

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Doyet A. Early, III, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTONIO MILLER,

APPELLANT

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN

State of South Carolina,

vs.

Antonio Miller,

Defendant

MOTION TO SUPPRESS

Warrants H873156, 159, 162, 165, 168

**DEFENDANT'S
EXHIBIT**

JB12

The Defendant moves to suppress all firearms, drugs and drug paraphernalia seized in this case and all evidence seized at [REDACTED], Columbia, South Carolina and a screwdriver seized in Aiken County as inadmissible on the grounds of relevancy and prejudice to the defendant.

Summary of Facts

At approximately 5:15 p.m. on the afternoon of September 15th, 2008, the Richland County Sheriff's Department searched the residence at [REDACTED] Street pursuant to a search warrant as well as a car located near that residence that was reported as belonging to U Save Auto Rental. Illegal drugs and weapons were located in the car and the residence and alleged drug paraphernalia, cash and other items were located in the residence. These items resulted in separate Richland County criminal charges brought against Antonio Miller by the Richland County Sheriff's Department for Simple Possession of Marijuana, Trafficking in Crack Cocaine and Unlawful Carrying of a Pistol.

During the Aiken County investigation, officers with Aiken County Sheriff's Department seized a screwdriver that was located on the side of a public highway with the assistance of a co-defendant.

Legal Argument

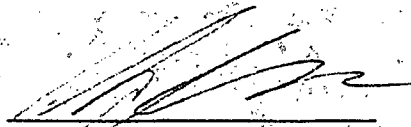
The items seized in Richland County are not relevant to the prosecution for the Aiken County charges brought against the defendant and will be prejudicial to the defendant. "In the prosecution of one crime, proof of another direct substantive crime is never admissible unless there is some legal connection between the two upon which it can be said that one tends to establish the other or some essential fact in issue." *State v. Jenkins*, 317 S.C. 183, 452 S.E.2d 612 (Ct. App 1994). "The State must also show the evidence sought to be introduced fits into one of the exceptions under *State v. Lyle*, 125 S.C. 406, 118 S.E.2d 803 (1923)."

Even though the search warrant for the residence at [REDACTED] Street listed crack cocaine, paraphernalia and cash, these items are not relevant to the prosecution of the Aiken County charges against Mr. Miller and are prejudicial. "However, even if certain items listed in the search warrant are found, they may still be inadmissible on the grounds of relevancy or prejudice to the defendant." *State v.*

Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999) (where pornographic tapes and sex aids found in defendant's home were inadmissible in CSC with Minor case because there were no allegations that they had any connection to victims).

Officers with the Aiken County Sheriff's Department also seized a screwdriver located by the roadside in Aiken County with the assistance of a co-defendant. There has been no forensic testing on this screwdriver and there are no unique markings. This item is not relevant to the case involving defendant as law enforcement has been unable to establish that it is connected to the case in any way.

Aiken, South Carolina
February 13, 2012



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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN

State of South Carolina,

vs.

Antonio Miller,

Defendant

MOTION TO SUPPRESS

Warrants H873156, 159, 162, 165, 168

**DEFENDANT'S
EXHIBIT**

2B12 2

The Defendant moves to suppress all statements allegedly made by the Defendant under Jackson v. Denno, 378 U.S. 368 (1964) and the 5th Amendment to the United States Constitution.

Summary of Facts

On September 15th, 2008, the Richland County Sheriff's Department arrived at the residence of Deidra and Antonio Miller at [REDACTED] Street in Richland County, South Carolina.

Law enforcement reports indicate that they were seeking a vehicle rented to Deidra Miller which had not been returned. This vehicle was in the area of [REDACTED] Street and that Ms. Miller was arrested after law enforcement arrival at the location. Antonio Miller was arrested for Trafficking Crack Cocaine at this location after crack cocaine was located in the vehicle. Incident reports indicate that the Mr. Miller was questioned by Officer T. Jordan and that he stated while "under Miranda" the guns and drugs found at [REDACTED] Street belonged to him. A separate report indicates that the defendant gave a false name to Officer Franklin D. Ham.

Although no report states this, Assistant Solicitor Beth Ann Young has informed defense counsel that Detective Marcus Brown with the Richland County Sheriff's Office interrogated the defendant after he was placed into custody. Brown informed Assistant Solicitor Young on 2-9-12 that he spoke to the defendant after he had been arrested and was still outside of the location at [REDACTED] street. Brown stated that he asked defendant if he had been given his Miranda warnings and that he responded that he had and refused to give any statement. Brown said that he returned to speak to the defendant several times until defendant agreed to make a statement about a pistol found in a co-defendant's vehicle. Brown stated that he then informed the defendant of his rights under Miranda and that the defendant waived his rights and asked "would it be faster if I tell you everything?" Brown then stated that he replied "yes" to that question and then the defendant stated that the gun found in the co-defendant's car and the guns at [REDACTED] Street and the crack cocaine found in the rental car and the crack cocaine found at [REDACTED] Street belonged to him. In a separate report Detective Brown indicated that he asked defendant if he had come from Aiken that day and that defendant replied that he was in Charleston and that he then asked about drugs or weapons in the house and that defendant replied no and that he refused to sign a consent to allow a search of the residence. Detective Brown does not record that he advised defendant of his rights under Miranda.

