STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID MATTHEWS, JR.,

APPELLANT

APPELLATE CASE NO. 2025-000541

INITIAL BRIEF OF APPELLANT

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The trial judge erred in denying appellant's motion to suppress evidence seized during a search of his residence because the information presented to the magistrate and included in the affidavit did not establish sufficient probable cause to issue the search warrant in the case.

STATEMENT OF THE CASE

Appellant David Matthews was convicted on the offenses of trafficking in cocaine base, trafficking in cocaine, trafficking in methamphetamine, trafficking in fentanyl, and two counts of possession of a weapon during the commission of a violent crime during a jury trial held at the March 2025 term of the Lexington County General Sessions Court before Judge William P. Keesley. Appellant was sentenced to imprisonment for an aggregate period of twenty five-years. Attorney Charles E. Johnson represented appellant at trial, and Assistant Solicitors Jordan A. Cox, Caroline N. Strom, and Lucas A. Pincelli prosecuted the case.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

In Fourth Amendment search and seizure cases, the standard of review is limited to the following:

> The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling. The appellate court will reverse only when there is clear error.

State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (citations and internal quotation marks omitted). This deference does not bar appellate courts from conducting their own review of the record to determine whether the trial judge's decision is supported by the evidence. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010).

ARGUMENT

The trial judge erred in denying appellant's motion to suppress evidence seized during a search of his residence because the information presented to the magistrate and included in the affidavit did not establish sufficient probable cause to issue the search warrant in the case.

Only five witnesses (four police officers and a forensics chemist) testified at trial in the case at bar. On January 29, 2024, appellant was detained per a traffic stop conducted by police. During the time appellant was detained, one group of police officers quickly obtained a warrant to search his residence and shortly thereafter, another group of officers executed the search warrant signed by the magistrate in the case.

Prior to trial, defense counsel moved to suppress the drugs found at appellant's residence because there was insufficient probable cause presented in the affidavit submitted by the police to secure a search warrant in the case. Tr. 62, l.6-8. Tr. 68, l.22- p. 71, l. 16; Tr. 94, l.17-p. 95, l.3. Defense counsel argued that the grounds used to support the issuance of the warrant, i.e., residential foot traffic in the area, an individual's fatal overdose that occurred previously (six months before) at the residence, the smell of marijuana in the area of the residence, and information that narcotics were allegedly sold at appellant's residence, all combined did not constitute sufficient probable cause to support the issuance of the search warrant in the case, particularly since there was no information indicating that the informant was reliable. Tr. 109, l.10-p. 110, l.24.

An in-camera hearing followed on the question of whether sufficient probable cause existed to support the issuance of the search warrant. Officer Kennedy testified that he received information from an informant that appellant allegedly sold narcotics from his residence. Tr. 66, l.16-19. Tr. 65, lines 1-5. The informant described appellant's residential location and added that

"snake" was appellant's moniker. Tr. 80, l.25-p. 81, l.22. Officer Kennedy stated that the informant had been arrested earlier in a prior drug related incident and simply offered insider knowledge in the spirit of cooperation with law enforcement. Tr. 81, l.23-p. 82, l.11. Officer Kennedy emphasized that the affidavit included facts regarding the occurrence (six months before) of a person's death from a drug overdose at the alleged seller's residence. Tr. 82, l.15-p. 83, l.8. Also, information reading the type of vehicle appellant drove was submitted to the police. Tr. 84, l.8-22. Officer Kennedy admitted that he was not familiar with the informant who gave this information to police, and that this was the informant's first time ever providing such information to police, Tr. 90, l. 15 – p. 91, l. 8.

Thereafter, police surveillance of appellant's residence began. Tr. 81, lines 5-13; Tr. 84, l.12-22. On October 29, 2024, when appellant departed from his residence, Officer Kennedy testified that he approached the residence and smelled the odor of raw marijuana emanating from therein, and that the neighbors confirmed the same. Tr. 85, l.10-p. 87, l.16.

Ultimately, the trial judge ruled that based on the totality of the circumstances, the information gathered and presented in the affidavit created a fair probability that contraband would be found at appellant's residence and then denied the motion to suppress. Tr. 125, l. 13 - p. 127, l. 18.

