

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
HONORABLE PERRY M. BUCKNER, CIRCUIT COURT JUDGE.

THE STATE,

RESPONDENT,

v.

GREGORY KYLE GREEN,

APPELLANT.

No. 2019-001924

PRO SE BRIEF OF APPELLANT

RECEIVED

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SC Court of Appeals

GREGORY K. GREEN
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
PRO SE

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STANDARD OF REVIEW	3
ARGUMENTS	5
CONCLUSION	23
EXHIBIT A	
EXHIBIT B	

TABLE OF AUTHORITY

- PROSSER V. PARSONS 245 SC 493 141 SE2d 342 (1965)
PAYNE V. DELAWARE 414 F.Supp.2d 1158 (N.D. GA. 2004)
FRANKS V. DELAWARE 438 US 154 98 S.Ct. 2674, 57 L.Ed2d 667 (1978)
MILLER V. PRINCE GEORGE COUNTY, MD. 475 F.3d 621 (4th Cir. 2007)
BANKS V. U.S., 920 F.Supp. 688 (E.D. VA. 1996)
SMITH V. CAIN 565 US 73, 132 S.Ct. 627, 181 L.Ed2d 571 (2012)
MAPP V. OHIO 367 US 643 81 S.Ct. 1684 (1961)
VAUGHN V. STATE 362 SC 163 607 SE2d 72 (2004)
NAPUE V. PEOPLE OF ST. OR. I: 366 U.S. 264 79 S.Ct. 1173, 3 L.Ed 2d 1217 (1959)
GUNNING V. COUSIN 452 F.Supp. 916 (WD NC 1978)
STATE V. WILSON 345 SC 1. 545 SE2d 827 (2001)
STATE V. QUATTLEBAUM 338 SC 441 527 SE2d 105 (2000)
STATE V. LYNCH 412 SC 156 771 SE2d 346 (2015)
STATE V. BARONS 367 SC 41 625 SE2d 216 (2006)
STATE V. PORCH, 417 SC 619 790 SE 2d 440 (2016)
STATE V. JONES 331 SC 228, 500 SE2d 499 (1988)
STATE V. McKNIGHT 291 SC 110 352 SE2d 471 (1987)
STATE V. MISSOURI 337 SC 548 524 SE2d 394 (1998)
STATE V. ROBINSON 415 SC 600 785 SE2d 355 (2016)
STATE V. FRATZER 394 SC 213, 715 SE2d 650 (2011)
STATE V. Gilchrist 350 SC 221, 565 SE2d 281 (2002)
STATE V. Phillips 430 SC 319 844 SE2d 651 (2020)
STATE V. GRAY 408 SC 601 759 SE2d 160 (2014)
STATE V. SULLIVAN, 43 S.C. 205, 21 SE 7 (1895)
STATE V. PAGAN 369 SC 201 631 SE 2d 262 (2006)
U.S. V. NAJJAR 300 F3d 466 (4th Cir. 2002)
U.S. V. DE LA PAZ RENTAZ 613 F3d 18 (1st Cir. 2010)
U.S. V. LOANZA 107 F3d 257 (4th Cir. 1997)
CLOSE V. U.S. 679 F3d 714 (8th Cir. 2012)
S.C. CODE ANN. §17-13-140
S.C. CONST. ART. I, §10
U.S. CONST. AMEND IV

STATEMENT OF ISSUES ON APPEAL

THE ARREST WARRANT IN THIS CASE WAS FRAUDULENTLY OBTAINED THROUGH DELIBERATELY FALSIFIED AFFIDAVIT PRESENTED TO THE MAGISTRATE. FURTHERMORE, THE LEAD INVESTIGATOR DET. MICHAEL SANCHEZ OFFERED PERJURED TESTIMONY AT APPELLANT'S PRELIMINARY HEARING WHICH CONSTITUTES THE VIOLATION OF APPELLANT'S 4TH AMENDMENT RIGHTS WITH THE ILLEGAL SEIZURE OF APPELLANT.

1. Did the trial court err in denying motion of dismissal for lack of probable cause to arrest based on false information?

2. Did prosecutor's knowledge of photo lineup not presented to defense counsel show a deliberate act of the police to cover up the errors in the falsified affidavit?

3. Did judge err in allowing jail calls and visits into trial because appellant ~~was~~ was illegally detained under fraudulent arrest warrant affidavit?

