

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Newberry County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

REGINALD RODEZERE SCURRY,

APPELLANT

APPELLATE CASE NO. 2018-000710

RECEIVED

MAR 08 2019

SC Court of Appeals

ANDERS BRIEF OF APPELLANT

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**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

ARGUMENT

The trial judge abused his discretion by denying Appellant’s motion for a continuance where good cause existed since Appellant was incarcerated in a different county for the majority of his pretrial detention, Appellant’s appointed counsel first met with Appellant a mere two months before trial, and where Appellant wanted to retain counsel of his choice but was impeded from doing so as a result of his incarceration.....4

CONCLUSION.....9

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

**TABLE OF AUTHORITIES**

**Cases**

Bozeman v. State, 307 S.C. 172, 414 S.E.2d 144 (1992) ..... 3

State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989)..... 3, 8

State v. Funderburk, 367 S.C. 236, 625 S.E.2d 248 (Ct. App. 2006)..... 7

State v. Irick, 344 S.C. 460, 545 S.E.2d 282 (2001)..... 7

State v. Meggett, 398 S.C. 516, 728 S.E.2d 492 (Ct. App. 2012) ..... 7

State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977)..... 3

State v. Yarborough, 363 S.C. 260, 609 S.E.2d 592 (Ct. App. 2005) ..... 7

Ungar v. Sarafitr, 376 U.S. 575 (1964)..... 8

Williams v. Bordon’s, Inc., 274 S.C. 275, 262 S.E.2d 881 (1980)..... 7

**Statutes**

U.S. Const. Amend. XIV ..... 7

**Rules**

Rule 7(c), SCRCrimP..... 7

Rule 211(b), SCACR ..... 12

**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge abuse his discretion by denying Appellant's motion for a continuance where good cause existed since Appellant was incarcerated in a different county for the majority of his pretrial detention, Appellant's appointed counsel first met with Appellant a mere two months before trial, and where Appellant wanted to retain counsel of his choice but was impeded from doing so as a result of his incarceration?

## STATEMENT OF THE CASE

A Newberry County grand jury indicted Appellant on March 28, 2018 for trafficking crack cocaine, twenty-eight grams or more, and failure to stop for a blue light. R. 210-213. His case was called to trial on April 3, 2018 before the Honorable Frank R. Addy, Jr., and a jury. R. 1. Assistant Solicitors Dale Scott and Taylor Daniel represented the state, and Charles Verner represented Appellant. R. 1.

On April 5, 2018, the jury found Appellant guilty as indicted. R. 198, l. 25 – 199, l. 12. He was sentenced to twenty-five years for trafficking crack cocaine, third or subsequent offense, and three years concurrent for failure to stop for a blue light. R. 204, ll. 9-15.

This appeal follows.

### **STANDARD OF REVIEW**

“The denial of a motion for a continuance is within the sound discretion of the trial judge and his ruling will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the appellant.” Bozeman v. State, 307 S.C. 172, 175, 414 S.E.2d 144, 146 (1992) (citing State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989) and State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977)).

## ARGUMENT

The trial judge abused his discretion by denying Appellant's motion for a continuance where good cause existed since Appellant was incarcerated in a different county for the majority of his pretrial detention, Appellant's appointed counsel first met with Appellant a mere two months before trial, and where Appellant wanted to retain counsel of his choice but was impeded from doing so as a result of his incarceration.

### *Facts at Trial*

On January 5, 2017, Trooper Lazar with the South Carolina Highway Patrol was conducting routine patrol on Highway 56 in Newberry County when he observed a white sedan traveling in the opposite direction. R. 49, l. 21 – 50, l. 15; R. 52, ll. 19-22. Lazar was running radar and clocked the vehicle's speed as seventy miles per hour in a fifty mile per hour zone. R. 53, ll. 1-16. He decided to pull the vehicle over for speeding. R. 53, ll. 13-19. He activated his blue lights, performed a three point turn, and drove up behind the white sedan. As Trooper Lazar was catching up to the vehicle, he saw an "object come out of the passenger side and land onto the . . . right shoulder of the roadway." R. 53, l. 20 – 55, l. 11. The vehicle then quickly pulled over. R. 54, ll. 21-25.

