THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

Thomas A. Russo, Circuit Court Judge

Opinion No. 5110 (S.C. Ct. App. filed April 3, 1013), Appellate Case No. 2011-197635

THE STATE,

RESPONDENT/PETITIONER,

V.

ROGER BRUCE,

PETITIONER/RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for petitioner, pursuant to Rule 242(d)(1), SCACR, certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals.

TABLE OF AUTHORITIES

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QUESTION PRESENTED

I. Whether the trial court erred in refusing to suppress evidence seized from appellant's residence and a car in his backyard when the police took keys to the car from the residence without consent and without a search warrant?

COUNTER-QUESTIONS PRESENTED

I. Whether the Court of Appeals' erred when it determined the trial court made inadequate legal and factual findings supporting its' ruling that the victim's body would have been discovered pursuant to the inevitable discovery doctrine.

II. Whether the Court of Appeals erred in remanding the case to the trial court when the record supported the State's additional sustaining grounds that: (A) the keys to the victim's vehicle were obtained as a result of authorities receiving consent from Bruce to search the residence; (B) Bruce informed authorities the keys found in the residence were the victim's car keys, a car in which he had no possessory interest and thus no legitimate expectation of privacy meaning he had no standing to challenge the search, and (C) Bruce never expressly limited or revoked his consent to the scope of the search.

BACKGROUND AND STATEMENT OF THE CASE

On October 12, 2009, Florence authorities, while performing a welfare check at a residence occupied by Laura Creel ("Victim") and her boyfriend, Roger Bruce, discovered Victim's body stuffed in the trunk of her car. (R. 109-10, 116-17, 127). The ensuing investigation culminated in the trial and conviction of Bruce. (R. 459).

Bruce was indicted by the Florence County grand jury for murder (#2010-GS-21-0254). (R. 465-66). Following his indictment, Bruce was tried before the Honorable Thomas A. Russo and a jury on August 8-11, 2011 in Florence. (R. 1). At trial, Bruce was represented by chief public defender, Jack Lawson and assistant public defender Scott P. Floyd, while the State was represented by solicitor E.L. Clements, III. (R. 1). At the conclusion of trial, Bruce was found guilty and received a life sentence. (R. 459-60, 464). Thereafter, Bruce filed a timely notice of appeal and, on May 23, 2012, filed his final brief arguing, "the trial court erred in refusing to suppress evidence seized from appellant's residence and a car in his backyard when the police took keys to the car from the residence without consent and without a search warrant." (App. 4). In the conclusion of his brief, Bruce requested only that his conviction be reversed. (App. 10). In response, the State, via its' final brief maintained the trial court's factual finding, that the victim's body would have discovered pursuant to the inevitable discovery doctrine, was not clearly erroneous and furthermore, even if it was, reversal was not the appropriate remedy in light of a variety of evidence supporting the trial court's judgment. (App. 16). Accordingly, the State asked the Court of Appeals to affirm the trial court's judgment below. (App. 29).

On April 3, 2012, the Court of Appeals issued a published opinion remanding the case back to the trial court, stating "the court did not make adequate factual findings or legal conclusions." (App. 33). In particular, the Court of Appeals determined, the trial court's finding, that suppression was not the appropriate remedy under the inevitable discovery doctrine,

was "inadequate for appellate review." (App. 34). Accordingly, the Court of Appeals instructed the trial court to evaluate (1) whether Appellant had a legitimate expectation of privacy in the trunk of the victim's car; (2) whether Appellant consented to the search; and (3) if Appellant's Fourth Amendment rights were violated, whether the exclusionary rule applied. (App. 34). Both the State and Bruce timely sought rehearing, which the appellate panel denied. The State now seeks certiorari.

WHY THIS COURT SHOULD GRANT CERTIORARI

The State asks this Court to grant certiorari for two reasons. First, the Court of Appeals, by ignoring evidence supporting the trial court's ruling on inevitable discovery, and instead determining "the trial court's findings are inadequate for appellate review" turned a blind-eye to the standard of review which required it to affirm the trial court's factual ruling where there is "any evidence" supporting the ruling. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (holding that appellate courts, when reviewing a Fourth Amendment search and seizure issue, must affirm "if there is any evidence to support the trial court's ruling and will reverse only where there is clear error."). Second, by failing to address the State's additional sustaining grounds or even explain its rationale for failing to address these grounds, the Court of Appeals neglected to determine whether the trial court's purported legal error regarding its application of the inevitable discovery doctrine was prejudicial as required by the standard of review. See State v. Adams, 354 S.C. 361, 377, 580 S.E.2d 785, 793 (Ct. App. 2003) ("A trial judge's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant."); see also Snyder's Auto World, Inc. v. George Coleman Motor Co., Inc., 315 S.C. 183, 186, 434 S.E.2d 310, 312 (Ct. App. 1993) ("The burden is on the Appellant to show not only error, but also

prejudice."). In committing both of these errors within a published opinion the State submits that the broad language from this case could allow for remand or reversal of a ruling not because the appellant met the requirements under the court's standard of review, but instead because an appellate court, without any deference to the trial court's ruling, arbitrarily determines the factual and legal rulings contained within the record are simply "inadequate."

