STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEREMIAH FITZGERALD BELTON,

APPELLANT

APPELLATE CASE NO 2015-002423

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in admitting cell phone records of a phone purportedly owned by Appellant where it was undisputed that the officer, who obtained the search warrant, provided false information to the magistrate and no other information contained in the search warrant provided probable cause?

STATEMENT OF THE CASE

On November 3, 2014, a Charleston County grand jury indicted Appellant for murder (2014-GS-10-6481), burglary in the first degree (2014-GS-10-6482), and possession of a weapon during the commission of a violent crime (2014-GS-10-6483). R. 1303-1304; R. 1306-1307; R. 1309-1310. On October 27, 2015, Appellant moved to sever his trial from his co-defendant, King Conyers, and move to suppress certain evidence before the Honorable Kristi L. Harrington. R. 1. Jennifer Shealy and Daniel Cooper represented the state at the hearing. R. 2. Adam and Koontz Mlynarczyk represented Appellant. R. 2. At the conclusion of the hearing, Judge Harrington denied the motion to suppress. R. 49, l. 5 – R. 50, l. 3. She took the motion to sever under advisement. R. 57, l. 18 – R. 58, l. 1.

On November 2, 2015, the state called the case before Judge Harrington and a jury. R. 85. Shealy and Cooper represented the state. R. 86. The Mlynarczyks represented Appellant. R. 86. In light of the judge's off-the-record denial of the severance motion, the state also called Conyers to trial. R. 85. Christopher Murphy represented Conyers. R. 86. Ultimately, the jury found Appellant guilty as charged. R. 1240, l. 17 - R. 1241, l. 7. The jury also found Conyers guilty of the same charges. R. 1242, ll. 1-16. In accordance with the state's notice of intent to seek life imprisonment without the possibility of parole (LWOP), Judge Harrington sentenced Appellant to LWOP for murder and burglary. She sentenced him to five years' imprisonment for the weapon. She ordered all sentences to be served concurrently. R. 1252, l. 20 - R. 1253, l. 12. Pursuant to the state's request, Judge Harrington also sentenced Conyers to LWOP for murder and burglary with a concurrent five-year sentence for the weapon. R. 1257, ll. 15-25.

Appellant filed a notice of appeal. This brief follows.

STATEMENT OF FACTS

During the early morning hours of July 10, 2010, a group of men tried to rob Melvin "Kip" Simmons, a drug dealer, in his home. R. 250, ll. 20-22; R. 261, ll. 1-12; R. 277, ll. 3-5; R. 861, ll. 5-18. Simmons' daughter, Moett, heard gunshots and someone approaching her room. R. 232, ll. 1-5. Moett described a tall, skinny man in black clothing entering her bedroom. R. 232, ll. 13-15. The man had a black ski mask covering his face and "mittens" on his hands. R. 232, ll. 13-15. He placed a silver gun to her head. R. 232, ll. 6-7; R. 232, ll. 16-19. After the man left her room, she heard more tussling and gunshots. R. 234, ll. 2-3. Shemeika Stokes, Simmons' girlfriend, awoke to the sounds of yelling and crashing. R. 483, ll. 14-17.[1] Then, the shooting began. R. 484, ll. 23-25. Stokes saw two men wearing ski masks. R. 485, ll. 15-23. In the bedroom, Simmons had a gun. R. 486, ll. 11-12. After Simmons was shot, Stokes got his gun and chased the men out of the house with it. R. 486, l. 9 - Tr. 403, l. 14. She was unsure how many people entered the house, but she knew there were at least two. R. 488, l. 24 – R. 489, l. 8. When the men left, either she or Moett closed the door. R. 489, ll. 18-19. Stokes called 911 and began administering CPR. R. 492, ll. 11-12; R. 492, ll. 23-24; State's Exhibit #318 (CD of 911 call).

Shortly thereafter, the police arrived, and Moett let them in. R. 239, ll. 20-22; R. 264, ll. 23-24. The police found the dead body of Curtis "Crime" Delaney in the yard. R. 261, ll. 23-23. The police also found the dead body of Simmons in his bedroom. R. 270, l. 13 – R. 271, l. 18. Both men died as a result of gunshot wounds. R. 455, ll. 17-19; R. 461, ll. 15-17.

