STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KELVIN JONES,

APPELLANT

APPELLATE CASE NO 2016-001835

Proposed Stipulation

The parties agree that the August 11, 2014, transcript of a motion to suppress heard by the Honorable Edgar Dickson is unavailable. As an alternative to a reconstruction hearing, the parties propose the following stipulation:

1. On April 19, 2011, Detective John C. Medlin of the Aiken Department of Public Safety requested from a magistrate a search warrant for a residence located at 462 Morgan Street NW, in Aiken, South Carolina.

2. The affidavit in support of the search warrant provides:

> Det. Sawyer received complaints of short-term traffic at 462 Morgan St NW that is consistent with the sale of narcotics. On April 18, 2011 Det. Medlin coordinated with Bill Martin, Solid Waste Supervisor with the Aiken Department of Public Works, to collect trash from 462 Morgan St NW. Mr. Martin did so on Monday, April 18, 2011, which is the normal trash collection day for that residence. Mr. Martin found the can and contents at the curb beside the driveway in a manner consistent with the trash being ready for collection. Mr. Martin brought the can and the contents to Det. Medlin at the ADPS headquarters. Det. Medlin and Det. Sawyer searched the contents of the can and found the following items: 1 – the burnt remains of a cigar that contained a green leafy material believed to be marijuana; 2- numerous twisted and torn baggies (indicating the packaging of marijuana for resale); 3 – empty cigar tube wrappers; 4 – cigars that had been torn open to remove the tobacco (a common tactic for smoking marijuana covertly;) 5 – mail addressed to 462 Morgan St. NW Aiken SC. Based on my experience and training, the items listed indicate the use and repackaging of narcotics for resale. Detective Royster, a certified marijuana analyst, tested the plant material found in the trash and confirmed it to be marijuana. This officer verily believes that probable cause exists as to the presence of narcotics at this residence. See Attachment B for photographs of the items found. (Exhibit #3 attached).

3. The affidavit was not supplemented with sworn verbal testimony.

4. On August 11, 2014, Appellant submitted a written motion and memorandum in support of motion to suppress. (Exhibit #1 attached).

5. The search warrant and affidavit in support of the search warrant were attached to the motion and memorandum. (Exhibit #2 attached).

6. Appellant argued that the affidavit did not establish probable cause to search the residence because it failed to demonstrate the reliability of Detective Sawyer's sources, failed to demonstrate how the referenced short term traffic was consistent with narcotics sales and failed to provide a time frame regarding the short term traffic so that the magistrate could determine if the complaints were current or stale.

7. Appellant additionally argued that the single trash pull did not establish probable cause to believe that criminal activity was occurring at the residence or that contraband would be found at the residence.

8. Finally, Appellant argued that the good faith exception to the warrant requirement did not apply.

9. In a written order signed on October 20, 2014, Judge Dickson denied the motion to suppress writing, "In this case, probable cause existed for the magistrate to issue the warrant. Although the reliability of the tipsters was never established, the officers corroborated the tip by finding twisted, torn baggies and the remnants of marijuana cigars in the trash. See State v. Rutledge 644 S.E.2d 789 (Ct.App. 2007)(Finding probable cause for a search warrant where a trash pull corroborated a tip)." (Exhibit #3 attached).

Exhibit #1

Exhibit #1

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF GENERAL SESSIONS FOR THE SECOND JUDICIAL CIRCUIT
State of South Carolina	)	
v.	)	**DEFENDANT'S MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS**
Kelvin Jones,	)	
Defendant	)	

MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS

Defendant, by and through his undersigned counsel of record, file this Motion to Suppress evidence seized in violation of the Fourth and Fourteenth Amendments. In this Motion, Defendant challenged the state's search warrant for 462 Morgan St NW, as the affidavit supporting the search warrant did not establish probable cause to believe that anyone at the premises was currently engaged in criminal activity or that any contraband would be found at said residence.

Statement of the Facts

On April 19, 2011, Detective John C. Medlin of the Aiken Department of Public Safety approached Judge McKinney, a recorder or magistrate in Aiken County, for a warrant authorizing a search of the at 462 Morgan Street NW, in Aiken, South Carolina. The residence was described as a split level home with red brick veneer, gray siding, black shutters, and a gray shingle roof. In a sworn affidavit, Detective Medlin reported to Judge McKinney the following:

> Det. Sawyer received complaints of short-term traffic at 462 Morgan St NW that is consistent with the sale of narcotics. On April 18, 2011 Det. Medlin coordinated with Bill Martin, Solid Waste Supervisor with the Aiken Department of Public Works, to collect trash from 462 Morgan St NW. Mr. Martin did no on Monday, April 18, 2011, which is the normal trash collection day for that residence. Mr. Martin found the can and contents at the curb beside the driveway in a manner consistent with the trash being ready for collection. Mr. Martin brought the can and the contents