STATEMENT OF THE FACTS

On Monday, October 12, 2009, at approximately 11:00 PM, Bruce called Victim's son, Shane Ritch ("Shane"), from Victim's cell phone. (R. 88-89). During the course of the conversation, Bruce informed Shane that while Victim's car was at the residence he shared with Victim, he had not seen or heard from Victim "in a couple of days" and was curious whether Shane had heard from Victim. (R. 90). After telling Bruce he had not heard from Victim, Shane became concerned and called his brother Michael Ritch ("Michael") who in turn called Bruce. (R. 91). Thereafter, Michael, who described his conversation with Bruce as "funny," called Shane to express his concern over the situation. (R. 91). As a result of their conversation, Shane called Florence authorities requesting that they perform a welfare check at the residence occupied by Victim and Bruce. (R. 91).

Pursuant to this request, Officer Gary Beckett was dispatched to Victim and Bruce's residence, a one bedroom garage apartment. (R. 109, 110-11). After knocking on the door for approximately ten minutes and receiving no response, Beckett returned to his patrol car and had dispatch connect him with Shane. (R. 110-11, 113-14, 115). During Shane and Beckett's conversation, Shane informed Beckett that Bruce was inside as Shane had called and spoken to Bruce from a different line while he was on the line with dispatch. (R. 92). Shane further informed Beckett that both he and his brother spoke with Victim almost daily, but neither of

them had heard from Victim in three days. (R. 116). Additionally, Beckett learned Bruce had a substance abuse problem, the couple had recently been in an argument and it was unusual for Victim to leave the residence without her cell phone or car. (R. 116, 92-93).

In the midst of Shane and Beckett's conversation, Beckett was joined by his supervisor, Charles Hobgood and an additional patrol officer, Steven Starling, prompting Beckett to end the telephone conversation with Shane in order to brief them on the situation. (R. 116). After briefing Hobgood and Starling, the three returned to the residence where they saw Bruce who was looking out of the apartment's screen door. (R. 117). At that time, the officers explained to Bruce that they were there to check on Victim and asked Bruce if she was inside. (R. 117). In response, Bruce informed the officers that Victim was not inside, but gave the officers permission to "come in and take a look." (R. 117). After scanning the residence, the officers asked Bruce when he last saw Victim and if he had any idea where she may be. (R. 118). Answering the officers, Bruce explained Victim had left him following an argument a few days ago and he did not know where she was. (R. 118).

Over the course of their conversation, the officers observed a cell phone and keys which were consistent with the vehicle parked outside of the residence prompting them to ask Bruce who owned the cell phone and keys. (R. 119). Bruce then explained the cell phone and keys belonged to Victim. (R. 119, 49-50, 50-51, 167, 168).

At that time, Hobgood picked up the car keys and proceeded out to the vehicle in an effort to find "maybe a pocketbook" or "something that may give us an idea where she may be." (R. 118, 144). Bruce and the remaining officers followed and after Hobgood scanned the interior of the vehicle and unsuccessfully attempted to open the trunk, asked Bruce which key opened the trunk. (R. 126, 145, 156-57, 168). Responding to Hobgood's question, Bruce, who was

positioned towards the front of the car, "walked towards" Hobgood "with his arm out like he was going to grab the keys" prompting Hobgood to instruct Bruce to tell him which key opened the trunk rather than show him which key opened the trunk. (R. 126, 145, 156-57, 168). During this exchange, Starling, who was positioned next to Hobgood behind the trunk, hit the trunk release button on the key fob, opening the trunk. (R. 90-91, 146, 169). When the trunk opened, Starling and Hobgood observed a female body, later identified as Victim's, in the trunk. (R. 127-28, 146, 169). At that time, Bruce was handcuffed and later transported for questioning. (R. 128-29, 151-52, 153-54). He was subsequently arrested after telling investigators, who were unaware of what caused Victim's death, "he wouldn't shoot Laura." (R. 381).

