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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Court of General Sessions

Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VINCENT SHIVERS,

APPELLANT.

APPELLATE CASE NO. 2022-000425

INITIAL BRIEF OF APPELLANT

Jason T. Yonge (SC Bar No. 102869)
Benjamin A. Stitely (SC Bar No. 75339)
Anna W. Yonge (SC Bar No. 102407)
Williams, Stitely & Brink, PC
200 E. Main St.
Lexington, SC 29072
(803) 359-9000
jyonge@wsblegal.com
bstitely@wsblegal.com
ayonge@wsblegal.com

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

United States Supreme Court Cases:

Other Federal Cases:

Other Authorities:

STATEMENT OF ISSUE ON APPEAL

Did the Trial Court err by denying Shivers' motion to suppress evidence gathered by law enforcement after Deputy Hale entered Shivers' fenced backyard without a warrant or an objectively reasonable basis for believing someone inside the home required emergency assistance?

STATEMENT OF THE CASE

This is an appeal from Appellant Vincent Shivers' convictions for murder and possession of a weapon during commission of a violent crime. (March 29 Tr. pp. 274-275). Shivers was arrested on September 5, 2019. (March 21-25 Tr. pp. 273-274). On March 21, 2022, the State called this case for trial. (March 21-25 Tr. p. 14, lines 1-12). Shivers made two pretrial motions to suppress evidence. (Defendant's Motion to Suppress Search of Home and Vehicle; Defendant's Motion to Suppress Statements). The first motion was to suppress evidence obtained from the search of his residence and the vehicle found at his home, which the trial court denied. (March 21-25 Tr. pp. 68-172, 410-412). The second motion was to suppress statements made to Canadian law enforcement, which the trial court also denied. (March 21-25 Tr. pp. 185-353, 366-412).

Following a jury trial, Shivers was convicted of murder and possession of a weapon during the commission of a violent crime. (March 29 Tr. pp. 274-275). He was sentenced to seventy-five years and five years respectively, to be served concurrently. (March 29 Tr. p. 296, lines 1-5). Thereafter, Shivers timely served and filed a notice of appeal.

STATEMENT OF FACTS

On September 3, 2019, at approximately 11:07 a.m., Lexington County Sheriff's Department Deputy Joshua Hale received a call for service requesting a welfare check on Vincent Shivers. (March 21-25 Tr. p. 113-114). The welfare check was requested by Mr. Smith, the general manager of the Camping World location where Shivers was employed as a finance manager. (March 21-25 Tr. p. 70, lines 13-15; March 21-25 Tr. pp. 114-117).

After he received the call for service, Deputy Hale spoke with Mr. Smith on the phone. (March 21-25 Tr. pp. 140-141, lines 24-1). Based on that conversation, Deputy Hale knew the following information when he arrived at Shivers' home for the welfare check:

a. Shivers lived at the home with his girlfriend, Roselyn Cedeno. (March 21-25 Tr. p. 116, lines 1-8).

b. Mr. Smith believed that Ms. Cedeno did not have a job. (March 21-25 Tr. p. 116, lines 6-9).

c. Shivers did not show up for work on Monday, September 2, 2019. (March 21-25 Tr. p. 116, lines 18-21).

d. Shivers also had not shown up for work that morning, Tuesday, September 3, 2019. (March 21-25 Tr. p. 116, lines 18-21).

e. It was unusual for Shivers to miss work. (March 21-25 Tr. p. 117, lines 1-11).

f. Mr. Smith had attempted to contact Shivers by telephone and text message. (March 21-25 Tr. p. 116, lines 9-17).

g. Mr. Smith had already sent another employee to Shivers' home, but that employee did not have contact with anyone. (March 21-25 Tr. p. 141, lines 1-10).

Deputy Hale arrived at Shivers' home at 11:31 a.m. (March 21-25 Tr. p. 118, lines 17-20). He walked down the driveway to the front door. (March 21-25 Tr. p. 118-119). There was a blue Honda Accord in the driveway. (March 21-25 Tr. p. 117, lines 20-22). When he knocked on the door and rang the doorbell, no one answered. (March 21-25 Tr. p. 119, lines 4-12). However,

he could hear a dog barking and moving around inside the house near the front door. (March 21-25 Tr. p. 119, lines 4-23).

After he did not receive a response at the front door, Deputy Hale went to the mailbox to see if there were any deliveries. (March 21-25 Tr. pp. 118-120). He found "the usual mail such as bills in envelopes" and a package addressed to Roselyn Cedeno, which listed her phone number. (March 21-25 Tr. p. 120, lines 5-18). Deputy Hale attempted to call the phone number listed on the package multiple times, but there was no answer. (March 21-25 Tr. p. 120, lines 16-18). Deputy Hale also called Mr. Smith again and determined that Shivers typically drove a Ford F-150 pickup truck. (March 21-25 Tr. p. 141-142).

Deputy Hale returned to the front of the home and knocked on the front door and garage while announcing himself as a deputy with the sheriff's department. (March 21-25 Tr. p. 121, lines 3-12). He did not see Shivers' vehicle in the driveway or the garage, (March 21-25 Tr. p. 142, lines 13-20), nor did he have any indication that someone was inside the home, (March 21-25 Tr. p. 123-124, lines 23-1).

Deputy Hale then returned to his patrol car and checked social media to see if either Shivers or Roselynn Cedeno had accounts. (March 21-25 Tr. p. 121, lines 13-21). However, he was not able to find any such accounts. (March 21-25 Tr. p. 121, lines 13-21). He also ran the license plate on the blue Honda Accord in the driveway, which came back to Roselynn Cedeno. (March 21-25 Tr. p. 122, lines 3-11).

After checking social media and running the license plate, Deputy Hale again walked back down the driveway to the house. (March 21-25 Tr. p. 121-122). When he approached the blue Honda Accord, he touched the hood of the car to get an indication if it had been recently

driven. (March 21-25 Tr. pp. 122-123, lines 22-1). Because the hood was a "neutral heat," he determined the vehicle likely had not been driven recently. (March 21-25 Tr. p. 123, lines 1-5).

At 11:57 a.m., about 26 minutes after he first arrived at Shivers' home, Deputy Hale decided to check the backyard. (March 21-25 Tr. pp. 149-150). The backyard was not visible from the front of the home because it was enclosed by a wooden privacy fence, which was five to six feet tall. (March 21-25 Tr. pp. 148-149). Deputy Hale could not see anything by looking over or through the fence, (March 21-25 Tr. p. 148-149), and the gates were shut, (March 21-25 Tr. p. 147, lines 7-17).

Deputy Hale opened the fence gate and entered the backyard. (March 21-25 Tr. p. 146-147). He did not see any vehicles or people in the backyard, but he continued to search the area. (March 21-25 Tr. pp. 124-125, lines 22-2). The back of the home had a ground floor and a large deck that went up to the second floor. (March 21-25 Tr. pp. 125-126).

When he approached the bottom floor of the home, he observed a room with lights on. (March 21-25 Tr. p. 125, lines 3-6). Looking through the window, Deputy Hale saw a loose dog in the room and "a cell phone on the vanity where a lot of make-up was placed." (March 21-25 Tr. p. 125, lines 10-14). However, he did not see anyone inside the room. (March 21-25 Tr. p. 125, lines 7-9).

After seeing no one in the backyard or bottom floor of the home, Deputy Hale walked up the deck stairs to the second floor. (March 21-25 Tr. p. 126, lines 1-9). When he got to the second floor, he walked through an open gate onto the top patio. (March 21-25 Tr. p. 126, lines 1-9). The top patio led straight to a bedroom. (March 21-25 Tr. p. 126, lines 1-9). In plain view, through the bedroom window, Deputy Hale saw "what appeared to be a deceased person that was covered in bedsheets." (March 21-25 Tr. p. 126, lines 1-9).

Upon seeing the body on the floor, Deputy Hale knocked on the window, shined his flashlight through the window, and announced himself as a sheriff's deputy. (March 21-25 Tr. p. 127, lines 1-4). When he did not receive a response, he entered the bedroom through an unlocked door. (March 21-25 Tr. p. 127).

Deputy Hale walked toward the body, announced himself as a sheriff's deputy again, and tapped the body to ensure the person was not alive and in need of medical care. (March 21-25 Tr. p. 128, lines 1-12). He then looked under the sheet and determined that it was a female. (March 21-25 Tr. p. 128, lines 13-18). He also saw "several empty shell casings from a pistol on the left side of the body." (March 21-25 Tr. p. 127, lines 13-15).

After calling for backup, Deputy Hale performed a protective sweep of the home. (March 21-25 Tr. p. 131, lines 2-17). Once backup and first responders arrived, and the scene was secured, a search warrant for the home was obtained. (March 21-25 Tr. pp. 1084-1085).

Officers also entered Shivers and his Ford F-150 into NCIC as missing, (March 21-25 Tr. p. 1098, lines 15-20), obtained a search warrant for his cell phone, (March 21-25 Tr. p. 631, lines 12-22), and obtained his American Express records, (March 21-25 Tr. p. 632, lines 14-20). Through those sources, officers determined that Shivers had crossed into Canada in his Ford F-150, (March 21-25 Tr. pp. 634-637), and purchased an airline ticket to London, (March 21-25 Tr. pp. 642-643). Based on that information and the evidence collected from the home, officers obtained an arrest warrant for Shivers. (March 21-25 Tr. pp. 643-644, lines 13-1).

Shivers was subsequently detained by Canadian authorities at the Pearson International Airport in Toronto, Canada, on a Canadian "immigration warrant." (March 21-25 Tr. pp. 985-991). While he was being transported from the airport to the transport vehicle, Shivers made two statements to Canadian authorities. First, Shivers provided the location of his F-150 in the

parking garage. (March 21-25 Tr. p. 994, lines 9-19). Second, Shivers told the Canadian authorities that there were two guns in the truck and he was "going to eat one in Niagara falls for what [he'd] done." (March 21-25 Tr. p. 997, lines 15-20).

Suppression Hearing

Shivers made two pretrial suppression motions. First, Shivers made a motion to suppress all evidence seized from the search of his home. (Defendant's Motion to Suppress Search of Home and Vehicle; March 21-25 Tr. pp. 68-172). Shivers' counsel argued that the evidence should be suppressed because Deputy Hale exceeded the scope of a welfare check by entering the backyard through a closed fence gate. (March 21-25 Tr. pp. 157-158, 165-168, 171-172). His counsel also argued that law enforcement exceeded the scope of the search warrant by conducting an unreasonably long six-day search of Shivers' residence. (March 21-25 Tr. pp. 157-158, 165-168, 171-172).

Second, Shivers made a motion to suppress the statements he made to Canadian authorities. (Defendant's Motion to Suppress Statements; March 21-25 Tr. pp. 185-353). Shivers' counsel argued that Shivers should have been read his Miranda Rights when he was detained by Canadian authorities, because authorities from the United States and Canada were engaged in a joint venture when Shivers was detained. (March 21-25 Tr. pp. 350-353, 400-408).

The Trial Court ultimately denied both suppression motions. (March 21-25 Tr. pp. 410-412). Regarding the evidence seized from Shivers' home, the Trial Court found that "the officer in this case was operating under the community caretaking doctrine. . . . I think . . . when you go to check on somebody, you're going to walk around their house." (March 21-25 Tr. pp. 411-412). The court further clarified that "I'm going to find that entry. And it's a warrantless entry. It's under the exigency exception allowable." (March 21-25 Tr. pp. 412, lines 13-15). Regarding

Shivers' statements to Canadian authorities, the Trial Court found that Shivers was in custody when the statements were made, but there was no joint venture between the United States and Canada and Shivers made the statements voluntarily. (March 21-25 Tr. pp. 410-411).