> to Det. Medlin at the ADPS headquarters. Det. Medlin and Det. Sawyer searched the contents of the can and found the following items: 1-the burnt remains of a cigar that contained a green leafy material believed to be marijuana; 2-numerous twisted and torn baggies (indicating the packaging of marijuana for resale); 3-empty cigar tube wrappers; 4-cigars that had been torn open to remove the tobacco (a common tactic for smoking marijuana covertly;) 5-mail addressed to 462 Morgan St NW Aiken, SC. Based on my experience and training, the items listed indicate the use and repackaging of narcotics for resale. Detective Royster, a certified marijuana analyst, tested the plant material found in the trash and confirmed it to be marijuana. This officer verily believes that probable cause exists as to the presence of narcotics at this residence. See Attachment B for photographs of the items found.

(Affidavit and Warrant attached as Exh. A.) Based solely on the information contained in this Affidavit, Judge McKinney authorized a broad search warrant to allow for the search of 462 Morgan Street NW, Aiken SC for the following items:

> All illegal narcotics, to include but not limited to marijuana, cocaine, crack cocaine, methamphetamines, heroin, and ecstasy. All paraphernalia that may be used in the manufacturing, storage, use, or distributions of illegal narcotics. All monies in close proximity to illegal narcotics. Any documentation showing activity of drug use or distribution.

(Affidavit and Warrant attached as Ex. A.)

Discussion and Citation of Authority

Defendant's Motion to Suppress is based on the Fourth Amendment, which provides, in part:

> 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. . .

U.S. Const. amend. IV. The Fourth Amendment protects the reasonable expectation of privacy by prohibiting unreasonable searches and seizures. Rawlings v. Kentucky, 448 U.S. 98, 104,

100 S. Ct. 2556, 2561, 65 L. Ed. 2d 663 (1980). The search and seizure "golden rule" for any law enforcement officer is to obtain a search warrant before conducting any searches or seizures because a search or seizure conducted pursuant to a search warrant is deemed to be reasonable whereas a warrantless search or seizure is considered to be unreasonable under the Fourth Amendment unless a judicially recognized exception applies. Mincey v. Arizona, 437 U.S. 385, 390, 98 S. Ct. 2408, 2411, 57 L. Ed. 2d 290 (1978); Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576 (1967).

I. Defendant Has Standing to Challenge the Search Warrant.

Following the decisions of the United States Supreme Court, the South Carolina Supreme Court has definitively held that an overnight guest has a reasonable expectation of privacy, the legal prerequisite to confer standing on an individual. State v. Missouri, 361 S.C. 107, 603 S.E.2d 594 (2004) (citing Minnesota v. Olson, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990). Here, Detective Medlin (identified as Investigator Medline at the preliminary hearing) testified that Detective Sawyer had information that Defendant "either lived there [462 Morgan St NW] or spent lots of time there." (Transcript at 11.) This testimony is sufficient to establish a reasonable expectation of privacy, triggering Defendant's right to challenge the search warrant as unreasonable under the Fourth and Fourteenth Amendment.

II. Detective Medlin's Affidavit Is Deficient Because It Fails to Demonstrate the Reliability of Detective Sawyer's Sources.

All search warrants must (1) be based on facts that establish probable cause; (2) particularly describe the place to be searched; (3) particularly described the things to be seized; and

(4) be issued by a neutral and detached officer. The issuing magistrate must make a practical, common sense decision whether, given all circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in the place. Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527 (1983). Generally speaking, officers present the facts providing probable cause in an affidavit.

When an officer uses an affidavit citing an unnamed source or confidential informant, the officer must provide the magistrate the circumstances behind why the officer concludes that the confidential informant or unnamed source is worthy of belief. The Supreme Court explained that a magistrate's "practical, common sense decision whether probable cause exists" must include information based upon the "veracity" and the "basis of the knowledge" of persons supplying hearsay information. Gates, 462 U.S. at 238, 103 S. Ct. at 2332. In every case where a police officer relies on a confidential informant, he should allege the following: (1) the facts from which the informant concluded that the thing to be searched for is probably on the person or premises to be searched **and** the facts from which the officer concluded that (i) the informant is credible; or (ii) the information furnished by the informant is reliable. Gates, 462 U.S. at 231, 103 S. Ct. at 2328 (emphasis added). To demonstrate that an informant is reliable, an officer may present evidence that the informant has given reliable information in the past; that the informant is a private citizen known by the officer and the informant has a reputation for truthfulness; that the informer himself participated in criminal activity; or that the information is corroborated by another informant or by police surveillance.

