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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENWOOD COUNTY  
The Honorable Donald B. Hocker, Circuit Court Judge

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Appellate Case No. 2022-001156

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THE STATE,

Respondent,

v.

PHILLIP FRANKLIN DERRICK,

Appellant.

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**INITIAL BRIEF OF RESPONDENT**

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## **STATEMENT OF ISSUE ON APPEAL**

Whether the trial court properly denied Appellant's motion to suppress where a scrivener's error in one portion of a search warrant omitted the word "camper" in its description of the property to be searched, but where other parts of the warrant made clear that the camper was an intended target of the search, and the camper was located at the street address at which the warrant was directed.

## **STATEMENT OF THE CASE**

In September 2018, a Greenwood County Grand Jury indicted Appellant Phillip Derrick of trafficking in methamphetamine, 28 grams or more, second offense, and for possession of alprazolam. (Indictments). Appellant proceeded to a jury trial before the Honorable Donald. B. Hocker on August 1–3, 2022. Appellant was found guilty of trafficking in methamphetamine but acquitted for possession of alprazolam. (Tr. 289). Judge Hocker sentenced Appellant to 15 years' incarceration. (Sentencing Sheet). This direct appeal follows.

## STATEMENT OF FACTS

In April 2018, a confidential informant working for the Greenwood County Sheriff's Office purchased narcotics from Jamie Couey at 110 Barkwood Lane in Greenwood (Tr.p.26). Couey lived in a mobile home that was a permanent fixture on the property. There was a smaller camper in the woods behind the mobile home. The purchase took place in the camper, and both Couey and Derrick were present. (Tr.p.39). Derrick owned the real property at 110 Barkwood Lane. (Tr.p.113–14).

After the controlled purchase, police obtained a search warrant for the property on April 6, 2018. (Tr.p.40–41). On April 9, they executed the warrant. (Tr. 104). When police entered the camper, Couey and Appellant were inside. Appellant was seen immediately tossing a bag behind him as police entered and it took “three or four officers” and multiple tasers to take him into custody. Couey was also taken into custody. (Tr.p. 104–06; 145). Inside, police found methamphetamine, marijuana, alprazolam, scales, and packaging materials. (Tr.p. 106–07). A large bag containing 24 grams of methamphetamine—the bulk of methamphetamine taken by police—was discovered in Appellant’s pants pocket. (Tr.p. 111; 140; 147). The following day, Appellant gave a statement in which he claimed that “the dope found in camper belonged to James Couey.” (Tr.p. 119–20).

At a pretrial hearing, defense counsel moved to exclude all evidence obtained pursuant to the search warrant, arguing that the warrant was defective on its face for failing to describe the camper with specificity. (Tr.p. 27). Defense counsel argued:

Approximately a hundred yards behind the mobile home was a camper which was also a residence of itself. And that was not listed in the search warrant. What the search warrant says is a black and tan but it doesn't have anything more particular – first of all, I don't think you can have search warrants for two buildings. That would be like having an apartment A and apartment B. You would have to have two separate search warrants. Here there is only one search warrant. [ . . . ] [W]e

are challenging the search of that camper. Because we don't believe there was a search warrant for the camper and we don't believe that the search warrant, if you could have a search warrant for two separate residents [sic], we don't believe that that search warrant is specifically outlined in the affidavit enough to have gotten it.

(Tr.p. 28–29). In response to this initial argument, the Court stated:

What I am reading is, the target location is 110 Barkwood Lane, County of Greenwood, South Carolina. The residence is in a colored doublewide mobile home with brown trim, gray roof and a covered front porch. A white and tan in color is also located behind the residence. ***I have to assume that the word, camper, was just inadvertently left out of that line.*** I mean a white and tan in color is also located behind the residence.

(Tr.p. 29) (emphasis added). The State's position was as follows:

So in the affidavit it mentions camper, that is where the actual buy took place was in the camper behind 110 Barkwood Lane. My understanding is, that camper did not have an individual address. ***It is all on the property of 110 Barkwood Lane.*** So it is not the equivalent of going to apartment A and apartment B. This is one, 110 Barkwood Lane with more, you know, more buildings on it which is, in fact, the camper. And then also, so you have the affidavit. Within Exhibit A also had a GIS image for that property and describes exactly what they are looking at. You have got the doublewide in the front and then a white in color, my understanding and I believe it would be a camper because they actually make a specific sentence there, saying white and tan in color is also located behind the residence. ***And I think if you look at the search warrant all in totality, with the affidavit there, that also clearly references a camper. You can clearly understand what they are referring to.***

(Tr.p. 33–34) (emphasis added). The State also offered testimony from Investigator Bryan Louis who was responsible for preparing the search warrant:

Q. And again, in that body, in that affidavit, you specifically mentioned the camper?

A. I did.

Q. And also, I direct your attention to Exhibit A. Again, you mentioned 110 Barkwood Lane. Tan in color doublewide mobile home. And then also in this next sentence, a white and tan in color. What do you mean there?

