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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2018-002039

THE STATE, Respondent,

v.

FILICIANO JERMAINE SMITH, Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge erred in denying Appellant's motion to suppress the headlamp and handgun seized as a result of his warrantless arrest when the arresting officers had probable cause to arrest Appellant because they knew Appellant's DNA was found inside Victim's residence? And if the trial judge erred in admitting the headlamp and the handgun, whether any error was entirely harmless in light of the overwhelming evidence presented against Appellant?

II.

Whether the trial judge erred in denying Appellant's motion to suppress the single black latex glove seized as a result of the search warrant executed on his residence when the search warrant established a direct nexus between the items sought in the search warrant and the location to be searched? And if the trial judge erred in admitting the black latex glove, whether any error was entirely harmless in light of the overwhelming evidence presented against Appellant?

STATEMENT OF THE CASE

In October 2017, the Charleston County Grand Jury indicted Appellant for one count of criminal sexual conduct in the first degree (2017-GS-10-5881), one count of burglary first degree (2017-GS-10-5879), one count of kidnapping (2017-GS-10-5880), and one count of unlawful carrying of a pistol (2017-GS-10-5883). On November 5-8, 2018, a jury trial was held in the Charleston County Court of General Sessions with the Honorable Robin B. Stilwell, presiding. Appellant was represented by Jason King, Esquire, and Steven Bowden, Esquire, of the Charleston County Public Defender's Office. The State was represented by Solicitor Scarlett Wilson and Assistant Solicitor Chad Simpson. At the conclusion of trial, the jury convicted Appellant of all counts. Following the verdict, the trial judge sentenced Appellant to forty-five years' imprisonment for burglary first degree, thirty years' imprisonment for criminal sexual conduct first degree, thirty years' imprisonment for kidnapping, and one year imprisonment for unlawful carrying of a pistol. All sentences were to run concurrently with each other resulting in an aggregate term of forty-five years' imprisonment. Appellant then timely filed a notice of appeal and an initial brief.

STATEMENT OF FACTS

Victim, a widowed mother of two and grandmother of five, lived on her own in a house in the West Ashley area of Charleston. (Tr. 168-69). On May 21, 2017, Victim went to sleep in her bedroom at approximately 11:00 PM. (Tr. 179). Victim awoke early the next morning when a powerful light shined on her face. (Tr. 181). Victim heard the voice of an unknown assailant (Assailant) say "don't open your eyes or I'll kill you." (Tr. 181, lines 13-14). Victim complied with Assailant's demands and kept her eyes closed for the majority of the time Assailant was inside her home. Assailant demanded that Victim show him where the hidden money was. (Tr. 181). Assailant then pressed a handgun into Victim's cheek (Tr. 182-83). Victim told Assailant that she did not have any money but she would take him to the ATM to retrieve some money. (Tr. 181-82). Assailant demanded Victim to roll over on her side and place her hands behind her back. (Tr. 183). Victim complied with Assailant's request and he bound her hands behind her back. (Tr. 184). Assailant told Victim he needed some "white pussy" (Tr. 185, lines 1-6). Assailant went to Victim's kitchen to retrieve a trash bag to use as a condom. (Tr. 185-86). Assailant put the trash bag on his penis and engaged in vaginal intercourse with Victim. (Tr. 187-88). While Victim was being sexually assaulted by Assailant, he told her he was filming her with his phone. (Tr. 189). Assailant made Victim say things such as "you're so good" and "I want your dick" while purportedly filming her. (Tr. 190, lines 1-2). Assailant told Victim if he were caught, he would play the tape to prove the sex between them was consensual. (Tr. 189).

Victim described a total of four distinct parts of her sexual assault. (Tr. 190). Victim stated that Assailant engaged in vaginal intercourse with her while she was face down on the bed, while her face was looking upward, and when he picked her up off the bed and placed her legs around him. (Tr. 190-91). After engaging in vaginal intercourse with Victim, Assailant forced Victim to perform oral sex on him while he was still wearing the trash bag. (Tr. 191).

