THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenwood County Court of General Sessions
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2022-001156

The State.....Respondent

v.

Phillip Franklin Derrick.....Appellant

FINAL BRIEF OF APPELLANT

WILLIAM G. YARBOROUGH, III
LAUREN CAROLE HOBBIS

WGY Law
308 West Stone Avenue
Greenville, South Carolina 29609
(864) 331-1612 | F: 864-271-0711

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutory & Constitutional Law

STATEMENT OF ISSUES

I. WHETHER THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS WHEN THE SEARCH WARRANT WAS DEFECTIVE ON ITS FACE FOR FAILING TO SUFFICIENTLY DESCRIBE THE SEPARATE RESIDENCE LOCATED ON THE PROPERTY.

STATEMENT OF THE CASE

Appellant Phillip Franklin Derrick was charged with trafficking twenty-eight (28) grams or more of methamphetamine, second offense and for possession of alprazolam. (R. pp. 313-319). The offenses were alleged to have occurred on or about April 9, 2018. (R. pp. 316-319). Eighth Circuit Deputy Solicitor Yates Brown and Assistant Solicitor Madison Hoffman prosecuted the case. Appellant was represented by William G. Yarborough, III.

Appellant was tried by jury before the Honorable Donald B. Hocker on August 1st through August 3rd, 2022. Prior to trial, Appellant moved to suppress the evidence seized from a search of the property where he lived with his twin sister, Jamie Couey.[1] The motion to suppress was denied following an evidentiary hearing. (R. pp. 26-77). Appellant did not appear on the last day of trial and was tried in absentia for the remainder of trial. (R. pp. 217-220).

The jury ultimately found Appellant guilty of trafficking methamphetamine but acquitted him of the possession of alprazolam charge. (R. p. 289, lines 7-20). Judge Hocker imposed a sentence of fifteen (15) years at that time but accordingly sealed that sentence until Appellant appeared for court. (R. pp. 320-321). The sentence was unsealed after Appellant turned himself in and appeared in court on August 11, 2022. This appeal follows.

[1] Couey was also charged with possession of a Schedule IV controlled substance, first offense and trafficking methamphetamine 28 grams but less than 100 grams, second offense in connection with the search. (R. pp. 232-233; pp. 311-312).

STATEMENT OF THE FACTS

On April 9, 2018, law enforcement executed a search at the property located at 110 Barkwood Lane in Greenwood, South Carolina. (R. pp. 302-309; pp. 26-27). A search warrant had been issued three days prior on the basis of: (1) a controlled buy for methamphetamine between a confidential informant ("CI") and Couey at her residence located on the property, and (2) in light of Couey's involvement with narcotics and prior drug-related arrests. (R. pp. 302-309; pp. 26-27; p. 136, lines 15-23). Couey lived in a large 1970's-style camper home located behind dense trees at the back of the 1.14-acre property. (R. p. 31; pp. 103-104; p. 227, line 14—p. 228, line 4; p. 132, line 16—p. 133, line 11; pp. 300-301). Her home is set on a foundation and surrounded by a wooden platform and is equipped with all the trappings of any normal home. (R. p. 31; pp. 103-104; p. 227, line 14—p. 228, line 4; p. 132, line 16—p. 133, line 11). Whereas Appellant lived in a mobile home located toward the front of the property close to the street. (R. pp. 296-299; pp. 103-104; p. 229, lines 3-7). There also appear to be several other storage sheds, structures, or outbuildings located on the property.

Bryan Louis, an agent with Greenwood Sheriff's Office Drug Enforcement at the time, applied for the search warrant on April 6, 2018. The warrant affidavit form describes the property sought as: "An[sic] type [sic] substance believed to be methamphetamine and any other controlled substance in violation of Sections 55-53-370 and 44-53-375...Any ledgers, records, scales, electronic storage medium, and paraphernalia used in the manufacture, delivery, or sale of the controlled substance listed above." (R. pp. 305-306).

The warrant affidavit form refers to a separate, attached page labeled "EXHIBIT A" which describes the property to be searched as "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." (R. p. 308). The description also includes detailed driving directions to the street address. (R. p. 308).[2] Agent Louis testified that a full description of Couey's residence was inadvertently omitted from the description of the property to be searched section, leaving only "A white and tan in color." (R. p. 51, lines 14-19.)

In regard to the reasons for the affiant's belief that the property sought is on the subject premises, the warrant affidavit form refers to a separate, attached page also labeled "AFFIDAVIT", which provides in pertinent part:

> Within the past 72 hours, a Documented Reliable Confidential Informant, working with the Greenwood DEU, purchased a quantity of a crystal-like substance, which tested positive for meth, from Jamie Couey, in a camper behind the residence located at 110 Barkwood Lane, in the County of Greenwood, SC. The informant was equipped with audio/video recording capabilities and made contact with Couey who exchanged a clear plastic bag containing the crystal-like substance for recorded U.S. Currency. The informant then left the residence and made contact with Agents and relinquished the drugs. Couey has been arrested at this residence in the past and drug paraphernalia has been located inside the residence.

(R. p. 309).

At the suppression hearing, Defense Counsel argued the search warrant was defective on its face and failed to establish probable cause due to the lack of sufficient description of Couey's camper. (R. pp. 28-34; pp. 66-68). After taking *in camera* testimony from Agent Louis and hearing additional argument, the trial judge denied the motion to suppress. (R. p. 75, line 3—p. 77, line 19).

[2] Under the description of the premises to be searched, a note is made to "**Also see attached GIS image**" of the property. (R. p. 308). However, the search warrant entered into evidence does not appear to include that attached page nor does the record indicate that it was otherwise presented to the trial judge.

While executing the search warrant, officers found both Couey and Appellant inside of Couey's residence. (R. p. 43, lines 16-22; p. 104, lines 18-25). They struggled to handcuff both Couey and Appellant; several officers testified that they had to tase Appellant approximately two to three times due to his resistance. (R. p. 44; p. 105, line 11—p. 106, line 4; p. 138, lines 1-9; p. 145, lines 11-17). Appellant was also said to have attempted to conceal or throw away a baggie of what was ultimately determined to be 24.64 grams of methamphetamine while being handcuffed and searched. (R. pp. 44-45, p. 105; p. 197, lines 17-20). After detaining Couey and Appellant outside, the officers began their search of her residence. Officers found a baggie of 12 alprazolam[3] pills, several scales, a container of baggies, and suspected drug paraphernalia in the kitchen. (R. p. 197, lines 2-7; p. 303; p. 107, lines 1-15).[4] Officers also seized three cellphones[5] as well as another box containing suspected drug paraphernalia from Couey's bedroom. (R. p. 107, lines 1-15; pp. 303-304). Several other bags of a crystal-like and powder substance, ultimately determined by SLED to be methamphetamine and weighing 1.28 grams, 2.09 grams, and .10 grams respectively, were found on the kitchen floor and counter. (R. p. 196, line 20—p. 198, line 16; p. 106, lines 19-22; p. 303). The cumulative weight of methamphetamine in this case was calculated to be 28.11 grams with a plus or minus uncertainty of .01 and at a confidence level of 99.7%.[6] (R. p. 197, line 24—p. 198, line 3; p. 200, line 22—p. 202, line 3). No drugs or paraphernalia were found in

[3] Alprazolam is the generic form of Xanax. (R. p. 199, lines 18-19).

[4] A small baggie of .85 grams of a green, leafy material "believed to be marijuana" was also found on the kitchen counter. (R. p. 107, lines 1-15; p. 303).

[5] The State did not introduce any text messages or other cellphone data into evidence at trial.

[6] SLED Forensic Chemist Lynn Black testified that if the methamphetamine in this case were mixed with a cutting agent, it was a very low amount, though she could not say for certain. (R. pp. 202-203).

Appellant's mobile home. (R. p. 43, lines 11-12). None of the baggies, scales, or other paraphernalia found were tested for fingerprints. (R. p. 137, lines 9-19; p. 204, lines 9-20).

Couey and Appellant each gave a statement to law enforcement following their arrest. Appellant denied that the drugs found in Couey's residence belonged to him, and Couey claimed in her statement that all the drugs found belonged to her. (R. p. 78, lines 1-15; pp. 224-226; p. 310). Couey was subpoenaed by the defense to testify but upon her apprehension by law enforcement and appearance in court,[7] she ultimately invoked her right against self-incrimination under the Fifth Amendment and did not testify. (R. p. 80, lines 18-25; p. 208, line 9—p. 209, line 22; p. 215, lines 11-19). Her statement was admitted into evidence and published to the jury. (R. pp. 224-226; p. 310).

