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S.C. SUPREME COURT

The Supreme Court of South Carolina

Gregory Kyle Green, Petitioner Pro-Se Brief for Writ of  
Certiorari

v.

State of South Carolina, Respondent

Appellate Case No. 2025-000800

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(A)

## Procedural History

July 7th 2017, warrant obtained by Detective Sanchez for applicants arrest stating the following falsities:

- (a) cell phone records placed applicant at the scene of the crime
- (b) 3rd party witness implicated applicant
- (c) 3rd party witness statements were corroborated with eye-witness statements who gave initial description
- (d) eye witnesses heard name Kone uttered by co-defendant

(A) is disproved through affiant's own admission and testimony at Trial. FBI analysis expert Clay Simmonds also stated Applicant's records place him at his residence throughout the commission of the aforementioned crimes stated in affiant's warrant. Affiant falsely stated he had wrong date records at the time of the warrant's application but through discovery in the Federal lawsuit 2:21 cv 01376 document number 88, Det. Sanchez in fact received the wrong date records on July 16, 2017 5 days after the applicant's arrest.

(B) is disproved by trial counsel and lawsuit counsel's reviews of Lanica Walker's interviews and trial testimony from Ms. Walker the 3rd party witness herself

(C) & (D) are disproved by both Kendyl Rice's and Jerome Seabrooks interviews and trial testimony. The description given was of a 5'8" darkskin, muscular built bald-headed male, totally opposite of the applicant's description. Although Seabrook said he heard a name he was unsure of what it specifically was with certainty, Rice stated the Detective called the names Gregory and Kone to him in his interview. Detective Sanchez omitted the fact Rice did not pick Applicant out of photo-lineup according to the Detective's re-cross examination at Trial by Solicitor Waring. Detective also omitted the fact that description given by eyewitnesses was of someone other than applicant.

No DNA analysis information was provided by S.L.E.D. to affiant during the warrant application, nor was provided before the preliminary hearing or grand jury indictment that was improbable or unstatistical. Applicant DNA has been in CODIS since 2002 for a prior ABHIAN charge but was re-collected by Detectives months after ~~being~~ Being Incarcerated.

August 15th 2017 was the preliminary Hearing where Detective Sanchez falsely stated the eyewitnesses (referring to Jerome Seabrook) stated - he specifically heard the name Kone called, explained cell site analysis and falsely stated to the magistrate cell records (Applicants) went from one side of the tower to the crime scenes side of the tower and was the "red herring" to make applicant the suspect when in all actuality he had NO cell phone records at the warrants application time and neither did he have correct records at time of the preliminary hearing.

Dec 5th 2017 was the date of the Grand Jury indictment in which NCPD was the only testifying witness. According to the detectives Deposition in the Federal Lawsuit He notified the Solicitor and his Sergeant Nlemic shortly after he discovered the wrong date error After August 30th 2017 p. 20 (101-104 p 103) but Solicitor Warming did not notify Applicants attorney Taylor-Seaman Stewart until Dec. 27, 2017 after the Grand Jury Indictment.

Applicant was convicted on November 7th 2019, filed a direct appeal in 2020 which court of Appeals Denied, a PCR In 2021 and Federal Lawsuit 2:21-cr-01376 in 2021 which the PCR was denied and Lawsuit is still pending but paused until the State resolves the 4th amendment Violation issue in there courts.

(B)

### Questions presented and Arguments

① Why did PCR court err in its assertion of Franks Analysis?

PCR court erred in its version of a "Franks" analysis because it did not draw its conclusion from information the affiant had at the time he submitted the warrant affidavit application in relation to the "4 corners of the affidavit itself." The alleged co-defendant did not give a statement implying the applicant committed the crime until January 24th or 26th of 2018, 8 months and 4 contradictory statements after the crime was committed in a Proffer interview, therefore he is not a witness mentioned in the affidavit. The "3rd party witness to be named in court" Lancia Walker never identified the applicant in her interviews or as she stated in her trial testimony "She never knew who was the suspect because she was never told whom her ex boyfriend was with. Both eye witnesses gave the affiant a description of someone totally opposite of the applicants description so the inclusion of that statement was demonstrably false. One eye witness heard a name called by the alleged co-defendant but could not specify exactly what it was as affiant stated in the warrant "Both" eye witnesses heard such "names. In fact one eye witness testified at trial that Detective Sanchez called the names "Gregory" and "Kore" to him during his interview which is an overly suggestive procedure. The state misleadingly included DNA collected from alleged co-defendants car as one of the applicants arguments against the warrant affidavit but applicant never argued against the DNA part because he knows through investigation that no DNA results were obtained from SLED until 2018, and the initial results were improbable unstatistical but no results were obtained prior to the warrant affidavit application On July 7<sup>th</sup>, 2017. Affiant admitted in his deposition of Federal Lawsuit 2:21-01376-RMG-MGB (which PCR court said it would add all documents to the Record because of 4th Amendment claim) that Walker