4. Was prosecutor's comment, "I think you know what to do. It's time to find him guilty -" permissible in his closing arguments?

5. Did the prosecutor improperly vouch for Det. Sanchez in his closing argument?

6. Why was exculpatory evidence by State witness DONNA MONEY SLED DNA ANALYSIS EXPERT AND FBI CELL ANALYSIS EXPERT CLAY SIMMONS disregarded by the prosecutor and conflicting testimony of Brandi Dobbins accepted?

7. Did trial judge err in disregarding defense counsel's motion of dismissal against validity of arrest warrant?

8. Why did prosecutor deny giving codefendant a deal, during closing arguments?

STATEMENT OF THE CASE

Appellant Gregory Kyle Green was convicted of murder and possession of a weapon during the commission of a violent crime per jury trial held on November 4th - 7th of 2019 in the Charleston County General Sessions Court before Judge Perry M. Buckner, who sentenced him to an aggregate forty year prison term. Attorneys Taylor J. Stewart and Teresa L. Norris represented Appellant at trial, and Assistant Solicitors Richard Waring and White Sowards appeared on behalf of the state.

Appellant appealed his conviction and sentences. This brief follows.

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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 bound by the trial courts findings unless they are clearly erroneous. State v Quattlebaum, 338 S.C. 441, 452, 527 S.E. 2d 105, 111 (2000). A deferential standard of Review likewise applies in context of a 4th Amendment challenge to a trial courts fact driven affirmation of probable cause. Because this is a novel question the court must base its analysis on civil jurisprudence which dealt with false information in arrest warrants and false information presented at preliminary hearings. Miller v Prince George County, Md, 475 F.3d 621 (4th Cir 2007) (holding that whether an arrest violated the parameters of the 4th Amendment depends upon "a number of antecedent determinations, each of which inherently fact specific" and "entails an inquiry into the totality of the circumstances" and the appellate court must affirm if there is "any evidence" to support the rulings. This appeal presents both factual and legal challenges to the ~~appellate~~ ruling of the trial court concerning the arrest warrant. Following Miller v Prince George County Md 475 F.3d 621, Detective Sanchez violated the 4th Amendment by deliberately and recklessly making material false statements and omissions on an arrest warrant affidavit, ultimately resulting in the appellants seizure without probable cause. These falsities were elicited during cross examination during trial through the break down of the warrant and the testimony of the pre-liminary hearing. Furthermore Detective Sanchez omitted the fact that an eye witness did not pick appellant out of the photo-lineup which was only brought to the defenses attention through Re-direct examination by Solicitor Waring and not placed in the Rule 5 motion of Discovery. Yet Det Sanchez stated in affidavit that "3rd party witness

"gave a description that matched the descriptions of eye witness." Along with ~~several~~ other inconsistencies in the arrest affidavit used to mislead the magistrate into signing the affidavit. These actions furthermore bring to the appellants attention what perjurious actions were taken at the Grand Jury indictments where the Detective most likely was the testifying officer. Did he once again testify falsely to information he didn't have further commencing a criminal proceeding as he did at the Preliminary Hearings. Unlike in State v Lynch 412 S.C. 156 771 S.E. 2d 346, State v Baccus 367 S.C. 41 625 S.E. 2d 216, State v Porch 417 S.C. 619 790 S.E. 2d 440 Detective Sanchez admitted at trial that he obtained an arrest warrant with information he did not have. He also admitted at trial to withholding exculpatory evidence which contradicted the warrant even further. These acts were blatant intentional and deliberate acts of reckless disregard for the truth.

Question Presented

1) Did the trial court err in denying motion of dismissal for lack of probable cause to arrest based on false information?

A) Was trial court in error for refusing to suppress arrest warrant in violation of Federal and State Constitutions?

B) Does the wanton careless disregard for the truth as established in *franks v Delaware* apply to arrest warrants?

Facts

A)

The trial court denied counsel motion of dismissal for lack of probable cause (Tr. p. 370 lines 10-12, Tr. p. 369 lines 4-14) as such counsel asserted that the Police obtained this warrant on false information,

Based on the evidence presented at trial that the police did not obtain cell phone records until August 30, 2017, and the arrest warrant affidavit dated July 7th 2017 stated that "Defendants cell phone records indicate the he was on Baily Street during the time of the incident,"

Det Sanchez testified that

Q. But you put on the warrant that quote Defendants cell phone records indicate he was on Baily Street during the time of the incident?

