

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM Horry COUNTY  
Master in Equity

The Honorable Cynthia Graham Howe

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Case No. 2017-002365

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AUG 13 2018  
SC Court of Appeals

Jimmy A. Richardson, II, Solicitor for the Fifteenth Judicial Circuit, on behalf of  
the 15<sup>th</sup> Circuit Drug Enforcement Unit,

Respondent,

v.

Twenty-One Thousand and no/100 Dollars (\$21,000) U.S. Currency and Various  
Jewelry, Defendant Property, and Marvin Joshua White,

Appellant.

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REPLY BRIEF

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## LAW/ ANALYSIS

### I. SANCTIONS AGAINST RESPONDENT FOR FAILING TO DISCLOSE WOULD BE PROPER

Respondent argues that according to Rule 37 of the S.C. Rules of Civil Procedure, the requesting party files a motion for a court order compelling responses to discovery requests, whereas Rule 37 states a party may apply for such order. There is no authority requiring the requesting party to do so.

Respondent argued sanctions against him for failing to disclose evidence would result in the dismissal of Richardson's case, whereas, allowing a continuance and/or issuing an Order to Compel at that time would further the interest of jurisprudence. Allowing the Respondent to continue litigating the case without disclosing materials to Appellant is effectively a trial by ambush. The prejudice to Appellant is so great, such a sanction is justifiable. Furthermore, Respondent, as the plaintiff in this matter, has a responsibility to ensure all material sought to be utilized in the prosecution of the matter be forwarded to the Defendant within a reasonable time prior to trial. It is an abuse of power to decide a matter depriving the Appellant of personal property without first compelling Richardson to furnish the owner with any evidence prior to presenting before the court.

### II. ADMITTING EVIDENCE OBTAINED THROUGH A SEARCH WARRANT DEEMED IMPROPER IS REVERSIBLE ERROR

The affidavit from the Search Warrant for the residence was not signed. The affiant was not present in the hearing on this matter to testify as to the contents of the affidavit or its veracity. The testifying witness in this matter was not present during the drafting of the affidavit, the issuing of the Search Warrant, nor the executing of the Warrant on the

residence. Further, no testimony was presented as to the contents of the Search Warrant and its sufficiency. Further, no evidence was presented as to basis of Respondent's belief White was in possession or control of the residence or the narcotics, guns, and money recovered. The Court found it was not proper to allow the Search Warrant into evidence in this matter. Therefore, it would be improper to allow any returns from the Search Warrant to be considered in this matter. While, the Search Warrant may be found to be sufficient in an evidentiary hearing, the testimony presented in this matter failed to arise to the required level of probable cause. Moreover, any other evidence presented that could establish a nexus between alleged drug activity and White was obtained through investigations based upon the defective Search Warrant.

### III. A SEARCH WARRANT BASED UPON AN IMPROPER SEARCH WARRANT IS NOT A PROPER BASIS FOR PROBABLE CAUSE

The Search Warrant for White's banking records relied upon vague, unsubstantiated facts, including:

- a) the results of the search warrant from a residence which no testimony was provided establishing possession or control by White and which the court found not to be admissible in this matter;
- b) controlled drug purchases from which no evidence was provided and which the only testifying agent was not a part of;
- c) pictures and videos irrelevant to illegal activity; and
- d) information about a safety deposit box from an anonymous source without any testimony as to the reliability or veracity of the source.

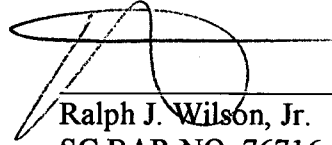
As of the date of the hearing, White had not been adjudicated guilty in state court of any of the incidents/arrests stated by Respondent as evidence of a nexus outside the search warrant from residence, and all have been dismissed. While, it is true, White has had federal convictions, as White's counsel stated in the hearing (R. p. 93, lines 11-22) White had raised several legal issues to the state's prosecuting authority which caused them petition the federal government to pursue charges against White in the federal arena where prosecutors can rely upon historical testimony through federal conspiracy laws. It was a bad case in state court, mostly because law enforcement improperly executed search warrants and was unable to obtain evidence admissible through state rules of evidence.

The purpose of a seizure hearing is for the seizing party to present evidence to establish probable cause. If probable cause is established, the burden shifts, however, the court stated they were not here to go behind the magistrate and decide if there is probable cause or not (R. p. 201, lines 15-17). Any evidence relied upon by the court to establish probable cause of a nexus between illegal drug activity, White and the property sought was weak and was fruit of the poisonous tree. Even the trial court was wavering over its decision as evidenced by the amount of time needed to make its decision.

#### CONCLUSION

For the reasons stated herein, this Court should reverse the judgment of the circuit court and dismiss the forfeiture action or in the alternative remand for a new trial on the merits of this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ralph J. Wilson, Jr.", is written over a horizontal line. The signature is stylized and somewhat cursive.

Ralph J. Wilson, Jr.

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August 8, 2018

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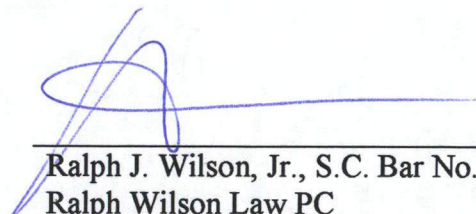
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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.



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