Pruett, of Gaffney, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Sailey W. Elliott, and Assistant Attorney General W. Rutledge Martin, all of Columbia; and Solicitor Harold W. Gowdy, III, of Spartanburg, for Respondent.

Judges: KITTREDGE, J. HUFF and BEATTY, JJ., concur.

Opinion by: KITTREDGE

Opinion

[**558] [*196] KITTREDGE, J.: Napoleon Thompson appeals his convictions for drug related offenses, arguing evidence was seized under an invalid search warrant. The questions presented are (1) [**559] whether the warrant sufficiently described the person or things to be seized; (2) whether the warrant was issued based on stale information; and (3) whether the warrant authorized an unreasonable bodily intrusion. We affirm.

FACTS

Officer A.B. Phillips of the Blacksburg Police Department was assigned to the Cherokee County Metro Narcotics Task Force. In 2002, Phillips was

investigating possible illegal [*197] drug activities involving [***2] Thompson. After the investigation had been ongoing for several months, Phillips received a tip from a confidential informant that the informant had seen illegal narcotics in Thompson's possession. Based on this information, Phillips prepared an affidavit and obtained a search warrant from a magistrate. The affidavit read:

Affiant's belief is based upon information received from a confidential reliable informant [sic], who has provided information in the past that has proven true and correct and led to the arrest and conviction of those involved in illegal drug trade. This C.R.I. states that he or she has seen a quantity of crack cocaine on the above described person within the past 72 hours. Affiant's [sic] knows this C.R.I. to know crack cocaine when seen by past information received from C.R.I.

The warrant issued described the permitted search as follows:

Description of Premises (Person, Place or Thing) To Be Searched

One, Napoleon [sic] Thompson III, aka Buster, is to be searched. A black male, DOB 5-29-79, DL number 0011405948, HGT 5-10, WGT 145lbs, address 207 E. Seven Springs St., Blacksburg SC. The search will include all clothing, shoes, [***3] hats, socks, under garments, jackets, scarfs [sic], bandannas, any vehicle and or any means of transportation that Mr. Napoleon [sic] Thompson III may be traveling in or on, and Mr. Napoleon [sic] Thompson's mouth. The search will also include any types of luggage, small or large in Mr. Thompsons [sic] poss.

Officer Phillips promptly undertook efforts to execute the warrant. The day after the warrant was issued, Phillips received information that Thompson "would be traveling down South Charleston Street [in Blacksburg] with crack cocaine and marijuana in his possession." This information was disseminated to officers in the area, and shortly thereafter, a police officer spotted Thompson's car traveling on South Charleston Street. When Officer Phillips arrived on South Charleston Street, Thompson had parked his car and entered a convenience store. When Thompson returned to his car, he was confronted by the officers. After being informed of the search warrant, Thompson stepped out of his car as instructed [*198] by the officers. Thompson then pulled two small plastic bags out of his pocket, threw

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them in the air, and attempted to flee. Phillips grabbed Thompson before he could [***4] get away and detained him.¹ The plastic bags Thompson had tossed away were recovered by police and held as evidence. Subsequent analysis revealed the bags contained marijuana and crack cocaine.

[***5] Thompson was taken to the police department and searched. The only additional evidence the search produced was \$ 2,654 cash found in Thompson's wallet.

[**560] Thompson was charged with possession with intent to distribute crack cocaine and possession with intent to distribute crack cocaine within a half mile of a school. Before trial, Thompson moved to suppress the crack cocaine and the marijuana evidence. Thompson claimed the drug evidence was inadmissible because it was obtained under an invalid search warrant. Specifically, Thompson argued the warrant was void because: (1) the warrant impermissibly permitted the search of Thompson's person and was otherwise overbroad with regard to the places and things it authorized law enforcement to search; (2) the affidavit submitted to obtain the warrant recited stale information insufficient to support a finding of probable cause; and (3) the warrant permitted an unreasonable bodily intrusion or strip search of Thompson. The trial court disagreed and denied the motion. Thompson [199] was ultimately convicted of possession of crack cocaine. This appeal followed.

STANDARD OF REVIEW

¹ Contrary to Phillips' testimony, it is clear that Thompson was under arrest when he was first detained in the convenience store parking lot. HN1 [↑] The determination of whether an individual is under arrest is measured objectively, and the subjective view of the particular officer is not controlling. See Stansbury v. California, 511 U.S. 318, 323, 128 L. Ed. 2d 293, 114 S. Ct. 1526 (1994) (opining that "our decisions make clear that the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned"). When Thompson was detained in the parking lot, following seizure of the suspected contraband, he was so substantially deprived of his freedom of movement as to constitute a full custodial arrest. See Park v. Shifflett, 250 F.3d 843, 850 (4th Cir. 2001) (holding that "the test for determining whether an individual is in custody or under arrest is whether, under the totality of the circumstances, the suspect's freedom of action is curtailed to a degree associated with formal arrest" (internal quotation marks omitted)).

HN2 [↑] In criminal cases, the appellate court sits to review errors [***6] of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). This court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). A deferential standard of review likewise applies in the context of a Fourth Amendment challenge to a trial court's fact-driven affirmation of probable cause. State v. Brockman, 339 S.C. 57, 65-66, 528 S.E.2d 661, 665-666 (2000) (holding that HN3 [↑] whether a search violated the parameters of the Fourth Amendment depends upon "a number of antecedent determinations, each of which is inherently fact-specific" and "entails an inquiry into the totality of the circumstances" and the appellate court must affirm if there is "any evidence" to support the ruling). This appeal presents both factual and legal challenges to the rulings of the trial court concerning the search warrant. Following Brockman, we adhere to the "any evidence" standard of review with respect to the factual findings of the trial court.

LAW/ANALYSIS

I. Permissible Scope of Search Authorized Under the Warrant

We first address [***7] Thompson's claim the warrant failed to describe with sufficient particularity the person, place, or thing to be searched. Though we conclude there is sufficient evidence to support the trial court's finding that some portions of the warrant are overbroad, we further concur with the trial court and find this fact does not render the entire warrant void or require suppression of the evidence seized in this case.

HN4 [↑] Under both the United States and South Carolina constitutions, search warrants may not be issued except "upon probable cause, supported by Oath or affirmation," and particularly describing the place to be searched and the persons or things to be seized. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Following these constitutional requirements, South Carolina Code section 17-13-140 [200] (2003) requires a search warrant be issued "only upon affidavit sworn to before the magistrate [or other judicial officer]" and only if the magistrate "is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist . . ." The magistrate issuing the search warrant must "make a practical, common-sense decision whether, [***8] given all the

circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 452 U.S. 213, 238, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983). In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention. *State v. Martin*, 347 S.C. 522, 527, 556 S.E.2d 706, 709 (Ct. App. 2001).

HN5 [↑] The specific requirement that a search warrant particularly describe the person, place, or thing to be searched "is aimed at preventing general warrants--those authorizing 'a general, exploratory rummaging in a person's belongings.'" *State v. Williams*, 297 S.C. 404, 407, 377 S.E.2d 308, 310 (1989) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)). "By limiting the authorization to [****561**] search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit. [*****9**] " *Id.* (quoting *Maryland v. Garrison*, 480 U.S. 79, 94 L. Ed. 2d 72, 107 S. Ct. 1013 (1987)).

