

July 15, 2014

Charles J Davis #326311
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

The State v. Charles Davis
Appellate case NO. 2014-001369

South Carolina Court of Appeals
P.O. Box 11629
Columbia SC 29211

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JUL 18 2014

SC Court of Appeals

Dear Court of Appeals:

I have a couple of arguable basis that are
issues preserved for appeal. On my affidavits
is false statements, Warrant #S 2013A2110200768,
769, 770, 771, 772, statements is false. A valid
warrant is a statement that is probable cause
based on facts. ~~an~~ Affidavits it basically saying
it was a robbery and victim got shot in process of
a robbery. Victim saying something totally different
then statement on Affidavit. DA saying something totally
different then what Affidavit. DA and investigator
saying they don't believe that it was a robbery. They
don't believe I even stepped inside trailer. This
is what they told my attorney. This is what the
DA said at my guilty plea on June 9 2014. If you
get my transcript and speak with my attorney
Karen Parrott it will verify that. ~~Frank v. Delta~~
Frank v. Delaware 438 U.S. 154, 155-56 (1978) A defendant
challenging the veracity of statement contained
in a supporting affidavit is entitled to an evidentiary

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hearing to determine whether the warrant was issued in reliance on a deliberately or recklessly false Affidavit. *Id.* at 156. To gain such a hearing, a defendant must make a substantial preliminary showing that: [1] the affidavit statement was deliberately false or demonstrated reckless disregard for the truth and [2] that the challenged statement or omission was essential to the magistrate's finding of probable cause. *Id.* at 171-72.

Once a Frank hearing has been granted, if the defendant proves the allegation, the court must declare the warrant invalid and suppress evidence seized during the unlawful search, 438 U.S. 156.

On the other case, warrant #s 2013A2120200744, 745, 746, 747, arguable basis is Defective Affidavit and Defective Indictment.

First Degree Burglary: is missing an essential element of the offense and the attempt Murder Indictment was obtained under perjured.

The first degree burglary indictment reads as follows; That Charles Jeffery Davis, along with others, did in Florence County on or about April 22 2013 enter the dwelling of Christina Cooper, located at 810 West Marion Street Apartment E, Florence, SC without consent and with the intent to commit a crime therein; and said defendant entered or remained in said dwelling in the night time; and/or when effecting entry or while in the dwelling, he or another participant in the crime were armed with a deadly weapon; in violation of Section 16-11-311, S.C. Code of Law 1976 as amended.

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A valid indictment charges all essential elements of an alleged criminal offense to inform a defendant of the accusation against him and enable him to be tried accordingly. *State v. McBane*, 276 N.C. 60, 65, 170 - S.E. 2d 913, 916 (1969)

Our Supreme Court has held that the constituent elements of Burglary in the first degree are: (1) the breaking, (2) and entering (3) in the night time (4) into a dwelling house or room used as a sleeping apartment (5) which is actually occupied at the time of the offense (6) with the intent to commit a felony there in.

State v. Person, 298 N.C. 765, 768, 259, S.E. 2d 867, 868 (1979). See N.C.G.S. § 14-51 (1999). ~~The~~ The "sole distinction" between first degree burglary and second degree burglary is the essential element of actual occupancy.

State v. Jolly, 297 N.C. 121, 130, 254 S.E. 2d 1, 7 (1979). See *State v. Wilson* 289 N.C. 531, 538, 223 S.E. 2d 311, 315 (1976) (If the burglarized dwelling is occupied it is burglary in the first degree; if unoccupied, it is burglary in the second degree). Accordingly, an indictment for burglary which fails to allege that the dwelling for burglary occupied by someone during commission of the crime, alleges only burglary in the second-degree. *State v. Fleming*, 107 N.C. 905, 908, 12 S.E. 131, 132 (1890). *State v. Simons*, 65 N.C. App. 164, 166, 308 S.E. 2d 502, 503 (1983)

Burglary is defined as the breaking and entering of a dwelling... during the night time with intent to commit a felony there in, and occupancy determines whether the offense is first degree or second degree. *State v. Simons*, 65 N.C. App. 164, 166, 308 S.E. 2d 502, 503 (1983).

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Effective Affidavit

Affidavits #3 2013 MAR 20 200745, 746, 744; 7 failed

to give the magistrate no basis to make a judgment regarding probable cause when the alleged victim name is not set forth in these Affidavits.

Malley v Briggs 106 S.Ct. 1092 (1986)

Affidavit which failed to establish probable cause on ground that Act Applying for an arrest warrant is per se objectively reasonable where officer believe that fact alleged in Affidavit are true, and that he is entitled to rely on judicial officer judgement in issuing warrant; question is whether a reasonably well trained officer could have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant; If such was the case, Application for the warrant was not objectively reasonable because it created unlawful arrest.

In this case, the arrest warrant affidavit is insufficient and it fails to establish probable cause the Affidavit provided the magistrate with no information of the name of the alleged victim that these offenses was alleged committed against. The Affidavit did not provide the Magistrate with sufficient information to make a probable cause determination.
See philpot 317 S.C. at 461, 454 S.E. 2d at 907.

The good faith exception is inapplicable in case where the affidavit fails to provide the magistrate with a substantial basis for probable cause.
State v Johnson 302 S.C. at 248-49, 395 S.E. 2d at 170;
State v Westo, 329 S.C. at 293, 494 S.E. 2d at 804.
Therefore, the good faith exception may not be used to validate the warrant.

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(Defective Indictment)

Attempted Murder (Warrant # 2013A212c .00745)

Indictment was obtain under perjured.

State v. Thrift, cite as 440 S.E. 2d 341 (S.C. 1994)

The Supreme court does not ordinarily inquire into nature or sufficiency of evidence before grand jury. State v. Williams, 301 S.C. 369, 392 S.E. 2d 181 (S.C. 1980); State v. Williams, 263 S.C. 290, 210 S.E. 2d 298 (S.C. 1974) An exception to this general rule exist where, as here a defendant makes a colorable claim of prosecutorial misconduct. It is usually difficult for a defendant to make such a claim. The court of Appeal in State v. Thompson 305 S.C. 496, 409 S.E. 2d 420 (Ct. App 1991) held that speculation about potential abuse of grand jury for quash an otherwise lawful indictment. Thompson 305 S.C. at 502, 409 S.E. 2d at 424. Emphasis in the original. Fortunately give the nature of state grand jury proceeding there is a complete record available for analysis. As noted above, the court will only entertain this type of challenge to an indictment, where there is a colorable claim of prosecutorial misconduct in the grand jury proceeding.

The prosecutor sworn to the statement in the indictment that; Charles Jeffery Davis, along with others allege did in Florence county with malice afore thought attempt to murder Leslie Baptiste by shooting through the door of a bedroom occupied by Leslie Baptiste causing greater bodily injury or substantial risk of death.

The prosecutor sworn to there statement in the indictment that were false because shooting through the door of a bedroom occupied by Leslie Baptiste did not cause greater bodily injury or substantial risk of death. No one got shot or hurt in the alleged incident admission in evidence at the grand jury proceeding that the petitioner causing

Injury or risk of death might lead the grand jury to return on true bill Indictment that violated due process of the fourteenth Amendment right and prejudice the petitioner.

Ineffective Assistance of Counsel

My assistance counsel coerced me into pleading guilty. In letters (Inclose) to me she was basically telling that pleading was in my best interest. I pointed out all the lies in my case and was wanting to go to trial. My assistance counsel, solicitor, and investigator know statement on warrant is false. But she still wouldn't put up a defense. Her main focus was getting me to plea guilty. She also told me that she believe that there is plenty to offer on my behalf in mitigation, meaning she have many reason that the judge should not give me ~~25~~ 25 years but should give me a lot less. Its like she would put up a defense. I know I had a good chance to win a trial. But ~~in~~ she was practically sure I was going to lose and catch a lot of time so I felt if she feel I was going to lose why go to trial with a Attorney who convince I was going to lose. She also didn't have my whole discovery. In letter she states she forward pieces of my discovery to me as she receive it. letter is date June 30 2014. I see why she was trying to avoid going to trial she didn't ~~get~~ have all of my discovery to put up a defense for trial. which is why she was focus on getting me to plea.

We held in Brady v. United States 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970) that a plea of guilt which could not have been entered except for the defendants desire to avoid a possible death penalty and to limit the maximum penalty to life imprisonment or a ~~termed~~ term of years was not for that reason compelled within the meaning of the fifth Amendment. Jackson established no ~~new~~ test for determining

the validity of guilty pleas, the standard was and remains whether the plea represented a voluntary and intelligent choice among the alternative courses of action open to the defendant, see - Boykin v. Alabama 395 U.S. 238, 242, 89 S.Ct. 1709, 1711, 23 L.Ed. 2d 274 (1969); Machibroda v. States 368 U.S. 487, 493, 82 S.Ct. 510, 513, 7 L.Ed. 2d 473 (1962); Kercheval v. United States 274 U.S. 220, 223, 47 S.Ct. 582, 71 L.Ed. 1009 (1927). That he could not have pleaded except for the opportunity to limit the possible penalty does not ~~not~~ necessarily demonstrate that the plea of guilty was not the product of a free and rational choice, especially where the defendant was represented by competent counsel whose advice was that the plea would be to the defendant's advantage.

