

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAR - 2 2015

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. Supreme Court

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2014-002071

Ronald Boozer #342268,..... Petitioner,

vs.

State of South Carolina,Respondent.

PETITION FOR WRIT OF CERTIORARI

TOMMY A. THOMAS
P.O. Box 88
Irmo, SC 29063
(803) 732-5507
ATTORNEY FOR APPELLANT

Other Counsel of Record:

J. Rutledge Johnson, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

Irmo, South Carolina
March 2, 2015

TABLE OF CONTENTS

STATEMENT OF THE CASE.1

STATEMENT OF FACTS2

QUESTION PRESENTED 4

Did the Lower Court err in not granting Post-Conviction Relief on the bases that the plea was not freely and voluntarily entered into?

Did the Lower Court err in not granting Post-Conviction Relief on the basis that Defense Counsel failed to adequately argue the Suppression Motion?

ARGUMENT5

CONCLUSION 9

STATEMENT OF THE CASE

The Appellant is currently confined with the South Carolina Department of Corrections, pursuant to Orders of Commitment from the York County Clerk of Court. The Appellant was indicted by the March 2010 term of the Grand Jury with one Count of Attempting to Manufacture Methamphetamine (2009-GS-46-01170) and One Count of Possession of Methamphetamine (2009-GS-46-01169).

The Appellant was represented by Jonathan C. Sullivan, Esq. On August 12, 2010 the Appellant plead guilty to Attempt to Manufacture Methamphetamine 2nd Offense and Possession of Methamphetamine 2nd Offense, before The Honorable John C. Hayes, III. Appellant received a seventeen (17) year sentence for Attempt to Manufacture Methamphetamine 2nd Offense and a five (5) year sentence for Possession of Methamphetamine 2nd Offense, both sentences to run concurrent.

The Appellant filed a timely Notice of Appeal on August 19, 2010. This Appeal was withdrawn pursuant to Rule 260C on November 14, 2010.

The Appellant filed an Application for Post-Conviction Relief on April 19, 2011. A Return was made by the Respondent on September 14, 2011 and an Evidentiary Hearing was convened on October 8, 2012 at the Moss Justice Center, in York, South Carolina. At the hearing, the Appellant testified on his own behalf. Jonathan Sullivan, Esq. and the Appellant's Mother, Barbara Boozer, also testified. The Court had before it a copy of the records of York County Clerk of Court, records from the South Carolina Department of Corrections and the guilty plea transcript.

This matter was heard by The Honorable Edgar W. Dickson, presiding Judge of the Sixteenth Judicial Circuit. An Order of Dismissal was signed on April 18, 2013. A timely notice

of Motion and Motion to Alter and Amend the Judgment was filed by the Appellant and an Amended Order was signed on August 28, 2014.

STATEMENT OF THE FACTS

Initially, the York County Sheriff's Department was contacted by the Appellant's parent's, Larry and Barbara Boozer. They were concerned that they had seen a suspicious vehicle parked in the Appellant's Driveway. The Appellant was living on a section of their property. Deputies came out to the house and spoke with Mr. and Mrs. Boozer at which time the deputies noticed a form of smoke coming from a two or three gallon bucket located behind the house (App. p. 119, lines 1-25 – p. 132). The Deputies looked inside the bucket and noticed items which they determined to be suspicious. They believed at that point that there were items that are used in the making of Methamphetamine (App. p. 159, lines 1-25) and the Deputies contacted York County Drug Enforcement Unit. York County Drug Enforcement Unit officers went inside the house and did what they called a "protective search". They were concerned that there was potential for fire or explosion from the production of Methamphetamine (App. p. 166, lines 10-13) . At that point a search warrant was executed and various items that were found in the house were deemed to be used in the production of Methamphetamine (App. p. 174, lines 15-24).

The Defense was a three prong strategy being that the items that were seized pursuant to the search warrant were common items not necessarily used solely for the production of Methamphetamine. That there was reasonable doubt since the Appellant was not in the house when the evidence was taken into custody and to attack the search warrant for illegal search and seizure and that there was no reason for a "protective search" (App. p. 289, lines 11-16).

There were two plea offers made in this case. The first one was a range from seven (7) to (10) years consecutive to a Probation Revocation. There was eight (8) years exposure on the Revocation. Counsel testified that there was a potential range from fifteen (15) to eighteen (18) years on this plea offer. The second offer was that the Solicitor agreed to dismiss four of the charges related to what was found in the house and that the Applicant would plea straight up to the Manufacturing and Possession charges, consecutive to what he received on the Probation Revocation. (App. p. 241, lines 8-24) After the trial started, the Court was notified that the Appellant had decided to accept a plea.