Thompson claims the warrant issued in the present case veers from the particularity requirement in three respects. First, Thompson argues that, by permitting the search of his "person," the warrant granted law enforcement unlimited discretion to search him wherever or whenever they desired. Specifically, Thompson suggests that warrants may only authorize the search of "places" and "things," not individuals. This argument is without merit.

Though not as common as warrants for the search of places, **HN6** [↑] the propriety of warrants authorizing the search of persons is well settled in the law. *South Carolina Code section 17-13-140*, our state statute governing the issuance [***201**] and execution of search warrants, clearly authorizes the search of a person. This section provides that "the property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control." *S.C. Code Ann. § 17-13-140* [*****10**] (2003) (emphasis added). Indeed, the United States Supreme Court has held that warrants authorizing the search of a person are constitutional provided that "a search or seizure of a person must be supported by probable cause particularized with respect to that

person." *Ybarra v. Illinois*, 444 U.S. 85, 91, 62 L. Ed. 2d 238, 100 S. Ct. 338 (1979). Thus, there is no basis to conclude the search warrant was invalid because it authorized the search of Thompson's "person."

Thompson's second and third exceptions to the particularity of the warrant concern two specific items subject to possible search and seizure under the warrant. Thompson claims the language contained in the warrant authorizing the search of any transportation that he was riding in or on and any type of luggage in his possession was not supported by probable cause. We agree.

As quoted above, Phillips' affidavit stated that his belief Thompson was in possession of contraband was based on information from a confidential informant that Thompson had been seen in the past 72 hours with quantity of crack cocaine on his "person." No further information was provided in the affidavit, and Phillips testified that the only additional [*****11**] information he provided the magistrate was the fact that Thompson was the subject of an ongoing narcotics investigation.

There is a substantial basis to support the trial court's determination that the warrant was overbroad in its authorization to search Thompson's vehicle or luggage. The information provided to the magistrate only related to seeing crack cocaine on Thompson's person. There was no basis upon which the magistrate could conclude that probable cause existed to search any vehicle Thompson was traveling in or on or any luggage in Thompson's possession.

We now turn to the legal question posed as a result of the finding that the warrant was overly broad with respect to [***202**] these specific provisions concerning transportation and luggage. We do not believe this finding renders the search warrant invalid on the whole. A contrary conclusion would mean that the seizure of certain items, even though proper if viewed separately, must be condemned merely because the warrant was defective with respect to other items. Though this question of law has not been directly addressed by South Carolina courts in our modern jurisprudence, we believe one of our supreme court's older precedents [*****12**] supports the principle of "severability." Moreover, such an approach is widely recognized in *Fourth Amendment* jurisprudence, in both federal and state courts. In essence, **HN7** [↑] overbroad portions of a search warrant may be "severed" from the portions for which probable cause is found to exist, thus permitting the admission of evidence

properly obtained.

Looking first to our state's law, we do find support for the concept of severability. In *Farmer v. Sellers*, 89 S.C. 492, 72 S.E. 224 [*562] (1911), our supreme court found a warrant, which permitted a search to be conducted by day or night, was valid regardless of a statute prohibiting nighttime searches. In that case, no search was conducted at night, and the court determined "there is therefore no ground to allege that the statute was violated. If courts gave heed to such extremely technical objections, the law would indeed be weak in its struggle with crime." *Id.* at 500, 72 S.E. at 227. The supreme court in *Farmer* thus implicitly recognized the propriety of admitting items seized under valid provisions of a warrant supported by probable cause, despite the fact that the warrant at issue was improper in other [*13] respects.

Other states have applied the concept of severability under circumstances directly analogous to the present case. For example, in *People v. Mangliano*, 75 Misc. 2d 698, 348 N.Y.S.2d 327 (1973), a seminal state court case addressing severability, a New York trial court reviewed the validity of a search warrant authorizing the police to search a suspect's home for illegal narcotics and associated paraphernalia as well as "records, mail, correspondence and communications used in conjunction with the sale or possession of any dangerous drugs." *Id.* at 330. The court found the affidavit submitted to obtain the warrant did not establish sufficient probable cause to justify the seizure of the "records, mail, correspondence [*203] and communications" listed in the warrant. Rather than suppress all of the evidence obtained under the warrant, the court elected to redact the latter phrase from the warrant, thereby preserving from suppression all evidence seized pursuant to the valid portions of the warrant. The court concluded:

There is strong and persuasive authority in other jurisdictions to permit a severance in order to save a warrant or a search. This would seem [*14] to be supported by logic as well. If there was probable cause to issue a search warrant describing particular items to be seized, and such items are found and those items alone constitute the basis of the criminal charge, there is no reason why some additional unsupported language in the search warrant, while to be avoided, should not be severable, particularly where no items seized thereunder are included as a basis for the criminal charge.

Id. at 337; see also, e.g., *State v. Noll*, 116 Wis. 2d 443, 343 N.W.2d 391, 396 (Wis. 1984) (concluding that "in cases involving search warrants which are partially but not wholly defective, those two interests are best accommodated by admitting those items seized pursuant to the valid parts of the warrant and suppressing those items seized under the invalid portion"); *Butler v. State*, 130 Ga. App. 469, 203 S.E.2d 558, 563 (Ga. App. 1973) (holding that "where a search as it was actually conducted is lawful, it is not rendered invalid merely because the warrant pursuant to which it was made was overbroad or founded upon erroneous beliefs") (internal citation omitted); *Aday v. Super. Ct. of Alameda County*, 55 Cal. 2d 789, 362 P.2d 47, 13 Cal. Rptr. 415 (Cal. 1961) [*15] (widely acknowledged as the leading state case adopting the doctrine of severability).

We also note that many federal courts, including the Fourth Circuit Court of Appeals, have recognized and applied the theory of severability. In *United States v. Jacob*, 657 F.2d 49 (4th Cir. 1981), the court examined whether items to be seized under a search warrant met the constitutional particularity requirement. The court noted that the overly broad portions of the warrant describing the items to be seized were severable from those portions that met the particularity requirement.² [*204] *Id.* at 52. Other federal circuits have also recognized and applied the severability concept. See *United States v. George*, 975 F.2d 72, 79 (2d Cir. 1992) (holding that evidence seized pursuant to valid portion of a search warrant may be admissible, even if part of the warrant is severed or redacted for lack of particularity or probable cause); *LeBron v. Vitek*, 751 F.2d 311, 312 (8th Cir. 1985) (holding that the valid portion of a warrant was severable from the invalid, over broad portion); *United States v. Offices Known as 50 State Distrib. Co.* [*16], 708 F.2d 1371, 1375-76 (9th Cir. 1983), cert. denied, 465 U.S. 1021, [*563] 79 L. Ed. 2d 677, 104 S. Ct. 1271, 104 S. Ct. 1272 (1984) (noting that "if probable cause was lacking as to the search of individuals, that does not operate to render the warrant itself invalid in its entirety as a general warrant. The remedy is not a return of all items seized but selective suppression or return of the items improperly seized"); *United States v. Christine*, 687 F.2d 749, 758 (3rd Cir. 1982) (holding that "redaction of a warrant containing valid severable phrases or clauses is

² The court in that case, however, found the entire warrant met the particularity requirement, defeating the need for severance.

consistent with all five purposes of the warrant requirement"); United States v. Cook, 657 F.2d 730, 735 (5th Cir. 1981) (opining that "we agree with the reasoning of the . . . majority of state courts that have considered this question and hold that in the usual case the district judge should sever the infirm portion of the search warrant from so much of the warrant as passes constitutional muster").