At trial, forensic pathologist, Dr. Cynthia Schandl testified Victim died as a result of a single, small caliber gunshot wound to the head fired at point blank range. (R. 241, 256). Further, SLED firearms and ballistics expert Kenneth Whitler explained that a spent cartridge recovered from the residence was fired by a Marlin .22 caliber rifle, which was found under Bruce's bed. (R. 321, 283, 323-24, 278-79, 167). Whitler further testified that while he could not conclusively state the bullet recovered from Victim's head was fired by Bruce's rifle due to deformities in the bullet, the bullet was consistent with having been fired by the rifle. (R. 326-28). Additionally, SLED DNA and serology expert Katherine Leisy testified Bruce's DNA was found on the rifle's trigger, stock and barrel. (R. 334, 335-36). Leisy also determined a portion of blood soaked carpet found inside the residence contained Victim's DNA. (R. 339).

PRESENTATION OF ISSUE AT TRIAL

Prior to trial, defense counsel informed the trial court they intended to suppress "evidence obtained in relation to the body itself" based upon their belief the evidence was obtained in violation of Bruce's Fourth Amendment rights. (R. 5). However, defense counsel further

informed the court that it would seek to suppress such evidence at the time the State sought to introduce it. (R. 5). Accordingly, while Beckett was testifying regarding the officers attempt to open the trunk, defense counsel objected and the jury was sent to the jury room. (R. 119). Defense counsel then explained "[w]e're getting to the point where the trunk is about to be open, and I understand—the Defense would object to the discovery of the body in that fashion, basis that there was no search warrant obtained and no—does not appear any consent by my client given at that time to search the vehicle. I know that he allowed them to come in and look when they asked, but there's no indication that he consented[.]" (R. 120).

In response to defense counsel's objection, the trial court questioned whether Bruce had standing to object to the search of a vehicle that was not his. (R. 120). Replying to the trial court's question, defense counsel argued Bruce had standing to challenge the search because the car was on his property and the keys were found in the house. (R. 120). The State then argued Bruce did not have standing to challenge the search since the officers knew the keys and car belonged to Victim and Bruce had given the officers permission to enter the residence. (R. 120). Continuing, the State noted Bruce simply did not have a reasonable expectation of privacy in a car that was not his. (R. 120-21). Defense counsel then argued Bruce and Victim were essentially in a common law marriage and the officers only knew the vehicle in the driveway looked like Victim's car. (R. 121). Based upon this, defense counsel further argued that the officers needed Bruce's permission to take the keys, which defense counsel claimed, they never attempted to do. (R. 121). In response, the State explained:

> Your Honor, I think Corporal Hobgood yesterday testified that [Bruce] said, here, and went to the keys and said, I'll show you which key to open it with and they hit the trunk release button and opened the trunk and so [Bruce] didn't have to. I think that was the testimony of Corporal Hobgood yesterday, and I'm pretty sure that that would have been testimony we'd gotten from him as well, but I don't think—I don't think there's any evidence; I don't think no one has ever said, yeah

> we're husband and wife. Just the fact that people live together, that doesn't establish in and of itself common law marriage. I just don't think he had any standing or any expectation of privacy in that vehicle and he also had offered to open the trunk for him before they hit the trunk release button.

(R. 122). Thereafter, the trial court noted, "[i]t appears that this is inevitable discovery; but/for hitting the trunk release button and opening the trunk according to the earlier testimony, [Bruce] was gonna open the trunk for them, or at least was providing the keys to do so." (R. 122). Continuing, the trial court determined, "I'm gonna overrule the objection and allow it." (R. 122). Defense counsel then argued "I understand it may inevitably have been discovered at a later point and what I'm saying is that any evidence gathered in the time between when it was discovered and when it would have been discovered would be appropriately suppressed in spite of the fact that they may have inevitably discovered it with a proper search warrant." (R. 122-23).

STANDARD OF REVIEW

In criminal cases, appellate courts sit only to review errors of law and are bound by the factual findings of the trial court unless they are found to be clearly erroneous. State v. Hernandez, 386 S.C. 655, 659, 690 S.E.2d 582, 584 (Ct. App. 2010). With respect to reviewing a Fourth Amendment search and seizure issue, the court must affirm "if there is any evidence to support the trial court's ruling and will reverse only where there is clear error." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011); State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000).