While Victim was performing oral sex on Assailant, she briefly opened her eyes and saw that Assailant was wearing a dark latex glove. (Tr. 191). Throughout her ordeal, Victim described Assailant's demeanor as erratically changing from angry behavior to nice or remorseful behavior. (Tr. 191-92). After Assailant had finished assaulting Victim, he untied her hands and left her cell phone on the kitchen table. (Tr. 193). As Assailant was leaving, Victim opened her eyes and briefly got a glimpse of him. (Tr. 194). Victim described Assailant as being approximately five-feet eleven-inches tall with an athletic build and dreadlocked hair. (Tr. 195). Victim also noticed Assailant had a unique accent. (Tr. 213). Assailant told Victim to stay in her room for a long time after he left, but notified her that her cell phone was on the kitchen table. (Tr. 193). Sometime after Assailant left, Victim noticed the clock in her kitchen read 4:10 AM. (Tr. 193). Victim waited until sunrise and then sent a text message to her daughter. (Tr. 200). Victim's daughter told Victim her son-in-law would arrive at her house soon. Victim took a shower and waited for her son-in-law's arrival. (Tr. 204). Victim's son-in-law called law enforcement when he arrived at Victim's residence. (Tr. 205).

Sarah Gladwell of the Charleston Police Department arrived at Victim's home to photograph the crime scene and collect evidence. Gladwell observed three red stains on a quilt on Victim's bed and an additional red stain on Victim's bed skirt. (Tr. 304-06). Gladwell cut the stained portions of the quilt and the bed skirt and packaged them for DNA analysis. (Tr. 325). Gladwell also collected the cord that was used to bind Victim's hands, the water bottle on Victim's nightstand, and a towel in Victim's guest bathroom that was left in the sink by Assailant. (Tr. 202, 306-07, 312).

Victim was taken to MUSC for a sexual assault examination. (Tr. 207). After arriving at MUSC, Victim was examined by SANE nurse Catherine Kaiser. Kaiser observed abrasions in

Victim's vaginal area that were consistent with sexual assault. (Tr. 281, 284-86). Kaiser also noted that Victim had abrasions on her wrist that were consistent with being tied with a ligature. (Tr. 278). Kaiser finished her examination by swabbing various areas of Victim's body and submitted them to law enforcement for analysis. (Tr. 282-83).

The items collected from Victim's home by Gladwell were sent to the Richland County Sheriff's Department for analysis. (Tr. 78). On May 29, 2017, Detective Daniel Wilson of the Charleston Police Department received notification from the Richland County Sheriff's Department that a single unknown male DNA profile had been developed for submission into the CODIS system. (Tr. 78-79). On June 1, 2017, Wilson was notified that the CODIS system returned a match for Appellant's DNA. (Tr. 78-80). Later that day, Wilson obtained a search warrant for a buccal swab to be taken from Appellant as well as a warrant for Appellant's arrest. (Tr. 428-30, Court's Exhibit #6, #7). Appellant was arrested outside of his residence on the same day. Appellant was carrying a book bag on his person that was searched incident to the arrest. A headlamp was located inside the book bag. (Tr. 434). A handgun was also located in Appellant's front pocket. (Tr. 351). Appellant's hair was dreadlocked when he was arrested. (State's Exhibit #128, #129, Court's Exhibit #13). A search warrant was executed on Appellant's apartment where law enforcement located a single black latex glove. (Tr. 375-76). Upon being arrested, Appellant was brought to the Charleston Police Department where Wilson collected a buccal swab from him. (Tr. 429-30). While in police custody, Appellant's legs and arms were photographed. Appellant had several cuts and scrapes on his legs and arms that were in various stages of healing. (Tr. 390-91).

The items collected from the crime scene and the buccal swab from Appellant were analyzed by DNA analyst John Barron of the Richland County Sheriff's Department. Barron

determined the DNA on Victim's quilt and bed skirt matched Appellant's DNA. (Tr. 565). Barron determined the likelihood of randomly selecting another person with the same DNA profile as Appellant was one in 290 nonillion[1]. (Tr. 564-65). Barron also concluded the DNA found on the towel in Victim's guest bathroom was 15.8 billion times more likely to be a mixture of Appellant and Victim's DNA than a mixture of Victim and a random person's DNA. (Tr. 566-67). Barron found male only DNA on the cord used to bind Victim's hands that was 1,850 times more likely to belong to Appellant or another fraternally related male than a random person. (Tr. 570-71). Similarly, the water bottle on Victim's nightstand contained male DNA that was 1,720 times more likely to belong to Appellant or a fraternally related male than a random person. (Tr. 572-73).

Appellant testified in his own defense at trial. Appellant admitted that he did not know Victim and he could not provide an explanation for why his DNA was found on the items in Victim's house. (Tr. 622, 653). Appellant also admitted that he changed his hair style in preparation for trial because he didn't want to be associated with the person who Victim described as assaulting her. (Tr. 653-54). Victim testified a second time on rebuttal. Victim testified that Appellant's demeanor on the witness stand was the same as the demeanor of the person who assaulted her. (Tr. 660). Victim also recognized Appellant's voice and identified Appellant as her attacker on that basis. (Tr. 665). At the conclusion of trial, Appellant was convicted of all counts.