In this case, Detective Medlin failed to identify any facts which show the basis for relying on the confidential statements made to Detective Sawyer sufficient to show a reasonable basis for relying on such statements. Detective Medlin offered no evidence from which the magistrate

could conclude that the anonymous complaints were reliable. Additionally, there is no indication as to whether the complainants stated that the short term traffic was consistent with the sale of narcotics or whether that simply was the conclusion of Detective Medlin. Thus, these alleged statements should be excised from the warrant affidavit in this Court's independent review to determine if probable cause existed.

Moreover, there was no time-frame regarding this short-term traffic for the magistrate to make a determination as to whether those complaints were current or stale. In order for an affidavit to support probable cause, "it must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time." State v. Winborne, 273 S.C. 62, 64, 254 S.E.2d 297, 298 (1979) (internal quotation marks omitted). "An affidavit which fails altogether to state the time of the occurrence of the facts alleged is insufficient." Id. The lack of any time frame for the alleged complaints of short term traffic, or the number and frequency of the short term traffic, renders this statement inadequate to be considered in the determination of probable cause.

III. The Search Warrant Fails to Establish Probable Cause to Believe that Criminal Activity Was Occurring at 462 Morgan St NW or that Contraband Was Located There at the Time the Search Warrant Was Signed.

A reviewing court's inquiry is whether the magistrate had a substantial basis to conclude that probable cause existed to issue a search warrant. United States v. Blackwood, 913 F.2d 139, 142 (4th Cir. 1990). To determine whether probable cause exists, a magistrate must make a practical determination, based upon the facts presented before him or her, whether "there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527 (1983); Robinson v. State, 407

S.C. 169, 190, n. 11, 754 S.E.2d 862, 873 (2014). The facts must "warrant a man of reasonable caution" to believe that evidence of a crime will be found for a magistrate to issue a search warrant. Texas v. Brown, 460 U.S. 730, 742, 103 S. Ct. 1535, 1543, 75 L. Ed. 2d 502 (1983); State v. Geer, 391 S.C. 179, 197, 705 s.E.2d 441, 450 (Ct. App. 2010).

The crucial element is not whether the target of a search warrant committed a crime, but whether it is reasonable under the facts presented to the magistrate that the items to be seized will be found in the place to be searched. Zurcher v. Stanford Daily, 436 U.S. 547, 556 & n. 6, 98 S. Ct. 1970, 1976-77 & n. 6, 56 L. Ed. 2d 525 (1978). In United States v. Anderson, 851 F.2d 727, 729 (4th Cir. 1988), *cert. denied,* the Court of Appeals adopted the rule that "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." Anderson, 851 F.2d at 729. In United States v. Lalor, this Court held that an affidavit that failed to describe any circumstances from which a magistrate could infer that evidence of drug crimes would be stored at defendant's residence failed for want of probable cause. United States v. Lalor, 996 F.2d 1578, 1582-83 (4th Cir. 1993), *cert denied,* 502 U.S. 833, 112 S. Ct. 111, 116 L. Ed. 2d 80 (1991).

Here, the only evidence that gave rise to the search warrant was discovered in a single trash pull from the trash collector on April 18, 2011, which revealed, as set forth in Detective Medlin's affidavit, the following:

> ...1-the burnt remains of a cigar that contained a green leafy material believed to be marijuana; 2-numerous twisted and torn baggies (indicating the packaging of marijuana for resale); 3-empty cigar tube wrappers; 4-cigars that had been torn open to remove the tobacco (a common tactic for smoking marijuana covertly;) 5-mail addressed to 462 Morgan St NW Aiken, SC.

(Affidavit and Warrant attached as Exh. A.) With respect to the "numerous twisted and torn

baggies, Detective Medlin fails to identify how many baggies were torn open that were likely used as a supply to smoke marijuana. Moreover, Detective Medlin fails to explain how a single incident of marijuana use on or before April 18, 2011 would indicate that there would be any additional contraband located at the residence at any time thereafter. In Raulerson v. State, 714 So.2d 536, 537 (Fl. App. 1998), the Florida Court of Appeals held that evidence from a single trash pull that found evidence that tested positive for cannabis, without other sufficient material facts, could not result in a fair probability to conclude that cannabis would be found in the home. Likewise, the evidence here is insufficient to conclude that there was a fair probability that marijuana, or any other substance outlined in the affidavit or warrant, would be found upon a search.[1] In Raulerson, the Florida Court of Appeals distinguished cases that involved multiple trash pulls and cases with additional reliable information regarding patterns of continuous drug activity, none of which exists here.

Likewise, the South Carolina Court of Appeals previously concluded that information regarding the names of the people involved in a crime and the specific location of the activity, could be sufficient to support reliability of an informant that could be used in conjunction with a trash pull to satisfy probable cause. State v. Rutledge, 373 S.C. 312, 317, 644 S.E.2d 789, 791 (Ct. App. 2007). Additionally, the Court of Appeals further allowed a search warrant to stand where the evidence consisted of an anonymous tip confirmed by evidence that the defendant lived at the address, defendant's prior marijuana convictions, and marijuana found in a trash pull. State v. Lecroy, 2011 WL 11735691, *1 (Ct. App. 2011). Again, Detective Medlin provided no supplemental information other than a one-time trash pull that exhibited evidence of marijuana use

[1] In his affidavit, Detective Medlin fails to explain how finding a mere trace of marijuana with other evidence consistent with marijuana use gave him or anyone sufficient facts to conclude that he might find cocaine, crack cocaine, methamphetamines, heroin, and ecstasy. In this regard, the warrant is overbroad.

on or before April 18, 2011. Such evidence is insufficient to support probable cause to search the residence, and all evidence recovered should be suppressed.

IV. The Good Faith Exception to the Warrant Requirement Does Not Apply.

The purpose of the exclusionary rule is to deter unreasonable searches and seizures by police and not to punish judges and magistrates. United States v. Leon, 468 U.S. 897, 917, 104 S. Ct. 3405, 3417, 82 L. Ed. 2d 677 (1984). In executing the warrant, an officer is permitted to reasonably rely on a judicial determination that the warrant is supported by probable cause. Leon, 468 U.S. at 923, 104 S. Ct. at 3421. This is the good-faith exception to the exclusionary rule which provides that evidence illegally seized due to an invalid search warrant will only be suppressed if "the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." Leon, 468 U.S. at 926, 104 S. Ct. at 3422. In State v. Johnson, 302 S.C. 243, 249, 395 S.E.2d 167, 170 (1990), the South Carolina Supreme Court interpreted Leon as precluding application of the good-faith exception when an affidavit fails to provide a magistrate with a substantial basis for finding probable cause. In State v. Weston, 329 S.C. 287, 292, 494 S.E.2d 801, 803-04, (1997), the South Carolina Supreme Court explained that "[s]uppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" Weston, 329 S.C. at 292, 494 S.E.2d 803-04 (quoting Leon, 468 U.S. at 923, 104 S.Ct. at 3421).

As demonstrated *supra*, Detective Medlin was reckless in preparing his affidavit because he provided no evidence of why Detective Sawyer's sources were reliable and because the only evidence he presented was from a one-time trash pull that indicated, at best, use of

marijuana which had taken place prior to trash collection. Detective Medlin offered no evidence to establish any likelihood that contraband would be present at the time he request the search warrant. In fact, this is basic legal knowledge needed by police officers in applying for a search warrant. Further, instead of vigorously scrutinizing the Detective Medlin's affidavit, Judge McKinney operated merely as a rubberstamp to law enforcement. This Court need only look at the actual search warrant to see that Judge McKinney authorized a search for not only marijuana for personal use, she also authorized a search for cocaine, crack cocaine, methamphetamines, heroin, and ecstasy. If Judge McKinney scrutinized the affidavit and warrant, she would have seen the affidavit and warrant as flawed and lacking in probable cause. Thus, the good faith exception in Leon does not apply to this case.

Conclusion

For the above reasons, the evidence seized and the statements made as a result of the defective warrant application and warrant should be suppressed. Defendant prays for an Order suppressing all evidence as fruit of the poisonous tree stemming from this unlawful search warrant.

RESPECTFULLY SUBMITTED, this 11th day of August, 2014.

Columbia, South Carolina

J. Preston Strom, Jr.
Mario A. Pacella
Bakari T. Sellers
Alexandra M. Benevento
STROM LAW FIRM, LLC
2110 Beltline Boulevard
Columbia, South Carolina 29204
(803) 252-4800
ATTORNEYS FOR DEFENDANT

Exhibit #2

STATE OF SOUTH CAROLINA

County of Aiken

SEARCH WARRANT

Date April 18, 2011

Officer Det. John C. Medlin

ORIGINAL

Exhibit #2

STATE OF SOUTH CAROLINA
COUNTY OF Aiken } **AFFIDAVIT**

Personally appeared before me, Detective John C. Medlin
one
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

All illegal narcotics, to include but not limited to marijuana, cocaine, crack cocaine, methamphetamines, heroin, and ecstasy. All paraphernalia that may be used in the manufacturing, storage, use, or distribution of illegal narcotics. All monies in close proximity to illegal narcotics. Any documentation showing activity of drug use or distribution.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