[***17] Furthermore, review of authoritative treatises addressing this subject further indicates the concept of severability has gained broad acceptance:

If a search warrant is issued to search a place for several items, but it is later determined that not all of those items are described with sufficient particularity or that probable cause does not exist as to all of the items described, it is often possible to sever the tainted portion of the warrant from the valid portion so that evidence found in the execution of the latter will be admissible.

2 Wayne R. LaFare et al., Criminal Procedure § 3.4(f), at 137 (2d ed. 1999); see also 79 C.J.S. Searches and Seizures § 185 (Supp. 2004) (commenting that "where the description in a search warrant of the items to be seized is in part insufficiently [*205] particular or unsupported by probable cause, the warrant may sometimes be severed so as to preserve the valid portions"); 68 Am. Jur. 2d Searches and Seizures § 168 (2000) (observing that "striking from a warrant those severable phrases and clauses that are invalid for lack of probable cause and preserving those phrases and [*18] clauses that satisfy the Fourth Amendment, is consistent with the Fourth Amendment and should be used in order to avoid unnecessary social costs").

In the case at bar, we find the invalid portions of the warrant relating to the search of Thompson's vehicle and luggage are severable from the authorization relating to the search of Thompson's person. Because the portion of the warrant allowing the search of Thompson's person remains valid, and because none of the evidence sought to be suppressed was derived from the overbroad portions of the warrant, we find Thompson's request for suppression of this evidence was properly denied.

In so holding we do not mean to suggest that invalid portions of a warrant will be treated as severable under all circumstances. We are mindful of the danger that warrants might be obtained which are essentially general in character but arguably meet the particularity

requirement in certain respects. We in no manner sanction wholesale seizures pursuant to questionable police practices. Our decision today is narrowly confined to those circumstances where, as here, there exists good faith³—measured objectively—on the part of law enforcement and the valid [***19] portion of the warrant is amply supported by probable cause.

II. Staleness

We next address, and reject, Thompson's claim that the information contained in the affidavit supporting the warrant [*206] was stale, and therefore could not have been the [***20] basis of a finding of probable cause.

HN9 [↑] In order for an affidavit to support probable cause, "it must state facts so closely related to the time of the issuance of [*564] the warrant as to justify a finding of probable cause at that time." State v. Winborne, 273 S.C. 62, 64, 254 S.E.2d 297, 298 (1979) (internal quotation marks omitted). "An affidavit which fails altogether to state the time of the occurrence of the facts alleged is insufficient." *Id.*

HN10 [↑] There is, however, no fixed standard or formula establishing a maximum allowable interval between the date of events recited in an affidavit and the date of a search warrant. United States v. McCall, 740 F.2d 1331, 1336 (4th Cir. 1984). This court has explained that the acceptable length of time between the establishment of probable cause and the execution of the warrant depends on a variety of case-specific factors:

While the lapse of time involved is an important consideration and may in some cases be controlling, it is not necessarily so. There are other factors to be considered, including the nature of the

³ See United States v. Leon, 468 U.S. 897, 922, 82 L. Ed. 2d 677, 104 S. Ct. 3405 (1984) (adopting the "good faith exception" to the exclusionary rule under which HN8 [↑] admission of evidence will not be barred where the evidence was obtained by officers who "manifested objective good faith" in relying on a search warrant issued by a detached, neutral magistrate even though the warrant was ultimately found to be invalid). This good faith exception, however, may not be employed to validate a warrant that is based on an affidavit that "does not provide the magistrate with a substantial basis for determining the existence of probable cause." State v. Johnson, 302 S.C. 243, 248, 395 S.E.2d 167, 170 (1990) (quoting Leon, 468 U.S. at 915).

criminal activity involved, and the kind of property for which authority to search is [***21] sought.

State v. Corns, 310 S.C. 546, 550-51, 426 S.E.2d 324, 326 (Ct. App. 1992) (quoting United States v. Steeves, 525 F.2d 33 (8th Cir.1975)).

The record in this case contains ample support for the trial court's rejection of Thompson's assertion that the circumstances providing probable cause for the search had grown stale by the time the warrant was executed. The affidavit provides that the informant had observed Thompson in possession of crack cocaine within the past 72 hours. The affidavit was sworn on the same day the magistrate issued the warrant, and Officer Phillips executed the warrant the day after it was issued. Additionally, the record reveals that the information received from the informant was not an isolated incident. Phillips testified that he informed the magistrate that Thompson was the subject of an ongoing narcotics investigation conducted during the several months prior to obtaining the warrant.

[*207] Given the continuous nature of the alleged drug activity, we find the record supports the trial court's finding that it was reasonable for the magistrate to conclude that Thompson would be found in possession of illegal substances. [***22] Although isolated sales of narcotics unquestionably occur, it is generally recognized that HN11 [↑] "narcotics conspiracies are the very paradigm of the continuing enterprises for which the courts have relaxed the temporal requirements of non-staleness." United States v. Rowell, 903 F.2d 899, 903 (2d Cir. 1990) (quotation marks and citation omitted); see also Donaldson v. State, 46 Md. App. 521, 420 A.2d 281, 286 (Md. Ct. App. 1980) (noting that the selling of drugs, by its nature, is an ongoing activity). Considering the informant's report of Thompson's drug possession together with Phillips' testimony that Thompson was the subject of an ongoing narcotics investigation did not suggest an isolated incident, but rather described a probable continuing course of illegal drug activity. We concur, therefore, with the trial court that the probable cause predicate, which supported the issuance of the warrant, continued to exist at the time of its execution.

III. Bodily Intrusion

Finally, we address Thompson's argument that the search warrant was invalid because it improperly authorized a bodily intrusion or a strip search.

Specifically, Thompson contends [***23] the warrant's authorization to search his mouth and undergarments rendered the warrant invalid because the warrant did not set forth specific findings required to justify a bodily intrusion as required under In re Snyder, 308 S.C. 192, 417 S.E.2d 572 (1992). We disagree.

In In re Snyder, our supreme court held that HN12 [↑] South Carolina Code section 17-13-140 (search warrant statute) provides for the involuntary submission of nontestimonial identification evidence, and the court set forth guidelines and procedures for obtaining samples of blood and saliva, along with head and pubic hair, from unarrested suspects in criminal investigations. In the present case, the search did not authorize the collection of any bodily fluids, tissue samples, or other such physical evidence for which a bodily intrusion would be required. The warrant in this case merely authorized the search of Thompson's mouth and undergarments in connection with the search of his person for illegal drugs. [**565] [*208] Therefore, the search of these areas did not rise to the level of the type of bodily intrusion contemplated under In re Snyder.

Moreover, our supreme court has held [***24] that the search of a suspect's mouth is appropriate in order to prevent a suspect's attempts to destroy evidence by swallowing it, because "he cannot consider the mouth a "sacred orifice" in which contraband may be irretrievably concealed from the police." State v. Dupree, 319 S.C. 454, 458, 462 S.E.2d 279, 282 (1995) (quoting State v. Williams, 16 Wn. App. 868, 560 P.2d 1160, 1162 (Wash. App. 1977)). Therefore, the magistrate could properly conclude there was a reasonable probability that the crack cocaine may be found in Thompson's mouth as part of his person.

We also note that when the police searched Thompson's undergarments he had already been placed under arrest and taken to the police department. It is well settled that, HN13 [↑] in the case of a lawful custodial arrest, the full search of a person does not require a search warrant and is considered reasonable under the Fourth Amendment. State v. Ferrell, 274 S.C. 401, 409, 266 S.E.2d 869, 873 (1980). Therefore, the validity of the warrant with regard to the search of Thompson's undergarments was of no consequence because the search conducted was a valid search incident to arrest.

[***25] CONCLUSION

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We find that: (1) although portions of the search warrant issued were overbroad in certain respects, this fact does not render the warrant wholly invalid; (2) the search warrant was issued and executed in a timely manner; and (3) the warrant did not authorize an unreasonable bodily intrusion. Therefore, the trial court's denial of Thompson's motion to suppress the drug evidence is

AFFIRMED.

HUFF and BEATTY, JJ., concur.

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Job Number: 189160909

Document (1)

1. *State v. Gentile, 373 S.C. 506*

Client/Matter: -None-

Search Terms: fourth amendment and describing the place to be searched

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by
Court: State Courts > South Carolina

State v. Gentile

Court of Appeals of South Carolina

April 2, 2007, Submitted; May 8, 2007, Filed

Opinion No. 4244

Reporter

373 S.C. 506 *; 646 S.E.2d 171 **; 2007 S.C. App. LEXIS 96 ***

The State, Respondent, v. Omar Shariff Gentile,
Appellant.

Subsequent History: [***1] As Corrected May 24,
2007.

Rehearing denied by State v. Gentile, 2007 S.C. App.
LEXIS 149 (S.C. Ct. App., June 28, 2007)

Writ of certiorari denied State v. Gentile, 2008 S.C.
LEXIS 225 (S.C., Apr. 4, 2008)

Disposition: REVERSED.

Core Terms

search warrant, marijuana, probable cause, traffic,
narcotics, smelled, cocaine, tip, circumstances,
suppress, arrest, driver, informant, visitors, oral
testimony, investigators, surveillance, verification

Case Summary

Procedural Posture

Defendant's motion to suppress was denied by the Charleston County Circuit Court (South Carolina). Defendant was convicted, after a bench trial, of trafficking in cocaine and possession with intent to distribute cocaine within proximity of a school, and was sentenced. Defendant appealed his convictions and sentences.

Overview

Defendant argued that the search warrant was not supported by probable cause. The appellate court held that the search warrant was invalid under the totality of the circumstances. Although the officers verified the traffic pattern at defendant's home, without additional investigation into the home, the traffic did not establish that narcotics activity was taking place. A single

citizen's tip that she smelled marijuana in the vicinity of defendant's home might not have been communicated to the magistrate. Further, the tip was vague in that there was no indication of how many times the citizen might have smelled marijuana, or that she could readily identify that the odor was emanating from defendant's home. There was no indication that the citizen was knowledgeable about the smell or marijuana, and the officers did not independently verify the tip. Finally, the arrest of one of defendant's visitors did not support a finding of probable cause as the officers did not know whether the visitor purchased the marijuana found on him from defendant. Neither the driver nor his vehicle was searched prior to going to defendant's home, and there was no indoor surveillance.

Outcome

Defendant's convictions and sentences were reversed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Findings of Fact

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Search & Seizure

Criminal Law & Procedure > ... > Standards of Review > Deferential Review > Probable Cause Determinations

HN1 Clearly Erroneous Review, Findings of Fact

In criminal cases, the appellate court sits to review errors of law only. The appellate court is bound by the trial court's factual findings unless they are clearly

erroneous. A deferential standard of review likewise applies in the context of a Fourth Amendment challenge to a trial court's fact-driven affirmation of probable cause.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

HN2  Search & Seizure, Scope of Protection

See U.S. Const. amend. IV.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Exclusionary Rule

HN3  Search & Seizure, Exclusionary Rule

In parallel with the protection of the Fourth Amendment, the South Carolina Constitution provides a safeguard against unlawful searches and seizures. S.C. Const. art. I, § 10. Evidence obtained in violation of the Fourth Amendment is inadmissible in both state and federal court.

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview


Criminal Law & Procedure > ... > Search Warrants > Probable Cause > Totality of Circumstances Test

HN4  Search & Seizure, Search Warrants

A magistrate may issue a search warrant only upon a finding of probable cause. This determination requires the magistrate to make a practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying the information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant was issued.

Criminal Law & Procedure > ... > Search Warrants > Affirmations & Oaths > Examination of Affiants

Criminal Law & Procedure > ... > Search Warrants > Affirmations & Oaths > General Overview

HN5  Affirmations & Oaths, Examination of Affiants

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 S.C. Const. art. I, § 10 require an oath or affirmation before probable cause can be found by an officer of the court, and a search warrant issued. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Additionally, 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. S.C. Code Ann. § 17-13-140 (1985). Oral testimony may also be used in South Carolina to supplement search warrant affidavits which are facially insufficient to establish probable cause. However, sworn oral testimony, standing alone, does not satisfy the statute.

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

HN6  Search Warrants, Probable Cause

In terms of a court's review of the magistrate's decision to issue a search warrant, the duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed. In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention.

Counsel: Chief Attorney Joseph L. Savitz, III, Commission of Indigent Defense, of Appellate Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief

Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Shawn L. Reeves, all of Columbia; and Solicitor Ralph E. Hoisington, of Charleston, for Respondent.

Judges: BEATTY, J. HUFF and WILLIAMS, JJ., concur.

Opinion by: BEATTY

Opinion

[*509] [**172] BEATTY, J.: A circuit court judge, during a bench trial, convicted Omar Gentile of trafficking in cocaine and possession with intent to distribute cocaine within proximity of a school. Gentile asserts the judge erred in denying his motion to suppress the drug evidence on the ground the search warrant was not supported by probable cause. We reverse.¹

FACTS

At approximately 9:45 p.m. on July 10, 2004, officers with the narcotics division of the Charleston Police Department [*510] forcibly executed a search warrant for Gentile's residence in [**2] Charleston. Pursuant to the search, the officers seized one plastic bag containing 24.34 grams of cocaine and \$ 988 in cash from Gentile's person. The officers also discovered six plastic bags containing 2.14 grams of cocaine. Gentile ultimately admitted that the drugs belonged to him. As a result, a Charleston County grand jury indicted Gentile for trafficking in cocaine and possession with intent to distribute cocaine within proximity of a school.

