

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Horry County
Edward B. Cottingham, Circuit Court Judge

MAY 08 2014

SC Court of Appeals

Opinion No. 5224 (S.C. Ct. App. filed April 23, 2014)

THE STATE,

RESPONDENT,

V.

ALEX ROBINSON,

APPELLANT.

APPELLATE CASE NO. 2011-203769

PETITION FOR REHEARING

Appellant Alex Robinson is in agreement on the whole with this Court's Opinion issued on April 23, 2004 which reversed Appellant's conviction where the search warrant was invalid because the affidavit supporting it gave the issuing judge no information as to the confidential informant's reliability.

Because Appellant, however, anticipates that the State will likely file a timely Petition for Rehearing and subsequently seek review from the South Carolina Supreme Court, Appellant seeks to preserve for review this Court's additional holding that suppression was not required based on the false statements contained in the affidavit supporting the search warrant. Therefore, Appellant files this Petition for Rehearing

pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court:

This Court agreed that Sergeant Donald's statements in the affidavit supporting the search warrant that the informant purchased cocaine from the occupants of the house and that informant has been able to make purchases of drugs from this residence were false and held that the trial court's finding that the affidavit contained no false statement was "clearly erroneous."

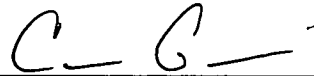
This Court, however, found that Sergeant Donald's false statements in the affidavit did not require suppression because probable cause still existed. Appellant disagrees with this analysis and asserts that when these false statements are set aside, there is no remaining content in the warrant affidavit to support a finding of probable cause. The entirety of the probable cause section of the affidavit is false and there is no residual sufficient content to support a finding of probable cause. See State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000); State v. Missouri, 337 S.C. 548, 524 S.E.2d 394 (1999).

Therefore, the search warrant is invalid both because the affidavit supporting it consists entirely of false statements and because the affidavit gave the issuing judge no information as to the confidential informant's reliability and both of these reasons warrant suppression of the evidence seized pursuant to the search warrant.

CONCLUSION

For the reasons set forth herein, Appellant Alex Robinson respectfully requests that only the portion of the Opinion of the Court of Appeals holding that the false statements in the search warrant affidavit did not also warrant suppression be modified to reflect that such false statements in the affidavit did warrant suppression. Appellant requests that the remaining portions of the Opinion be upheld.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

This 8th day of May, 2014.

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CERTIFICATE OF SERVICE

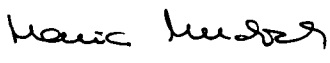
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Alex Robinson, #348613, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 8th day of May, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 8th day
of May, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.