Trial

The evidence gathered from the search of Shivers home and his subsequent statements to Canadian authorities were admitted into evidence at trial. (Clerk of Court's Exhibit List; March 21-25 Tr. pp. 994-997).

STANDARD OF REVIEW

"[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means [the appellate court] reviews[s] the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to *de novo* review." State v. Frasier, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022).

ARGUMENT

The Trial Court erred by denying Shivers' motion to suppress evidence gathered by law enforcement after Deputy Hale entered Shivers' fenced backyard without a warrant or an objectively reasonable basis for believing someone inside the home required emergency assistance.

Vincent Shivers' convictions for murder and possession of a weapon during the commission of a violent crime were based entirely on evidence gathered by law enforcement after Deputy Hale opened the fence gate and entered Shivers' backyard. Therefore, if this Court determines that the trial court erred in denying Shivers' motion to suppress evidence seized from inside his home, both convictions should be reversed.

When Deputy Hale walked onto Shivers' front porch and knocked on the front door, he physically entered the curtilage of Shivers' home. See State v. Bash, 419 S.C. 263, 268, 797 S.E.2d 721, 724 (2017) ("The curtilage of a home is 'the land immediately surrounding and associated with the home'"); Florida v. Jardines, 569 U.S. 1, 8 (2013) ("The front porch is the classic exemplar of an area adjacent to the home and to which the 'activity of the home life extends.'").

Because Shivers' backyard was adjacent to the home and surrounded by a privacy fence, it was also part of the curtilage of his home. See United States v. Dunn, 480 U.S. 294, 301 (1987) ("[C]urtilage questions should be resolved with particular reference to four factors: the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.").

"The curtilage of a home is . . . 'part of the home itself for Fourth Amendment purposes.'" Bash, 419 S.C. at 268, 797 S.E.2d at 724 (quoting Oliver v. United States, 466 U.S. 170, 180 (1984)). The Fourth Amendment provides that the "right of the people to be secure in

their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. The essence of the Fourth Amendment is to protect a person's right to be free from unreasonable government intrusions in his or her own home. See Kyllo v. United States, 533 U.S. 27, 31 (2001).

"When the Government obtains information by physically intruding [a home], a search within the original meaning of the Fourth Amendment has undoubtedly occurred." Jardines, 569 U.S. at 5. Searches conducted without a warrant "are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967).

Here, Deputy Hale approached Shivers' home to perform a welfare check. Shivers did not give Deputy Hale permission to be there, and Deputy Hale did not have a search warrant. As such, the scope of Deputy Hale's search was explicitly limited to those areas of Shivers' home where a private citizen would have an implicit license to go, unless an exception to the warrant requirement applied. Jardines, 569 U.S. at 7 ("[A]n officer's leave to gather information is sharply circumscribed when he steps off [public] thoroughfares and enters the Fourth Amendment's protected areas."); Id., 569 U.S. at 8 ("Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is no more than any private citizen might do.) (internal quotation marks omitted).

Although Deputy Hale certainly had an implicit license to conduct a welfare check by knocking on the front door and looking around the front of Shivers' home for signs that someone was inside, he exceeded the scope of that implicit license by opening the fence gate and entering the backyard. Furthermore, the emergency aid exception to the warrant requirement did not apply when Deputy Hale entered Shivers' backyard, because Deputy Hale had no indication that

anyone was even inside the home, let alone in need of emergency assistance. Therefore, Deputy Hale's warrantless search of Shivers' backyard was unconstitutional under the Fourth Amendment, and all evidence seized following that search should have been suppressed at trial.

I. Deputy Hale exceeded the scope of his implied license to perform a welfare check at Shivers' home when he entered the backyard through a closed privacy fence gate after a 26-minute investigation at the front of the home indicated that no one was inside.

When Deputy Hale walked down the driveway to the area immediately surrounding Shivers' home, he physically entered a constitutionally protected area. Jardines, 569 U.S. at 8. Because he did not have a warrant, or reason to believe a crime had been committed, it was only proper for Deputy Hale to enter that area if society recognized an implied license to do so. Id. ("A license may be implied from the habits of the country.") (quoting McKee v. Gratz, 260 U.S. 127, 136 (1922) (Holmes, J.)). "The scope of a license—express or implied—is limited not only to a particular area but also to a specific purpose." Id. at 9. Thus, the scope of Deputy Hale's implied license to investigate the curtilage of Shivers' home must be determined by both the purpose of his visit and the specific areas of Shivers' home that were searched.

The purpose of Deputy Hale's visit to Shivers' home was to perform a welfare check. A "'welfare check' is conducted by law enforcement based upon concern for a person's welfare, not to inquire about illegal activity at the residence." State v. Counts, 413 S.C. 153, 776 S.E.2d 59, n.7 (2015). However, officers do not have carte blanche to search all areas of a home simply because a welfare check is not a criminal investigative technique. See id. Rather, "[i]n the instance of a 'welfare check,' the implicit license to approach a home as referenced in Florida v. Jardines . . . is applicable." Id.

Deputy Hale performed the welfare check by searching two areas of Shivers' home: the front of the home (including the front porch and garage areas) and the backyard (including the back porch).

Deputy Hale had an implied license, under the Fourth Amendment, to knock on Shivers' front door to perform a welfare check. The Supreme Court of the United States has "recognized that the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds." Jardines, 569 U.S. at 8 (internal quotation marks omitted). "This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." Id. Based on this rationale, an officer "not armed with a warrant may approach a home and knock, precisely because that is 'no more than any private citizen might do.'" Id. (quoting Kentucky v. King, 563 U.S. 452, 470 (2011)); but see Counts, 413 S.C. at 174, 776 S.E.2d at 71 (holding that the South Carolina Constitution's heightened privacy protections require officers to have "reasonable suspicion of illegal activity before approaching the targeted residence and conducting a 'knock and talk.'").

After he arrived at Shivers' home, Deputy Hale knocked on the front door and rang the doorbell. Although he could hear a dog barking inside, no one answered. He then attempted to call Shivers and Roselyn Cedeno's phones, without a response; determined that Cedeno's car in the driveway had not been recently driven based on the "neutral heat" from the hood; knocked on front door again; knocked on the garage while announcing himself as a deputy sheriff; and established that Shivers' truck was not in the driveway or garage.

After Deputy Hale spent 26 minutes in front of the home, without any indication someone was inside, the welfare check should have ended. Instead, he opened the fence gate on the side of Shivers' home and entered the backyard.

Unlike a "knocker on the front door," the gate on a five or six-foot-tall wooden privacy fence is not "an invitation or license to attempt an entry." Quite the opposite. It is a clear indication that the homeowner does not want people to enter the backyard. A homeowner does not have an obligation to open the front door when someone knocks, regardless of "whether the person who knocks . . . is a police officer or a private citizen." King, 563 U.S. at 469-70. In fact, at "[t]he 'very core' of [the Fourth Amendment] is 'the right of a man to retreat into his own home and there be free from unreasonable government intrusion.'" Caniglia v. Strom, 141 S.Ct. 1596, 1599 (2021) (quoting Jardines, 569 U.S. at 6). This right to be left alone inside your home would be meaningless if everyone from Girl Scouts and trick-or-treaters to neighbors and the police had an implied license to invade your fenced backyard if you did not answer the front door. See Jardines, 569 U.S. at 8 (""Complying with the terms of that traditional invitation [to approach the front door] does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters.").

Because he entered the fenced backyard, Deputy Hale exceeded the scope of his implied license to perform a welfare check at Shivers' home. Therefore, unless an exception to the warrant requirement applied at the moment Deputy Hale opened the fence gate, Deputy Hale's search of Shivers' backyard violated the Fourth Amendment, and all evidence seized as a result should have been suppressed.

II. The emergency aid exception to the Fourth Amendment's warrant requirement did not apply when Deputy Hale entered Shivers' backyard.

In denying Shivers' motion to suppress, the Trial Court found that Deputy Hale "was operating under the Community Caretaking Doctrine," (March 21-25 Tr. p. 411, lines 23-25), and that the search of Shivers' home was allowable "under the exigency exception," (March 21-25 Tr. p. 412, lines 13-15).

Community Caretaking Doctrine v. Emergency Aid Exception

Although both the community caretaking and emergency aid exceptions to Fourth Amendment's warrant requirement "overlap conceptually . . . the two exceptions are not the same." Hunsberger v. Wood, 570 F.3d 546, 554 (4th Cir. 2009). The community caretaking exception applies only to police activities that are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Cady v. Dombrowski, 413 U.S. 433, 441 (1973). On the other hand, the emergency aid exception allows officers to "enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." Michigan v. Fisher, 558 U.S. 45, 47 (2009) (internal quotation marks omitted).

Furthermore, "[t]he doctrines have different 'intellectual underpinning[s]." Hunsberger, 570 F.3d at 554. "The community caretaking doctrine requires a court to look at the *function* performed by a police officer, while the emergency exception requires an analysis of the *circumstances* to determine whether an emergency requiring immediate action exists." Id. (emphasis in original).

Importantly, the Supreme Court of the United States has only ever applied the community caretaking exception to searches of vehicles, and has "repeatedly declined to expand the scope of . . . exceptions to the warrant requirement to permit warrantless entry into the home." Caniglia v.

Strom, 141 S.Ct. 1596, 1600 (2021) (internal quotation marks omitted). Therefore, because this search occurred at Shivers' home, the Trial Court should have analyzed Deputy Hale's search of the backyard under the emergency aid exception only, not the community caretaking doctrine.

Emergency Aid Exception

When Deputy Hale opened the fence gate and entered Shivers' backyard, he did not have "'an objectively reasonable basis for believing'" that an emergency was occurring inside or that an occupant was "in need of immediate aid." See Fisher, 558 U.S. at 47 (quoting Mincey v. Arizona, 437 U.S. 385, 392 (1978)). Unlike other cases where courts have held that the emergency aid exception applied, Deputy Hale had no indication that anyone was inside the home after his 26-minute investigation at the front of the home. See, e.g., Brigham City v. Stuart, 547 U.S. 398, 401 (2006) (Officers, while investigating a tip about a loud house party, entered the backyard of a home after hearing shouting from inside); Fisher, 558 U.S. at 45-46 (Officers, while responding to a complaint of a disturbance, "found a house in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside. The officers also noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house."); Hunsberger, 570 F.3d at (After receiving a complaint about possible vandalism and burglary at a house, officers observed, among other things, someone enter the house through the garage and lights turning on and off at the house.).

When Deputy Hale arrived at Shivers' home, he did not find a house in chaos or hear shouting from inside. Although what he ultimately discovered while he was on the back porch was terrible, what he encountered during his 26 minutes at the front of the home was no different than what you would expect to encounter at any home when the residents are away. He found a

quiet home, with one of two vehicles in the driveway, and a dog barking at the door when someone knocked.

At most, Deputy Hale may have had a slight suspicion that someone may be inside the home. But a slight suspicion is not sufficient to justify a warrantless entry into Shivers' backyard based on the emergency aid exception. Hunsberger, 570 F.3d at 555 ("It is true that police officers need more than a slight suspicion that property is being harmed to justify a warrantless entry. For example, an open door alone does not create a reasonable belief that a burglary is taking place."). Therefore, the emergency aid exception did not apply when Deputy Hale entered Shivers' backyard.

