ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2016-000576

THE STATE,

Respondent,

vs.

ROBERT DAVIS SMITH, JR.,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied defense counsel's motion to suppress the incriminating evidence discovered as a result of Appellant's arrest because the arresting officer had a probable cause basis to believe Appellant had sexually assaulted the victim prior to taking him into custody in light of the fact the injured victim reported she was sexually assaulted, Appellant fully matched the physical description of the victim's assailant, Appellant was located in close proximity to the scene of the crime, and Appellant claimed ownership of a cell phone that was found in the victim's motel room shortly after the sexual assault was committed.

STATEMENT OF THE CASE

In June of 2013, Appellant Robert Davis Smith, Jr. was arrested following an investigation into a sexual assault that took place at a motel located in Greenville, South Carolina. In April of 2014, the Greenville County Grand Jury indicted Appellant for one count of first-degree criminal sexual conduct, one count of first-degree burglary, one count of possession of a weapon during the commission of a violent crime, three counts of kidnapping, and one count of first-degree assault and battery. On March 2, 2016, a jury trial was commenced in the Greenville County Court of General Sessions on the criminal sexual conduct, burglary, and possession of a weapon charges with the Honorable Brian M. Gibbons, circuit court judge, presiding. At the conclusion of the trial two days later, the jury convicted Appellant of first-degree criminal sexual conduct and acquitted Appellant of the other two charges. Following the verdict, the trial judge sentenced Appellant to a twenty-three-year term of imprisonment. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Around 11:00 a.m. on the morning of June 17, 2013, Melissa Fortner ("Victim"), an eight-month-long resident of the Regal Inn in Greenville, South Carolina, began cleaning the second-floor motel room she shared at that establishment with her boyfriend, Walter Pope, who was away at work, and her two young children, who were in the room with her.[1] (R. pp. 47-50; p. 56; p. 63; p. 66; p. 76; p. 80; pp. 122-123; p. 130). During the cleaning process, Victim left the door open so she could easily put the bed sheets outside for the motel's maid to collect. (R. pp. 49-50). As she continued to clean, a man she did not know came by her room and asked for an individual called "Mike Mike" or "Mookie." (R. p. 50; p. 69; p. 76; p. 198). Victim responded she did not know the person the man was looking for, and the man walked off down the motel corridor. (R. p. 50; pp. 69-70). Victim then resumed cleaning her room. (R. p. 50).

A short time later, the man returned to Victim's room, came inside, pulled out a box cutter, told her to keep quiet, and shut the door behind him. (R. p. 51; p. 70). After that, the man advanced towards Victim and pushed her onto one of the room's beds, and Victim responded by physically resisting the man. (R. p. 51; p. 73). During the ensuing struggle, the two fell off the bed onto the floor, and the man began choking Victim to such an extent she could barely breathe. (R. p. 51; pp. 73-75). The man then pulled down his pants, shifted Victim's underwear to the side, and proceeded to rape her. (R. p. 52; pp. 74-75). After that, the man directed Victim to go into the bathroom, and she complied. (R. pp. 52-53). The man then rapidly fled from the motel room. (R. pp. 53-54).

As soon as the man was gone, Victim ran to the door and locked it. (R. p. 53). She then quickly called 911 and reported the sexual assault. (R. p. 44; p. 55). Minutes later, law enforcement officers from the Greenville Police Department responded to the motel and began

[1] At the time of the incident, Victim's children were three years old and seven months old. (R. p. 48).

investigating the incident. (R. pp. 56-57; pp. 132-133; p. 144). As part of the investigation, the officers spoke with Victim about what occurred, and she advised them of the details of the sexual assault. (R. p. 57; p. 134; p. 142; p. 144). In recounting the incident, Victim described her assailant as a black male wearing a black three-button shirt with a white shirt underneath it and jeans. (R. pp. 134-135; p. 142; p. 151; p. 197). Victim was then transported away from the scene and to Greenville Memorial Hospital. (R. p. 59; pp. 82-83).