[1] Barron described this number as being 290 followed by 30 zeros. (Tr. 565).

STANDARD OF REVIEW

I.

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The trial judge's factual findings on whether evidence should be suppressed due to a Fourth Amendment violation are reviewed for clear error." Id.

II.

"An appellate court reviewing the decision to issue a search warrant should decide whether the magistrate had a substantial basis for concluding probable cause existed." State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). Applying the same standard as the issuing judge, an appellate court should base its determination on the totality of circumstances. State v. Keith, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003). "A reviewing court should give great deference to a magistrate's determination of probable cause." State v. Rutledge, 373 S.C. 312, 316, 644 S.E.2d 789, 791 (Ct. App. 2007).

ARGUMENT

I.

The trial judge did not err in denying Appellant's motion to suppress the headlamp and handgun seized as a result of his warrantless arrest when the arresting officers had probable cause to arrest Appellant because they knew Appellant's DNA was found inside Victim's residence. However, even if the trial judge erred in admitting the headlamp and the handgun, any error was entirely harmless in light of the overwhelming evidence presented against Appellant.

Appellant contends the trial judge erred by denying his motion to suppress evidence seized from Appellant during his arrest because the arresting officers lacked probable cause to arrest Appellant. Specifically, Appellant argues the officers who arrested Appellant did not know enough about the investigation to arrest Appellant because the knowledge of the lead investigator could not be imputed to them. Accordingly, Appellant contends the headlamp found in Appellant's book bag and the handgun found on Appellant's person should have been suppressed. Appellant's argument is meritless for two reasons. First, the officers who arrested Appellant had probable cause to make a warrantless arrest because they knew Appellant's DNA had been found at the scene of a home break-in and sexual assault. Second, even if the trial judge erred in admitting the evidence seized from Appellant when he was arrested, any error was harmless because the evidence seized could not have possibly affected the outcome of Appellant's trial.

Probable Cause

South Carolina Code section 17-13-30 provides that law enforcement officers "may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State if such arrest be made at the time of such violation of law or immediately thereafter." S.C. Code § 17-13-30. "The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest." Baccus, 367 S.C. at 49, 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." State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996). "Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal." Id.

Here, Appellant's arrest warrant does not indicate what time it was drafted and signed by the magistrate[2]. (Court's Exhibit #6). However, at trial the State conceded Appellant was arrested at approximately 2:00 PM while the arrest warrant was not drafted until approximately 3:30 PM. (Tr. 105). Therefore, Appellant's arrest was warrantless, but it was not without probable cause. When Appellant moved to suppress the evidence seized pursuant to his arrest at trial, the State proffered testimony from Officer Andrew Lupisella of the Charleston Police Department. Lupisella testified he was aware of the home invasion that occurred at Victim's residence on May 22, 2017 and he was aware that DNA evidence from that crime scene had matched Appellant's DNA. (Tr. 113-14). Specifically, Lupisella testified the DNA match was "the reason that brought us to where we were at that time on June 1st." (Tr. 114, lines 9-10). Therefore, Lupisella had probable cause to arrest Appellant based on Appellant's DNA being found inside Victim's residence. Furthermore, even if Lupisella lacked probable cause to arrest Appellant for crimes committed at Victim's home on May 22, Lupisella and the officers with him witnessed Appellant committing the crime of unlawful carrying of a handgun in their presence. (Tr. 351). Therefore, Lupisella was permitted to arrest Appellant without a warrant. See S.C. Code § 16-23-20.

[2] The search warrant used to obtain a buccal swab from Appellant indicates it was signed at 3:32 PM. (Court's Exhibit #7).

Appellant argues Lupisella lacked probable cause to arrest him because Lupisella could not rely on what Detective Daniel Wilson or other officers told him to establish probable cause. When taken to its logical conclusion, Appellant's argument would lead to an absurd result that would prohibit a law enforcement officer investigating a crime from being able to rely on the assistance of other officers in effecting a warrantless arrest. According to Appellant's argument, a lead investigative officer would be the only one who could arrest the suspect of a crime because only the lead investigator would have personal knowledge of the evidence that established probable cause. This would be a draconian restriction on law enforcement that would unnecessarily hinder their ability to investigate crime. Contrary to Appellant's argument, law enforcement in this state can communicate the probable cause basis for arresting a suspect to other law enforcement officers to effectuate an arrest.