A magistrate may issue a search warrant only upon a finding of probable cause, which is a practical common-sense determination under the totality of circumstances that there exists a fair probability that contraband or evidence of a crime will be found in a particular place. State v. Gentile, 373 S.C. 506, 646 S.E.2d 171 (2008). Here, the information given to the magistrate did not support probable cause to issue a search warrant in the case. Clearly, the information received was hearsay information sans verification or corroboration regarding the alleged drug

sales that supposedly occurred at appellant's residence. For example, the informant did not reveal that he observed drugs at the residence or that he witnessed drugs sales occurring at the residence. The informant reported to police was ONLY that appellant allegedly sold narcotics from his (appellant's) residence and gave the location of the residence as well as the appellant's moniker (snake). Tr. 81, lines 5-18. More importantly, the trial judge agreed that there was "not a lot specificity" outlined in the warrant affidavit. Tr. 105, lines 21-23.

Moreover, there was no showing on the question of whether the informant was reliable. As a rule, the reliability of an informant is a chief factor for the analysis in assessing the reliability of the affidavit/warrant. State v. Martin, 347 S.C. 522, 556 S.E.2d 706 (SC Ct. App. 2001). The Martin Court quoted Illinois v. Gates, 462 U.S.213 (1983), regarding the test to ascertain sufficient probable cause for a warrant's issue as being a totality of the circumstances test in judging whether the magistrate made a proper "practical, common sense decision [on] whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge" of persons supplying hearsay information," that probable cause existed. Under the totality of the circumstances test in these cases, all circumstances, including the basis of the knowledge and the veracity of the informant, are factors to be considered when determining whether probable cause is present to support a search warrant. State v. Dupree, 354 S.C. 676, 583 S.E.2d 437 (2003). In State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000), the Court held that a deficiency regarding reliability or veracity could be a problem under the totality of the circumstances test outlined above. For example, in Martin, the affidavit stated the reliability of the informant by explaining that the informant's past information given had been true and correct. The Court in Gentile supra, cited to State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002), for the rule that the affidavit must include the veracity and basis of knowledge

of the person supplying the information. Note further that the Gentile Court cited People v. Titus, 880 P.2d 148 (Colo 1994), for the proposition that a first time anonymous informant's tip without "independent verification" as argued by the defense failed to supply or add to a finding of probable cause in the case. Defense counsel objected to the warrant and the search on the ground that the informant was neither verifiable nor reliable because there was nothing in the warrant to establish the veracity of truthfulness of that the informant and no prior relationship existed between the police to substantiate the information in the reports regarding appellant. Tr. 62, l.1-18, Tr. 68, l.22-p. 69, l.22; Tr. 72, lines 1-15; Tr. 94, l.17-p. 95, l.3. The informant's report was that narcotics were allegedly sold at appellant's residence and that snake was appellant's moniker. The information was minimal and there was no testing of the informant's reliability. The police officer who received the information admitted that he was not familiar with the informant, and that the informant had not given the police narcotics information previously. Tr 81, l. 23 – p. 82, l. 9; Tr. 90, l. 13 – p. 91, l. 8.

Additionally, foot traffic at a suspect's residence would fail to give rise to a finding of probable cause to support the issuance of a search warrant. Here, there was testimony from police was that neighbors confirmed that multiple vehicles went to and left the "target residence" after being there for a short period of time, which according to the officer constituted "narcotics related events." Tr. 85, lines 15-21; Tr. 96, lines 8-10; Tr. 97, lines 4-6; Tr. 96, lines 1-3. Again, note the Gentile's Court's reference to People v. Titus, supra, for the additional proposition that traffic to and from the alleged defendant's home and "a large number of people [who] visit a residence [over a period of time would not suggest or prove] that illegal activity is taking place." Note further the Court's holding in Gentile that traffic in and out of one's residence particularly without "additional investigation" would not rise to the level of sufficient probable cause for the

issuance of a search warrant. Also, with respect to "additional investigation," it is telling that the investigation in this case totaled only forty (40) minutes to sixty (60) minutes of surveillance time of appellant's residence on the same day of his arrest. No prior investigations were conducted in the case. Tr. 94, lines 2-22; Tr. 91, l.20-25; Tr. 90, lines 7-9. A forty-minute (40) surveillance watch over appellant's residence would not constitute "additional investigation" to adequately supplement the overall insufficient information put forth as probable cause to search.

