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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

JAMES R. EUBANKS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000784

JOHNSON PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR judge erred in concluding the sale of drugs in a resident's driveway supports a search of the residence under the Fourth Amendment merely because both are within the curtilage.

STATEMENT

On March 30, 2009, the Spartanburg County Grand Jury indicted Petitioner James R. Eubanks for trafficking in cocaine. App. 307—App. 308. On February 23, 2010, Petitioner proceeded to trial before The Honorable Roger L. Couch and a jury. Dorothy A. Manigault represented Petitioner and James Edward Hunter represented the State. App. 1. The State alleged that officers from the Spartanburg County Sheriff's Office executed a search warrant at Petitioner's home in Inman, South Carolina and found inside large quantities of cash and cocaine. App. 95, line 20—App. 97, line 24.

Prior to trial, Petitioner moved to suppress the evidence found as a result of the search on grounds that the warrant's affidavit did not contain sufficient information to support probable cause. App. 37, line 21—App. 76, line 3. The affidavit underlying the search warrant read as follows:

Within the past seventy-two hours of today's date (6/13/08) a confidential reliable informant (CRI) working for the Spartanburg County Sheriff's Office observed cocaine being sold at the residence described above. CRI observed James Eubanks exchanging cocaine for U.S. currency. In the past SRI has observed quantities of cocaine being stored inside the residence. CRI knows James Eubanks to hide illegal contraband throughout the residence, on his person, and on the curtilage area to avoid police detection. CRI know [sic] cocaine by sight, smell, texture, and packaging. CRI has provided information to the Spartanburg County Sheriff's Office in the past that has led to the arrest of subjects and the confiscation of illegal contraband.

App. 240; App. 272, line 15—App. 273, line 3. During the suppression hearing, the officer who wrote the affidavit and obtained the warrant testified that only the observed sale that was noted first in the affidavit had occurred within seventy-two hours of his obtaining the warrant. App. 49, line 22—App. 50, line 15. He also testified that the observed sale occurred outside of Petitioner's home and that Petitioner arrived at the home from a different location and did not enter the home until after the sale. App. 51, lines 8-16.

Petitioner argued that the affidavit did not create probable cause to search inside his home because the confidential informant did not observe a drug transaction in the home and because the prior alleged observations by the confidential informant of cocaine inside the home were made without any specific reference to dates, times, or even years. App. 38, line 20—App. 39, line 1. The trial judge denied Petitioner’s motion and held that the seized evidence was admissible. App. 76, lines 7-15.

At the end of the trial the jury found Petitioner guilty as charged, and the trial judge sentenced him to life imprisonment without the possibility of parole. App. 225, 13-21; App. 229, lines 15-17. Petitioner appealed to the South Carolina Court of Appeals and filed a final brief on May 11, 2012. App. 235—App. 248. Petitioner argued that the affidavit was drafted and submitted to the magistrate with reckless disregard for the truth because it misrepresented that the confidential informant had recently witnessed the sale and other transactions inside Petitioner’s home. App. 243—App. 244. On November 7, 2012, the court of appeals issued an unpublished opinion denying the appeal on grounds that this argument was not preserved for appellate review. 2012-UP-602 (S.C. Ct. App. Nov. 7, 2012); App. 250.

On November 26, 2012, Petitioner filed an application for post-conviction relief (PCR) claiming ineffective assistance of counsel. App. 252—App. 258. The State filed a return on March 27, 2014. App. 260—App. 264. On January 13, 2015, Petitioner appeared at an evidentiary hearing before The Honorable Deadra L. Jefferson. Christopher D. Brough represented Petitioner and Suzanne H. White represented the State. App. 265.

Trial counsel testified about her strategy at trial: “Our strategy was actually picking out words out of the search warrant which dealt with – the affidavit stated that the buy was made at the residence. My client was saying, after we reviewed the video and everything, that the buy was

made in the driveway” App. 283, lines 16-20. During cross-examination, trial counsel testified that she was aware the affidavit was misleading.