Troy Mason arrived at Trident Medical Center before 6 a.m. on July 10, 2010, suffering from a gunshot wound. R. 294, ll. 1-5. When the police arrived to investigate, Mason lied,

[1] Stokes admitted that she tried to hide the gun she and Simmons used because she was on probation. R. 491, l. 13 – R. 492, l. 6.

claiming he was the victim of an armed robbery. R. 294, l. 21 – R. 295, l. 1; R. 299, ll. 4-22; R. 308, ll. 1-16. Mason's mother told police that Mason had been with his cousin, Mario Caldwell, when he returned home with the gunshot wound. R. 308, l. 21 – R. 309, l. 16.

The police arrested Mason on August 11, 2010 for the Simmons home invasion and murder. R. 352, ll. 16-17; R. 374, ll. 15-21. The police matched blood found at the scene to Mason. R. 889, ll. 13-18. He provided no information to police at that time. R. 327, ll. 3-4. In 2012, shortly before his scheduled trial, Mason told police that he was involved with the home invasion. R. 327, l. 19 – Tr. 244, l. 14. He explained that he and Caldwell went to Simmons' home where they met up with "Finger" and "Bez." R. 328, ll. 15-24. However, he denied shooting a gun or even having a gun. R. 330, ll. 1-3.

After learning of Caldwell's involvement from Mason, the police arrested Caldwell on August 3, 2012. R. 554, ll. 11-12; R. 608, ll. 7-10. Two years after his arrest, Caldwell negotiated a plea agreement with the state. He entered guilty pleas to voluntary manslaughter, attempted armed robbery and burglary first and faced a range of sentence between fifteen and forty-five years, instead of mandatory LWOP. R. 553, ll. 7 – R. 554, ll. 10. In exchange for this deal, Caldwell told the police that Appellant and Conyers were involved, and he agreed to testify against them R. 554, ll. 13-18.

One week before Appellant's trial, Mason changed his story yet again. R. 327, ll. 10-13. He had been charged with murder, assault and battery in the first degree, attempted armed robbery, and possession of a weapon during a crime of violence. R. 325, ll. 8-25. He was hoping his testimony against Appellant would work in his favor. R. 326, ll. 6-11. This version more closely resembled the story given by Caldwell. In this version, Mason met up with Caldwell on July 9, 2010. R. 331, ll. 14-16; R. 567, ll. 19-20. Caldwell was driving a rented

white Dodge Avenger. R. 332, ll. 6-7. The two drove to Charlotte, where they picked up Appellant, who was called "Finger." R. 334, ll. 3-5; R. 567, ll. 19-25. They also picked up Delaney from a second location in Charlotte. R. 334, ll. 11-12; R. 568, ll. 12-18. On the return trip to Charleston, the foursome stopped in Columbia, where they picked up Conyers, who was called "Bez." R. 336, ll. 10-21; R. 572, ll. 11-25. When they arrived in Charleston, they stopped at a house on Dorchester Road where they discussed committing a robbery. R. 338, ll. 10-20; R. 577, ll. 14-17; R. 582, ll. 14-15. There were two other men at the house who joined the conversation. R. 339, ll. 1-9.[2] According to Mason, he and Caldwell drove to Simmons' home where they met up with Appellant, Conyers, Delaney, and the two unnamed men. R. 341, ll. 2-20; R. 343, ll. 1-7. Caldwell's testimony differed only slightly – he claimed Delaney and Conyers were in the car with them and that the group stopped so that Caldwell could get a gun. R. 584, ll. 24-25; R. 585, ll. 12-16.

The group approached the home with "someone" kicking in the door. R. 343, ll. 15-18. In preparation for the home invasion, Caldwell put socks on his hands to eliminate evidence. R. 589, ll. 19-22. According to Caldwell, Delaney was the person who kicked in the door. R. 592, ll. 1-4. Caldwell also claimed that Delaney, Mason, Appellant and Conyers entered the home – in that order. R. 592, ll. 5-8. However, Mason claimed that Caldwell entered the home, followed by Mason. R. 343, ll. 19-20; R. 394, ll. 20-24. Caldwell actually denied ever entering the house. R. 592, ll. 14-15. Mason and Caldwell, however, agreed the shooting started shortly after the men entered. R. 343, ll. 21-23; R. 395, ll. 17-19. Mason placed Caldwell in Moett's bedroom. R. 344, ll. 19-12. Mason claimed he went toward Simmons' bedroom – the source of the shooting. R. 344, ll. 13-17; R. 397, ll. 8-15. When Mason approached the bedroom, he was

[2] Caldwell also claimed Appellant left with these two men, but returned later. R. 576, ll. 18-19; R. 580, ll. 9-11.

shot. R. 346, ll. 1-12; R. 399, ll. 2-18. He immediately returned fire, and then, fled the home. R. 346, ll. 7-10.

On his way out, Mason saw Conyers shooting the side of the house. R. 348, ll. 17-15; R. 401, ll. 1-10. However, Caldwell testified he saw one of the unknown men shooting at the house. R. 598, ll. 1-8. Mason returned to the Dodge Avenger where he waited for Caldwell. R. 349, ll. 7-12. Conyers got into the car as well. R. 349, ll. 13-15. Caldwell also said that Mason was the first to exit the house, but he claimed he helped Mason to the car. R. 593, ll. 7 – R. 594, ll. 3. Caldwell saw Delaney grabbing his chest as he exited the home. R. 596, ll. 16-24. He claimed Conyers grabbed Delaney's arm, but dropped him and left him in the yard to die. R. 597, ll. 1-10.

Mason claimed that when Caldwell arrived at the car, Mason insisted on being taken to his mother's home. R. 350, ll. 5-15; R. 599, ll. 22-24. Mason claimed that Caldwell concocted the armed robbery story during this interval, but Caldwell claimed Mason devised the tell himself and advised Caldwell of it later. R. 350, ll. 21-25; R. 604, ll. 13-23. Caldwell spoke to the police on July 14, 2010, and confirmed Mason's lies. R. 605, ll. 6-18.

On July 11, 2010, the police found the White Dodge Avenger fully engulfed in flames. R. 474, ll. 15-17. Caldwell had reported the car as stolen. R. 566, ll. 20-21. At trial, Caldwell admitted the car was burned at his direction. R. 566, ll. 6-8.

At trial, Caldwell claimed Appellant had two cell phones: 642-1025 and 926-0218. R. 563, ll. 5-8.[3] The state had no evidence against Appellant except the testimony of Caldwell and Mason, who lacked all credibility. As a result, the state turned to the cell phone records in an effort to buttress its case. Using the cell tower records, the state mapped the communications for

[3] Appellant admits there was no objection made when the cell phone records were introduced at trial. R. 563, ll. 99-12.

642-1025, and used that mapping to show where the phone was during relevant time periods on July 10, 2010. Additionally, the state used the cell phone records to show communications between 642-1025 and others allegedly involved in the home invasion. R. 1045, l. 21 - R. 1064, l. 13. Essentially, the cell phone records placed the phone going from Charlotte, through Columbia, into Charleston, and out to McClellanville, where Simmons lived, during the relevant time period. R. 1045, l. 21 - R.1064, l. 13. The phone records also showed the phone had returned to Charlotte by 10:18 a.m. on July 10, 2010. R. 1064, ll. 11-13. The phone records also showed numerous calls between 642-1025 and Caldwell during the relevant time frame. R. 1075, ll. 8-15.

ARGUMENT

The trial judge erred in admitting cell phone records of a phone purportedly owned by Appellant where it was undisputed that the officer, who obtained the search warrant, provided false information to the magistrate and no other information contained in the search warrant provided probable cause.

Relevant facts

Prior to trial, Appellant moved for a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978), and to suppress telephone records procured with a search warrant. R. 1261-1281. Judge Harrington convened a hearing on the motion on October 27, 2015. R. 1. The lead investigator on the case was Charles Lawrence, and he prepared the affidavit in support of the search warrant. R. 64-67.[4]

The search warrant used to obtain the cell phone records for number (843) 642-1025, a phone purportedly owned by Appellant provided a lengthy paragraph describing why Lawrence believed the phone records contained evidence of a crime. First, Lawrence described the evidence of the home invasion found by the police. R. 64-67. This included the finding of the bodies of Simmons and Delaney, and information provided by Simmons' girlfriend Stokes. R. 64-67. According to the information provided by Stokes, two men were responsible for the home invasion – or, at least, that was all that Simmons described. R. 64-67. Second, Lawrence revealed that the investigation uncovered that Mason was treated for gunshot wounds at a nearby hospital a couple of hours after the home invasion. R. 64-67. Lawrence omitted Mason's initial denial of any involvement in the Simmons' home invasion, and relayed only that Mason

[4] Charles Lawrence was no longer employed with the Charleston County Sheriff's Office at the time of the hearing because he lied to his superiors regarding an extramarital affair he had that compromised another case. R. 27, ll. *.

indicated he had been shot during the home invasion and transported to his mother's house by Caldwell. R. 64-67. Lawrence also stated that blood found at the scene matched blood found on Mason's clothing seized at the hospital. R. 64-67. Next, and without any explanation, Lawrence swore under oath that "Mason subsequently stated that the aforementioned number belonged to co-defendant Jeremiah Belton who was present and made several calls prior to and after the home invasion occurred." R. 64-67. In short, Lawrence swore that Mason told the police that the phone number belonged to Appellant. R. 7, ll. 4-13. Further, Lawrence swore that Mason said Appellant was present during the home invasion and made several calls prior to and after the home invasion occurred. R. 7, ll. 4-13.

The state agreed Lawrence's sworn affidavit contained false information because Mason never told the police what Lawrence claimed. R. 7, ll. 14-17; R. 29, ll. 13-22. Trial counsel argued that once the false information was removed from the search warrant, probable cause no longer existed. R. 8, ll. 17-21; R. 9, ll. 10-23.

According to Lawrence, the police interrogated Mason on April 24, 2012 and August 3, 2012. R. 15, ll. 1-11. However, Lawrence did not seek the search warrant for the phone records until September 13, 2013. R. 64-67. Lawrence claimed that when he drafted the search warrant affidavit, he believed Mason had provided Appellant's name in connection with the phone number, 843-642-1025. R. 17, ll. 8-17; R. 19, ll. 10-17.

Lorelle Proctor, a Charleston County Public Defender, represented Mason on his pending charges related to the home invasion. R. 37, ll. 11-13. She was present for his interrogations. R. 37, ll. 20-24. Proctor told the judge that she had revealed to Lawrence that the phone number was connected to Appellant. R. 42, ll. 3-14. According to Proctor, she was getting ready for Mason's upcoming trial prior to the August 3, 2012, interrogation. R. 39, ll. 14-25. In preparing

for trial, Proctor asked her investigator to conduct some reverse phone number searches for numbers in Mario Caldwell's phone records. R. 40, ll. 4-7. Her investigator provided a stack of information. R. 40, ll. 9-11; R. 77-84. During Mason's interrogation, Proctor told Lawrence that one number "kept coming up on Mario Caldwell's records" and the number appeared during the time right before and after the shooting. R. 42, ll. 3-14. Shortly before the hearing, Proctor learned from the state that there was a challenge to the search warrant due to Lawrence's false statement that Mason provided Appellant's name in connection with the phone number. R. 43, l. 15 – R. 44, l. 15. During this exchange, Proctor told Shealy that she had revealed this information during the interrogation, not Mason. R. 43, ll. 3-15.

At the conclusion of the hearing, Appellant argued the court should suppress the phone records secured by the state for 843-642-1025 due to the admittedly false statement made by Lawrence in the affidavit. There was no dispute that the search warrant affidavit contained false information. R. 48, ll. 6-10. Appellant argued Lawrence either intentionally placed the false information in the affidavit or he acted in reckless disregard for the truth when he did so. R. 45, ll. 1-7. Further, Appellant argued Proctor's testimony did not alter the fact that the only information contained in the affidavit relative to Appellant was false. R. 45, ll. 15-17. Removal of the false information rendered the search warrant invalid as it no longer provided probable cause to obtain the records. R. 45, ll. 17-19. Appellant explained nothing else in the search warrant affidavit related to Appellant or the phone number. R. 48, ll. 13-18.

The state argued Appellant had failed to show that Lawrence acted intentionally when he provided the false information or that he acted with reckless disregard for the truth. R. 44, ll. 8-9. According to the state, Proctor's testimony demonstrated that "there was discussion in the room about whose phone number, the number in question, was and that Jeremial Belton came

back as a subscriber." R. 44, ll. 13-19. This led to Lawrence's "mistake" in the affidavit. R. 44, ll. 20-24. Shealy argued "Lawrence could have believed that that was Troy's [*sic*] number, or mistakenly remembered that either way it was certainly not delivered through fault, nor was it reckless." R. 44, ll. 20-24. Later, Shealy argued that combining Proctor's testimony with Lawrence's testimony revealed that Lawrence did not act with reckless disregard for the truth. R. 46, l. 24 – R. 47, l. 1.

Further, the state argued any problems with the previously obtained search warrant were cured by a search warrant obtained by Detective Goldstein on September 10, 2015. R. 47, ll. 5-8; R. 77-84. According to Shealy, "[t]here is absolutely nothing inappropriate with getting another search warrant when you have a lingering legal issue in a case." R. 47, ll. 8-10. The state claimed the second search warrant affidavit was "independent of the facts that were in the search warrant in question." R. 47, ll. 10-12. She claimed the return for the first search warrant "did not give rise to the information" contained in the second search warrant affidavit. R. 47, ll. 12-14.[5]

Judge Harrington "[did] not find that there were allegations of deliberate falsehood or of reckless disregard for the truth." R. 49, ll. 10-12. According to the judge, the South Carolina appellate courts do "not require that they be perfect," especially considering "the officers that are writing these warrants are not legal technicians." R. 49, ll. 16-21. There simply "has to be a finding of probable cause." R. 49, ll. 18-19. She classified the officers preparing search warrant affidavits as "reasonably, hopefully prudent men and errors can be made." R. 49, ll. 21-22. In conclusion, she found probable cause and found no deliberate or reckless disregard for the truth. R. 49, l. 23 – R. 50, l. 1. As such, she denied the motion. R. 50, ll. 2-3.

[5] The state also argued Appellant had no reasonable expectation of privacy in the records because they were in the possession of a third party. R. 47, ll. 14-22.

Discussion

Appellant's right for his affects to be free from a search not based upon probable cause is rooted in the United States Constitution and the South Carolina Constitution. The Fourth Amendment to the United States Constitution provides for

> [t]he 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.

Additionally, the South Carolina Constitution provides similarly "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated" and for "no warrants [to] issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained." S.C. Const. Art. 1, § 10.

Thus, a search warrant must be based upon probable cause. "Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances to believe likewise." Wortman v. City of Spartanburg, 310 S.C. 1, 4, 425 S.E.2d 18, 20 (1992); see also State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996); Jones v. City of Columbia, 301 S.C. 62, 65, 389 S.E.2d 662, 663 (1990); Gist v. Berkeley County Sheriff's Dep't, 336 S.C. 611, 615, 521 S.E.2d 163, 165 (Ct. App. 1999). If the warrant affidavit is insufficient to establish probable cause, it may be supplemented by sworn oral testimony before the magistrate. State v. Crane, 296 S.C. 336, 338, 372 S.E.2d 587, 588 (1988); State v. Sachs, 264, S.C. 541, 216 S.E.2d 501 (1975). Evidence obtained in violation of the Fourth Amendment is inadmissible in both

state and federal court. State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001) (citing Weeks v. United States, 232 U.S. 383 (1914), Mapp v. Ohio, 367 U.S. 643 (1961), Wolf v. Colorado, 338 U.S. 25 (1949)).

In Franks v. Delaware, 438 U.S. 154, 171-172 (1978), the United States Supreme Court held that the Fourth and Fourteenth Amendments gave defendants the right to challenge the veracity of warrant affidavits after the warrants were issued and executed in certain circumstances, including where the affidavit omits necessary information. Our Supreme Court, applying Franks, found probable cause lacking in State v. Missouri, 337 S.C. 548, 524 S.E.2d 394 (1999). The Court found the officer acted recklessly in making a false statement and in omitting exculpatory information. Id. at 555, 524 S.E.2d at 397. The officer testified that although the affidavit contained the sentence indicating that an individual told a confidential informant that the individual had crack, the individual never said this. Additionally, the officer testified that he neglected to place in the affidavit that the informant had visited the individual's house and informed the officer that no crack was there and that the individual said he was not going to cook crack in his house because his wife was trying to go straight. Id. at 553, 524 S.E.2d at 396. The Court then examined the affidavit by excluding the false information and inserting the exculpatory information. Id. at 555, 524 S.E.2d at 397. The Court concluded that the affidavit failed to support a finding of probable cause to search the individual's house. Id.

The Court presumed that the Fourth Amendment did not require an affiant to include all potentially exculpatory information in the affidavit. However, the Court found the information omitted in Missouri's case went "to the very heart of the affidavit's purpose," which was to establish probable cause to search the individual's apartment for crack cocaine. The Court explained that the omitted information did more than create "some uncertainty," rather it created

"an affirmative hurdle which the remaining portions of the affidavit must overcome." Id. at 555-556, 524 S.E.2d at 397-398. Although finding the case presented a "close call on the probable cause determination," the Court held the combination of the officer's false statement and omission of critical facts "pollute[d] the affidavit to the extent that a magistrate could not have found that probable cause existed to issue the search warrant." Id. at 556, 524 S.E.2d at 398.

