STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Horry County
The Edward B. Cottingham, Circuit Court Judge

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

THE STATE,

PETITIONER,

V.

ALEX ROBINSON,

RESPONDENT.

APPELLATE CASE NO. 2014-001545

RETURN TO PETITION FOR WRIT OF CERTIORARI

CARMEN V. GANJEHSANI
Appellate Defender

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

ATTORNEY FOR RESPONDENT

INDEX

COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

The Court of Appeals correctly held that (1) the Trial Court erred in ruling that there were no false statements in the affidavit supporting the search warrant; (2) the affidavit supporting the search warrant failed to include any evidence of the confidential informant's reliability, thus rending the warrant invalid such that the evidence seized pursuant to the warrant had to be suppressed; and (3) the good faith exception to the exclusionary rule did not apply to render the evidence admissible despite the invalidity of the search warrant as the State contends.

COUNTERSTATEMENT OF THE CASE

On August 27, 2009, Respondent Alex Robinson was indicted by the Horry County Grand Jury for trafficking between one-hundred and two-hundred grams of cocaine and failing to stop for a blue light. R. 536-541.

On November 7, 2011, Robinson proceeded to trial before the Honorable Edward B. Cottingham and a jury. R. 1. Robinson was represented by John Hilliard and Julia Bass, and the State was represented by Assistant Solicitor Brad Richardson. Pre-trial, the Trial Court granted defense counsel's motion to sever the charges, and the State proceeded to trial on the trafficking cocaine charge. R. 3, l. 24 – 19, l. 21.

On November 9, 2011, the jury found Robinson guilty of trafficking between one-hundred and two-hundred grams of cocaine. R. 524, ll. 20-25. The Trial Court sentenced Robinson to twenty-five years imprisonment pursuant to S.C. CODE ANN. § 44-53-370(e)(2)(c) (2008). R. 534, l. 10 – 535, l. 8.

Robinson filed an appeal with the South Carolina Court of Appeals. Robinson argued on appeal that (1) the Trial Court erred by failing to quash the search warrant and suppress the evidence found during the execution of the warrant because the affidavit supporting the warrant was stale and contained false and unreliable information; (2) the Trial Court erred in refusing to reveal the identity of the confidential informant because it was essential to a fair determination of Robinson's case; (3) the Trial Court erred in refusing to recuse himself where its impartiality might be questioned by ruling on the validity of a search warrant he previously issued; and (4) the Trial Court erred in refusing to grant a new trial where the cumulative effect of the errors were so prejudicial they deprived Robinson of a fair trial. App. 593-620.

On April 23, 2014, the Court of Appeals reversed Robinson's conviction, holding the Trial Court erred in refusing to suppress the evidence seized pursuant to a search warrant where the affidavit supporting it gave the issuing judge no information as to the confidential informant's reliability. See Opinion No. 5224; App. 679-687. Because the Court of Appeals found that the search warrant was invalid and the evidence must be suppressed, the Court of Appeals did not reach the additional issues raised by Robinson on appeal. App. 686.

The State filed a Petition for Rehearing on May 19, 2014 which was denied by the Court of Appeals on July 18, 2014. App. 691-704. The State has now filed a Petition for Writ of Certiorari to which Robinson responds.

ARGUMENT

The Court of Appeals correctly held that (1) the Trial Court erred in ruling that there were no false statements in the affidavit supporting the search warrant; (2) the affidavit supporting the search warrant failed to include any evidence of the confidential informant's reliability, thus rending the warrant invalid such that the evidence seized pursuant to the warrant had to be suppressed; and (3) the good faith exception to the exclusionary rule did not apply to render the evidence admissible despite the invalidity of the search warrant as the State contends.

