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Aug 21 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SEUVARRGGIO SENWUEZ RECTOR,

APPELLANT

APPELLATE CASE NO. 2023-001513

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by denying Appellant's motion to suppress the evidence seized from his vehicle pursuant to the Fourth Amendment when the affidavit in support of the search warrant failed to provide the magistrate with a substantial basis for determining the existence of probable cause?

STATEMENT OF THE CASE

A Greenville County grand jury indicted Appellant on July 7, 2020 for murder and kidnapping. R. 1079-1082. His case was called to trial on September 11, 2023 before the Honorable Alex Kinlaw, Jr., and a jury. R. 1. Appellant was tried jointly with his codefendant Octabio Wright. Assistant Solicitors Jon Gregory and Walker Miller represented the state. Appellant proceeded *pro se*. David Cantrell served as stand by counsel for Appellant. R. 1. Michael Brown represented codefendant Wright.

On September 15, 2023, the jury found Appellant guilty as indicted. R. 1062, l. 23 – 1063, l. 13. He was sentenced to forty-seven years for murder and thirty years concurrent for kidnapping. R. 1076, ll. 6-15.

This appeal follows.

STATEMENT OF FACTS

On December 26, 2018, a locomotive engineer who was running a train from Pelzer to Spartanburg noticed a man lying on the ground in the woods about twenty feet from the railroad tracks. The train had just crossed Chick Springs Road in Taylors, which is located in Greenville County. The engineer stopped the train out of concern for the individual and the train conductor went to check on the man. The conductor reported that the man appeared to be deceased. The engineer notified his dispatcher of the discovery and provided the approximate location of the body. The train then continued on its journey to Spartanburg. When the engineer finished work for the day, he asked his dispatcher if the police had found the body and was told they had not. Consequently, on his way home, the engineer stopped at the crossing, located the body again, and called the police. R. 144, l. 12 – 148, l. 10.

The deceased individual was identified as Hall Edward Eskew. His hands and feet were bound together with electrical cords and tape. R. 155, ll. 11-15. It was determined that he suffered a single gunshot wound to the back of his head. He also had a laceration on top of his head with an associated skull fracture as well as abrasions on his face. R. 206, ll. 6-12. The pathologist testified that the laceration and underlying skull fracture were consistent with being hit with a hammer or similar object. R. 209, ll. 6-23.

Eskew was reported missing by his sister, Vaughn Overman, on December 26, 2018. However, the last time Overman spoke to Eskew was on December 14, 2018 and the last activity on his iPad occurred on December 17, 2018. R. 301, l. 5 – 307, l. 19; R. 392, ll. 12-18. Overman went to Eskew's house on December 23, 2018 after a friend contacted her and indicated he had been unable to reach Eskew. Upon entering Eskew's home, Overman found

that his two safes where he stored his extensive gun and coin collections were open and mostly empty. R. 301, l. 9 – 305, l. 15.

Law enforcement investigating Eskew's death discovered that his credit card had been used on December 21, 2018 at QuikTrip (QT), a gas station and convenience store off Pleasantburg Drive in Greenville. Sergeant David Picone went to the QT and was able to view surveillance video of the transaction. The footage showed a four door, black Mercedes with a sunroof at the gas pump where the transaction was made. The vehicle had a paper tag with red lettering. A black male got out of the vehicle, pumped gas, returned to the vehicle, and then left. R. 365, l. 2 – 367, l. 19.

Law enforcement also learned that Eskew's credit card was used to book a hotel room on Expedia. The reservation was made on December 18, 2018 for a room at the Windham Super 8 Motel in Spartanburg County. The check out date was December 22, 2018. However, no one showed up for the reservation. The room was booked under the name Edward Hall and the email address provided by the renter was ggiorctor@gmail.com. R. 369, l. 1 – 370, l. 21.