(3)

Rice and Seabrook are in fact the 3rd Party witness, and eye witnesses mentioned in the warrant. State erroneously contends that a Franks hearing is not warranted because the charge was indicted disregarding the facts that @ a warrant that contains false material statements made knowingly and willingly to mislead a magistrate in to believing the facts presented are true is an invalid arrest warrant and ⑤ an indictment returned upon false testimony that influenced the grand jury decision to indict or where there exists a grave doubt whether the decision to indict was free from the substantial influence of the false testimony is not a valid indictment.

#### Franks v Delaware (1978) S.Ct. 267457 L.Ed. 2d 667

Where defendant makes substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth was included in warrant affidavit, and the alleged falsity is necessary to the finding of probable cause, the 4th Amendment requires that a hearing be held at the defendant's request. If after the evidentiary hearing defendant establishes by a preponderance of evidence that the falsity is knowingly and willingly or recklessly provided, with the falsity set to one side, if the remaining content is insufficient to establish probable cause, the warrant must be voided and fruits of the warrant excluded.

#### Hunter v U.S. (1991) A2.d 1048

Presentation of false testimony to a grand jury warrants dismissal of indictment only where it is established that false testimony subsequently influenced grand jury's decision to indict or there exists a grave doubt whether the decision to indict was free from substantial influence of the false testimony.

Applicant specifically requested all documents from case no: 2.21-cv-01376-RMG-MGB be placed on the records because it breaks down the 4th amendment violation claim in its entirety. Even highlighting the fact that the State tried to deny the 3rd Party witness and eye witnesses mentioned in the warrant were in fact whom the Affiant stated they were in his deposition and trial testimony. PCR Magistrate Newman said that she would place the documents on the Record. Applicant would respectfully request the Supreme Court of South Carolina review the documents and determine whether the applicants claim is meritorious or not.

U.S. v Glass (2023) W.D North Carolina Statesville Division

If intentenality and materiality are proven warrant must be voided and fruits of the arrest must be excluded.

Sykes v Anderson (2010) F.3d 294

Officer testified falsely at preliminary hearing and participated or influenced decision to prosecute

Gregory v City of Louisville 444 F.3d 725, 758

An officer cannot rely on a judicial determination of probable cause when that determination was premised on an officers own material misrepresentations.

State v Moore N.C. (2020) S.E. 2d 282

Statements made by officer on affidavit in support of warrant were false, misleading and made in bad faith

State v Douglas N.E 2d 2005

A) No person in any official proceeding shall knowingly make a false statement under oath or affirmation, or knowingly swear to affirm the "truth" of a false statement previously made when either statement is material.

B) A falsification is material, regardless of its admissibility into evidence if it can effect the course or outcome of the proceeding.

U.S. v Maynard 615 F.3d 544, 568 D.C Cir. 2010

4th Amendment error admitting improperly seized evidence not harmless because other evidence not overwhelming.

U.S. v White (2001) 4th Cir F.3d.537

A conviction acquired through the knowing use of perjured testimony by the prosecution violates due process, regardless of whether the prosecution solicited testimony it knew to be false or simply allowed such testimony to pass uncorrected. USCA. Const. Amend. 5.

The initial contested statement in the warrant affidavit that "cell phone records placed applicant at the scene of the crime" was admitted to be false by affiant at trial. Affiant stated at preliminary hearing "cell phone records placing applicant at the scene of the crime was the red-herring that made applicant the suspect. Affiant also stated in his deposition he informed the prosecutor that the cell phone records indicating applicant was at the scene was false shortly after the preliminary hearing but this information was not corrected and went uncorrected until his trial testimony. (Nor were the other falsities ever.) Prosecutor Wherry excused the applicant attorney Dec. 27, 2017 saying cell records wouldnt be used at trial to place applicant at scene but he did which was dishonest, despite the records he allegedly produced were erased. What records did he use at trial?

Document # 67 Report and Recommendation from civil case # 2:21-cv-01376-RMG-MGB contains the 3rd party and Eyewitness statements at trial discrediting affiant's material statements made in the warrant affidavit proving the affiant knowingly and willingly misled the magistrate who signed the warrant application.

DNA analysis reports have been included with this argument to show dates in which tests and results were performed and concluded.

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