STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Laurens County
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES CLYDE DILL, JR.,

Petitioner.

STATE'S PETITION FOR REHEARING

Appellate Case No. 2016-000654

Pursuant to Rules 221 and 240, SCACR, the Petitioner State now requests a rehearing on the following points that this Court may have overlooked or misapprehended:

I.

This Court reversed the Court of Appeals' and Circuit Court's determination that a search warrant affidavit, supplemented with testimony by the affiant, was insufficient to support probable cause. The State respectfully submits this Court's opinion overlooks (1) that because affidavits are commonly drafted by non-lawyers in the haste of criminal investigation, they should be judged on the facts presented, **not the precise wording used**; and (2) probable cause does not require certainty.

"Probable cause is a flexible, common sense standard" that "does not import absolute certainty." State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572, 587 (Ct. App. 2005) *rev'd on other grounds by* State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). Probable cause "does not demand any showing that such a belief be correct or more likely true than false." Texas v. Brown, 460 U.S. 730, 742 (1983). While supporting affidavits must contain sufficient underlying facts and information upon which the magistrate can make a probable cause determination, they are "not meticulously drawn by lawyers, but are normally drafted by non-lawyers in the haste of a criminal investigation, and should therefore be viewed in a common sense and realistic fashion." Fletcher. "Affidavits must be judged on the facts presented and not on the precise wording used." Fletcher at 587-88 (emphasis added).

"A search warrant that is insufficient in itself to establish probable cause may be supplemented by sworn oral testimony." State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997).

In the affidavit Moody attests to the following:

> Laurens County Sheriff's Office has received information in the last 72 hours that at the above listed location an active methamphetamine lab is in operation. A confidential informant working in an undercover capacity with the Laurens County Sheriff's Office was at this location and did see numerous items that are used in the manufacturing of methamphetamine.

R. 146.

II.

The search warrant affidavit consists of two sentences. The first informs the magistrate that the affiant received information of an active methamphetamine lab. The second informs the magistrate that an informant at the location saw numerous items used in manufacturing

methamphetamine. A common sense reading attributes the information in both sentences to the informant because the second sentence is modifying the first: the first sentence indicates the sheriff's office received information and the second informs the magistrate the source of that information was the informant. Taken as a whole, the search warrant affidavit informs the reader that the informant viewed an active methamphetamine lab with numerous ingredients used in the manufacture of methamphetamine. Further, the informant providing this information was a reliable informant used in the past.

"A reviewing court should give great deference to a magistrate's determination of probable cause." State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997). In the instant case, the magistrate was supplied information forming a substantial basis to believe there was an active methamphetamine lab with numerous ingredients at Dill's residence.

Further, more specific information concerning the ingredients was not required. State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978) (finding warrant referencing "use and sale of drugs" without naming specific narcotics sufficient); State v. Williams, 297 S.C. 404, 377 S.E.2d 308 (1989) (affidavit references illegal drugs, but not specifying types of drugs found sufficient).

Hammond cited with approval State v. Albert, 565 P.2d 534, 536 (Ariz. Ct. App. 1977), in which the search warrant affidavit advised the reliable informant saw heroin at the residence and the affidavit provided a conclusory assertion that the informant knows heroin when the informant sees it. The Arizona Court of Appeals observed the affidavit provided "no underlying fact from which the magistrate might independently conclude the informant could reliably identify heroin." Id. However, the court also observed the affidavit set out that the informant

provided reliable information in the past and personally observed the heroin, satisfying the warrant requirement. Id.

Likewise, in the instant case, the magistrate was informed that the informant provided reliable information in the past and based on his own personal observations, believed there was an active methamphetamine lab and numerous ingredients for use in methamphetamine production at Dill's residence. Accordingly, as in Albert, the affiant was not required to provide any more detail concerning the informant's basis of knowledge. This was sufficient for the magistrate, under the totality of circumstances, to believe there was a fair probability that contraband or evidence of methamphetamine manufacturing would be found at Dill's residence.

III.

The State is concerned by the third footnote in this Court's opinion. Sergeant testified he received information about "a **possible** manufacturing of methamphetamine." First, because probable cause requires less than absolute certainty, an equivocal modifier does not defeat probable cause. Second, in context, Sergeant Moody's use of the term is merely colloquial police-speak meaning Sergeant Moody received a not yet verified report of methamphetamine manufacture. Sergeant Moody also testified to taking the information to the magistrate "in a possible search warrant." R. p. 24, lines 16-19. Obviously, the warrant was more than a possibility, the magistrate did issue the search warrant at issue in this case.

WHEREFORE, the State requests this Court to grant the petition for rehearing and affirm Dill's conviction and sentence.

Respectfully submitted,

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July 3, 2018

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S.C. SUPREME COURT

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within State's Petition for Rehearing on Appellant by delivering two copies of the same to his attorney of record, Taylor D. Gilliam, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.
This 3rd day of July, 2018.

Anne Mueller

Anne A. Mueller
Legal Assistant

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