On December 29, 2018, law enforcement received an anonymous tip from Crime Stoppers regarding the case. The tip provided a particular address on East Poinsett Street in Greer. On December 30, 2018, Investigator Tracy King conducted surveillance on the address. While King was parked in a church parking lot down the street from the residence, he saw a black Mercedes with a paper tag in the driveway and several individuals outside in the front yard. R. 397, l. 17 – 399, l. 23. King pulled into the driveway and spoke with the individuals in the yard, including Appellant, James Henry Busey, Abarlee Pierce, and Jimmy Green, Jr. King determined the Mercedes was consistent with the car Sergeant Picone had seen on the surveillance footage from the QT. Appellant told King that the vehicle belonged to his brother.

Green allegedly told King after Appellant left that Appellant had been driving the car. R. 403, l. 6 – 409, l. 13.

Numerous codefendants testified against Appellant and Wright, including Abarlee Pierce, Shelby Portch, Steven Sanders, and Jimmy Green, Jr. All four had been charged with various offenses related to their involvement in this case. Unsurprisingly, their testimony was often inconsistent with each other and it was apparent that each was attempting to minimize his or her own involvement. Generally, these witnesses claimed that Appellant and Jimmy Green sold cocaine to the decedent in exchange for gold, silver, or platinum coins. R. 724, l. 11 – 725, l. 19. Shortly before Christmas, the decedent came to the residence on East Poinsett Street where Green lived with his girlfriend, Abby Pierce, to buy cocaine. When the decedent arrived, Appellant, Wright, Green, Sanders, Pierce, and Portch were present. When the decedent came through the back door of the residence, Wright struck him in the head with a hammer. The decedent fell to the floor and the men began beating him and tied his hands and feet together with charging cords. Appellant, Wright, Sanders, and the decedent then left the residence in the decedent's truck. After they left, Green forced Pierce and Portch at gunpoint to clean the blood off the kitchen floor and wall with bleach. Green then disposed of the cleaning materials and the hammer. R. 439, l. 4 – 464, l. 20; R. 648, l. 16 – 663, l. 23; R. 720, l. 4 – 736, l. 24.

According to Sanders, Appellant, Wright, Sanders, and the decedent went to the decedent's house where they loaded up his guns and coins into his truck. They then drove to the railroad tracks. Sanders claimed Appellant and Wright forced the decedent to walk down the railroad tracks at gunpoint. While Sanders was in the truck, he heard a single gunshot. Appellant and Wright returned to the truck, but the decedent did not. According to Sanders, Wright had a gun both before he got out of the truck and when he returned to the truck. The

three then returned to the residence on East Poinsett Street and unloaded the guns and coins. R. 536, l. 1 – 549, l. 8. Portch, who was Wright's girlfriend, testified that Wright later told her he shot the decedent. R. 681, ll. 20-24; R. 685, ll. 1-7.

STANDARD OF REVIEW

“On appeal from a motion to suppress based on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse if there is clear error.” State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) (citing State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 459 (2002)); See State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (holding the appellate standard of review in Fourth Amendment search and seizure cases is limited to determining whether any evidence supports the trial court’s finding and the appellate court may only reverse where there is clear error). “However, this deference does not bar this Court from conducting its own review of the record to determine whether the trial judge’s decision is supported by the evidence.” Id. (citing Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459).

ARGUMENT

The trial judge erred by denying Appellant's motion to suppress the evidence seized from his vehicle pursuant to the Fourth Amendment when the affidavit in support of the search warrant failed to provide the magistrate with a substantial basis for determining the existence of probable cause.

Relevant Facts

Appellant moved pretrial to suppress all evidence seized from Appellant's vehicle, a C 300 Mercedes, pursuant to a search warrant because the warrant was not supported by probable cause in violation of the Fourth Amendment. R. 94, ll. 5-20. In support of his motion, Appellant proffered the testimony of David Picone and Tracy King, both of the Greenville County Sheriff's Office.

Sergeant Picone testified that he went to QuikTrip (QT), a gas station and convenience store off Pleasantburg Drive, on December 28, 2018. Picone had been told that the decedent's debit card had been used at this location. Picone was able to view surveillance footage from the QT from the date and time of the transaction. The footage showed a black, four door Mercedes with a sunroof at Pump 19 where the bank card was used. While Picone was unable to read the license plate because of the quality of the footage, he could tell it was a paper dealer tag with red lettering. He passed along this information to Tracy King, the lead investigator. R. 98, l. 17 – 105, l. 4.