None of the officers involved have indicated in any of the reports that Defendant was advised by them of his *Miranda* rights and Assistant Solicitor Young has informed defense counsel that all of the Richland County officers at the scene (other than Det. Brown) have stated that they did not advise the defendant of his rights under *Miranda*.

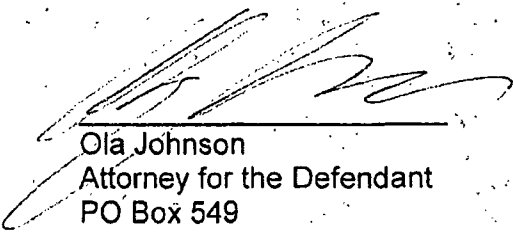
Legal Argument

Incident reports indicate that Antonio Miller made several statements to law enforcement while in their custody in response to interrogation by officers. Officers failed to provide *Miranda* warnings to defendant and continued to interrogate defendant after he refused to make any statement, "To protect an accused's Fifth Amendment right against involuntary self-incrimination, certain warnings must be given whenever a person is subjected to interrogation while in custody". *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

Once Detective Brown believed that the defendant had invoked his right to have counsel present that officer could not re-initiate the interrogation of defendant. *Edwards v. Arizona*, 451 U.S. 477 (1981). The defendant invoked his right to remain silent thus, Detective Brown re-initiated contact and continued to interrogate defendant in violation of his right under *Miranda*.

As a result of the foregoing, the statements made by the defendant were involuntary and are inadmissible.

Aiken, South Carolina
February 13, 2012



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**DEFENDANT'S
EXHIBIT**

2-13-12 3

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN

State of South Carolina,

vs.

MOTION TO SUPPRESS

Warrants H873156, 159, 162, 165, 168

Antonio Miller,

Defendant

The Defendant moves to suppress all property taken from the residence at [REDACTED] Street, Columbia, South Carolina pursuant to a search warrant from entry as evidence in this case.

Summary of Facts

At approximately 5:15 p.m. on the afternoon of September 15th, 2008, the Richland County Sheriff's Department searched the residence of Deidra and Antonio Miller at [REDACTED] Street pursuant to a search warrant obtained by that agency.

The affidavit attached to the search warrant indicates that law enforcement was seeking a reported stolen vehicle rented to Deidra Miller and that this vehicle was in the area of [REDACTED] Street and that Mrs. Miller was arrested after law enforcement arrived at the location. The affidavit also states that crack cocaine was discovered in the vehicle, Antonio Miller was arrested for Trafficking Crack Cocaine and he has a record of 12 arrests for illegal narcotics.

The Aiken County Asst. Solicitor assigned to this case has informed defense counsel that the facts listed in the search warrant were the only facts submitted to the magistrate issuing the warrant and no supplemental oral testimony was presented.

The search of the residence resulted in the seizure of weapons that the state alleges to be linked to the scene of the murder through a ballistics match as well as DNA evidence. The state also recovered shoes that the state alleges to be linked to the crime. The state has also alleged that money and crack cocaine seized are from the home of the victim.

The search of [REDACTED] Street was illegal and in violation of Article I, § 10 of the South Carolina Constitution and the Fourth Amendment of the Federal Constitution, and S.C. Code Section 17-13-140 proscribing unreasonable search and seizure.

In this case, the search of the defendants home at [REDACTED] Street constitutes one of the greatest intrusions that law enforcement can make into an area where one has a reasonable expectation of privacy under the law, "Physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed" *Wilson v. Layne*, 526 U.S. 603.

The basis for this search and seizure was the search warrant mentioned above and no exigent circumstances or other exceptions to the search warrant requirement applied. The search warrant contained insufficient information for the magistrate to find probable cause to issue the warrant.

"A magistrate may issue a search warrant only upon a finding of probable cause" State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997); S.C. Code Section 17-13-140. "The affidavit must contain sufficient underlying facts and information upon which a magistrate can make a probable cause determination." State v. Robinson, 335 S.C. 620, 518 S.E.2d 269 (Ct. App. 1999). "The duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed". State v. Adams 352 S.E. 2d 483 (1987).

