

The State of South Carolina
In the Supreme Court

The State, Petitioner/Respondent,

v.

Adrian Neal, Respondent/Petitioner,
on writ of Certiorari to the Court of Appeals

July 21, 2020

Pro Se response Brief

This matter comes before the Court of Appeals by way of an memorandum in support of the writ of Certiorari for consideration in this case which is already on file with the South Carolina Court of Appeals.

RECEIVED

JUL 24 2020

SC Court of Appeals

Ineffective Assistance of Counsel

1) Counsel did not properly review or share discovery with applicant: Applicant testified that he did not receive a copy of the discovery until seven ~~days~~ months and seven days after the plea.

* Attention to the court, please notice and determine within exhibit "F" the original letter head that the applicant receive from his Counsel that was dated Feb. 19 2013. Applicant would like to ask the court to render whether or not he suffered prejudice by his Counsel failure to provide him with his case/file, the discovery and evidence the state had against him before his alleged guilty plea.

2) Counsel failure to challenge the insufficient of the search warrant on the applicant's vehicle and the applicant arrest warrant in which the applicant testified that they are invalid / defective because they are lacking the issuing officer's signature.
17-13-140 code L1576

* Attention to the court, please notice and determine within exhibit, A, B, C, D, E if the warrant's was invalid / defective due to the lack of the issuing Officer's signature. S.C. Code 17-13-140 (1976)

Dear, Clerk of Court, please present before the court of appeals by way of my memorandum in support of the writ of Certiorari for consideration to review and determine if the "Fact's in exhibit's A, B, C, D, E and F warrants, time served, the vacate or dismissal and Mr. Neal immediate release from the S.C.D.C. from the negotiated 30 year sentence for allose murder. On record dated Oct. 17, 2016, Mr. Neal argue that his warrant's was invalid / defective in how they were lacking the issuing officer's signature. Please have the court to review exhibit "A" that was dated Tuesday, April 14, 2009 in which the Supreme Court "ruled" a search warrant must be signed by a judge or it isn't valid.

They unanimously overturned Mr. Covert
25-year prison sentence in exhibit "A": State
v. Covert. As the court will see that Mr. Neal
warrants wasn't properly signed and are
lacking the endorsement on the back of
his arrest warrant, ~~and~~ lacking the issuing
officer's signature on the second page of
the accompanying two-page affidavit and
the officer's signature is missing on the
return page of the search warrant. Mr.
Neal have submitted these cases, Article
and exhibit's to the court of appeals.
Search warrant, dated 09-19-2011 at 9:00 p.m.)
State v. Covert 368, S.C. 188, 628 S.E. 2d 482 (Ct. App.
2006, see also State v. Freeman 459 S.E. 2d 867
1995. Arrest Warrant # I-829942, that was
filed in General Session 8th judicial circuit,
Greenwood, S.C. on Sept. 22, 2011 at 9:07 am
stamped and signed "Attest a true copy"
by the Clerk of Court, Angela Woodhurst
CCCP and GS, Greenwood County, S.C.
Davis v. Sanders, 40 S.C. 507, 19 S.E. 138 (1894)
DuBose v. DuBose 90 S.C. 87, 90, 72 S.E. 645, 646
(1911).

Please submit my memorandum to the
Court of Appeals on my behalf, file it and
Please return stamped filed copy to me.

Sincerely,

[Signature]

Subscribed and sworn to before me
this 21 day of July 2020.

Kangra Robinson

NOTARY Public for South Carolina

my Commission Expires:

8/5/2024

Fact's

1) I quoted this statement on record before the court, but it was left out of my PCR hearing transcript, in that the U.S. Const. Amend IV ~~and~~ and the S.C. Const. art. 2 and 10, mandating that a warrant must be supported by probable cause.

2) The Fourth amendment guarantees the right of the people to be secure (From) unreasonable searches and seizures, U.S. Const. Amend. IV) In parallel with the protection of the fourth amendment the south carolina constitution also provides a safe guard against unlawful searches and seizures. State v. Forrester 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001), S.C. Const. art 1 and 10, evidence obtained in violation of the fourth amendment is inadmissible in both state and federal court.