Investigator King testified that on December 30, 2018, he conducted surveillance at a residence on East Poinsett Street in Greer based on information law enforcement had received the day before from a Crime Stoppers tip. The anonymous tip stated that the individuals involved in Eskew's death lived at the residence. While King was parked down the street from

the residence, he saw a black Mercedes in the driveway, which matched the description of the vehicle Picone saw on the surveillance footage from the QT. Specifically, the vehicle had a dealer tag with red, white, and black markings. King pulled into the driveway of the residence and spoke with the individuals who were outside in the yard, including Appellant, Abarlee Pierce, and Jimmy Green, Jr. Appellant told King that the car belonged to his brother.

King testified that he told the individuals in the yard that he was seizing the Mercedes and would conduct an inventory of the car. King claimed there was a “lot of information that put [him] in a position to seize the vehicle.” He stated that in addition to the footage showing the driver of the Mercedes using the decedent’s bank card at the QT, there was also evidence that the vehicle was present when the bank card was used at other locations, including a McDonald’s.

When King opened the driver’s door of the Mercedes during the “inventory” search, a firearm fell out. King “cleared” the gun and laid it on the driver’s seat. An officer with the City of Greer Police Department removed a book bag from the vehicle. The officer allegedly found the decedent’s social security card inside the book bag. After law enforcement found the social security card, they stopped “inventorying” the vehicle and “called forensics out.” The car was eventually sealed at the scene, towed to the “forensic lab” and secured inside the vehicle bay there. The following day, December 31, 2018, King obtained a search warrant for the car. R. 106, l. 19 – 120, l. 9.

At the conclusion of the *in camera* hearing, the trial judge denied Appellant’s motion to suppress. The judge found “there was sufficient probable cause for the search of the vehicle.” R. 120, ll. 14-18. While Appellant did not make any contemporaneous objections when the evidence seized from the vehicle was admitted into evidence, he was not required to do so

pursuant to State v. Jones, 435 S.C. 138, 866 S.E.2d 558 (2021), as the judge’s ruling on the Fourth Amendment issue was final.

Discussion

The trial judge erred by denying Appellant’s motion to suppress the evidence seized from his Mercedes pursuant to the Fourth Amendment because the affidavit in support of the search warrant failed to provide the magistrate with a substantial basis for determining the existence of probable cause.

“The Fourth Amendment to the United States Constitution guarantees the right of the people to be free from unreasonable searches and seizures and provides that no warrants shall be issued except upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.” McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 47 (2013) (citing U.S. Const. amend. IV). “In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures.” State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001) (citing S.C. Cont. art. I. § 10). “In addition to language which mirrors the Fourth Amendment, S.C. Cont. art. 1 § 10 contains an express right to privacy: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and *unreasonable invasions of privacy* shall not be violated.” Id. at 644, 541 S.E.2d at 840-841 (emphasis in original).

“In South Carolina, search warrants may be issued ‘only upon affidavit sworn to before the magistrate ... establishing the grounds for the warrant.’” State v. Baccus, 367 S.C. 41, 50-51, 625 S.E.2d 216, 221 (2006) (quoting S.C. Code Ann. § 17-13-140 (2003)); See State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). “The affidavit must set forth particular facts

and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter.” Id. (citing Franks v. Delaware, 438 U.S. 154, (1978)).

“In determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime, *but whether it is reasonable to believe that the items to be seized will be found in the place to be searched.*” State v. Thompson, 419 S.C. 250, 256, 797 S.E.2d 716, 719 (2017) (citing Zurcher v. Stanford Daily, 436 U.S. 547, 556 (1978)) (emphasis in original). “In South Carolina, the judicial officer asked to issue a search warrant must make a practical, common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, *there is a fair probability that evidence of a crime will be found in the particular place to be searched.*” Id. at 256-257, 797 S.E.2d at 719 (citing State v. Tench, 353 S.C. 531, 534, 579 S.E.2d 314, 316 (2003)) (emphasis in original); See State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997); State v. Philpot, 317 S.C. 458, 454 S.E.2d 905 (Ct. App. 1995). “If no supplemental oral testimony is taken, an issuing judge’s probable cause determination is limited to the four corners of the search warrant affidavit.” Id. at 257, 797 S.E.2d at 719 (citing State v. Kinloch, 410 S.C. 612, 616, 767 S.E.2d 153, 155 (2014)).

