

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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May 22 2020

SC Court of Appeals

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALVIN GREGORY MITCHELL, JR.,

APPELLANT.

APPELLATE CASE NO. 2019-001352

ANDERS BRIEF OF APPELLANT

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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 REVIEW3

ARGUMENT

The trial court erred in denying appellant’s motion to suppress because the police’s search warrant for a mobile home only contained conclusory statements and did not give any basis for probable cause.....4

CONCLUSION.....11

PETITION TO BE RELIEVED AS COUNSEL12

TABLE OF AUTHORITIES

Cases

Robinson v. State, 407 S.C. 169, 754 S.E.2d 862 (2014)..... 3

State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015)..... 3, 7, 8, 9

State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001)..... 8

State v. Kotowski, 427 S.C. 119, 828 S.E.2d 605 (Ct. App. 2019).....9

State v. Smith, 301 S.C. 371, 392 S.E.2d 182 (1990)..... 7

State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2007)..... 8

State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997) 7, 9, 10

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying appellant's motion to suppress because the police's search warrant for a mobile home only contained conclusory statements and did not give any basis for probable cause?

STATEMENT OF THE CASE

A Jasper County grand jury indicted appellant Alvin Gregory Mitchell, Jr. for murder and a weapons charge and on July 30, 2019, appellant was tried before the Honorable Carmen T. Mullen and a jury. R. 1. Sean Thornton and Duston Whetsel represented the State. R. 2. Ian Deysach and Carolina Lawson represented appellant. R. 1. The jury convicted appellant. R. 481, l. 13 – 25. Judge Mullen sentenced appellant to life imprisonment. R. 492, l. 2 – 5. This appeal follows.

STANDARD OF REVIEW

“On appeal from a motion to suppress on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse only if there is clear error.” Robinson v. State, 407 S.C. 169, 180–81, 754 S.E.2d 862, 868 (2014). The same deferential standard of review applies to cases decided under the South Carolina Constitution. State v. Counts, 413 S.C. 153, 161, 776 S.E.2d 59, 63 (2015).

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ARGUMENT

The trial court erred in denying appellant's motion to suppress because the police's search warrant for a mobile home only contained conclusory statements and did not give any basis for probable cause.

In this murder case, the State's theory of motive was that appellant killed Darrell Hamilton, a known drug dealer, to rob him of a large amount of cash. R. 445, l. 24 – 446, l. 13. The problem with the State's theory was that appellant and Hamilton had been around each other all day with another man, Alfred Butler, partying, driving around, and shooting guns for fun. R. 188, l. 7 – 196, l. 2.

Appellant, Hamilton, and Butler began their day at a hangout called The Sugar Shack and started drinking, shooting guns, and using drugs. R. 188, l. 7 – 196, l. 2. The three men later drove around, firing guns, and went to a daiquiri shop. R. 188, l. 7 – 196, l. 2. Hamilton and appellant both had a gun in the truck. R. 134, l. 9 – 23. They dropped Butler off at approximately 5:00 AM. R. 195, l. 16 – 25. Butler never testified about any animosity between Hamilton and appellant. A woman who lived at The Sugar Shack said that Hamilton was a drug dealer who kept his guns under the mattress and frequently carried \$10,000 in cash on his person. R. 174, l. 13 – 175, l. 18.

Appellant's statement to the police described what happened after they dropped off Butler. R. 413, l. 5 – 415, l. 25. Hamilton drove and appellant sat in the passenger seat of the truck. R. 413, l. 5 – 415, l. 25. When the stopped at a stop sign, Hamilton answered a call on his phone. R. 413, l. 5 – 415, l. 25. While Hamilton was on the phone, a masked man appeared on the passenger side, pulled open the door, threatened to kill them, and demanded money. R. 413, l. 5 – 415, l. 25.

Appellant struggled with the robber. R. 413, l. 5 – 415, l. 25. During the fight, appellant injured his hand. R. 413, l. 5 – 415, l. 25. Appellant broke free of the masked assailant and ran down the road toward a Denny's restaurant. R. 413, l. 5 – 415, l. 25. While he was running, he heard gunshots. R. 413, l. 5 – 415, l. 25. A man in a black sedan gave appellant a ride to a store where he called his girlfriend to pick him up. R. 413, l. 5 – 415, l. 25. After later hearing that Hamilton was killed in the robbery, appellant turned himself in to the police. R. 413, l. 5 – 415, l. 25.

A woman on her way to work saw the truck in which appellant, Hamilton, and Butler had been riding in a ditch with the wheels turning. R. 116, l. 11 – 22. She stopped to help and saw the passenger door open. R. 116, l. 11 – 22. Inside the truck she saw Hamilton slumped over the steering wheel and also a small dog. R. 116, l. 11 – 22.

