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ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONNELL LAKEITH DAVIS,

APPELLANT

APPELLATE CASE NO 2018-000858

ANDERS BRIEF OF APPELLANT

RECEIVED
APR 17 2019
SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Davis' motion to suppress the drug evidence because the contract that the confidential informant (CI) had signed with the Lexington County Sheriff's Office had expired making the CI's involvement unreliable because it was outside the scope of the CI's employment with the Sheriff's Office?

STATEMENT OF THE CASE

In January 2016, the Lexington County Grand Jury indicted Appellant Donnell Lakeith Davis on the charge of distribution of methamphetamine. On April 23-24, 2018, Appellant Davis proceeded to trial before the Honorable Eugene C. Griffith and a jury. Appellant Davis was represented by Benjamin A. Stitely, and the state was represented by Bradley P. Pogue and Lester McGill Bell, Jr. R. 1. The jury found Appellant Davis guilty as indicted. R. 248, ll. 13 – 25. Judge Griffith sentenced Davis to fifteen years' incarceration. R. 260, ll. 7 – 25. Trial counsel filed a notice of appeal. This appeal follows.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The trial court erred in denying Appellant Davis' motion to suppress the drug evidence because the contract that the confidential informant (CI) had signed with the Lexington County Sheriff's Office had expired making the CI's involvement unreliable because it was outside the scope of the CI's employment with the Sheriff's Office.

Relevant Facts

Agent Michael Merckle with the Lexington County Sheriff's Office was contacted by a confidential informant (CI), that he had used numerous times in drug cases, that Appellant Donnell Davis was selling methamphetamine. The CI said that he was able to purchase the drug from Davis. R. 52, ll. 1 – 25; R. 55, ll. 4 – 10.

Agent Merckle testified that the CI was Javan Haygood. The agent had used Haygood as a CI since 2013 when Haygood called and wanted to work with law enforcement. R. 58, ll. 23- R. 60, ll. 19. in this case with Davis, the agent said that Haygood did not have pending charges at the time but was performing as a CI for the money. R. 59, ll. 1 – 25. On March 11, 2015, the CI Haygood contacted Agent Merckle that he could purchase methamphetamine from Davis. R. 60, ll. 10 – 25.

On that date, Agent Merckle and Agent Scott Purdy met with CI Haygood to plan the drug buy. The CI set up the time and place with Davis, and the two agents drove the CI to the location for the drug transaction. The CI was fitted with a recording device and given money with which to purchase the drugs. R. 61, 1 – R. 62, ll. 25; R. 65, ll. 23 – R. 66, ll. 25.

The CI Haygood testified that he started working for law enforcement in 2013. He read a contract telling him what he could and could not do as a CI. He then signed with the Sheriff's

Department and agreed to the terms of being a CI. He “acted on that agreement.” R. 123, ll. 24 – R. 125, ll. 16. On March 11, 2015, Haygood worked with law enforcement and set up a drug buy with Appellant Davis. Haygood testified that he met Davis at an abandoned house off of Platt Springs Road and bought one hundred dollars’ worth (\$100) of methamphetamine. The incident was recorded which Haygood confirmed as accurate. R. 128, ll. 1 – R. 130, ll. 3; R. 139, ll. 1 – 21.

During cross-examination, the CI Haygood identified Defendant’s Exhibit 7 as the contract he signed with the Sheriff’s Department. R. 159, ll. 1 – R. 161, ll. 15.

In a pretrial motion, defense counsel moved to suppress the evidence because the contract the CI Haygood signed with the sheriff’s Department limited the term of the contract to twelve months. The contract was signed in August of 2013. This incident with Appellant Davis occurred eighteen months later in March 2015. Counsel argued that the statute required that a warrant based on a CI’s information must be determined by the magistrate to be reliable especially when the CI had a criminal record. R. 30, ll. 5 – R. 31, ll. 2.

Counsel continued to argue that the contract provided for a specific time for a reliable informant. However, once the contract had expired, the CI was no longer bound by the contractual terms. Therefore, counsel argued that that the work was done outside the scope of the CI’s employment and would not be reliable as “defined under the statute.” R. 31, ll. 1 – R. 36, ll. 1.