In support of his argument, Appellant contends the State cannot rely on the "collective knowledge doctrine[3]" because it has never been recognized in South Carolina. (Initial Brief of Appellant 8). However, the State does not need to rely on the collective knowledge doctrine because there is no need to impute knowledge in the current case. Here, Lupisella knew that Appellant's DNA had been found inside Victim's home. Lupisella did not need to have the test results in hand or have been the person who ordered the test or conducted the test to have personal knowledge that there was probable cause to arrest Appellant. Sufficient probable cause

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[3] "The collective-knowledge doctrine, as enunciated by the Supreme Court, holds that when an officer acts on an instruction from another officer, the act is justified if the instructing officer had sufficient information to justify taking such action herself; in this very limited sense, the instructing officer's knowledge is imputed to the acting officer." U.S. v. Massenburg, 654 F.3d 480, 492 (4th Cir. 2011). "The law seems to be clear that so long as the officer who orders an arrest or search has knowledge of facts establishing probable cause, it is not necessary for the officers actually making the arrest or conducting the search to be personally aware of those facts." U.S. v. Laughman, 618 F.2d 1067, 1072 (4th Cir. 1980).

existed for Lupisella to arrest Appellant without a warrant because he knew Appellant's DNA connected him to the scene of a recent crime.

Furthermore, while our State's appellate courts haven't used the exact words "collective knowledge doctrine" in an opinion, our appellate courts have endorsed a very similar concept on multiple occasions. For example, in State v. Baccus our Supreme Court considered whether a Florence County Sheriff's deputy had probable cause to effectuate a warrantless arrest of Baccus for a murder Baccus committed in Marion County. The Florence County deputy arrested Baccus based on information he received from law enforcement in Marion County and observations he made while at Baccus' residence that corroborated the information he was given. Baccus, 367 S.C. at 46, 625 S.E.2d at 219. The Supreme Court ruled that probable cause existed to arrest Baccus based on the information the Florence County deputy received from Marion County and based on the observations the deputy made at Baccus' residence. Baccus, 367 S.C. at 49, 625 S.E.2d at 220. Here, like in Baccus, Lupisella and fellow officer Joshua Razumich had probable cause to arrest Appellant based on information they received from other law enforcement officers. Additionally, they observed that Appellant matched the description Victim gave of her attacker. (Tr. 349-50). See also State v. Jackson, 260 S.C. 30, 36, 194 S.E.2d 181, 183-184 (1973) ("Deputy Nesbitt had reasonable cause to believe that its occupants were attempting to elude him and to forcibly stop them for further investigation. That the car was actually stopped by other officers coming to Nesbitt's assistance is entirely without legal significance because they had a right to rely upon his knowledge in coming to his aid."). Accordingly, this Court should affirm the trial judge's decision to admit the evidence seized as a result of Appellant's warrantless arrest.

Harmless Error

Even if the trial judge erred in admitting the headlamp and the handgun, any error was entirely harmless because the admission of the headlamp and the handgun could not have possibly affected the outcome of the trial.

An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result. State v. Black, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). "Error is harmless when it could not reasonably have affected the result of the trial." Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (quoting State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971)).

While the headlamp found in Appellant's book bag and the hand gun found on Appellant's person were both circumstantial evidence of his guilt, they had minimal evidentiary value when compared to the other evidence presented against Appellant. Victim never saw Appellant with a headlamp, and could only described the light used to blind her as "one of those really strong flashlights you use when you hunt." (Tr. 181, lines 16-17). Furthermore, Appellant admitted on direct examination that he was carrying a handgun when he was arrested and trial counsel admitted Appellant was guilty of unlawful carrying of a handgun in his closing argument. (Tr. 631-32, 685). The remaining evidence presented against Appellant was

overwhelming. Appellant's DNA was found on five different items in Victim's bedroom[4]. (Tr. 564-73). The chances that the blood stains found on Victim's quilt and bed skirt belonged to someone other than Appellant were 1 in 290 nonillion. Appellant claimed he had never met Victim and could not explain how his DNA was found inside her home. (Tr. 622, 653). When Appellant was arrested ten days after the date of offense, he had wounds on his arms and legs in various stages of healing. (Tr. 390-91). Appellant matched the physical description given by Victim and had the same dreadlocked hairstyle when he was arrested that Victim described. (Tr. 195, 208, State's Exhibit #128, #129, Court's Exhibit #13). Appellant changed his hairstyle for his trial because he didn't want to be associated with the person who Victim described as her attacker. (Tr. 653-54). Victim listened to Appellant testify at trial and identified him as her attacker based on his voice and his demeanor in her rebuttal testimony. (Tr. 660, 665). The jury returned a guilty verdict against Appellant because of the aforementioned evidence, not because Appellant had a headlamp in his book bag and a gun on his person when he was arrested. Appellant's convictions and sentences should be affirmed.