Forrester, 343 S.C. at 643, 541 S.E.2d at 840. A magistrate may issue a search warrant only upon a finding of probable cause. State v. Bellamy 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1994).

Exhibit "A" - Article from the state paper that was dated April 14, 2009. Address to the court entitled "warrant's must be signed."

Exhibit "B" - Briefing from state v. covert, on writ of certiorari to the court of appeals, opinion #26632 heard Jan. 21, 2009. Filed April 13, 2009. State v. Covert 368 S.C. 188, 628 S.E.2d 482 (Ct. App 2006, see also State v. Freeman 459 S.E.2d 867, 1995) Attention to the court of appeals, please review and notice pg. 56 and 57, analysis of the search warrant, when it was signed and date, policy considerations apply to a search warrant.

Exhibit "C" - Search warrant from the State of South Carolina, County of Greenwood against Adrian "Keith" Neal that was stamped and dated 09-19-2011 at 9:00 p.m. Please have the court to review this entire search warrant against Mr. Neal, the court to notice on the second page of the accompanying two-page affidavit, that it was never sworn, signed or dated. The same search warrant against Mr. Neal, please have the court to notice and review the return sheet

of the warrant, which it was never sworn,
signed or dated. by the magistrate as Mr. Neal
argue this issued on pg. 34 line 15 thru pg. 35 line 1
thru 24, also pg. 45 line 12 thru 25 and pg. 46 line 1-3
it's lacking the issuing ~~officer's~~ officer's signature.
State v. Covert, 368 S.C. 188, 628 S.E.2d 482 (Ct. App. 2006)
also see State v. Freeman 459 S.E.2d 867 (1995),

Exhibit "D" - Quote out of briefing in State v. Covert,
Opinion # 26632 heard Jan 21, 2009 - Filed April 13, 2009
on writ of certiorari to the court of appeals. Please
have the court to review the bottom section in exhibit
"D" pg. 56 * Fact's as shown below, quoted the court
decision, we have held ~~in~~ in the context of
an arrest warrant, that such a warrant is not
lawful where the issuing judicial officer failed
to sign the warrant on the space provided on
the warrant form. Davis v. Sanders, 40 S.C. 507, 19
S.E. 138 (1894).

Exhibit "E" - Arrest Warrant # I-829942, please
present Mr. Neal arrest warrant to the court
of appeals to review and determine if his arrest
warrant is invalid or not lawful. Please have
the appeal court to review and notice that the
back of Mr. Neal warrant was never signed/
endorse by the issuing judicial officer as Mr. Neal

Argue this issue on ps. 34 line 15 thru ps. 35 line 1
thru 24 also ps. 45 line 24-25 ps. 46 line 9 and 10.

Davis v. Sanders 40 S.C. 507, 19 S.E. 138 (1894). Please
have the appeal court to notice the case that was
used in exhibit "D" on ps. 56 Davis v. Sanders, 40 S.C.
507, 19 S.E. 138 (1894), Mr. Neal, arrest warrant #
I-829942, that was filed in General Session 8th
Judicial Circuit in Greenwood, S.C. on Sept. 22, 2011
at 9:07 AM in which was signed and stamped
"Attest a true copy" by the clerk of court, Angela
Woodhurst CCP and GS Greenwood County S.C.

Exhibit "F" - Is to show the appeal court
as argue on record on ps. 42 line 7-11, that Mr. Neal
never received his case, the evidence and discovery
the state had against him until seven months and
seven days ~~later~~ later after his alleged guilty plea.
For the court of appeals to review, here is the original
letter head that Mr. Neal received from his counsel
office that was dated Feb. 13, 2013.

Thank you



6B Tuesday, April 14, 2009

PLEASE READ THIS

STATE

Court: Warrants must be signed

COLUMBIA — The South Carolina Supreme Court has ruled a search warrant must be signed by a judge or it isn't valid.

The justices Monday unanimously overturned Kevin Covert's convictions and 25-year prison sentence for cocaine trafficking and a weapons charge.

Court records show officers found about a pound of cocaine in Covert's Greenville County home during a September 2002 search.

Covert's lawyer wanted the evidence tossed out because the search warrant wasn't signed, but the trial judge agreed with prosecutors that it was a procedural mistake.

The Supreme Court justices now say the signature is needed because it assures the public that a judge has found police have enough evidence for a search.