Relevant Facts of Suppression Hearing

Pre-trial, defense counsel challenged the sufficiency of the search warrant that was previously issued by the Trial Court and moved to suppress the evidence found during the execution of the search warrant on September 25, 2008. R. 11, ll. 4-11; R. 30, ll. 6-10. The probable cause section of the search warrant affidavit provided:

> *A confidential and reliable informant* working for the Horry County Police Department *purchased* a quantity of off white powder substance represented as being cocaine and field-testing positive for cocaine attributes *from the occupants of the house identified as [redacted] Stoneybrook Dr* in Conway, SC. That the informant has been able to make *recent continuous purchases of illegal drugs from this residence* leads to the affiant's belief that there is the possibility there may be more illegal drugs located at this residence.

R. 27, ll. 19-25; 545 [State's Exhibit # 1 (Search Warrant) (emphasis added)]. Defense counsel argued that, under the totality of the circumstances, the search warrant affidavit and the supplemental oral testimony failed to establish sufficient information to support the Trial Court's finding of probable cause where: (1) the affiant knew information in the affidavit was false (e.g., the confidential informant did not actually observe the alleged drug transaction); and (2) there was no evidence presented to the Trial Court to verify the reliability of the confidential informant (CI). R. 11, l. 24 – 30, l. 13; R. 47, l. 2 – 57, l. 19.

Contrary to the information contained in the search warrant affidavit, Sergeant Kent Donald of the Horry County Police Department admitted that the CI *never* purchased cocaine from the occupants of the residence at Stoneybrook Drive. R. 23, l. 22 – 39, l. 2. On August 15, 2008, Sergeant Donald and another agent met up with the CI. The CI stated that she would go meet up with the other person that was going to supply them with the cocaine and that she drove them over to the residence. The other person the CI picked up was Christopher Oliver. Oliver told the CI to drop him off away from the residence because the occupants of the house did not want any undue suspicion on their house. Oliver therefore told her to park down the road and Oliver would walk to the residence to purchase the cocaine. This first purchase occurred on August 15, 2008. R. 25, ll. 3-17.

A second purchase occurred on August 22, 2008. Sergeant Donald again met up with the CI and wired her and gave her $600 of police buy money. She went and picked up Oliver again so he could purchase the drugs. A third purchase made in the same manner occurred on September 12, 2008. R. 25, l. 18 – 26, l. 1.

The CI told Sergeant Donald that she observed Oliver enter the residence and that when he left her car, he had the marked police money that she gave him. She claimed when Oliver left the residence, he returned with cocaine. Sergeant Donald admitted that Oliver was not the CI used by him. R.26, l. 2 – 27, l. 7. Based on this information, Sergeant Donald sought a search warrant for the residence that the drugs were allegedly purchased from. R. 27, l. 8 – 29, l. 14.

On cross-examination, Sergeant Donald admitted that his CI never once walked up to the door and knocked on the door of the residence in question. The only person he had wired was the CI, not the actual person who went to the residence to allegedly purchase the

drugs. The only person who was wired during the alleged drug transactions was the CI who merely sat in her car and played music, sang, and used profanities on the audio from the wire. Therefore, the wire did not capture any information relating to the alleged drug transactions. R. 35, l. 15 – 36, l. 19.

Sergeant Donald again admitted that the wired CI just sat in the car the whole time and never once got up and went to the door of the targeted residence. Nevertheless, Sergeant Donald told Judge Cottingham, the issuing judge of the search warrant, that the CI had made continuous drug buys herself. He never once told Judge Cottingham that the CI never walked to the door of the targeted residence and did not see anything because she was just sitting in the car listening to music down the street. R. 36, l. 20 – 37, l. 22.

Sergeant Donald also conceded that, although he prepared and signed the sworn search warrant affidavit, he did *not* inform Judge Cottingham that the CI *never* entered the Stoneybrook residence, or that the CI was *not* the person who allegedly purchased the cocaine from the Stoneybrook residence. Sergeant Donald did not inform Judge Cottingham that it was actually Oliver who allegedly purchased the drugs from the targeted residence. R. 37, l. 11 – 40, l. 10.

Sergeant Donald further admitted that he failed to provide Judge Cottingham with any information establishing the reliability of CI as well as the dates for when the alleged drug transactions occurred. R. 40, ll. 11-22; R. 44, l. 24 – 45, l. 2. Sergeant Donald further noted that he *never* "patted down" Oliver—as required—for drugs prior to the alleged drug transactions. R. 45, l. 3 – 46, l. 8. Sergeant Donald only patted down the CI who was not the one who entered the targeted residence and made the alleged drug purchases. Tr. 46, ll. 1-8.

After defense counsel listed numerous cases in support of the motion to quash the search warrant and suppression of the evidence,[1] the Trial Court rejected defense counsel's argument that the State failed to prove the reliability of the CI and stated: "I'll be glad for you [defense counsel] to put your cases on the record but I'm not gonna [sic] sit here and have a review of all the cases that I've read for the last twenty-seven years." R. 47, l. 2 – 50, l. 22. The Trial Court also gave a further explanation of his ruling:

> I'm familiar generally with the cases that you [defense counsel] cited but I respectfully disagree with your position. This affidavit in my opinion then and now is complete and in accordance with the law regarding search warrants. This affiant to the best of his knowledge told the truth. Now, he [Sergeant Donald] may have told it not exactly as you would have it but he said I'm basing it on reliable information that I received that drugs have been sold from this place on several occasions.

R. 52, ll. 5-12. In response, defense counsel argued, "Your Honor, we would move on three grounds, number one, that there [was] patently on the face of this search warrant incorrect information provided to Your Honor." R. 52, ll. 21-23.

The Trial Court ruled, "Respectfully rejected. It's not patently information wrong [sic]. *I dealt with that twice now and I'm not gonna [sic] go there again.*" R. 52, l. 24 – 53, l. 1 (emphasis added). The Trial Court noted, "My concern, [defense counsel], is whether or not this affiant to the best of his knowledge was telling me the truth on that day. He says he got this from a reliable and confidential informant." R. 55, ll. 10-13.

The Trial Court ruled, "I conclude that [the search warrant affidavit] contains sufficient information for me to issue a bench warrant, I mean, a search warrant, which I did. And I respectfully deny your motion to quash the indictment [search warrant]." R. 55, ll.

[1] R. 548-583 [Court's Exhibit #1 (Case law submitted by Robinson)].

16-19. To further support his ruling, the Trial Court stated, "I think it's sufficient for me to conclude that the affidavit of this affiant was sufficient and the totality of the information provided is sufficient for the search warrant. *Now, I don't need any more on this question.*" R. 57, ll. 2-6 (emphasis added).

The cases cited in support of defense counsel's motion to suppress were later entered into evidence as Court's Exhibit #1. R. 83, l. 1 – 84, l. 17. After the close of the State's case, defense counsel noted, "I did not object to the introduction of the powder cocaine into evidence, what I intended and what I meant by that was I did not object to the chain of custody aspect of it. I preserve and reserve my previous objections." R. 359, ll. 8-12. In response, the Trial Court stated, "*No, you are protected on the record as to that issue clearly and I understood that it was subject to that objection in fairness to you.*" R. 359, ll. 20-22 (emphasis added). After the jury found Robinson guilty of trafficking cocaine, defense counsel renewed the motion to quash the search warrant and suppression of the evidence found during the execution of that search warrant. R. 531, ll. 2-8. The Trial Court denied the motion. R. 531, ll. 9-23.

Discussion

A. The affiant knew the information in the search warrant affidavit was false.

In its Petition for Writ of Certiorari, the State challenges the Court of Appeals' holding that the Trial Court clearly erred in ruling that no false statements were made by Sergeant Donald in the affidavit supporting the search warrant even though the Court of Appeals ultimately did not reverse Robinson's conviction on this basis.

In this case, it cannot be denied that Sergeant Donald included false statements in the affidavit supporting the search warrant where he avers in the affidavit that his CI made the alleged drug purchases from the targeted residence yet admitted during the suppression hearing that his CI never went to the door of the targeted residence and sat in her car and listened to music while another person, Oliver, allegedly purchased the drugs. Sergeant Donald admitted on cross-examination that, although he prepared and signed the sworn search warrant affidavit, he *never* told Judge Cottingham, the issuing judge, that the CI did *not* enter the Stoneybrook residence, or that the CI was *not* the person who allegedly purchased the cocaine from the Stoneybrook residence and that it was rather Oliver who allegedly purchased the drugs. R. 37, l. 11 – 40, l. 10. Because the affidavit represented that the CI was the actual purchaser of the drugs but did not disclose that Oliver purchased the drugs, the affidavit is false even if the State contends that Oliver was the CI's agent.

The State attempts to argue in its Petition that the affidavit "only indicated the [CI] purchased and obtained drugs from the targeted residence, which is **exactly** what actually occurred." Petition, pp. 25-26 (emphasis in original). Sergeant Donald's testimony at the suppression hearing indicated that what actually happened was a far cry from what he averred in his affidavit. The Court of Appeals correctly held that Sergeant Donald's testimony at the suppression hearing conclusively demonstrated that his statements in the affidavit were false. App. 681-682.

The Court of Appeals did not reverse Robinson's conviction on this basis, however, finding that the false statements in themselves did not require suppression of the evidence. The Court of Appeals concluded that the affidavit might have still provided probable cause for the issuance of a search warrant *if* the CI was telling the truth. The Court of Appeals

then addressed whether the affidavit contained any information about the reliability of the CI. App. 682-683.

B. The State failed to establish the reliability of the confidential informant.

The Court of Appeals did find that Sergeant Donald's failure to include in his affidavit any evidence of the CI's reliability rendered the search warrant invalid. This State's law has long been well-settled that an affidavit supporting a search warrant must contain information supporting the credibility of the CI and the basis of her knowledge.

In a case with comparable facts, State v. Philpot, 317 S.C. 458, 454 S.E.2d 905 (Ct. App. 1995) the Court of Appeals 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. The Court of Appeals agreed with the defendant's position. Id. at 460, 454 S.E.2d at 907.

The Court of Appeals 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.

In Philpot, the Court of Appeals 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, Sergeant Donald's affidavit was based solely upon information received from an undisclosed confidential informant. The affidavit contained absolutely no information about the reliability of this informant other than a bald assertion that she was reliable. R. 545. In addition, Sergeant Donald made it clear at the suppression hearing that he did not provide any additional information other than what was contained in the affidavit to Judge Cottingham before Judge Cottingham issued the search warrant. Sergeant Donald did not mention anything in his affidavit or to Judge Cottingham about any kind of prior experiences he had had with the CI to show she was reliable. R. 34, ll. 13-22; 40, ll. 11-22.

The search warrant ultimately issued stemmed from this unreliable CI. There was no substantial basis for Judge Cottingham, who served as the issuing judge and the trial judge, to have concluded that probable cause existed. Accordingly, the evidence obtained during the execution of the search warrant was correctly suppressed by the Court of Appeals and Robinson's conviction correctly reversed.

In its Petition, the State makes several references to the fact that there were controlled buys which established the CI's reliability and cites to State v. Dupree, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003) in support of its argument that Judge Cottingham had a substantial basis for concluding probable cause existed to issue the search warrant.

In Dupree, the affidavit supporting the search warranted provided: "Within the past (72) hours, a confidential and first time informant of the Richland County Sheriff's Department has purchased crack cocaine from the described location. The informant was searched before and after the purchase and was observed by narcotics agents while making the purchase entering and exiting the location." 354 S.C. at 681, 583 S.E.2d at 439-40. The magistrate issued the search warrant and during the execution of the warrant the officers found crack cocaine. Id. at 681, 583 S.E.2d at 440. Defense counsel moved the trial court to suppress the crack cocaine seized pursuant to the search warrant arguing that the warrant was not supported by probable cause and lacked any indicia of reliability as to the informant's veracity or reliability. The trial court denied the defendant's motion to suppress. Id. at 681-82, 583 S.E.2d at 440.