[4] Notably, on appeal, Appellant does not challenge the validity of the DNA results nor does he argue the trial judge erred by admitting them into evidence. (Initial Brief of Appellant 1, 4, 10-11). See Rule 208(b)(1)(B)("Statement of Issues on Appeal. A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

II.

The trial judge did not err in denying Appellant's motion to suppress the single black latex glove seized as a result of the search warrant executed on his residence because the search warrant established a direct nexus between the items sought in the search warrant and the location to be searched. However, even if the trial judge erred in admitting the black latex glove, any error was entirely harmless in light of the overwhelming evidence presented against Appellant.

Appellant next argues the trial judge erred by denying his motion to suppress the results of the search warrant executed upon Appellant's residence because the search warrant affidavit failed to establish probable cause. Specifically, Appellant argues the single black latex glove seized from Appellant's apartment should have been suppressed because the State failed to provide the magistrate with a substantial basis to conclude the glove would be found in Appellant's residence. On the contrary, the search warrant established a timely and direct nexus between the evidence sought and the location to be searched. The search warrant listed the items that law enforcement was seeking and detailed how they were used in a crime that took place just ten days prior to the date of the search warrant. Therefore, the magistrate had enough information to make a common sense determination that there was a fair probability items used in a crime committed ten days prior would be found in Appellant's apartment. However, even if the trial judge erred in admitting the evidence seized from Appellant's home, any error was harmless in light of the evidence against Appellant.

South Carolina Code section 17-13-140 provides a search warrant "shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant." S.C. Code § 17-13-140. The statute further provides that the issuing judge shall issue the warrant if they are "satisfied that the grounds for the application exist or that there is probable cause to believe that they exist." Id. Search warrant affidavits "are not meticulously drawn by lawyers, but are normally drafted by non-lawyers in

the haste of a criminal investigation, and should therefore be viewed in 'a common sense and realistic fashion.'" State v. Gore, 408 S.C. 237, 247, 758 S.E.2d 717, 722 (Ct. App. 2014) (quoting State v. Sullivan, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976)).

When reviewing a decision to issue a search warrant, the reviewing court should decide whether the issuing judge had a substantial basis for concluding probable cause existed. Dupree, 354 S.C. at 683, 583 S.E.2d at 441. The evidence presented to a judge issuing a search warrant "need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive" but rather it is sufficient if the evidence "is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist." State v. Williams, 262 S.C. 186, 189, 203 S.E.2d 436, 437-438 (1974). A search warrant will be deemed sufficient if the information provides a "timely and direct nexus between the contraband sought and the location to be searched." State v. Thompson, 419 S.C. 250, 257, 797 S.E.2d 716, 719 (2017). "In South Carolina, the judicial officer asked to issue a search warrant must make a practical, common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, *there is a fair probability that evidence of a crime will be found in the particular place to be searched.*" Thompson 419 S.C. 256-57, 797 S.E.2d at 719. The issuing judge's probable cause determination should be afforded great deference on appeal. Rutledge, 373 S.C. at 316, 644 S.E.2d at 791.

Here, Appellant takes issue with the following language in the affidavit considered by the issuing magistrate and the trial judge: "It is believed that material evidence of the crime may be located at 178-B America St." (Court's Exhibit #16). Appellant contends "the affiant could have informed the magistrate that officers had conducted surveillance on the apartment, had seen Appellant coming and going from the address, and that the residence was in fact Appellant's