[7] Solicitor Brown informed the Court that Couey was actively eluding law enforcement on additional active warrants at the time of trial. (R. p. 78, lines 12-15; p. 81).

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). On appeals from a motion to suppress, appellate courts apply a deferential standard of review and will reverse for clear error. *State v. Moore*, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016). "The duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed." *Baccus*, 367 S.C. at 50, 625 S.E.2d at 221. This review, like the determination by the magistrate, is governed by the "totality of the circumstances" test. *State v. Jones,* 342 S.C. 121, 536 S.E.2d 675 (2000). However, appellate review of the validity of a warrant is limited to only the information that was brought to the magistrate's attention. *State v. Thompson,* 363 S.C. 192, 199–200, 609 S.E.2d 556, 560 (Ct. App. 2005).

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS BECAUSE THE SEARCH WARRANT WAS DEFECTIVE ON ITS FACE FOR FAILING TO SUFFICIENTLY DESCRIBE THE SEPARATE RESIDENCE LOCATED ON THE PROPERTY.

"A search warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional." *Massachusetts v. Sheppard*, 468 U.S. 981, 988, n. 5, (1984); U.S. Const. amend. IV; S.C. Const. art. I, § 10. Thus, a search warrant may only issue if it particularly describes the place to be searched, the person or thing to be seized, and the information to be obtained. S.C. Code Ann. § 17–13–140; *State v. Williams*, 297 S.C. 404, 407, 377 S.E.2d 308, 310 (1989). The specificity requirement "is aimed at preventing general warrants—those authorizing a general, exploratory rummaging in a person's belongings." *Williams*, 297 S.C. at 407, 377 S.E.2d at 310 (quoting *Coolidge v. New Hampshire,* 403 U.S. 443, 467 (1971)); *Thompson*, 363 S.C. at 200, 609 S.E.2d at 560–61. Evidence seized in violation of the particularity requirement is subject to suppression pursuant to the judicially created exclusionary rule. *See Weeks v. United States*, 232 U.S. 383, 398 (1914); *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). "[T]he presumptive rule against warrantless searches applies with equal force to searches whose only defect is a lack of particularity in the warrant." *Groh v. Ramirez*, 540 U.S. 551, 559 (2004).

In considering the totality of the circumstances here, there was not a substantial basis for the magistrate to have found probable cause. First, the search warrant was defective on its face because it lacked the requisite specificity in describing the place to be searched. *E.g., State v. Philpot,* 317 S.C. 458, 454 S.E.2d 905 (Ct. App. 1995) ("The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause."). The most glaring error is that the "Exhibit A" attachment to the warrant omitted the word "camper" or some other term to describe Couey's home from the property description of the

location to be searched. This is even more problematic when considering that it also fails to provide any other identifying feature besides "white and tan" in color to distinguish Couey's residence from any other building or structure located on the property, including Appellant's mobile home which is also described as being partially tan in color. *See e.g*., *United States v. Owens,* 848 F.2d 462, 463 (4th Cir. 1988) ("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."). The "Affidavit" attachment to the warrant also provides no additional physical description of Couey's home.

This case can thus be readily distinguished from *State v. Crane*, 296 S.C. 336, 372 S.E.2d 587 (1988). Our Supreme Court held that the search warrant in that case sufficiently described the premises to be searched because it "gave directions to the house, described it, and designated 'the residence' as the place to be searched". In contrast, the search warrant and its attachments here gave such a description for Appellant's mobile home only and failed to even approach the minimum level of requisite detail for Couey's home. In fact, the search warrant also failed to make known that there was a second home at all—Couey's home— located on the 110 Barkwood Lane property. What's more, the characterization of Couey's home as a "camper" in the probable cause section of the search warrant is insufficient to cure the warrant's defects because this phrasing itself is—albeit unintentionally—misleading. Without more, the word "camper" implies a smaller, movable storage container or temporary sleeping area for outdoor recreation that could be hauled behind a vehicle. In reality, Couey's home was a permanent, large, immovable[8] dwelling set on a