The location to be searched is a site-built, single-family dwelling with red brick veneer. The residence is a split-level home with a garage on the first floor on the southern end of the residence. It has gray siding, black shutters, and a gray shingle roof. The residence is located at 462 Morgan St NW Aiken, SC and has the numbers "62" affixed to the wall to the right of the front door. The scope of the search is also to include all sheds, outbuildings, and vehicles located on the property. See Attachment A for photographs of the residence.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Det. Sawyer received complaints of short-term traffic at 462 Morgan St NW that is consistent with the sale of narcotics. On April 18, 2011 Det. Medlin coordinated with Bill Martin, Solid Waste Supervisor with the Aiken Department of Public Works, to collect the trash from 462 Morgan St NW. Mr. Martin did so on Monday, April 18, 2011 which is the normal trash collection day for that residence. Mr. Martin found the can and contents at the curb beside the driveway in a manner consistent with the trash being ready for collection. Mr. Martin brought the can and contents to Det. Medlin at ADPS headquarters. Det. Medlin and Det. Sawyer searched the contents of the can and found the following items: 1- the burnt remains of a cigar that contained a green leafy material believed to be marijuana; 2- numerous twisted and torn baggies (indicating the packaging of marijuana for resale); 3- empty cigar tube wrappers; 4- cigars that had been torn open to remove the tobacco (a common tactic for smoking marijuana covertly); 5- mail addressed to 462 Morgan St NW Aiken, SC. Based on my experience and training, the items listed indicate the use and repackaging of narcotics for resale. Detective Royster, a certified marijuana analyst, tested the plant material found in the trash and confirmed it to be marijuana. This officer verily believes that probable cause exists as to the presence of narcotics at this residence. See Attachment B for photographs of the items found.

Sworn to and Subscribed before me
this 19th day of Apr, 20 11.
Capt D McKinney (L.S.)
Signature of Judge

}

Affiant

Address 251 Laurens St NW Aiken, SC 29801

Phone 803 642-7620

STATE OF SOUTH CAROLINA
COUNTY OF Aiken

Search Warrant

Form approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

ORIGINAL

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF

Aiken County

It Appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The location to be searched is a site-built, single-family dwelling with red brick veneer. The residence is a split-level home with a garage on the first floor on the southern end of the residence. It has gray siding, black shutters, and a gray shingle roof. The residence is located at 462 Morgan St NW Aiken, SC and has the numbers "62" affixed to the wall to the right of the front door. The scope of the search is also to include all sheds, outbuildings, and vehicles located on the property. See Attachment A for photographs of the residence.

Now, therefore, you are hereby authorized to search the subject premises described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

All illegal narcotics, to include but not limited to marijuana, cocaine, crack cocaine, methamphetamines, heroin, and ecstasy. All paraphernalia that may be used in the manufacturing, storage, use, or distribution of illegal narcotics. All monies in close proximity to illegal narcotics. Any documentation showing activity of drug use or distribution.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to Judge C. McKinney within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

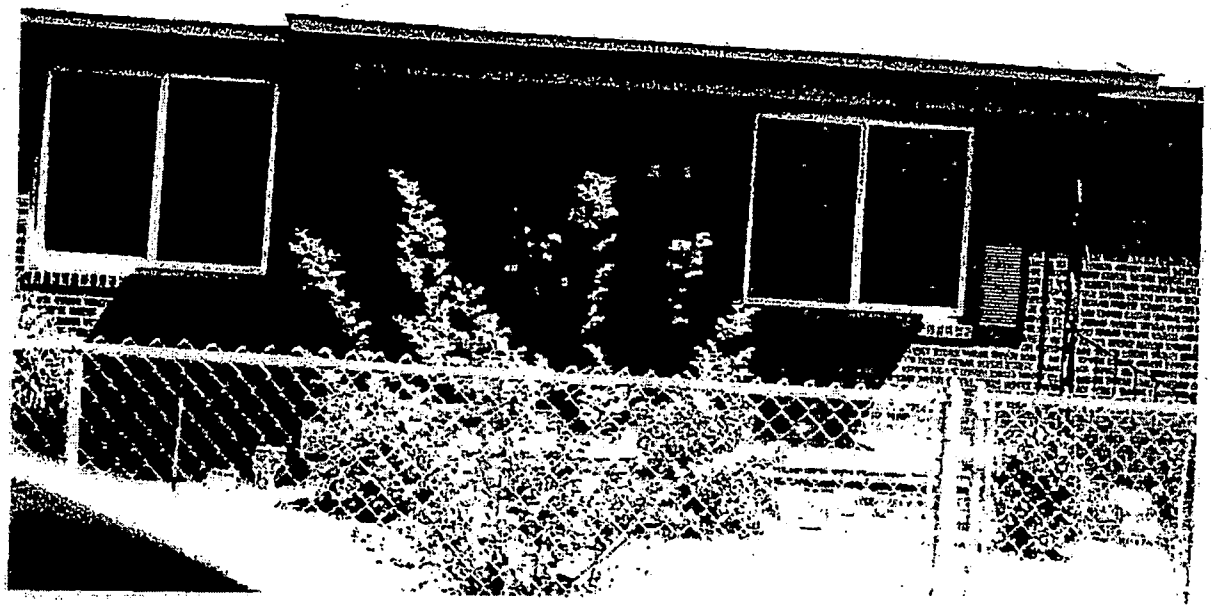
A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such persona as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Aiken, S.C.
April 19, 20 11

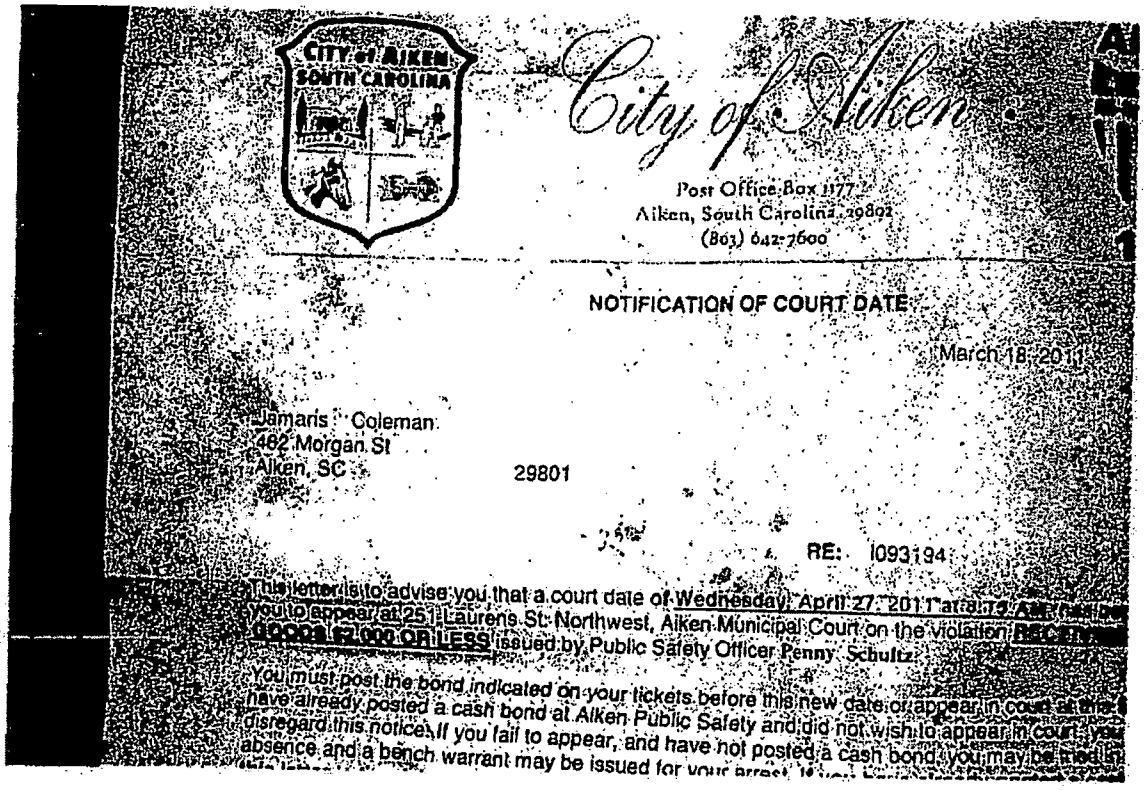
Capt D McKinney (L.S.)
Signature of Judge

SCCA/513
(3-78)

