

The supreme Court of South Carolina
Daniel E. Shearouse, Clerk of Court
Post office Box 11330
Columbia, South Carolina 29211

IN RE: Dennis Temple v. State
Appellate Case NO. 2016-002254

Dear Mr. Shearouse:

Please find enclosed appellants Pro se
response regarding the above-captioned
case.

RECEIVED

AUG 21 2017

S.C. SUPREME COURT

Sincerely yours,

Dennis M Temple

Dennis M. Temple # 274802

Perry Corr. Inst

430 Oaklawn Road

Pelzer, South Carolina 29669

August 16, 2017

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO Oconee County
Honorable Edgar W. Dickson, Circuit Court Judge

Dennis M. Temple

PETITIONER,

V.

STATE OF SOUTH CAROLINA

RESPONDENT,

APPELLATE CASE NO. 2016-002254

PRO SE RESPONSE

DENNIS M. TEMPLE
PRO SE

Dennis M. Temple

Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

INDEX

INDEX	P. 1
ISSUE PRESENTED	P. 2
STATEMENT	P. 3
ARGUMENT	P. 6
FACTS	P. 6
Preliminary Hearing	P. 14
Legal Discussion	P. 16
Constitution	P. 16, 17.
SEARCH	P. 17
Standard of Review	P. 20
CONCLUSION	P. 24

ISSUE PRESENTED

Did the General sessions court have Jurisdiction to hear appellants criminal case? When the Magistrate Court never established it had probable cause to detain appellant on the arrest warrants.

STATEMENT

Appellant, Dennis Maurice Temple was convicted per jury trial of two Courts of first degree, criminal sexual conduct, grand larceny and kidnapping during the December 2010 term of the Oconee County General Session Court before Judge J. Cordell Maddox. Appellant appeared pro se at trial by force. Kurt Travernier appeared as stand-by counsel at trial. Appellant was sentenced to imprisonment for a period of one-hundred (100) years. see. STATE v. Dennis Temple, 2010-65-37-00886, 00887, 00888 and 00889.

Appellant timely filed a Notice of Appeal on all parties on December 2010. The South Carolina Commission on Indigent Defense was designated to initiate appellant's direct appeal to the South Carolina Court of Appeals. On August 1, 2012 Deputy Chief Appellate Defender, Wanda H. CARTER submitted a ANDERS BRIEF on Appellants behalf. On September 28, 2012 appellate counsel submitted

Anders Brief was filed in the South Carolina Court of Appeals.

On September 11, 2013 the South Carolina Court of Appeals issued a order dismissing appellant's Direct Appeal.

On October 15, 2013 appellant filed a Post-Conviction Relief (PCR) application in the Ten Judicial Circuit Court in Oconee County. Attorney, Hugh Welborn was appointed to represent appellant on October 31, 2013. A hearing was held on July 28, 2014 at the Oconee County Courthouse before Presiding JUDGE EDGAR H. DICKSON. On October 24, 2016 JUDGE DICKSON issued a order of dismissal on appellant's (PCR) application. Dennis M. Temple v. STATE OF SOUTH CAROLINA, civil Action No. 2013-CP-37-0729.

On August 2, 2017 Taylor D. Gilliam of the South Carolina Commission on Indigent Defense submitted a Johnson Petition for writ of Certiorari and a copy of Appendix on appellants behalf to the Supreme Court

of South Carolina.

On August 3, 2017 Daniel E. Shearouse, clerk of court for the Supreme Court of South Carolina notified appellant that he may file a pro se response within 45 days.

This pro se response follows.

ARGUMENT

Did the General Session Court have Jurisdiction to hear appellants criminal case. When the Magistrate Court never established it had probable cause to detain appellant on the arrest warrants.

FACTS

1. Appellant, Dennis M. Temple was a 38 Year old black male from Seneca, South Carolina. In 2009, appellant began a small business buying product at low prices and reselling them at higher prices. His business began to do well and he researched different storage facilities. Appellant selected All safe storage in Seneca, South Carolina because

of the security features it advertised and location. On March 22, 2010 appellant went into the All safe storage in Seneca, South Carolina and signed a contract to rent a storage unit.