A Yes

Q So that information was not accurate

A That's correct

(Tr. p. 606; lines 21-25; Tr. p. 607 line 1)

This evidence was critical to establishing probable cause for arrest, and the police knew they did not have this information when they obtained the warrant. Similarly, Detective Sanchez also told the magistrate that "A witness to be named in court provided a 3rd Party Confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence. This witnesses statements were corroborated by details provided by other witnesses that viewed the car drop off and pick up the suspect and gave the initial description."

Trial Brief p. 6 Procedural issues A. Probable cause states "Walker is the ~~3rd~~ party witness. However Walker never told Det. Sanchez the name of the person Duceed allegedly gave a ride too. In fact Walker never identified the person by name, nickname photo or other wise.

Detective Sanchez testified that

Q Detective Sanchez I kind of want to go through a couple of points that the defendant brought up. Witness Kendyl Rice were you in here earlier in the week when he was testifying?

A I was

Q Okay did you interview him

A I did

Q All Right Did you show him at any point a photographic line up?

A I did

Q Was he able to identify the defendant as the person he saw that night?

A No he was not.

Neither was the description given by either eye witness a description close to the description of the appellant ~~Tr p. 276 lines 17-25.~~ Tr p. 276 lines 17-25. Tr p. 277 lines 1-9. Tr p. 246 lines 23-25 Tr p. 247 lines 1-4

Also stated in the arrest warrant the witnesses heard the name [Name] uttered by the codefendants. Det Sanchez suggested names to the eye witnesses despite their not remembering ~~the name~~ they heard including the appellants real name and nick name in the interviews of the eye witnesses. Both eye witnesses stated they could not recall what name they heard but the officers suggestive questioning and total opposite physical descriptions in the affidavit are false hoods also in the affidavit.

(Trp. 245 lines 12-18 Tr p. 279 lines 24-25, Tr 280 lines 1-21)

All of this evidence was fabricated to obtain an arrest warrant, as a consequence it is the only evidence police had to establish probable cause for arrest. I'm showing the car that these are the "evidence" used to obtain the warrant once these falsities are stripped from the warrant the warrant is invalid.

B) This is a novel question of law because no state precedents or federal precedents deal with false information contained in arrest warrants to establish probable cause.

~~The~~ The arrest warrant is the central focus of this case, here in the evidence clearly shows police intentionally supplied the magistrate with false information to obtain probable cause.

In State v Missouri 337 S.C. 548 (1999); State v Sachs 294 S.C. 541 (1975) this case addressed whether a defendant could attack the veracity of facts supporting a search warrant when the warrant was valid on its face. Noting that the Supreme Court had not yet squarely ~~addressed~~ ^{addressed} this issue, this court answered the question in the affirmative, providing the following limited test: Did the Officer or other government official, in such capacity intentionally, recklessly, or in bad faith recite facts he knew or should have known to be erroneous without correcting the error by additional affidavit or information to obtain issuance of a warrant? This court should further provide a caveat, if the police obtain an arrest warrant based on false information, the police would in reality violate petitioner's rights of being illegally seized. See Gerstein v Pugh 420 US 103 (1975), Beck v Ohio 379 US. 89 (1964)

Legal Analysis

A warrant issued without Probable cause violates the 4th Amendment of the U.S. Constitution and Article I section 10 of the South Carolina Constitution and makes search and seizure based on ~~the~~ the warrant unlawful. U.S. Const Amend 4
S.C. Constitution Art I, Sect 10.

State v Jones 331 S.C. 228, 500 S.E. 2d 499 (ct App) 1998

The court of appeals held the evidence should be suppressed because the false affidavit circumvented the affidavit requirement of S.C. Code of Ann 17-13-140 (1985) and State v Mc Knight 291 S.C. 110 352 S.E. 2d 471 (1987)

State v Missouri SC of SC (1999) 337 S.C. 549

Inclusion of false statement in affidavit and exclusion of other statements required suppression.

False information will only void warrant if information was necessary to finding probable cause.

An arrest warrant is void under the 4th Amendment if the affidavit supporting the warrant contains deliberate falsehoods or reckless disregard for the truth
Payne v DeKalb County N.D GA (2004) 414 F. Supp 2d 1158

There are 4 circumstances in which Good Faith exception to the exclusionary rule will not apply: (1) If magistrate in issuing warrant, was misled by information in affidavit that affiant knew was false or would have known was false except for his reckless disregard for the truth, (2) issuing magistrate wholly abandoned his judicial role, (3) if affidavit supporting warrant is so lacking indicia of probable cause as to render official belief in its existence entirely unreasonable and (4) if ~~under~~ ~~circumstances~~ case warrant is so facially deficient, that is, in failing to particularize place to be searched or thing to be seized, that executing officers cannot reasonably presume it to be valid.

Prosser v Parsons 245 S.C. 493, 141 S.E. 2d 342 (1965)

Probable cause must exist at the time the warrant is issued, ultimate proof of guilt will not cure lack of probable cause

Franks v Delaware 438 U.S. 154, 164 (1978)

Statements that are knowingly false or exhibit a reckless disregard for the truth must not be used by magistrate to determine Probable cause

State v Robinson 785 S.E. 2d 355 (2016)

Arrest ~~of~~ warrant affidavit contained false statements that were made knowingly and intentionally in violation of Franks; Good faith exception to exclusionary rule was not available

West notes

Constitutional law

When public officers connive at or knowingly acquiesce in use of perjured evidence, their misconduct denies defendant due process of law.

Criminal law

Deliberate deception of a court and jurors by presentation of known false evidence is incompatible with rudimentary demands of justice

State v Nelson S.C. (1999) 336 S.C. 186, 519 S.E. 2d 786

The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of police; and the evidence has been obtained by the exploitation of that illegality.

Question Presented

2) Did prosecutors knowledge of photolinesup not presented to defense counsel show a deliberate act of the police to cover up the errors in the deliberately falsified affidavit?

Facts

In recross examination of Detective Sanchez, Solicitor Waring brought up a photolinesup given to eye witness Kendy Rice. The facts of the matter is this photo lineup furthermore proves the falsities in the detectives Affidavit. How did the solicitor have knowledge of this photo lineup not provided in the Rule 5 motion of Discovery Trp. 627 lines 3-24 This is a "Brady" violation.

Legal Analysis

Banks v. U.S. 920 F Supp 688 (E.D Va 96)

It is a violation of the due process clause when a prosecutor knowingly suppresses evidence favorable to a defendant.

State v. Fraizer (S.C App 2011) 394 S.C. 213, 715 S.E. 2d 650

A defendant asserting a Brady violation must demonstrate that the evidence the state failed to disclose was (1) favorable to the defendant (2) In possession of or known to the state (prosecutor or police officers), (3) suppressed by the state (4) material to guilt or punishment

West Headnotes

Criminal law

Prosecutors Brady disclosure duty encompasses both impeachment material and exculpatory evidence, and includes material that is known only to police investigators and not to the prosecutor, individual prosecutor, has duty to learn of any favorable evidence known to others acting on the governments behalf

State v Cain (2013) 565 U.S. 73, 132 S. Ct. 627, 181 L. Ed. 2d 571

Supreme Ct held that witness's statements made to police on night of murder and 5 days later, were material for purposes of Brady in this case. We ask the same standard apply to the photolineup.

Question Presented

3) Judge erred in allowing jail calls and visits into trial because appellant was illegally detained under a fraudulent arrest warrant

Facts

There was a pretrial motion filed on lack of probable cause and the initial objection was made by Teresa Norris Trp. 369 lines 4-14. Due to the fact that the seizure of the appellant derived from a fraudulent arrest warrant which is the "tree of poison" the jail calls and visits are "fruits of the poisonous tree" Had the appellant not been illegally detained in violation of his 4th Amendment rights this evidence would not have been obtained. Judge buckner denied the motion stating probable cause was deemed at Preliminary Hearing. As Solicitor was stated to him it was "Rubber Stamped" (Trp. 370 lines 1-12, Trp 369 lines 4-25) Not until cross examination of Det Sanchez was his testimony at preliminary hearing brought up and proven to be falsified. Further more he commenced a criminal proceeding by not only falsifying the arrest warrant affidavit he also provided false testimony at the preliminary hearing. (Trp ^{S96} ~~370~~ - Trp. ~~370~~ ⁶²) in its entirety to see the reckless disregard for the truth.)