Prior to his bench trial, Gentile filed a written motion to suppress all evidence seized from his residence. In his motion, Gentile argued there was no probable cause to support the issuance of the search warrant. During the trial, the court reviewed the search warrant and accompanying affidavit and heard testimony from the officers involved in the search.

The affidavit in support of the search warrant provided in pertinent part:

¹ Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

[**173] Investigators received [sic] information of narcotic activity at 23 Cleveland ST Apartment A. Investigators conducted periodic surveillance on 23 Cleveland ST and observed a black male enter the residence. Black male subject was observed leaving the residence. Subject was stopped by narcotic investigators and recovered [***3] approximately 4.0 grams of marijuana. Subject made no stops from time of leaving residence until stopped by investigators. Based on above information, there is probable cause to believe narcotics (marijuana) and proceeds from narcotic sales to be stored inside 23 Cleveland ST Apartment A., Charleston, South Carolina.

Officer George Bradley, the officer who procured the warrant from the magistrate, testified regarding his affidavit as well as the oral testimony he gave to the magistrate. According to Bradley, the Charleston Police Department received citizen complaints regarding suspected narcotics traffic at Gentile's residence. Bradley testified the citizens claimed to have witnessed heavy foot traffic "in and out of the residence, later in the afternoon up until the wee morning hours." As a result of these tips, Bradley and Officer Steven Sierko conducted surveillance of the residence. Bradley testified they observed "several black males entering and leaving the residence, [*511] walking in, being in there less than five minutes." Bradley alerted officers in a nearby unmarked patrol car regarding one particular visitor. Corporal Andre Jenkins followed the visitor's vehicle as it left the [***4] residence and then conducted a traffic stop for an obstructed license plate. Jenkins arrested the driver of the vehicle after he refused to produce his driver's license and then engaged in a physical altercation. A search of the driver's person revealed two bags of marijuana.

After this arrest, Corporal Jenkins contacted Bradley to inform him that he believed there was probable cause for a search warrant based on the officers' observations regarding the traffic at the residence and the subsequent arrest of one of the visitors. Jenkins also testified that he established his belief on the citizen tips regarding the traffic at the residence as well as the complaint of one citizen who claimed she smelled marijuana in the vicinity of the residence.

Based on the citizen tips, his observations during the surveillance, the arrest of one of the visitors, as well as his experience, Bradley believed narcotics transactions were being conducted at Gentile's residence. Bradley testified he presented this information to the magistrate

who ultimately signed the warrant for the search of Gentile's residence.

At the conclusion of the suppression hearing testimony, Gentile's counsel reiterated his motion [***5] to suppress. He asserted the search warrant was invalid because there was no probable cause. Specifically, he claimed there was no independent verification of what transpired within Gentile's residence. Instead, counsel averred the citizen complaints, the officers' observations, and the arrest were a series of unrelated events that did not support a finding of probable cause. The judge denied the motion, finding the search warrant was properly issued based on the totality of the circumstances. Although the judge recognized that there was no "indication with regards to the reliability of the informant information," he found the officers did not seek a warrant solely on this information. Instead, the judge found significant that the warrant was procured based on the officers' own investigation, through their own observations . . . which through their [*512] experience as narcotics officers for several years have proven to indicate the presence of drug activity."

The judge convicted Gentile of trafficking in cocaine and possession with intent to distribute cocaine within proximity of a school. He sentenced Gentile to twenty-five years imprisonment for the trafficking offense and a concurrent, [***6] ten-year sentence for the other offense. Gentile appeals his convictions and sentences.

STANDARD OF REVIEW

HN1 [↑] "In criminal cases, the appellate court sits to review errors of law only." State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). We are bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). "A [**174] deferential standard of review likewise applies in the context of a Fourth Amendment challenge to a trial court's fact-driven affirmation of probable cause." State v. Thompson, 363 S.C. 192, 199, 609 S.E.2d 556, 560 (Ct. App. 2005).

DISCUSSION

Gentile argues the judge erred in denying his motion to suppress because the search warrant was not supported by probable cause. We agree.

The Fourth Amendment guarantees HN2 [↑] "[t]he right of the people to be secure . . . [from] unreasonable searches and seizures." U.S. Const. amend. IV, HN3 [↑] "In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures." State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); S.C. Const. art. I, § 10. Evidence obtained in violation [***7] of the Fourth Amendment is inadmissible in both state and federal court. Forrester, 343 S.C. at 643, 541 S.E.2d at 840.

HN4 [↑] A magistrate may issue a search warrant only upon a finding of probable cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). "This determination requires the magistrate to make a practical, common-sense decision of whether, given the totality of the circumstances set forth in [*513] the affidavit, including the veracity and basis of knowledge of persons supplying the information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." State v. King, 349 S.C. 142, 150, 561 S.E.2d 640, 644 (Ct. App. 2002). "The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant was issued." State v. Dupree, 354 S.C. 676, 684, 583 S.E.2d 437, 441 (Ct. App. 2003) (citations omitted).

In discussing the specific requirements for issuing a search warrant, our supreme court has explained:

HN5 [↑] The General Assembly has imposed [***8] 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. U.S. Const. amend. IV, S.C. Const. art. I, § 10. Additionally, 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 . . ." S.C. Code Ann. § 17-13-140 (1985). Oral testimony may also be used in this state to supplement search warrant affidavits which are facially insufficient to establish probable cause. See State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997). However, "sworn oral testimony, standing alone, does not satisfy the statute." State v.

McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987).

State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678-79 (2000).

HNG In terms of a court's review of the magistrate's decision, "[t]he [***9] duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed." State v. Baccus, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). "In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention." State v. [**514] Thompson, 363 S.C. 192, 200, 609 S.E.2d 556, 560 (Cl. App. 2005).

Reviewing this case within the above-outlined parameters, we find the affidavit and the supplemental oral testimony were insufficient to provide the magistrate with a substantial basis for which to find probable cause to issue the search warrant for Gentile's residence.

Although we are cognizant that our decision should be based on the totality of the circumstances, for analytical purposes we find it necessary to separately address each piece of evidence presented to the magistrate.

[**175] The narcotics officers' decision to investigate Gentile was precipitated primarily by the receipt of citizen complaints regarding a high volume of traffic at Gentile's residence. Even though the officers verified the pattern of traffic at Gentile's residence, this, without additional investigation into the [***10] residence, was not sufficient to establish that narcotics activity was taking place. See State v. Hunt, 150 N.C. App. 101, 562 S.E.2d 597, 601-02 (N.C. Ct. App. 2002) (reversing trial court's decision denying defendant's motion to suppress drug evidence and stating "[a]ll that the affidavit offers are complaints from citizens suspicious of drug activity in a nearby house. There is no mention of anyone ever seeing drugs on the premises. The citizens only reported heavy vehicular traffic to the house. The officer verified the traffic. His verification, as the trial court found, was not a conclusion."); Bailey v. People, 15 Cal. Rptr. 2d 17, 19-20, 11 Cal. App. 4th 1107 (Cal. Ct. App. 1992) (finding information from an anonymous informer and an unidentified citizen regarding heavy foot traffic at defendant's residence, without investigation, was insufficient to establish probable cause for the issuance of a search warrant; stating "'heavy foot traffic' does not necessarily engender criminal behavior. True, under certain circumstances, such activity might raise suspicions, or be one indicator of possible narcotics

transactions.").

