

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHARLES HAMMONS,

APPELLANT

APPELLATE CASE NO. 2011201887

ANDERS BRIEF OF APPELLANT

CARMEN V. GANJEHSANI
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STATEMENT OF ISSUE ON APPEAL

The Trial Court erred in denying Appellant's motion to suppress the evidence seized during the execution of the search warrant where the affidavit for the search warrant was based in part on two informant tips and contained no information about the reliability of these informants.

STATEMENT OF THE CASE

On May 10, 2011, Appellant Charles J. Hammons was indicted by the Greenville County Grand Jury for manufacturing methamphetamine in violation of S.C. CODE ANN. § 44-53-375. R. 300-301.

Hammons was tried jointly with co-defendant Debra S. Newland before the Honorable Robin B. Stillwell and a jury on October 11-12, 2011. R. 1. Hammons was represented by Ivan Toney, and the State was represented by Assistant Solicitor Perry Deloach. Id.

On October 12, 2011, the jury found Hammons guilty as indicted. R. 289, l. 17 – 290, l. 2. Judge Stillwell sentenced Hammons to eight year imprisonment. R. 297, ll. 8-11.

Hammons timely appealed and this brief follows.

ARGUMENT

The Trial Court erred in denying Appellant's motion to suppress the evidence seized during the execution of the search warrant where the affidavit for the search warrant was based in part on two informant tips and contained no information about the reliability of these informants.

On June 18, 2010, a search warrant was issued to search a residence in Greer, South Carolina. The officer's affidavit seeking the warrant was based in part on two tips received by the Greenville County Sheriff's Office. The first tip was received by the sheriff's office in March 2010. The sheriff's office received information from "a law enforcement agency in Georgia that a person they arrest[ed] had provided information that Debra Newland and other persons were manufacturing and distributing methamphetamine" from the residence in Greer. R. 305-312. The second tip received by the sheriff's office in April 2010 was "information from a confidential informant in which he/she was approached by Charles Hammons and Debra Newland to purchase methamphetamine." R. 312.

Based upon those tips, officers thereafter conducted undercover drug buys of methamphetamine at the residence and subsequently obtained a search warrant. The search warrant was executed at the residence on June 23, 2010, and at that time both Hammons and co-defendant Debra Newland were present at the residence and later charged with manufacturing methamphetamines. R. 33, l. 1 – 40, l. 6; 40, l. 23 – 41, l. 5; 102, l. 25 – 104, l. 4; 314.

All six of the officers who were present during the execution of the search warrant testified at trial. Investigator Kurt Jacobson testified that he participated in the execution of the search warrant at the residence in question and found Hammons and co-defendant Newland inside at that time. R. 101, l. 25 – 104, l. 4. In the front room, Jacobson found

sudafed, lithium batteries, and toulene (paint thinner solvent) and concluded that these were items used to manufacture methamphetamines. R. 110, l. 12 – 115, l. 22.

Investigator Jason Owens testified that he was present on the scene when the search warrant was executed and saw items such as toulene, sudafed, lithium batteries, liquid fire, coffee filters, syringes, and a pesticide sprayer, all of which he explained would be items used to make methamphetamines. R. 123, l. 14 – 146, l. 16.

Investigator Joseph Parrish testified that he assisted with the execution of the search warrant and was the scribe assigned to list all items seized pursuant to the search and then turn them over to Investigator Brown. R. 166, l. 12 – 173, l. 21. Investigator Brown testified that he received the items seized in the search and placed them in the evidence room at the police department. Investigator Brown added that the items in question are “commonly found in manufacturing methamphetamines.” R. 189, l. 19 - 194, l. 19.

Hammons was ultimately found guilty by the jury on the charge of manufacturing methamphetamine. R. 289, l. 17 – 288, l. 2.

Prior to trial, Hammons’ defense counsel moved to suppress the evidence seized during the search of his residence where the search warrant was based upon two informant tips that were devoid of information as to the informants’ reliability. R. 29, l. 15 – 45, l. 21. The investigation into Hammons began after the sheriff’s office received these two tips from the undisclosed informants.

One of these informants was a person arrested in Georgia who informed Georgia law enforcement that Debra Newland and other persons were manufacturing and distributing methamphetamine at Hammons’ residence. R. 312. Georgia law enforcement then relayed this information to the sheriff’s office. The language of the affidavit seeing the search warrant does not

contain any other information about this informant, and during pre-trial hearings, Investigator Kurt Jacobson did not provide any additional information about this informant. R. 22, l. 4 – 41, l. 17; 312. This particular informant was anonymous, and Investigator Jacobson did not know who this person was or anything else about this particular person. R. 40, ll. 12 – 22.

The second tip was from a confidential informant who gave information that he was approached by Hammons and Debra Newland to purchase methamphetamine. R.*. There was also no other information about this informant in the language of the affidavit, and Investigator Jacobson did not provide any additional information about this informant at the hearing. R. 22, l. 4 – 41, l. 17; 312.

There was also no testimony by Investigator Jacobson that he gave the issuing magistrate any additional information about these two informants concerning their reliability. R. 22, l. 4 – 41, l. 17.