ARGUMENT

I. The Court of Appeals erred when it determined the trial court made inadequate legal and factual determinations to support its ruling that the victim's body would have been discovered pursuant to the inevitable discovery doctrine

On appeal, Bruce claimed the trial court erroneously determined the victim's body would have been inevitably discovered explaining the trial court's ruling was based upon the solicitor's incorrect recollection of the facts as testified to by the State's witnesses during a Jackson v. Denno[1] hearing conducted the previous day. As a result, Bruce maintained the State failed to meet its burden of showing, by a preponderance of the evidence, that Victim's body would have been discovered lawfully.[2] The State disagreed with Bruce's contention arguing that even assuming the solicitor's recollection of the factual testimony from the Jackson v. Denno hearing was incorrect, the evidence at trial supported the trial court's ruling on inevitable discovery meaning the ruling should be affirmed. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure issue, this court must affirm if there is any evidence to support the trial court's ruling and will reverse only where there is clear error."). Ruling on the issue, the Court of Appeals opined the trial court "did not make adequate factual findings or legal conclusions" to support the trial court's inevitable discovery ruling." (App. 33). In so finding, the State submits the Court of Appeals erred when it misapprehended the trial court's application of the inevitable discovery doctrine and, as a result, overlooked evidence which clearly supported the trial court's ruling.

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[1] Jackson v. Denno, 378 U.S. 368 (1984).

[2] Notably, Bruce *never* argued the trial court erroneously applied the inevitable discovery doctrine. Rather, Bruce's only argument on appeal was that the State failed to prove, by a preponderance of the evidence, that the victim's body would have been discovered through lawful means. See (App. 7-8) ("The prosecution bears the burden of showing by a preponderance of the evidence that the items seized would ultimately have been discovered lawfully even though it was obtained by an illegal seizure. The prosecution has not met that burden.") (internal citation omitted). In other words, Bruce only argued the trial court made a *factual error* rather than a *legal error*. Thus, because Bruce only alleged that the trial court made a *factual error* in his inevitable discovery ruling, the Court of Appeals, by finding "this does not appear to be a situation in which the inevitable discovery doctrine is properly applied," has answered a question which was never asked of it. See Atlantic Coast Builders and Contractors, LLC v. Lewis, 396 S.C. 323, 331 n.4, 730 S.E.2d 282, 286 n.4 (2012) ("If a question is not presented for our review, we should not answer it no matter how much we may want to do so. For as former Chief Judge Alex Sanders famously wrote, 'appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.' ") (quoting Langley v. Boyter, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct.App.1984), quashed on other grounds, 286 S.C. 85, 332 S.E.2d 100 (1985)).

The inevitable discovery doctrine is an exception to the exclusionary rule which states that illegally obtained evidence should not be suppressed where the prosecution can establish, by a preponderance of the evidence, that such evidence would have been discovered by lawful means. Nix v. Williams, 467 U.S. 431, 444 (1984). The rationale for this doctrine is that, "[w]hen the State has met its burden of proving it inevitably would have discovered the evidence, the 'deterrence' purpose of the exclusionary rule is not 'clearly subserved,' and there is no rational basis to keep that evidence from the jury to ensure the fairness of the trial proceedings.'" State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011) (quoting Nix 467 U.S. at 447).

Subsequent case law from the Fourth Circuit Court of Appeals regarding the application of Nix illustrates at least three circumstances in which inevitable discovery may apply. Specifically, in U.S. v. Allen, 159 F.3d 832 (1998), a case cited by Appellant and relied upon by undersigned counsel throughout the oral argument, the Fourth Circuit found, "[t]he inevitable discovery doctrine may apply where additional routine or factually established investigative steps would inevitably lead to discovery of the evidence without undertaking any search." Id. at 841. Similarly, the Allen Court said, "*the doctrine also may apply where the facts indicate another search inevitably would have occurred and would inevitably have uncovered the evidence, and that search falls within an exception to the warrant requirement.*" Id. (emphasis added). Continuing, the Allen Court explained, "[t]he doctrine may even apply where the subsequent search that inevitably would have uncovered the disputed evidence required a warrant and the police had probable cause to obtain this warrant prior to the unlawful search but failed to do so, *if* the government produces evidence that the police would have obtained the necessary warrant absent the illegal search." Id. (emphasis in original).

As detailed above, the Court of Appeals determined the trial court's factual findings and legal conclusions on inevitable discovery were "inadequate." (App. 33). In response, the State first notes this is not the standard of review and further submits this ruling is incorrect as the Court of Appeals misapprehended the legal basis for the trial court's inevitable discovery ruling and as a result, overlooked evidence supporting the trial court's application of inevitable discovery. Specifically, a review of the record shows the trial court's ruling was *not* based upon a factual determination that authorities would have sought and obtained a search warrant as contemplated under the first circumstance in the Allen case.[3] In fact, the State agrees there was nothing supporting this assertion in the record. Rather, as explained by undersigned counsel in his brief and reiterated during the oral argument, the factual basis supporting the trial court's inevitable discovery ruling was that if Starling had not hit the trunk release button, police would have still lawfully opened the trunk because it was clear Bruce, through his words and actions, consented to the trunk being opened. (R. 126-27, 145, 156-58, 168-69). Thus, consistent with the second example in Allen, because authorities had implicitly received consent from Bruce to open the trunk and consent is a warrantless search exception, the record shows police would have discovered the contents of the trunk (i.e. Victim) through lawful means absent Starling's intervening action of hitting the trunk release button. See Allen, 159 F.3d at 841 ("The doctrine also may apply where the facts indicate another search inevitably would have occurred and would inevitably have uncovered the evidence, and that search falls within an exception to the warrant requirement."). Indeed, the record reflects this was clearly the trial court's line of reasoning when it stated, "[i]t appears that this is inevitable discovery; but/for hitting the trunk

