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Jun 23 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM HOLMES,

PETITIONER.

APPELLATE CASE NO. 2021-001018

REPLY BRIEF OF PETITIONER

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ARGUMENT

Because State v. Wright was not controlling appellate precedent that authorized Officer Sherwood's actions, the good-faith exception to the exclusionary rule stated in Davis v. United States does not apply here.

The State believes that State v. Wright, 391 S.C. 436, 706 S.E.2d 324 (2011), was controlling appellate precedent that authorized Officer Sherwood to perform this knock-and-talk without reasonable suspicion. (Brief of Resp. pp. 21-23). However, "[i]t is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.'" Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972)).

Because the right-to-privacy provision of the South Carolina Constitution was not argued or mentioned in this Court's opinion in Wright, it was not controlling appellate precedent that Officer Sherwood could properly rely upon here. In Wright, this Court only addressed the plain view and exigent circumstances exceptions to the Fourth Amendment's warrant requirement. Wright, 391 S.C. at 441, 706 S.E.2d at 326.

Furthermore, Wright did not involve a knock-and-talk. Instead, the officers in Wright investigated a wooded area near a mobile home after receiving an anonymous tip that dogfighting was taking place there. See id. 391 S.C. at 440-41, 706 S.E.2d at 325-26. Ultimately, this Court held that the trial court improperly granted the defendant's motion to suppress evidence because the deputies lawfully entered private property after receiving an anonymous tip and personally observed numerous vehicles and spotlights shining near the mobile home. Id. 391 S.C. at 445, 706 S.E.2d at 328.

The State relies on dicta contained in the Wright opinion to support its argument that Officer Sherwood's actions here were consistent with controlling appellate precedent.

Specifically, the State argues that Wright authorizes officers to "*obviously* go to a resident's door to speak with someone inside." (Brief of Resp. p. 22) (citing Wright, 391 S.C. at 444, 706 S.E.2d at 328). However, whether the officers in Wright could perform a knock-and-talk was not an issue properly before this Court because the defendant's trial counsel conceded that issue. See id. 391 S.C. at 445, 706 S.E.2d at 328 (Respondent's "defense counsel admitted that the police may lawfully knock on the front door after receiving a complaint."); State v. Benton, 338 S.C. 151, 156, 526 S.E.2d 228, 231 (2000) ("[A]n issue conceded in the trial court cannot be argued on appeal.").

Not only was the knock-and-talk issue not properly before this Court in Wright, but that case is factually distinguishable from the present case based on the amount of information available to the officers before entering the private property. Here, unlike the officers in Wright, Officer Sherwood was not acting on an anonymous tip, nor did he personally observe any plain-view evidence of criminal activity in the 15 minutes he waited before knocking. Although this Court stated that those officers could "obviously go to a resident's door," the presence of the anonymous tip appears to have played an important role in this Court's reasoning, as evidenced by other portions of its dicta. See Wright, 391 S.C. at 444, 706 S.E.2d at 328 ("A police officer without a warrant is privileged to enter private property to *investigate a complaint or a report of an ongoing crime*.") (emphasis added) (internal quotations and citations omitted); Id. 391 S.C. at 445, 706 S.E.2d at 328 ("However, even absent [the officers' plain view] observations, the police had the investigative authority to approach the front door of the mobile home *in order to investigate the anonymous tip*.") (emphasis added).

Because this Court did not address whether a knock-and-talk was proper under the South Carolina Constitution in Wright, and because Wright is factually distinguishable from the present

case, Wright was not controlling appellate precedent that Officer Sherwood could properly rely upon when he performed this knock-and-talk without reasonable suspicion. Therefore, the good-faith exception to the exclusionary rule stated in Davis v. United States, 564 U.S. 229 (2011), is inapplicable here.

CONCLUSION

For the reasons stated above, and for the reasons stated in Petitioner's brief, this Court should reverse Holmes' convictions and remand this matter for a new trial with instructions that the Trial Court suppress all evidence seized following this knock-and-talk.

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This 23rd day of June, 2022.