III. The exclusionary rule applies to all evidence flowing from Deputy Hale's unconstitutional entry into Shivers' backyard, and the record on appeal does not support the conclusion that this evidence would have been inevitably discovered by lawful means.

All the evidence in this case, including the evidence seized from Shivers' home and the statements he made to Canadian authorities, flowed from Deputy Hale's unconstitutional entry into Shivers' backyard. If Deputy Hale had not entered Shivers' backyard, law enforcement would not have had the requisite probable cause to get a search warrant for his home or the cell phone data that was introduced at trial; nor would law enforcement have discovered that Shivers was in Canada, where his statements to Canadian authorities were made.

The exclusionary rule prohibits the use of evidence obtained through an unlawful search and/or seizure. See Nix v. Williams, 467 U.S. 431, 441 (1984) ("[T]he exclusionary rule applies not only to the illegally obtained evidence itself, but also to other incriminating evidence derived from the primary evidence."); State v. Copeland, 321 S.C. 318, 232, 468 S.E.2d 620, 624 (1996) ("The 'fruit of the poisonous tree' doctrine provides that evidence must be excluded if it would

not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality.").

However, while "cases implementing the exclusionary rule 'begin with the premise that the challenged evidence is in some sense the product of illegal governmental activity . . . this does not end the inquiry'" Nix, 467 U.S. at 444 (quoting United States v. Crews, 445 U.S. 463, 471 (1980). Rather, "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . the evidence should be received." Id.

Here, because the Trial Court improperly ruled that Deputy Hale's entry into Shivers' backyard was constitutional, the issue of inevitable discovery was never raised and ruled upon by the Trial Court. While an appellate court may affirm a lower court's ruling on additional sustaining grounds, those additional sustaining grounds must be supported by the record on appeal. See I'On v. Town of Mt. Pleasant, 338 S.C. 406, 419-20, 526 S.E.2d 716, 723-24 (2000). Considering the volume of evidence flowing from Deputy Hale's unconstitutional search of Shivers' backyard, the record here does not support the conclusion that each piece of evidence would have inevitably been discovered by lawful means.

Therefore, this Court should remand this matter to the Circuit Court with instructions that it suppress all evidence that was the product of Deputy Hale's unconstitutional search of Shivers' backyard, unless the State proves by a preponderance of the evidence that the inevitable discovery doctrine applies.

CONCLUSION

For the reasons stated above, this Court should reverse Shivers' convictions for murder and possession of a weapon during the commission of a violent crime and remand this matter for a new trial with instructions that the Trial Court suppress all evidence gathered following Deputy Hale's unconstitutional entry into Shivers' backyard, unless the State can establish by a preponderance of the evidence that the evidence would have been inevitably discovered.

Respectfully Submitted:

s/Jason T. Yonge_____
Jason T. Yonge (SC Bar No. 102869)
Williams, Stitely & Brink, PC
200 E. Main St.
Lexington, SC 29072
(803) 359-9000
jyonge@wsblegal.com

March 6, 2023

Attorney for Appellant

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THE STATE,

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PROOF OF SERVICE

I, Jason T. Yonge, certify that I served the Initial Brief of Appellant and Designation of Matter on the following individuals pursuant to Rule 262, SCACR, and S.C. Sup. Ct. Order 2021-08-25-02:

Melody Brown, Esquire
Office of the Attorney General
mbrown@scag.gov

Alan McCrory Wilson, Esquire
Office of the Attorney General
awilson@scag.gov

I further certify that all parties required by Rule to be served have been served.

s/Jason T. Yonge
Jason T. Yonge (SC Bar No. 102869)
Williams, Stitely & Brink, PC
200 E. Main St.
Lexington, SC 29072
(803) 359-9000
jyonge@wsblegal.com

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Attorney for Appellant