ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from York County

John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HASHIN ALLIE ONEIL,

APPELLANT

APPELLATE CASE NO. 2013-02126

BRIEF OF APPELLANT PURSUANT TO WHITE V. STATE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUE ON APPEAL

Did the court err in failing to suppress Appellant's statement to law enforcement where Appellant was arrested without probable cause and without a warrant in violation of the Fourth Amendment?

STATEMENT OF THE CASE

A York County Grand Jury indicted Appellant at the April 12, 2012 term of General Sessions for attempted murder and possession of a firearm during the commission of a violent crime. App. 697-698. His case was called to trial on April 16, 2012 before the Honorable John C. Hayes, and a jury. Assistant Solicitors Lisa Collins and Christopher Epting represented the state, and Robert A. Muckenfuss and Elizabeth Timmermans represented Appellant. App. 1.

At the conclusion of the trial on April 18, 2012, the jury acquitted Appellant of attempted murder and the weapons offense, but found Appellant guilty of the lesser included offense of first degree assault and battery. App. 615, l. 24 – 616, l. 10. He was sentenced by Judge Hayes to ten years imprisonment. App. 622, ll. 3-8. Appellant did not appeal.

On October 8, 2012, Appellant filed an application for post-conviction relief (PCR) seeking, *inter alia*, a belated direct appeal because his attorney failed to file a notice of appeal. App. 659-665. The state filed a return to this application dated April 25, 2013. App. 666-670. The matter proceeded to an evidentiary hearing on August 16, 2013 before the Honorable G. Edward Welmaker. App. 671. Assistant Attorney General J. Rutledge Johnson represented the state, and Charles T. Brooks, III represented Appellant. App. 671 By order dated September 23, 2013, Judge Welmaker granted Appellant a belated direct appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974). App. 696. However, Judge Welmaker denied Petitioner's remaining PCR allegation, which was briefed in the petition for writ of certiorari filed simultaneously with this brief. App. 696.

This brief of appellant follows.

ARGUMENT

The court erred in failing to suppress Appellant's statement to law enforcement where Appellant was arrested without probable cause and without a warrant in violation of the Fourth Amendment.

Relevant Facts

During a pretrial hearing, Detective Eddie Strait of the York County Sheriff's Office testified that he arrived at the emergency room at Piedmont Medical Center, a local hospital in Rock Hill, around four o'clock in the morning on November 12, 2010. After he arrived at the hospital, Strait interviewed the complainant, Crystal Caldwell, who was being treated for a gunshot wound.[1] Strait testified that Caldwell told him she did not know who shot her. App. 67, l. 8 – 69, l. 3; App. 69, l. 25 – 70, l. 6. However, according to Strait, Caldwell "gave details of an argument between her and her boyfriend Hashin O'Neil [Appellant]." App. 69, ll. 4-6; See App. 657.

While the details of the argument were not discussed during his testimony, the "Incident Interview Report" completed by Strait states, "Crystal [Caldwell] stated that she left the residence around 7:30 or 8:00 pm [the night before] because Hashim [Appellant] had said nasty things to her. She had told him to leave the residence and he did pack his things up into his car. She stated they did talk on the phone and send text messages to each other while she was gone. Crystal came home around midnight and he was still there. Crystal

[1] Caldwell suffered a gunshot wound to her lower back or torso area. App. 204, ll. 4-9. The doctor who treated Caldwell decided not to operate because "the track of the bullet appeared to simply involve soft tissue." App. 243, l. 22 – 244, l. 5.

asked him for the house keys and the keys to her car. He asked for his ring back and she gave it to him then." App. 657.

During his testimony, Strait confirmed that Crystal told him that she then "went to walk out of the apartment and heard a noise and felt like she could not walk. Hashin [Appellant] then said it looks like you have been shot. Hashin then brought her to PMC [Piedmont Medical Center] to be treated." App. 69, ll. 12-17; See App. 657. Strait testified that when he asked Caldwell if Appellant shot her, "she replied she did not see him shoot her, but they were the only two in the apartment." App. 69, ll. 18-24; App. 657.

Strait explained that after Caldwell gave this statement, he told her to call Appellant and ask him to come back to the hospital. He said Caldwell had "to be transferred to Charlotte because of the seriousness of her injuries" so she called Appellant and asked him "to come back to the hospital and see her before she went to Charlotte." App. 70, ll. 7-14. Strait testified that he was in the hospital room with Caldwell when she made this phone call to Appellant. App. 70, l. 15-16.

