

Exhibit

SEARCH WARRANT

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# 2

Also DIRECT VERDICT

The Attorney General is attempting to "characterize"<sup>H</sup>

*Informant*

the ~~person in the blue car~~ ~~Informant~~ as the person in the [blue car], as a "Incustody Informant" when being detained; who made a written statement against his penal-interest ... (See State v. Adolphe, 314 S.C. 89, 441 S.E.2d 832 (1994)(It is apparent the "Affiant" has no knowledge of Donnell's reliability because Donnell was taken into custody only a short time before the warrant was issued)).

As in this present case; Adolphe is applicable to this this current circumstance. The same facts can be applied to the probable cause determination in the Search Warrant which both these cases demonstrate considerable simulation. The similarities of these two cases is the ~~person~~ <sup>Informant</sup> was taken into custody a short period prior to the making of the statement, (See Trial Tr.p. 34), this is evident by the Affiant, Detective Ratliffe had no knowledge of the person in the blue-car and as to the ~~person's~~ <sup>Informant's</sup> reliability. See Gary v. State, 262 Ga. 573, 422 S.E.2d 426 (1992)(It applied a totality of circumstances analysis and concluded that the magistrate did not have a substantial basis for concluding that probable cause existed because none of the facts that formed the basis for the Affiant's belief that the informant was being "truthfull" were ever revealed to the magistrate); Adolphe, (Finding the Good-Faith exception was inappropriate because the Affidavit did not contain any information regarding the reliability of the informant); United States v. Cruz Jimenez, 894 F.2d 1, 3 (1st Cir. 1990)(Informant, [searched first], had cocaine when she exited defendants motel room, that plus what police overheard from recorder she wore during the transaction, confirmed that she obtained drugs from defendant); Unites State v. Dukes, 758 F.3d 932 (2014)(when probable cause depends on information supplied by an Informant, the core question is whether the Informant is reliable ...); United States v. O'Dell, 766 F.3d 870 fn. 7 (2014)(Information in

Search Warrant Affidavit may be sufficiently reliable to support a probable cause finding and issuance of a Search Warrant if the person supplying the information has a track record of supplying reliable information, or if its corroboration by independent evidence ...); State v. Gentile, 373 S.C. 506, 513, 646 S.E.2d 171, 174 (Ct.App. 2007)("The Affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause").

As is apparent in this case, Detective Ratliffe provided oral-supplemental purported facts, and in so doing this oral-supplemental fact mission failed to offer the reliability of the Informant, as in this case, the person in the blue-car who's statement and information were presented to the issuing magistrate. Furthermore, the four-corners of the "Affidavit" were left void of the Informant's reliability. Therefore, the officers purported oral-supplemental facts pertaining to the reliability of the Informant in securing this Search Warrant was fatally flawed. Yet the State would fall short of its burden in which probable cause would exist. As is evident by the officers statement that Affiant only saw or observed what appeared to be a hand to hand transaction, and could not distinguish or independently verify what was being exchanged. Since the officers were half a "football field" away in a fixed location, and there was no evidence of video surveillance within the range of the Informant's car, the person who got pulled over and the drugs were found on. Who shifted the burden and alleged he just purchased drugs from "Blow". So, instead of being arrested, he made a written statement against his penal-interest alleging himself being involved in a drug transaction. Nor was there any proof the Informant was telling the truth to these officers, nor as presented to the magistrate. Neither the driver nor his vehicle were searched prior to going or coming to this

Appellant's residence. Gentile, supra.

Furthermore, the police "did not actually see a drug-transaction," and had no reasonable suspicion to stop the person leaving the residence where there was even an insufficient amount of speculation that a drug transaction had occurred. United States v. Black, 104 F.Supp.3d 997 (2015); State v. Flower, 322 S.C. 263, 471 S.E.2d 706 (App.Ct. 1996)(Granted motion to suppress Judge Dennis, Charleston, appeal courts affirmed the trial courts decision). As was the issue in Flowers, the officer did not see the drug transaction and had no reason to stop the person leaving a known drug house, ruled unconstitutional stop).

As is evident in this present case, the same fact should be applied as in Flower and Black where the officers, by their own admissions stated they only saw what appeared to be a hand to hand transaction from about 50 yards away.