2. On April 2010 a 19 year-old white female Clemson University student, named Catherine McGough rented a storage unit at the All Safe Storage in Seneca, South Carolina.

3. On May 10, 2010 the 19 year-old white female Clemson University student, named Catherine McGough alleged in her Seven (7) Page Sworn written statement to police at the Oconee Medical Center...

In conclusion that, "On May 9, 2010 she arrived at her storage unit at the All Safe Storage in Seneca, South Carolina at 4:30 P.M. when she noticed a black man between the age 20 to 40 walking on site without a car. She became nervous and he

tried to sell her some shoes, but she did not want to buy. He then beat her up, dragged her into his storage unit where he raped her, cleaned her out with a blue cloth and stole her car and left her inside his storage unit tied up. Ultimately, she freed herself and found a cell phone inside the storage unit. she then called 911 and a Oconee County Sheriff officer rescued her from the storage unit. Afterwards, she was taken to the Oconee County Medical Center. (APP. P. 789-795).

4. Later that day, On May 10, 2010 a Oconee County Sheriff's officer named Sergeant, Scott Arnold had magistrate Judge Blake Norton issued three (3) arrest warrants for appellants arrest for allegedly committing the crimes of criminal sexual conduct, first degree, Grand Larceny and Kidnapping at the All safe storage in Seneca, South Carolina.

5. On May 10, 2010 Sgt. Scott Arnold a Oconee County Sheriff officer Swears in his arrest warrant affidavit for criminal sexual conduct, first degree that the defendant (or appellant) Dennis Temple did commit the

crime set forth and that probable cause is based on the following, "Quote"

" The Defendant Did, on 05-09-10, while committing the crime of kidnapping engage in sexual Battery upon the victim, Catherine McCough, by performing sexual intercourse on the victim against her will. The Defendant Did, while at Unit 193, All safe storage, 600 Shiloh RD. Seneca, Sc in Oconee County force sexual intercourse with the victim, victim was Transported to Omc for examinations. Investigated by OCSO. (A written report. Photograph and statements are on file. case # 1012105. (APP. P. 796).

6. In addition, on May 10, 2010 Sgt. Scott Arnold Swears in his arrest warrant affidavit for Grand Larceny that there is probable cause to believe that the defendant (or appellant) Dennis Temple did commit the crime set forth and that probable cause is based on the following: "Quote"

"The Defendant did on 05-09-10 with intent to permanently Deprive the owner, TAKE and carry away a 2008 Honda accord, West Virginia TAG # NL3593, valued at more Than \$5,000.00 which belonged to Catherine McGough. This incident occurred at 600 Shiloh RD, Seneca, Sc in Boone County and was investigated by OCSO. A written Report is on file. case # 1012105. (APP. P. 797).

7. Lastly, On May 10, 2010 Sgt. Scott Arnold Swore in his arrest warrant affidavit for kidnapping that there is Probable cause to believe that the defendant, (or appellant) Dennis Temple did commit the crime set forth and that Probable cause is based on the following: "Quote"

"The Defendant Did on 05-09-10 unlawfully and without authority to do so, ABDUCT, confine and inveigle the victim, Catherine McGough against her will while accompanied by aggravated circumstances. This Defendant Did force the victim from her storage Unit. Unit 177. To his Personal storage Unit. Unit 193. where he committed the crime of criminal sexual conduct against the victim. The victim was Tied up

and left inside the Defendants storage unit.

This incident occurred at 600 Shiloh RD. Seneca, SC in Oconee County and was investigated by OCSO. (A written Report, Photographs and statements are on file, case # 1012105. (APP. P. 798)

8. On May 11, 2010 appellant was arrested by the Oconee County Sheriff's officer Captain Greg Reed (former Lieutenant Greg Reed) and Sergeant Jerry Moss for allegedly committing the crimes of kidnapping, criminal sexual conduct, first degree and Grand Larceny at the All safe storage in Seneca, South Carolina.

9. On May 12, 2010 appellant was taken before magistrate Judge Blake Norton, which he issued a \$ 200,000 bond against appellant to gain his freedom for the charges. (APP. P. 803 - 804.)

10. Appellant was unable to post bail on the \$ 200,000 bond and remained in the Oconee County Detention Center.

11. On May 20, 2010 a pretrial hearing was held at the Anderson County Courthouse regarding the state request for sexual transmitted diseases testing on appellant. (APP. P, 1-8)

12. On May 22, 2010 at the Oconee County Detention Center several nurses and Oconee County Sheriff officer took blood, head hairs and pubic hairs from the appellant.

13. On June 30, 2010 a Pretrial hearing was held at the Oconee County courthouse regarding the appellant's bond reduction and appointment of Counsel. (APP. P, 9-18).

14. On July 16, 2010 a Preliminary hearing was held at the Oconee County Courthouse regarding probable Cause to arrest appellant. (Courts "may properly take Judicial notice of matters of Public record"). see, Phillips v. Pitt cnty. mem. Hosp, 572 F.3d 176, 180 (4th cir. 2009). Colonial Penn. Ins. Co v. coil, 887 F.2d 1236, 1239 (4th cir. 1989).

15. On July 29, 2010 a Pretrial hearing was held at the Oconee County courthouse regarding the appellant's request to dismiss attorneys Sarah Drawdy and Keith Denny and Request to obtain Private Counsel. (APP. P. 19-29)

16. On September 7, 2010 appellant was allegedly indicted by the Grand Jury on two counts of criminal sexual conduct, first degree, kidnapping and Grand Larceny charges. (APP. P. 894 - 901).

17. On September 14, 2010 a Pretrial hearing was held at the Anderson county courthouse regarding the appointment of another counsel. (APP. P. 30-48).

18. On September 22, 2010 a Pretrial hearing was held at the Oconee County Court house regarding DNA testing pursuant to Schmerber. (APP. P. 49-74).

19. On October 21, 2010 a Pretrial hearing was held at the Anderson County courthouse regarding pro se representation and stand-by counsel. (APP. P. 75-106).

20. On December 7, 2010 a Pretrial hearing was held at the Anderson County Courthouse regarding Rape shield STATUTE motion and pro se Representation. (APP. P. 107-198).

21. On December 13, 2010 appellant was coerced by the trial Judge J. Cordell Maddox Jr. to proceed pro se in a Jury Trial at the Oconee County Courthouse. (APP. P. 258 1. 3 - P. 261 1. 22).

22. On December 15, 2010 a Partial Jury found appellant guilty on two counts of criminal sexual conduct, first degree, kidnapping and Grand Larceny charges. Judge Maddox sentenced appellant to 100 years in prison. (APP. P. 199-657).

PRELIMINARY HEARING

In a preliminary hearing, the state must show that there was "Probable cause" to arrest the defendant for the commission of some crime. Absent this showing, the charge must be dismissed. State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (S.C. 1982).

The defendant's right to request a preliminary hearing is provided solely by state statute. It is not required by either the state or Federal Constitution and is not necessary before a grand jury can indict a person for a crime. State v. Irby, 166 S.C. 430, 164 S.E. 912 (1932). South Carolina statutory law specifically provides that an accused may be brought to trial under indictment by a grand jury without a preliminary hearing in some cases. State v. Nesmith, 213 S.C. 60, 48 S.E. 2d 595 (1948). The indictment itself constitutes a finding of probable cause and thus avoids the need for a preliminary hearing. U.S. v. Werbrouck, 589 F.2d 273 (7th Cir. 1978) cert den. 400 U.S. 962, 99 S.Ct. 1507, 59 L.Ed. 2d 776.

Once the accused properly request a preliminary hearing, the magistrate's court retains jurisdiction and the Court of General Sessions is deprived of jurisdiction until such hearing is held. State v. Porcher, 273 S.C. 507, 257 S.E. 2d 505 (1979). No indictment may be true billed by the grand jury when the circuit court lack jurisdiction since the grand jury's jurisdiction of the court in which it is impaneled and for which it is to make inquiry. State v. Funderburk, 259 S.C. 256,

191 S.E.2d 520 (1972); State v. Wheeler, 259 S.C. 571, 193 S.E.2d 515 (1972); But, where the request for preliminary hearing was not properly made in the first place, then the circuit court, and grand jury, is not deprived of jurisdiction even though a preliminary hearing is granted after indictment. State v. Fortner, 266 S.C. 223, 222 S.E.2d 508 (1976).

LEGAL DISCUSSION

U.S. Constitution, 4th Amendment Search 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.

S.C. Constitution Article I, Section 10, Searches and seizures; invasions of privacy

The right of the people to be secure there persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy 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, the person or thing to be searched, the person or thing to be seized, and the information to be obtained.

THE SEARCH

The Constitutions of the United States and the state of South Carolina require that search warrants be "supported by oath or affirmation". U.S. Const. Amend. IV; S.C. Const. Art. I Section 10. This is a minimum standard and state legislatures are free to enact stricter requirements for the issuance of search warrants. State v. York, 250 S.C. 30, 156 S.E.2d 326 (1967).

The South Carolina General Assembly has enacted a requirement that search warrants may be issued "only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant." S.C. Code Ann. section 17-13-140 (1985). A search warrant that would survive constitutional scrutiny may still be defective under statute. State v. Mcknight, 289 S.C. 167, 337 S.E. 2d 208 (1987).

In addition, the statutory requirement that all proceedings before magistrates in criminal cases shall be commenced on information under oath plainly and substantially setting forth the offense charged, upon which and only which, shall a warrant of arrest issue", cannot be waived. Town of Honea Path v. Wright, 194 S.C. 461, 9 S.E. 2d 924 (S.C. 1940); S.C. Code Ann. § 22-3-710 (1976); Gist v. Berkeley county Sheriff's Department, 336 S.C. 611, 521 S.E. 2d 163 (1999). The purpose of the statute requiring that a warrant be issued only upon affidavit is to provide for timely recording of facts presented to a judicial officer. State v. Sachs, 264 S.C. 541, 216 S.E. 2d 501 (S.C. 1975). A warrant affidavit is "insufficient in itself to establish probable cause may be supplemented before a magistrate

by sworn oral testimony" State v. Crane, 296 S.C. 334, 372 S.E.2d 587 (1988). However, a warrant issued upon a statement of facts not sworn to is unconstitutional. State v. Wimbush, 9 S.C. 309 (1878).

An affidavit is a voluntary ex parte statement reduced to writing and sworn to or affirmed before some person legally authorized to administer an Oath in that an affidavit consists of a statement of fact which is sworn to as the truth. While an Oath is a Pledge, while a Sworn, oral statement may be sufficient to satisfy the constitutional requirement for Oath or affirmation, it does not satisfy the statutory requirement of an affidavit. State v. Knight, 289 S.C. 167, 337 S.E.2d 208 (1987).

South Carolina is one of the Jurisdictions allowing affidavit set out on information and belief. When the facts are set out on information and belief, the affiant is required to show the source of his knowledge. S.C. Code of Laws § 61-2-220 et seq. (1976); State v. York, 250 S.C. 30, 156 S.E.2d 326 (1967); State v. Hill, 245 S.C. 76, 138 S.E.2d 829 (1964); Illinois v. Gates, 402 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

STANDARD OF REVIEW

In determining the existence of probable cause "the task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place". Illinois v. Gates, 402 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed. 2d 527 (1983). For a magistrate to properly perform this function, the affidavit must contain adequate supporting facts about the underlying circumstances to show that probable cause exists. United States v. Weaver, 99 F.3d 1372, 1377 (6th Cir. 1996). A magistrate's findings are entitled to great deference and "the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed." Gates, 462 U.S. at 238, 103 S.Ct. 2317. Yet, "the court must . . . insist that the magistrate perform his neutral and detached function and not serve merely as a rubber stamp for police". Aguilar v. Texas, 378 U.S. 108, 111, 84 S.Ct. 1509, 12 L.Ed. 2d 723 (1964). A such "deference to the issuing magistrate . . . is not boundless". United States v. Leon, 468 U.S. 897, 914, 104 S.Ct. 3405, 82 L.Ed. 2d 677 (1984).

In this present case, the three arrest warrants affidavit by Sgt. Scott Arnold set forth no facts as to why Police believed Temple committed the crimes. state v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990); state v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (S.C. 2006); state v. Jenkins, 398 S.C. 215, 727 S.E.2d 761 (S.C. App. 2012). The Magistrate's "action cannot be a mere ratification of the bare conclusions of other," Illinois v. Gates; 462 U.S. at 239, 103 S.Ct. 2317 (1983); state v. Viard, 276 S.C. 147, 276 S.E.2d 531 (1981). The affidavits in this case lacks specificity and contains nothing more than conclusory statements. The affidavit must set forth particular facts and circumstances underlying the existence of Probable cause to allow the magistrate to make an independent evaluation of the matter." 367 S.C. at 50-51, 625 S.E.2d at 221 (citing Franks v. Delaware, 438 U.S. 154, 165, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978)). The affidavit in this case fails to meet the requirement of showing why Police believed Temple committed the crimes.

Sgt. Scott Arnold affidavits are not based on personal knowledge, but on information and belief. There is a statutory requirement that an affidavit on information and belief must set forth the source of affiant's information

is to the end that the magistrate may judicially weigh not only information, but the source thereof, in determining whether or not there is probable cause for the issuance of the warrant. See, S.C. Code of Laws § 61-2-220 et seq (1976). State v. York, 250 S.C. 30, 156 S.E.2d 326 (1967). State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (S.C. 1975); State v. Hill, 245 S.C. 76, 138 S.E.2d 829 (1964). Illinois v. Gates, 462 U.S. at 230, 103 S.Ct. 2317 (1983).

In this case, Sgt. Scott Arnold stated his source of his information and belief (or basis of knowledge) at the end of his affidavit statements in all three arrest warrants stating... "A written report, photographs and statements are on file." This may satisfy the source of information and belief requirement; however, the affidavit does not contain even a conclusory assertion that the information is reliable and that its source is credible. Illinois v. Gates, 462 U.S. at 238, 103 S.Ct. 2317 (1983) (stating the circumstances a magistrate must consider include the "veracity" of the persons supplying the information on which the warrant is based). "Without any information concerning the credibility of the informant and the reliability of his information, the inferences from the

facts which lead to the complaint will be drawn not by a neutral and detached magistrate, as the constitution requires, but instead, by a police officer engaged in the often competitive enterprise of ferreting out crime. . . . "State v. Johnson, 302 S.C. 243, 248, 395 S.E.2d 167 (1990). (citation and quotation marks omitted).

Moreover, when these arrest warrants were issued by the magistrate Judge Blake Norton on May 10, 2010 and at the time of Dennis Temple's arrest on May 11, 2010. The only "written Report, photographs and statement on file was the alleged victim's seven (7) page statement and a photo lineup of six blackmales; however, this sworn written statement by the alleged victim or the source of Sgt. Scott Arnold information and belief: (1) did not state that Dennis Temple was identified in the photo lineup as the assailant or blackman; (2) it did not connect any criminal activity to storage unit # 193; (3) it did not connect any criminal activity to Dennis Temple; (4) it did not connect Dennis Temple to storage unit # 193.

CONCLUSION

Therefore, the information that was included in Sgt. Scott Arnold's affidavits that was never mentioned in the statement by the alleged victim (or source of information) was misleading and false. In Young, the Court stated that, "A facially valid search warrant will be found to violate the Fourth Amendment if it contains false or misleading statements that are "necessary to the finding of probable cause". See. Wilkes v. Young, 28 F.3d 1362, 1365 (4th cir. 1994), cert. denied, 513 U.S. 1151 (1995) (quoting Franks v. Delaware, 438 U.S. 154, 156 (1978)).

Viewing these deficiencies together and considering the totality of the circumstances, we find that Sgt. Scott Arnold did not provide the magistrate Judge a substantial basis on which to find probable cause to believe Temple committed these crimes, and that Sgt. Scott Arnold committed perjury and the Magistrate Judge Blake Norton was not impartial. In addition, the General Sessions Court did not have jurisdiction over this case and the indictments were void.

For the foregoing reasons, Petitioner requests that the Court grant his pro se response by reversing the charges against him, and remand the case for a new trial.

August 16, 2017

Dennis M Temple
Dennis M Temple # 274802
Perry CORR. Inst
430 Oaklawn Road
Pelzer, South Carolina 29669