

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 24 2014

Appeal from Florence County

SC Court of Appeals

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLIFFORD CLAUDE CAMPBELL,

APPELLANT

APPELLANT CASE NO. 2013-001450

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the court err in denying Appellant's motion to suppress evidence contained in a cell phone that was seized from Appellant's person incident to his arrest where Appellant was unlawfully arrested without an arrest warrant and without probable cause in violation of the Fourth Amendment?

STATEMENT OF THE CASE

On July 19, 2012, a Florence County Grand Jury indicted Appellant for trafficking in marijuana. R. 432-433. His case was called to trial on June 17, 2013 before the Honorable D. Craig Brown, and a jury. R. 1. Kirk Truslow represented Appellant. John Jepertinger was the assistant solicitor. R. 1.

At the conclusion of the trial on June 18, 2013, the jury found Appellant guilty. R. 407, l. 24 – 408, l. 7. Judge Brown sentenced Appellant to six years imprisonment. R. 416, ll. 11-14.

This appeal follows.

ARGUMENT

The court erred in denying Appellant's motion to suppress evidence contained in a cell phone that was seized from Appellant's person incident to his arrest where Appellant was unlawfully arrested without an arrest warrant and without probable cause in violation of the Fourth Amendment.

Relevant Facts

Special Agent Dennis Tracey of SLED testified that he received a telephone call “from a source of information in the Phoenix area advising [him] of a suspicious inbound FedEx shipment destined for a location in Florence, South Carolina.” R. 149, ll. 20-25. Tracey was provided with “a tracking number and the recipient name and address.” R. 150, ll. 3-4. He testified that he used the tracking number to track the package and discovered that the package originated out of a FedEx Kinko's store in Phoenix, Arizona at 3:43 pm on February 22, 2012. R. 152, ll. 3-5. This package eventually arrived at a FedEx facility in Florence County at 5:03 am on February 28, 2012. R. 152, ll. 9-10.

Special Agent Robert Downey explained that he responded to the FedEx location in Florence after Agent Tracey requested the use of a K-9 for possible “narcotics detection on the parcel.” Downey testified that “[t]he box in question was obtained” and placed in a “parcel array” with five other boxes. Downey then “conducted a K-9 search for the presence of narcotics.” Downey claimed that his K-9 “alerted to the presence of the odor of narcotics on the box in question.” R. 128, l. 21 – 129, l. 19.

Downey testified that the agents then obtained a search warrant for the package based on the “characteristics of the box as well as the K-9 indication for the parcel.” The search warrant was signed by a Florence County magistrate. The agents then opened the

box and discovered “a bale of green plant material wrapped in several layers of plastic cellophane.” Downey said he “believed [the substance] to be marijuana.” R. 130, l. 13 – 131, l. 11. At that point, Downey explained, the agents repackaged the box and contacted the Florence County Sheriff’s Office. R. 131, ll. 19-24.

Together with the Florence County Sheriff’s Office, the agents planned a “controlled delivery.” In anticipation of the controlled delivery, Downey explained that Special Agent Ronnie Hinson met with a magistrate and obtained an anticipatory search warrant for the residence listed as the recipient address on the FedEx package. R. 132, ll. 2-12. Agent Tracey then posed as a FedEx employee and delivered the package to the residence using a white van owned by SLED. R. 133, ll. 1 – 133, l. 13.

Agent Tracey testified that he backed the van into the driveway, got out of the vehicle, and carried the parcel to the front door. After no one came to the front door, Tracey explained that he walked off the porch and back into the yard. At that point, according to Tracey, a black male came around the left side of the house. Tracey greeted the man and asked him “if it was the Gibson residence” or “if he was Mr. Gibson,” who was the addressee on the package. The male said either “he was Mr. Gibson or that it was the Gibson residence” and signed for the package. R. 155, l. 12 – 156, l. 9; see also R. 222, ll. 10-19.

