STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
ROGER L. COUCH, CIRCUIT COURT JUDGE

THE STATE,

RESPONDENT,

V.

RICHEZ MARKIVIOUS BOWSER,

APPELLANT,

APPELLATE CASE NO: 2018-002164

PRO SE BRIEF

RICHEZ M. BOWSER
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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL ..... 1.

STATEMENT OF THE CASE ..... 2.

STANDARD OF REVIEW ..... 3.

STATEMENT OF FACTS ..... 4.

ARGUMENT ..... 5.

Did THE TRIAL JUDGE ERR IN PERMITTING THE STATE TO INTRODUCE EVIDENCE ON ILLEGAL SEARCH AND SEIZURE OF A RESIDENCE WITHOUT A SEARCH warrant?

CONCLUSION ..... 6.

TABLE OF AUTHORITES

CASES

COOLIDGE V. NEW HAMPSHIRE, 403 U.S. 443, (1971) 5

DALIA V. UNITED STATES, 441 U.S. 238, (1979) 5

GOLDSMITH V. UNITED STATES, 981 F.2D 697 (4CIR. 1992) 5

GROH V. RAMIREZ, 540 U.S. 551, 124 S.CT. 1284, ... 5
157 L.ED 1068 (2004)

KATZ V. UNITED STATES, 389 U.S. 347, 88 S. CT..
507, 19 L.ED. 2D. 576 (1967)

SHADWICK V. TAMPA, 407 U.S. 345 (1972) 5

WARDEN V. HAYDEN, 387 U.S. 294 (1967) 5

WONG SUN V. U.S., 371 U.S. 471 (1963) 5

FRANKS V. DELEWARE, 438 U.S. 154 (1979) 5

CONSTITUTIONAL PROVISIONS

FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.....

ARTICLE, SECTION 10 OF THE CONSTITUTION OF SOUTH CAROLINA.....

STATUTORY PROVISIONS

S.C. CODE SECTION 17-13-160.....

S.C. CODE SECTION 17-13-140.....

STATEMENT OF THE ISSUE ON APPEAL

Did THE TRIAL JUDGE ERR IN PERMITTING THE STATE TO INTRODUCE EVIDENCE ON ILLEGAL SEARCH AND SEIZURE OF A RESIDENCE WITHOUT A SEARCH WARRANT?

STATEMENT OF THE CASE

ON FEB. 21. 2017 OFFICERS FROM YORK, ROCK HILL, AND CHESTER CO. S.C. ALONG WITH SLED ENTERED THE RESIDENCE of 1384 AMELIA AVE, IN YORK CO. S.C. R. 292, l. 20 - R. 293, l. 15. RICHEZ BOWSER RESIDES AT THE RESIDENCES. BUT WASNT THERE WHEN OFFICERS ENTERED RESIDENCE, A INVESTIGATOR of ROCK HILL, S.C. POLICE DEPT., INV. LUKE BOLING SUPPOSEDLY OBTAINED A SEARCH WARRANT, R. 35, 24-25, R. 36; 1-25, R. 38, 13-16. WHICH IS THE SAME, SEARCH WARRANT, DETECTIVE WALTER BECK of THE YORK CO. SHERIFF'S office, SEARCHED AND SEIZED ITEMS ILLEGAL from THE RESIDENCE. DETECTIVE W. BECK'S CHAIN of CUSTODY FORMS, ALONG WITH, INVESTIGATOR LUKE BOLING'S, SEARCH WARRANT TIME of OCCURRENCE DON'T MATCH UP. R. 333; 16-24, R. 334; 1-23.

ON SEPT. 11, 2018, THE HONORABLE WILLIAM MCKINNON PRESIDED OVER A SUPPRESSION HEARING REGARDING A PRETRIAL MOTION, WHICH WAS DENIED!

ON DEC. 7, 2018 APPLLANT SERVED HIS NOTICE of APPEAL, THIS PRO'SE BRIEF follows.