“The duty of the reviewing court is to ensure the issuing judge had a substantial basis for concluding probable cause existed.” Id. (citing Kinloch, 410 S.C. at 616, 767 S.E.2d at 155). “Although great deference must be given to an issuing judge’s conclusions, the judge may only issue a search warrant upon a finding of probable cause.” Id. (citing State v. Jones, 342 S.C. 121, 126, 536 S.E.2d 675, 678 (2000)); See State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999).

The search warrant in this case failed to comply with the Fourth Amendment, Article 1, § 10 of the South Carolina Constitution, and § 17-13-140 because the grounds for the warrant were

not supported by probable cause. Based on the testimony presented during the pretrial suppression hearing, the only evidence law enforcement had in support of the warrant was (1) the occupants of a four door, black Mercedes with a paper tag used the decedent's bank card at a QT on December 21, 2018; (2) an anonymous Crime Stoppers tip stated that the individuals involved in the decedent's death lived at a particular residence on East Poinsett Street in Greer; and (3) the vehicle sought to be searched, which generally matched the description of the car seen on the QT footage, was located at the East Poinsett residence on December 30, 2018.¹ There was no reason for law enforcement to believe that evidence related to the decedent's death would be found in the vehicle subject to the search warrant. There was no evidence connecting the Mercedes to the decedent's murder. Rather, the evidence merely established that the occupants of a similar vehicle used the decedent's bank card more than a week prior. This evidence did not provide the magistrate with a substantial basis for determining the existence of probable cause.

Because the affidavit in support of the search warrant failed to establish probable cause, the trial judge should have granted the motion to suppress and excluded the evidence unlawfully seized from Appellant's car. See Wong Sun v. United States, 371 U.S. 471, 484 (1963) (The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine.).


Respectfully, this Court should hold the trial judge abused his discretion by denying Appellant's motion to suppress, reverse Appellant's convictions, and remand for a new trial.

¹ Neither the search warrant nor the affidavit in support of the search warrant are part of the record. Only oral testimony was presented during the pretrial suppression hearing.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,


Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of August, 2024.

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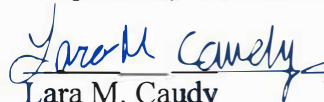
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Seuvarrggio S. Rector states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial, which was held on September 11-15, 2023 before the Honorable Alex Kinlaw, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967) briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Seuvarrggio S. Rector.

Respectfully Submitted,


Lara M. Caudy

Senior Appellate Defender

ATTORNEY FOR APPELLANT

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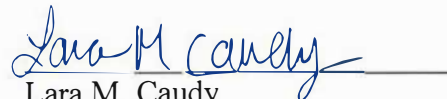
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Complete Trial Transcript Dated September 11-15, 2023;
- (2) Indictments;
- (3) Sentence Sheets.

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



Lara M. Caudy
Senior Appellate Defender

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ATTORNEY FOR APPELLANT

This 21st day of August, 2024.

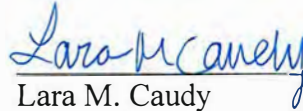
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CERTIFICATE OF COUNSEL

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."



Lara M. Caudy
Senior Appellate Defender

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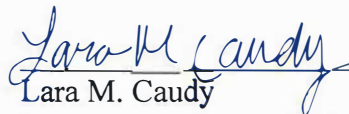
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CERTIFICATE OF SERVICE

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 Melody J. Brown, Esquire, at her primary email address listed in the Attorney Information System (AIS); and on Seuvarrggio S. Rector, #392088, at Evans Correctional Institution, 610 Highway 9 West, Bennettsville, SC 29512, this 21st day of August, 2024.


Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT