STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

CLAUDIUS ADRIAN WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001738

PETITION FOR WRIT OF CERTIORARI

VICTOR R. SEEGER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether the PCR court erred when it found that trial counsel did not provide ineffective assistance of counsel when he failed to move to suppress the defective arrest warrants since the gun found pursuant to the arresting officer's protective sweep was a key piece of evidence against Petitioner?

STATEMENT

Petitioner was indicted at the September 2013 term of the Anderson County Grand Jury for one count of armed robbery and one count of possession of a weapon during a violent crime. App. 354 – 357. Petitioner's case was called to trial on January 27 – 28, 2012, before the Honorable Frank Addy and a jury. App. 1. Petitioner was represented by Hugh W. Welborn, and the state was represented by Rame Campbell. Id. Petitioner was convicted as indicted. App. 273, ll. 4 – 12. Judge Addy sentenced Petitioner to life without parole for armed robbery pursuant to § 17-25-45 S.C. Code Ann. App. 278, ll. 17 – 22.

Petitioner's conviction was affirmed pursuant to an Anders v. California, 386 U.S. 738 (1967) filed by Tiffany Butler of Appellate Defense. App. 281 – 295.

Petitioner filed an application for post-conviction relief on February 25, 2016, that alleged ineffective assistance of counsel for failure to make a motion to suppress the insufficient arrest warrants. App. 298 – 306. On January 19, 2017, the state filed its return. App. 307 – 310. An evidentiary hearing was held on February 27, 2017 before the Honorable R. Scott Sprouse. App. 312. Petitioner was represented by Robert Mills Ariail and the state was represented by Lindsay Ann McCallister. Id.

In an order dated July 17, 2017, Judge Sprouse denied Petitioner's PCR application. App. 347 – 353. This petition follows.

ARGUMENT

The PCR court erred when it found that trial counsel did not provide ineffective assistance of counsel when he failed to move to suppress the defective arrest warrants since the gun found pursuant to the arresting officer's protective sweep was a key piece of evidence against Petitioner.

Relevant Facts

At trial the state alleged the facts as follows. On April 24, 2013, Petitioner allegedly robbed a convenience store on South Murray Avenue in Anderson with a firearm. App. 86, ll. 1 – 10. Meseret Kifle, the complaining witness, was the only person working at the convenience store at that time and hit the panic button directly linked to law enforcement shortly after the incident. App. 85, ll. 22 – 25; 86, ll. 19 – 23.

The police put fliers up with a picture of the alleged perpetrator. App. 122, ll. 12 – 15. Over a month passed until the complaining witness contacted the police to tell them she received a tip from a third party. App. 162, l. 18 – 163, l. 11.

She told police that an individual walked into her convenience store and after seeing the fliers told the complaining witness, under the condition of anonymity, "I know who that is, that's Claudius Williams. I grew up with him." App. 36, ll. 10 – 18. The complaining witness got the tipster's phone number for police to call. App. 36, ll. 19 – 20.

After speaking with the tipster, Police looked up Petitioner on South Carolina Department of Motor Vehicle's information database. App. 37, ll. 9 – 17. They put Petitioner's photo into a SLED photo lineup and showed it to the complaining witness, who identified Petitioner as the perpetrator. App. 37, ll. 16 – 17; 39, ll. 2 – 15.

After the complaining witness identified Petitioner in the photo lineup based solely on the anonymous tipster's information, Police went to an address where they believed Petitioner was staying. App. 47, ll. 10 – 21. Once at the address, Police saw Petitioner through the screen door and asked if he was Claudius Williams. Petitioner answered yes, so they asked him to come outside and then arrested him. App. 48, ll. 1 – 15. Police performed a protective sweep of the house after they arrested Petitioner and found a hand gun under the couch where Petitioner had been sitting. App. 49, ll. 1 – 8. The police did not have a search warrant to search the house. The only reason they were able to perform the search as a protective sweep, and ultimately find the gun, was because the search happened while they executed the arrest warrant for Petitioner.

At PCR, Petitioner complained that his trial attorney did not make a motion to suppress the arrest warrants as being defective for lack of probable cause. App. 318, ll. 6 – 10. Petitioner cited page 170 of his trial transcript as evidence that the police officer who got the arrest warrant, "talked with the magistrate… but he never stated that he was sworn, either before or after talking with the magistrate." App. 322, ll. 1 – 8. At trial, the police officer who obtained the arrest warrant never testified that his supplemental testimony, the supporting affidavit to the magistrate, was under oath, and there is nothing in the record to show that the officer was under oath when he gave the supplemental testimony for the warrant.

Since the arrest warrant was defective, the protective sweep of the home was illegal. Since the illegal search was the only way the police uncovered the gun, it should not have been admitted into evidence as it was fruit of an illegal search. Therefore, had trial counsel moved to suppress the defective arrest warrant, that served as the basis for performing the illegal search and uncovering the gun, there is a reasonable probability that the outcome of Petitioner's trial would have been different.

