

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Horry County  
Benjamin H. Culbertson, Circuit Court Judge

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**RECEIVED**

MAR 11 2015

COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

SANDY LEE LOCKLEAR,

APPELLANT

APPELLATE CASE NO. 2014-001354

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INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1.

Whether the court erred in ruling that Appellant was not in custody prior to being read her Miranda rights and in allowing the Appellant's pre-Miranda statement to be admitted into evidence?

2.

Whether the court erred in ruling that the State did not violate the rule set forth in Missouri v. Seibert?

3.

Whether the court erred, thereby violating the Fourth Amendment and the Appellant's right to privacy, when it upheld a search warrant on the home at 509 Fair Bluff Road?

## STATEMENT OF THE CASE

Sandy Lee Locklear (Appellant) was indicted in Horry County on two counts of murder. These charges stemmed from Appellant's alleged participation in an incident on August 19, 2012 in the Loris area of Horry County, South Carolina where Amos Hatfield and Thomas Hatfield were killed. On May 28, 29, and 30, 2014, a Jackson v. Denno, 378 U.S. 368 (1964) hearing was held on the issue of whether Appellant's statements were admissible at trial. Tr. 19. Also on May 30, 2014, a hearing was held on three search warrants and other pre-trial issues. Ralph Wilson, Jr. represented Appellant, while Brad Richardson and Monica Wooten represented the State.

Beginning on June 2, 2014 and ending on June 12, 2014, Appellant proceeded to trial before Judge Benjamin H. Culbertson and a jury. Tr. 356. The jury found Appellant guilty of two counts of murder. Tr. 1468, ll. 17-24. For each charge, Judge Culbertson sentenced Appellant to life imprisonment with the Department of Corrections. Tr. 1483, ll. 9-14. Appellant's attorney filed a notice of appeal. This appeal follows.

## ARGUMENT

I. The Trial Court erred in ruling that Appellant was not in custody prior to being read her Miranda rights and in allowing the Appellant's pre-Miranda statement to be admitted into evidence.

### **Relevant Facts**

On August 19, 2014 at approximately 4:00 a.m., Appellant called 911 and requested that officers respond to 1163 Red Bluff Road in Loris, South Carolina. Tr. 357, ll. 5-9. When the police arrived, Appellant told them that she was the victim of a crime. She stated that two men came to the house and shot her husband Amos Hatfield and her stepson Thomas Hatfield. Also, she told the police that she was the victim of a sexual assault at the hands of the perpetrators.

At the scene, lead Detective Neil Frebowitz spoke briefly to Appellant and directed that she be transported to Conway Hospital so that a rape kit could be conducted. Tr. 83, ll. 5-13. Appellant never requested that the police transport her to the hospital. Tr. 86, ll. 20-25. She was driven to the hospital in the front seat of a police car by Detective Chatfield of the Horry County Sheriff's Department. Tr. 1103, ll. 17-25. No ambulance was called to transport the Appellant to the hospital. Tr. 572, ll. 22-23.

While at the hospital, Appellant was examined and treated for injuries that occurred that morning. She spoke to members of the Horry County Sheriff's Department at the hospital. Tr. 24, ll.1-20. After receiving an examination and treatment at the hospital, Appellant was transported to the M.L. Brown Building (the Horry County Sheriff's Department Headquarters) in Conway by a member of the Sheriff's department. Tr. 25, ll. 15-16. Appellant was not asked if she would have like to go home before going to the police

station. Appellant was taken directly from the Conway Hospital to the M.L. Brown Building in Conway. When she arrived at the M.L. Brown building, Appellant was wearing scrubs that she was given by the hospital staff, presumably because all of her clothes were taken while performing the rape kit. Tr. 112, ll. 7-12.

After arriving at the sheriff's department, Appellant was taken to an interview room where Detective Frebowitz and others began questioning her. Appellant was not handcuffed at this time and was not read her Miranda rights when the questioning began. Tr. 23, ll. 1-4. At the Jackson v. Denno hearing prior to trial, Detective Frebowitz testified that they treated Appellant like a victim and were seeking to gain information about the crime. Tr. 25, ll. 24-25.