The Appellant was warned that he was pleading to violent offenses and that as a violent offender he was warned that in the future he could be subject to being incarcerated for life without parole. (App. p. 264, lines 1-25 – p. 265) At no time was he warned that he would not be eligible for parole on this sentence.

The South Carolina Department of Corrections originally listed the Appellant as eligible for parole, pursuant to the 2010 Omnibus Crime Bill. An Order was issued by Judge Hayes regarding the Appellant's parole eligibility, clearing up any confusion and Ordering that the Appellant was not eligible for parole.

QUESTIONS PRESENTED

- 1. Did the Lower Court err in not granting Post-Conviction Relief on the bases that the plea was not freely and voluntarily entered into?**
- 2. Did the Lower Court err in not granting Post-Conviction Relief on the basis that Defense Counsel failed to adequately argue the Suppression Motion?**

ARGUMENT #1

That the lower Court erred in not granting Post-Conviction Relief on the bases that the plea was not freely and voluntarily entered into.

Appellant testified that it was his decision to go to trial (App. p. 211, line 15). Appellant stated that Defense counsel had told him that there were a number of things that they could not do but it wasn't long after the trial started that he changed what he was telling them and he indicated that if he continued to go to trial, then he would end up with a thirty year sentence (App. p. 311-312). The Appellant testified that the only reason that he plead was defense counsel scared him into believing that he would get thirty (30) years and that he wished that he would have went on with his trial. He was asking for the Court to grant him Post-Conviction Relief and grant him a new trial (App. p. 312, lines 1-16).

Upon being questioned as to whether or not he fully understood what he was doing when he entered into the plea, the Appellant testified that he did not understand how a lot of things worked in the legal system and that no he did not understand what he was doing (App. p. 212, lines 13-16). Appellant further testified that he did not enter into the plea freely or voluntarily. On cross-examination, the Appellant stated that he did not know what he was doing when he entered into this plea and that he wished that he would have gone further with his trial. (App. p. 320, lines 7-17)

ARGUMENT #2

That the Lower Court erred in not granting Post-Conviction Relief on the basis that Defense Counsel failed to adequately argue Suppression Motion?

There were a number of items seized at the Appellant's residence that were household items. The State argued that it was these items, in combination, that indicated that the Appellant was manufacturing Methamphetamine. One of the major components were the car batteries that were allegedly found at the location.

Argument was made at trial by Defense Counsel that there was lack of probable cause to support the issuance of a search warrant (App. p. 16, lines 18-19). Testimony was taken in camera of Deputy Daniel Seaford. He testified that the call came in as a trespass issue, with a vehicle in the driveway. The person who made the call wanted the vehicle removed (App. p. 19, lines 1-25). That the Deputy believed that the call came from the Appellant's parents. The Deputy stated that there was a fire in a galvanized bucket, on the ground (App. p. 21, lines 10-25). Further testimony was that there were Lithium batteries and some type of blister packs from medicine in the bucket. The Deputy testified that in a vehicle, in close proximity to the bucket, that he looked through the back windshield and saw a can of camping fuel and also a bag of ammonium nitrate. (App. p. 22, lines 22-25 – p. 22, lines 6-9) The Deputy knew from his training, that these chemicals are used in the Manufacturing of Methamphetamine (App. p. 24, lines 16-17). The Deputy also testified that he looked around and noticed a large number of car batteries and some cans of Drano. It was at this point in time that he made a phone call to the narcotic's lieutenant. In his walk around the property he noticed in excess of fifty (50) car batteries. Possibly between fifty (50) and one hundred (100) (App. p. 25, lines 2-5).

Also testifying in camera was Officer Lewis Allen Cantey. Officer Cantey testified that he worked for the Rock Hill Police Department assigned to the York County Multi-jurisdictional Unit (App. p. 40, lines 4-5). Officer Cantey testified that he observed in the bucket a partially burned blister pack that appeared to be 30 mg of pseudoephedrine tablets and some burnt

Lithium batteries. He also observed through the back glass of the automobile ammonium nitrate and Coleman camp fuel (App. p. 43, lines 9-24). Officer Cantey testified that he did not see the car batteries that were described by the previous officer (App. p. 45, lines 9-11).

Sulfuric acid is one of the components used toward the final production of Methamphetamine (App. p. 45, lines 12-22). Officer Cantey contacted Sergeant Lubben and requested a search warrant (App. p. 46, lines 1-23). The Sergeant was able to obtain a search warrant. However, prior to the issuance of a search warrant, the Officer was concerned about the safety issues of the residence. If it was left unattended, there could be a possible explosion (App. p. 47, lines 1-10). At that point he went ahead with a "protective sweep". Only after they did the protective sweep were they able to obtain a search warrant and were able to search the residence. (App. p. 49, lines 1-25). It was after the Protective sweep that he was contacted that his search warrant had been signed and was being brought to the premises. (App. p. 52, lines 14-25).

At trial Officer Daniel Seaford testified that there were car batteries and other things that he indicated are used to produce Methamphetamine (App. p. 133, lines 4-6). Officer Seaford further testified that there were around 150 car batteries (App. p. 134, line 4). Sergeant Jim Lubben testified in camera that he was the officer who obtained the search warrant.

Counsel moved to suppress evidence that had been seized from the Appellant's house located at 2100 Willow Creek Road, Rock Hill, SC, that the search warrant was not supported by probable cause (App. p. 80, lines 6-25 – p. 81, 82). Trial Counsel argued that the items outside of the house are normal household items that are legal to possess and there is nothing inherently illegal on the face looking at these items. The Court denied the Motion to Suppress finding

sufficient probable cause for the issuance by the Magistrate of this particular warrant (App. p. 85-86).

Appellant testified at Post-Conviction Relief that there were no car batteries at his residence. (App. p. 309, lines 16-17)

The Appellant's Mother, Mrs. Barbara Boozer testified at the Post-Conviction Relief hearing. She stated that she was initially listed as a State's witness and that she had provided information to counsel that she felt might have assisted him in her son's defense. (App. p. 323, lines 18-20). She testified that there were no batteries located on the premises. There were only two AA batteries in the bucket in which the police had been talking about. (App. p. 324, Line 1-3). She also testified that there was a neighbor who was also available as a witness to testify that there were no batteries. (App. p. 324, lines 4-7). Mrs. Boozer also testified that she was at the scene while the police were conducting their search. She stated that she saw a tall dark haired guy toss something white in the back seat of a vehicle parked at the scene. This was not the Appellant and the item that was tossed into the car turned out to be a coffee filter with Methamphetamine residue. Mrs. Boozer stated that she had provided this information to counsel and she was told by trial counsel that he did not want to hear that information. (App. p. 325, lines 14-15) On cross examination she stated that she saw a Police Officer throw the coffee filter into the back of the car. (App. p. 327, lines 2-8)

The issue of the presence of the car batteries is substantial. Without the batteries containing sulfuric acid, the household goods could not be associated with the manufacturing of Methamphetamine. The lack of the batteries supports the argument that there was no probable cause for the search warrant or the protective sweep. The Lithium batteries, on their own, are not supportive of Methamphetamine production.

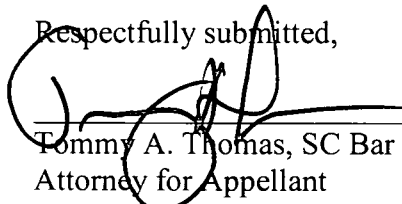
Defense counsel failed to adequately address or argue the issue of the car batteries. Without the essential ingredient of sulfuric acid, the individual household items had no importance in the Manufacturing of Methamphetamine.

Defense Counsel further failed to argue or bring to the attention of the Court Mrs. Boozer's concerns regarding the possible planting of evidence in the vehicle. This information was brought to the attention of Defense counsel. This information in conjunction with the issue of the car batteries could and should have been used in Counsel's Suppression Motion.

CONCLUSION

For the reasons stated above, the Petitioner respectfully requests that this Court grant the Petition for Certiorari.

Respectfully submitted,



Tommy A. Thomas, SC Bar #: 5536
Attorney for Appellant
P.O. Box 88
Irmo, S.C. 29063
(803) 732-5507

Irmo, South Carolina
March 2, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM YORK COUNTY
Court of Common Pleas

MAR - 2 2015

Edgar W. Dickson, Circuit Court Judge

S.C. Supreme Court

Appellate Case No.: 2014-002071

Ronald Boozer #342268,..... Petitioner,

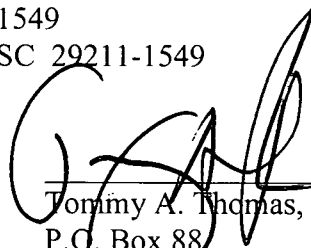
vs.

State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I, Tommy A. Thomas, Attorney for the Applicant, hereby certify that I hand delivered, a copy of the Appendix and the Petition for Writ of Certiorari to:

Office of the Attorney General
Atten: J. Rutledge Johnson, Esq.
P.O. Box 11549
Columbia, SC 29211-1549



Tommy A. Thomas, Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, South Carolina
March 2, 2015