[3] The Court of Appeals appears to assume this is the basis for the trial court's ruling in its' opinion writing: "Moreover this does not appear to be a situation in which the inevitable discovery doctrine is properly applied. In this case, the State presented no evidence that it would have inevitably discovered Creel's body by some other means had the officers not searched the trunk of her car as they did." (App. 37).

release button and opening the trunk according to the earlier testimony, [Bruce] was gonna open the trunk for them, or at least was providing the keys to do so." (R. 122).

Keeping in mind the trial court's rationale in admitting the evidence, the State submits there is a variety of evidence supporting the trial court's ruling. First, the State notes that almost immediately after the trial court denied defense counsel's motion to suppress, the solicitor elicited testimony from Officer Beckett indicating Bruce was reaching for the keys to show Hobgood which key would open the trunk. (R. 126-27). Specifically, Beckett testified Bruce was attempting to show Corporal Hobgood which key opened the trunk of Victim's car immediately before Officer Starling hit the trunk release button on Victim's key ring. (R. 126-27). Hobgood later corroborated this, adding that Bruce actually offered to show him which key opened the trunk right before Starling hit the trunk release button. (R. 145). This was confirmed on cross-examination and again during Starling's direct examination. (R. 156-58, 168-69). Understanding this, the State submits there is evidence supporting the trial court's inevitable discovery ruling and as such, asks this Court to affirm the trial court's ruling on this matter and reverse the Court of Appeals' ruling. See Wright, 391 S.C. at 442, 706 S.E.2d at 326 ("When reviewing a Fourth Amendment search and seizure issue, this court must affirm if there is any evidence to support the trial court's ruling and will reverse only where there is clear error.").

II. Even if the trial court's inevitable discovery ruling was not supported by the evidence, the Court of Appeals erred in remanding the case as the record shows: (A) the keys to the victim's vehicle were obtained as a result of authorities receiving consent from Appellant to search the residence; (B) Appellant informed authorities the keys found in the residence were the victim's car keys, a car in which he had no possessory interest, no legitimate expectation of privacy and thus no standing to challenge the search, and (C) even assuming Appellant had standing to challenge the search, he never expressly limited or revoked his consent to search

On appeal, the State asserted three additional sustaining grounds, explaining that even if the trial court's factual finding was determined to be incorrect, the judgment should still be affirmed as the record reflects: (A) Victim's keys were obtained as a result of a consent search; (B) the keys were not Bruce's, he had no possessory interest in Victim's car and as a result no legitimate expectation of privacy in its' trunk meaning he had no standing to challenge the search of the car; and (C) even if Bruce did have standing to contest the search of Victim's vehicle, he never expressly limited or revoked his consent to search, but instead, through his actions, implicitly consented to the search of the car. See Rule 220(c), SCACR (explaining the appellate court may affirm any ruling, order or judgment for any ground appearing in the record on appeal). In its decision, the Court of Appeals failed to rule on the State's additional sustaining grounds, instead remanding the case to the trial court and requesting a ruling on these questions. Accordingly, the State submits the Court erred when it ignored the State's additional sustaining grounds, failed to address, or even explain, its' rationale in failing to address the additional sustaining grounds and instead remanded the case to the trial court. Therefore, in light of the evidence in support of affirming the trial court's judgment, the State seeks a writ of certiorari to review the Court of Appeals' decision to remand this matter for further proceedings.

In I'On, L.L.C v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) this Court explained the purpose served by the submission of additional sustaining grounds opining:

> [A] respondent—the "winner" in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review. *It also could violate the principle that a court usually should refrain from deciding unnecessary questions.*

338 S.C. at 419, 526 S.E.2d at 723 (emphasis added); Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 327, 734 S.E.2d 177, 181 (Ct. App. 2012). Explaining other requirements of additional sustaining grounds the I'On Court said, "additional sustaining grounds must appear in the record on appeal" Id. at 419-20, 526 S.E.2d at 723 and further stated:

> The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment. An appellate court may not rely on Rule 220(c), SCACR, when the reason does not appear in the record, or when the court believes it would be unwise or unjust to do so in a particular case. It is within the appellate court's discretion whether to address any additional sustaining grounds.