The justices also ruled Covert deserved a new trial because the "not guilty" option was left off a verdict form.

Woman dies after hit by car, coroner says

GREENVILLE — Authorities said an 89-year-old woman has died after her husband hit her with their car in a South Carolina grocery store parking lot.

Greenville County Deputy Coroner Kent Dill told The Greenville News that 89-year-old Jesse Roaden was pulling the car to the front of the store to pick up his wife Saturday afternoon when he lost control of the vehicle.

Dill said Roaden told investigators he may have hit the accelerator instead of the brake.

Authorities said Eula Mae Roaden died shortly after she was hit.

The Highway Patrol said a special team of troopers is investigating the crash.

INCRAC

225-5-540 Return of Paper work to the clerk of Court

JUSTICE PLEICONES: We granted certiorari to review the Court of Appeals decision in State v. Covert, 368 S.C. 188, 628 S.E.2d 482 (Ct. App. 2006)¹ and now affirm, as modified, that court's decision to grant respondent a new trial. In a split decision, Judges Short and Anderson found reversible error in the jury's possession of a statute during deliberations; in addition, Judge Short found that evidence should have been suppressed, and Judge Anderson found reversible error in the verdict form.

We hold, as did Judge Short, that an unsigned search warrant is invalid, and agree with Judge Anderson that when a verdict form is submitted to a jury in a criminal case, it must affirmatively offer a "not guilty" option. Finally, while we agree with Judges Short and Anderson that it was error to permit this jury to have a written version of the trafficking statute with it during deliberations, we would not find sufficient prejudice from that error alone to warrant reversal.

ISSUES

- 1) Did Judge Short err in holding that an unsigned search warrant is invalid?
- 2) Did Judge Anderson err in finding the verdict form here was so prejudicial as to require reversal?
- 3) Did permitting the jury to have a written version of the trafficking statute with it during deliberations require reversal?

¹ The facts are fully reported in that opinion, and the verdict form is reproduced in Judge Anderson's concurring opinion.

ANALYSIS

1. Warrant

The search warrant in this case is signed by the magistrate, and dated September 28, 2002; the accompanying two-page affidavit is signed by her on each page, and both these signatures are dated September 26, 2002. The return is signed and dated September 27, 2002. It is undisputed that the warrant was obtained and served on September 26, 2002.

At trial, respondent contended that the warrant was unsigned when it was served, that it was therefore invalid, and that accordingly the evidence seized pursuant to the search should be suppressed. Respondent argued that, without the magistrate's signature, the warrant was not issued within the meaning of South Carolina's search warrant statute, S.C. Code Ann. § 17-13-140 (1985). The trial judge refused to suppress the evidence even though he found the warrant had not been signed before it was served, holding that the search warrant statute was subject to a "good faith" exception, and that such an exception was applicable here.

On appeal, Judge Short held that the search warrant was not issued within the meaning of the statute because it lacked a timely signature. Judge Short also held there was a good faith exception to the statutory warrant procedures, but that it was inapplicable here. We agree that the absence of the magistrate's signature at the time the warrant was served invalidates it, but do not reach the issue whether there exists a "good faith" exception to the statutory warrant requirements since we find, as explained below, that no warrant was ever issued.

We have held, in the context of an arrest warrant, that such a warrant is not lawful where the issuing judicial officer failed to sign the warrant on the space provided on the warrant form. Davis v. Sanders, 40 S.C. 507, 19 S.E. 138 (1894). Although the State would characterize such an omission as merely procedural or ministerial, we disagree. The Davis Court gave a persuasive explanation of the signature requirement, albeit in the context of an arrest warrant:

56 Coolidge v. New Hampshire 91 S.C. 2022
92 S.C. 26

[W]hen it is remembered that a sheriff or other officer, who undertakes to arrest a citizen under a warrant, is bound to show his warrant, if demanded, to the person proposed to be arrested, and if he refuses to do so the arrest may be lawfully resisted [internal citation omitted], we think it would be very dangerous to the peace of society for the court to hold that a paper, which shows on its face that it is an unfinished paper... would be a sufficient justification for an arrest.