During the first fifty minutes of questioning, Detective Frebowitz asked Appellant to tell the truth and to tell him all that she could remember from that night. Interrogation Audio 4:20 (Please note, the audio of the interrogation is in the record) As Appellant explains the past events, Detective Frebowitz began to point out inconsistencies and changes in her story. When Appellant tells him that she was bitten while she was being raped, he questioned her on that and said it was unusual for rapists to bite. Interrogation Audio 23:00. He pointed out that she did not tell him that she was tied up when she was raped earlier in the interview. Interrogation Audio 40:05

During the course of the questioning the detectives continued to question parts of her story. Such as, when Appellant stated that she did not spend much time at her husband's house because she did not like the smell and the smoke, Detective Frebowitz questioned her about why she spent time at the house the previous night and was not just "in and out." Interrogation Audio 30:10.

Detective Frebowitz asked Appellant for consent to search her phone records to see who she spoke with that day. Appellant agreed to the search of her phone records and provided further information about who she spoke with that day. Interrogation Audio 42:20.

During the first part of the interrogation before Miranda was given, the police denied Appellant a cigarette break after she said she needed one. When she asked for a cigarette, Detective Frebowitz said, “no smoking, it is not good for you” and would not let Appellant leave the room for a cigarette. Interrogation Audio 47:50

After approximately fifty minutes of questioning, the parties took a ten-minute break. Upon their return, Detective Frebowitz informed Appellant that he “forgot” to read her rights before and that he would do that now. Interrogation Audio 1:00:01. He reads the Miranda rights and obtains the Appellant’s signature on the waiver of Miranda rights form.

After receiving the Miranda waiver, the detectives confronted Appellant and said that she had not been raped. The detectives proceeded to questions her for several hours until placing her under arrest.

## **Discussion**

Law enforcement must state Miranda rights "after a person has been taken into custody or otherwise deprived of his freedom of action in any way." State v. Evans, 354 S.C. 579, 582 S.E.2d 407 (2003), *citing* Miranda v. Arizona, 384 U.S. 436 (1966). “To determine whether a suspect is in custody, the trial court must examine the totality of the circumstances, which include factors such as the place, purpose, and length of interrogation, as well as whether the suspect was free to leave the place of questioning.” Id. at 583. This is an objective analysis based on whether or not a reasonable person would believe they are in

police custody. *Id. citing Bradley v. State*, 316 S.C. 255, 257, 449 S.E.2d 492, 493-494 (1994).

In *Evans*, an individual was suspected of lighting her home on fire and killing her three children inside. Ten days after the fire, the police asked Evans if she would come to the police station for an interview. Evans agreed and drove herself to the police station to talk to the police. *Id.* at 581. After her arrival, police took Evans to a back office and began to question her, never reading her *Miranda* rights. The police proceeded to challenge Evans' version of the events confronted her with information that contradicted her statements.

In *Evans*, the Court affirmed the trial judge's ruling that the suspect was in custody and *Miranda* should have been read, which was supported by several factors. These included that the police accompanied her at all times while she was there, that the interview took place in a back office at the police station, the interview lasted three hours, and the interview was not just about fact finding, but rather a process where they questioned the information she gave them. *Id.* at 583-584.

In another South Carolina case, the Court of Appeals examines the factors the courts should consider in more detail when determining whether or not a criminal defendant is in custody. *See State v. Williams*, 405 S.C. 263, 747 S.E.2d 194 (Ct. App., 2013). These factors included “. . . whether the contact with law enforcement was initiated by the police or the person interrogated, and if by the police, whether the person voluntarily agreed to interview and “whether they informed the person he or she could terminate the interview and leave at any time or whether the person's conduct indicated an awareness of such freedom.” *Id.* at 276 *citing* George L. Blum, Annotation, What Constitutes “Custodial Interrogation” of Adult by Police Officer Within Rule of *Miranda v. Arizona* Requiring that

Suspect Be Informed of Federal Constitutional Rights Before Custodial Interrogation—At Police Station or Sheriff’s Office, Where Defendant Voluntarily Appears or Appears at Request of Law Enforcement Personnel, or Where Unspecified as to Circumstances Upon Which Defendant Is Present, 29 A.L.R.6th 1, § 2 (2007).