Shortly thereafter, Appellant came back to the hospital and Strait and another officer met him in the parking lot near the emergency room entrance. Strait explained, "Initially I advised him I was putting him in cuffs for our safety and his safety and I patted him down for weapons." App. 70, l. 17 – 71, l. 3. Appellant did not have any weapons on him. App. 71, ll. 4-7. Strait then "advised him that he was under arrest" and he "was placed into a patrol car at that point." App. 71, ll. 7-14.

Strait admitted that at the time he placed Appellant under arrest, the only information he had was the statement from Caldwell indicating "she didn't know who shot her" and Caldwell's claim that she and Appellant had been arguing. Strait also said that he

was aware Appellant had left the hospital after he dropped Caldwell off and went back to the apartment and switched vehicles. Strait testified, "He actually brought her [to the hospital] in her car. Her car was found at the apartment with the flashers on and his car was gone. He had not come back to the hospital to check on her condition and he hadn't called."[2] App. 72, l. 1 – 73, l. 9.

When questioned by the state, Strait testified that Caldwell appeared "nervous and scared." App. 78, l. 13-19. He also explained that Caldwell had made him aware of text messages she and Appellant had exchanged the night before during their alleged argument. Strait viewed some of these text messages on Caldwell's phone and photographs of the text messages were later taken by law enforcement. App. 78, l. 20 – 80, l. 10; See App. 626-655. Strait testified that he viewed these texts messages while he was interviewing Caldwell before Appellant's arrest and that the messages indicated "a verbal dispute going on between [Appellant] and Ms. Caldwell."[3] App. 79, l. 15 – 81, l. 5.

Strait also agreed with the solicitor's assertion that these text messages progressed from love to "threats of assault and battery" and "indicat[ed] [Caldwell] may be subjected to harm." App. 81, ll. 8-21.

At the conclusion of the testimony, trial counsel argued:

> [W]e would contend that the police did not have probable cause to place Mr. O'Neil [Appellant] under arrest. I think

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[2] Appellant did in fact return to the hospital after receiving the phone call from Caldwell and learning that she was being transferred to Charlotte. See App. 70, ll. 7-18.

[3] Appellant moved pretrial to exclude these text messages from being admitted into evidence because the state failed to preserve all of the messages exchanged between Appellant and Caldwell that night. Specifically, of the thirty text messages preserved by the state, only two were sent from Caldwell to Appellant while twenty-eight were sent from Appellant to Caldwell. The state ultimately agreed not to admit the text messages into evidence during its case in chief. See App. 94, l. 18 – 98, l. 9.

> the detective stated and it's in the report that Ms. Caldwell specifically told them she did not see Mr. O'Neil shoot her and she did not know who shot her. There was no physical evidence collected by the police at the time that they arrested Mr. O'Neil. I think Detective Strait simply stated that he knew they had an argument. He was aware that Mr. O'Neil was with her at the apartment although Ms. Caldwell stated she was walking out of the door of the apartment when she heard a noise and felt like she couldn't walk. From that standpoint, Your Honor, I think under the case law there was an illegal arrest or an arrest not supported by probable cause, a remedy would be to exclude any evidence collected as a result following the arrest. In this case it would be the statement that [Appellant] provided orally to Detective Strait in the conference room.[4]

App. 89, ll. 2-19.

In response, the solicitor argued that Caldwell's initial statement that she did not know who shot her was "consistent with her lying." He said that Caldwell told Strait "she was going to walk out of the house and somebody shot her as she was going to walk out of the house." The solicitor argued, "The implication of that is that she had not yet left the house. She stated to officers then that she and Hakim [sic] were the only two people in the house." App. 90, l. 19 – 91, l. 3. The solicitor also maintained that some of the text messages Appellant sent to Caldwell were "very threatening." He specifically quoted four text messages from Appellant to Caldwell: "You're no good, God is going to punish you;"

[4] Appellant was interrogated by Detective Strait shortly after his arrest. During this interview, Appellant told Strait that he and Caldwell had argued the night before, that he had decided to end the relationship, and that Caldwell had returned an engagement ring he had given her. Appellant also told Strait that after Caldwell returned the ring and he packed up his belongings, he left the residence, but returned shortly thereafter. According to Strait, when he asked Appellant what happened after Appellant returned to the residence, Appellant replied, "Whatever she said happened." Appellant then asked for an attorney and the interview was terminated. App. 656.

"I hate you Crystal for this;" "I hate you, I promise you will not enjoy that ring;" and "I hope the day that I die you die too." App. 91, ll. 5-17.