Next, we consider the single citizen claim that she smelled marijuana in the vicinity of Gentile's residence. [***11] Initially, we question whether the magistrate was privy to this information. Based on our review of the record, we are [**515] unable to find where Bradley, the officer who obtained the warrant, testified regarding this information. Instead, the only reference to this tip was through the testimony of Corporal Jenkins. Furthermore, there is no mention in the affidavit regarding this tip. Therefore, it is questionable whether it was communicated to the magistrate.

Even if we conclude that Bradley communicated to the magistrate the citizen's tip, we find it was insufficient to establish probable cause. First, the tip is vague in that there is no indication of how many times the citizen may have smelled marijuana or that she could readily identify that the odor was emanating from Gentile's residence. Secondly, there was no indication that the citizen was knowledgeable about the smell or marijuana. Significantly, there was no independent verification by the narcotics officers regarding this tip.²

Finally, the arrest of one of Gentile's visitors did not support a finding of probable cause to search the residence.³ [**516] [***13] According to [**176] the

²Because the narcotics officers did not verify the citizen tip regarding the odor of marijuana, we find the instant case distinguishable from State v. Ford, 71 N.C. App. 748, 323 S.E.2d 358 (N.C. Ct. App. 1984), a case [***12] relied upon by the State at trial and on appeal. In Ford, the defendant was convicted of trafficking in marijuana based on a search of his residence which revealed 10,000 pounds of marijuana. On appeal, Ford challenged the trial court's denial of his motion to suppress the drug evidence on the ground the supporting affidavit failed to show sufficient probable cause to justify the issuance of the search warrant. Id. at 361. The North Carolina Court of Appeals affirmed the trial court's decision, finding that evidence presented to the magistrate regarding unusual traffic at a residence in conjunction with the surveillance officer's detection of marijuana odors coming from within a mobile home, which was identified as belonging to Ford, was sufficient to constitute probable cause. Id. at 361-62. In the instant case, unlike in Ford, the surveillance officers did not verify the citizen's vague claim regarding the smell of marijuana. Without further investigation by the narcotics officers, we do not believe the citizen's general claim was sufficient to establish probable cause.

³At trial, the State relied on two cases decided by this court for the proposition that an arrest, which yields the presence of

testimony and the affidavit, the officers discovered marijuana in the possession of the driver after he left Gentile's residence. The officers, however, had no knowledge of whether the driver purchased the marijuana from Gentile. Neither the driver nor his vehicle was searched prior to going to Gentile's residence. Furthermore, without surveillance within Gentile's residence, there was no verification that the driver in fact purchased marijuana from Gentile. Additionally, it is important to note that the officers' search of Gentile's residence revealed cocaine and not marijuana.

Based on the foregoing, we hold the search warrant was invalid under the totality of the circumstances, and [***15] thus, the circuit court judge erred in admitting the drug evidence.

We find support for our decision in the factually similar opinion of *People v. Titus*, 880 P.2d 148 (Colo. 1994) (en banc). In *Titus*, the defendant was charged with possession of marijuana with intent to distribute or sell and possession of marijuana. The drug evidence was discovered at Titus's residence pursuant to the execution of a search warrant. The Colorado Springs Police Department procured the warrant based on the

narcotics, is sufficient to establish probable cause for the issuance of a search warrant for the location of where the arrestee came from prior to the arrest. See *State v. Keith*, 356 S.C. 219, 225, 588 S.E.2d 145, 148 (Ct. App. 2003) (affirming decision of trial court to admit drug evidence seized pursuant to a search warrant for defendant's residence where the following facts established probable cause: informants' tips regarding drug transactions at the defendant's [***14] home; surveillance by law enforcement; and a traffic stop of the defendant after leaving his residence which revealed the presence of a marijuana "bud" and a pipe in the defendant's vehicle); *State v. Scott*, 303 S.C. 360, 362-63, 400 S.E.2d 784, 785-86 (Ct. App. 1991) (affirming defendant's convictions for trafficking in cocaine and unlawfully transporting drugs in a motor vehicle and finding affidavit in support of search warrant was sufficient to establish probable cause where affidavit was based on information from surveillance officers who followed defendant leaving his residence and ultimately arrested him and searched his vehicle which revealed the presence of twenty grams of cocaine).

These cases are clearly distinguishable from the instant case. In both *Keith* and *Scott*, the defendant was arrested and searched after leaving his residence. Here, Gentile was not arrested. Instead, the surveillance officers followed and arrested a third party. This person, a visitor at Gentile's residence who had not been searched prior to his arrival, was not a target of their surveillance.

following information: 1). a first-time anonymous informant alleged defendant was engaged in selling marijuana at his residence, there was unusual traffic at defendant's residence, and that she had smelled the odor of burning marijuana coming from the residence; 2). the informant gave police a list of the license plate numbers of those that visited [***17] the defendant's residence; 3). police officers' verification of the license plate numbers and the traffic at the defendant's residence; 4). an attempted controlled buy of narcotics from defendant; and 5). the fact that the defendant was self-employed and operated a telephone repair business out of his home.

Prior to trial, the court granted the defendant's [***16] motion to suppress the drug evidence found at his residence on the ground the affidavit underlying the search warrant did not establish probable cause. *Id.* at 149. The prosecution appealed the decision. On appeal, the Colorado Supreme Court, sitting en banc, affirmed the trial court's ruling. In reaching this decision the court found "the police had no indication, apart from the anonymous informant's suspicions and the police informant's conversation with Titus, that Titus was engaged in criminal activity." *Id.* at 151. In terms of the high volume of traffic at the defendant's residence, the court stated "[t]he fact that a large number of people visit a residence in a one-month period does not establish that illegal activity is taking place." The court also relied on the fact that there was nothing in the affidavit to suggest that "any of the [visiting] vehicles belonged to known drug offenders, or were used in the furtherance of any illegal activity." *Id.* Finally, the court rejected the prosecution's reliance on the anonymous informant's claims that she smelled the odor of burned marijuana coming from the defendant's residence on several occasions. *Id.* at 152. The court found that "[u]nder [***17] no circumstances do [the claims] support the conclusion that Titus was selling marijuana out of his home." *Id.* In reaching this conclusion, the court found significant the fact that:

[t]he affidavit does not state the circumstances under which the informant smelled the odor of burned marijuana. Nor does it disclose how many times she smelled it. Most importantly, however, it does not disclose when these olfactory experiences took place. There is no indication that the police officer attempted to determine whether the informant had smelled marijuana burning recently, or whether the event was remote in time.

Id.

As in *Titus*, we find the warrant to search Gentile's home was not supported by [**177] probable cause. The narcotics [*518] officers' decision to obtain the search warrant was based on citizens' tips regarding high volume traffic at Gentile's residence, which was not necessarily indicative of illegal activity at the residence. Additionally, the citizen claim regarding the smell of marijuana in the vicinity of Gentile's residence was vague and not corroborated by the officers' surveillance. Finally, as previously discussed, the officers' arrest of a visitor to Gentile's residence adds nothing to [***18] the probable cause determination. Without more, we find the evidence in the affidavit and the oral testimony was insufficient to support a finding of probable cause.