In Williams, the Court of Appeals upheld the trial court’s finding that the defendant was not in custody before his Miranda rights were read. The suspect agreed to an interview with the police after he was suspected of abusing a child in his care. After the police contacted him, the defendant agreed to be interviewed and drove himself to the police station. 405 S.C. at 269. The suspect stated that he wanted to take care of the matter before he left town and brought two family members with him. After interviewing Williams for fifteen minutes, the police read him his Miranda rights and began confronting him with evidence and conflicting information. Id. The Court explained that he drove himself to the station along with his family members and his pre-Miranda interview only lasted fifteen minutes. The Court wrote “he never asked if he could leave or asked for anything; and the conversation leading to his incriminating statements included information about where he was from and his background.” Id. at 278.

In this case at the Jackson v. Denno hearing, the trial court ruled the Appellant’s pre-Miranda statements were admissible. The trial court ruled “that pre-Miranda it was still a fact investigation of someone thought to be a victim” and that she was not in custody until Miranda was given. Tr. 301, ll,16-20. Therefore, the statement given to the police that was admissible and was subsequently played for the jury. Tr. 507-509.

In this case, there are many facts that would lead a reasonable person in the Appellant’s position to believe that they were in police custody as soon as they arrived at the

sheriff's department. Unlike the defendants in Evans and Williams, the Appellant in this case did not drive herself to the sheriff's department or have a family member or friend drive her, instead she was transported by detectives to the M.L. Brown Building in Conway in a police car. Unlike Evans, the Appellant was in the presence of the sheriff's and detectives from the time she called 911 that morning. Which included being transported to the hospital, examined at the hospital, transported to the sheriff's department, and then being questioned.

Evidence exists in the record that the detectives controlled the movements of Appellant and would not let her move freely. For example, when she asked for a cigarette break, the detective responded that there would be no cigarette break. Appellant did not tell the detectives she was going outside to smoke a cigarette, which indicates that the police were controlling her movements.

Another factor that would lead a reasonable person to believe that they were in custody is the location of the interview. This interview took place at the Horry County Sheriff's Department headquarters in an interrogation room. The interrogation room at the sheriff's department was not in an area where a reasonable person would assume they could easily come and go.

At the Jackson v. Denno hearing, Detective Frebowitz testified and the State argued that they believed that Appellant was a victim of a crime and they needed to interview her to gain evidence to solve the case. In other words, the state argued that she was treated like a victim until they became suspicious and then Miranda was read.

If Appellant was treated like a victim, the detectives did several things that one would not equate with the treatment of a victim. After leaving the hospital, Appellant was

not permitted to go home, even for a brief period of time, before being interviewed. It seems that a victim of sexual assault would be offered a chance to go home, have a meal, take a shower, and put on her own clothes. Instead, Appellant was taken straight to the sheriff's department wearing temporary scrubs that she was given at the hospital.

Another factor that distinguishes this case from Williams, where the individual being questioned was found to not be in custody, is the length of the pre-Miranda questioning. In Williams, the questioning lasted only fifteen minutes before Miranda was given. In this period of time, there is only time for a "name, rank, and serial number" type questioning. In contrast to Williams, the pre-Miranda questioning in Evans lasted nearly three hours. This was one of the factors that the Court relied on in affirming the trial court's finding that the suspect was in custody.

In this case, the fifty-minute pre-Miranda questioning is more akin to the longer questioning in Evans. The interview did not consist of simply background information, but rather went into detail about the events of the previous night. Detectives asked detailed questions about Appellant's relationship to the victims and about the events of the night.

