

STATE OF LOUISIANA

NO. 18-K-647

VERSUS

FIFTH CIRCUIT

DERRICK B. LEGGETT

COURT OF APPEAL

STATE OF LOUISIANA

March 18, 2019

Susan Buchholz
First Deputy Clerk

IN RE DERRICK B. LEGGETT

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE LEE V. FAULKNER, JR., DIVISION "P", NUMBER 17-3548

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and Stephen J. Windhorst

WRIT GRANTED FOR LIMITED PURPOSE; REMANDED

Defendant-relator, Derrick Leggett, seeks review of the trial court’s denial of his motion to suppress. Because we find that the trial judge considered documentation not properly offered and introduced into evidence, we vacate the August 16, 2018 trial court judgment and remand the matter to the trial court to allow defendant the opportunity to formally offer and introduce exhibits into evidence.

On June 7, 2017, the Jefferson Parish District Attorney’s Office filed a bill of information charging relator with various narcotics offenses.¹ Defendant subsequently filed a motion to suppress the evidence seized during a search, pursuant to a warrant, of his motel room following his arrest. Following a hearing, on September 7, 2017, the trial judge denied the motion to suppress. On July 17, 2018, defendant filed a “Motion to Supplement the Record” and specifically asked the trial court “to supplement the record in this matter with documents and transcripts to assist the Court in the ruling on whether to suppress evidence discovered in a search which was authorized pursuant to an alleged confidential informant.” In his motion, defendant sought to supplement the record with eight exhibits, including an EMS report from the date of defendant’s arrest—which defendant alleged showed that the search was conducted prior to the execution of

¹ The bill of information charged defendant with possession with intent to distribute marijuana, a violation of La. R.S. 40:966(A)(count one); possession with intent to distribute heroin, a violation of La. R.S. 40:966(A)(count two); possession with intent to distribute cocaine, a violation of La. R.S. 40:967(A)(count three—which the State nolle prossed); possession with intent to distribute oxycodone, a violation of La. R.S. 40:967(A)(count four); possession with intent to distribute Tramadol, a violation of La. R.S. 40:969(A)(count five); possession of Amitriptyline—a legend drug—without a prescription, a violation of La. R.S. 40:1060.13(count six). The bill of information additionally charged defendant with being a convicted felon in possession of a firearm, a violation of La. R.S. 14:95.1(count seven).

the search warrant, rendering the warrantless search illegal—as well as cellular phone records and other documents.

The documents provided in connection with this writ application reflect that the trial judge considered defendant’s motion as a reurged motion to suppress. The trial court held an additional hearing on August 16, 2018, during which he stated that he “reopened” the matter, as defense counsel previously requested.

At the August 16, 2018 hearing, defense counsel failed to introduce into evidence the additional documentation he sought to rely upon in support of his motion to suppress. Following argument at the August 16, 2018 hearing, the trial judge stated:

The Court has had the opportunity to review the documents, including but not limited to the transcripts, police report and the phone logs in this matter. The Court maintains its previous ruling in these matters.

Based upon a review of the writ application and attachments thereto, we find that the trial judge improperly considered evidence not properly offered and introduced at the August 16, 2018 hearing. Exhibits and attachments not properly and officially offered and admitted into evidence cannot be considered, even if it is physically filed into the trial court record. *State v. Whitley*, 14-737 (La. App. 5 Cir. 3/25/15), 169 So.3d 658, 660 (quotations omitted), *citing Denoux v. Vessel Mgmt. Services, Inc.*, 07-2143 (La.5/21/08), 983 So.2d 84, 88; *and State v. Cobb*, 13–0431 (La. App. 5 Cir. 6/25/14), 161 So.3d 28.

Accordingly, we grant this writ application for the limited purpose of remanding this matter to the trial court for reopening of the suppression hearing, so as to allow defendant the opportunity to properly offer, file, and introduce the exhibits into evidence. *See State v. Pigott*, 18-598 (La. App. 5 Cir. 1/24/19), --- So.3d ----, 2019 WL 322837; *State v. Young*, 99-880 (La. App. 5 Cir. 1/12/00), 751 So.2d 364, 368; *State v Schexnayder*, 14-479 (La. App. 5 Cir. 12/30/14), 167 So.3d 832, 836, *approvingly citing State v. Williams*, 536 So. 2d 612, 615 (La. Ct. App. 1988).

Gretna, Louisiana, this 18th day of March, 2019.

FHW
JGG
SJW

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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FIRST DEPUTY CLERK

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **03/18/2019** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY

CHERYL Q. LANDRIEU
CLERK OF COURT

18-K-647

E-NOTIFIED

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