This black male was later identified as Shawn Davis. R. 222, ll. 20-22. After accepting the package, Davis “placed the box on his shoulder” and walked around to the back of the house. After losing sight of Davis, the police, who were conducting surveillance on the residence, “move[d] in on the house” in order to execute the anticipatory search warrant. R. 223, ll. 11-22. In the backyard, the police found and detained both Davis and

Appellant. R. 223, l. 23 – 224, l. 2; R. 134, l. 7 – 135, l. 9. It is unclear from the record who actually detained the men as all of the law enforcement officers who testified at trial claimed both men were already detained by the time they got to the backyard. R. 134, l. 22 – 135, l. 12; R. 157, ll. 3-24; R. 209, l. 12 – 210, l. 1; 223, l. 23 – 224, l. 2. It is also unclear from the record whether the men were under arrest at that point or whether they were simply being detained pursuant to the search warrant.

After placing Appellant in handcuffs, law enforcement searched Appellant and found two cell phones, including a Verizon Samsung and a Sprint Samsung, and an iPod Touch on his person. R. 236, l. 11-19; R. 244, l. 20 – 245, l. 10; R. 287, l. 9 – 288, l. 20. An officer, who was not identified at trial, searched through these cell phones and allegedly found a “dialed call” on the Verizon Samsung to a telephone number in Phoenix, Arizona that was placed at 10:20 pm on February 26, 2012, which was two days earlier. R. 245, l. 7 – 247, l. 3. This was suspicious to law enforcement who knew the FedEx package was shipped from Phoenix, Arizona.

As a result of the search warrant, law enforcement seized just over thirty-three thousand dollars from the trunk of a vehicle parked on the property; various quantities of marijuana found in the master bedroom, the kitchen, and a bedroom used as a weight room; approximately four thousand dollars in the master bedroom; various firearms throughout the house; and a digital scale, a vacuum sealer system, and vacuum sealer bags in the kitchen. R. 227, l. 14 – 228, l. 19; R. 229, ll. 18-25; R. 232, l. 5 – 234, l. 11; R. 235, ll. 3-16. Additionally, almost nine thousand dollars was found on Davis’ person. R. 249, ll. 9-24; R. 252, ll. 5-16. The FedEx box that was a part of the “controlled delivery” was found in the bedroom used as a weight room. R. 229, ll. 22-25.

Angil Landrum, who was qualified as an expert in drug analysis, testified that the FedEx box that was the center of the “controlled delivery” contained 23.08 pounds of marijuana. She also testified that the rest of the green plant material found within the home and seized pursuant to the search warrant was 7.20 pounds of marijuana. R. 189, l. 3 – 190, l. 25; R. 173, ll. 13-18.

Davis testified against Appellant at trial and claimed that Antwan Eaddy, who was Davis’ marijuana supplier out of Arizona, had sent Appellant to Florence to stay with Davis and “oversee the weed and help with the deals.” R. 267, l. 16 – 270, l. 21. Davis explained that he used to pay Eaddy for the marijuana that was shipped to him by depositing money into Eaddy’s bank account. However, according to Davis, this arrangement stopped after a teller at the bank commented, “oh, you must have had a good night on the block.” After this comment, Davis told Eaddy that he would no longer deposit money at the bank and “[t]hat’s when [Appellant] came into play.” From then on Davis was to “package up” the cash and ship it to Eaddy with Appellant’s supervision. R. 278, l. 10 – 280, l. 18.

Davis testified that Appellant went with him to pick up twenty-two thousand dollars from a man at the Olive Garden and to pick up another ten thousand dollars from another individual at Sparky’s, a local fireworks store. According to Davis, this was money the men owed Eaddy for weed they had already “gotten and got rid of.” Davis also explained that this was the money that was found in a box in the trunk of the vehicle on the property where Appellant and Davis were arrested. It was packaged and ready to be shipped to Eaddy. R. 280, l. 22 – 283, l. 11.