At the hospital, Dr. Alissa Manfredi, an emergency room doctor, provided treatment to Victim. (R. p. 59; pp. 85-86). During the course of that treatment, Victim reported she had been choked and sexually assaulted earlier that day, and Dr. Manfredi conducted a physical examination of Victim's body. (R. p. 87; pp. 91-92). Based on that examination, Dr. Manfredi concluded Victim appeared to be in pain and distress, had bruising and swelling evident on her neck, and had lacerations to her vagina. (R. pp. 91-92).

Meanwhile, officers continued their investigation into the sexual assault back at the Regal Inn. (R. p. 100; p. 146). In doing so, they spoke with Lisa Crowder, who was a housekeeper at the motel, and Crowder recounted she observed a man with a camouflage bag run down from the second floor and away from the motel "in a hurry" while trying to pull his pants up earlier that morning after her boyfriend had informed her he had seen a camouflage bag on the ground just around the corner from Victim's room. (R. pp. 97-102; p. 146; p. 151). Likewise, as part of the investigation, the officers searched Victim's motel room and, during the search, located a cell phone they were advised did not belong to Victim or her boyfriend on the floor of the room in between the room's two beds. (R. pp. 57-58; pp. 148-149). However, the officers were not able to obtain any information from the phone that day despite obtaining a search warrant for it, and they were ultimately unable to identify a suspect on the date of the incident. (R. pp. 147-150).

Thereafter, on the following morning, the cell phone discovered in Victim's motel room rang, and Detective Tim Conroy of the Greenville Police Department answered the call. (R. pp. 15-16; p. 111; p. 150). During the ensuing call, the caller indicated he had lost the phone, and the two arranged to meet with one another at Labor Smart – an "on-demand" staffing company located in close proximity to the motel where the phone was found – so the phone could be returned. (R. p. 16; p. 79; pp. 105-106; p. 108; p. 115; pp. 150-152). Detective Conroy then travelled to the Labor Smart office, and Appellant, who matched the description of and was wearing the exact same attire as Victim's assailant, came outside of the office along with his boss, Jim Sawyer. (R. p. 6; p. 15; p. 112; p. 152; pp. 173-174; p. 180). Upon encountering Appellant, Detective Conroy briefly spoke with him before placing him in handcuffs, taking him into custody, and advising him he wanted to speak with him about something that occurred on the preceding day. (R. pp. 6-7; pp. 16-17; p. 112; p. 152; p. 176; p. 180). Detective Conroy then retrieved Appellant's camouflage backpack from the office and transported him to the police department. (R. pp. 152-153).

At the police department, the detective informed Appellant of his rights, and Appellant initialed and signed a form waiving those rights. (R. p. 7; p. 9; pp. 155-157). Detective Conroy then spoke with Appellant about his activities on the day of the incident, and Appellant provided a variety of different accounts of what had occurred on that day. (R. p. 158; State's Ex. # 9 (Recorded Statement)). Initially, Appellant stated he went to the Labor Smart office on the morning of the incident, found there was no work for him that day, took a bus ride away from the area, ate lunch, went to a friend's house, borrowed a U-Haul truck, realized his phone was missing, went back downtown, and had a man call his phone to help him find it. (State's Ex. # 9). The detective then advised Appellant he intended to show a photographic lineup to Victim,

