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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN TRÖY GIBSON,

APPELLANT

APPELLATE CASE NO. 2015-001956

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Gibson's motion to suppress the items, which included computers, printers, blank check paper, found in Appellant's bedroom with a search warrant that was not based on sufficient probable cause because the warrant did not name particular facts as to why Appellant Gibson committed the crime?

STATEMENT OF THE CASE

On January 21, 2014, the Edgefield County Grand Jury indicted Jonathan Gibson on the charges of forgery and criminal conspiracy. On September 1-3, 2015, Appellant Gibson proceeded to trial before the Honorable R. Knox McMahon and a jury. Gibson was represented by Derek Chiarenze, and the state was represented by Ervin Maye and Al H. Eargle. R. 1. The jury found Gibson guilty of both charges as indicted. Judge McMahon sentenced Gibson to five years on each charge with the sentences to run concurrent. R. 263, ll. 1 – 24. Gibson's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Appellant Gibson's motion to suppress the items, which included computers, printers, blank check paper, found in Appellant's bedroom with a search warrant that was not based on sufficient probable cause because the warrant did not name particular facts as to why Appellant Gibson committed the crime.

On September 12, 2013, Walter Morris went to Neese's Liquor Store in Johnston in Edgefield County and cashed a payroll check for \$363.49 from Amick Farms. Morris did not work at Amick Farms, and knew the check was not valid. However, he put his fingerprint on the check and cashed it. R. 119, ll. 5 – R. 120, ll. 22; R. 102, ll. 19 – 23.

On September 18, 2013, Morris again attempted to cash another fraudulent check from Amick Farms at a store in Batesburg-Leesville in Lexington County. The store owner there had previously received some fraudulent checks so he called law enforcement. Morris was arrested and charged with forgery. He agreed to cooperate with law enforcement and tell them where he received the check. R. 129, ll. 19 – R. 130, ll. 16.

Captain Jarrad Goldman was the chief of police in Ridge Spring in Saluda County. On September 19, 2013, he received a call from Captain Goss of the Batesburg-Leesville Police who told him that Captain Goss had arrested a man who tried to cash a fraudulent check in Batesburg-Leesville. The man told Captain Goss that the manufacturing of the checks was occurring in Ridge Spring. R. 165, ll. 1 – 17.

Captain Goldman went to Batesburg and got a written statement from the suspect who was Morris. Morris had agreed to cooperate. At that point, Captain Goldman brought Morris to Ridge Spring, and they rode by the address on Merritt Street where Morris said the checks were being made. According to Captain Goldman, Morris also told him during the time in the vehicle, that

Andre Gibson and Jonathan Gibson were manufacturing the checks at that address. However, Morris said he had never actually seen them make the checks. Jonathan and Andre were brothers and were cousins of Morris. R. 165, ll. 18 - R. 166, ll. 22; R. 120, ll. 1 -22; R. 127, ll. 1 - 24; R. 60, ll. 21 - R. 61, ll. 9.

Captain Goldman testified that he was initially investigating the Batesburg check because he was not aware of the fraudulent check cashed at Neese's in Edgefield County. It was only after he had executed the search warrant on the residence on Merritt Street did he learn of a check cashed in Edgefield County that matched the Batesburg check. R. 166, ll. 23 - R. 167, ll. 16.

Morris had told Captain Goldman that Andre Gibson was the person who gave him the check Morris tried to cash in Batesburg-Leesville. Andre Gibson was the name Morris provided when Captain Goldman first interviewed Morris. R. 166, ll. 23 - R. 167, ll. 6.

On September 17, 2013, Captain Goldman, while on patrol, passed by the residence on Merritt Street and saw two men in the yard around two or three o'clock in the morning working on laptop computers. After Morris pointed out this residence as the origin of the fraudulent checks, Captain Goldman searched the DMV records for the Gibson brothers and realized they were the two men in the yard on the computers on September 17, 2013. R. 167, ll. 17 - R. 169, ll. 8.