Hammons' defense counsel argued there was no indication that these informants were reliable and therefore, the subsequent investigation into Hammons and the evidence seized pursuant to the search warrant were "the fruit of the poisonous tree." R. 31, l. 24 – 32, l. 8. The Trial Court denied Hammons' motion to suppress the evidence seized pursuant to the search warrant. R. 45, ll. 8-21.

In a case with similar facts, State v. Philpot, 317 S.C. 458, 454 S.E.2d 905 (Ct. App. 1995), this Court held that a search warrant affidavit was insufficient to establish probable cause for a search of the defendant's residence. In Philpot, an officer of the Pickens County Sheriff's Department signed an affidavit to obtain a search warrant for marijuana and marijuana paraphernalia at the residence of the defendant. The affidavit contained the following statement:

Within the past 72 hours, a confidential informant has seen a quantity of marijuana in the residence to be searched. Also in the past, agents with the Special Operations

Div. of the Pickens County Sheriff's Office have received information the [sic] one of the persons who lives at the residence, Jim Philpot, is involved in illicit activity.

317 S.C. at 460, 454 S.E.2d at 906.

Based upon this affidavit, the magistrate issued the search warrant. Officers of the sheriff's department executed the search warrant and seized evidence of marijuana manufacturing and possession. Id.

The defendant moved to suppress the evidence seized during the search because the name of the confidential informant had not been disclosed and the affidavit for the search warrant was devoid of information as to the informant's reliability. The trial court denied the motion. During cross-examination, the defense counsel asked the officer presenting the affidavit whether he told the magistrate why this informant was dependable and reliable. The officer replied that he had presented the magistrate with a statement from the informant. Defense counsel moved for a production of the statement, and the trial court reviewed the statement and ruled there was nothing in it which would assist the defense and denied the motion to produce. Id. at 460, 454 S.E.2d at 906-07.

On appeal, the defendant asserted that the evidence seized during the execution of the search warrant should have been suppressed because the warrant was not supported by probable cause. More specially, the defendant attacked the failure of the affidavit to address the veracity of the confidential informant. This Court agreed with the defendant's position. Id. at 460, 454 S.E.2d at 907.

This Court first set forth the law regarding the issuance of search warrants by magistrates. "The task of a magistrate when determining whether to issue a warrant is to make a practical, common sense decision as to whether, under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place. State

v. Adolphe, 314 S.C. 89, 441 S.E.2d 832 (Ct. App. 1994). This decision includes consideration of the veracity of the person supplying the information and the basis of his or her knowledge. Id. The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. State v. Smith, 301 S.C. 371, 392 S.E.2d 182 (1990). If the affidavit alone is insufficient to establish probable cause, it may be supplemented by sworn oral testimony before the magistrate. State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990). An appellate court reviewing the decision to issue the warrant should decide whether the magistrate had a substantial basis for concluding probable cause existed. Adolphe, 314 S.C. 89, 441 S.E.2d 832.” Philpot, 317 S.C. at 461, 454 S.E.2d at 907.

This Court then concluded that the search warrant should not have been issued. The record indicated that the magistrate only had the officer’s affidavit and the written statement of the confidential informant before him. This Court found that the affidavit and written statement contained absolutely no showing of the confidential informant’s reliability. Furthermore, the officer testified at the pre-trial suppression hearing that the magistrate had no information regarding the reliability of the informant making a remand unnecessary under State v. Johnson. This Court held there was no substantial basis for the magistrate to conclude that probable cause for the search existed. Therefore, the evidence obtained as a result of the search warrant was inadmissible. Philpot, 317 S.C at 461, 454 S.E.2d at 907.

The facts of this case are akin to the facts in the Philpot case. Here, the officer’s affidavit was based in part on tips from two different informants. One was from a completely anonymous person arrested in Georgia and the other was from an undisclosed confidential informant. R. 312. The affidavit contained absolutely no information about the reliability of these informants. Id. In

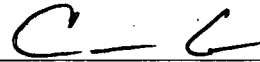
addition, at the pre-trial suppression hearing, the officer who signed the affidavit provided no additional information about these informants and did not indicate that he provided the issuing magistrate any additional information about these informants. R. 33, l. 4 – 41, l. 17.

The entire investigation of Hammons and the search warrant ultimately issued stemmed from these two unreliable tips. There was no substantial basis for the magistrate in this case to have concluded that probable cause existed. Accordingly, the evidence obtained from Hammons' residence during the execution of the search warrant should be suppressed and Hammons' conviction for manufacturing methamphetamine reversed.

CONCLUSION

For the reasons set forth herein, Appellant Charles J. Hammons requests that the Trial Court's denial of his motion to suppress the evidence seized during the execution of the search warrant and his conviction for manufacturing methamphetamine be reversed.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of August, 2013.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charles Hammons states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Robin B. Stilwell, which was held on October 12, 2011, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Charles Hammons.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of August, 2013.

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

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

- (1) True-billed indictment;
- (2) Transcript of trial held October 11-12, 2012;
- (3) Verdict;
- (4) Sentencing sheet;
- (5) State's Exhibit No. 1 – Drug Analysis Report; and
- (6) Court's Exhibit No. 1 – Search Warrant.

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

August 23rd, 2013



Carmen V. Ganjehsani
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Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 23rd, 2013



Carmen V. Ganjehsani
Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Charles Hammons, #330590, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 23rd day of August, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of August, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023