Attachment A



Attachment B



City of Aiken

Post Office Box 1177
Aiken, South Carolina 29802
(803) 642-7600

NOTIFICATION OF COURT DATE

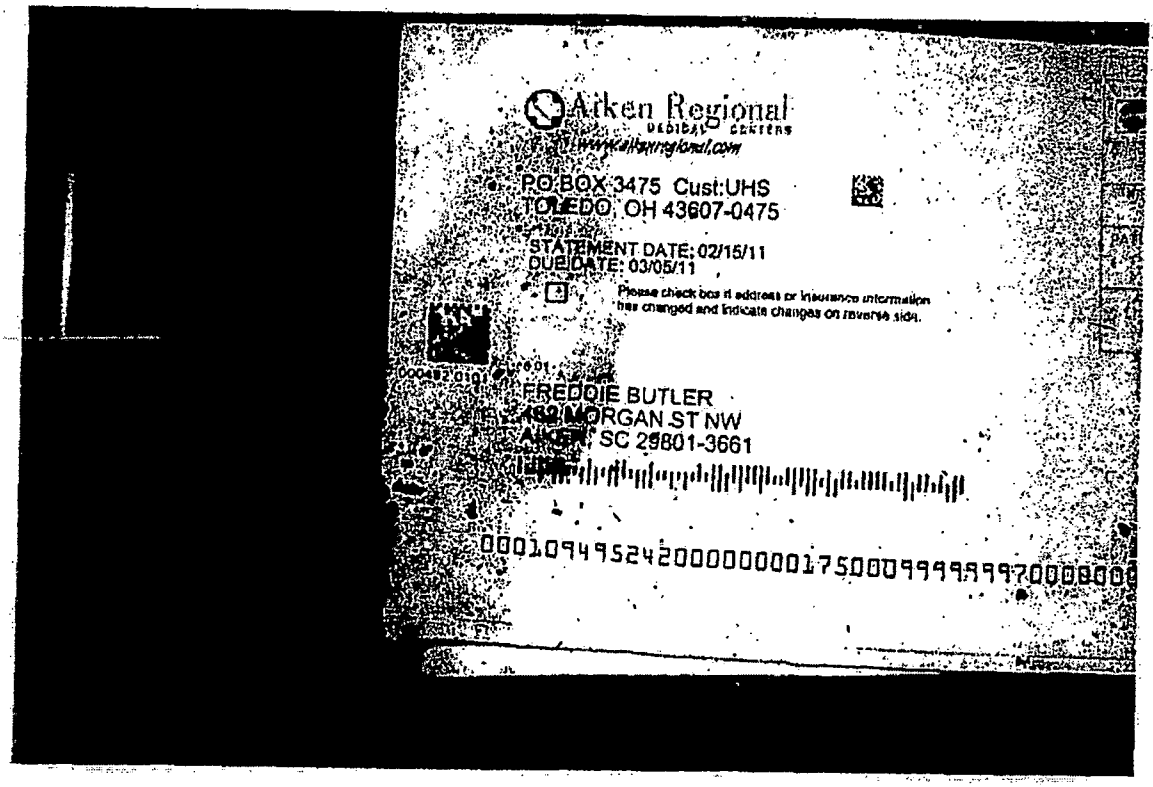
March 18, 2011

Jamaris Coleman
482 Morgan St
Aiken, SC 29801

RE: I093194

This letter is to advise you that a court date of Wednesday, April 27, 2011 at 9:15 AM has been set for you to appear at 251 Laurens St. Northwest, Aiken Municipal Court on the violation REFUSAL TO SIGN $1,000 OR LESS issued by Public Safety Officer Penny Schultz.

You must post the bond indicated on your tickets before this new date or appear in court at the time. If you have already posted a cash bond at Aiken Public Safety and did not wish to appear in court, you may disregard this notice. If you fail to appear, and have not posted a cash bond, you may be found in absence and a bench warrant may be issued for your arrest.



Aiken Regional
MEDICAL CENTERS
www.aikenregional.com

PO BOX 3475 Cust:UHS
TOLEDO, OH 43607-0475

STATEMENT DATE: 02/15/11
DUE DATE: 03/05/11

Please check box if address or insurance information has changed and indicate changes on reverse side.

FREDDIE BUTLER
482 MORGAN ST NW
AIKEN, SC 29801-3661

00010949524200000000175000999999970000000


WHITE GARE
CIGARILLOS
FRESH

Exhibit #3

Exhibit #3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Indictment Nos.: 2014-GS-02-01182
	)	2012-GS-02-00133
v.	)	2012-GS-02-00134
	)	
Kelvin Jones,	)	
	)	
Defendant.	)	**ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**
	)	

The Defendant moved to suppress evidence seized pursuant to the execution of a search warrant at a home in Aiken on April 21, 2011. This Court held a pre-trial suppression hearing on August 11, 2014. At the hearing, the Defense argued that the magistrate lacked probable cause to issue the warrant. After considering the evidence and legal arguments presented to the Court, the Defendant's Motion to Suppress is denied for reasons stated below.