Id. Here, the State submits there is evidence in the record supporting its' assertion that even if the trial court's ruling on inevitable discovery is incorrect, Bruce's conviction and sentence should be affirmed.

A. The Officers had Consent to Search the House and Seize the Keys

As detailed in the State's brief before the Court of Appeals, the record conclusively shows Bruce voluntarily gave authorities permission to search the residence he shared with Victim. Therefore, even if the trial court's ruling on inevitable discovery is clearly erroneous, reversal or remand would be unnecessary because Bruce consented to allowing authorities to search the residence he occupied with Victim, and the keys, which were in plain view inside the residence were therefore lawfully seized.

"The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . ." State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011). "Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent." State v. Provet, 391 S.C. 494, 507, 706 S.E.2d 513, 520 (Ct.

App. 2011). "While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response." INS v. Delgado, 466 U.S. 210, 216 (1984). Nevertheless, the State "bears the burden of establishing the voluntariness of the consent." Provet, 391 S.C. at 507, 706 S.E.2d at 520. Determining the voluntariness of consent to search is a question of fact to be determined from the totality of the circumstances. Id. Moreover, "law enforcement officers may seize evidence in plain view, provided that they have not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made." Kentucky v. King, 563 U.S. --, 131 S.Ct. 1849, 1858 (2011) (citing Horton v. California, 496 U.S. 128, 136-40 (1990).

The State submits Bruce voluntarily consented to allowing the officers to search the residence and therefore, cannot object to the seizure of Victim's keys which were found in plain view inside the residence. In support of this assertion the State first notes that even defense counsel agreed Bruce voluntarily consented to a search of the residence. (R. 120). Moreover, the record demonstrates that while Bruce may have been intoxicated, he clearly understood the officers were at the residence to check on Victim and understanding this to be the case, agreed to let the officers search the premises and question him regarding Victim's whereabouts without qualification. (R. 117-19, 141-42, 158, 164-65, 166). In fact, Bruce consistently demonstrated his ability to respond to questions posed to him by the officers volunteering that the keys and cell phone found in the residence were not his, but Victim's. (R. 117, 49-50, 50-51, 167, 168). Accordingly, as there is no question Bruce voluntarily consented to allowing the officers to search and question him regarding Victim's whereabouts, it logically follows that the keys, which were in plain view and obtained as a result of this consent search, were lawfully obtained

and therefore, their seizure was not unreasonable and did not violate Bruce's Fourth Amendment rights.

B. Bruce had no Standing to Challenge the Search of the Vehicle

Additionally, Bruce did not have standing to challenge the search of Victim's vehicle where the record reflects he had no legitimate expectation of privacy in the vehicle or its' trunk, where Victim's body was found. See Rakas v. Illinois, 439 U.S. 128, 133-34 (1978) ("A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed."). While defense counsel argued Bruce had standing to challenge the search based upon the fact the vehicle was located in the yard of the residence he occupied with Victim, this argument is irrelevant, as authorities had consent to be on the property, and the vehicle, which was the property that was actually searched, was not Bruce's, but Victim's. See U.S. v. Castellanos, --F.3d--, 2013 WL 2321976 (4th Cir. 2013) ("[S]uppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence.") (internal citations omitted).

The "capacity to claim the protection of the Fourth Amendment depends ... upon whether the person who claims the protection . . . has a legitimate expectation of privacy in the invaded place." Rakas, 439 U.S. at 143. "In order to demonstrate a legitimate expectation of privacy, [the accused] must have a subjective expectation of privacy," U.S. v. Bynum, 604 F.3d 161, 164 (4th Cir. 2010), and that subjective expectation of privacy must be "objectively reasonable; in other words, it must be an expectation that society is willing to recognize as reasonable[.]" U.S. v. Bullard, 645 F.3d 237, 242 (4th Cir. 2011) (internal quotation marks omitted).

In determining whether a person has a legitimate expectation of privacy in a particular place or object, courts should review the totality of the circumstances, U.S. v. Gray, 491 F.3d 138, 151 (4th Cir. 2007) taking into account "whether [the] person claims an ownership or possessory interest in the property," U.S. v. Rusher, 966 F.2d 868, 875 (4th Cir. 1992); the individual's "control of the area searched," U.S. v. Horowitz, 806 F.2d 1222, 1225 (4th Cir. 1986); "his efforts to ensure [his] privacy" in the object or area, id.; "the purposes for which the individual uses the property," U.S. v. Stevenson, 396 F.3d 538, 546 (4th Cir. 2005); his "historical use of the property," U.S. v. Sanchez, 943 F.2d 110, 113 (1st Cir. 1991); and "society's common understanding as to areas that deserve Fourth Amendment protection[.]" Stevenson, 396 F.3d at 546. "Any determination of the reasonableness of an individual's expectation of privacy is necessarily fact intensive," U.S. v. Smith, 978 F.2d 171, 180 (5th Cir. 1992), and "custom and contemporary norms necessarily play . . . a large role in the constitutional analysis[.]" Payton v. New York, 445 U.S. 573, 600 (1980). It is well-established that the burden of showing a legitimate expectation of privacy in the area searched lies with the defendant. Rawlings v. Kentucky, 448 U.S. 98, 104 (1980).

Generally, an individual has a reduced expectation of privacy in a motor vehicle due to the high level of regulation to which they are subject. California v. Carney, 471 U.S. 386, 392 (1985). Furthermore, with respect to vehicles, Courts have historically placed a great deal of significance on whether the accused has a possessory interest in the vehicle searched—this is so because "the Fourth Amendment protects people, not places." Katz v. U.S., 389 U.S. 347, 351 (1967). For example, in Rakas v. Illinois, the Supreme Court of the United States determined passengers who had no possessory interest in a vehicle lacked standing to suppress items found in a search of that vehicle ruling:

> Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections. There is no reason to think that a party whose rights have been infringed will not, if evidence is used against him, have ample motivation to move to suppress it. Even if such a person is not a defendant in the action, he may be able to recover damages for the violation of his Fourth Amendment rights, or seek redress under state law for invasion of privacy or trespass.

Rakas, 439 U.S. at 133–34 (internal citations omitted).

This logic was compelling in U.S. v. Rusher, where the Fourth Circuit, applying Rakas, found that a husband and wife who were passengers in a truck in which they lacked any possessory interest, did not have a legitimate expectation of privacy in the truck and thus lacked standing to seek suppression of items found in a search of that truck. 966 F.2d at 874. Continuing, the Fourth Circuit, citing to Rakas noted, "a passenger's privacy rights are no greater in the trunk of a car than in its interior." Id. Similarly, in U.S. v. Sanchez, the First Circuit Court of Appeals found that a defendant who was the driver and only person in the vehicle at the time it was searched, but was not the owner and merely claimed he had permission to drive the vehicle from a person who purportedly had permissive use of it, had not established enough of a possessory interest in order to establish a legitimate expectation of privacy in the vehicle. 943 F.2d at 113-14.

More recently, the Fourth Circuit, in U.S. v. Castellanos, affirmed a district court's denial of a motion to suppress where the defendant was unable to substantiate claims that he had recently purchased the vehicle searched by authorities. --F.3d--, 2013 WL 2321976. In its opinion, the Fourth Circuit explained, "[t]he evidence heard by the district court at the

suppression hearing failed to support a conclusion that Castellanos had anything more than a distantly attenuated connection to the [vehicle searched]." Id. As a result, the Court said the district court's ruling must be affirmed since, "Castellanos bore the burden to show that he had a reasonable expectation of privacy, and he has not done so." Id.

Here, the record clearly reflects Bruce did not have a legitimate expectation of privacy in Victim's vehicle, much less the trunk of Victim's vehicle. Indeed, the record clearly reflects Bruce had no possessory interest in the vehicle meaning the case falls into the category of Rakas, Rusher, Sanchez and Castellanos in that Bruce lacked standing to challenge the search of a vehicle he did not own. Specifically, there was a wealth of testimony indicating Victim owned the vehicle and drove it exclusively. (R. 90, 101-102, 218-219, 236, 345). Additionally, an inventory of the vehicle revealed Victim's driver's license and further indicated the vehicle was registered and insured in Victim's name. (R. 305-306). In fact, Bruce did not have a driver's license meaning he could not lawfully operate the vehicle. (R. 223).

Moreover, Bruce failed to exercise any control over the vehicle, rarely, if ever, used the vehicle and never sought to ensure privacy in the vehicle. In particular, as in Sanchez, Bruce never produced any evidence that he had permissive use of the vehicle at the time of the search and a review of the record conclusively refutes such an assertion. In fact, both Shane and Michael repeatedly said no one other than Victim drove the vehicle and even Bruce's brother admitted Bruce essentially the same testifying Bruce did not normally drive. (R. 90, 101, 219). Furthermore, while Bruce admittedly drove Victim's vehicle around following her murder, there is nothing to suggest he had permissive use while doing so, nor do these actions give Bruce a legitimate expectation of privacy in the vehicle or its' trunk. Indeed, Bruce's interactions with authorities after he drove the vehicle the previous day indicate he was not attempting to ensure

privacy in Victim's car. Notably, Bruce freely admitted the keys to the vehicle were not his, and further attempted to aid authorities in opening Victim's trunk. (R. 126-27, 145, 156-58, 168-69).