Q: And would it be fair to say that [Petitioner] felt like [the officer] didn’t – wasn’t truthful in his affidavit for the search warrant?

A: That’s correct.

Q: Okay. And that one of the things that he thought was untruthful about was where the actual underlying transaction occurred, whether it was inside the residence or in the – inside his vehicle?

A: That’s correct.

App. 287, lines 3-11.

At the conclusion of the hearing, the PCR judge made an oral ruling that Petitioner did not establish ineffective assistance of counsel. Specifically, she found that trial counsel adequately argued to suppress the evidence from the search and thereby preserved the issue for appellate review. She then ruled that Petitioner’s argument that the sale of drugs in the driveway did not support a search of his home “really [has] no basis in fact or in law” because she “didn’t think you can separate residence from driveway. They’re all one. . . . It’s my property and it’s my curtilage.” App. 289, line 16—App. 290, line 14. On March 26, 2015, the PCR judge issued a written order confirming her ruling and dismissing Petitioner’s application. App. 293—App. 306.

ARGUMENT

The PCR judge erred in drawing the legal conclusion that the sale of drugs in a resident's driveway supports a search of the residence under the Fourth Amendment simply because they are both within the curtilage.

The PCR judge erred in drawing the legal conclusion that the sale of drugs in a resident's driveway supports a search of the residence under the Fourth Amendment simply because they are both within the curtilage. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. *Id.* at 687.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. Thus a search warrant may issue only upon a finding of probable cause." *State v. Weston*, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997) (citing *State v. Owen*, 275 S.C. 586, 274 S.E.2d 510 (1981)). "A probable cause analysis involves the use of a fact-based, objective perspective that requires more than reasonable suspicion of criminal activity" *State v. Morris*, 395 S.C. 600, 609-10, 720 S.E.2d 468, 472 (Ct. App. 2011).

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.

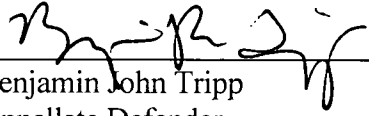
Weston, 329 S.C. at 290-91, 494 S.E.2d at 802-03 (quoting *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983)). Additionally, “[i]n determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched.” *United States v. Laylor*, 996 F.2d 1578, 1582 (4th Cir. 1993) (holding the search warrant defective where the affidavit failed to explain the geographic relationship between the area where the drug sales occurred and the defendant’s residence). Specifically, “the nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence.” *Id.* (internal quotations omitted).

In this case, the PCR judge dismissed Petitioner’s application after concluding that trial counsel’s failure to argue the reckless falsity of the affidavit was immaterial because no prejudice resulted; the judge concluded no prejudice resulted because the sale of drugs in Petitioner’s driveway supported a search of the residence under the Fourth Amendment simply because both were within the curtilage. This conclusion was erroneous. As explained above, the test for whether the search of the inside of the home was supported was whether probable cause existed that contraband would be found there. At the PCR hearing, the testimony established that trial counsel was aware that the affidavit was misleading as to the location and history of the drug activity. Thus, had she argued that the affidavit included false and misleading statements, the issue would have preserved the issue for appellate review. Accordingly, the PCR judge’s conclusion that trial counsel’s failure to argue the issue was immaterial was based on legal error, and the ruling and dismissal of Petitioner’s application should be reversed.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of August, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
DEADRA L. JEFFERSON, CIRCUIT COURT JUDGE

JAMES R. EUBANKS,

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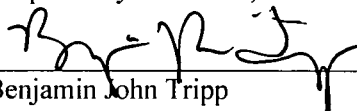
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James R. Eubanks states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on January 13, 2015. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for James R. Eubanks.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of August, 2015

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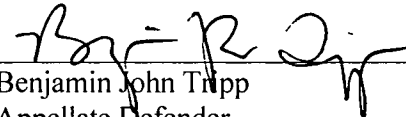
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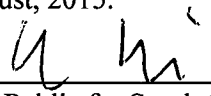
CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire and James R. Eubanks, #213678, at Perry Correctional Institution this 19th day of August, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day
of August, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.