The judge allowed counsel to cross examine the CI on whatever “path he chose concerning his history with law enforcement.” R. 34, ll. 15 – 25. The judge ruled that he was going to treat this as a “motion in limine.” R. 35, ll. 1 – R. 36, ll. 3.

Shana Sorrells, the forensic chemist with the State Law Enforcement Division (SLED), testified that the drug Davis gave to the CI Haygood was methamphetamine with a weight of .63 grams. R. 190, ll. 2 – 6; R. 194, ll. 21 – R. 195, ll. 1.

The jury found Appellant Davis guilty as indicted. The judge sentenced him to fifteen years. R. 260, ll. 7 – 25. Defense counsel filed a notice of appeal. This appeal follows.

Discussion

In State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990), the Supreme Court held that “the veracity and the basis of knowledge” of persons supplying the information for a search warrant are considerations in the determination of whether there is probable cause to issue a search warrant.

The Supreme Court also held that an affidavit based solely on information provided by a confidential informant must contain information supporting the credibility of the informant and the basis of his knowledge. State v. Martin, 347 S.C. 522, 527, 556 S.E.2d 706, 709 (2001).

In State v. Robinson, 415 S.C. 600, 785 S.E.2d 355 (2016), the Supreme Court held that the Court of Appeals erred in finding that the affidavit for the search warrant did not contain sufficient information to establish the “reliability of the confidential informant.” The Supreme Court found that the information in the affidavit describing the informant’s work with law enforcement and his successful purchases of illegal drugs from the home was sufficient to support the trial court’s decision that the confidential informant was reliable.

In State v. Durham, 266 S.C. 263, 222 S.E.2d 768 (1976), the Supreme Court ruled that the scope of cross-examination of the police officer concerning the “credibility and reliability” of the

confidential informant was left to the sound discretion of the trial court. The police officer provided the sole basis for the finding of probable cause for the issuance of the search warrant.

The caselaw clearly demonstrates that reliability of a confidential informant is critical to the case. The CI's credibility establishes the reliability for a search warrant as this reliability is necessary to establish probable cause. The trial court erred in denying Appellant Davis' motion to suppress the drugs because the reliability of the CI was not sufficiently established.

CONCLUSION

Based on the above, Appellant's convictions should be reversed, and the case remanded for a new trial.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of April, 2019.

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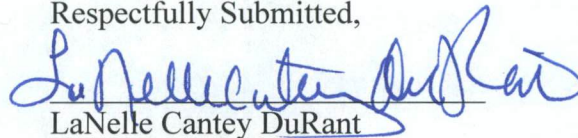
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Donnell Lakeith Davis states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Eugene C. Griffith, which was held on April 24, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Donnell Lakeith Davis.

Respectfully Submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

This 17th day of April, 2019.

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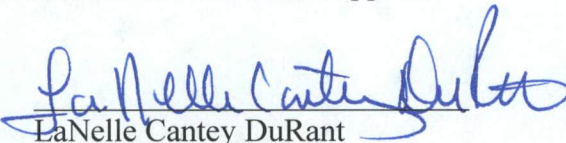
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Sentencing sheet
- (3) Trial Transcript April 23-24, 2018
- (4) Defendant's Exhibit 7-CI's contract

I certify that this designation contains no matter which is irrelevant to this appeal.

April 17, 2019

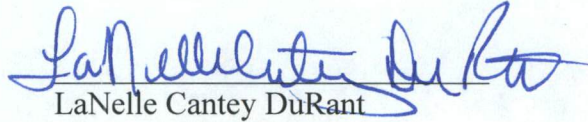

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 17, 2019.



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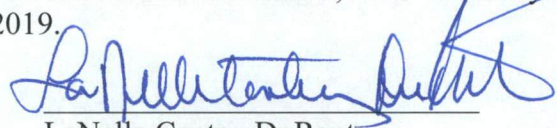
V.

DONNELL LAKEITH DAVIS,

APPELLANT


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Donnell Lakeith Davis, 326904, at Lee Correctional Institution, 990 Wsacky Hwy., Bishopville, SC 29010, this 17th day of April, 2019.



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of April, 2019.

 (L.S)

Notary Public for South Carolina
My Commission Expires: September 27, 2028.