A. The camper was suppose[d] to be in that sentence. I guess it just got omitted out of there.

(Tr.p. 41). Following further questioning and discussion, the Court took the suppression issue under advisement. (Tr.p. 70). The Court then denied Appellant's suppression motion the following day, ruling as follows:

What I have to make a determination is whether or not there was probable cause for the Magistrate, I assume it is Magistrate or City Judge to believe that drugs would be found in the camper and therefor authorizing a search and seizure, search of the camper and any seizure of any drugs. That is what I have got to look at. I think several factors are important here. The fact that the camper is where the CI buy took place. It was mentioned that [Appellant] was present during the CI buy, fairly reflective in some video that maybe the State has. The address for the entire property where the camper was situated is 110 Barkwood Lane as reflected in the search. And I think it has already been acknowledged and *I don't think the Defense has any contest to the scrivener's error where the camper, right after the white and tan description, the word camper is omitted. And the use of the word, camper, is used also in the affidavit and the warrant itself.* And as State versus Williams case reflects, those documents are to be read together. Also the fact that the search warrant was issued within 72 hours of the CI buy. [. . .] And I don't think that two, under any circumstances, two warrants would be needed in this case, if there was probable cause to believe that the camper had some drugs in it. I think that is what is important. The State versus Driggers refers to a Washington case that there was one search warrant for two separate apartments. And I think Mr. Yarborough, in making your argument yesterday, you used that as an analogy. At least in that particular case one warrant for two apartments was admitted. U.S. versus Bennett case, a Fed 3rd cite, 170 F.3rd 632 says description in the search warrant was sufficient to authorize search of both the residence and a shop building. I realize there is some, maybe difference, between shop building and camper. The shop building was located approximately 60 to 100 feet away from the residence. The warrant stated the shop building. *And that is the key. If the warrant or affidavit never referred to camper then I think we have a problem.* But it allowed the search of the shop building because it was named in the warrant finding that the shop building was within the curtilage of the residence. And lastly, State versus Williams. As the State has argued, alludes the fact that *in determining whether or not the search warrant is valid, you read the search warrant in [sic] the affidavit together.* Consequently I find that the search warrant was proper and authorized the search of the camper and seizure of any drugs found. And I will deny the motion for suppression that has been raised by the Defense.

(Tr.p. 75–77) (emphasis added).

## STANDARD OF REVIEW

Appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis where the court reviews the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion is a question of law subject to de novo review. State v. Frasier, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022), reh'g denied (Nov. 17, 2022).

## ARGUMENT

**The trial court properly denied Appellant's motion to suppress because the search warrant, read with the supporting affidavit, described the place to be searched with sufficient particularity and supported a finding of probable cause.**

The trial court properly denied Appellant's motion to suppress based on a challenge to the search warrant. While a portion of the warrant's description of premises to be searched was rendered ambiguous by a scrivener's error, the remainder of the property description and supporting affidavit resolved the ambiguity such that the warrant was sufficiently particularized. The warrant properly authorized the search of the entire property at 110 Barkwood Lane, including the camper. Furthermore, the search warrant was supported by probable cause. When read together, the description of premises to be searched and supporting affidavit established a fair probability that drugs would be discovered in the search. This Court should affirm.

### **A. The warrant was sufficiently particularized.**

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. State v. Thompson, 363 S.C. 192, 199, 609 S.E.2d 556, 560 (Ct. App. 2005) (citing U.S. Const. amend. IV, S.C. Const. art. I, 10, and S.C. Code Ann. § 17-13-140). The specificity requirement “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 (1971)). But a “search warrant satisfies the particularity requirement if the description enables an officer to ascertain and identify the place to be searched with reasonable effort.” United States v. Owens, 848 F.2d 462, 463 (4th Cir. 1988). A warrant may be read in connection with the supporting affidavit to satisfy constitutional

and statutory requirements of particularity in the description of the place to be searched.

Williams, 297 S.C. at 406, 377 S.E.2d at 309 (citing State v. Ellis, 263 S.C. 12, 207 S.E.2d 408 (1974) and State v. Crane, 296 S.C. 336, 372 S.E.2d 587 (1988)).