- PENAL INTEREST -

As in the case at bar ... the person in the blue-car, who was pulled over and drugs were found in his possession had reason to lie and was not proven nor established to be credible; was promised a deal in order to not be arrested and charged; therefore, he made a statement against his penal-interests by shifting the burden to this Appellant; whose written statement the officer used as an instrument and a key factor in procuring

the Search Warrant. And all the while this statement was against the Informants penal interests, thus the Court has held that tips made to curry favor with police, although they do not eliminate the residual risk approbium of having admitted criminal conduct, they certainly make the declaration "less reliable". United States v. Martin, 615 F.2d 318, 326 (5th Cir. 1980); State v. Thompson, 413 S.C. 590, 776 S.E.2d 423 (2015)(An Affidavit supplying information included in a Search Warrant application may be considered reliable if he possesses a "special relationship" and capacity to gain knowledge that should prompt belief in a voracity of his information ...); State v. Sheppard, 122 OhioApp.2d 358, 7012 N.E.2d 778 (information provided by Informant who is privy there solely because he is himself implicated in criminal activity may be relied upon as a basis for investigative detention only if the totality of circumstances demonstrates that he is reliable of his information concerning criminal conduct was corroborated through independent police work).

As relative to the facts in the case at bar ... there was no independent police work or corroboration; neither any verification of a drug transaction really occurring. Since these officers were so far away, approximately 50 yards, and only saw what appeared to be a drug transaction; with only speculation to go on, and the Informants statement; and who is unknown and their credibility is at issue, these officers were suppose to conduct independent police work by going back and conducting a controlled buy at the residence to corroborate the facts of the Informant's statement of an alleged transaction.

The Search Warrant Affidavit and testimony of the officers at the Suppressions Hearing lacked probable cause as evidence the "record" implicates the officer was [50 yards away] (that is the equivalent of 300 feet) during the purported surveillance and could not identify or see anything being exchanged; therefore, the officer lacked personal knowledge to support his "speculation" of an alleged illegal transaction, and furthermore, did not meet the burden of proof for the trial court to make a proper determination as to the probable cause issue. United States v. Johnson, 726 F.2d 1018, 1021 (4th Cir. 1984)(magistrate can take judicial notice of distances; the record contains no evidence concerning the distance. In short, the magistrate was given no basis for making a judgment concerning this aspect of probable cause).

The Attorney General has relied upon the case of State v. Jenkins, 790 So.2d 626, 627 fn. 1 (La. 2001)(Officers observation of a suspected drug buy involving a woman leaving targeted residence after conducting hand to hand exchange of money for an object along with seizure from the woman a plastic bag filled with vegetable matter, which was packaged commonly associated with marijuana trafficking provided probable cause to issue Search Warrant for residence).

As relates to the case at bar, Jenkins is distinguishable because the officers in Jenkins actually observed and had independent verification of money being exchanged for an object believed to be drugs, i.e., marijuana, which was identified as a "vegetable matter", commonly identified as marijuana related. The factual distinction of this case and Jenkins is obvious. The case at bar involves the fact that the

officers were such a great distance away that they could not identify if any thing, or what could have been passed as drugs, money or anything at all. This factual basis separates the Attorney General's position because there is no substantial means of relating this incident to the elements of a buy. There was no way then, and now, that would cause some form of corroboration of facts that would connect the two cases.

The Attorney General has further relied upon the case of United States v. Harris, 403 U.S. 573, 583-84 (1972). In Harris the Search Warrant Affidavit on its face contained information from the "Affiant", an "Unnamed informant" in fear of his life, who stated he purchased whisky within the Harris's residence for a period of over two years; and within the past two weeks; accompanied with the officers knowledge of the Harris provided a sufficient factual basis for credibility for the Unnamed Informant which the magistrate could reasonably relief upon to issue the Search Warrant.

In the case at bar, officer Ratliffe was the individual who prepared the Affidavit for the Search Warrant and never mentioned the fact of anyone ever overseeing drugs on the premises or the purchase of drugs within the Rowland residence. So along with the Affiant's oral-supplement testimony pertaining to his history of the defendant would still fall short of the facts which were corroborated in Harris on the fact of the Affidavit. This makes this case distinguishable from Harris by more than a mere margin.

The Attorney General has relied on Illinois v. Gates, 462 U.S. 213. the factual basis of Gates is that, in Gates there was an "anonymous tip" in a handwritten letter mailed to the Roomingdale Police Department indicating Lance and his wife, Susan Gates, were making their living selling drugs. This include making trips to Florida to make their supply buys. Susan would

drive the car to Florida where she would load up with drugs. Then Lance would fly a plane down and drives the car back up loaded down with drugs. they would have over \$100,000.00 worth of drugs in their basement; and would brag about never having to work by making their entire living as pushers. The Chief of Police pursued the tip that was supplied by a CI whose examination of certain financial record revealed more recent address for the Gates; and he learned from police officers assigned to O'Hare Airport that "L. Gates" had made a reservation on Eastern Airlines Flight 245 to West Palm Beach Florida. Officer Mader and D.E.A. Agent corroborated this by surveilling Gates boarding the flight; and Federal Agents observed him arrive in West Palm Beach and taking a taxi to a nearby Holiday Inn, to a room that was registered to his wife, Susan Gates.

