

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia,
Plaintiff Below, Respondent**

v.) No. 101185 (Summers County 08-F-35)

**Donald Garfield Galloway
Defendant below, Petitioner**

FILED

March 11, 2011

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Donald Galloway files this timely appeal from his jury conviction for possession of a controlled substance with the intent to deliver and from the finding that he is a habitual offender. Petitioner seeks a reversal of his convictions and a dismissal of all charges against him. Respondent State of West Virginia filed a timely response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner was indicted on two counts of possession of a controlled substance with intent to deliver, three counts of battery of a police officer, and one count of obstructing an officer. Following a jury trial, he was acquitted of all charges except Count Two which charged possession of a controlled substance with intent to deliver in violation of West Virginia Code §60A-4-401(a)(iii). The substance was Xanax. Thereafter, the State filed a recidivist information against petitioner given his prior convictions for voluntary manslaughter, possession of a controlled substance with the intent to deliver, and third degree sexual assault. Following a trial, the circuit court sentenced petitioner to life imprisonment as a habitual offender.

Petitioner argues that his current conviction, which triggered the recidivist information, should be reversed and all charges dismissed because the only evidence against him at trial was evidence that should have been suppressed. Petitioner argues that there was not probable cause to support both the search warrant and the affidavit and complaint in support of the issuance of the warrant presented by Deputy James A. Chellis of the Summers County Sheriff's Department. Petitioner further argues that Magistrate Jeffries simply "rubber-stamped" Deputy Chellis's request for the warrant, which deprived petitioner of his right to an independent evaluation of probable cause.

Prior to trial, petitioner filed a motion to suppress all evidence seized as a result of the execution of the search warrant on his home. A hearing was held on the motion during which the State presented the testimony of Deputy Chellis, while petitioner called Magistrate Jeffries to testify. Following the hearing, the circuit court entered an order denying the motion to suppress.

"When reviewing a ruling on a motion to suppress, an appellate court should construe all facts in the light most favorable to the State, as it was the prevailing party below. Because of the highly fact-specific nature of a motion to suppress, particular deference is given to the findings of the circuit court because it had the opportunity to observe the witnesses and to hear testimony on the issues. Therefore, the circuit court's factual findings are reviewed for clear error.' Syllabus point 1, *State v. Lacy*, 196 W. Va. 104, 468 S.E.2d 719 (1996)." Syl. Pt. 13, *State v. White*, No. 35529, 2011 WL 504760 (W.Va. Feb. 10, 2011).

The circuit court found in its order denying the motion to suppress that two confidential informants, one male and one female, called the Summers County Sheriff's Department on March 1, 2008, and advised that a large shipment of illegal drugs was at petitioner's home. The circuit court further found that Deputy Chellis completed an "Affidavit and Complaint for Search Warrant" in which he referenced these anonymous calls and stated that the residence was known for high drug activity and that surveillance on the residence revealed a large amount of activity¹ going and coming from the residence. The circuit court also noted that Deputy Chellis stated that both confidential informants said the same thing regarding the drug activity at petitioner's residence and, therefore, corroborated each other. The circuit court concluded that the actions taken by Deputy Chellis and the Sheriff's Department constituted independent verification that established the informants' reliability; that there was probable cause for the issuance of the search warrant based upon

¹ Presumably, a "large amount of activity" was in the form of many people going and coming from the residence.

Deputy Chellis's affidavit; and that the articles seized during the authorized search should be admitted into evidence at petitioner's trial.

Having reviewed the record and the parties' arguments on appeal, this Court cannot find clear error in the circuit court's denial of the motion to suppress. Accordingly, we affirm.

Affirmed.

ISSUED: March 11, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh