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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

THE STATE,

Respondent,

vs.

SHONDRE LAMOND WILLIAMS,

Petitioner.

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

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STATEMENT OF ISSUES ON APPEAL

I.

The circuit court did not err in refusing to suppress the search warrant for Appellant's home.

II.

The circuit court did not err in refusing to suppress the drug evidence.

STATEMENT OF THE CASE

Petitioner was indicted for trafficking more than two hundred grams of cocaine and possession with intent to distribute cocaine base (crack cocaine). Appellant's trial took place in Spartanburg County, South Carolina and occurred from February 25-27, 2013. Prior to trial, Appellant's counsel moved to suppress all evidence found pursuant to the search warrant and also moved to suppress the drug evidence alleging an incomplete chain of custody. The trial court denied both motions, and the case proceeded to the jury. The jury ultimately convicted Petitioner of trafficking two hundred grams of cocaine and the lesser included offense of possession of cocaine base (crack cocaine). Upon conviction, the trial court sentenced Petitioner to twenty-five years' imprisonment and imposed a \$50,000 fine for trafficking, and ten years' imprisonment and imposed a \$12,500 fine for the possession of cocaine base (crack cocaine) conviction.

Petitioner appealed to the Court of Appeals. Following briefing and oral argument, the Court of Appeals affirmed the convictions and sentences in an unpublished opinion on October 29, 2014. The Court of Appeals denied the petition for rehearing on December 17, 2014. Petitioner filed a petition for writ of certiorari. Respondent's return follows.

STATEMENT OF THE FACTS

On March 2, 2012, Petitioner purchased a “quarter kilo” of cocaine from an informant working with the Spartanburg County Sheriff’s Office. R. pp. 157-58. This purchase was conducted under surveillance and resulted in the issuance of a search warrant for the Appellant’s home and the subsequent seizure of 249.71 grams of cocaine and 4.91 grams of crack cocaine from Appellant. R. p. 172, pp. 174-75, p. 198.

The operation was a reverse buy coordinated under supervision and surveillance by the Spartanburg County Police Department. R. pp. 12-14. On March 1, 2012, Spartanburg County Sheriff Investigator Travis McJunkin assisted the Greenville County Sheriff’s Department in executing a search warrant on Shondrell Williams’ Greenville County residence¹ and found narcotics. R. p. 12; p. 153. Consequently, Shondrell Williams (Informant) agreed to cooperate with law enforcement and arranged a cocaine sale with Petitioner. R. p. 12; p. 153. Informant was a known drug supplier and sold drugs to Petitioner on several prior occasions. R. pp. 154-55.

On March 2, 2012, the Spartanburg County Sheriff’s Office supplied Informant with a predetermined amount of cocaine, fixed recording devices on Informant’s person, and conducted surveillance on the entire operation. R. pp. 12-13. After receiving cocaine from law enforcement, Informant went to Appellant’s home in Spartanburg County and exchanged the cocaine for \$4,000 with Appellant.² R. pp. 157-160. After selling Petitioner cocaine, Informant met with Spartanburg County Sheriff’s Office Investigator William Tillinghast and turned over the \$4,000. R. p. 13. Subsequently, a search warrant was obtained for Appellant’s home. R. pp. 29-31. During this search, law

¹ Shondrell Williams, a witness at trial, is not the same person as Shondre Williams, the Petitioner.

² Petitioner actually purchased \$9,000 worth of cocaine from Informant, and Petitioner agreed to pay the remaining \$5,000 at a later date.

enforcement recovered not only the 249.71 grams of cocaine Informant had sold Appellant, but also an additional 4.91 grams of crack cocaine. R. pp. 13-14, p. 198.

On the day of this operation, March 2, 2012, the Spartanburg County Sheriff's Office developed a coordinated plan to facilitate this reverse buy operation. R. pp. 142-43. This plan was communicated throughout the day amongst the various officers involved so that the proper preparations were coordinated and put in place. Id. Upon Informant agreeing to sell Petitioner cocaine, Spartanburg County Investigator Matt Hutchins retrieved cocaine from the Spartanburg County Sheriff's Office's evidence room. R. p. 25. The cocaine was ultimately provided to Informant who sold it to Appellant. R. pp. 155-58. However, upon retrieving the cocaine, Investigator Hutchins then returned to the Sheriff's Office to complete the search warrant for Appellant's home should the transaction occur. R. p. 25. Throughout that day, Investigator McJunkin kept Investigator Hutchins apprised of the events transpiring during the operation so Investigator Hutchins could accurately prepare the search warrant. R. pp. 17, 26.

Spartanburg County Investigator William Tillinghast, who followed Informant to and from the cocaine sale at Appellant's house, recovered the money Petitioner paid Informant for cocaine. R. pp. 19-20. Upon receiving this money, Investigator Tillinghast called Investigator Hutchins to inform him that Informant left the sale and that Petitioner purchased cocaine from Informant in exchange for money. R. pp. 20, p. 26. After speaking with Investigator Tillinghast, Investigator Hutchins completed the search warrant affidavit and presented it to a magistrate to obtain a search warrant. R. pp. 26-27. Investigator Hutchins was not present on the scene for this operation; however, Investigator Hutchins confirmed that everything he placed in the search warrant affidavit

had in fact happened before taking the search warrant to the magistrate and swearing the search warrant affidavit. R. pp. 26-27, pp. 32-36. This was accomplished by various personal contact and telephone calls with Investigator McJunkin throughout the day on March 2, 2012, and at least one phone call with Investigator Tillinghast. R. p. 17, p. 20, p. 34.

Ultimately, a Spartanburg County magistrate signed the search warrant and the Appellant's house was searched. R. p. 30. During this search, Petitioner directed Investigator McJunkin to the cocaine Petitioner just purchased from Informant, and this cocaine was recovered from a hiding place near a water heater in Appellant's garage.³ R. p. 149. Spartanburg County Investigator Dan Swad ultimately recovered this cocaine and sealed it in a tamper-resistant BEST evidence bag. R. p. 172. In addition to the cocaine, Investigator Swad also located crack cocaine on top of the cabinets in Appellant's kitchen. R. p. 174. Investigator Swad placed the crack cocaine in the same tamper-resistant BEST evidence bag along with the cocaine. R. pp. 174-75. Investigator Swad did not alter or tamper with either substance at any time. R. p. 172, p. 174. Further, upon law enforcement completing the search at Appellant's house, Investigator Swad immediately took the evidence to the evidence room at the Spartanburg County Sheriff's Office and placed it in the evidence locker. R. p. 175, p. 179. This occurred on March 2, 2012. R. p. 175, p. 179, p. 182).⁴ In addition to the cocaine and the crack cocaine located in Appellant's house, law enforcement recovered a set of digital scales, \$12,500 in U.S. Currency, and a money counter. R. pp. 175-77.

³ At first, Petitioner was not truthful regarding the location of the cocaine; however, Petitioner ultimately acquiesced and led the investigators to the cocaine. R. pp. 148-49.

⁴ However, it appears that Investigator Swad incorrectly dated one evidence form indicating this occurred on March 3, 2012, when in fact it occurred on March 2, 2012. This was a simple scrivener's error. R. p. 181.

On that same date, March 2, 2012, Spartanburg County Sheriff's Office Evidence Custodian Anita Mullinax retrieved the evidence for this case, including the BEST bag containing the cocaine and crack cocaine recovered from the Appellant's house, and entered the evidence into the evidence computer log, and put it in the secure drug room at the Sheriff's Office. R. pp. 182-84. When Mullinax received this evidence, it had not been opened or tampered with in any way. R. p. 183. In addition, Mullinax testified she did not alter or tamper the evidence in any way. Id.

Ultimately, Ashley Harris, a chemical analyst for the Spartanburg County Sheriff, retrieved the evidence recovered from Appellant's house from the drug room at the Sheriff's Office and performed a chemical analysis on it. R. p. 189, pp. 191-92, p. 195. However, initially upon retrieving this evidence and prior to performing the chemical analysis, Mr. Harris checked to make sure the BEST evidence bag containing these drugs was not tampered with. R. pp. 193-94. Satisfied the evidence was not altered or tampered with in any way, Mr. Harris ultimately performed a series of chemical analyses. R. p. 194. Both items testing positive for cocaine, one being crack cocaine and the other being cocaine. R. p. 195. After the positive analysis, the cocaine weighed out to be 249.71 grams, and the crack cocaine, after air drying, weighed out to be 4.91 grams. R. p. 198. These items were not altered or tampered with in any way. R. pp. 193-94, pp. 198-99.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

“In criminal cases, an appellate court reviews errors of law only and is bound by factual findings of the trial court unless clearly erroneous.” State v. Covert, 368 S.C. 188, 193, 628 S.E.2d 482, 485 (Ct. App. 2006) *aff'd as modified*, 382 S.C. 205, 675 S.E.2d 740 (2009)(citing State v. Wilson, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001)).

“A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant.” State v. Adams, 354 S.C. 361, 377, 580 S.E.2d 785, 793 (Ct.App.2003).