STANDARD of REVIEW

IN CRIMINAL CASES, THE APPELLATE COURT SITS TO REVIEW ERRORS of LAW ONLY. STATE V. WILSON, 345 S.C. 1, 5, 545 S.E. 2D 827, 829 (2001). THIS COURT IS BOND BY THE TRIAL COURT'S FACTUAL FINDINGS UNLESS THEY ARE CLEARLY ERRONEOUS. STATE V. QUATTLEBAUM, 338 S.C. 441, 452, 527 S.E. 2D. 105, 111 (2000). THE TRIAL JUDGE'S FACTUAL FINDINGS ON WHETHER EVIDENCE SHOULD BE SUPPRESSED DUE TO A FOURTH AMENDMENT VIOLATION ARE REVIEW FOR CLEAR ERROR. STATE V. BROCKMAN, 339 S.C. 57, 66, 528 S.E. 2D 661, 665-66 (2000) (A PRIVATE SEARCH IS A QUESTION of FACT AND THE TRIAL COURT'S RULING WILL BE RESERSED ONLY IF THERE IS CLEAR ERROR).

STATEMENT OF FACTS

On February 21, 2017 officer INVestigator Luke Boling of Rock Hill, South Carolina Police Department, supposedly secured a search warrant for the residence of 1384 Amelia Ave in Rock Hill, S.C. R. 36; 1-25, R. 37; 1-14 this is The some search warrant supposedly pursuant To the items officer Det. WalTER Beck of the York Co. Sheriff's office search and seized the items ON 1384 Amelia Ave with R. 334; 10-14, These Time frames of officers seizing items and search warrant do not match up!

ARGUMENT

Did the Trial JUDGE ERR in Permitting the state to introduce Evidence on illegal Search and SeizURE of A Residence without a search warrant ?

I. The admission of evidence obtained without a search warrant violated the appellant's fourth Amendment rights against unreasonable search and seizure.

The appellant, Richez Bowser, Timely moved To suppress evidence seizured without a search warrant, and the Defectiveness of the search warrant. The court allowed introduction of evidence obtained without a search worrant of a Residence in which appellant claimed a reasonable expectation of privacy. appellant Renewed his argument. By Timely moving

for a new Trial which the Trial Judge denied.

A. The appellant had a legitimate expectation of privacy in the premises searched.

The fourth Amendment guarantees individuals the right to be free from unreasonable searches and seizures. U.S. Const. Amend. IV.; S.C. Const. ART. 1, § 10. To claim protection under the fourth Amendment of the U.S. Constitution, defenant must show That they have a legitimate expectation of privacy in the place searched. Rakas v. Illinois, 439 U.S. 128, 143, 99 S.Ct. 421, 430, 58 L.ED.2d 357 (1978). A legitimate expectation of privacy is both subjective and objective in Nature: The defendant must show (1) He had a subjective expectation of not being discovered, and (2) The Expectation is one that society Recognizes as Reasonable. Oliver v. united states, 466 U.S. 170, 177, 104 S.Ct. 1735, 1741, 80 L.ED.2d

214 (1984) (CITING KATZ V. UNITED STATES, 389 U.S. 347, 361, 88 S. CT. 507, 516, 19 L. ED. 2D 576 (1967) (HARLAN, J. CONCURRING)). IT IS FUNDAMENTAL THAT FOURTH AMENDMENT RIGHTS ARE PERSONAL IN NATURE AND MAY NOT BE VICARIOUSLY ASSERTED. RAKAS V. ILLINOIS, (1978), 439 U.S. 128, 133-34, 99 S. CT. 421, 58 L. ED. 2D 387. A PERSON AGGRIEVED BY THE INTRODUCTION OF EVIDENCE SECURED BY AN ILLEGAL SEARCH OF A THIRD PERSON'S PREMISES OR, PROPERTY HAS NOT SUFFERED ANY INFRINGMENT UPON HIS FOURTH AMENDMENT RIGHTS. ID. AT 134. CONSEQUENTLY, A PERSON CHALLENGING THE LEGALITY OF A SEARCH BEARS THE BURDEN OF PROVING THAT HE HAS STANDING. THE BURDEN IS MET BY ESTABLISHING THAT THE PERSON HAS A LEGITIMATE EXPECTATION OF PRIVACY IN THE PLACE SEARCHED THAT SOCIETY IS PREPARED TO RECOGNIZE AS REASONABLE. RAKAS, 439 U.S. AT 143. OVERNIGHT GUESTS HAVE A REASONABLE EXPECTATION OF PRIVACY IN THE HOME IN WHICH THEY ARE STAYING, WHILE A PERSON MERELY PRESENT IN THE HOME WITH THE CONCENT OF THE OWNER MAY NOT. BOWSER HAD CLOTHES, AS WELL AS PAID BILLS, AND PROVIDED