Accordingly, Gentile's convictions and sentences are

REVERSED.

HUFF and WILLIAMS, JJ., concur.

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1. *State v. Laux, 344 S.C. 374*

Client/Matter: -None-

State v. Laux

Supreme Court of South Carolina
February 6, 2001, Heard ; March 19, 2001, Filed
Opinion No. 25262

Reporter
344 S.C. 374 *; 544 S.E.2d 276 **; 2001 S.C. LEXIS 50 ***

The State, Respondent, v. Bernard Laux, Appellant.

Prior History: [***1] Appeal From Charleston County, Edward B. Cottingham, Circuit Court Judge.

Disposition: AFFIRMED.

Core Terms

apartment, consent to search, apparent authority, bedroom, premises

Case Summary

Procedural Posture

Appellant sought review of the decision of the Charleston County Circuit Court, South Carolina, which denied his motion to suppress evidence and convicted him of murder.

Overview

A temporary resident in appellant's apartment gave consent for police to search the apartment. Ammunition and a holster were found and appellant moved to suppress the evidence contending that the temporary resident did not have authority to consent to the search. The appellate court found that it was reasonable for the officers to assume that the temporary resident had authority to consent to the search because she told the officers that it was her apartment and that she stayed there with appellant, she answered the door in her bedclothes, and female clothing, hair spray, and hair brushes were observed in the bedroom and bathroom. Therefore, the appellate court ruled that the consent to search was valid.

Outcome

The trial court's ruling denying appellant's motion to suppress was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Warrantless Searches > Consent to Search > Sufficiency & Voluntariness

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Consent to Search

Criminal Law & Procedure > ... > Warrantless Searches > Consent to Search > Third Party Consent

HN1 Consent to Search, Sufficiency & Voluntariness

The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched.

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Consent to Search

HN2 Warrantless Searches, Consent to Search

Common authority is defined as mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable for officers to believe the person granting consent to search has the authority to do so.

Criminal Law & Procedure > Search &
Seizure > Warrantless Searches > Consent to
Search

HN3 [] Warrantless Searches, Consent to Search

Whether an individual has actual authority to consent to a search is not necessarily dispositive. A consent to search may be valid if based upon apparent authority. Determinations of consent to enter must be judged against an objective standard: would the facts available to the officer at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises?

Criminal Law & Procedure > Search &
Seizure > Warrantless Searches > Consent to
Search

Criminal Law & Procedure > Preliminary
Proceedings > Pretrial Motions &
Procedures > Suppression of Evidence

HN4 [] Warrantless Searches, Consent to Search

Suppression of evidence seized is not warranted if officers had an erroneous but reasonable belief of authority to consent to the search.

Counsel: Assistant Appellate Defender Robert M. Dudek, of South Carolina Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Senior Assistant Attorney General William E. Salter, III, of Columbia, and Solicitor George M. Ducworth, of Anderson, for respondent.

Judges: JUSTICE WALLER. TOAL, C.J., MOORE, BURNETT and PLEICONES, JJ., concur.

Opinion by: WALLER

Opinion

[*375] [**276] JUSTICE WALLER: Appellant, Bernard Laux, was convicted of murder and sentenced to thirty years. We affirm.

FACTS

Laux was charged with the murder of his long-time friend and drinking buddy, Frank Joseph (Butch) Beylotte, III, who allegedly owed Laux \$ 2000.00. Beylotte's body was found on John's Island in the early morning hours of March 4, 1997, having been shot in the head and shoulder, and apparently run over by an automobile.

Beylotte was last seen alive with Laux in the late evening hours of March 3, 1997, at [***2] the Golden Key Club and the Hayloft Lounge in Charleston. The following morning, police went to Laux' apartment to find him. According to the *in camera* testimony of Detective Michael Conkey, he went to Laux' apartment at 11:15 am and was met at the door by Dee Cooke, who answered the door in her night clothes, appearing to have just gotten out of bed. Cooke told Conkey [**277] she lived there with Laux and that it was her apartment. ¹ Cooke [*376] consented to police searching the one-bedroom apartment, and signed a waiver to that effect. According to Conkey, he saw female clothing in the bedroom and hair spray and brushes in the bathroom. Conkey did not recall seeing a suitcase on the floor.

Dee Cooke testified *in camera* that she had been living with Laux for about one week, that she had a key to the apartment, and that she had told police she lived there and had consented to the search of the apartment. Although [***3] she was still "living out of [her] suitcase some," she testified that a number of her personal items were in the bedroom and bathroom.

Laux moved to suppress the evidence seized, ² contending Cooke was an overnight guest who had no authority to consent to the search. The trial court ruled there was an appropriate consent, either by a person with apparent authority, or by a person temporarily living in the house.

ISSUE

Did Cooke, a temporary resident in Laux'

¹ Conkey also had information from Golden Key employees that Cooke lived in the apartment with Laux.

² Some .357 magnum bullets, a holster, and a few papers were found in the bedroom and kitchen as a result of the search. Laux' 357 revolver was subsequently found stuck inside some cinder blocks outside the Golden Key Club, and a spent bullet shell found at the scene was consistent with having been shot from Laux' weapon.

Stephen Bowden

apartment, have actual or apparent authority sufficient to consent to a search of the premises, such that the trial court properly denied the motion to suppress?

DISCUSSION

HN1 [↑] The test of whether a third party [***4] has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched. *U. S. v. Matlock*, 415 U.S. 164, 39 L. Ed. 2d 242, 94 S. Ct. 988 (1974); *State v. Middleton*, 266 S.C. 251, 258-259, 222 S.E.2d 763, 766 (1976).

HN2 [↑] Common authority is defined as mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable for officers to believe the person granting consent has the authority to do so. *Matlock*, 415 U.S. at 171, note 7. Accord *State v. [***77] Cannon*, 336 S.C. 335, 520 S.E.2d 317 (1999) (noting that any person with an equal right to use or occupy property may consent to its search).