FINDINGS OF FACT

In April 2011 narcotics officers with the Aiken Department of Public Safety received tips of short term traffic at 462 Morgan St. Northwest. Acting on these tips, the officers conducted a "trash pull" at the house on April 18, 2011. The trash collector picked up the trash from the curb as usual at the normal time of collection and gave it to the officers to inspect. The officers found torn and twisted baggies, remains of a suspected marijuana cigar, and mail addressed to the home. Later that day, a marijuana analyst confirmed that the cigar did in fact contain marijuana.

After confirming the presence of marijuana, one of the officers, Detective John Medlin, requested a search warrant from a magistrate on April 19, 2011. The affidavit in support of the warrant reads:

> Det. Sawyer received complaints of short-term traffic at 462 Morgan St. NW that is consistent with the sale of narcotics. On April 18, 2011 Det. Medlin coordinated with Bill Martin, Solid Waste Supervisor with the Aiken Department of Public Works, to collect the trash from 462 Morgan St NW. Mr. Martin did so on Monday, April 18, 2011 which is the normal trash collection day for that residence. Mr. Martin found the can and contents at the curb beside the driveway in a manner consistent with the trash being ready for collection. Mr. Martin brought the can and contents to Det. Medlin at ADPS headquarters. Det. Medlin and Det. Sawyer searched the contents of the can and found the following items: 1- the burnt remains of a cigar that contained a green leafy material believed to be marijuana; 2- numerous twisted and torn baggies (indicating the packaging of marijuana for resale); 3- empty cigar tube wrappers; 4- cigars that had been torn open to remove the tobacco (a common tactic for smoking marijuana covertly); 5- mail addressed to 462 Morgan St NW Aiken, SC. Based on my experience and training, the items listed indicate the use and repackaging of narcotics for resale. Detective Royster, a certified marijuana analyst, tested the plant material found in the trash and confirmed it to be marijuana. This officer verily believes that probable cause exists as to the presence of narcotics at this residence. See Attachment B for photographs of the items found.

Detective Medlin did not supplement the affidavit with sworn verbal testimony.

Finding probable cause existed, the magistrate authorized the search warrant. Law enforcement officers executed the search warrant two days later on April 21, 2011 and found a large amount of cocaine and several ecstasy pills.

RULINGS OF LAW

"The task of a magistrate when determining whether to issue a warrant is to make a practical, common sense decision as to whether, under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place." State v. Philpot, 454 S.E.2d 905 (Ct. App. 1995). In this case, probable cause existed for the magistrate to issue the warrant. Although the reliability of the tipsters was never established, the officers corroborated the tip by finding twisted, torn baggies and the remnants of marijuana cigars in the trash. See State v. Rutledge, 644 S.E.2d 789 (Ct. App. 2007)(Finding

probable cause for a search warrant where a trash pull corroborated a tip). Therefore, probable cause existed for the magistrate to issue the warrant.

ORDER

For the reasons stated above, the Defendant's Motion to Suppress is hereby respectfully **DENIED.**

AND IT IS SO ORDERED.

~~The Honorable~~ Edgar W. Dickson
Presiding Judge
Court of General Sessions

Aiken, South Carolina,
10/20, 2014.

SCCID
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October 19, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Jackson, South Carolina 29831

Re: State v. Kelvin Jones
Appellate Case No. 2016-001835

Dear Ms. Kitchings:

The above case has been held in abeyance since February 28, 2017, when counsel discovered the she did not have the transcript from a motion to suppress held on August 11, 2014. On April 26, 2017, the court reporter advised counsel that the transcript from the motion to suppress held on August 11, 2014, was unavailable. Counsel for appellant and counsel for respondent reached an agreement, in the form of a proposed stipulation, to the substance of the motion to suppress that, in the opinion of counsel, adequately addressed the issue for purpose of the direct appeal without the need for a reconstruction hearing. The judge who heard the motion to suppress, the Honorable Edgar W. Dickson, reviewed the proposed stipulation and agreed that the proposed stipulation accurately reflected the facts presented during the hearing. Although the parties had reached the agreement, on September 15, 2017, I asked the Court to continue to hold the case in abeyance as it appeared the court reporter would be able to provide the missing transcript. Upon further review, the transcript is still unavailable.

I have attached a copy of the proposed stipulation and ask the Court to allow the stipulation to take the place of the missing transcript in the record on appeal without requiring a remand for a reconstruction hearing. If the proposal meets with the Court's approval, counsel additionally requests that the Court take the case out of abeyance and set the filing date for the initial brief and designation for November 19, 2017. If you have any question or concerns, please do not hesitate to contact me. Thank you for allowing me to bring this to your attention.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH:lms

Encl.

cc: Honorable Edgar W. Dickson
Benjamin Aplin, Esquire
Desiree Allen, South Carolina Court Administration
Kelvin Jones