In affirming the trial court's denial of the motion to suppress, the Court of Appeals observed that "[a]n informant's controlled buy of drugs can constitute probable cause sufficient for a magistrate to issue a warrant." Id. at 687, 583 S.E.2d at 443. The Court of

Appeals further went on to state: "If the controlled buy was properly conducted, it alone can provide facts sufficient to establish probable cause for a search warrant." Id. at 689, 583 S.E.2d at 444. Based upon the totality of the circumstances, the Court of Appeals held the affidavit in Dupree provided the magistrate with a substantial basis for finding probable cause to search the mobile home.

The Court of Appeals found that information provided by the confidential informant was corroborated by an independent police investigation where officers had set up a controlled buy. The affidavit indicated that an officer searched the informant prior to the controlled buy. The officer observed the informant enter and exit the mobile home. The informant was searched again after the buy. These facts constituted sufficient police corroboration of the informant's information based upon the controlled buy, and the controlled buy was evidence of the credibility and trustworthiness of the informant. Id. at 690-91, 583 S.E.2d at 444-45. The Court of Appeals therefore upheld the trial court's denial of the defendant's motion to suppress the crack cocaine and reiterated that "if a controlled buy is properly conducted, the *controlled buy alone* can provide facts sufficient to establish probable cause for a search warrant." Id. at 691, 583 S.E.2d at 445 (emphasis in original).

Unlike Dupree, there were no controlled buys conducted in any of the three alleged purchases of drugs from the targeted residence establishing probable cause for the search warrant. While there was some testimony that the CI was patted down prior to Oliver's purchases of the drugs, the actual purchaser, Oliver, was not patted down or searched. R. 46, ll. 2-8. There was no indication in the affidavit that law enforcement observed the CI or even Oliver entering the targeted house or even observed the CI or Oliver leaving to go to

the targeted house. In fact, we know that Sergeant Donald never observed the CI entering the targeted house since she sat in her car down the street listening to music the whole time these alleged drug buys were occurring. From the limited information provided in this affidavit, there is no way of knowing whether the CI or even Oliver in fact obtained any drugs from Robinson or the targeted house. The CI or Oliver could have already been in possession of the drugs when the CI claimed to law enforcement she purchased drugs from the targeted residence – which of course she never actually purchased herself as Sergeant Donald stated in his affidavit. The bare bones affidavit Sergeant Donald used to seek the search warrant of the targeted residence therefore lacks any indication of the CI's reliability and did not provide Judge Cottingham with a substantial basis for issuing the search warrant.

The Court of Appeals therefore correctly held that it was necessary that Sergeant Donald demonstrate the CI's reliability to the issuing judge and that the failure of Sergeant Donald to do so rendered the search warrant invalid. The Court of Appeals properly held that the evidence should have been suppressed and thus properly reversed Robinson's conviction.

C. The good faith exception to the exclusionary rule does not apply to permit admission of the evidence despite the invalidity of the search warrant as the State contends.

In its Petition, the State contends that the Court of Appeals erred in concluding that the good faith exception to the exclusionary rule did not apply, arguing that the good faith exception was applicable under the facts and circumstances of Robinson's case because Sergeant Donald's reliance on the judicially-issued warrant was objectively reasonable and because the warrant was not so lacking in indicia of probable cause as to render official

belief in its existence entirely unreasonable. The States relies upon the case of United States v. Leon, 468 U.S. 897 (1984) in support of its argument.

In Leon, the United States Supreme Court established a good faith exception to the exclusionary rule, holding "that when an officer acting in objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope, a reviewing court should not order a suppression of the evidence based on a lack of probable cause." State v. Weston, 329 S.C. 287, 292, 494 S.E.2d 801, 803–04 (1997) (summarizing Leon). In Leon, the United State Supreme Court listed three situations in which the good faith exception cannot apply, one of which is reviewing courts will not defer to a warrant based on an affidavit "that does not provide the magistrate with a substantial basis for determining the existence of probable cause." 468 U.S. at 914–15.