and Appellant claimed he had been working on cars with his father on the date of the incident, acknowledged he saw a lot of police activity at the motel that day, and admitted he asked a woman if she knew "Mike." (State's Ex. # 9). Eventually though, Appellant conceded he was actually both at the motel on the date of the incident and spoke with Victim, but he claimed he did not do anything and had no physical contact with her. (State's Ex. # 9). He further insisted someone else must have taken his cell phone into Victim's motel room. (State's Ex. # 9). However, after further questioning, Appellant shifted his story again and claimed Victim offered to have sexual intercourse with him in exchange for money needed for "baby milk" and diapers, he had consensual sexual intercourse with her in the motel room after giving her $25, and he left after the intercourse. (State's Ex. # 9). Furthermore, Appellant acknowledged he left his camouflage backpack outside of the motel room during the sexual intercourse, insisted he did not leave his phone in the room, and offered to provide some unspecified information to the detective if he was allowed to "walk." (State's Ex. # 9). Following those remarks, Detective Conroy formally arrested Appellant in connection to the sexual assault at the conclusion of the interview. (R. p. 160; p. 167).

On the following day, Detective Conroy prepared a six-person photographic lineup that included Appellant's photograph, and he returned to the Regal Inn and presented it to Victim. (R. pp. 59-60; p. 160). Upon seeing the lineup, Victim immediately selected Appellant's photograph as the photograph of her assailant without any hesitation or doubt. (R. p. 61; pp. 160-161). Victim then circled Appellant's photograph on the lineup sheet and signed it. (R. pp. 61-62; p. 161).

Subsequently, Appellant was indicted for numerous offenses, including first-degree criminal sexual conduct, first-degree burglary, and possession of a weapon during the

commission of a violent crime, and he proceeded forward to trial on those three charges. (R. p. 3; pp. 27-28; pp. 272-274). At the outset of trial, the solicitor indicated an in limine hearing was needed to address some evidentiary matters related to Appellant's statement and the identification evidence, and the trial judge obliged. (R. p. 3; p. 6). During the ensuing hearing, Detective Conroy testified about the circumstances of Appellant's apprehension, his interview of Appellant, and Appellant's incriminating statement, which he indicated was freely and voluntarily made after Appellant was advised of and waived his rights. (R. pp. 6-14). Thereafter, on cross-examination, defense counsel repeatedly characterized the detention of Appellant as illegal during his questioning of the detective, and Detective Conroy responded to defense counsel's questions by explaining he detained Appellant based on probable cause and believed he had a sufficient probable cause basis to arrest Appellant at that time.[2] (R. pp. 16-19). However, Detective Conroy conceded to defense counsel he did not expressly tell Appellant he was under arrest when he initially detained him and did not formally obtain an arrest warrant until after he completed his interview of Appellant. (R. pp. 16-17).

At the conclusion of the in limine hearing, defense counsel moved for both Appellant's statement and the photographic lineup evidence to be suppressed. (R. p. 21; pp. 24-25). In support of his objection, defense counsel asserted Appellant was illegally taken into custody and "[e]ssentially" arrested without an arrest warrant and without "any legal authority with which [he was] familiar" while contending the "proper course" would have been for the officer to obtain an arrest warrant before initiating the arrest. (R. pp. 21-22). Defense counsel further maintained all the evidence obtained as a result of the illegal detention and arrest should be suppressed. (R. pp. 21-22). In rebuttal, the solicitor asserted Appellant did not express any desire not to go with the

[2] Later on during trial, defense counsel questioned Detective Conroy as to whether an arrest warrant is what allows an officer to make an arrest and whether the "other thing" that does so is the officer actually witnessing a crime being committed. (R. pp. 38-39).

officer following the detention and the detention was not illegal, and defense counsel responded by contending the officer "could have secured [Appellant] at the scene" while an arrest warrant was obtained. (R. pp. 22-23). Defense counsel then again maintained the officer illegally detained and arrested Appellant. (R. p. 23). At that point, the trial judge inquired of defense counsel as to whether an investigative detention was permissible, and defense counsel responded: "I don't know that there's an investigative detention that's allowed. They're allowed to secure a scene until a warrant can be obtained, Your Honor, is my understanding." (R. p. 23). Defense counsel then renewed his assertion Appellant was "[f]or all intensive purposes" arrested while noting the officer did not have an arrest warrant or inform Appellant of why he was being arrested. (R. pp. 23-24). Following defense counsel's remarks, the solicitor noted investigative detentions were, in fact, permissible, and the trial judge took the matter under advisement. (R. p. 24).