Davis claimed he was constantly receiving shipments of marijuana. For example, he claimed he and Appellant went to another residence in Conway and picked up a different

box of marijuana “some days before” the two got arrested. R. 275, l. 24 – 276, l. 17. He testified, “We break down the box that the marijuana come in and seals it up. We seals it up in big bags. Me and [Appellant].” R. 275, ll. 17-23. The two would allegedly use a “Seal-a-Meal” to seal a pound of marijuana in separate individual bags. Id.

Davis’ case was adopted by the federal government after he was also charged with a multitude of offenses related to the conspiracy to distribute cocaine. He ultimately pled guilty to conspiracy to distribute five kilograms or more of cocaine and possession of a firearm in furtherance of a drug trafficking crime. He was sentenced to only fifteen years due to his cooperation with the government and in exchange for his testimony against Appellant. Before pleading guilty, Davis was facing life imprisonment. R. 290, l. 16 – 293, l. 1.

Motion to Suppress

Defense counsel moved pretrial to suppress the evidence of the “dialed call” “based upon the illegal warrantless arrest of [Appellant].” R. 35, ll. 1-3. Defense counsel argued, “Judge, my client is from Florida. He was visiting South Carolina. He was visiting this residence. He was not inside the house; he was outside of the home. There is - - there is absolutely no probable cause at that point in time to - - that Mr. Campbell, my client, knew that Mr. Davis was going to receive a package from FedEx, that he knew what was in the sealed FedEx package that Mr. Davis alone took possession of and carried into his primary residence, Mr. Davis that is, and put away.” R. 36, ll. 11-19. Defense counsel continued, “[Appellant] was placed immediately under arrest, handcuffed, arrested based upon mere presence at this residence and not even inside this residence. His name did not appear on any package. He was arrested before they had determined anything - - that he had anything

to do with anything. He was arrested simply because he was standing at the back door of this residence.” R. 37, ll. 6-12. Defense counsel maintained that it was only after Appellant was arrested that the police searched through his cell phone and allegedly found a phone number connected with Arizona, which is where the package was allegedly shipped from. R. 36, l. 20 – 37, l. 3.

Defense counsel stated that “according to State v. Frazier¹ and citing State v. Baccus², . . . 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 the crime is being committed by the person being arrested.” R. 37, ll. 18-24. He argued, “I cannot identify any circumstances within the arresting officer’s knowledge at the time of [Appellant’s] arrest that would lead a reasonable person to believe that Mr. Campbell committed a crime. He was simply present at this house when Mr. Davis received a FedEx parcel.” R. 38, ll. 9-13.

The state then presented the testimony of Agent Ronnie Hinson. Hinson testified that Agent Tracey received a tip from a confidential informant about a package that was going to be delivered in Florence County. R. 45, ll. 15-24. Hinson explained that the agents had the tracking number for the package and discovered that the origin of the package was Phoenix, Arizona. However, the return address was in Cerritos, California. The addressee on the package was a “Jhon Gisbon.” R. 46, l. 21 – 47, l. 20. Hinson claimed that a “narcotics K-9 conducted a sniff on the package and alerted” to the “presence of illegal narcotics.” R. 46, ll. 4-17.

¹ 394 S.C. 213, 715 S.E.2d 650 (Ct. App. 2011)

² 367 S.C. 41, 625 S.E.2d 216 (2006)

Based on this information, the agents obtained a search warrant for the package and discovered “one wrapped bale of green plant material consistent with marijuana” inside. R. 49, ll. 13-19. The agents then planned a controlled delivery of the package and obtained an anticipatory search warrant for the residence listed as the recipient address. R. 50, ll. 1-20. In addition to the actual residence, the search warrant specified the following to be searched: “all persons in the residence and all vehicles associated with the occupants, personal effects, locked containers, and any and all parcels or boxes.” Under the search warrant, the items to be seized included, “Any records, paper or electronic, showing . . . involvement in the importation of controlled substances; any computer, digital media related to controlled substances . . . cellular phones, palm pilot style devices containing contact information for source areas . . .” R. 50, l. 23 – 51, l. 20.