At 7:00am the next morning, Gates and an unidentified woman left the Motel in a Mercury automobile bearing Illinois license plates, driving Northbound on the Interstate to the Chicago area. In addition, the DEA Agent informed Mader that the two license plate numbers on the Mercury were registered to a Hornet Station Wagon owned by Gates. That Agent also advised Mader that the driving time between West Palm Beach and Bloomigdale was approximately 22 to 24 hours. Mader was the officer who signed the Affidavit setting forth the following facts and submitted it to a Circuit Court in Dupage County, together with a copy of the anonymous letter and the Judge issued a Search Warrant for the Gates residence and for their automobile ...

As relates to the facts in the case at bar; Gates can be distinguished from this case where it was evident the Court in Dupage County, together with a copy of the anonymous letter and the Judge issued a Search Warrant for the Gates residence and for their automobile ...

As relates to the facts in the case at bar; Gates can be distinguished from this case where it was evident the Court in Gates dealt with an "anonymous" tip in a letter from an unidentified person who has no reason to lie or liability to arrest. In Rowland, the case dealt with a person who scrutiny to arrest for drugs found on him giving him reason to lie; as in Gates, the officer then pursued the tip and conducted an independent investigation of police work by following up on the anonymous tip and conducting surveillance by confirming the alleged car tips and plane flights by the Gates; proving the anonymous tip, the letter, to be "truthfull" and reliable; and in addition to the officers independent police work corroborated the facts alleged in the anonymous letter; the tip that was in the Affidavit presented to the magistrate. Also, another key element to the probable cause in Gates is the anonymous letter. In Gates there was a verification from the Informant of drugs actually being seen and stored at the Gates residence in their basement. *As* in the Rowland case it is distinguishable from Gates where there is no mention of any one ever seeing drugs on the premises, or within the residence. And by the officers only seeing what appeared to be a drug transaction. Therefore, the officers only saw what appeared to be a drug transaction from 50 yards away, with no evidence other than the "hearsay" information from the person in the blue car of this alleged transaction. With that mindset, in the Rowland case there was no factually basis at all because no one actually saw a drug transaction; did not perform any form of independent police work and then conduct a control buy in the residence in question. Since there was no proof this person was telling the truth either by searching his car or store looking for the evidence; did not conduct any further searches. Therefore, the facts were not corroborated as stated in Detective Saffitte's Affidavit for the search warrant and the reliability

of the Informant had to be demonstrated to the issuing magistrate  
...

The Attorney General relies on the case of United States v. Rose, 321 Fed.Appx. 114 (2003). In Rose, the detectives were surveilling the residence (1) and noticed significant "loose cash traffic" at the residence of the kind typically associated with the purchase and distribution of drugs. They arrested an individual ("Informant") seen exiting residence (1) upon their first arrival there. The Informant told officers he had purchased crack cocaine within the residence, and that others in the house were using crack cocaine there ...

The Rose case is distinguishable because the detectives actually seen the Informant coming out of the residence walking on foot. As is the difference in Rowland, the person was in a car and the Informant never went into the residence. Furthermore, in Rose, the Informant told officers he purchased drugs within the residence. In Rowland, there was no mention in Warrant's Affidavit, nor in the oral supplemental testimony of anyone seeing or purchasing drugs with the residence. The key element to distinguishing in Rowland is that the Informant who got pulled over in the blue car could have already had drugs within his car or on his person, as is different than the Rowland case. The person was seen on foot going to and from the residence and was discovered to have the drugs in his sole possession while leaving this residence. This would distinguish Rose from Rowland.

- WRONG ADDRESS ON SEARCH WARRANT - AFFIDAVIT -

United States v. Crabtree, 77 F.Supp.3d 1192 (2015)(Search Warrant for defendant's apartment completely failed to describe the premises, and this did not satisfy the Fourth Amendment particularity requirement, where officer's supporting Affidavit correctly identified defendant's apartment as the place to be searched, but she failed to plug that information into her warrant template ...)

As the officers were reckless in preparing the Affidavit, they are not protected by the good-faith reliance on the warrant. United States v. Leon, 408 U.S. 897 (1984); also United States v. Collins, 830 F.2d 145 (1987).