The same policy considerations apply to a search warrant,² and thus the lack of the issuing officer's signature is not excusable as merely procedural or ministerial, but rather negates the existence of a warrant, creating instead "an unfinished paper." As the Davis Court went on to hold, the fact that the issuing officer intended to sign the warrant and had in fact signed the back was not sufficient to validate it, nor was the arrest legal despite the fact the officers who executed the arrest pursuant to the "warrant" were "entirely innocent of any intentional wrong."

The Davis requirement that a warrant must be signed by the issuing judicial officer in order to be complete is a common law decision predicated on public policy considerations. The signature is the assurance that a judicial officer has found that law enforcement has made the requisite probable cause showing, and serves as notice to the citizen upon whom the warrant is served that it is a validly issued warrant. Without the signature, it is merely an "unfinished paper." Davis, supra; see also DuBose v. DuBose, 90 S.C. 87, 72 S.E. 645 (1911) ("But it has been decided [in Davis] that, when an officer is performing the ministerial duty of issuing a paper on compliance with certain conditions prescribed by law, his signature at the foot of the paper he intended to sign is necessary to its validity").

We consider also whether the unsigned warrant can be upheld in the face of § 17-13-140, the general search warrant statute. The statute contains

² See S.C. Code Ann. § 17-13-150 (2003) (copy of warrant and affidavit shall be furnished to person served)

requirements different from those mandated by the Fourth Amendment, and is in some ways “more strict” than the federal constitution. State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). While we have recognized a “good faith” exception to the statute’s requirements where the officers make a good faith attempt to comply with the statute’s affidavit procedures, McKnight, supra, explaining State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975), we have left open the question whether a good faith exception would be applied where “the officers reasonably believe the warrant is valid when the search is made, but is subsequently determined to be invalid.” McKnight, supra. Here, we do not reach the question whether there exists a good faith exception to the statute where a defective warrant is issued, since under South Carolina law an unsigned warrant is not a warrant, and is not capable of being issued within the meaning of § 17-13-140. See also Davis, supra (officers good faith irrelevant where warrant is not signed).

The circuit court erred in refusing to suppress the evidence seized pursuant to the unsigned “warrant.” Respondent is therefore entitled to a new trial.

2. Verdict Form

In this case, the jury was given a verdict form which tracked the provisions of the trafficking statute, but did not specifically allow the jury to return a “not guilty” verdict. We agree with Judge Anderson that this was error and hold that henceforth, any verdict form given to a jury for use in a criminal case must specifically include as an option “not guilty.” We therefore overrule State v. Myers, 344 S.C. 532, 544 S.E.2d 851 (Ct. App. 2001) to the extent it holds that a jury charge can negate prejudice from the lack of a “not guilty” choice on a verdict form.

3. Trafficking Statute

Judge Short and Judge Anderson found reversible error in the trial court’s submission to the jury of the trafficking statute, while Judge Goolsby found no error. Since this case was tried and the appeal decided by the Court of Appeals, we have held that it is within the trial judge’s discretion to “submit its instructions on the law to the jury in writing.” State v. Turner, 373 S.C. 121, 644 S.E.2d 693 (2007). We caution the bench again, as we did

in Turner, that this practice should be used sparingly, and only where it will aid the jury and where it will not prejudice the defendant. It is never appropriate, however, to give only part of the charge to the jury as was done in this case.

CONCLUSION

The Court of Appeals decision reversing respondent's convictions and sentences is

AFFIRMED AS MODIFIED.

WALLER, BEATTY, JJ., and Acting Justice James E. Moore, concur. TOAL, C.J., concurring in a separate opinion.

CHIEF JUSTICE TOAL: Although I concur in the decision to affirm the court of appeals' decision reversing Covert's conviction, I write separately because I would reach this decision on different grounds.

As a primary matter, I do not find that *Davis v. Sanders*, 40 S.C. 507, 19 S.E. 138 (1894) controls this case. *Davis* was decided over one hundred years ago, prior to the passage of § 17-13-140. Moreover, the *Davis* Court, in the absence of any statutory authority, relied on prior case law in declaring that a warrant must be signed.³ See *State v. Vaughn*, 16 S.C.L. (Harp.) 313 (1824) (holding that a warrant that was signed but not sealed was nevertheless a valid warrant). Moreover, I find it significant that the parties in *Davis* conceded that a warrant had to be signed, thereby leaving only the issue of whether the magistrate's notation on the warrant constituted a signature for the Court's determination. Accordingly, I believe that *Davis* is somewhat irrelevant to the facts of this case and that we must solely look to § 17-13-140 to determine the validity of this warrant.

Section 17-13-140 does not specifically require the magistrate to sign the warrant, but rather, merely requires that a magistrate "issue" the warrant. Nonetheless, a magistrate's signature indicates that she has made the necessary probable cause finding required before issuing the warrant. Even assuming that an unsigned warrant is defective, I do not believe that this alone necessarily renders the warrant void *ab initio*.

This Court has held that the good faith exception to the exclusionary rule applies in cases where officers make a good faith attempt to comply with the statute's affidavit requirements. See *State v. McKnight*, 291 S.C. 110, 112-13, 352 S.E.2d 471, 472 (1987) (refusing to apply the good faith exception where the officers failed to attempt to comply in good faith to the affidavit requirements); *State v. Sachs*, 264 S.C. 541, 559, 216 S.E.2d 501, 510 (1975) (allowing evidence to be admitted pursuant to the good faith exception where officers attempted in good faith to comply with the statutory

³ Specifically, the *Davis* Court found that the lower court properly charged the jury that "a warrant need not be under seal, yet it must be in writing, and signed by the officer issuing." *Id.* at 509, 19 S.E. at 139.

requirements). In my view, the policy reasons for applying the good faith exception to the exclusionary rule in other cases are applicable in this case. See *State v. Harvin*, 345 S.C. 190, 194, 547 S.E.2d 497, 500 (2001) (recognizing that the main purpose of the exclusionary rule is the deterrence of police misconduct). Covert does not allege that the officers knew the warrant was unsigned or deliberately obtained the warrant without a signature, and the record contains no evidence that he was prejudiced by the statutory violation. Therefore, I would hold that the officers attempted in good faith to comply with § 17-13-140's requirements and the exclusionary rule should not render the evidence inadmissible.

In my view, the fatal flaw in the State's case is its failure to present any evidence at trial that the magistrate made a probable cause finding. As the majority observes, the signature on the warrant indicates that a judicial officer found that law enforcement made the requisite probable cause showing, a finding clearly required before a warrant may be issued. The State bore the burden of proving the validity of the warrant and, in my view, while the absence of a magistrate's signature may be a factor in determining whether the warrant was issued upon probable cause, it is not dispositive of the determination. However, by failing to call the magistrate to testify that she issued the warrant upon finding probable cause, the State failed to present any evidence to show the warrant was valid and therefore did not carry its burden. See *Sachs*, 264 S.C. at 555, 216 S.E.2d at 508 (recognizing that "all that is necessary to justify the issuance of a warrant is probable cause"); see also U.S. Const. amend. IV and S.C. Const. art. I (mandating that a warrant must be supported by probable cause).

For these reasons, I would hold that the good faith exception is applicable under these circumstances, but that the State failed to carry its burden of proving the magistrate issued the warrant upon finding probable cause. Accordingly, I concur with the majority's decision to affirm as modified the court of appeals' opinion.

STATE OF SOUTH CAROLINA

Exhibit "C" 5 pgs.

County of Greenwood

SEARCH WARRANT

Date 9/19/11

Officer Captain Nick Futch

9/19/2011 9:00:00 PM

STATE OF SOUTH CAROLINA

COUNTY OF Greenwood

SEARCH WARRANT

Form approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Greenwood

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Gold 2001 Honda Accord, tag number GLK280 registered to Adrian Keith Neal

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Firearms, bullets, shell casings, a letter written by the defendant pertaining to this incident, and/or blood evidence

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Adrian Keith Neal

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Greenwood
Sep. 19

, S.C.
20 11

Signature of Judge

(L.S.)

STATE OF SOUTH CAROLINA }

AFFIDAVIT

COUNTY OF **Greenwood**

Personally appeared before me, one Cpt. Nick Futch who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Firearms, bullets, shell casings, a letter written by the defendant pertaining to this incident, and/or blood evidence

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

Gold 2001 Honda Accord, tag number GLK280

**REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

SEE ATTACHMENT A

Sworn to and Subscribed before me

This 19th day of Sep
N. Futch
Signature of Judge

, 20 11 }
(L.S.)

[Handwritten Signature]
AFFIANT

ADDRESS:

PHONE:

9/19/2011 9:00:00 PM

Liabilities: List all your creditors, liens, encumbrances, mortgages, car payments, credit cards, etc and amount owed:

Heat Wave Motor's \$ 5,000 or less
\$ _____
\$ _____

AFFIDAVIT OF DEFENDANT:

I do solemnly swear that the account by me delivered to this Court with my application for counsel does contain a true and full account of all my real and personal estate, debts, credits, and affects whatsoever, without exception. That which I or any person in trust for me have or at the time of my possession had, or am, or was, in any respect entitled to, in possession, remainder or revision and that I have not at any time since charges were made against me or before directly or indirectly sold, leased, assigned, or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand that the State shall file a claim against me in an amount equal to representation, but that such claim shall not constitute a lien against my property unless the claim is reduced to Judgment by Order of the Court after giving at least thirty days notice.

I, the defendant named herein, further acknowledge that I am required by Order of the Court to notify the Greenwood County/City Public Defender's Office of any change in my financial status prior to the trial of my case.

Any change in my financial status may affect my eligibility for court appointed counsel. Upon any change in my financial status I will contact the Public Defender for re-screening to determine my continued eligibility for counsel.

I further acknowledge that my failure to notify the Public Defender of any change may result in my being held in Contempt of Court.

I am financially able unable to employ counsel and request that counsel be not be assigned to represent me.

Adrian Keith Gas
Signature of Defendant

Sworn to and Subscribed Before Me This _____ day of _____, 20____

Presiding Judge

APPOINTMENT OR DENIAL OF COUNSEL (if applicable):

Based on information contained in this Affidavit the appointment of a Public Defender to represent the above named defendant is hereby

Approved Initials _____

Denied Initials _____

Defendant released on bond Yes No

Presiding Judge

RETURN

I received the attached Search Warrant

9-19

, 20 11

, and have executed it as follows:

On 9-19

, 20 11

at

9:20

o'clock

P

M, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with *Keith Neil Jail Property*
Name of person searched or "at the place of search" with:
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Hand written letter from Keith Neil from center console

Taurus .357 Revolver from Dash Compartment

This inventory was made in the presence of *Kenya Griffin*

AND

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this

day of

, 20

(L.S)

Signature of Judge

}
}

(Signature of Officer Executing Warrant)

9/19/2011 9:00:00 PM

Exhibit "D"

ANALYSIS

1. Warrant

The search warrant in this case is signed by the magistrate, and dated September 28, 2002; the accompanying two-page affidavit is signed by her on each page, and both these signatures are dated September 26, 2002. The return is signed and dated September 27, 2002. It is undisputed that the warrant was obtained and served on September 26, 2002.

At trial, respondent contended that the warrant was unsigned when it was served, that it was therefore invalid, and that accordingly the evidence seized pursuant to the search should be suppressed. Respondent argued that, without the magistrate's signature, the warrant was not issued within the meaning of South Carolina's search warrant statute, S.C. Code Ann. § 17-13-140 (1985). The trial judge refused to suppress the evidence even though he found the warrant had not been signed before it was served, holding that the search warrant statute was subject to a "good faith" exception, and that such an exception was applicable here.

On appeal, Judge Short held that the search warrant was not issued within the meaning of the statute because it lacked a timely signature. Judge Short also held there was a good faith exception to the statutory warrant procedures, but that it was inapplicable here. We agree that the absence of the magistrate's signature at the time the warrant was served invalidates it, but do not reach the issue whether there exists a "good faith" exception to the statutory warrant requirements since we find, as explained below, that no warrant was ever issued.

