

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Ernest Kindard, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO COLLINS,

APPELLANT

APPELLATE CASE NO. 2013-002343

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. The trial judge allowed the admission of improperly obtained DNA and/or blood evidence, and erred in denying the Appellant's motions to exclude the improperly obtained DNA and/or blood evidence.

2. The trial court committed reversible error when it admitted DNA and/or blood evidence, despite conflicting testimony which demonstrated improper sample collection and a tainted crime scene, which demonstrated probable tampering or altering of the samples.

3. There Was No Probable Cause for the Arrest of the Appellant.

STATEMENT OF THE CASE

The Appellant was indicted on December 15, 2011. The Appellant was charged with Murder, Burglary in the First Degree, Kidnapping, and Possession of a Weapon during the Commission of a Violent Crime. A trial was held on October 21-24, 2013. The Defendant was found guilty of all counts (Transcript of Record, page 603). The lower court sentenced the Appellant to 33 years (Transcript of Record, page 610). Numerous pre-trial and post-trial motions were filed, almost all of which were denied, which will be discussed infra.

Testimony presented at trial indicates that on June 22, 2009, the victim, Ronald Coleman was the victim of a burglary and murder at his home located on Seabrook Road. The door of the victim's home was kicked open and the victim was hit by four bullets from a .40 caliber Smith and Wesson gun. The victim bled to death. Another victim, Enrekae Miles was kidnapped, but managed to escape unharmed.

Enrekae Miles is the cousin of the victim, Ronald Coleman. The victim's brother, Byron Coleman was killed in Atlanta on June 9, 2009. The victim and his brother are alleged to be drug dealers who were "jacking the boys in Atlanta" for their marijuana to bring it to South Carolina to sell.

EMS and law enforcement arrived at the crime scene. Ronald Coleman could not be revived. Law enforcement began their investigation and began to secure the crime scene. A sketch artist was brought in to assist Enreake Miles in composing a photograph of the perpetrators. There were no fingerprints of value found on any of the evidence collected from the area where the body was found.

Appellant asserts that his name was provided to law enforcement as a suspect by relatives and/or friends of the victim. At the time Appellant became a suspect in this present case, Appellant was incarcerated in a Florida jail for unrelated charges. Appellant further asserts that he provided DNA and/or blood sample evidence based on misstatements made by Florida law enforcement official who told never told him that he was a suspect in a murder case, never advised him of his Miranda rights, and told him the evidence would be used to exclude him from a sexual assault (See Motion hearing transcript, page 3). Appellant would never have provided the DNA and/or blood evidence if he had been advised of his right to refuse or right to counsel. Once the DNA and/or blood evidence was matched to the samples collected at the crime scene, Appellant was arrested and extradited back to South Carolina to stand trial.

After a three day trial on October 21-24, 2013, Appellant was convicted of Murder, Burglary 1st, Possession of a Weapon during the Commission of a Violent Crime, and Kidnapping. Appellant was sentenced to 33 years in prison.

This appeal followed.

ARGUMENT

- 1. The trial judge allowed the admission of improperly obtained DNA, and erred in denying the Appellant's motions to exclude the improperly obtained DNA.**

The Appellant's arrest and conviction in this case was based almost solely on DNA and/or blood evidence collected from him during his incarceration in a Florida jail. There was insufficient probable cause to either request or obtain a search warrant that would allow law enforcement to legally collect DNA from Appellant without his consent.

Once Appellant's name was given to law enforcement by friends and family of the victim as a possible suspect, he was targeted for his DNA and/or blood in an effort to link him to this crime. South Carolina law enforcement contacted Florida law enforcement to assist with obtaining Appellant's DNA and/or blood for testing. Appellant was incarcerated in Florida on an unrelated charge. Florida law enforcement misled and manipulated Appellant during a custodial interrogation without administering Miranda warnings to obtain his DNA for the specific purpose of establishing sufficient probable cause to arrest him as a suspect in this crime. This improperly obtained evidence is the only thing linking Defendant to this crime, and the only probable cause resulting in Appellant's arrest warrant. The trial judge's denial of the defendant's motion to suppress this evidence obtained through improper means constituted reversible error.

The Appellant filed a motion to exclude the DNA and/or blood evidence based on the way this evidence was improperly obtained. A hearing was held on this motion and related motions to suppress on January 25, 2012 (Motion Hearing Transcript).

- 2. The trial court committed reversible error when it admitted DNA and/or blood evidence, despite conflicting testimony which demonstrated improper sample collection and a tainted crime scene, which demonstrated probable tampering or altering of the samples.**

Appellant further moved to suppress the DNA and/or blood evidence based on the improper procedures used by South Carolina law enforcement used to collect the DNA and/ blood evidence from the tainted crime scene after numerous officers, witnesses, and ems workers walking through the area and through the crime scene, stepping in the blood and other evidence used to link Defendant to the crime.

Law enforcement spent months trying to find leads to a suspect in this case. They spoke with witnesses, most of whom where related to or well acquainted with the victim. The statements given by these witnesses were accepted as true, and there is no evidence that the witnesses were excluded as possible suspects through DNA, fingerprints or other means. There were no eye witnesses to the crime, and only the DNA linked Defendant (who resided in Florida at the time) to this crime. Despite the bloody crime scene and blood found in the vehicle suspected in the crime, there was no exclusion of other possible suspects nor was the owner (and alleged driver of this vehicle) ruled out as a suspect. There is no evidence or

testimony to place Defendant in South Carolina at the time of this crime, nor is there any evidence or testimony to determine how Defendant was able to travel back to Florida without the use of the vehicle allegedly used in the crime or any other means. Witnesses planted the seed that Defendant was a possible suspect, and law enforcement investigated the case to find evidence to support that theory. Law Enforcement did nothing to investigate the local witnesses who pointed the investigation towards Defendant.

Tire tracks, blood in the alleged vehicle used in the crime, fingerprint and DNA of witnesses were not even studied by the State. Instead, they took the witnesses at their word, despite evidence that the victim, was involved in the sell and/or consumption of illegal drugs.

3. There Was No Probable Cause for the Arrest of the Appellant.

Law enforcement did not have sufficient probable cause to obtain a search warrant to get Defendant's DNA through legal means.

A search warrant may issue only upon a finding of probable cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). The duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed. State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987). In Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332 (1983), the United States Supreme Court adopted a "totality-of-the-circumstances" test for probable cause determinations:

The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or

evidence of a crime will be found in a particular place.

In South Carolina, search warrants may be issued “only upon affidavit sworn to before the magistrate. . .establishing the grounds for the warrant.” S.C.Code Ann. § 17-13-140 (2003); see also State v. McKnight, 291 S.C.110, 352 S.E.2d 471 (1987). The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter. Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978).

The lower court judge then made the determination that the DNA was properly obtained from Defendant and was properly collected, resulting in the probable cause for the arrest and admission of the DNA during the trial. The basis for the judge’s decision on this matter is based on flawed evidence obtained from a tainted crime scene. The circumstances surrounding Mr. Collins’ providing his DNA were mischaracterized and inaccurate, leading to faulty conclusions which infected this case throughout.

There Was No Probable Cause for the Arrest of the Appellant

The Appellant was arrested after his DNA was improperly obtained during Defendant’s interview with law enforcement wherein Defendant was not advised of his rights to remain silent, not to provide his DNA and his right to counsel. Appellant’s DNA and/or blood was obtained in violation of the Fourth Amendment of the United States Constitution, S.C. Code Ann. § 17-13-140, and Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826 (1966).

Appellant consented to have his blood drawn and tested after being told by Florida law enforcement officials telling him that it would be used to exclude him from a sexual assault crime, when they were aware that South Carolina had requested and would receive this DNA and/or blood evidence to specifically link Appellant to the murder and

burglary of the victim in this case. This misleading information provided to Appellant during a custodial setting without benefit of being mirandized allowed the State to bypass meeting constitutional or statutory requirements of providing no sworn testimony, warrant, or an affidavit showing probable cause that a search of Appellant's body would produce admissible evidence.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. An order issued pursuant to § 17-13-140 that allows the government to procure evidence from a person's body constitutes a search and seizure under the Fourth Amendment. Schmerber, 384 U.S. at 767-70, 86 S.Ct. at 1834-35; State v. Register, 308 S.C. 534, 419 S.E.2d 771 (1992). The Fourth Amendment protects against intrusions into the human body for the taking of evidence absent a warrant unless there are exigent circumstances, such as the imminent destruction of evidence Schmerber, 384 U.S. at 770, 86 S.Ct. at 1835; see also State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995) (applying Schmerber analysis to search of suspect's mouth). Where blood is needed only to determine blood type to match existing evidence, a warrant must be obtained even though there has been a lawful arrest. Gantt v. State, 354 S.C. 183, 580 S.E.2d 133 (2003).