Legal Analysis

U.S. v Najjar 300 F.3d 466, 477 (4th 2002)

Generally evidence derived from an illegal search or arrest is deemed fruit of the poisonous tree and is inadmissible

State v Nelson SC 1999 336 S.C. 186, 519 S.E. 2d 786

The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of police; and the evidence has been obtained by the exploitation of that illegality

4 WAS PROSECUTOR'S COMMENT "I think you know what to do. It's time to find him guilty" PERMISSIBLE IN HIS CLOSING ARGUMENTS.

To. p. 732 IN. 25, p. 733 IN. 1.

THE JURY COULD HAVE MISCONSTRUED THAT WORDING AS IF IT WAS THEIR JOB TO CONVICT THE APPELLANT. AS STATED IN ANDERS BRIEF SUBMITTED BY APPELLATE ATTORNEY WANDA H. CARTER ALL STATES EVIDENCE IN THIS CASE IS WHOLLY CIRCUMSTANTIAL AND ONLY CORROBORATED BY THREE (3) OF THE STATE'S WITNESSES, THE CO-DEFENDANT/ORIGINAL SUSPECT AND HIS TWO (2) GIRL-FRIENDS WHOM MUST BE VIEWED AS BIASED DUE TO THE RELATIONSHIPS BETWEEN THEM.

LAW/ANALYSIS

U.S. v. DE LA PAZ RENTAZ, 613 F.3d 18, 26 (1st Cir. 2010) (PROSECUTOR'S REMARKS IN HIS CLOSING ARGUMENTS "Jury should do its duty" IMPROPER BECAUSE COULD CONVEY TO JURY THAT ITS JOB WAS TO CONVICT.

THE TEST FOR REVERSIBLE PROSECUTORIAL MISCONDUCT GENERALLY HAS 2 COMPONENTS (1) THE PROSECUTOR'S REMARKS AND CONDUCT MUST IN FACT HAVE BEEN IMPROPER, AND (2) SUCH REMARKS

OR CONDUCT MUST HAVE PREJUDICIALLY EFFECTED
THE DEFENDANT'S SUBSTANTIAL RIGHTS SO AS TO
DEPRIVE DEFENDANT OF A FAIR TRIAL.

5) THE PROSECUTOR IMPROPERLY VOUCHER FOR DET. SANCHEZ IN HIS CLOSING ARGUMENT.

TR. P. 745 IN. 17-25, P. 746 IN. 1-7.

SOLICITOR WARING ASKED THE JURY TO SIDE WITH SANCHEZ BECAUSE HE WAS AN OVER WORKED GOVERNMENT EMPLOYEE DESPITE HIS RECKLESS DISREGARD FOR THE TRUTH AND INCONSISTENCIES DURING THE WHOLE INVESTIGATION OF THE APPELLANT FROM ~~FALSIFYING~~ FALSIFYING THE AFFIDAVIT, TO OFFERING PERJURED TESTIMONY AT PRELIMINARY HEARING AND MISHANDLING EVIDENCE. - TR. P. 596 - 626 (IN ITS ENTIRETY TO VIEW ALL FALSIFYING ACTS.) -

LAW ANALYSIS

U.S. V. LOAYZA 107 F3d 257; 46 Fed. R. Evid. SERV. 745. PROSECUTOR'S COMMENT DURING CLOSING ARGUMENT THAT, HE BELIEVED GOVERNMENT WITNESS WAS TELLING THE TRUTH, IMPROPER. - U.S. V. CLOSE, 679 F.3d 714, 717 (8th Cir. 2012) (PROSECUTOR'S COMMENT THAT POLICE WITNESS WAS A SWORN POLICE OFFICER FOR 17 YEARS, HAD NO MOTIVE TO LIE, AND WOULD LOSE HIS JOB IF HE ~~WAS~~ ~~USED~~ IMPROPER COMMENT ON GOVERNMENT WITNESSES CREDIBILITY. - STATE V. GILCHRIST, 350 SC 221, 565 SE 2d 281 (2002) (STATE IMPROPERLY VOUCHER FOR WITNESS CREDIBILITY IN CLOSING ARGUMENT). - VAUGHN V. STATE, 362 SC 163, 607 SE 2d 72 (2004) (STATE IMPROPERLY VOUCHER FOR CREDIBILITY OF POLICE OFFICER.)

6) EXCULPATORY EVIDENCE BY STATE WITNESSES DONNA MONEY SLED DNA ANALYSIS EXPERT AND FBI CELL ANALYSIS EXPERT CLAY SIMMONDS WAS DISREGARDED BY THE PROSECUTOR, AND CONFLICTING TESTIMONY OF BRANDI DOBBINS ACCEPTED.

THE FACTS OF THE MATTER AT HAND ARE THAT STATE EXPERTS WITNESSES DONNA MONEY STATED THAT THE VICTIMS BLOOD THAT WAS FOUND IN THE CO-DEFENDANT'S CAR COULD NOT HAVE BEEN PLACED THERE BY THE APPELLANT. TR. P. 476 IN. 8-20. AND CONTRADICTORY TO THE FALSIFIED AFFIDAVIT AND ARREST WARRANTS CONTENT THAT THE APPELLANT'S CELL PHONE RECORDS LOCATED HIM ON BAILEY ST. AT THE TIME OF THE CRIMES EXPERT CLAY SIMMOND TESTIFIED THAT THE APPELLANT'S CELL RECORDS PLACE HIM AT HIS RESIDENCE DURING THE QUESTIONED TIMES. TR. P. 689 IN. 7-13.

ON TR. P. 289 IN. 8-14 BRANDI DOBBINS CONFLICTED STATEMENTS SHE MADE SAYING THAT CO-DEFENDANT LEFT. TR. P. 291 IN. 3-12, P. 295 IN. 23-25, AND P. 296 IN. 1-10, SHE STATES THAT SHE NEVER SAID THE APPELLANT LEAVE.

Legal Analysis

IN STATE V. PHILLIPS, 430 SC 319, 844 SE2D 651 (2020), GALLMAN TESTIFIED THAT PHILLIPS WAS EXCLUDED FROM BEING THE CONTRIBUTOR OF THE DNA MIXTURE.

THE MINIMAL PROBATIVE VALUE OF GALLMAN'S TESTIMONY MUST BE BALANCED AGAINST THE DANGER OF PREJUDICE, CONFUSION OF THE ISSUES OR MISLEADING THE JURY.

UNFAIR PREJUDICE IS THE TENDENCY OF THE EVIDENCE TO SUGGEST A DECISION BASED ON SOMETHING OTHER THAN THE PROBATIVE FORCE OF THE EVIDENCE. GRAY, 408 S.C. AT 616, 759 S.E.2D 168. PHILLIPS ARGUED GALLMAN'S TESTIMONY WAS UNFAIRLY PREJUDICIAL BECAUSE IT CONFUSED MISLEAD JURY AS STATED IN DEFENDANT'S TRIAL BRIEF P. 10. THE PRESIDENT'S COUNSEL OF ADVISORS ON SCIENCE AND TECHNOLOGY ISSUED A REPORT IN SEPTEMBER 2016 AT LENGTH THE PROBLEMS WITH C.P.I. STATISTICS (COMBINED PROBABILITY OF INCLUSION) STATING THEY WERE FOUNDATIONALLY INVALID. A NEW METHOD PROVES TO BE MORE SUFFICIENT. IN TRIAL DONNA MONEY STATED THE MIXTURE OF THE VICTIM AND ~~THE~~ AN UNKNOWN UNRELATED INDIVIDUAL WAS FOUND IN THE CODEFENDANT'S CARE THEREFORE EXCLUDING THE APPELLANT FROM BEING THE APPLICANT UNDER THE PROGRAM CURRENTLY USED IN OTHER DNA REFERENCES DURING THE TRIAL WERE THOSE OF CPI AN INVALID METHOD OF OBTAINING PROPER RESULTS.

DESPITE THE INITIAL CLAIM IN THE AFFIDAVIT THE DEFENDANT'S CELL PHONE WAS LOCATED ON BAILEY ST. AT TIMES OF THE INCIDENT AS ASSERTED BY THE AFFIANT. FBI CELL SITE ANALYSIS EXPERT STATED THE DEFENDANT'S CELL PHONE COULD HAVE BEEN AT HIS HOUSE FOR ALL OF THOSE CALLS INFERRED BY THE PROSECUTOR.

