

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Saluda County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMARCUS L. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2017-002624

ANDERS BRIEF OF APPELLANT

RECEIVED

JUN 04 2018

SC Court of Appeals

LARA M. CAUDY  
Appellate Defender

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

ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW .....3

STATEMENT OF THE FACTS .....4

ARGUMENT

    The trial judge erred by denying Appellant’s motion to suppress  
    evidence seized during the execution of a search warrant at his  
    house when the affidavit in support of the search warrant failed to  
    provide the magistrate with a substantial basis for finding probable  
    cause.....6

CONCLUSION.....9

PETITION TO BE RELIEVED AS COUNSEL .....10

**TABLE OF AUTHORITIES**

**Cases**

Illinois v. Gates, 462 U.S. 213 (1983) ..... 7

State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006)..... 7

State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999)..... 7

State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990) ..... 7

State v. Kinloch, 410 S.C. 612, 767 S.E.2d 153 (2014) ..... 6, 7

State v. Robinson, 415 S.C. 600, 785 S.E.2d 355 (2016)..... 7

State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010)..... 3

State v. Wright, 391 S.C. 436, 706 S.E.2d 324 (2011)..... 3

**Constitutional Provisions**

U.S. Const. amend. IV ..... 6, 7

**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err by denying Appellant's motion to suppress evidence seized during the execution of a search warrant at his house when the affidavit in support of the search warrant failed to provide the magistrate with a substantial basis for finding probable cause?

### STATEMENT OF THE CASE

A Saluda County Grand Jury indicted Appellant on November 1, 2016 for armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime. R. 405-410. His case was called to trial on November 5, 2017 before the Honorable Robert E. Hood, and a jury. R. 1. Assistant Solicitors Doug Fender and Alton Eargle represented the state, and Aimee Zmroczek represented Appellant. R. 1.

On November 8, 2017, the jury found Appellant guilty as indicted. R. 391, l. 18 – 392, l. 10. He was sentenced to twenty-five years' imprisonment for armed robbery, twenty-five years for kidnapping, and five years for the weapons offense. All sentences were ordered to be served concurrently. R. 402, l. 21 – 403, l. 1.

This appeal follows.

### STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling. The appellate court will reverse only when there is clear error.” State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (internal citations and quotation marks omitted). This deference does not bar appellate courts from conducting their own review of the record to determine whether the trial judge’s decision is supported by the evidence. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) (internal citation omitted).

## STATEMENT OF THE FACTS

During the early morning hours of August 1, 2016, the Circle K in Ridge Spring was robbed by an armed man. R. 147, l. 20 – 148, l. 11. The robber pointed a pistol at the clerk and demanded the clerk open the register. R. 148, ll. 4-10. He stole an undetermined amount of cash consisting exclusively of five and one-dollar bills, along with a case of cigarettes and a cigar. R. 149, l. 1 – 150, l. 9; R. 157, ll. 2-5. The robber was wearing black shorts and gray underwear. However, he did not have a shirt on. R. 150, ll. 18-24. His face and head were “almost completely covered” and he was carrying a silver revolver with a black handle. R. 165, l. 9 – 166, l. 6; R. 148, ll. 12-14.

The clerk gave the 911 operator a general description of the perpetrator. R. 178, l. 19 – 179, l. 15. However, when law enforcement arrived at the store, the clerk for the first time identified Appellant as the robber. R. 182, l. 17 – 183, l. 1. He claimed that, while he initially did not recognize the man, he later “realized” the robber was Appellant “after [he] gathered [his] bearings” and “gained [his] senses.” R. 151, ll. 18-24. The clerk knew Appellant “from the neighborhood and from the store.” Appellant was allegedly “a regular” at the Circle K and visited the store frequently. R. 152, ll. 9-17. The clerk also claimed that on several occasions, while walking to work, he observed Appellant playing football in a neighbor’s yard without a shirt on. R. 152, l. 18 – 153, l. 17. He allegedly identified Appellant as the robber based on Appellant’s body build and because he recognized a scar on Appellant’s shoulder and a star tattoo on his arm. R. 160, l. 20 – 161, l. 24.

While en route to the store to assist in the investigation, Ridge Spring Chief of Police Michael Raffield learned Appellant had been named as a suspect and responded to Appellant’s house, which was less than a mile from the Circle K. R. 47, ll. 1-8. Appellant’s mother greeted

Raffield at the door and ultimately led Raffield upstairs to a bedroom. R. 48, ll. 9-23. Raffield found Appellant asleep on top of a sleeping bag on the floor of the bedroom. R. 49, ll. 3-6; R. 250, ll. 18-21. He allegedly observed numerous five and one-dollar bills in the immediate area around Appellant. R. 49, ll. 5-6; Tr. 251, ll. 5-14. After Appellant was secured, Raffield obtained a search warrant to search the remainder of Appellant's bedroom. R. 49, ll. 3-14; R. 53, l. 3 - 54, l. 6; R. 252, ll. 2-7. During the execution of the search warrant, officers found forty-one dollars in cash underneath the sleeping bag. R. 49, ll. 17-19. Specifically, officers found five five-dollar bills and sixteen one-dollar bills. R. 49, ll. 10-21; R. 251, ll. 5-14. They also found two pairs of black shorts underneath the sleeping bag, and a silver revolver with a black handle, a box of ammunition, several packs of Newport cigarettes, and a cigarillo all in the bedroom closet. R. 49, l. 15 - 50, l. 13; R. 252, l. 18 - 253, l. 23.

Chief Raffield later seized Appellant's gray underwear from his property at the detention center, which allegedly matched the underwear worn by the robber. R. 260, ll. 5-23.

Appellant established an alibi. Chief Raffield testified that Appellant's mother and sister reported that, while Appellant had been out that morning, he returned home around 2:30 am, which was at least ten minutes before the robbery occurred. R. 282, l. 8 - 284, l. 7; R. 302, l. 11 - 304, l. 10. Accordingly, the trial judge instructed the jury on alibi. R. 385, l. 20 - 386, l. 9.

## ARGUMENT

The trial judge erred by denying Appellant's motion to suppress evidence seized during the execution of a search warrant at his house when the affidavit in support of the search warrant failed to provide the magistrate with a substantial basis for finding probable cause.

Appellant moved pretrial to suppress the evidence seized from his bedroom, during the execution of the search warrant arguing the affidavit in support of the search warrant failed to provide the magistrate with a substantial basis for finding probable cause. Defense counsel also stated she was concerned with “the veracity of what was sworn out to the magistrate” when the warrant was obtained. R. 57, l. 16 – 59, l. 2. Counsel emphasized the affidavit alleged Appellant was found still wearing partial clothing from the armed robbery, clothing which had been observed on the store surveillance video, but that Chief Raffield, the affiant, had not seen the surveillance footage at the time he applied for the search warrant. R. 58, l. 3 – 59, l. 2.

The trial judge ultimately found the affidavit in support of the search warrant contained sufficient evidence to establish probable cause that Appellant had committed an armed robbery and was located at the place to be searched. The judge concluded the evidence seized during the execution of the search warrant was admissible. He emphasized that Appellant was identified by the clerk as the perpetrator, who was seen running in the direction of Appellant's house, which was in close proximity to the Circle K, after the robbery, and the incriminating evidence Chief Raffield observed during the search incident to Appellant's arrest. R. 59, l. 22 – 61, l. 13.

### **Discussion**

“The Fourth Amendment protects against unreasonable searches and seizures.” State v. Kinloch, 410 S.C. 612, 616, 767 S.E.2d 153, 155 (2014) (citing U.S. Const. amend. IV.)

“A search or seizure does not violate the Fourth Amendment if it is authorized by a warrant that

is supported by probable cause.” Id. (citing U.S. Const. amend. IV and State v. Baccus, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006)). “A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Id. at 617, 767 S.E.2d at 155 (citing Baccus, 367 S.C. at 50, 625 S.E.2d at 221); See Illinois v. Gates, 462 U.S. 213, 238 (1983).

“In reviewing a magistrate’s probable cause determination, circuit court judges must determine whether the issuing magistrate had a substantial basis upon which to conclude that probable cause existed.” Id. (citing Baccus, 367 S.C. at 50, 625 S.E.2d at 221); See State v. Bellamy, 336 S.C. 140, 143-145, 519 S.E.2d 347, 348-349 (1999).

“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.” State v. Robinson, 415 S.C. 600, 605, 785 S.E.2d 355, 357 (2016) (citing State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990)).

The trial judge erred by denying Appellant’s motion to suppress the evidence seized from his bedroom during the execution of the search warrant because the affidavit supplied by Chief Raffield in support of the warrant failed to provide the magistrate with a substantial basis for finding probable cause. Moreover, the affidavit claimed Appellant was found wearing partial clothing that matched the clothing worn by the robber as observed on the store’s surveillance video, yet Chief Raffield had not watched the video at the time he submitted the affidavit and applied for the warrant.

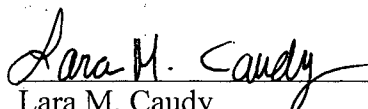
Chief Raffield also relied on the unreliable identification made by the clerk. The clerk’s identification was not reliable where he initially gave the 911 operator a mere general description of the robber and, only after having time to develop a story, identified Appellant as the perpetrator.

Consequently, Appellant respectfully requests this Court hold the trial judge erred by failing to suppress the evidence seized from his bedroom, reverse his convictions and sentence, and remand for a new trial.

**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  
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of June, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Saluda County

Honorable Robert E. Hood, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**  
JUN 04 2018  
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

DEMARCUS L. ROBINSON,

APPELLANT

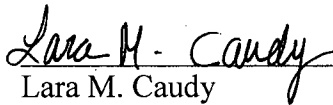
\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Demarcus L. Robinson 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 before the Honorable Robert E. Hood, which was held on November 6-8, 2017, 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 Demarcus L. Robinson.

Respectfully Submitted,

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of June, 2018.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Saluda County  
Honorable Robert E. Hood, Circuit Court Judge

---

**RECEIVED**

JUN 04 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DEMARCUS L. ROBINSON,

APPELLANT

---

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

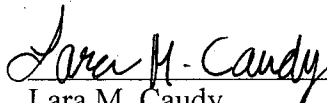
---

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

- (1) True-Billed Indictments:
- (2) Complete Trial Transcript Dated November 6-8, 2017.

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

June 4, 2018

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

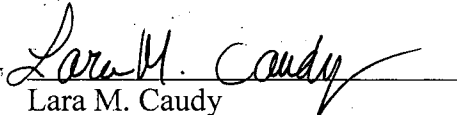
South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
P.O. Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**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."

June 4, 2018.

  
Lara M. Caudy  
Appellate Defender

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

ATTORNEY FOR APPELLANT

**RECEIVED**  
JUN 04 2018  
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Saluda County

Honorable Robert E. Hood, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**  
JUN 04 2018  
SC Court of Appeals

THE STATE,

RESPONDENT,

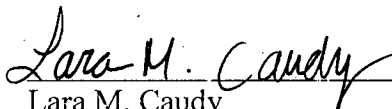
V.

DEMARCUS L. ROBINSON,

APPELLANT


\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal has been served upon Demarcus L. Robinson, #374512, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 4th day of June, 2018.

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 4th day of June, 2018.

 (L.S)

Notary Public for South Carolina  
My Commission Expires: May 12, 2027.