In addition to the length of the pre-Miranda interview, the content of the questioning would make a reasonable person believe they were in custody. The detectives began to lay the groundwork for confronting Appellant pre-Miranda. For example, after Appellant tells Detective Frebowitz that she did not typically spend much time at her husband's house, he repeatedly questions her about why she was there for an extended period of time that night. Also, when she tells him that she was bitten while being raped, he states that rapists usually do not bite, indicating that he found her story unusual.

In sum, a reasonable person in the Appellant's situation would believe that they were not free to go, therefore were in custody. The detectives should have read Appellant her Miranda rights as soon as they began questioning her at the police station.

II. The trial court erred in ruling that the State did not violate the rule set forth in *Missouri v. Seibert*.

**Relevant Facts**

In this case, the State used the tactic of eliciting incriminating information and then Mirandizing the Appellant. As was discussed in the previous section of this brief, Appellant was questioned for approximately fifty minutes before she was read her Miranda rights. Detective Neil Frebowitz of the Horry County Sheriff's Department was the lead investigator on this case. He took part in the entire interview, both pre and post Miranda warnings. Tr. 29, ll. 21-23. While other detectives came and assisted in the interrogation, Detective Frebowitz remained in charge of the entire interrogation.

During this questioning, the detectives elicited incriminating information that they would later use to contradict her statements. Detective Frebowitz told Appellant that she was a victim and that he was seeking information to solve the crime. Interrogation Audio 0:50. However, many of the questions he asked Appellant were about her actions the night before and he managed to expose many inconsistencies in her story. These inconsistencies were used by the State at trial to show that Appellant was lying to investigators during her interview.

During the pre-Miranda interrogation, Detective Frebowitz told her that what she is saying is "a little different" than what she said before. Interrogation Audio 20:33. Also, detectives responded to her statement that the rapist bit her by saying that most rapists do

not bite, and that it would be unusual if her rapist bit her. Interrogation Audio 23:00.

Appellant told the detectives that she was beat up and had marks on her body. In response to this assertion, the detectives responded, “well I don’t see any marks on you,” and clearly question her statement.

Towards the end of the pre-Miranda interview, the issue of whether or not Appellant was tied or taped up is discussed. Interrogation Audio 40:00. Appellant brought up how she was taped up and bound by the rapists. The detectives responded to this statement by questioning her and asking why she did not mention this earlier. He stated that you would think that would be the first thing one would remember, not the last. Id.

During the interview, Appellant stated several times that she did not spend time at Amos Hatfield’s house because she did not like that he smoked in the house. She explained that even though they were married, they lived separately and he would come over to her house. She stated that she went over to his house the night of the murders to watch golf on TV and “hang out.” Interrogation Audio 30:00. In response to this statement, Detective Frebowitz questioned her about why on this night she was spending time at Amos’ house when she previously told them she did not like to spend time at his house. Id. Appellant responded somewhat incoherently and did not directly address her previous statement of not spending time at Amos’ house.

After the first fifty minutes of questioning, the detectives took a ten-minute break. After returning from this break, Detective Frebowitz told the defendant that he “forgot” to read her Miranda rights and then proceeded to read the rights and have Appellant sign a waiver form. Interrogation Audio 59:56, Miranda Form.

At the pre-trial Jackson v. Denno hearing, Defense Counsel argued that the State had committed a constitutional violation as laid out in State v. Navy, a South Carolina case which adopts the rule of Missouri v. Seibert. See State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010).

### **Discussion**

In Missouri v. Seibert, the United States Supreme Court addressed the police practice of questioning a suspect until incriminating evidence is elicited, and then administering Miranda warnings. Id. citing Missouri v. Seibert, 542 U.S. 600, (2004). After the Miranda warnings are given, the incriminating information is re-elicited, and then entered into evidence at trial. Id.

According to the Seibert plurality opinion, the factors to be considered in determining if a constitutional violation occurred are: “1) the completeness and detail of the question and answers in the first round of interrogation; 2) the timing and setting of the first questioning and the second; 3) the continuity of police personnel; and 4) the degree to which the interrogator's questions treated the second round as continuous with the first.” Id. at 842.