HN3 [↑] Whether an individual has actual authority to consent to a search is not, however, necessarily dispositive. In *Illinois v. Rodriguez*, 497 U.S. 177, 111 L. Ed. 2d 148, 110 S. Ct. 2793 (1990), the United States Supreme Court held a consent to search may be valid if based upon apparent authority. The Court stated, "determinations of consent to enter must be judged [***5] against an objective standard: would the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had authority over the premises?" 497 U.S. at 188. See also *United States v. Whitfield*, 291 U.S. App. D.C. 243, 939 F.2d 1071, 1074 (D.C. Cir. 1991); *State v. Williams*, 101 Ohio App. 3d 340, 655 N.E.2d 764 (Ct. App. Ohio 1995) (finding *Rodriguez* applicable to situations in which an officer would have had valid consent to search if the facts were as he reasonably believed them to be).³

³ Although this Court has not directly addressed the issue, we have implicitly upheld a search based upon officers' reasonable belief that the person authorizing the search had the authority to do so. *State v. Bailey*, 276 S.C. 32, 37, 274 S.E.2d 913, 916 (1981) (where defendant left his pickup truck parked in his uncle's yard, without any instructions or restrictions on its use, and vehicle was unlocked with keys inside, it was "reasonable for the officers to believe . . . the [uncle] had authority to consent to the search."). See also

[***6] Under *Rodriguez*, we find the officers in this case were clearly justified in their belief that Cooke had authority to consent to [**278] the search. ⁴ [***7] Officer Conkey was told by people at [**378] the Golden Key Club that Cooke was living with Laux. Conkey went to Laux' apartment and was met by Cooke, who answered the door in her bedclothes at 11:15 am, told him this "was her apartment," and that she "stayed there with Mr. Laux." She then orally consented to a search of the apartment, and signed a written consent search waiver of rights form in which she stated she was "the owner or person in charge of the item or premises to be searched." Moreover, Conkey observed female clothing in the bedroom and hair spray and hair brushes in the bathroom. Conkey did not recall seeing a suitcase on the floor of the apartment.⁵

Dee Cooke verified that she had told police she lived in the apartment and had given her consent to the search, and that a number of her personal effects were in the bathroom and bedroom. She also testified that she possessed a key to the apartment. However, she acknowledged that she had only been staying there for about a week, and that she was still "living out of her

State v. Brockman, 329 S.C. 115, 494 S.E.2d 440 (Ct. App. 1998), *rev'd on other grounds*, 339 S.C. 57, 528 S.E.2d 661 (2000) (recognizing that **HN4** [↑] suppression is not warranted if officers had an erroneous but reasonable belief of authority to consent).

⁴ Accordingly, we need not decide the more difficult question of whether she had actual authority to do so. Compare *People v. Lewis*, 277 A.D.2d 1010, 716 N.Y.S.2d 204 (N.Y. App. Div. 2000) (defendant's guest who had been living in defendant's residence for approximately one week possessed requisite degree of authority and control over premises to voluntarily consent to police officers' entry) with *United States v. White*, 40 M.J. 257 (C.M.A. 1994) (roommate who had shared apartment with accused for only two weeks was without actual authority to consent to entry of accused's bedroom); *People v. Pickens*, 275 Ill. App. 3d 108, 655 N.E.2d 1206, 211 Ill. Dec. 823 (Ill. App. 1995) (overnight guest whom police found sleeping on defendant's sofa, and whom police had no information lived in defendant's residence, had no authority to consent to search of defendant's residence).

⁵ We have viewed photographs of the search scene in which a closed "suitcase" is shown on the floor of the bedroom. The suitcase is small, brown, and leather and somewhat resembles a large attache case. We find nothing in its appearance which would have alerted Conkey's attention to the fact that Cooke was not a permanent resident of the premises.

suitcase some."

Under these circumstances, we find it was entirely reasonable for Detective Conkey to assume Cooke had authority to consent to the search of the premises. Accord United States v. White, supra (although roommate who had shared apartment with accused for only two weeks was without actual authority to consent to entry of accused's bedroom, officers [***8] nonetheless reasonably relied on roommate's apparent authority to consent); United States v. Ramirez, 115 F. Supp. 2d 401 (S.D.N.Y. 2000) (objectively reasonable for officers to conclude defendant's girlfriend had authority to consent to search of his apartment where she had property at the apartment, had been staying there for at least one week prior to the search, and she opened the door and let officers inside); State v. McCaughey, 127 Idaho 669, 904 P.2d 939 (Idaho 1995) (facts not known to officer at time of search not relevant to question of whether [***9] they reasonably believed defendant's wife could consent to search). See also U.S. v. Kinney, 953 F.2d 863, 866-67 (4th Cir. 1992) (joint resident's consent to search closet valid because officers had reasonable belief in apparent authority because she possessed closet key and opened closet in presence of officers); U.S. v. Thomas, 120 F.3d 564, 571 (5th Cir. 1997), cert. denied 522 U.S. 1061, 118 S. Ct. 721, 139 L. Ed. 2d 660 (1998) (babysitter had apparent authority to consent to search of common areas of apartment, including bedrooms and areas he was permitted to use and given free access [***9] to as a babysitter).

We hold it was objectively reasonable for officers to conclude Cooke had apparent authority to consent to the search of the residence. Accordingly, the trial court's ruling denying Laux' motion to suppress is

AFFIRMED.

TOAL, C.J., MOORE, BURNETT and PLEICONES, JJ., concur.

End of Document.

Stephen Bowden

STATE OF SOUTH CAROLINA

RECEIVED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

FEB 14 2028

STATE

SC Court of Appeals

INDICTMENT/CASE#: 2021-GS-10-00417

VS.

ROMANE CLARE

AKA:

Race: Black

Sex: M

Age: 37

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State,

Zip:

DL#* [REDACTED]

SID# SC02180022

A/W#:

2019A1010205164

Date of Offense:

09/26/2019

S.C. Code §:

16-03-0010

CDR Code #:

0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Voluntary Manslaughter

In violation of § 16-03-0050

of the S.C. Code of Laws, bearing CDR Code #

0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: (range of 25-30 years)

Jessica Baldwin, Assistant Solicitor 76284 SC Bar # Defendant Attorney for Defendant 102195 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 27 days/months/years/Time Served Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$____; provided that upon the service of ___ days/months/years/Time Served and or payment of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.

1,233 days/months To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

STATE ROMANE CLARE INDICTMENT/CASE#: 2021-GS-10-00417
 VS. _____

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:		\$ _____
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____		
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge) ~	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ <u>3.75</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
	TOTAL	\$ <u>128.75</u>

Clerk of Court/Deputy Clerk: Sferlond
 Court Reporter: DCRP

Presiding Judge: Bentley
 Judge Code: 2266
 Sentence Date: 2/2/23

RECEIVED

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

FEB 14 2023

COUNTY OF CHARLESTON

SC Court of Appeals

STATE

INDICTMENT/CASE#: 2021-GS-10-00418

VS.

ROMANE CLARE

AKA:

Race: Black

Sex: M

Age: 37

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State,

Zip:

DL#* [REDACTED]

SID# SC02180022

A/W#: 2019A1010205165

Date of Offense: 09/26/2019

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. (5 years concurrent)

ATTEST:

Jessica Baldwin, Assistant Solicitor

76284 SC Bar #

Defendant

Attorney for Defendant

102195 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 5 days/months/years/Time Served Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$___; provided that upon the service of ___ days/months/years/Time Served and or payment of \$___; plus costs and assessments as applicable*; the balance is suspended with probation for ___

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: 2021-GS-10-0417

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc. days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

STATE ROMANE CLARE INDICTMENT/CASE#: 2021-GS-10-00418
VS. _____

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:		\$
Fine may be pd. in equal consecutive weekly/monthly prmts. of	\$ _____	Beginning _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ <u>3.75</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
	TOTAL	\$ <u>128.75</u>

Clerk of Court/Deputy Clerk: Sterland DCRP
Court Reporter: _____

Presiding Judge: _____
Judge Code: 2706
Sentence Date: 2/2/23