Accordingly, the State submits Bruce failed to prove he had a legitimate expectation of privacy in Victim's vehicle and therefore, lacked standing to suppress Victim's body which was of course, found in the vehicle's trunk. See Rakas, 439 U.S. at 133 (holding constitutional rights may not be vicariously asserted and as a result one who is aggrieved by the introduction of evidence from a third person's property has not had their Fourth Amendment rights violated); Rusher, 966 F.2d at 874 (concluding that a defendant without a possessory interest in a vehicle does not have a greater expectation of privacy in the trunk of a car than in its interior meaning he cannot seek suppression of items seized from the vehicle searched); Sanchez, 943 F.2d at 114 (stating a defendant's mere assertion of permissive use of a vehicle is not enough to create a legitimate expectation of privacy in the vehicle and thus the defendant cannot seek suppression of the items seized during a vehicle search); Castellanos, --F.3d--, 2013 WL 2321976 (explaining the accused did not have standing to suppress the fruits of a vehicle search where he failed to prove he owned the vehicle searched). As a result, the State asks this Court to vacate the Court of Appeals ruling and reinstate Bruce's conviction and sentence.

C. Bruce Never Expressly Revoked or Limited his Consent to the Search

Finally, even if Bruce did have a legitimate expectation of privacy in Victim's car, he never expressly limited or revoked his consent to search once the officers removed the keys from the residence and began to use them to open Victim's car. In fact, rather than expressly revoke or limit his consent, Bruce instead, by way of his actions, implicitly consented to the search of Victim's car.

In State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) this Court explained that pursuant to the South Carolina Constitution, "suspects are free to limit the scope of the searches to which they consent." 343 S.C. at 648, 541 S.E.2d at 843. Continuing, the Forrester Court stated, "[w]hen relying on the consent of a suspect, a police officer's search must not exceed the scope of the consent granted or the search becomes unreasonable." Id. "The scope of the consent is measured by a test of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" State v. Mattison, 352 S.C. 577, 585–86, 575 S.E.2d 852, 856 (Ct. App. 2003) (citation omitted).

Here, the State submits the facts and circumstances surrounding the search clearly informed Bruce of the scope of the search. Furthermore, even if one were to assume that Bruce did not consent to a search of Victim's vehicle when he initially granted consent, the facts surrounding his questioning and the subsequent actions of the officers clearly demonstrate Bruce, despite having the opportunity to limit the search or revoke his consent, declined to do so, instead deciding to aid the officers in the search of Victim's vehicle.

Indeed, Bruce was clearly aware, based upon the statements and actions of the officers that they intended to use the keys to search Victim's vehicle. Specifically, Bruce was asked who owned the keys they found in the residence, and after he explained the keys were Victim's, observed the officers as they proceeded to Victim's vehicle in an attempt to unlock it. (R. 118, 119, 49-50, 50-51, 144, 167, 168). Nevertheless, Bruce, rather than revoking or limiting consent, chose to aid the officers in their search by attempting to show them which key opened the the vehicle's trunk. (R. 126, 145, 156-57, 168).

Understanding these circumstances, the State submits an objectively reasonable person would have understood that when the officers asked whose keys were in the apartment, picked

the keys up, headed outside and began using the keys, the scope of consent may have changed. However, despite these facts, the State submits that an objectively reasonable person would have interpreted Bruce's additional actions of attempting to aid the officers in their search, as implicitly consenting to the expanded search rather than seeking to limit or revoke his consent. Accordingly, the State submits Bruce's Fourth Amendment Rights were not violated and therefore, the evidence obtained from the search of the car should not be excluded.

CONCLUSION

For the aforementioned reasons, the State respectfully requests this Court grant certiorari and reinstate Bruce's conviction and sentence as imposed by the trial court.

Respectfully Submitted,

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June 5, 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

Thomas A. Russo, Circuit Court Judge

Opinion No. 5110 (S.C. Ct. App. filed April 3, 1013), Appellate Case No. 2011-197635

THE STATE,

RESPONDENT/PETITIONER,

V.

ROGER BRUCE,

PETITIONER/RESPONDENT.

CERTIFICATE OF SERVICE

I, Brendan McDonald, counsel for the Respondent/Petitioner, certify that I have served the within ***Petition for Writ of Certiorari,*** on opposing counsel by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney:

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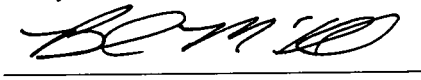
I further certify that all parties required by Rule to be served have been served on this 5th day of June, 2013.



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