The search warrant, read with the supporting affidavit, described the property to be searched with sufficient particularity such that it was not a "general warrant." The "description of premises to be searched," attached to the warrant as "Exhibit A," stated: "The target location is 110 Barkwood Lane, in the County of Greenwood, SC. The residence is a tan in color doublewide mobile home with brown trim, a grey roof, and a covered front porch. A white and tan in color is also located behind the residence." (State's Exhibit #26). Officer Louis testified the word "camper" was inadvertently omitted from the final sentence, which should have read "white and tan in color camper." (Tr.p.41).

Despite this scrivener's error, it is apparent from the body of the document that it describes two structures. The inclusion of the word "also" makes clear that two structures are referenced. Furthermore, the probable cause affidavit makes clear that the confidential informant purchased drugs from a camper "behind the residence," just as the "white and tan" structure is described in the description of premises to be searched. As the trial court noted and the solicitor emphasized, the omission of the word "camper" was a scrivener's error that did not impact the ability of the magistrate to determine what "white and tan" structure police intended to reference. (State's Exhibit #26; Tr.p. 29; 33–34; 75–77). When read together, as is proper under Williams, the warrant and affidavit described the property with sufficient particularity to allow police to "ascertain and identify the place to be searched with reasonable effort." Owens, 848 F.2d at 463.

While defense counsel argued police should have been required to secure two distinct search warrants, the warrant legitimately authorized the search of both the mobile home and

camper. Police sought to search all of the structures at 110 Barkwood lane, including the both the camper and mobile home. The warrant's property description stated: "[i]n my experience as a law enforcement officer, drugs dealers keep drugs, money, guns, scales, and other paraphernalia inside their residence and vehicles. It is reasonable to believe these items will be found inside the residence, vehicles, campers, curtilage, or outer buildings." Both the mobile home and camper were located at the same address with the same GIS number. Cf. Crane, 296 S.C. at 340, 372 S.E.2d at 589 (holding search conducted "on property 100 to 150 yards away from appellant's outhouse on land owned by another individual" was not within scope of warrant for appellant's home). Officers were not required to secure two separate warrants to search the camper and mobile home located at the same address.

United States v. Bennett, 170 F.3d 632 (6th Cir. 1999), which the trial court referenced in its ruling, is instructive. There, the Sixth Circuit Court of Appeals found that a search warrant including both a residence and a detached shop building "60 to 100 feet" away from the main residence was valid. Bennett, 170 F.3d at 638. The court found "the description in the search warrant was sufficient to authorize a search of both Bennett's residence and the shop building." Id.; see also United States v. Hinton, 219 F.2d 324, 326 (7th Cir. 1955) (stating that in context of apartment building, "[a] single warrant may cover several different places or residences in a single building. But probable cause must be shown for searching each residence unless it be shown that, although appearing to be a building of several apartments, the entire building is actually being used as a single unit."); United States v. Johnson, 26 F.3d 669, 694 (7th Cir. 1994) (finding search warrant for single house number satisfied particularity requirement for both units in duplex in light of sufficient description of house so that there was no risk that police officers would search another building and officers intended to search entire structure).

**B. The warrant was supported by probable cause.**

A magistrate issuing a 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." Thompson, 363 S.C. at 200, 609 S.E.2d at 560 (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)). When reviewing a magistrate's decision to issue a search warrant, the appellate court must consider the totality of the circumstances. State v. Jones, 342 S.C. 121, 126, 536 S.E.2d 675, 678 (2000).

In this case, the warrant's supporting affidavit supported a finding of probable cause to search the camper. The affidavit informed the magistrate that police had conducted a controlled purchase of drugs from the camper in question within 72 hours of the issuance of the warrant. See Williams, 297 S.C. at 406, 377 S.E.2d at 309 (finding warrant affidavit supported probable cause where it stated an "informant had seen the drugs in appellant's residence within 72 hours of the swearing of the affidavit").

It was clear from the description of property to be searched and supporting affidavit that the "white and tan" structure referenced in the warrant was the camper where police had conducted a controlled buy of drugs from Couey in Appellant's presence. (Tr. 54). All of the relevant details regarding the warrant were before the magistrate, namely (1) there was a camper located on a larger property behind a "larger residence," (2) an informant working for police had purchased narcotics from the camper, and (3) the camper had been previously involved in a narcotics bust where Couey was arrested. Even assuming there was no oral supplementation, the affidavit supports a finding of probable cause.

Accordingly, there was sufficient evidence to support a finding of probable cause and the resulting search warrant was not defective on its face. Under the Williams standard, the warrant

and affidavit read together clearly point to Couey's camper located on Appellant's property where an undercover drug buy had occurred one day prior. The inadvertent failure to include the word "camper" in the description of premises to be searched does not render the warrant invalid. This Court should affirm.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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