Captain Goldman proceeded to obtain a search warrant for the residence on Merritt Street. The information he included in the affidavit for the warrant was the written statement of Morris which did not name Appellant Jonathan Gibson, and the fact that the captain had seen the allegedly same two men in the yard of that residence on the computers on September 17, 2013. Captain Goldman did not include Jonathan Gibson's name in the search warrant because Morris had only told him that Andre was the one who actually gave Morris the check. Morris did not include Jonathan Gibson's name in his written statement. The information the captain had was only for the

Batesburg check. He did supplement the affidavit orally with the judge when he gave her an overview including when he saw the two men in the yard. He also told her that Jonathan Gibson was involved. R. 63, ll. 1 – R. 65, ll. 24; R. 69, ll. 17 – R. 70, ll. 6.

On cross examination at trial, Captain Goldman admitted that he provided no information to the magistrate about the fraudulent check in Edgefield County because Morris had told him nothing about the Edgefield incident. R. 73, ll. 1 – 22. The captain had no information in his search warrant about Appellant Jonathan Gibson except that his name was listed on the second page as suspect number 2. R. 74, ll. 24 – R. 76, ll. 23. Captain Goldman also admitted on cross examination that Morris had not mentioned Jonathan Gibson's name prior to his going to the house on Merritt Street with the search warrant. The captain said he had no information about Appellant Jonathan Gibson committing a crime when he executed the search warrant on the house. R. 76, ll. 1 – 23. The captain said:

I didn't have any kind of criminal ties to tie him into at the time.

R. 77, ll. 1 – 2.

Moses Gibson, uncle of Jonathan Gibson and Andre, provided consent to the police to search the residence on Merritt Street. He told the police that Appellant Jonathan Gibson and Andre Gibson shared a bedroom there. This was the home of Moses Gibson's mother and the grandmother of Jonathan and Andre. Jonathan had lived there several years but Andre had been there only about a month. The two men left before the police arrived with the search warrant. R. 50, ll. 1 – R. 53, ll. 10.

When Captain Goldman served the search warrant, he found no laptop computers in the house. The police did find two desktop computers, blank checks, several printers, and one very large commercial printer. R. 68, ll. 1 – 23.

In a pretrial motion, defense counsel moved to suppress anything found as a result of the search warrant that was executed on September 19 at the Gibson residence on Merritt Street. The court held a hearing on this issue where Moses Gibson, Walter Morris, and Captain Jarrad Goldman all testified. R. 49, ll. 3 – R. 77, ll. 20. Following the hearing, defense counsel argued that the affidavit was not sufficient to provide probable cause for the search warrant. All the police had was the statement of Morris who admitted he never saw Jonathan Gibson making checks. Morris said the checks had an involvement with Andre Gibson. Jonathan Gibson only lived in the home where this was happening. The testimony about the two individuals that were seen in the yard working on laptop computers was not reliable for a search warrant. He argued nothing was really added in the oral supplement to the affidavit. R. 77, ll. 19 – R. 79, ll. 25.

The state argued that there was probable cause as the co-defendant Morris indicated that the two people told him they were manufacturing the checks. R. 80, ll. 2 – R. 81, ll. 22.

The judge found that the search warrant did have sufficient probable cause in that additional sworn oral testimony was given. He ruled that the items seized by the search warrant were admissible. R. 83, ll. 1 – 25.

At trial, Morris testified that he and Andre and Appellant Jonathan Gibson had an agreement. Andre and Jonathan would provide the fraudulent checks to Morris who would cash the checks. Then Morris received a percentage from the check. He never actually saw them making the checks but they provided the checks to Morris. R. 125, ll. 1 – R. 126, ll. 19. When Morris cashed the check at Neese's in Edgefield County, Jonathan and Andre drove him there. R. 126, ll. 20 – R. 127, ll. 24. When he went to the store in Batesburg-Leesville, only Andre was in the car with Morris. R. 141, ll. 20 – 24. When asked if he were absolutely certain that he told Captain Goldman within two

days that both Andre and Jonathan were involved in making the checks, Morris responded: “ I’m almost positive, sir.” He said this was not in his written statement. R. 143, ll. 1 – 21.