FOOD FOR THE RESIDENCE, AS WELL AS KEY WITNESS KADIJAH ERVIN STATED ON RECORD, TO SOLICITOR EPTING, R. 9; 16-17 THAT RICHEZ BOWSER DID RESIDE AT THE 1384 AMELIA AVE. RESIDENCE. BASED ON THESE CONTACTS WITH THE PREMISES, BEING OF THE TYPE RECOGNIZED BY THE COURTS UNDER FOURTH AMENDMENT ANALYSIS, BOWSER HAD A LEGITIMATE EXPECTATION OF PRIVACY IN THE RESIDENCE. BOWSER THEREFORE HAS THE RIGHT TO RAISE AN ISSUE IN THIS CASE AS TO ANY DEFECT IN THE SEARCH AND SEARCH WARRANT.

B. THE AFTER THE FACT SEARCH WARRANT WAS DEFECTIVE FOR FAILING TO STATE WITH PARTICULARITY THE PREMISES TO BE SEARCHED.

THE FOURTH AMENDMENT REQUIRES THAT SEARCH WARRANT'S BE ISSUED ONLY "UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED." FINDING THESE WORDS TO BE "PRECISE AND CLEAR," STANFORD V. TEXAS, 379 U.S. 476, 481 (1965), THIS COURT HAS INTERPRETED THEM TO REQUIRE ONLY THREE THINGS. FIRST, WARRANT MUST BE ISSUED

BY NEUTRAL, DISINTERSTED MAGISTRATE, SEE E.G., CONNALLY V. GEORGIA, 429 U.S. 245, 250-251 (1977) (PER CURIAM); SHADWICK V. TAMPA, 407 U.S. 345, 350 (1972); COOLIDGE V. NEW HAMPSHIRE, 403 U.S. 443, 459-460 (1971). SECOND, THOSE SEEKING THE WARRANT MUST DEMONSTRATE TO THE MAGISTRATE THEIR PROBABLE CAUSE TO BELIEVE THAT "THE EVIDENCE SOUGHT WILL AID IN A PARTICULAR APPREHENSION OR CONVICTION" FOR A PARTICULAR OFFENSE. WARDEN V. HAYDEN, 387 U.S 294, 307 (1967). FINALLY, "WARRANTS MUST PARTICULARLY DESCRIBE THE THINGS TO BE SEIZED, AS WELL AS THE PLACE TO BE SEARCHED. STANDFORD V. TEXAS, SUPRA, AT 485. DALIA V. UNITED STATES, 441 U.S. 238, 255 (1979).

ARTICLE I, SECTION 10 of THE CONSTITUTION of SOUTH CAROLINA, AS AMENDED, AND THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION, ARE PRACTICALLY INDENTICAL, AND AS TO SEARCHES AND SEIZURES PROVIDE THAT; "NO WARRANTS SHALL BE ISSUE BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE THE PLACE TO SEARCHED, THE PERSON OR THING TO

BE SEIZED....." PURSUANT TO S.C. CODE SECTION 17-16-160 A SEARCH WARRANT MUST BE ON THE FORM PRESCRIBED BY THE ATTORNEY GENERAL. A SEARCH WARRANT MUST IDENTIFY THE PROPERTY AND NAMING OR DESCRIBING THE PERSON OR PLACE TO BE SEARCHED. S.C. CODE SECTION 17-13-140. SOUTH CAROLINA COURT ADMINISTRATION PROVIDES SCCA 513 AS THE STANDARD SEARCH WARRANT FORM FOR USE IN SOUTH CAROLINA. ON THE SEARCH WARRANT FORM SCCA 513, THERE IS A SECTION CONSPICUOUSLY IDENTIFIED AS; DESCRIPTION OF PREMISES TO BE SEARCHED, FOLLOWED BY FOUR LINES ON WHICH TO DESCRIBE THE PREMISES TO BE SEARCHED. TO SATISFY THE PROVISIONS OF THE FOURTH AMENDMENT, ARTICLE I, SECTION 10, AND S.C. CODE SECTION 17-13-140 THE PORTION THE WARRANT DESCRIBING THE PREMISES TO BE SEARCHED MUST BE COMPLETED. THE SOUTH CAROLINA BENCH BOOK FOR SUMMARY COURT JUDGES IN THE PROVISION APPLICABLE TO SEARCH WARRANTS STATES; (3) THE PARTICULARITY REQUIREMENT - " BOTH THE AFFIDAVIT AND SEARCH WARRANT MUST PARTICULARLY DESCRIBE THE OBJECTS TO BE SEIZED." IN THIS CASE, DET. WALTER BECK, WHO SUPPOSEDLY SEIZED ITEMS FROM THE RESIDENCE R. 333; 16-24, MR. WALTER BECK WAS GOING OFF HIS CHAIN OF CUSTODY FORMS, MR. WALTER BECK STATES THE SEARCH WARRANT WAS IN HAND DUE TO THE SEARCH AND SEIZURE. TIME FRAME ON

SEARCH WARRANT ISSUED 9:41 PM, THE ITEM WERE SEIZED BEFORE A SEARCH WARRANT R.334; 1-25.

"AN AFFIDAVIT MAY BE REFERRED TO FOR PURPOSES of PROVIDING PARTICULARITY IF THE AFFIDAVIT ACCOMPANIES THE WARRANT AND THE WARRANT USES SUITABLE WORDS of REFERENCE WHICH INCORPORATE THE AFFIDAVIT." UNITED STATES V. KLEIN, 565 F.2D 183, 186 N.3 (1ST CIR 1997). SEE ALSO, GROH V. RAMIREZ, 540 U.S. 551, 557-58, 124 S. CT. 1284, 157 L ED 2D 1068 (2004) (LISTING CASES FROM MULTIPLE CIRCUITS WHICH HAVE ALLOWED WARRANTS TO BE CONSTRUED WITH REFERENCE TO AN INCORPORATED AFFIDAVIT). IN CONSIDERING WHETHER UNDER THE FOURTH AMENDMENT THE INFORMATION IN AN AFFIDAVIT CAN SUPPLEMENT AN INCOMPLETE DESCRIPTION IN A SEARCH WARRANT, THE FEDERAL COURTS HAVE FOUND THAT TWO CONDITIONS MUST BE MEET. FIRST, THE SEARCH WARRANT AND AFFIRMATIVELY THAT THE SEARCH WARRANT AND AFFIDAVIT WERE PHYSICALLY ATTACHED AT THE TIME of EXCUTION. SECOND, "THE SEARCH WARRANT MUST EXPRESSLY REFER TO THE AFFIDAVIT AND INCORPORATE IT BY REFENCE USING SUITABLE WORDS of REFERENCE." UNITED STATES V. WILLIAMSON, 1F.3D 1134 (10TH CIR. 1993). (QUOTING 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE SECTION 4.6 (A), AT 241, (2D. ED. 1987).

MOST IMPORTANTLY, THE ISSUE PRESENTED IS NOT ONE of THE AFFIDAVIT [redacted] ADDING SPECIFICITY TO THE DESCRIPTION IN THE SEARCH WARRANT. NOR IS IT AN ISSUE of EXPRESSLY [redacted] REFERRING TO THE AFFIDAVIT AND INCORPORATING IT BY REFERENCE BY USE of SUITABLE WORDS of REFERENCE. THIS CASE PRESENTS THE ISSUE of A COMPLETE LACK of A SEARCH WARRANT, AND IDENTIFYING THE PLACE TO BE SEARCHED. IN ADDRESSING THE ISSUE of A COMPLETE LACK OF INFORMATION AS TO PARTICULARY IN A SEARCH WARRANT THE SUPREME COURT HAS STATED:

THIS WARRANT DID NOT SIMPLY OMIT A FEW ITEMS from A LIST of MANY TO BE SEIZED, OR MISDESCRIBE A few of SEVERAL ITEMS. NOR DID IT MAKE WHAT FAIRLY COULD BE CHARACTERIZED AS A MERE TECHNICAL MISTAKE OR TYPOGRAPHICAL ERROR. RATHER, IN THE SPACE SET INSIDE for A DESCRIPTION of THE ITEMS TO BE SEIZED, THE WARRANT STATED THAT THE ITEMS CONSISTED of "ANY AND ALL EVIDENCE PERTAINING TO BURGLARY, SAFECRACKING, RECEIVING STOLEN GOODS, FIREARMS VIOLATIONS, AND VIOLATION of DRUG LAW."

