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**Mar 20 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

LORA MAE LEWIS,

APPELLANT

APPELLATE CASE NO. 2022-000402

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ANDERS BRIEF OF APPELLANT

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TAYLOR D GILLIAM  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in denying Appellant's motion to suppress a search warrant for lack of probable cause?

## STATEMENT OF THE CASE

On March 21, 2019, a Beaufort County grand jury indicted Appellant for breach of trust with fraudulent intent, \$10,000 or more. R. 266. Appellant proceeded to trial before the Honorable Carne. T. Mullen and a jury on March 14, 2022. Taylor Diggs represented Appellant; Francine Norz appeared on behalf of the state. Following a two-day trial, the jury found Appellant guilty as indicted. R. 240, ll. 20 – 24. Judge Mullen sentenced her to ten years' incarceration, suspended to five years' probation following the service of eight years' active time. R. 252, l. 25 – R. 253, l. 3. Restitution in the amount of \$240,877.02 was also ordered. R. 253, ll. 4 – 6.

This appeal follows.

## **STANDARD OF REVIEW**

The South Carolina Supreme Court clarified its standard of review for cases involving an appeal from a motion to suppress based on Fourth Amendment grounds. State v. Frasier, 437 S.C. 625, 879 S.E.2d 762 (2022). The Court explained that due to the “dawn of the technological age, appellate courts are no longer dependent on the trial court” when the appellate court reviews the evidence. Id. Accordingly, the Court held that “appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means [the appellate court] review[s] the trial court’s factual findings for any evidentiary support, but the ultimate legal conclusion ... is a question of law subject to de novo review.” Id.

## ARGUMENT

**The trial court erred in denying Appellant’s motion to suppress a search warrant for lack of probable cause.**

### Relevant facts

Jim Jansen owns and operates Benchmark Interiors in Bluffton, South Carolina. R. 77, l. 22 – R. 79, l. 17. He started the business in 2001. Appellant began working at Benchmark, for Jansen, in 2012. Id. Appellant was one of four employees; she was “the bookkeeper in charge of writing checks, paying the bills, [and] keeping track of the money in the accounts.” Id. The other employees were supervisors and estimators; they did not have financial responsibilities as Appellant did. Id.

Jansen used Quickbooks for tracking the financial operations of his painting business. R. 80, ll. 10 – 14. Appellant was the only person to have access to Quickbooks and Jansen’s corresponding business account. R. 80, l. 20 – R. 81, l. 9. Appellant was paid eighteen dollars an hour and worked between twenty-four and thirty hours a week. R. 83, ll. 3 – 7.

In 2018, Jansen noticed that despite business being good, his accounts did not reflect his company’s success. He asked his accountants to audit his company’s financial documents. R. 84, ll. 2 – 9. His accountant informed him that Appellant was “robbing [him] blind.” R. 84, ll. 10 – 25. Jansen confronted Appellant:

At first, Lora wouldn’t give [the accountant] all the information she needed. So she called me and made me force her to give her all the information she needed, and then [Appellant] stopped showing up for work. [The accountant] called me and said something, yeah, there’s definitely a problem here. She’s robbing you blind. You need to go to the police.

So then I ... made copies of all the checks, took them over to [Appellant’s] house, and she told me she was sorry. She needed the money for whatever reason, and she did not have the money to pay me back. Begged me not to go to the police.

By the time I got back in my car and ... before I got back to our office, [the accountant] called me again and said, Jim, it happened again in 2017 and '16.

R. 84, l. 20 – R. 85, l. 7.

Appellant allegedly forged Jansen's signatures on the checks. R. 87, ll. 6 – 24. She was supposedly taking approximately \$80,000 per year, over the course of three years, from Jansen's business. R. 88, ll. 10 – 19.

Anita Murphy, the accountant, confirmed Jansen's testimony. R. 186, ll. 11 – 16. Appellant was arrested soon after the discovery was made. R. 199, ll. 11 – 17.

Prior to the start of trial, counsel for Appellant moved to quash the search warrant for lack of probable cause. R. 43, ll. 5 – 9. Counsel contended that the officer's affidavit to the municipal judge was insufficient. R. 43, ll. 19 – 24. The officer was informed by the solicitor, who had been told by Jansen, that Appellant uses TD Bank for her banking needs. R. 44, ll. 13 – 20.