A court order issued pursuant to § 17-13-140 that allows the government to procure evidence from a person's body must comply with constitutional and statutory guidelines. Schmerber, 384 U.S. at 769-70, 86 S.Ct. at 1835; In re Snyder, 308 S.C. 192, 417 S.E.2d 572, (1992); Register, 308 S.C. at 537, 419 S.E.2d at 772. In Snyder, we stated: Section 17-13-140 covers "the issuance, execution and return of search warrants for property connected with the commission of crime. . ." Subsection (4) provides for the issuance of a search warrant for "*property* constituting evidence of crime or *tending to show that a particular person committed a criminal offense*." Under this court's construction, "property" as used in Section 17-13-140, encompasses nontestimonial identification evidence.

Section 17-13-140 has been construed to provide for the involuntary submission of nontestimonial identification evidence. Further, this Court holds that upon a sufficient showing of probable cause for the issuance of an order, a court may order that such evidence be obtained from

unarrested suspects within guidelines mandated under the statutory provisions, case law, and Constitutional laws of this State and of the United States. 308 S.C. at 195-96, 417 S.E.2d at 573-74; see also Register, 308 S.C. at 537-38, 419 S.E.2d at 773 (setting forth essentially the same considerations for a warrant or order compelling a bodily intrusion into a potential witness).

Appellant's case is similar to Snyder and Register because the Fourth Amendment protections apply even when an individual has been arrested and indicted. In Appellant's case, they apply even though he was under arrest for another crime in Florida. See Gantt, 354 S.C. at 187, 580 S.E.2d at 135 ("A lawful arrest does not in itself justify a warrantless search that requires bodily intrusion."). "Therefore, a court order allowing the State to procure evidence from an arrested and indicted suspect must meet statutory and constitutional guidelines."

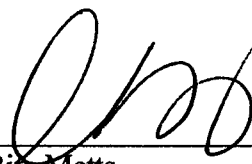
"Under both the United States and South Carolina constitutions, search warrants may not be issued except "upon probable cause, supported by Oath or affirmation." U.S. Const. amend. IV; S.C. Const. art. I, § 10. Following these constitutional requirements, § 17-13-140 requires a sworn affidavit for a search warrant to be issued. A court order issued pursuant to § 17-13-140, which stands in place of a search warrant, should only be issued upon a finding of probable cause, which is supported by oath or affirmation. Nothing in the record suggests the court order was issued upon a finding of probable cause supported by oath or affirmation. Furthermore, exigent circumstances did not exist to justify a bodily intrusion without a warrant or order issued under § 17-13-140. Compare Schmerber, 384 U.S. at 770-71, 86 S.Ct. at 1826 (exigent circumstances existed when testing for blood alcohol level, which is considered subject to imminent destruction). We conclude the trial judge erred in refusing to suppress evidence of

Appellant's blood because the order fails to comply with constitutional and statutory requirements. See State v. Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) ("Evidence seized in violation of the Fourth Amendment must be excluded from trial.")"

CONCLUSION

The Appellant has provided many grounds which warrant a reversal of the trial court's conviction. However, Appellant would ask that the Court not lose sight of the greater picture when reviewing the various areas raised in this appeal. The most important matter is that the Appellant is innocent and the State's case lacked any proof to the contrary. Absent the improperly obtained DNA and/or blood evidence, the case is purely circumstantial. The conviction must be reversed.

Respectfully submitted,



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This 6th day of February, 2015

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IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Ernest Kinard, Circuit Court Judge

THE STATE,

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APPELLATE CASE NO. 2013-002343

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of February, 2015.



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SUBSCRIBED AND SWORN TO
before me this 6th day of February, 2015.

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Amber J. Jones (L.S.)
Notary Public for South Carolina
My Commission Expires: 11/10/2018.

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