ARGUMENT

I. The circuit court did not err in refusing to suppress the search warrant of Appellant's home.

In South Carolina, a search warrant “shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant.” S.C. Code Ann. § 17-13-140. However, South Carolina law clearly allows a search warrant affidavit to be based on hearsay and recognizes that an affiant may attest to information supplied by fellow officers. State v. Dunbar, 354 S.C. 479, 488, 581 S.E.2d 840, 845 (Ct. App. 2003) *vacated in part*, 356 S.C. 138, 587 S.E.2d 691 (2003); State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976) (recognizing the validity of an affiant attesting to information supplied him by a fellow officer).

In the instant case, Spartanburg County Investigator Matt Hutchins testified that he had personal knowledge of everything contained in the search warrant affidavit as

Investigator Hutchins confirmed everything with his fellow officers who were on the scene observing each aspect of this operation. Investigator Hutchins specifically testified as follows:

Q: Okay. And you prepared the affidavit in the affiant section of that⁵?

A: I did.

Q: On the tape that the informant has played previously in court you hear Investigator Tillinghast tell you we got the money. What does that mean to you of what did that mean to you at that time?

A: Basically, that the informant had went to the address, had sold the target a quantity of cocaine and had received payment for the cocaine.

Q: And so when you received that phone call, what did you do?

A: I then typed the -- or finished typing the affidavit adding that part to the affidavit and then went before a magistrate to get it signed.

Q: So you did have part of the affidavit already typed out.

A: I was in the process of typing while it was going on, yes, sir.

Q: And everything that's in the affidavit, you did confirm that it occurred as it was in the affidavit before you submitted it?

A: Yes. Investigator McJunkin was the case agent, and had confirmed through him that that was the facts. And then when Investigator Tillinghast had told me that he had the money, then confirmed that. And the search warrant was signed.

Q: So you didn't sign the search warrant until after you heard -- you got the phone call from Tillinghast.

⁵ Referring to the disputed search warrant. R. p. 25.

A: That's correct.

R. pp. 25-27. Investigator Hutchins also testified that he spoke with the case agent, Investigator McJunkin, throughout the day to obtain information for this affidavit. Specifically, he testified as follows:

Q: Okay. And the C.I. and the C.I.'s vehicle again were searched and no illegal contraband was located, checking, and they goes on from there to unrelated facts, but who -- who conveyed to you that the surveillance continued to be maintained on the residence until after the transaction and the C.I.'s vehicle had been searched again? Who informed you of that?

A: I believe it was Investigator McJunkin.

Q: And how did he inform you of that?

A: I know I had talked back and forth with him also in reference to the search warrant, because he was actually standing by for me to let him know it had been signed. So I believe that's who I would have got those facts from.

R. p. 28. Investigator Hutchins further testified as follows:

Q: You say you were talking to Tillinghast or McJunkin by phone?

A: At which time? I actually --

Q: To get these facts. How did you get these facts?

A: I had spoke with both of them. I had spoke with McJunkin and I had spoke with Tillinghast....

Q: Okay. And these phone records would show that you were communicating these facts right here contemporaneous with their occurrence or at least some point before the warrant --

A: Was signed at some point, yes....

R. pp. 34-35. Investigator Hutchins explained, “[b]efore I signed this search warrant these facts were conveyed to me that they had happened.” R. p. 36. As such, it is clear that Investigator Hutchins had personal knowledge of the facts set forth in the affidavit.

Investigator McJunkin testified, “I had several contacts with Investigator Hutchins throughout the day.” R. p. 15. Investigator McJunkin further indicated he relayed a significant amount of information to Investigator Hutchins: “[t]he information that we had placed recorded phone calls to Shondre Williams in reference to the purchase or the sale of an amount of cocaine, would have given him a description of the premises to be searched, the facts of the case as I knew them at that time.” R. p. 17. Spartanburg County Investigator William Tillinghast also testified he spoke with Investigator Hutchins to supply information for the search warrant. Specifically, Investigator Tillinghast testified he told Investigator Hutchins “that our informant had left the location and that the cocaine has been given to Shondre in exchange for the U.S. Currency.” R. p. 20.

Further, Investigator Hutchins testified he did not complete the search warrant affidavit that he was working on throughout the day **until** after he spoke with Investigator Tillinghast to confirm the drug sale and the recovery of the money. R. p. 26, p. 29. Investigator Hutchins testified as follows:

Q: Okay. What portion of the affidavit was prepared in advance?

A: Well, I --

Q: Any of the facts?

A: While I was sitting there or when I'd started preparing it the part on the prior involvement in reference to the recorded phone calls showed the desire to purchase a

quantity of cocaine. All of that along with the criminal history at the end would've been already typed up.

Q: Okay. So you're saying that this is on a computer and you can just insert the portion that happened when the C.I. got back to Tillinghast.

A: That's correct.

R. p. 29. Investigator Hutchins testified that he completed the search warrant affidavit by inserting the information provided by Investigator Tillinghast. Investigator Hutchins then printed a hard copy of the search warrant and affidavit, drove to the magistrate, and swore the affidavit on the personal knowledge he received from his fellow officers. The magistrate then signed the warrant. R. p. 30.

Accordingly, the testimony clearly demonstrates the search warrant affidavit sworn to the magistrate by Investigator Hutchins was based on the information Investigator Hutchins received and obtained from Investigator McJunkin and Investigator Tillinghast. The information contained in this affidavit was accurate and was based specifically on the personal knowledge of the Spartanburg County Sheriff's narcotics team acquired during the course of this coordinated operation. R. p. 14.

Further, Appellant's assertion that the only conclusion to be drawn from the facts of this case is that Investigator Hutchins had already completed the affidavit in its entirety before speaking with Investigator Tillinghast is completely without merit. Put simply, there is no evidentiary support whatsoever for this assertion and the testimony in this matter directly contradicts this assertion.

In addition, any discrepancy between the time appearing on the undercover video camera and the time put down by the magistrate leads only to the logical conclusion that

these two clocks were not synchronized. Not surprisingly, Investigator Hutchins confirmed that there was no synchronization between the clocks answering the following:

Q: And did you synchronize your watches with video cameras before this -- this investigation took place?

A: I did not. I had no part of anything to do with the video in this.

R. p. 33. Moreover, Investigator Hutchins also testified as to the inaccuracy of the clocks on undercover surveillance video cameras, explaining the following:

Typically, there are a lot of times, though the batteries will go dead and the clocks will reset. So they may or may not be accurate.... The timestamps on them are preset. You hook it up to a computer, and then you punch in what time it was. So, you look at your watch and I look at mine. They may be minutes off what you set the time as, would be different from mine.

R. p. 33. As such, Appellant's contention that Investigator Hutchins did not confirm the facts set forth in the affidavit prior to swearing them to the magistrate is clearly rejected by Investigator Hutchins' testimony and the testimony of other law enforcement officers.

In the words of Investigator Hutchins: "[b]efore I signed this search warrant these facts were conveyed to me that they had happened.... The facts that are in here would have been conveyed to me that they had happened." R. p. 36. This is uncontroverted direct evidence that Investigator Hutchins had personal knowledge of the facts set forth in the search warrant affidavit, and clearly satisfies the personal knowledge requirements of South Carolina search warrant jurisprudence. See S.C. Code Ann. § 17-13-140; State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976). Accordingly, the trial judge correctly denied Appellant's motion to suppress. Therefore, this Court should deny the petition for writ of certiorari on this issue.

II. The circuit court did not err in refusing to suppress the drug evidence in this matter as the State clearly established a full and complete chain of custody.

“Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete.” State v. Hatcher, 392 S.C. 86, 92, 708 S.E.2d 750, 753 (2011) (quoting State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001)). In applying this rule courts have “found evidence inadmissible only where there is a missing link in the chain of possession *because the identity of those who handled the [substance] was not established at least as far as practicable.*” Id. (emphasis in original). In the instant case, there is no missing link in the chain of custody because the identity of each individual handling the evidence was established.

The first link in the chain, Spartanburg County Investigator Dan Swad, testified he collected the drug evidence at the scene. R. p. 172, pp. 174-75. Specifically, Investigator Swad recovered the cocaine from the water heater in Appellant’s garage and placed this evidence into a BEST evidence bag.⁶ R. p. 172. In addition, Investigator Swad also located crack cocaine on top of the cabinets in Appellant’s kitchen. R. p. 174. Investigator Swad recovered the crack cocaine and placed it in the same tamper-resistant BEST evidence bag along with the cocaine. R. pp. 174-75. Investigator Swad did not alter or tamper with either substance at any time. R. p. 172, p. 174. After completing the search at Appellant’s house, Investigator Swad left Appellant’s residence and immediately took all the evidence to the evidence room at the Spartanburg County

⁶ This occurred after the Petitioner directed law enforcement to this evidence. R. p. 149.