The trial judge erred in determining Lawrence did not intentionally include false information in the search warrant affidavit, or at a minimum, Lawrence acted recklessly. It was undisputed at the hearing and at trial that Mason had not provided Appellant's name or Appellant's phone number. The affidavit was simply false. The state's assertion that Lawrence was simply mistaken does not hold water. By all accounts, Mason did not, and could not, have provided the information Lawrence claimed he had. Omitting the false information from the affidavit reveals an affidavit devoid of any probable cause. Without the false statement, the affidavit contains no connection between the phone number and the crime or between Appellant and the crime. Proctor's testimony did not, and could not, assist the state. While Proctor may have told Lawrence that her investigation revealed the phone number was associated with Appellant, the affidavit failed to disclose this information to the magistrate. Rather, the affidavit claimed this information derived from a co-conspirator in the crimes. Proctor's investigation concerning the owner of the phone number – conducted using internet searches – could not satisfy the reliability requirements for search warrants. Finally, the subsequently obtained search warrant could not save the state's case as it used information obtained after the initial search warrant to establish probable cause.

The harm to Appellant as a result of the cell phone record evidence cannot be overstated. The only evidence against Appellant was that from the mouths of two co-defendants, who were

testifying to receive favor from the state. No physical evidence connected Appellant to the crime scene. The state's eyewitnesses – Moett and Stokes – indicated only two or three men were involved. Those men were clearly Caldwell, Mason, and Delaney. The state had its culprits, and the physical evidence aligned with those three culprits. Although Caldwell and Mason testified against Appellant, there testimony lacked all credibility in light of their admitted lies to police in the past, their criminal histories, and their acknowledged hopes for favor in exchange for their testimony. The state used the illegally obtained cell phone records to buttress its very weak case against Appellant. Those phone records showed a phone owned by Appellant travelling from Charlotte, through Columbia, to Charleston, and into McClellanville and returning to Charlotte during the relevant time period. The records also showed phone calls between the phone and others involved in the home invasion. As such, the damage of those records to Appellant was immeasurable.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial in light of the trial judge's erroneous admission of telephone records in light of the officer's use of false information in a search warrant to obtain the records.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of October, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEREMIAH FITZGERALD BELTON,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeremiah Fitzgerald Belton states:

1. She is an 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 pre-trial motions hearing, which was held on October 27, 2015, and his trial, which was held November 2-6, 2015. Judge Kristi Lea Harrington presided over both. In the opinion of undersigned counsel, the appeal is without legal merit sufficient to warrant a new trial.

3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Jeremiah Fitzgerald Belton.

Respectfully Submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

This 17th day of October, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPELLANT

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) Entire Motions Hearing Transcript dated October 27, 2015;
(2) Court's Exhibit #1 (Original Search Warrant);
(3) Court's Exhibit #2 (New Search Warrant);
(4) Court's Exhibit #3 (Phone records);
(5) Entire Trial Transcript dated November 2-6, 2015;
(6) Motion for Franks Hearing and Suppression;
(7) State's Exhibit #318 (CD);
(8) State's Exhibit #329 (phone records);
(9) State's Exhibit #333 (phone records);
(10) Court's Exhibit #8 (jury note);
(11) Court's Exhibit #9 (jury note);
(12) True-billed indictments (2014-GS-10-6481, -6482, -6483); and
(13) Sentence sheets (2014-GS-10-6481, -6482, -6483).

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

October 17, 2016.

Susan B. Hackett
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."

October 17, 2016.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
OCT 19 2016
SC Court of Appeals

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

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APPELLANT

CERTIFICATE OF SERVICE

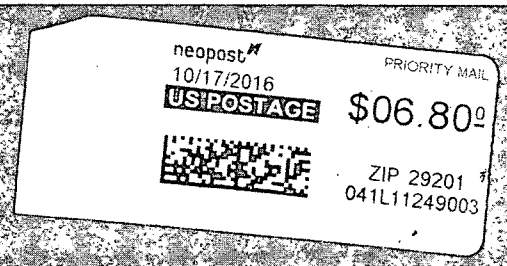
The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Jeremiah Fitzgerald Belton, 261628, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 17th day of October, 2016.

Susan B. Hackett

Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of October, 2016.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.



South Carolina Commission On Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
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