[8] Note that it is not as though the search in this case could be upheld notwithstanding the deficient warrant under the automobile exception to the warrant requirement. This case is thus unlike *California v. Carney*, 471 U.S. 386 (1985) because Couey's residence was not readily mobile nor being used for transportation. Its use and structure as that of a home, as opposed to an automobile or some other mere outbuilding, that makes Couey's residence deserving of the highest level of

foundation and equipped with all the normal amenities of any home. *See e.g., State v. Sullivan*, 281 S.C. 522, 524, 316 S.E.2d 404, 406 (1984) (noting that the rules relative to the search of an automobile are somewhat relaxed in contrast to the search of a home); *Florida v. Jardines*, 569 U.S. 1, 6 (2013) ("[W]hen it comes to the Fourth Amendment, the home is first among equals."). The failure for the search warrant to clarify that there was a second dwelling or home on the property and that the "white and tan" in color was referring to that second home is significant because notwithstanding the "camper" characterization, Couey's home deserved the same elevated level of Fourth Amendment protection that applies to any home. Couey's residence therefore needed its own particularized description in the search warrant just as Appellant's mobile home was described in the warrant. Moreover, it is because Couey's residence was a dwelling within the curtilage, and thus deserving of heightened Fourth Amendment protection, that the errors and omissions in the search warrant cannot be considered cured by the search warrant's listing of all other structures or outbuildings or campers on the property as included in the places to be searched.

The defective warrant in this case is akin to a scenario in which a search warrant fails to specify that the location to be searched is a multiple-unit structure. *See State v. Ellis*, 263 S.C. 12, 207 S.E.2d 408 (1974) (holding that as a general rule, a search warrant directed against a multiple-unit structure is invalid where it fails to describe the particular units or subunits to be searched with sufficient definiteness to preclude a search of other units located within it). *See also United States v. Brooks*, 294 Fed.Appx. 71 (4th Cir. 2008). This issue could also be analyzed as a scope issue in which the result would be the same: in that the search of Couey's residence extended

---

Fourth Amendment protection. *See Id.* at 407–08 ("These places [mobile homes] may be as spartan as a humble cottage when compared to the most majestic mansion ... but the highest and most legitimate expectations of privacy associated with these temporary abodes should command the respect of this Court.") (Stevens, J., dissenting).

beyond than what the warrant described and is thus also invalid. *See United States v. Srivastava*, 540 F.3d 277, 290 n.16 (4th Cir. 2008) ("The fundamental legal principals involved in interpreting the validity of a search warrant also apply to assessing its scope."); *Groh,* 540 U.S. 551.

Furthermore, the incomplete description of Couey's home is not remedied by other portions of the warrant or otherwise, as Agent Louis did not make any clarification in the affidavit or sworn testimony when applying for the warrant. Agent Louis only testified that it was "customary" for officers to give more information to a magistrate when applying for a search warrant and also that a magistrate will typically ask additional questions. (R. p. 42). Agent Louis did not testify that he provided any additional information to the magistrate when applying for the search warrant here. *See State v. Arnold,* 319 S.C. 256, 259, 460 S.E.2d 403, 405, n. 2 (Ct. App. 1995). There is also no indication that any pictures or video were shown to the magistrate when applying for the warrant. Additionally, although the warrant makes reference to a GIS image of the entire property, this was not attached to the search warrant submitted into evidence during the suppression hearing or at trial as an exhibit, and thus it cannot be certain that the magistrate considered it either. *See Thompson,* 363 S.C. at 199–200, 609 S.E.2d at 560 (review of a search warrant's validity is limited to only the information that was brought to the magistrate's attention).

Therefore, in light of the foregoing, the trial court erred in denying the motion to suppress because there was not a sufficient basis for the magistrate to have found probable cause due to the search warrant's defects and failure to meet the particularity requirement.

CONCLUSION

In light of the foregoing, the Appellant respectfully urges this Court to vacate his conviction and sentence and remand for a new trial. Appellant also respectfully requests that oral argument be held in this case if the Court believes it would aid in deciding the issue raised herein.

Respectfully submitted,

By: *s/ Lauren Carole Hobbis*
South Carolina Bar No. 103190
William G. Yarborough III, Attorney at Law, LLC
308 West Stone Avenue
Greenville, South Carolina 29609
(864) 331-1612 | F: (864) 271-0711

COUNSEL FOR APPELLANT

CERTIFICATE OF COUNSEL

Undersigned Counsel hereby certifies that this Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

s/ Lauren Carole Hobbis
South Carolina Bar No. 103190
William G. Yarborough III, Attorney at Law, LLC
308 West Stone Avenue
Greenville, South Carolina 29609
(864) 331-1612 | F: (864) 271-0711

COUNSEL FOR APPELLANT