In State v. Johnson, 302 S.C. 243, 248, 395 S.E.2d 167, 170 (1990), this Court ruled "Leon specifically precludes the application of the good faith exception" in a situation indistinguishable from Robinson's case. In Johnson, "the informant told South Carolina Law Enforcement agents that he had seen a large quantity of cocaine, cash and a gun in Johnson's home" "within the past seventy-two (72) hours." 302 S.C. at 245, 395 S.E.2d at 168. The affidavit supporting the search warrant, however, did not set forth any information as to the reliability of the informant, and this Court held that the affidavit by itself did not provide the magistrate with sufficient information concerning the informant's reliability upon which he could base a probable cause determination. Id. at 247-48, 395 S.E.2d at 169. This Court stated:

> Without any information concerning the reliability of the informant, the inferences from the facts which lead to the complaint will be drawn not by a neutral and detached magistrate, as the Constitution requires, but instead, by

> a police officer engaged in the often competitive enterprise of ferreting out crime, or, as in this case, by an unidentified informant.

Id. at 248, 395 S.E.2d at 169 (internal quotation marks omitted).

After concluding that the affidavit did not provide the magistrate with sufficient information to make a probable cause determination, this Court considered whether the good faith exception applied and whether "sufficient information was given to the magistrate to perform his 'neutral and detached' function rather than serve as a 'rubber stamp for the police.'" Id. at 248, 395 S.E.2d at 169-70. Quoting Leon, 468 U.S. at 915, this Supreme Court found the good faith exception inapplicable:

> [R]eviewing courts will not defer to a warrant based on an affidavit that does not provide the magistrate with a substantial basis for determining the existence of probable cause. Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.

Johnson, 302 S.C. at 248, 395 S.E.2d at 170 (internal quotation marks omitted).

As in Johnson, Sergeant Donald's affidavit gave the issuing judge no information to assess the reliability of the CI or information on which probable cause could exist. Without such information, the issuing judge was forced to guess whether the events in the affidavit actually occurred, especially where there was no indication that the CI was reliable. Under these circumstances, this Court, like the Court of Appeals, should not defer to the warrant because Sergeant Donald's affidavit did not provide the issuing judge with a substantial basis for determining the existence of probable cause. The affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. There is no good faith of Sergeant Donald where he in the one that prepared the affidavit to

obtain the search warrant and knew that there was nothing in that affidavit to indicate that the CI was reliable.

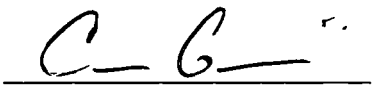
The Court of Appeals did not err in holding that the good faith exception was inapplicable to Robinson's case. Precedent from this Court makes it clear that the Court of Appeals' holding was correct and does not need to be reviewed by this Court.

CONCLUSION

The Opinion of the Court of Appeals correctly held that (1) the Trial Court erred in ruling that there were no false statements in the affidavit supporting the search warrant; (2) the affidavit supporting the search warrant failed to include any evidence of the confidential informant's reliability, thus rending the warrant invalid; and (3) the good faith exception to the exclusionary rule did not apply. Accordingly, the evidence was required to be suppressed and Respondent Alex Robinson's conviction reversed. The Opinion of the Court of Appeals is supported by well-established law and the facts present in this case. There are no special or important reasons why this Court should grant certiorari in this case, and there is no error in the Opinion for this Court to correct.

For the reasons set forth herein, Respondent Alex Robinson requests this Court to deny the State's Petition for a Writ of Certiorari.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 29th day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Horry County
The Edward B. Cottingham, Circuit Court Judge

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

THE STATE,

PETITIONER,

V.

ALEX ROBINSON,

RESPONDENT.

APPELLATE CASE NO. 2014-001545

CERTIFICATE OF SERVICE

I certify that a true copy of the return to petition for writ of certiorari in this case have been served on 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 29th day of September, 2014.

Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 29th day
of September, 2014.

Bailey Reed (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021.