

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 10 2014

SC Court of Appeals

Appeal from Greenwood County
Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAUNWELL J. ERVIN,

APPELLANT

APPELLATE CASE NO. 2013-001656

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

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State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976)..... 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to suppress drugs seized from appellant's apartment when the police lacked sufficient probable cause for the search warrant?

STATEMENT OF THE CASE

Appellant was convicted of possession of marijuana with intent to distribute, the same within proximity of a school, and possession of a controlled substance after a jury trial held before the Honorable Frank R. Addy, Jr., on July 23 – 24, 2013, in Greenwood County. Respective sentences were ten (10) years, five (5) years consecutive, and time served. Lauren Taylor, Esquire, was trial counsel. Aaron Taylor, Esquire, and David Stumbo, Esquire, prosecuted the case.

This appeal follows.

ARGUMENT

The trial court erred in refusing to suppress drugs seized from appellant's apartment because the police lacked sufficient probable cause for the search warrant.

Lieutenant Reeder with the Greenwood County Sheriff's office testified at the suppression hearing that he was the commander over the narcotics unit where he supervised combined members of the Sheriff's Office and the City Police Department. (Tr. p. 15, line 13 – p. 16, line 14).¹ Based on his narcotics investigations and interviews and things, he received a lot of information from people about appellant distributing drugs in Greenwood County. He said they got more information about appellant because the word on the street was that he was dealing more than anybody else in quantity and volume. This information came from repeated sources. (Tr. p. 16, line 20 – p. 18, line 12). He knew appellant had prior convictions in federal court for drug-related offenses. (Tr. p. 19, line 9 – p. 20, line 4). He learned from Sergio Quarles that Quarles and two other men had broken into appellant's apartment in reference to stealing narcotics. Two agents went with Quarles to see where he had stashed the drugs. (Tr. p. 20, line 21 – p. 23, line 3). Quarles also told him that he had purchased marijuana from appellant in the past. (Tr. p. 24, lines 2 – 6).²

Lieutenant Reeder said he did surveillance of appellant's apartment. On one occasion, he saw appellant drive a Dodge pickup truck. And on one occasion, he saw appellant's cousin, Brent Ervin, who reportedly lived with appellant, driving a Nissan Altima. (Tr. p. 26, lines 2 – 11; tr. p. 27, lines 2 – 7).

¹ All transcript page numbers are from the suppression hearing held on January 31, 2013.

² Quarles denied everything Reeder said about him. He denied even knowing appellant. (Tr. p. 75, line 8 – p. 77, line 25).

On cross-examination, Lieutenant Reeder said he received numerous anonymous tips about appellant selling drugs. (Tr. p. 51, lines 20 – 24). Upon questioning by the court, Reeder said he did not rely on the anonymous tips when he wrote the affidavit for the search warrant. (Tr. p. 53, lines 1 – 8).

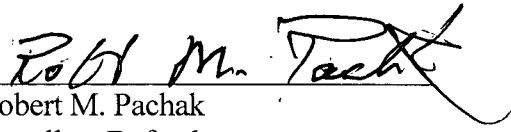
As can be seen from Lieutenant Reeder's testimony, the only thing he has to support probable cause for a search warrant is the hearsay testimony of Sergio Quarles, which Quarles denied under oath and the surveillance of seeing appellant and his cousin each driving their car on one occasion – whatever that means.

Anonymous tips have to be corroborated by independent police work that exhibit a sufficient indicia of reliability. Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412 (1990). When police do rely on hearsay, the person they rely on has to be credible. State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976). The search warrant in this case was not supported by probable cause. State v. Dunbar, 361 S.C. 240, 603 S.E.2d 615 (2004).

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of March, 2014.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Maunwell J. Ervin states:

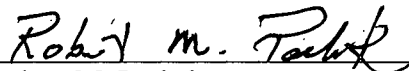
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Frank R. Addy, which was held on July 24, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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, he asks the Court to relieve him as counsel for Maunwell J. Ervin.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of March, 2014.

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APPELLATE CASE NO: 2013-001656

**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(s);
- (2) Entire Suppression Hearing Transcript (January 31, 2013)
- (3) Entire Trial Transcript (July 23 – 24, 2013)

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

March 10, 2014

Robert M. Pachak

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

March 10, 2014

Robert M. Pachak

Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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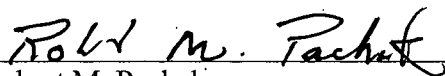
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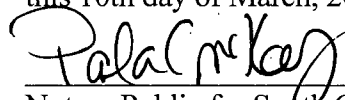
CERTIFICATE OF SERVICE

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 Maunwell J. Ervin, #356337 at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 10th day of March, 2014.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of March, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.