Furthermore, evidence regarding a prior overdose at appellant's residence was also insufficient evidence to establish probable cause, particularly since the event was too remote in time to matter. This death occurred seven months before this questionable information was submitted by the informant; and furthermore, there was no proof of the manner of death or whether appellant was in any way connected to the death. The overdose reliance was insufficient proof of probable cause that would support a search warrant in the case. Tr. 75, lines 6-13. Tr. 72, l.23-p. 73, l.3; Tr. 82, l.25-p. 83, l.17; Tr. 109, l.20-p. 110, l.2.

Finally, the matter of the smell of marijuana also failed to provide the nexus required to establish probable cause to issue a search warrant in the case. Officer Kennedy testified that he smelled marijuana (raw) when he approached appellant's residence prior to the execution of the search warrant therein. Tr. 85, lines 10-15; Tr. 87, lines 1-14, However, there is little credence to the smell of marijuana emanating from appellant's residence because the doors of appellant's residence (trailer in a trailer park) were all closed. Tr. 110, lines 3-10; Tr. 120, l.24-p. 121, 15. Counsel's argument regarding the smell test follows:

> MR. JOHNSON: Yes, Your Honor. In that case, Your Honor, the house was—actually it was a trailer, a single-wide trailer in a trailer park. Where the trailer is located there's a trailer behind it, on both sides of it and across the street from it. At the time the officer was there, the trailer was closed, no windows open, the door was locked. A windy day if you read the statement in the

> incident report. So it's our position that that by itself, the alleged smell of marijuana in a trailer that had all the windows closed, a windy day in a trailer park, to say definitively that an odor came from that trailer I think would be kind of stretching it a little bit. It's supposed to be—one officer went to say—went to the front door and alleged he smelled marijuana and someone went to—was going to the back of the trailer, a gust of wind came by and allegedly this smell of marijuana coming from the trailer from a gust of wind but that—all that's alleged in the warrant. There is no allegation that they had a K-9 unit come and see where the K-9 alerted to anything around the trailer relating to marijuana or any other drugs. It's just the officers' statement saying that we smelled that by standing by the front door. Tr. 70, l.18-p. 71, l.16. the only basis there that could be grounds for a search warrant is related to Officer Kennedy's assertion that he smelled marijuana through closed doors, windows in a trailer park, and submit that's insufficient grounds for a search warrant. Tr. 121, l. 1-5.

This scene was a congested tightly placed trailer park, which means that no conclusion could have been reached as to where the smell of marijuana in the area emanated from or definitively that the smell emanated from appellant's residence. In Gentile, the Court referred to and required verification regarding marijuana smells. This smell factor here failed to create sufficient probable cause to issue a search warrant in the case.

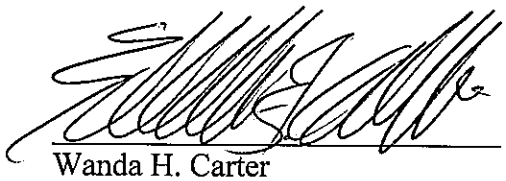
In the case at bar, a review of the state's probable cause information did not constitute circumstances when viewed under the totality of the circumstances that resulted in a substantial basis to support the issuance of the search warrant in the case. Here, there was surveillance conducted for a mere forty (40) minutes (no more than 60 minutes), and a report of foot traffic from a neighbor who admitted he didn't know if drugs were being sold at appellant's residence, and a report of a smell of marijuana within the trailer park where appellant's trailer was located, and information that drugs were allegedly sold from appellant's residence sans further corroboration, and information about a person's death from a drug overdose that occurred at

appellant's residence seven months before appellant's arrest, all of which did not rise to the level of probable cause in the case, and the motion to suppress should have been granted as a result.

The Fourth Amendment guarantees against unreasonable searches and seizures, and the South Carolina Constitution also provides a safeguard against unlawful searches and seizures under article 1§10. State v. Gentile, supra. The lower court erred in denying appellant's motion to suppress drugs seized per the search because there was no probable cause presented to support the issuance of the search warrant in the case.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that appellant's convictions and sentences be reversed and his case remanded to the lower court for a new proceeding.



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This 29th day of May, 2026.