The court ultimately found law enforcement had probable cause to arrest Appellant at "the moment the arrest was made." The court stated, "At that time [the officers] had facts and circumstances within their knowledge which they had reason to consider as trustworthy information at the time and that they were sufficient to warrant a prudent man to believe that the defendant had committed an offense." App. 92, ll. 3-19.

Discussion

Appellant was arrested without probable cause and without a warrant in violation of the Fourth Amendment. Because Appellant was arrested illegally, the verbal statement he gave to law enforcement shortly after his arrest should have been suppressed by the trial court as the fruit of the poisonous tree. See Wong Sun v. United States, 371 U.S. 471 (1963).

"The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest. Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested." State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006) (citing State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996)). "Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal." Id. (citing Beck v. Ohio, 379 U.S. 89, 91 (1964)).

"A police officer has probable cause to arrest without a warrant where he, in good faith, believes that a person is guilty of a felony, and his belief in his right to arrest is

based on such grounds as would "induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise..." State v. Roper, 274 S.C. 14, 17, 260 S.E.2d 705, 706 (1979) (quoting State v. Swilling, 249 S.C. 541, 558, 155 S.E.2d 607, 617 (1967)) (internal quotation marks omitted).

When Detective Strait made the decision to arrest Appellant for attempted murder, he knew that Appellant and Caldwell had been arguing over the course of several hours before Caldwell arrived at the hospital. Strait also knew, based on his interview with Caldwell, that she had been shot as she was walking out of her apartment. However, Caldwell told Strait that ***she did not know who shot her*** and, specifically, that ***she did not see Appellant shoot her***. Additionally, Strait testified that he knew Appellant drove Caldwell to the emergency room after she was injured, but left the hospital to exchange vehicles. Appellant then returned to the hospital when Caldwell called him and told him she was being transferred to a hospital in Charlotte.

Furthermore, prior to Appellant's arrest, Strait had viewed text messages on Caldwell's telephone exchanged between Caldwell and Appellant. These text messages corroborated Caldwell's statement that she and Appellant had been arguing and that perhaps their romantic relationship was coming to an end. However, Detective Strait's assertion that the messages Appellant sent to Caldwell were progressing towards "threats of assault and battery" and indicated Caldwell "may be subjected to harm" was a substantial mischaracterization. See App. 81, ll. 8-21. The text messages allegedly sent by Appellant to Caldwell did not reflect any threats of violence or harm. Rather, these messages demonstrated the emotional turmoil of two people ending an engagement. It is apparent from the messages that Appellant was upset with Caldwell and wanted her to

return the engagement ring he had given her. However, there is no indication from the messages that Appellant intended to harm Caldwell. See App. 626-655.

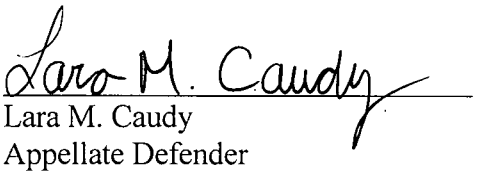
This knowledge and information taken as a whole would not "induce an ordinarily prudent and cautious man, under the circumstances, to believe" Appellant was guilty of shooting Caldwell in the lower back. See Roper, 274 S.C.at 17, 260 S.E.2d at 706. ***Caldwell herself stated she was shot as she was leaving her apartment, but did not know who shot her***. See App. 657. Because Caldwell indicated the injury occurred as she was walking out of her apartment, it is possible the perpetrator was on the outside of the apartment. There was absolutely no evidence presented regarding whether Strait had any knowledge as to where Appellant was located inside the apartment at the time Caldwell was shot. It is possible he was not near the front door or even in the same room as Caldwell. Furthermore, there was no physical evidence collected at the time of Appellant's arrest.

Under the totality of the circumstances, the information known by Detective Strait at the time of Appellant's arrest did not rise to a level of knowledge sufficient to lead a reasonable person to believe that a crime had been committed by Appellant. See Baccus, 367 S.C. at 49, 625 S.E.2d at 220. Therefore, Appellant was arrested unlawfully without probable cause and the subsequent verbal statement he gave to law enforcement should have been suppressed. See Wong Sun, 371 U.S. 471.

CONCLUSION

Based on the foregoing argument, Appellant's conviction and sentence should be reversed and this case remanded to the York County Court of General Sessions for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of June, 2014.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following additional items be transported to the Court for consideration of his direct appeal:

(1) State's Exhibit No. 8 (30 photographs of text messages).

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

June 12th, 2014

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APPELLATE CASE NO. 2013-02126

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant Pursuant to White v. State and Designation of Matter in the above referenced case has been served upon J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of June, 2014.

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of June, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022