STATE V. SULLIVAN, 43 S.C. 210, 21 S.E.2D 7 (1895) AS TO QUESTIONS AND CONTRADICTIONARY TESTIMONY IN REFERENCE

to prior statements contradictory to his testimony
on trial. IN CROSS EXAMINATION Dobbins stated she
NEITHER SAW APPELLANT LEAVE NOR RETURN but in direct
EXAMINATION she stated she SAW APPELLANT RETURN WITH
CODEFENDANT. ALSO STATED SHE NEVER SAW DEFENDANT, IN
SAME BREATHE. TR. p. 290 IN. 19-25, p. 291 IN. 1-6, p. 289
IN. 8-14

7) TRIAL JUDGE ERRED IN DISREGARDING DEFENSE COUNSEL'S MOTION OF DISMISSAL AGAINST VALIDITY OF ARREST WARRANT.

LEAD INVESTIGATOR DET. SANCHEZ ADMITTED TO FALSIFYING INFORMATION ON ARREST WARRANT AFFIDAVIT, AND THE DEFENSE COUNSEL BROUGHT TO THE COURT'S ATTENTION THE PERJURED TESTIMONY PRESENTED BY SANCHEZ AT PRELIMINARY HEARING. TAYLOR STEWART THEN PRECEDED TO RECITE THE WONG SUN DOCTRINE AND MINED FOR A MOTION OF DISMISSAL WHERE JUDGE BUCKNER DENIED (AUDIO VERSION OF TRIAL TRANSCRIPT DURING SANCHEZ'S CROSS EXAMINATION.)

I HAVE REQUESTED THE AUDIO VERSION BE OBSERVED BECAUSE THIS ALONG WITH A PREJUDICIAL COMMENT BY SANCHEZ THAT WAS STRICKEN FROM THE RECORD AND TOLD TO BE DISREGARDED TO THE JURY, ALONG WITH SEVERAL OBJECTIONS MADE DURING CLOSING ARGUMENTS ARE NOT CONTAINED IN THE WRITTEN TRANSCRIPT. I FILED A MOTION TO BRING THIS TO ~~THE~~ THE ATTENTION OF THE COURT REQUESTING THE AUDIO. TR. P. 596 - 626 ARE SANCHEZ'S CROSS EXAMINATION WHICH DO NOT CONTAINED IN THE RECITATION OF THE WONG SUN DOCTRINE. BUT THE FALSITIES IN THE AFFIDAVIT AND AT PRELIMINARY HEARING ARE CONTAINED WITHIN THESE PAGES. THIS FURTHERMORE SHOWS HOW THE DETECTIVE HAS ACTED ILLEGALLY THROUGHOUT THE DURATION OF THIS CASE TAINTING IT FROM THE VERY BEGINNING.

LAW ANALYSIS

AN ABUSE OF DISCRETION OCCURS WHEN THE TRIAL COURT'S RULING IS BASED ON AN ERROR OF LAW OR WHEN GROUNDED IN FACTUAL CONCLUSIONS, IS WITHOUT EVIDENTIARY

SUPPORT AS IN State v. Pagan, 369 S.C. 201, 631 S.E.2d 262
(2006) -

g) Why did prosecutor deny giving codefendant a deal during closing arguments?

Solicitor Waring denied giving codefendant a deal in closing arguments. TR. 7. 746 IN. 9-11. When in fact he admitted to giving a proffer agreement which is a deal to avoid prosecution on January 24, 2018. Trial brief 7.5 and 7.186 IN. 10-18. This falsehood is believed to have been presented to the jury days after the initial testimony of the codefendant to confuse the jury of codefendant's motive to falsify testimony. That also is a blatant act of perjury because the solicitor lied to jury under oath. NAYUE V. PEOPLE OF THE STATE OF IL., 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959) (State's attorney denied promise made for consideration made to witness for testimony.)

Criminal law

Where there exists an understanding or agreement that, in exchange for witnesses' testimony, he will receive immunity from prosecution or other favorable consideration from the state in connection with his own criminal activity, the agreement must be disclosed to the court and jury if the witness' credibility is an issue in the case; if there is any reasonable likelihood that the witness' denial of such an agreement or understanding could have affected the jury's judgment as to his credibility, the agreement or understanding is material and must be disclosed as stated in Quinning v. Cousin, 452 F. Supp. 916 (W.D.N.C. 1978)

A proffer agreement is an agreement grant.

immunity for an informant by a prosecutor agreeing not to use any information against the informant so by stating in his closing argument he did not give the codefendant a deal was a deliberate act to confuse the jury-