IN OTHER WORDS, THE WARRANT DID NOT DESCRIBE THE ITEMS TO BE SEIZED AT ALL. IN THIS RESPECT THE WARRANT WAS SO OBVIOUSLY DEFICIENT THAT WE MUST REGARD THE SEARCH AS "WARRANTLESS" WITHIN THE MEANING OF OUR CASE LAW. SEE LEON, 468 U.S. AT 923; cf. MARYLAND V. GARRISON, 480 U.S. 79, 85 (1987); STEELE V. UNITED STATES, 267 U.S. 498, 503-504 (1925).

GROH V. RAMIREZ, 540 U.S. 551, 557-58, 124 S. CT. 1284, 157 L. ED. 2D 1068 (2004).
EMPHASIS ADDED
IN THIS CASE IT IS CLEAR THAT THE SEARCH WARRANT FAILED TO PROVIDE ANY DESCRIPTION OF THE PLACE TO BE SEARCHED AND FURTHER FAILED TO EXPRESSLY REFER TO THE AFFIDAVIT AND INCORPORATE IT BY REFERENCE. UNDER BOTH STATE AND FEDERAL LAW, THE WARRANT IN THIS CASE IS SO DEFICIENT AS TO MAKE THE SEARCH IN THIS CASE A WARRANTLESS SEARCH.

A WARRANTLESS SEARCH IS PRESUMPTIVELY UNREASONABLE. IN GROH THE COURT

REITERATED THAT THE PRESUMPTIVE RULE AGAINST WARRANTLESS SEARCHES APPLIES WITH EQUAL FORCE TO SEARCHES WHOSE ONLY DEFECT IS A LACK OF PARTICULARITY IN THE WARRANT.

THE EXCLUSIONARY RULE PROVIDES THAT EVIDENCE OBTAINED AS A RESULT OF AN ILLEGAL SEARCH MUST BE EXCLUDED. STATE V. SACKS, 264 S.C. 541, 560, 216 S.E.2D 501, 511 (1975). THE FRUIT OF THE POISONOUS TREE DOCTRINE, MOST OFTEN ASSOCIATED WITH VIOLATIONS OF THE FOURTH AMENDMENT'S PROHIBITION OF UNREASONABLE SEARCHES AND SEIZURES, PROHIBITS THE USE OF EVIDENCE OBTAINED DIRECTLY OR INDIRECTLY THROUGH AN UNLAWFUL SEARCH OR SEIZURE. WONG SUN V. U.S., 371 U.S. 471, 484 (1963).

IN THIS CASE, THE SEARCH WARRANT WAS SO DEFICIENT ON ITS FACE (FAILING TO PARTICULARIZE THE PLACE TO BE SEARCHED OR THINGS TO BE SEIZED) THAT THE POLICE OFFICERS EXECUTING THE WARRANT COULD NOT REASONABLY PRESUME IT TO BE VALID. UNITED STATES V. LEON, 468 U.S. 897 (1984). THE GOOD FAITH EXCEPTION TO THE

EXCLUSIONARY RULE THEREFORE does NOT APPLY IN THIS CASE.
THE UNITED STATES SUPREME COURT IN Groh HELD THAT GIVEN THAT THE PARTICULARITY REQUIREMENT IS SET FORTH IN THE TEXT of THE CONSTITUTION, NO REASONABLE officer COULD BELIEVE THAT A WARRANT THAT PLAINLY DID NOT COMPLY WITH THAT REQUIREMENT WAS VALID. See ~~Harlow~~ Harlow v. FITZGERALD, 457 U.S. 800, 818-819 (1982).
AS A RESULT, THE EVIDENCE from THE SEARCH of THE 1384 AMELIA AVE RESIDENCE MUST THEREFORE BE EXCLUDED.

CONCLUSION

BASED ON THE FOREGOING, THE APPELLANT'S CONVICTION SHOULD BE REVERSED

RESPECTFULLY SUBMITTED
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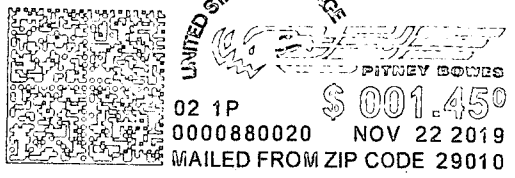

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