Trooper Lazar approached the passenger side of the car and immediately asked the driver "what he threw out of the vehicle." The driver repeatedly denied throwing anything out of the car. R. 55, l. 12 – 56, l. 25. He then handed Lazar a state issued identification card for Reginald Scurry, Appellant. Lazar claimed he determined the photograph on the identification matched the driver of the vehicle. R. 56, l. 25 – 57, l. 25. He identified Appellant in the courtroom as the driver of the white sedan. R. 55, l. 21 – 56, l. 7. After the driver handed Lazar the identification card, he admitted he did not have a valid driver's license. R. 58, ll. 1-2. Lazar asked him to step out of the vehicle. However, the driver "did the opposite, he accelerated and pulled away in his vehicle." R.

58, ll. 3-7. Trooper Lazar “gave chase” and pursued the car a good distance into Laurens County. Eventually, the car turned onto a gravel road leading to the Belfast Planation and maneuvered around a closed gate on the property. It was at this point that Trooper Lazar stopped “giving chase” and lost sight of the car. R. 58, l. 8 – 59, l. 12. Lazar ultimately found the vehicle on foot about “three quarters of a mile out in a clearcut.” It was severely damaged, and no one was inside. R. 59, l. 13 – 60, l. 1. Lazar determined the vehicle was registered to a Courtney Burris, whose address was the same address listed on Appellant’s state issued identification card Lazar was handed by the driver of the car. R. 60, ll. 3-11.

After clearing the scene where the vehicle was located, Trooper Lazar traveled back to the location where he saw the object fly out of the passenger side of the white sedan immediately before it pulled over. He found a “plastic baggie on the right shoulder” that had a white substance inside. R. 60, l. 24 – 62, l. 25. He collected the object. The substance was later confirmed to be 82.44 grams of crack cocaine. R. 109, ll. 17-21.

Appellant was ultimately arrested in Cherokee County on unrelated charges January 21, 2017. R. 203, ll. 15-19. He testified in his own defense at trial and denied being the driver of the white sedan on that date. He explained that Courtney Burris, the owner of the white sedan, was his ex-girlfriend and that, when they broke up a few weeks earlier, he left his identification card in her vehicle. R. 146, l. 5 – 147, l. 22. Appellant did not have the keys to her vehicle or access to her car. He further denied being in Newberry County on January 5, 2017, the day of the stop. R. 146, ll. 5-7; R. 148, ll. 15-17.

#### ***How the Issue was Presented Below***

Appellant moved pretrial for a continuance to obtain counsel of his choice. Appellant was arrested on January 21, 2017 on unrelated charges in Cherokee County. Appellant remained in

Cherokee County until he was acquitted by a jury of his Cherokee County charges in January 2018. R. 203, ll. 15-19. He was then transferred to Newberry County. R. 6, ll. 7-16. Appellant's appointed counsel met with him for the first time on February 1, 2018, a mere two months before his trial in early April. R. 5, ll. 11-14.

Appellant's appointed counsel requested the trial judge continue the case for one month to allow Appellant to retain attorney John Reckenbeil, who represented Appellant in Cherokee County. Counsel explained that he had spoken to Mr. Reckenbeil, who was willing to represent Appellant if Appellant "paid off the old case." R. 5, l. 10 – 6, l. 1.

Appellant reiterated that he wanted to retain John Reckenbeil to represent him. He was confident that Mr. Reckenbeil would represent him after he paid Reckenbeil the thousand dollars he still owed him. Appellant explained that his family was "working on" coming up with the funds. He further asserted that he had only been in Newberry County for sixty days and talked to his appointed counsel twice. R. 7, l. 19 – 8, l. 1.

The trial judge denied the motion. He stated, "I can't continue the case in hopes that you will be able to retain this gentleman." R. 9, ll. 8-9. The judge maintained the "situation" would be different if "Mr. Reckenbeil was in here saying, hey, I am on this case, I just need some more time." R. 8, l. 13 – 9, l. 9. However, because Appellant's appointed counsel indicated he was prepared to try the case, the trial judge refused to grant a continuance emphasizing "this is not going to be the eleventh hour continuance. Mr. Verner [appointed counsel] is representing you." R. 9, ll. 15-24.

After jury selection the following morning, Appellant renewed his motion for a continuance. R. 20, l. 23 – 21, l. 9. The trial judge again denied the motion. The judge concluded the "gest" of the motion was "essentially that Mr. Scurry [Appellant] does not have a great deal of faith, does not have a great deal of faith in Mr. Verner [appointed counsel]. I recall distinctly our hearing yesterday

and we are still in the same position as we were yesterday. I have gotten no indication Mr. Verner is not prepared. Mr. Verner is prepared to go forward. He has always been a zealous advocate, I have seen him try many cases. Mr. Scurry, you are in good hands. I am not inclined to relieve Mr. Verner in hopes that in some future point in time you and your family will be able to retain counsel. So Mr. Verner will remain your attorney for this trial.” R. 21, l. 19 – 22, l. 5.

### ***Discussion***

The Fourteenth Amendment to the United States Constitution guarantees criminal defendants the right to due process of law. U.S. Const. Amend. XIV. “The authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases. This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” Williams v. Bordon’s, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980).

The South Carolina Rules of Criminal Procedure provide that the presiding judge may grant a continuance based upon “a showing of good and sufficient legal cause.” Rule 7(c), SCRCrimP. As such, “[t]he granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion.” State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005). “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001); See State v. Funderburk, 367 S.C. 236, 239, 625 S.E.2d 248, 249-250 (Ct. App. 2006) (“An abuse of discretion occurs when the trial court’s ruling is based on an error of law”).

“It is axiomatic that determination of [a motion for continuance] must depend upon the particular facts and circumstances of each case.” State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d

492, 496 (Ct. App. 2012) (quoting State v. Babb, 299 S.C. 451, 454-455, 385 S.E.2d 827, 829 (1989)). While “[t]here are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process,” the decision must rest upon “the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” Ungar v. Sarafit, 376 U.S. 575, 589 (1964).

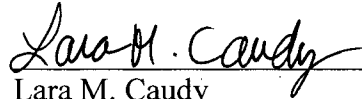
The trial judge abused his discretion by denying Appellant’s motion for a continuance. While the charges were approximately fifteen months told, Appellant was detained for over a year in Cherokee County and was not transferred to Newberry County to face trial until late January 2018. Appointed counsel met with Appellant for the first time on February 1, 2018, a mere two months before trial. In the sixty days that followed, counsel only met with Appellant one other time. At the time Appellant’s case was called to trial on April 3, 2018, Appellant was in the process of retaining the private attorney who represented Appellant in Cherokee County. He was impeded from doing so as a result of his continuous incarceration. The trial judge should have granted the one month continuance to allow Appellant to retain counsel of his choice. His failure to do so was an abuse of discretion where good cause existed to grant the motion.

Respectfully, this Court should reverse Appellant’s convictions and sentence and remain for a new trial.

**CONCLUSION**

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

Respectfully submitted,

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

ATTORNEY FOR APPELLANT

This 8th day of March, 2019.

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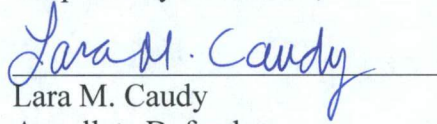
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Reginald Rodezere Scurry states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial, which was held on April 3-5, 2018, before the Honorable Frank R. Addy, 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 Reginald Rodezere Scurry.

Respectfully Submitted,

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of March, 2019.

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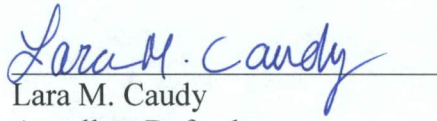
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) Complete Trial Transcript Dated April 3-5, 2018;
- (2) Court's Exhibit No. 1 (News 7 Body Camera Article);
- (3) Court's Exhibit No. 2 (SC Department of Public Safety Report);
- (4) Court's Exhibit No. 4 (Defense Request to Charge);
- (5) True-Billed Indictments;
- (6) Sentence Sheets.

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

March 8, 2019

  
Lara M. Caudy  
Appellate Defender

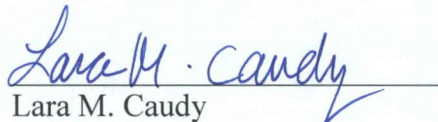
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ATTORNEY FOR APPELLANT

**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."

March 8, 2019.

  
Lara M. Caudy  
Appellate Defender

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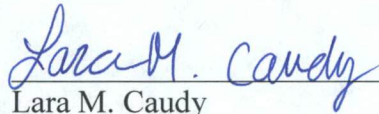
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REGINALD RODEZERE SCURRY,

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 have 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 have been served upon Reginald Rodezere Scurry, #375937, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 8th day of March, 2019.

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

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 8th day of March, 2019.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina  
My Commission Expires: September 27, 2028.