CONCLUSION

As stated since trial and before trial even started, the arrest warrant in this case has proven to be invalid. Once the falsities are removed and the omitted photographic line up facts are inserted the arrest warrant is deemed invalid because it no longer has probable cause to arrest the appellant. Along with the other evidence the police officer said he had at the time of obtaining the arrest warrant. Accordingly the Beck court established that the arrest warrant must be viewed, by looking at the evidence the police had at the time of the arrest, and not what they obtained after the arrest. Thus unlike search warrants under Sch Franks the standard set forth by these cases requires the court to review whether false information after being omitted still establishes probable cause, but under Beck, Henry the court must determine whether probable cause to arrest existed at the time of the obtaining of the warrant or was false or misleading information presented to the magistrate to make him believe probable cause existed.



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EXHIBIT A

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT
OCA# 2017016967
INV M. SANCHEZ

Personally appeared before me, a magistrate of this County, one, M. Peristchko who first being duly sworn, deposes and says that

Gregory Kyle Green

did within this County and State on the 8th day of June, 2017 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

**MURDER-
16-3-10**

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On June 8th, 2017, at approximately 4:30 A.M., while at 2278 Bailey Street, which is located in the City of North Charleston, County of Charleston, State of South Carolina, the defendant, Gregory Kyle Green, did commit the offense of MURDER, in violation of section 16-3-10 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully shoot the victim, Freeman Rivers which resulted in his death.

Facts to establish the aforesaid are that on June 8th, 2017, at approximately 4:46 A.M., officers of the North Charleston Police Department responded to a report of a fire located at 2278 Bailey Street. Fire fighters located the body of a male later identified as Freeman Rivers. Autopsy showed that Rivers had sustained multiple gun shots which resulted in his death. Detectives obtained a description of the vehicle used

This vehicle was described as a light blue new Chrysler 200. Video from the area ~~near~~ prior to the incident shows a 2017 light blue Chrysler 200 bearing SC tag MJK 304 entering the neighborhood and pulling into the Cheapway Gas Station at 3615 Dorchester Road.

In addition, the witness stated the vehicle had blood transfer to the interior of the car as the suspect of the crime was covered in blood at the time of the incident. On June 22, 2017, Doucet's 2017 Chrysler 200 was located, after being reported stolen on June 19, 2017. Testing on the interior of the vehicle reviewed presumptive positive results for trace evidence of blood after a search was conducted of the car pursuant to a lawful search warrant.

All this done against the law, peace and dignity of the State of South Carolina. Det. M. Sanchez and witnesses to be named in court are witness to prove the same.

Sworn to and Subscribed before me
This 7th day of JULY
2017.
Signature of Judge _____

[Signature] #1251
(AFFIANT)
Address: 2500 City Hall Lane
North Charleston SC, 29406
Phone: 843-554-5700

24

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
HONORABLE PERRY M. BUCKNER, Cir. Court Judge

THE STATE,

Respondent,

v.

GREGORY K. GREEN,

APPELLANT.

CERTIFICATE OF SERVICE

I, GREGORY K. GREEN, CERTIFY THAT A COPY
OF MY PRO SE BRIEF HAS BEEN PLACED IN THE
UNIT MAILBOX ADDRESSED AS INDICATED
BELOW ON THIS — DAY, 2020.

SOUTH CAROLINA COURT OF APPEALS
JENNY ABBOT KITCHINGS, CLERK
P. O. BOX 11629
COLUMBIA, S.C. 29211

Gregory Green

November 6 ~~2020~~ 2020

JENNY A. KITCHINGS, CLERK
P.O. BOX 11629
COLUMBIA, SC 29211

RE: STATE V. GREGORY GREEN
No. 2019-001924

RECEIVED

NOV 09 2020

11/5/20 SC Court of Appeals

DEAR MS. KITCHINGS:

ENCLOSED, PLEASE FIND, IS A COPY ~~OF~~ OF
MY PRO SE BRIEF OF APPELLANT. I REQUEST
THAT A FILED COPY BE FOREWARDED TO THE
RESPONDENT IN THIS CASE, AND A COPY BE
MAILED TO ME.

Thank you,

GREGORY H. GREEN
PRO SE

Gregory H. Green

Gregory Green #299039 FY-2254
990 W. Sackly Hwy
Bishopville SC 29010



RECEIVED

NOV 09 2020

SC Court of Appeals

RE: Appellate Brief
South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
P.O. Box 11629
Columbia, SC 29211