Thereafter, upon "reviewing the law and considering the testimony and evidence presented," the trial judge denied defense counsel's suppression motion. (R. p. 25). Furthermore, the trial judge ruled Appellant's statement would be admissible during trial after finding it was voluntarily, knowingly, and intelligently made. (R. p. 25). The trial judge then asked the parties if there was anything else he needed to know or do, and both the solicitor and defense counsel responded in the negative. (R. pp. 25-26).

Following the trial judge's ruling, the trial proceeded forward, and Victim, who was married by the time of trial, recounted to the jury the traumatic details of the sexual assault while also – without objection – identifying Appellant in the courtroom as her assailant. (R. pp. 47-80). In addition to Victim's testimony, Crowder testified about her observations at the motel on the morning of the incident and noted she observed a black male with a camouflaged bag

hurriedly fleeing from the motel's second floor at that time. (R. pp. 97-100). Crowder further acknowledged drug activity was common at the motel and it was possible acts of prostitution occurred there, but she indicated she was not aware of any issues occurring that involved Victim and her boyfriend while they lived at the motel. (R. pp. 103-104). Additionally, Walter Pope, who was Victim's boyfriend at the time of the incident and husband by the time of trial, testified about how Victim was distraught after the sexual assault, experienced behavioral changes, and began having difficulty sleeping. (R. pp. 121-125). Pope further recounted he had observed Appellant with a camouflaged bag before when they were both working at Labor Smart, but he stated he had never actually spoken to or interacted with Appellant during that time period. (R. pp. 129-130). Furthermore, Sawyer recounted Appellant came into the Labor Smart office on the date of the sexual assault but left around 10:00 a.m. because there was no work available for him that day. (R. p. 109). After that, Sawyer indicated Appellant came to the office the next morning, asked him if he had heard anything about the "commotion" that had taken place at the Regal Inn, and advised him he had lost his phone. (R. pp. 110-111). Sawyer testified he then called Appellant's phone to help him locate it, someone answered, and Appellant was taken into custody by the police a short time later. (R. pp. 111-112).

Beyond that testimony, the law enforcement officers and other personnel who responded after the sexual assault was reported testified about Victim's statements following the incident, Victim's description of the assailant, Victim's injuries at that time, and the details of the ensuing investigation that culminated in Appellant's arrest. (R. pp. 41-46; pp. 81-83; pp. 85-96; pp. 132-198). During the presentation of that testimony, the photographic lineup evidence was admitted into evidence over defense counsel's objection, and Appellant's statement following his

apprehension was likewise admitted into evidence over objection and played for the jury. (R. pp. 159-164).

Subsequently, at the conclusion of trial, the jury convicted Appellant of first-degree criminal sexual conduct and acquitted him of the two remaining charges. (R. p. 259). Following the verdict, the trial judge sentenced Appellant to a term of incarceration of twenty-three years. (R. p. 266).

ARGUMENT

The trial judge properly denied defense counsel's motion to suppress the incriminating evidence discovered as a result of Appellant's arrest because the arresting officer had a probable cause basis to believe Appellant had sexually assaulted the victim prior to taking him into custody in light of the fact the injured victim reported she was sexually assaulted, Appellant fully matched the physical description of the victim's assailant, Appellant was located in close proximity to the scene of the crime, and Appellant claimed ownership of a cell phone that was found in the victim's motel room shortly after the sexual assault was committed.