After obtaining the anticipatory search warrant, Agent Tracey conducted the controlled delivery while the other officers conducted surveillance on the residence. R. 52, l. 3 – 53, l. 9. After a black male, later identified as Davis, accepted the package and walked around to the back of the residence, the officers moved in on the residence in order to execute the anticipatory search warrant. They “ended up securing two black males.” R. 53, l. 10 – 54, l. 20. Agent Hinson explained that’s “its common practice” to “secure anybody in and around the residence” for officer safety. R. 54, l. 21 – 55, l. 5. The two black males detained were Shawn Davis and Appellant. They were found on the back porch. R. 55, ll. 9-10.

Hinson explained that the officers immediately patted down each of them for “any weapons or anything and to retrieve items . . . from their pockets.” R. 55, ll. 20 – 25. Two cell phones and an iPod Touch were found on Appellant. R. 56, l. 180 – 57, l. 3. At that

point, one of the officers, but Hinson did not know who, look[ed] through [the cell phones] to see any recent call history.” They found a call to Phoenix, Arizona. Based on this dialed phone call to Phoenix where the package originated, the officers thought Appellant “was involved in this crime” and arrested him for trafficking in marijuana. R. 57, ll. 4-21. Hinson testified that he thought they asked Davis who was living at the residence and that Davis said both he and Appellant stayed at the residence “off and on.” Allegedly, there was marijuana plainly visible when you walked throughout the house. R. 57, l. 22 – 58, l. 22.

On cross-examination, Hinson admitted that he was not involved in the arrest of Appellant and that by the time he got to the backyard Appellant was already in handcuffs. Therefore, he had no personal knowledge that Appellant was found on the porch. R. 61, ll. 3-18; R. 64, ll. 16-20. Hinson testified that it was not until after the arrest that the officers discovered the dialed call to Arizona. R. 61, l. 19 – 62, l. 4; R. 63, ll. 2-7.

The state also called Agent Dennis Tracey to the stand. Tracey testified consistent with Hinson up until the completion of the controlled delivery. However, Tracey admitted that he was not present when Appellant was arrested or when the cell phone was retrieved from Appellant. R. 70, ll. 23-24.

Tracey explained, “When warrants are being executed, all persons located at the property are detained. Detaining is not necessarily an arrest. It just means that they are detained for their safety and the safety of the officers on the scene. Their properties are removed from their person usually . . . so that they can’t damage or destroy any potential evidence . . .” He claimed that based on his knowledge, this was what happened in this case. Tracey also said, “[O]ur anticipatory search warrants do have language to say that the electronic devices on scene are to be searched for indicia of involvement in the importation

of narcotics or shipping of drug-related currency.” R. 71, l. 3 – 72, l. 3. Furthermore, Tracey agreed with the solicitor that the residence includes the curtilage. R. 74, ll. 4-6.

The court found “that law enforcement had sufficient leave or justification to search [Appellant], his cell phone, and the premises pursuant to a search warrant.” The court also found “sufficient probable cause existed for [Appellant] to be arrested based upon the evidence and testimony that’s been elicited from this stand.” The court commented that defense counsel’s argument regarding mere presence was “a factual issue for the jury.” R. 75, ll. 1-21.

The court later clarified, “The anticipatory search warrant even had in there cell phones. Okay? So they had a warrant to search that phone and I made a finding . . . that they had a warrant to search that phone the day that he was taken into custody. When they went out there, delivered that package, and subsequently arrived at that house and took each of these defendants, Mr. Davis and Mr. Campbell, into custody, they already had a warrant to search the phone when they went out there.” R. 80, l. 19 – 81, l. 10. Defense counsel disagreed arguing that law enforcement did not have a search warrant to search Appellant or Appellant’s phone. He stated they only had a warrant to search the residence and Appellant was not found in the residence. R. 81, ll. 11-17.

Discussion

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

U.S. Const. amend. IV. “The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest.” Frazier, 394 S.C. at 220, 715 S.E.2d at 653 (quoting Baccus, 367 S.C. at 49, 625 S.E.2d at 220) (internal quotations omitted). “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.” Id. “Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer’s disposal.” Id.

If this Court finds Appellant was placed under arrest, rather than simply detained, immediately upon law enforcement discovering Appellant in the backyard of the residence where the FedEx box was delivered, then this Court should find Appellant was subject to an unlawful arrest since at that time, law enforcement had no knowledge that a crime had been committed by Appellant. At the time law enforcement found Appellant in the backyard, all they knew was that a FedEx box containing what they believed to be marijuana was delivered to the house and accepted by Davis. There was no evidence connecting Appellant to the FedEx box or any evidence that Appellant had knowledge of what the box contained. Therefore, under the totality of the circumstances, the officers, or any other reasonable person, could not have believed that Appellant had committed a crime. If anything, Appellant was merely present at the scene.

Furthermore, if this Court finds that Appellant was arrested without probable cause, then the evidence allegedly found within Appellant’s cell phone, specifically the “dialed call” to a number in Arizona should have been suppressed. See State v. Sachs, 264 S.C. 541, 560, 216 S.E.2d 501, 511 (1975) (The exclusionary rule provides that

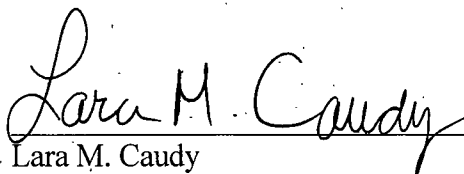
evidence seized in violation of the Fourth Amendment must be excluded from trial.); see also Wong Sun v. United States, 371 U.S. 471, 484 (1963) (The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine.).

Therefore, the trial court erred in denying Appellant's motion to suppress since he was arrested without probable cause and without a warrant. Appellant's conviction should be reversed and this case remanded to the Florence County Court of General Sessions for a new trial.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction for trafficking in marijuana and remand this case to the Florence County Court of General Sessions for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of March, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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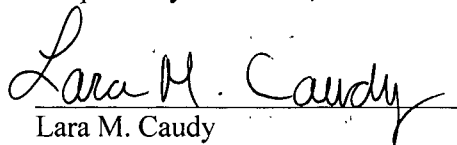
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Clifford Claude Campbell states:

1. She is 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 Judge D. Craig Brown, which was held on June 17-18, 2013, 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, 87 S.Ct. 1396 (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 Clifford Claude Campbell.

Respectfully submitted,


Lara M. Caudy

Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of March, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

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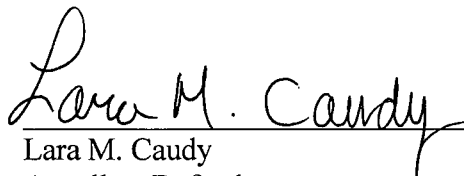
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments;
- (2) Entire trial transcript dated June 17-18, 2013;
- (3) Court Exhibit No. 1 (anticipatory search warrant);
- (4) Court Exhibit No. 2 (cell phone search warrant);
- (5) State's Exhibit No. 8 (FedEx tracking information).

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

March 24th, 2014



Lara M. Caudy
Appellate Defender

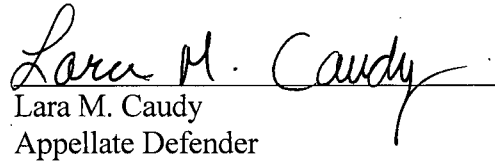
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 24, 2014


Lara M. Caudy
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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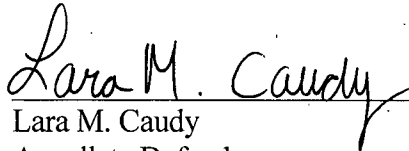
V.

CLIFFORD CLAUDE CAMPBELL,

APPELLANT

CERTIFICATE OF SERVICE

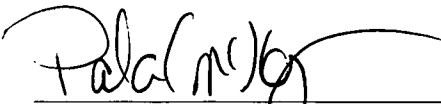
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Clifford Claude Campbell, #355870 at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 24th day of March, 2014.


Lara M. Caudy

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of March, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.