The police found a couple of hundred dollar bills, shell casings, and the puppy. R. 130, l. 13 – 131, l. 9. They also found a lanyard with a key in the road near the truck. R. 141, l. 8 – 15. The truck belonged to Consuela Daggett, who loaned it to Hamilton. R. 144, l. 4 – 145, l. 20. The key belonged to Felicia Robinson, appellant's ex-girlfriend. R. 158, l. 21 – 162, l. 3. The lanyard belonged to Robinson's daughter. R. 158, l. 21 – 162, l. 3. Robinson said appellant had the key on the day of the shooting and also had his puppy with him. R. 158, l. 21 – 162, l. 3.

Hamilton died from several gunshot wounds. R. 293, l. 6 – 298, l. 8. Stippling at the wounds indicated the shots were fired at close range. R. 293, l. 6 – 298, l. 8. The entrance wounds were on the right side of Hamilton's body, which was consistent with appellant's description of the masked man attacking from the passenger side of the truck. R. 293, l. 6 – 298, l. 8. DNA analysis of blood found in the truck showed both appellant's and Hamilton's DNA. R. 376, l. 1 – 378, l. 15.

Prior to trial, appellant moved to suppress all evidence obtained from the police's illegal search of a mobile home. R. 64, l. 2 – 98, l. 25. The police claimed that appellant's father told them appellant "was staying in an abandoned trailer." R. 67, l. 11 – 22. The police went to the property before obtaining a search warrant. R. 70, l. 24 – 73, l. 1. The officer "observed fresh blood droplets leading into the residence." R. 71, l. 1 – 6. The front door was ajar and had blood on it. R. 71, l. 1 – 6.

The police then entered the trailer without a warrant. R. 71, l. 7 – 72, l. 8. The officer claimed this initial warrantless entry "was out of concern for the safety of potential subjects." R. 72, l. 3 – 11. They entered the trailer through its back door. R. 72, l. 3 – 11.

No one was inside the trailer. R. 77, l. 12 – 18. The police saw additional blood droplets inside. R. 77, l. 19 – 21. The trailer was less than a mile from the where Hamilton was found. R. 77, l. 22 – 78, l. 4. The officer testified, "At that point, we wanted to make sure no one was injured on the inside. We go in there, secure the residence, and then we back off." R. 77, l. 12 – 21.

The police then obtained the search warrant. R. 65, l. 7 – 66, l. 20. R. 509 (Court's Ex. 2). The affiant for the warrant could not recall whether the warrant affidavit was supplemented with oral testimony. R. 65, l. 22 – 24. Nothing about the deputy who supposedly spoke with appellant's father or whether the police verified that they spoke with appellant's father was included in the warrant. R. 67, l. 15 – 68, l. 21.

The police did not include information they had received that appellant was staying with his girlfriend in another location. R. 69, l. 14 – 18. The affidavit described the trailer as being next to a billboard, but the affiant had no knowledge of whether that was how the father described the property. R. 70, l. 18 – 71, l. 11. The officer agreed that nothing in the search

warrant indicated any reason to believe that appellant shot Hamilton, but fell back on the fact that an arrest warrant had already been obtained by SLED for appellant. R. 72, l. 12 – 73, l. 12. The police admitted they did not have the arrest warrant in hand and that the magistrate who issued their search warrant was not the same as the magistrate who issued SLED’s search warrant. R. 73, l. 2 – 23.

Appellant’s suppression argument was two-fold. First, appellant argued the initial warrantless approach was illegal under the state constitution because the officers did not have reasonable suspicion. R. 89, l. 17 – 98, l. 25. Appellant relied on State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015). R. 89, l. 17 – 98, l. 25. Second, appellant argued that only analyzing the test of the warrant, “there is not one sentence that indicates why Alvin Mitchell would be the person of interest, much less probable cause that he is the person that would have committed the shooting.” R. 93, l. 3 – 20. Appellant cited State v. Smith, 301 S.C. 371, 392 S.E.2d 182 (1990) and State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997) in support of his argument. R. 93, l. 5 – 95, l. 1.

Judge Mullen denied the motion to suppress. R. 95, l. 2 – 98, l. 25. The court reasoned that the officers went to the residence on a tip regarding a defendant who had an active arrest warrant for murder. R. 95, l. 2 – 98, l. 25. The trial judge reasoned that after finding blood, exigent circumstances allowed the warrantless entry into the trailer and found the subsequent search warrant was valid. R. 95, l. 2 – 98, l. 25. Appellant renewed his objection throughout the trial. R. 277, l. 4 – 5. R. 374, l. 3 – 9. R. 379, l. 19 – 23.