Morris pled guilty to forgery and conspiracy in Lexington County and Edgefield County. He received eighteen months in prison. R. 132, ll. 1 – R. 133, ll. 23.

A search warrant may issue only upon a finding of probable cause. U.S.C.A. Const. Amend.4; State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2008). In State v. Baccus, *id.*, the Supreme Court found that the affidavit that was submitted in support of the search warrant failed to set forth the particular facts and circumstances underlying the existence of probable cause. The Court found that the affidavit did not name any facts as to why the police believed that the suspect committed the crime.

The Supreme Court also ruled in State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000), that oral information may only be used to supplement or to amend incorrect information in an affidavit which was not knowingly , intentionally or recklessly supplied by the affiant.

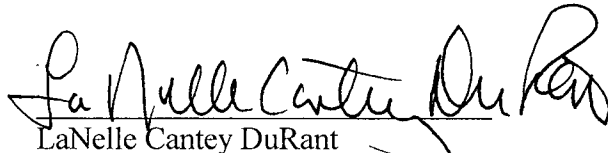
The items from the search warrant should be suppressed as related to Appellant Jonathan Gibson. The search warrant did not include his name. The written statement of Morris, which was also used as a basis for probable cause for the search warrant, did not name Appellant Gibson. The search warrant was obtained only on information related to the Batesburg-Leesville check. Morris’ testimony was that Andre provided the check to him for Batesburg and Andre drove him there. Appellant Gibson was not with them. Captain Goldman admitted that he had no evidence of Appellant Gibson committing a crime when he served the search warrant. The captain saw the two Gibson brothers on laptop computers on September 17 but no laptops were found with the search warrant. There was nothing to connect Appellant Gibson with this search warrant except that he lived at the residence. The items from the search warrant should have been suppressed as related to

Gibson. Gibson was tried only on the Edgefield check and not on the Batesburg check. The search warrant was based solely on the Batesburg check.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for a new trial.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of May, 2016.

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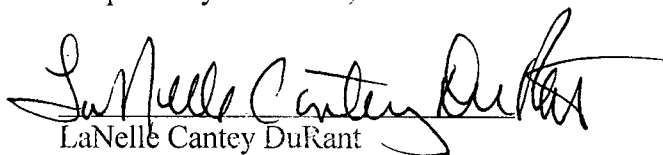
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jonathan T. Gibson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on September 3, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Jonathan T. Gibson.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of May, 2016.

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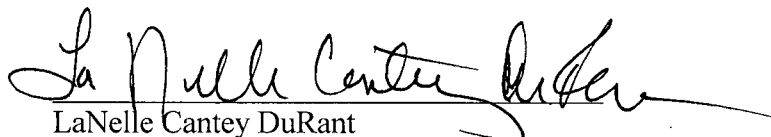
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Sentencing Sheets
- (3) Trial Transcript September 1-3, 2015.

I certify that this designation contains no matter which is irrelevant to this appeal.

May 12th, 2016


LaNelle Cantey DuRant
Appellate Defender

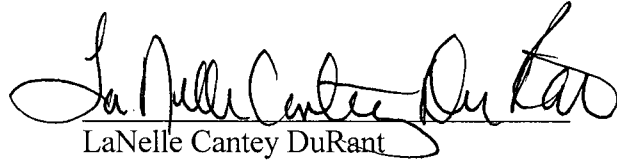
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Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 12, 2016



LaNelle Cantey DuRant
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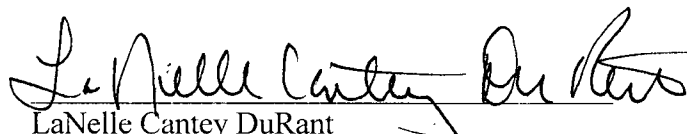
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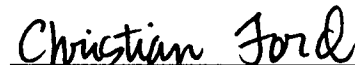
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and a copy of the Anders Brief of Appellant and Designation of Matter along with the Record on Appeal have been served on Jonathan T. Gibson, #349771 at Manning Correctional Institution, 502 Beckman Drive, Columbia, SC 29203, this 12th day of May, 2016.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of May, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026.