Also in Seibert, Justice Kennedy wrote separately and stated that not all Miranda violations require suppression, such as when the police do not realize a suspect is in custody or when the officer did not plan to question the suspect at that time. Id. He suggested that a curative measure should be taken in a case such as this, such as a substantial break in questioning between the pre-warning and post-warning statement. Id.

In Navy, the South Carolina Supreme Court addressed a case of “springing” incriminating information on an individual to elicit a confession, and only then Mirandizing the suspect who restated the previous information. In that case, officers obtained a voluntary

statement of the suspect that conformed with his previous statements. Id. at 839. However, the officers had prior knowledge that the suspect's child had died of suffocation and had broken ribs, information that implicated the suspect in question. After his first statement, the officers confronted the suspect with the information of suffocation and broken ribs. Id. at 840. They assured him he was not under arrest, but they elicited information from the suspect that he had hit the child and interfered with its breathing. Id. After this information, they read the suspect his Miranda rights and got him to write a statement that included the incriminating information. Id. The officers consulted with a pathologist, then asked more questions of the suspect about how long he held his hand over the child's face.

The Supreme Court held that the second and third statements (given after Miranda warning) should have been suppressed. The Court found that the officers began the questioning with knowledge that the child had been suffocated and went into the questioning with the intention of getting a confession. The officers "sprang" the facts about broken ribs and suffocation on the suspect without reading Miranda. And "[O]nce those incriminating answers were given — i.e. after respondent admitted he had popped the child on the back and "patted" his mouth — respondent was permitted a supervised cigarette break, then given Miranda warnings, with interrogation by the same officer resuming immediately. Thus the four elements outlined in Seibert were met here." Id.

Also, the Court addressed the State's argument that Navy was different from Seibert because there was not a deliberate police practice of "question first" and then Mirandize. Id. The Court wrote that "in our view, that deliberate practice was not determinative in Seibert." Id.

In this case at the pre-trial Jackson v. Denno hearing, Defense counsel argued that the officers violated the law in Navy by eliciting incriminating information from Appellant without Miranda warnings and then getting her to restate those same statements after Miranda was given.

At the pre-trial hearing, the trial judge stated that the key factor in whether or not the rule in Navy was violated was whether or not the officers had knowledge that the Appellant had not been raped, prior to giving her Miranda. The trial judge stated, “Well, and I can go back and I can review that portion of that time, and I can tell from the tone of his questioning whether or not he’s questioning her with knowledge that she had not been raped and was trying to elicit a confession or whether or not he was still conducting a fact investigation of someone he perceived to be a victim, and I’ll have to just look at the statement and make a judgment call as to what a preponderance of the evidence shows at that point in time because that is the standard that I have is the preponderance of the evidence at this point in time, and I can look at it and say, make a judgment call, do I think he think she’s lying and he’s trying to elicit a confession or do I think that he is still interviewing somebody that he perceives to be a victim of a rape, and I’m--I’ll be able to look at that and make a decision.” Tr. 203, ll 24-25. 204, ll. 1-8.

It is implicit in the content of their questions that the detectives had doubts about Appellant’s story. For example, the detectives pointed out the inconsistencies of Appellant’s story on multiple occasions during the interview. Also, detectives questioned her about whether or not she was bitten as she claimed and questioned her recollection of being tied up. Miranda was required long before it was administered in this case.

Detectives managed to elicit an inconsistent story that she would later recant, that was used against her to show that she was not being straightforward with the police. At his closing statement, the Solicitor stated, “She wanted to talk. She wanted to explain away her prior inconsistencies on the 911 tape, her prior inconsistencies at the hospital, her prior inconsistencies when she talked to Neil Frebowitz as a victim witness. She was eager to lie again and again because she knows that her plan is coming unraveled.” Tr. 1417, ll. 14-19. In violation of the rule set out in Navy, they elicited this information that was used against her at trial without giving her Miranda warnings.

In this case, the four factors laid out in Seibert to consider if a constitutional violation occurred are all met. The first round of interrogation was complete and detailed, consisting mainly of detailed questions about what happened to Appellant that night. The officers did not just treat her as a victim, but rather questioned her story and raised questions about her story. The tone and content of the questioning did not change substantially from the before and after Miranda was given, except for the direct confrontation with the information that she was not raped.