Appellant contends the trial judge committed reversible error by admitting into evidence an incriminating statement Appellant made after he was taken into custody along with a photographic lineup in which Appellant was identified as the perpetrator of the sexual assault. In support of that contention, Appellant maintains he was unconstitutionally arrested without probable cause and, thus, all the evidence discovered as a result of the illegal arrest had to be suppressed during trial.[3] To the contrary, the circumstances known to the officer at the time Appellant was taken into custody established a fair probability a sexual assault had been committed and Appellant was the person who had committed it. Specifically, Detective Conroy

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[3] Notably, defense counsel did **not** specifically argue Appellant's arrest was not supported by probable cause as Appellant is now arguing on appeal. (R. pp. 21-25). Instead, defense counsel contended to the trial judge Appellant's arrest was illegal based on the fact Detective Conroy did not obtain an arrest warrant, and he repeatedly asked questions of Detective Conroy suggesting he mistakenly believed an arrest warrant was necessary in order for an arrest to be legitimate if an officer did not actually witness a criminal offense. (R. pp. 18-19; pp. 21-24; pp. 170-172). Moreover, defense counsel even incorrectly suggested to the trial judge – based on his understanding – there was no authority in existence that permitted an investigative detention for any purpose other than securing a scene until a warrant could be obtained. (R. p. 23). Therefore, because defense counsel did not raise the particular argument Appellant is now raising on appeal, Appellant's appellate argument is not properly preserved for appellate and cannot properly be considered or addressed for the first time on appeal. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing a party cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."); see also In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."); State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"); cf. State v. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000) (finding Benton's appellate challenge to the trial judge's refusal to give a requested charge was not preserved for appellate review where Benton "argued one ground in support of a circumstantial evidence charge at trial (State only presented circumstantial evidence of intent) and argues another ground in support of the charge on appeal (palm print is circumstantial evidence).").

was aware Victim had reported she had been sexually assaulted, Victim had suffered injuries to her neck and vagina, Appellant fully matched the physical description of Victim's assailant, Appellant's place of employment was located in close proximity to the scene of the sexual assault, and Appellant was claiming ownership of a cell phone that was found in Victim's motel room after the incident. Under those circumstances, Appellant's arrest was both supported by probable cause and constitutionally reasonable, and the trial judge properly denied Appellant's suppression motion. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In search and seizure cases, an appellate court in South Carolina is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) ("[A]ppellate courts must affirm if there is any evidence to support the trial court's ruling."); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (" 'When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.' " (citation omitted)). Critically, the appellate court will not reverse merely because it would have reached a

different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 ("In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge's ultimate determination de novo but, rather, would apply a deferential standard of review.").

ANALYSIS

The Fourth Amendment of the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; see also Florida v. Jimeno, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."). Importantly, that constitutional provision is designed "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976). For Fourth Amendment purposes, a search occurs when "an expectation of privacy that society is prepared to consider reasonable is infringed." United States v. Jacobsen, 466 U.S. 109, 113 (1984). Likewise, a seizure occurs when there is some meaningful interference with an individual's possessory interest in property or with the individual's freedom of movement. Id.; see Terry v. Ohio, 392 U.S. 1, 16, n. 16 (1968) ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.").

Pursuant to the Fourth Amendment, a law enforcement officer may approach a citizen in an effort to speak with or question that citizen without implicating the Fourth Amendment so long as a reasonable person under the same circumstances would feel free to disregard the officer and leave if he or she chose to do so. Florida v. Bostick, 501 U.S. 429, 434 (1991). Significantly, engaging in a consensual encounter generally does not implicate or violate any

constitutional rights. State v. Pichardo, 367 S.C. 84, 100, 23 S.E.2d 840, 848-849 (Ct. App. 2005); see State v. Culbreath, 300 S.C. 232, 237, 387 S.E.2d 255, 257 (1990) ("Not all personal encounters between policemen and citizens involve 'seizures' of persons thereby bringing the Fourth Amendment into play."), abrogated on other grounds by Horton v. California, 496 U.S. 198 (1990).