Sheriff's Office and placed it in the evidence locker. R. p. 175, p. 179. All of these actions occurred on March 2, 2012. R. p. 175, p. 179, p. 182.⁷

On that same date, March 2, 2012, the second link in the chain of custody, Spartanburg County Sheriff's Office Evidence Custodian Anita Mullinax, retrieved the evidence, including the BEST bag containing the cocaine and crack cocaine, from the evidence locker where Investigator Swad put it, entered the evidence into the evidence computer log, and placed the evidence in the secure drug room of the Sheriff's Office. R. pp. 182-84. Mullinax testified that the evidence had not been tampered with when she received it. In addition, Mullinax testified she did not alter or tamper with this evidence in any way. Id.

The final link in the chain of custody, Spartanburg County Sheriff's Office's chemical analyst, Ashley Harris, testified he retrieved the evidence recovered from the Appellant's house from the drug room at the Sheriff's Office and performed a chemical analysis on it. R. p. 189, pp. 191-92, p. 195. Harris testified he inspected the evidence upon retrieving it. R. pp. 193-94. Mr. Harris testified he specifically checked to make sure the BEST evidence bag containing these drugs was not been tampered with. R. pp. 193-94. Satisfied this evidence was not altered or tampered with in any way, Harris performed chemical analyses on the evidence. R. p. 194. Both items tested positive for cocaine, one being crack cocaine and the other being cocaine. R. p. 195. The cocaine weighed 249.71 grams and the crack cocaine, after air drying, weighed 4.91 grams. R. p. 198. Further, Harris testified his inspection upon retrieval of this evidence revealed these items were not altered or tampered with in any way. R. pp. 193-94, pp. 198-99. As such,

⁷ However, it appears that Investigator Swad incorrectly dated one evidence form indicating this occurred on March 3, 2012, when in fact it occurred on March 2, 2012. This was a simple scrivener's error. R. p. 181.

the identity of each person who handled this drug evidence was established at trial. Accordingly, the trial court correctly denied Appellant's motion to suppress based on a chain of custody argument.

Furthermore, Appellant's argument that the scrivener's error on one evidence form is determinative in this matter is without merit. In South Carolina, the "[p]roof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete." State v. Hatcher, 392 S.C. 86, 92, 708 S.E.2d 750, 753 (2011). In this matter, a complete chain of custody was presented. Investigator Swad testified he recovered the drugs from Appellant's house and immediately took the drugs to the evidence locker at the Spartanburg County Sheriff's Office. R. p. 175, p. 179. That same day, March 2, 2012, Evidence Custodian Mullinax recovered the drugs, processed them into the lab and placed them in the secure drug room.⁸ R. pp. 182-84. And, the chemical analyst in this matter, Ashley Harris, testified he retrieved the drugs from this drug room to perform his testing. R. p. 189, pp. 191-92. In the face of Investigator Swad's direct testimony that he immediately took the drugs from the Appellant's house to the evidence locker, and Evidence Custodian Mullinax's direct testimony that this evidence was recovered on March 2, 2013, Investigator Swad's scrivener's error on one evidence form is inconsequential and certainly not determinative in this matter. Rather, the State's presentation of a full and complete chain of custody in this matter, with each link in the chain testifying that the drug evidence had not been tampered with or altered in any way prior to the chemical testing on this evidence, clearly satisfies South Carolina's chain of custody requirements. See State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011).

⁸ Even assuming *arguendo* that this occurred on March 3, 2013, there is no break in the chain as Investigator Swad testified that he took the evidence immediately from the Appellant's house to the evidence locker where Ms. Mullinax retrieved it. R. p. 175, p. 179.

Accordingly, the trial court did not abuse his discretion in denying the Appellant's motion to suppress based on the chain of custody. Therefore, petition for writ of certiorari should be denied.

CONCLUSION

Based on the foregoing, the petition for writ of certiorari should be denied. Should this Court see fit to grant the petition, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

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BY: 

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ATTORNEYS FOR RESPONDENT

February 13, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

The J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

SHONDRE LAMOND WILLIAMS,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing party by mailing two (2) copies in the United States mail, postage prepaid:

Carlyle R. Cromer, Esquire
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Robert M. Dudek, Esquire
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This 13th day of February, 2015


NORMA BIGBEE
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

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February 13, 2015

S.C. Supreme Court

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: State of South Carolina v. Shondre Lamond Williams
Appellate Case No: 2013-000487

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing party today.

Sincerely,

David Spencer
Senior Assistant Attorney General

DS/nb
Enclosures

cc: Carlyle R. Cromer, Esquire (2 copies)
Robert M. Dudek, Esquire (2 copies)
Trisha Allen