The timing and setting of the first and second questioning were in the exact same location at the Horry County Sheriff’s Department. Also, the second questioning began after only a ten minute break from the first set of questions. The police personnel remained the same, with Detective Frebowitz leading the interrogation the entire time.

Detectives treated the second round of questioning as a continuation of the first. In fact, before reading her Miranda rights, Detective Frebowitz said that he “forgot” to read them before and that this was “routine,” giving a clear indication to Appellant that this was a continuation of the first questioning.

Instead of Mirandizing Appellant and indicating to her that they were suspicious of her story, detectives proceeded to elicit statements that would later proved to be untrue. The affect of this pre-Miranda questioning was to set the stage for confronting Appellant with information that she was not raped, which directly implicated her in the crime.

In sum, the detectives got the Appellant “on the hook” by eliciting untruthful information before Miranda was read. After administering Miranda, they proceeded to “reel her in” based on the information they received before her rights were read.

III. The court erred, thereby violating the Fourth Amendment and the Appellant’s right to privacy, when it upheld a search warrant on the home at 509 Fair Bluff Road.

#### **Relevant Facts**

Before trial, Defense Counsel moved that the evidence obtained from a search warrant of the Appellant’s home at 509 Fair Bluff Road in Tabor City, North Carolina be suppressed. After the murder of Amos and Thomas Hatfield, Faye Hunt came to the Horry County Sheriff’s Department to “clear her name” and gave the officers information about the alleged crime, including the existence of a life insurance policy. Tr. 239, ll. 2-10. Hunt wrote a statement that said in part, “I came to the police department to clear my name. Sandy Lee Locklear Hatfield, brother Timmy Locklear, is telling my family and friends that I had something to do with her husband and stepson’s death” and “I also came to tell about the million dollar policy that the victim left Sandy L. Locklear Hatfield and that if she – if he died today she would be a rich bitch.” Tr. 239, ll. 2-10.

At the pre-trial hearing on the search warrant, Horry County Detective Damon Vescovi testified that Faye Hunt came to the Horry County Sheriff’s Department and told

them about the existence of a life insurance policy related to this case. Tr. 234-235, ll. 18-25, 1-16. Also, Faye Hunt told the detectives that there was a small-caliber gun in Appellant's house. Vescovi testified that he did not have any knowledge of an insurance policy before Faye Hunt came into the department unsolicited to "clear her name" and provide a statement. Tr. 236. ll. 5-9.

Vescovi testified at the suppression hearing that he never personally met with Faye Hunt when she came to the Horry County Sheriff's Department. Tr. 237, ll. 14-24. He testified that he only knew about the statement generally and was relying on information given to him by his colleagues and from Faye Hunt's written statement.

At the suppression hearing, no other witnesses were put on the stand who testified to the credibility of Faye Hunt's statement. The only two witnesses for the warrant to search 509 Fair Bluff Road were Damon Vescovi and Tabor City Police Officer Jerry Sarvis. In other words, both individuals who testified at the suppression hearing testified that they were "passing on information" and neither was able to answer questions on the circumstances surrounding Faye Hunt's statement.

Based on this information, the Horry County Sheriff's Department asked Tabor City Police Department Officer Jerry Sarvis to provide an affidavit to a North Carolina Magistrate to obtain a warrant for the residence.

In the matter of Sandy Locklear, the date, the of August the 20th, 2012, I, Detective Sarvis, do attest I'm a sworn law enforcement officer in the State of North Carolina. I'm employed as a detective with the Tabor City Police Department. I have worked for Tabor City 58 months. I do have my general certification in law enforcement in North Carolina. I, Detective Sarvis, do swear and attest that on 8-19, 2012, the Horry County -- in Horry County, South Carolina, a murder occurred with two victims being shot execution style, placing a pillow