North Carolina v. Alford 400 U.S. 25, 91 S.Ct. 160 U.S.N.C. (1970) plea was involuntary and was motivated principally by fear of the 130 plus life my assistance of counsel was telling me.

These are my arguable basis. I pray to hear from you soon. Thank you.

Sincerely,

Charles J Davis

Charles J Davis
Defendant.

**OFFICE OF
TWELFTH CIRCUIT PUBLIC DEFENDER**

SCOTT P. FLOYD
12th CIRCUIT PUBLIC DEFENDER
MICHAEL S. BELL
CHIEF PUBLIC DEFENDER
FOR FLORENCE COUNTY
PHONE: (843) 665-3055
FAX: (843) 665-4041

CITY-COUNTY COMPLEX, ROOM 703
180 NORTH IRBY STREET, MSC-N
FLORENCE, SOUTH CAROLINA 29501



May 20, 2014

Mr. Charles Davis # 326311
Allendale Correctional Institution
P. O. Box 1151
Fairfax, South Carolina 29827

Dear Mr. Davis,

I left Mr. Jupertinger, the solicitor over your case, a message last week and asked him to please reconsider his position on your charges, specifically that he would no longer make an offer on your case. He came to see me this morning and we discussed your charges from both cases. Because of the fact that Ms. Bland is now cooperating with him, he did not believe that he would be able to make an offer besides leaving it open for the judge to sentence as he sees fit to two counts from her case and we could work on the other one. I asked him to please consider some number and since I knew from the way he was acting that he was not going to go back down to 15 years, I asked that he consider 20 years. After consulting Ms. Bland, he has now called to tell me that he will agree to 25 years negotiated, with her permission. He will drop the other case entirely for the plea on Bland's case to Attempted Murder and Burglary 1st. I know that 25 years seems like a lot but given what you are facing at trial with her having been shot four times, I have no doubt that a judge would seriously consider maxing you out on that charge which is 30 years and I do believe that consecutive time is something they would consider as well and Burglary 1st carries a minimum of 15 years. As I have stated, he would agree to this as negotiated so that the judge could not sentence you to anything more than 25 years but he also cannot go any lower than that either. Mr. Jupertinger said he is not going to do it as a recommendation so it is 25 years if you want that offer. He also warned that he is not going to take kindly to any waffling on doing the plea meaning if you say you are going to do it but then change your mind, I do believe he will push for consecutive time. I do not tell you that to pressure you but more as a warning because he has a temper and when he gets upset about a case, he pushes for harsher penalties. I know you wanted to talk with him and see about getting a lower sentence, but after working with him for 11 years now, and knowing him the way I do, he is not going to go lower than the 25 years that he has offered with the victim's consent. I really had to push for him to consider doing any offer. Please let me know as soon as possible if you will accept this offer as he is looking at your case for a June trial.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen E. Parrott". The signature is fluid and cursive, with a large, stylized initial "K" and "P".

Karen E. Parrott
Assistant Public Defender

Cc: file

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FLORENCE, SOUTH CAROLINA 29501



May 5, 2014

Charles Davis, #326311
Allendale Correctional Institute
P. O. Box 1151-
Fairfax, SC 29827

RE: State v. Charles Davis

Dear Mr. Davis,

The prosecutor's offer of a negotiated 15 years concurrent for a plea to Armed Robbery and Attempted Murder has now been withdrawn after your turning it down on April 9, 2014. The solicitor was able to get in touch with and interview Etell Bland on that Friday, April 11, 2014. He then informed me that he would not be able to make any offer on your case and that he plans to try your case in the June term. As such, you now face 10 years to 30 years (violent, no suspended sentence, no parole, most serious) on each of the two armed robbery charges, 0 to 30 years on each of the two attempted murder charges (violent, most serious, no parole, no probation, no suspended sentence), 15 to life on each of the two Burglary 1st charges (violent, most serious, no parole), and 0-5 years on each of the two possession of a weapon during a crime of violence. In sum, you face a possible sentence of life plus 130 years if convicted of all of the charges and the judge runs all the counts consecutively.

Since that appearance in court, I have talked with your mother and she seemed to suggest that you did not wish to go to trial but did want to plead guilty. If that is in fact the case, I need you to let me know as soon as possible. I do not know if I can get the solicitor to offer anything like the 15 years that was on the table for only the two counts, but I may be able to get some offer and possibly concurrent so that all the charges run together.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Karen E. Parrott".

Karen E. Parrott
Assistant Public Defender

Cc: file

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JUL 18 2014

SC Court of Appeals

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June 30, 2014

Mr. Charles Davis # 326311
Allendale Correctional Institution
P. O. Box 1151
Fairfax, South Carolina 29827

Dear Mr. Davis,

Enclosed please find a copy of the discovery received in your case. Obviously, I have not sent the cds as you would not be able to play them. As you noted in your letter, I am sure you have almost all, if not all, of the information contained in this copy as I forwarded it to you as I received I, which is why you got it piecemeal.

As an update, Gabriel Sutton aka Rumble was arrested on June 10, 2014, and remains incarcerated at the Florence County Detention Center. Should he wish to go to trial, I am sure the State would be interested in your testifying; again, as I explained to you previously, if he is convicted, it would be possible for the State to then move before the Court for your sentence to be reduced based upon your cooperation. Tyson Cooper pled and got probation because of his being the driver and not being part of the planning of this event, according to everyone's account. Brittany Griffin received a negotiated sentence of 10 years for an Accessory conviction for her having set the whole thing up. Archie Leach and Etell Bland came to every one of the pleas and I would expect they will continue to cooperate against Mr. Sutton. She has spoken at the sentencing of all three of you and from what I was told, expressed great dissatisfaction for Mr. Cooper receiving probation.

The Notice of Intent to Appeal was filed and forwarded on to Appellate Defense and they will handle it from there. Because it was a plea, they will ask for you to give your reason for wanting to appeal the matter. I will forward that letter to you once I receive it.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen E. Parrott". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Karen E. Parrott
Assistant Public Defender

Enclosures as noted

Cc: file

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June 5, 2014

Mr. Charles Davis # 326311
Allendale Correctional Institution
P. O. Box 1151
Fairfax, South Carolina 29827

Dear Mr. Davis,

I met again with Mr. Jupertinger yesterday; Tyrone Porter, the investigator on your case was also present. I discussed with both of them your denial of ever having entered the house or robbed Ms. Bland. In reviewing the pictures and discussing where the bullet fragments and holes were in relation to the back door, it might be possible that you were standing on the landing at the back entrance stairs when you fired the gun. Based upon that, I asked again for Mr. Jupertinger to consider a lesser sentence for his offer. He told me that he could not offer the negotiated 15 years but what he could do was offer a 25 year CAP to one count of Attempted Murder instead of a negotiated 25 years, and all the rest of the charges on this case as well as all of the charges on the other case would be dismissed. What that does is allows me to argue to the judge for a lesser sentence. The judge will have discretion then to sentence you to less than the 25 years but he can also sentence you to up to 30 years since it would not be negotiated sentence but an offer of a cap. When solicitors offer caps, they are basically letting the judge know that the number they offer (here 25 years) is what they believe the sentence should be but the judge after listening to Defense counsel as well as the Defendant if he/she wishes to speak, as well as any of his /her family members, may sentence differently. Victims also have a right to speak at plea hearings and I cannot stop that if Ms. Bland wishes to speak.

I do believe that there is plenty to offer on your behalf in mitigation, meaning I have many reasons that the judge should not give you 25 years but should give you a lot less. I cannot put on the record in open court the things you have done to help yourself but I will go in chambers with the solicitor and the investigator and tell the judge what those things are; I am not comfortable even putting it on the record with Ms. Bland in the room since she is still with Mr. Leach. The investigator has no problem with you getting a sentence in the 15-20 year range based upon all the help you were to him. I think given all of this, that there would be a good chance of getting into that 15-20 year sentence range if you want to plea and obviously, I would hope to get the least amount of time possible for you but it would be open to the judge to sentence you.

I do not believe that you need to take this case to trial though because the chances of you winning are not good. The reality is you would have to win all 4 counts on this case and all 4 counts on the other case to walk away and any conviction on either case will likely result in a hefty sentence. If you plead as offered to Attempted Murder, it is up to the judge to sentence you from anything from time served to up to 30 years. Let me be clear: I do not believe that you are going to get time served if you plead guilty to attempted murder but the sentencing range allows for anything from time served up to 30 years. It is still

violent, most serious, no suspended sentence, no parole, no probation and yes, you would do at least 85%, if not 100% of the sentence imposed but at least this way, I have a chance of arguing for you to get a sentence back down around what the offer was up until April which was 15 years.

If you do not wish to plead, the solicitor is looking to try the case the week of June 16.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Parrott". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Karen E. Parrott
Assistant Public Defender

Cc: file

June 15, 2014

Charles J Davis # 326311
Allendale CI
P.O. Box 1151
Fairfax, SC 29827

Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Dear Clerk:

Can you please send me a copy of everything
I have enclosed especially the letters. Enclosed
are my arguable basis that there are issues
preserved for Appeal. Thank you.

Respectfully submitted,

Charles J Davis

Charles J Davis

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