During cross examination of Petitioner at PCR, the state pointed out that the warrants say the officer was, "being duly sworn, deposes and says." App. 326, ll. 2 – 13. However, the warrants do not allege any of the facts giving rise to probable cause for arrest; therefore, the fact that the officer's signature on the warrant says he was deposed is inconsequential. App. 327, l. 14 – 328, l. 6. The officer needed to be under oath when he provided supplemental testimony to the magistrate that alleged the underlying facts that gave rise to probable cause. The only record of the officer's interaction with the magistrate is from the officer's testimony stating that he merely "spoke" to the magistrate, not that he was under oath. App. 322, ll. 1 – 8.

The PCR judge denied Petitioner's post-conviction relief application. App. 347 – 353. That denial was an error and that error prejudiced Petitioner.

Discussion

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984). To prove ineffective assistance of counsel, "the defendant must show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." Id. "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 687-688, 104 S.Ct. at 2064. Concerning prejudice, "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." Rather, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been

different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694, 104 S.Ct. at 2068.

A sworn oral statement may be sufficient to satisfy the "oath or affirmation" requirement of both federal and state constitutions. See State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471, 472 (1987) (noting that a "sworn, oral statement may be sufficient to satisfy the requirement for oath or affirmation"); see also U.S. v. Clyburn, 806 F.Supp. 1247, 1249-50 (1992), aff'd by 24 F.3d 613 (1994) (noting that it is constitutionally permissible for a magistrate to consider unrecorded sworn oral testimony in determining whether probable cause exists to issue a search warrant). An affidavit, which would satisfy the stricter requirements for a finding of probable cause found in our state statute, also satisfies the minimal constitutional requirements that probable cause be supported by an "oath or affirmation." McKnight, 291 S.C. at 113, 352 S.E.2d at 472 ("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 or affirmation ... It differs from an oath in that an affidavit consists of statements of fact which is sworn to as the truth, while an oath is a pledge...."); State v. White, 275 S.C. 500, 502, 272 S.E.2d 800, 801 (1980) (holding that a search warrant issued upon affidavit or affirmation does not offend the Constitution); State v. York, 250 S.C. 30, 36-37, 156 S.E.2d 326, 329 (1967) (noting that an affidavit complies with the minimum constitutional standards for the issuance of a warrant upon probable cause supported by oath or affirmation). "Generally, affidavits must be made on the affiant's personal knowledge of the facts alleged in the petition. The affidavit must in some way show that the affiant is personally familiar with the facts so that he could personally testify as a witness." 3 Am.Jur.2d Affidavits § 14 (2002).

In Giordenello v. U.S., 357 U.S. 480, 78 S.Ct. 1245 (1958), the defendant was convicted of unlawful purchase of narcotics. He challenged the legality of the arrest warrant and the admissibility of the evidence that flowed therefrom. Giordenello, at 481, 78 S.Ct. at 1247.

The police obtained an arrest warrant for Giordenello that stated, "The undersigned complainant being duly sworn states: That on or about January 26, 1956, at Houston, Texas in the Southern District of Texas, Veto Giordenello did receive, conceal, etc., narcotic drugs, to-wit: heroin hydrochloride with knowledge of unlawful importation; in violation of Section 174, Title 21, United States Code." Id. It is important to note the characteristics of this defective warrant, it only states that at a certain location on a given date petitioner committed a crime. There were none of the underlying facts supporting probable cause on the warrant itself.

The next day a police officer arrested Giordenello and performed a search incident to arrest which discovered heroin on the Giordenello. Id. at 482, 78 S.Ct. at 1248. The state admitted since they did not have a search warrant, the heroin could only be admitted via the search incident to arrest. Id. at 483, 78 S.Ct. at 1248.

The Supreme Court analyzed the language of the warrant requirement under the Federal Criminal Rules through the lens of its Constitutional purpose. "Criminal Rules 3 and 4 provide that an arrest warrant shall be issued only upon a written and sworn complaint (1) setting forth "the essential facts constituting the offense charged; and (2) showing 'that there is probable cause to believe that such an offense has been committed and that the petitioner has committed it. The provisions of these rules must be read in light of the Constitutional requirements they implement. The language of the Fourth Amendment, that 'no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the persons or things to be seized,' of course applies to arrest as well as search warrants..." (internal citations

omitted). Giordenello, at 485–86, 78 S. Ct. at 1250 (1958). The Court held that the seizure in [Giordenello] was illegal; and that petitioner's conviction must be set aside because the seized narcotics should not have been admitted into evidence. Id. at 488, 78 S.Ct. at 1251.

The warrant in Giordenello did not pass Constitutional muster because, "it contained no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein; it did not indicate any sources for the complainant's belief; and it did not set for any other sufficient basis upon which a finding of probable cause could be made. Id. 486, 78 S.Ct. at 1250.