over them and firing a small caliber projectile into their head causing the death of a human being. Witness statements obtained during the investigation disclosed the motive behind the murders to be for fiduciary gain by the wife of one of the victims. The wife identified as Sandy Locklear lives and resides at 509 Fair Bluff Road in Tabor City, North Carolina, and is currently incarcerated in Horry County Detention Center charged with two counts of murder and associated crimes with warrants issued upon affidavit of probable cause presented to a South Carolina Magistrate Judge. Eyewitness statements obtained by Horry County Detectives revealed the Defendant Locklear recently obtained a life insurance policy naming herself as the beneficiary and the decedent as the insured. The document was subsequently observed inside a container stored in a non-descriptive drawer within the kitchen that also contained a small caliber pistol significantly similar to the weapon used to commit the crimes. I, Detective Sergeant, do request that a search warrant be issued to collect the document, instrument or corresponding papers directly related to the life insurance policy identifying Amos Hatfield as the decedent -- as the insured along with weapons, pistol or ammunition located and contained in the aforementioned storage drawer. Tr. 220-222.

At the suppression hearing, Officer Sarvis admitted that he never saw any of the evidence referenced in the affidavit that he signed. Tr. 230, ll.9-12. He stated that he relied on the Horry County officers being truthful and was passing along what he was told to the magistrate. He stated that the Horry County detectives never brought him anything to base his affidavit on, other than their own words. He stated that members of the Horry County Sheriff's Department were with him when he presented the evidence to the North Carolina Magistrate, but he said that they "told the judge the same thing I told him." Tr. 220, ll. 15-18.

At the pre-trial hearing, Officer Sarvis acknowledged that the members of the Horry County Sheriff's Department told him that they had "*multiple statements*" (emphasis added)

that were the basis for this warrant. Tr. 232, ll. 10-25. Sarvis testified that he was under the impression that Horry County Detectives had multiple *statements* regarding the existence of life insurance, not just the one statement from Faye Hunt. Tr. 231, ll. 11-16. In his argument at the suppression hearing, the solicitor admits that there was only one statement that indicated the existence of a life insurance policy. Tr. 246, ll. 19-20.

At the pre-trial hearing, Defense Counsel argued that on its face the search warrant was untrue and that Appellant had a Fourth Amendment right to privacy in her own home that was violated. Tr. 247, ll. 11-15. Furthermore, Defense Counsel argued that Faye Hunt had a clear motive to lie and the evidence they had was not enough to support probable cause. Tr. 248, ll. 1-22.

At the end of the hearing the trial judge upheld the warrant and stated, “I’m going to find the search warrant is valid.” Tr. 248, ll., 23-24.

## **Discussion**

A search warrant may be issued only upon a finding of probable cause. State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999). The Magistrate must “make a practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002). In South Carolina, “A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant.” S.C. Code 17-13-140 (2003). The affidavit must set forth particular facts or circumstance 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 (1978).

The duty of a reviewing court is simply to ensure that the magistrate has a substantial basis for concluding that probable cause existed. State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999).

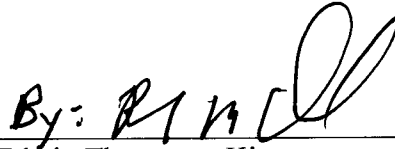
In this case, the Magistrate did not have a substantial basis for determining that probable cause did exist. As it is now clear, the only information that the Magistrate had to determine if there was probable cause was the statement of Faye Hunt. This was a statement from an individual who came to police station unsolicited to “clear her name.” Until that point, the detectives had no knowledge of any insurance policies related to Appellant. There is no evidence in the record that the Magistrate took any steps to question the reliability of Faye Hunt’s statement.

Furthermore, the Magistrate based his finding of probable cause on false information. While the state argued that it was a minor mistake, the Magistrate made his decision with the belief that there were multiple *statements* related to the insurance policy and the gun at Appellant’s residence.

CONCLUSION

By reason of the foregoing argument, appellant's convictions should be reversed and this case remanded to the Horry County Court of General Sessions for a new trial.

Respectfully submitted,

By: 

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ATTORNEYS FOR APPELLANT

This 9<sup>th</sup> day of March, 2015.