Beyond a purely consensual encounter, a law enforcement officer who possesses reasonable articulable suspicion a citizen is involved in criminal activity may conduct a brief, non-consensual stop and detention of that citizen for investigative purposes. State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) ("To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity."); State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) ("It is recognized that the police may briefly detain and question a person upon a reasonable suspicion, short of probable cause for arrest, that he is involved in criminal activity."); see also United States v. Sokolow, 490 U.S. 1, 7 (1989) ("[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." (citation omitted)). Importantly though, such an investigative detention must remain brief and limited unless the officer's suspicions are confirmed or further aroused, which may justify a more prolonged and expanded detention. State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001).

However, when a law enforcement officer has probable cause to believe a citizen has committed a felony, the officer may fully take custody of and arrest that citizen even without possessing a valid arrest warrant. State v. Thompson, 304 S.C. 85, 87, 403 S.E.2d 139, 140 (Ct.

App. 1991); see State v. Roper, 274 S.C. 14, 17, 260 S.E.2d 705, 706 (1979) ("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 rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise . . . .' " (citation omitted)). For constitutional purposes, a citizen has been seized – and, thus, arrested unless only subjected to a brief investigatory detention – when a reasonable person under the circumstances would not believe he or she was free to leave. See State v. Brannon, 388 S.C. 498, 503, 697 S.E.2d 593, 596 (2010) (recognizing there is a difference between an arrest for statutory purposes and constitutional purposes, noting an arrest is the highest form of a constitutional seizure, and stating a constitutional seizure occurs when a reasonable person under the circumstances would not believe he or she was free to leave); see also United States v. Elston, 479 F.3d 314, 319 (4th Cir. 2007) ("We have expressly recognized that 'the perception that one is not free to leave is insufficient to convert a Terry stop into an arrest. A brief but complete restraint of liberty is valid under Terry.' " (citations omitted)); United States v. Berry, 670 F.2d 583, 591 (5th Cir. 1982) ("Supreme Court holdings sculpt out, at least theoretically, three tiers of police-citizen encounters: communication between police and citizens involving no coercion or detention and therefore without the compass of the Fourth Amendment, brief 'seizures' that must be supported by reasonable suspicion, and full-scale arrests that must be supported by probable cause."). Critically, so long as such an arrest is supported by probable cause, it is ordinarily considered to be constitutionally reasonable. See Riley v. California, __ U.S. __, 134 S. Ct. 2473, 2484 (2014) (recognizing "a 'custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment' " (citation omitted)); see also United States v. Watson, 423 U.S. 411, 423-424 (1976) ("Law enforcement officers may find it wise to seek arrest warrants where

practicable to do so, and their judgments about probable cause may be more readily accepted where backed by a warrant issued by a magistrate. But we decline to transform this judicial preference into a constitutional rule when the judgment of the Nation and Congress has for so long been to authorize warrantless public arrests on probable cause rather than to encumber criminal prosecutions with endless litigation with respect to the existence of exigent circumstances, whether it was practicable to get a warrant, whether the suspect was about to flee, and the like." (citations omitted)).

In determining the lawfulness of an arrest, the fundamental issue is simply whether there was probable cause to make one. State v. Cuevas, 365 S.C. 198, 203, 616 S.E.2d 718, 721 (Ct. App. 2005). "Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise." Wortman v. City of Spartanburg, 310 S.C. 1, 4, 425 S.E.2d 18, 20 (1992). Significantly, the probable cause standard merely requires the facts and circumstances available to the officer at the time of the arrest to be such that would warrant a reasonably cautious person in the same situation to believe an offense has been committed and the person detained committed it. In re Care and Treatment of Brown v. State, 372 S.C. 611, 619-620, 643 S.E.2d 118, 122 (Ct. App. 2007). Importantly, the probable cause standard does **not** demand any showing the officer's belief was correct or more likely true than false. Texas v. Brown, 460 U.S. 730, 742 (1983); see Garcia v. County of Merced, 639 F.3d 1206, 1209 (9th Cir. 2011) ("For information to amount to probable cause, it does not have to be conclusive of guilt, and it does not have to exclude the possibility of innocence[.] . . . [P]olice are not required 'to believe to an absolute certainty, or by clear and convincing evidence, or even by a preponderance of the available evidence' that a suspect has committed a crime. All that is

required is a 'fair probability,' given the totality of the evidence, that such is the case." (citations omitted)). Instead, it is a flexible, common-sense standard not requiring absolute certainty or the complete exclusion of some alternative possibility of innocence. See Brown, 460 U.S. at 741 ("[P]robable cause is a flexible, common-sense standard."); Brown, 372 S.C. at 619, 643 S.E.2d at 122 ("The very term itself, 'probable cause,' does not import absolute certainty."); cf. United States v. Sanchez, 689 F.2d 508, 515-516 (5th Cir. 1982) ("[O]ur ultimate inquiry is not whether there is some hypothesis of the yellow truck's 'innocence' which is reasonably consistent with the circumstances shown, for such an analysis is more appropriate to the 'beyond a reasonable doubt' standard used on the merits. Here, we are dealing with 'probable cause,' which requires 'far less evidence[.]' All that is required is a showing of 'facts and circumstances (that) would lead a reasonably prudent man to believe that the vehicle contain(ed) contraband.' " (citations omitted)).

In the case sub judice, Detective Conroy took Appellant into custody shortly after encountering him, placed him in handcuffs, transported him to the police department in a police vehicle, and interviewed him for several hours. Unquestionably, Appellant was not free to leave during that encounter unless and until he was released from law enforcement custody by the detective. See Brendlin v. California, 551 U.S. 249, 254 (2007) (recognizing a person is "seized" for constitutional purposes whenever an officer terminates or restrains the person's freedom of movement through means intentionally applied). Under those circumstances, Appellant was seized and arrested for constitutional purposes regardless of how the seizure was characterized or labeled at the time it was initiated. See Dunaway v. New York, 442 U.S. 200, 212 (1979) (concluding probable cause was necessary to involuntarily transport Dunaway to a police department in a police vehicle and place him in an interrogation room); see also Brighton

City, Utah v. Stuart, 547 U.S. 398, 404 (2006) ("An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed *objectively,* justify [the] action.' The officer's subjective motivation is irrelevant." (citations omitted and brackets in original)); State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 458 (2013) (recognizing an "officer's subjective motivations are irrelevant" when determining the constitutionality of a seizure).

Because Appellant was constitutionally seized in a manner constituting something more than a brief investigative detention, it was necessary for Detective Conroy to possess a probable cause basis to believe Appellant had committed or was committing a crime in order to take the actions he did. See State v. Jones, 273 S.C. 723, 727-728, 259 S.E.2d 120, 123 (1979) ("It is well settled that a police officer may conduct a warrantless arrest if, at the time of the arrest, the officer has reliable information or reasonable grounds that would justify his belief that a felony has been committed and that the arrestee is the perpetrator."). Critically, based on the totality of the circumstances existing at the time of the seizure, Detective Conroy did, in fact, possess such a probable cause basis for an arrest. Specifically, prior to taking Appellant into custody, Detective Conroy was aware Victim, who was suffering from bruising to her neck and a laceration to her vagina, had reported she was attacked and sexually assaulted by a black male wearing a black three-button shirt with a white shirt underneath it and jeans, and Appellant fully matched the physical description of Victim's assailant when the detective encountered him in close proximity to the scene of the incident just one day after the sexual assault. See State v. Bell, 263 S.C. 239, 244, 209 S.E.2d 890, 892 (1974) (concluding probable cause existed for a warrantless arrest of Bell where he was located several hours after a rape was reported, he matched the physical description of the rapist provided by the victim, and his vehicle matched

the description of the rapist's vehicle provided by the victim); State v. Singleton, 258 S.C. 125, 129-130, 187 S.E.2d 518, 521 (1972) ("The arresting officer had reliable information that a felony had been committed and with a description of the automobile and its contents and of the suspects, he was justified in concluded that the appellants were the ones who had committed the crime."); cf. Thompson, 304 S.C. at 87, 403 S.E.2d at 140 (holding officers had probable cause to arrest Thompson after locating him and determining he matched the physical description of a drug dealer who was reported to have just sold cocaine to an undercover narcotics agent). Moreover, before Appellant was taken into custody, Appellant claimed ownership of a cell phone located on the floor of Victim's motel room subsequent to the sexual assault, and the cell phone did **not** belong to Victim or any of her family members. See People v. Daggs, 133 Cal. App. 4th 361, 366, 34 Cal. Rptr. 3d 649, 652 (Cal. Ct. App. 2005) (recognizing it was inferable an unclaimed cell phone left at a drug store that had just been robbed belonged to or had been in the possession of the robber); see also Powe v. State, 235 So. 2d 920, 922 (Miss. 1970) ("[O]rdinarily, when the trustworthy evidence makes it clear that an offense has been committed and that a particular person was on the scene at the time it was committed, and then available evidence makes it reasonable to infer that the particular person not necessarily was, but may have been, one of the offenders, most discreet and prudent men would order that person's arrest."). Under those circumstances, it was entirely reasonable for Detective Conroy to believe a sexual assault had been committed and Appellant was the person who committed it, which meant the arrest of Appellant was legally and constitutionally proper. See Baccus, 367 S.C. at 48, 625 S.E.2d at 220 ("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."); see also State v. Retford, 276 S.C. 657, 660,

281 S.E.2d 471, 472 (1981) ("At the time of the arrest, the officers knew that a felony (auto theft) had been committed. [Retford] fit the description of the person given to the officers as the one who allegedly committed the felony. This, together with all of the other facts and circumstances, constituted sufficient basis for a reasonable belief that [Retford] committed the larceny of the automobile so as to permit his arrest without a warrant.").

Because Detective Conroy possessed a probable cause basis to arrest Appellant in connection to the sexual assault, Appellant's arrest was entirely reasonable and did not violate his constitutional rights in any way, and the evidence discovered as a result of his arrest was properly admitted during trial. See Riley, __ U.S. __, 134 S. Ct. at 2484 (acknowledging arrests supported by probable cause are constitutionally reasonable); cf. State v. George, 323 S.C. 496, 510, 476 S.E.2d 903, 911 (1996) ("[W]e conclude that probable cause for a warrantless arrest existed. Accordingly, [George]'s August 10th statement as well as any fruits therefrom were admissible."). Accordingly, the trial judge committed no error in denying Appellant's meritless suppression motion, his ruling was fully supported by the evidence, and there is no proper basis upon which to disturb that ruling on appeal. See State v. Manning, 400 S.C. 257, 267, 734 S.E.2d 314, 319 (Ct. App. 2012) ("The finding that an arrest was made based upon probable cause is conclusive on appeal where supported by evidence."); see also Provet, 405 S.C. at 107, 747 S.E.2d at 456 (recognizing South Carolina appellate courts review search and seizure determinations under a clear error standard and will affirm if there is any evidence to support the trial court's ruling). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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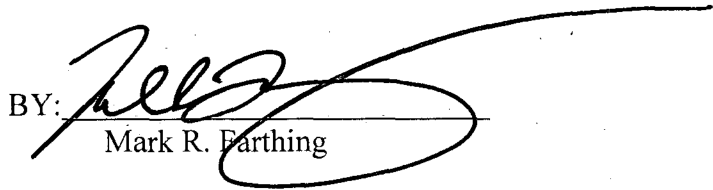

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September 20, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2016-000576

THE STATE,

Respondent,

vs.

ROBERT DAVIS SMITH, JR.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent 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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