If the Court allowed this type of warrant to suffice, its decision "would not comport with the protective purposes which a complaint is designed to achieve." Id. at 487, 78 S.Ct. at 1250. The Court furthered that an indictment issued after the arrest warrant was executed, and the petitioner was arrested, did not cure the defective arrest warrant. "A warrant of arrest can be based upon an indictment because the grand jury's determination that probable cause existed for the indictment also establishes that element for the purpose of *issuing a warrant* for the apprehension of the person so charged. Here, in the absence of an indictment (at the time of the arrest), the issue of probable cause had to be determined by the Commissioner and an adequate basis for such a finding had to appear on the face of the complaint." Id. (emphasis added)

In Jaben v. U.S., 381 U.S. 24, 85 S.Ct. 1365 (1965), the Supreme Court held that the warrant used to convict Jaben for tax evasion was sufficient. The statute of limitations for tax evasion was six years, but if a complaint was made within the six year period, the statute grants the state a nine month extension. Id. at 214, 85 S.Ct. at 1366. The day before the six year period was set to expire, the government filed a complaint against Jaben, for willfully filing a false return. The Commissioner determined that the complaint showed probable cause. Id.

Jaben argued that the warrant was defective under Giordenello, but the Supreme Court disagreed. "The complaint here is distinguishable from Giordenello. Information in a complaint alleging the commission of a crime falls into two categories: (1) that information, if true, would directly indicate commission of the crime charged, and (2) that which relates to the source of the directly incriminating information. The Giordenello complaint gave no source information whatsoever." Id. at 223, 85 S.Ct. at 1370. If the complaint in Jaben were defective, as in Giordenello, it would have simply stated that petitioner committed the crime at a specified date and place. Unlike in Giordenello, the Jaben complaint went into great detail about the sources from which probable cause was derived, "affiant indicated that he, in his official capacity, had personally conducted an investigation... examined the taxpayer's returns for 1956 and other years, interviewed third parties who did business with petitioner..., and consulted with public and private records reflecting [petitioner's] income..." Id.

The Jaben Court further explained its decision in Giordenello, because that decision held a sufficient warrant required, "that enough information be presented to the Commissioner to enable him to make the judgment that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal process." Id. at 224, 85 S.Ct. at 1371. When looking at the warrant issued for Jaben through that lens the Court found, "[i]n this instance the issue of probable cause comes down to the adequacy of the basis given for the allegation... Here the affiant... *swore* he conducted just such an investigation and thereafter *swore* that he had personal knowledge as to petitioner's actual income. Id. at 252, 85 S.Ct. at 1371. (emphasis added)

In State v. Dunbar, 361 S.C. 240, 603 S.E.2d 615 (2004), this Court held that although sworn oral statements will comply with constitutional requirements that an arrest warrant be

supported by "oath or affirmation," the defects in the search warrant in this case could not be cured by [the officer]'s oral statements to the magistrate. Id. at 248, 603 S.E.2d at 620. [The officer] testified that he "spoke with the judge about the warrant and the probable cause over the telephone." He did not testify that he was ever placed under oath, and there was no evidence in the record that he was under oath when speaking with the magistrate on the telephone. Because there was no evidence that the information was given under oath, the search warrant issued in this case offended the constitutional requirement that it be supported by "oath or affirmation. Id.

In the instant case, the warrant used to arrest Petitioner is almost identical to the warrant in Giordenello. Petitioner's warrant stated the same insufficient information, namely that Petitioner committed a crime at a certain place on a certain date. Petitioner's warrant only stated, "That on April 24, 2013, in the county of Anderson, one Claudius Adrian Williams did take cash from Little General at 3401 Murray Ave. with intent to deprive while armed with a black semi-automatic hand gun, a deadly weapon." App. 342. Therefore, Petitioner's arrest warrant was insufficient on the same grounds as Giordenello: it did not contain an affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein, it did not contain any sources for the complainant's belief, and it did not set forth any other sufficient basis upon which a finding of probable cause could be made. Giordenello, at 486, 75 S.Ct. at 1250.

The state argued in Giordenello, as the state did here at PCR, that an indictment issued after the arrest warrant had been executed cured the defective warrant. Id. at 487, 75 S.Ct. at 1250. The subsequent indictment did not cure the defective warrant in Giordenello and should not cure the defective warrant here. Id.

Unlike the warrant in Jaben, where the officer *swore* to the facts supporting the warrant, the officer here merely "spoke" to the magistrate when he gave the supplemental facts to support

the deficient arrest warrant. App. 346, ll. 9 – 13. The same type of conversation was found insufficient to cure a defective warrant in Dunbar and did not cure the defective warrant here. The officer in at Petitioner's trial did not testify that he was ever placed under oath, and there was no evidence in the record that he was under oath when speaking with the magistrate. Therefore, Petitioner's counsel provided ineffective assistance when he failed to move to suppress the defective arrest warrants, and that ineffective assistance prejudiced Petitioner.

CONCLUSION

By reason of the foregoing arguments, Petitioner respectfully requests that the Court grant his application for post-conviction relief, reverse the charges against him, and remand the case for a new trial.

Victor R. Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of April, 2018.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Kelly Oppenheimer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Claudius Adrian Williams, #299040, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 23rd day of April, 2018.

Victor R. Seeger

Victor R. Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 23rd day of April, 2018.

(L.S)

Notary Public for South Carolina
My Commission Expires: July 3, 2023