apartment, but, for whatever reason, failed to do so." (Initial Brief of Appellant 15). Thus, Appellant argues the affidavit failed to establish probable cause because it did not definitively establish that Appellant lived at 178-B America Street. However, Appellant ignores the rest of the information provided in the affidavit. The affidavit listed the specific items that law enforcement was searching for and detailed how they were involved in the crime committed. The affidavit listed the following property sought: "Any and all latex gloves, flashlights, handguns, black mesh athletic style shorts, white kitchen style trash bag." (Court's Exhibit #16). The affidavit specifically described the manner in which the assault was committed and how the items sought were used during the assault. In regard to latex gloves, the affidavit stated "the subject entered the victim's bedroom, awakened her with a flashlight, stated that he had a firearm and bound her hands behind her back with an orange cord while wearing latex gloves." (Court's Exhibit #16). Finally, the affidavit detailed that DNA specimens from the crime scene matched Appellant's DNA, Appellant matched the description given by Victim, and that Appellant had been located at 178-B America Street on June 1, 2017. (Court's Exhibit #16). The affidavit thus listed sufficient information to notify the magistrate why Appellant was being investigated by law enforcement, what evidence was sought by law enforcement, and why it was being sought. Thus, the magistrate was able to make a common sense determination that if Appellant's DNA was found at the crime scene and Appellant was located at 178-B America Street ten days later, there was a fair probability that the items used in the crime would be found at the address where Appellant was located.

Appellant frequently cites to our Supreme Court's decision in State v. Thompson to support his argument, however the facts of Thompson are distinguishable from this case. In Thompson, the Supreme Court concluded the affidavit that authorized law enforcement to search

a residence for drugs did not establish a sufficient nexus between the contraband sought and the location searched because the affidavit showed no drug activity at the residence for fifteen months prior to the date of the search warrant. Thompson 419 S.C. 258, 797 S.E.2d at 720. Here, the search of Appellant's residence occurred a mere ten days after Appellant committed the crime. Therefore, it was reasonable for the magistrate to conclude there was a fair probability the items used by Appellant in committed the assault would be found at the residence where he was located ten days later.

Harmless Error

Even if the trial judge erred in admitting the black latex glove, any error was entirely harmless because the admission of the black latex glove could not have possibly affected the outcome of the trial. Like the headlamp and handgun seized from Appellant during his arrest, the black latex glove found inside Appellant's apartment was circumstantial evidence of his guilt. Victim recalled opening her eyes long enough to see that her attacker had on at least one dark latex glove. (Tr. 191). However, also like the headlamp found in Appellant's book bag and the handgun found on his person, the evidentiary value of the black latex glove paled in comparison to the other evidence against Appellant. As previously argued, Appellant's DNA was found on five different items inside a house where Appellant claimed he had never been. (Tr. 564-73, 622, 653). When he was arrested, Appellant matched the physical description that Victim gave of her attacker. (Tr. 195, 208, State's Exhibit #128, #129). Victim was able to listen to Appellant speak on the witness stand and she identified him based on his demeanor and the sound of his voice. (Tr. 660, 665). The jury determined Appellant's guilt based on the aforementioned evidence; not based on law enforcement finding a single black latex glove inside Appellant's apartment. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2018-002039

THE STATE, Respondent,

v.

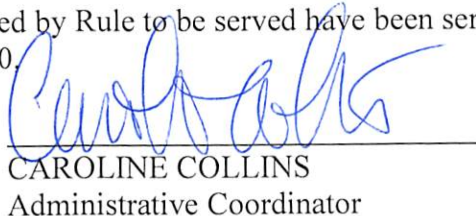
FILICIANO JERMAINE SMITH, Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by email to the address listed in AIS and with a copy of the same in the United States mail, postage prepaid, addressed to:

Lara M. Caudy, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This twenty-second day of May, 2020.



CAROLINE COLLINS
Administrative Coordinator

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

Caroline Collins

From: Caroline Collins
Sent: Friday, May 22, 2020 10:03 AM
To: 'lcaudy@sccid.sc.gov'
Cc: 'Matthews, Lindsey'; William Blitch; Scott Matthews
Subject: The State v. Filiciano Jermaine Smith (2018-002039)
Attachments: SMITH Filiciano - Cover Letter - IBOR and DOM (02284539xD2C78).PDF; SMITH Filiciano - Initial Brief of Respondent and Designation of Matter - 2018-002039 (02284541xD2C78).PDF

Follow Up Flag: Worldox

Good Morning Ms. Caudy,

Attached please find a copy of the initial Brief of Respondent and Designation of Matter in The State v. Filiciano Jermaine Smith (2018-002039), along with its cover letter. These documents will be submitted to the Court of Appeals through the AIS system. As written in the certificate of service, in addition to this email a hard copy of these documents has been deposited in today's mail.

If you will, please reply to confirm receipt of this email.

Thank you!

Caroline Collins
Administrative Coordinator
South Carolina Attorney General's Office
P: (803) 734-3723

RECEIVED
May 22 2020
SC Court of Appeals