We have held, in the context of an arrest warrant, that such a warrant is not lawful where the issuing judicial officer failed to sign the warrant on the space provided on the warrant form. Davis v. Sanders, 40 S.C. 507, 19 S.E. 138 (1894). Although the State would characterize such an omission as merely procedural or ministerial, we disagree. The Davis Court gave a persuasive explanation of the signature requirement, albeit in the context of an arrest warrant:

56 Coolidge v. New Hampshire 91 S.Ct 2022
92 S.Ct. 26

[W]hen it is remembered that a sheriff or other officer, who undertakes to arrest a citizen under a warrant, is bound to show his warrant, if demanded, to the person proposed to be arrested, and if he refuses to do so the arrest may be lawfully resisted [internal citation omitted], we think it would be very dangerous to the peace of society for the court to hold that a paper, which shows on its face that it is an unfinished paper... would be a sufficient justification for an arrest.

The same policy considerations apply to a search warrant,² and thus the lack of the issuing officer's signature is not excusable as merely procedural or ministerial, but rather negates the existence of a warrant, creating instead "an unfinished paper." As the Davis Court went on to hold, the fact that the issuing officer intended to sign the warrant and had in fact signed the back was not sufficient to validate it, nor was the arrest legal despite the fact the officers who executed the arrest pursuant to the "warrant" were "entirely innocent of any intentional wrong."

The Davis requirement that a warrant must be signed by the issuing judicial officer in order to be complete is a common law decision predicated on public policy considerations. The signature is the assurance that a judicial officer has found that law enforcement has made the requisite probable cause showing, and serves as notice to the citizen upon whom the warrant is served that it is a validly issued warrant. Without the signature, it is merely an "unfinished paper." Davis, supra; see also DuBose v. DuBose, 90 S.C. 87, 72 S.E. 645 (1911) ("But it has been decided [in Davis] that, when an officer is performing the ministerial duty of issuing a paper on compliance with certain conditions prescribed by law, his signature at the foot of the paper he intended to sign is necessary to its validity").

We consider also whether the unsigned warrant can be upheld in the face of § 17-13-140, the general search warrant statute. The statute contains

² See S.C. Code Ann. § 17-13-150 (2003) (copy of warrant and affidavit shall be furnished to person served)

ARREST WARRANT

1-829942

12-134

STATE OF SOUTH CAROLINA

County/ Municipality of GREENWOOD

THE STATE Am 9-20-11 against

NEAL, ADRIAN KEITH

Address: _____

Phone: _____ SSN: _____

Sex: M Race: B Height: 508 Weight: 240

DL State: SC DL#: _____

DOB: _____ Agency ORI #: _____

Prosecuting Agency: CITY OF GREENWOOD

Prosecuting Officer: NICK FUTCH

Offense: MURDER/MURDER - 16-03-0010, 0020

Offense Code: 0116

Code/Ordinance Sec. 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of GREENWOOD /

The Accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge _____ (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Adrian Neal

on 9-20-11

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:

B. LEE MILLER
520 MONUMENT STREET
GREENWOOD SC 29646

ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

STATE OF SOUTH CAROLINA

County/ Municipality of GREENWOOD

Exhibit "E"

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

Personally appeared before me the affiant NICK FUTCH being duly sworn deposes and says that defendant NEAL, ADRIAN KEITH who did within this county and state on 09/19/2011 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of GREENWOOD) in the following particulars:

DESCRIPTION OF OFFENSE:

MURDER/MURDER - 16-03-0010, 0020

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: CASE# 11024023 ADRIAN KEITH NEAL DID ON 09-19-2011, WILLFULLY, UNLAWFULLY, AND WITH MALICE AFORETHOUGHT, MURDER KAYBREISHA DYESHAE TIMPSON. NEAL AND TIMPSON WERE TRAVELING IN NEAL'S CAR TOGETHER ALONG WITH THEIR INFANT CHILD. THE TWO BECAME INVOLVED IN A VERBAL ARGUMENT AT WHICH TIME NEAL STOPPED THE VEHICLE, RETRIEVED A HANDGUN FROM THE GLOVE COMPARTMENT, POINTED THE WEAPON AT TIMPSON AND FIRED ONE ROUND WHICH STRUCK TIMPSON IN THE LEFT HAND, FOREARM, AND CHEST AREA. TIMPSON THEN BEGAN TO EXIT THE VEHICLE AT WHICH TIME NEAL FIRED HIS HANDGUN A SECOND TIME STRIKING TIMPSON IN THE LOWER BACK TO THE LEFT OF HER SPINE. TIMPSON EXITED THE VEHICLE AND TRAVELED A FEW FEET BEFORE COLLAPSING ON THE SIDE OF MERRYWOOD RD. NEAL THEN FLED THE AREA IN THE VEHICLE ALONG WITH THEIR INFANT CHILD. TIMPSON DIED AS A RESULT OF THE GUNSHOT WOUNDS SHORTLY AFTER EXITING THE VEHICLE. NEAL WAS DEVELOPED AS A SUSPECT IN THIS CASE AND INTERVIEWED BY CAPT. FUTCH. NEAL DID GIVE A VOLUNTARY STATEMENT IMPLICATING HIMSELF IN THIS UNLAWFUL ACT THIS INCIDENT OCCURRED WITHIN THE CITY LIMITS OF GREENWOOD IN VIOLATION OF STATE LAW.

Signature of Affiant _____

STATE OF SOUTH CAROLINA

County/ Municipality of GREENWOOD

Affiant's Address 520 MONUMENT STREET GREENWOOD SC 29646

Affiant's Telephone 864-942-8458

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 09/19/2011 defendant NEAL, ADRIAN KEITH did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of GREENWOOD) as set forth below:

DESCRIPTION OF OFFENSE:

MURDER/MURDER - 16-03-0010, 0020

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 9-20-11
B. Lee Miller (L.S.)

Signature of Issuing Judge _____

Judge Code: 202

Judge's Address 520 MONUMENT STREET GREENWOOD SC 29646

Judge's Telephone 864-942-8458

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

FILED
GENERAL SESSION
AT JUDICIAL CIRCUIT
GREENWOOD, SC
2011
SEP 22 AM 9 07

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

Exhibit "F"

PUBLIC DEFENDER

**Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties
Suite 208, Park Plaza
600 Monument Street
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104**

**Janna A. Nelson
Circuit Defender
Greenwood County**

February 19, 2013

Mr. Adrian Keith Neal, #351553
Cooper A-42
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

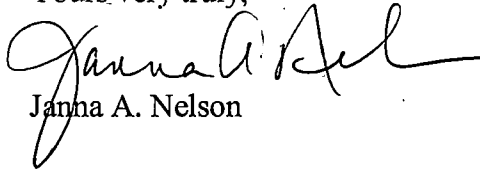
Re: State v. Adrian Keith Neal
Our File Number: 24A11-00000418
Warrant Number(s): I-829942; I-829943

Dear Mr. Neal:

In response to your recent letter, I am enclosing a copy of my entire file, with the sole exception of a DVD of your taped statement. Also enclosed are copies of the sentencing sheet and indictments. I do not have copies of any transcripts in your case.

If you need anything else, please let me know. I hope you are doing as well as possible under the circumstances and wish you the best.

Yours very truly,


Janna A. Nelson

Enclosures

Certificate of Service

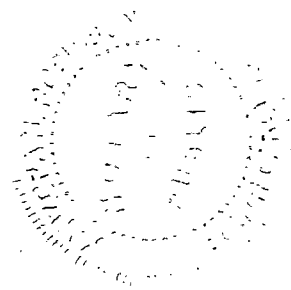
RECEIVED

JUL 24 2020
SC Court of Appeals

The undersigned hereby certify that
he mail a copy of his memorandum to the
Court of Appeals, South Carolina Court of
Appeal office on 21 day of July 2020
by depositing same in the U.S. mail room at
Broad River Corr. Inst.

Adrian Paul

Subscribed and sworn to before me
this 21st day of July 2020



Kangara Robinson
NOTARY Public for ~~South~~ Carolina

My Commission Expires:

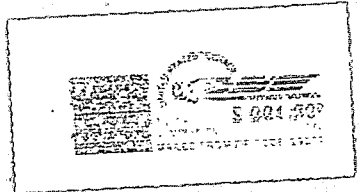
8/5/2024

Michael Scarfo # 119081

PB-9

4848 Goldmine Hwy

Kershaw, SC 29067



To: South Carolina Court of
APPEALS

c/o JENNY ABBOTT KITCHINGS, CLERK

V. CLAIRE ALLEN, Deputy Clerk

P.O. Box 11629

Columbia, SC 29211

RECEIVED

JUL 22 2020

RECEIVED
JUL 24 2020
SC Court of Appeals