The trial court erred in upholding the entry into the curtilage and in finding the subsequent warrant valid. South Carolina’s Constitution provides: “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures

and unreasonable invasions of privacy shall not be violated.” S.C. Const. Art. I, Section 10. “The South Carolina Constitution, with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” State v. Forrester, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (2001). “[T]he federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling.” Id. at 647, 541 S.E.2d at 842. According to the Supreme Court, “[t]he focus in the state constitution is on whether the invasion of privacy is reasonable, regardless of the person’s expectation of privacy” in the place searched. State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007). “By articulating a specific prohibition against ‘unreasonable invasions of privacy,’ the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution.” Id. (citing Forrester, 343 S.C. at 644-45, 541 S.E.2d at 841).

In Counts, the Court held expanded our citizens’ right to privacy by holding “that law enforcement must have reasonable suspicion of illegal activity at a targeted residence **prior to approaching the residence** and knocking on the door.” Counts at 172, 776 S.E.2d at 70 (emphasis added). The Court reasoned, “we find this rule safeguards the express constitutional right against unreasonable invasions of privacy and does not hamper law enforcement in their investigative efforts.” Id.

The knock-and-talk in Counts was only upheld after the police corroborated two anonymous tips. Id. at 173-74, 776 S.E.2d at 70-71. The tips identified Counts’ vehicles. Id. The tips gave Counts’ phone number. Id. The tips gave Counts’ multiple identities. Id. The officers investigated and determined that Counts had two false identification cards. Id. The police also learned Counts had two prior drug convictions. Id.

The recent interpretation of Counts in State v. Kotowski, 427 S.C. 119, 828 S.E.2d 605 (Ct. App. 2019) further shows the lack of any effort to satisfy the reasonable suspicion standard in this case. Kotowski at 129, 828 S.E.2d at 610. In Kotowski, the police did not just rely on an anonymous tip before conducting a knock-and-talk. Id. The police conducted surveillance. Id. The surveillance revealed a car belonging to the son of a convicted meth cook. Id. The police also examined the Sudafed database which revealed a substantial amount of purchases. Id.

Here, the police had what amounted to an uncorroborated anonymous tip that appellant was at this trailer. Neither the affiant nor the other officer who testified at the hearing spoke to the person who claimed to be appellant's father. When defense counsel asked Officer Morris whether he was aware that appellant's father was dead, he said he was not. R. 89, l. 1 – 3. None of the corroboration work that was done in Counts or Kotowski was done in this case. A tip, without further corroboration, cannot amount to reasonable suspicion. Therefore, the warrantless entry into the curtilage was illegal under the South Carolina Constitution.

It then follows that without reasonable suspicion for the initial warrantless entry, the police lacked probable cause for a search warrant because the blood drops were only viewed because the police were in a place they had no right to be. Furthermore, the warrant is defective even if the initial search could somehow be upheld. In Weston, the case cited by appellant, the warrant "affidavit failed to set forth any facts as to why police believed Weston committed the Crumlin crime. The first three sentences of the affidavit were mere conclusory statements. While the fourth sentence provided information linking Weston to his car at the time of the incident, it offered nothing to link Weston or the Datsun to the Crumlin crime itself. Additionally, there was absolutely nothing on the face of the affidavit from which the ministerial recorder could have assessed the veracity and basis of knowledge of the informant." State v.

Weston, 329 S.C. 287, 291–92, 494 S.E.2d 801, 803 (1997). Here, the affidavit failed to even contain conclusory statements.

Furthermore, the Weston Court also rejected reliance on an arrest warrant when nothing from the arrest warrant was attached to the search warrant. Id. The affiant testified that he could not remember any supplementary information provided to the magistrate and the magistrate was different from the judge who issued the arrest warrant for SLED. On its face, this warrant is defective and does not survive appellant Fourth Amendment challenge. The trial court erred in refusing to suppress the evidence obtained from the trailer and this case should be reversed.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and this case remanded for a new trial.

This 22nd day of May, 2020.

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alvin Gregory Mitchell states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Carmen T. Mullen, which was held on August 21, 2019, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, He asks the Court to relieve him as counsel for Alvin Gregory Mitchell.

This 22nd day of May, 2020.

Respectfully Submitted,

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

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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) Trial Transcript dated July 30-August 2, 2019
- (2) Hearing Transcript dated August 21, 2019
- (3) Court's Exhibit No. 2 (Search Warrant)
- (4) Indictments
- (5) Sentence Sheets

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

May 22, 2020

s/David Alexander
Appellate Defender

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ATTORNEY FOR APPELLANT

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.”

May 22, 2020.

s/David Alexander
Appellate Defender

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