Further, in the search warrant obtained by Richland County, the affidavit fails to list any information about the relevance of the home at [REDACTED] Street or who resided there. As a result the search warrant cannot be considered sufficient to convince a magistrate that there was a "fair probability that contraband or evidence of a crime" would be found within the residence. "A magistrate must make a practical, common sense decision of whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Baccus, 625 S.E. 2d 216 (2006) citing Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317 (1983).*

The affidavit also fails to mention any connection between Mr. Miller and the car where the first bag of crack cocaine was located or between Mr. or Ms. Miller and [REDACTED] Street. There is no information within the search warrant that indicates that the issuing magistrate was given any information about Mr. or Ms. Miller entering the vehicle or having any connection to the drugs located within the vehicle. No additional information was orally presented to the magistrate.

In previous cases involving the search of a home for suspected illegal drugs, the South Carolina Court of Appeals has found that even in a case where police received citizen complaints about a high volume of foot traffic at a residence and a complaint of a citizen smelling marijuana in the vicinity of the same residence as well as a visitor leaving the residence and being arrested with marijuana, the facts in the affidavit were still insufficient to establish probable cause for a search warrant. *State v. Gentile, 373 S.C. 506, 646 S.E.2d 171 (Ct. App. 2007).* The supporting affidavit must set out facts sufficient to establish the reason law enforcement believes they will find evidence of a crime. *State v. Baccus, 625 S.E. 2d 216 (2006).*

In this case, this affidavit fails to set forth any facts as to why the police believed Appellant would have had drugs inside the residence. The affidavit states that Antonio Miller was arrested for Trafficking Crack Cocaine for drugs allegedly found in the vehicle and Deidra Miller was arrested for Use of a Motor Vehicle without Owner's Consent. "An affidavit is defective if it does not set forth any facts as to why the police believed the suspect had committed a crime, but rather merely makes conclusory statements." *State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997)*

The affidavit also fails to mention two pairs of shoes as evidence sought in the search of [REDACTED] Street. The incident reports from Richland County Sheriffs Department indicate that the shoes were seized by Aiken County at a later time by a separate search warrant obtained by them. The Aiken County Asst. Solicitor assigned to this case has informed defense counsel that this warrant has been lost and that the shoes were seized by Richland County under their search warrant. However the evidence and other Richland County incident reports indicate that an Aiken County investigator, while searching the residence with the Richland County search warrant, seized the shoes after recognizing a tread pattern on the shoes that matched patterns from the crime scene in Aiken County. Aiken County then seized the shoes without obtaining a search warrant for the residence at [REDACTED] Street.

The Richland County search warrant fails to mention how the shoes can be related to criminal activity and as a result these items cannot be seized even if the search warrant was valid under the fourth amendment, "Evidence not described in a search warrant may be seized if there is a nexus between the items seized and some criminal behavior". *State v. McGuinn*, 268 S.C. 112, 232 S.E.2d 229 (1977).

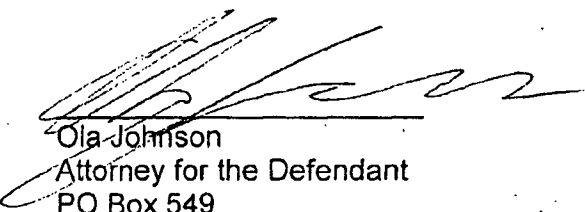
This violation of Mr. Miller's rights under the Fourth Amendment cannot be admitted under a good faith exception

"The good faith exception does not apply if the underlying affidavit does not include sufficient information to allow a magistrate to determine probable cause." *State v. Adolphe*, 314 S.C. 89, 441 S.E.2d 832 (1994).

In addition, for the reasons stated above, this search warrant violates the law of South Carolina and exclusion is the appropriate remedy. S.C. Code Section 17-13-140, Article I, § 10 of the South Carolina Constitution.

Therefore the evidence seized from the execution of this search warrant is the product of an unlawful search and seizure and exclusion of the evidence is required to deter improper police behavior and to avoid the prejudicial effect on defendant Antonio Miller.

Aiken, South Carolina
February 13, 2012

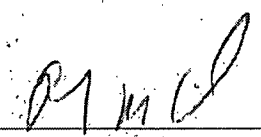


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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 24th, 2014



Robert M. Dudek
Chief Appellate Defender

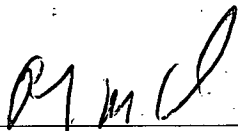
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ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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February 24th, 2014



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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

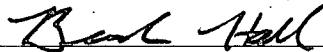
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ANTONIO MILLER,

APPELLANT

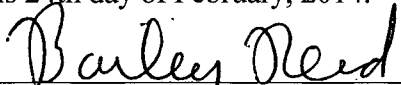
CERTIFICATE OF SERVICE

I certify that a true copy of the Supplemental Record on Appeal in the above referenced case has been served upon J. Anthony Mabry, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 24th day of February, 2014.


Brandon Hall

Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 24th day of February, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021