Counsel argued the search warrant on its face was deficient:

And my argument isn't that it would've been hard to figure out where she banked. I mean he did figure out where she banked. **My issue is he did not put any of that information in the search warrant.** You know, he put ... the basis of the charge, but the final line and the only line that mentions TD Bank is ... the affiant's belief that there is evidence held at TD Bank which will show that [Appellant] was depositing checks into [her] personal account.

Any my issue is that at no point ... in the affidavit does he say where he would have obtained information that she banks at TD Bank, where ... he got that from. No connection. You know, he shows no connection between [Appellant] and TD Bank, and I feel like the way ... the affidavit is written, I mean he could have just taken out TD Bank for any other bank and served them on any bank, quite frankly, to see which one got a hit.

R. 46, l. 18 – R. 47, l. 8 (emphasis added).

Following a response from the state, the trial judge denied the motion to quash. R. 49, ll. 2 – 10. The search warrant and return were made a Court's Exhibit. R. 49, ll. 13 – 19; R. 255.

## Discussion

A search warrant may issue only upon a finding of probable cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). Under S.C. Code Ann. § 17-13-140, a search warrant may be issued “only upon affidavit sworn to before the magistrate ... establishing the grounds for the warrant.” A search warrant that is insufficient in itself to establish probable cause may be supplemented by sworn oral testimony. State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990). The veracity and the basis of knowledge of persons supplying the information in a search-warrant affidavit are considerations in the determination of whether there is probable cause to issue a search warrant. Id. An appellate court gives great deference to the issuing judge's probable cause determination. State v. Dupree, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003); State v. Crane, 296 S.C. 336, 372 S.E.2d 587 (1988).

The duty of a reviewing court is to decide whether “the magistrate had a substantial basis for concluding that probable cause existed.” Illinois v. Gates, 462 U.S. 213, 238-39, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) (internal quotations omitted); State v. Bellamy, 336 S.C. 140, 144, 519 S.E.2d 347, 349 (1999) (adopting the Gates standard of review). “A reviewing court should give great deference to a magistrate's determination of probable cause.” State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997); see Gates, 462 U.S. at 236, 103 S.Ct. 2317 (holding the Fourth Amendment evidences a “strong preference for searches conducted pursuant to a warrant”).

A probable cause determination requires the magistrate to analyze the totality of the circumstances, meaning he should “make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, ... there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Gates, 462 U.S. at 238,


103 S.Ct. 2317; see State v. Johnson, 302 S.C. 243, 247–48, 395 S.E.2d 167, 169 (1990) (adopting the Gates totality-of-circumstances test); State v. Crane, 296 S.C. 336, 338–39, 372 S.E.2d 587, 588–89 (1988) (holding the magistrate should determine probable cause based on all the information available to him at the time the warrant is issued, including sworn oral testimony); State v. Adams, 291 S.C. 132, 133–34, 352 S.E.2d 483, 485 (1987) (“A determination of probable cause depends upon the totality of the circumstances.”).

Counsel’s description of the search warrant was accurate. The final sentence under the “Reason for Affiant’s Belief that the Property Sought is on the Subject Premises” section in the search warrant only fleetingly references TD Bank: “It is the Affiant’s belief that there is evidence held at TD Bank, NA, which will show that [Appellant] was depositing the checks into personal accounts which ... are not affiliated with the business in any way.” R. 258. There is no indication as to how or why the officer developed probable cause to search TD Bank in particular.

The state did not put the officer on the stand pre-trial in order to elicit testimony that he advised the magistrate, orally, about any additional grounds for probable cause. It is unclear how the magistrate could have determined that probable cause existed to search any records at TD Bank in particular. As such, on its face, the warrant is lacking probable cause and should have been suppressed.

**CONCLUSION**

Based on the foregoing, Appellant respectfully requests that this Court reverse and remand for a new trial, to include suppression of the search warrant and the records obtained through it.



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Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of March, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Lora Mae Lewis 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 March 14-15, 2022, 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 Lora Mae Lewis.

Respectfully Submitted,



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Taylor D Gilliam  
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) Entire trial transcript dated March 14 – 15, 2022;
- (2) Court's Exhibit 2: Arrest Warrant; and
- (3) Indictment

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



Taylor D Gilliam  
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ATTORNEY FOR APPELLANT

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**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."



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CERTIFICATE OF SERVICE  
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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Lora Mae Lewis, #387450, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 20th day of March, 2023.



\_\_\_\_\_  
Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR APPELLANT