

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Thomas A. Russo, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT/PETITIONER,

V.

ROGER BRUCE,

PETITIONER/RESPONDENT

APPELLATE CASE NO. 2013-001208

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. The Court of Appeals was correct in determining 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.
- II. The record below shows that (A) Petitioner did not give his consent for the police to take the keys out of his residence; (B) Petitioner had a reasonable expectation of privacy in the keys that were in his house; and (C) Petitioner did not give his consent to search the car.

STATEMENT OF THE CASE

Petitioner was convicted of murder after a jury trial held before the Honorable Thomas A. Russo on August 8, 2011, in Florence County. A life sentence was imposed. Jack W. Lawson, Esquire, was trial counsel. E.L. Clements, III, Esquire, was the solicitor.

Petitioner appealed his conviction and filed his final brief on May 23, 2012. Respondent filed his final brief on June 12, 2012. Oral argument was heard by the Court of Appeals on January 9, 2013. The court filed an opinion on April 3, 2013, remanding the case to the lower court to make additional findings. Both petitioner and respondent filed petitions for rehearing. The petitions for rehearing were denied on May 6, 2013. Petitioner filed a petition for writ of certiorari on June 4, 2013. Respondent filed a petition for writ of certiorari on June 5, 2013.

This return follows.

ARGUMENT I

The Court of Appeals was correct in determining 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.

Respondent writes that “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.” (Petition p. 10). There is no factual basis for this assumption. It is just speculation. As the court in Nix v. Williams wrote, the “inevitable discovery involves no speculative elements, but focuses on demonstrated historical facts capable of ready verification or impeachment.” 467 U.S. at 444 n.5, 104 S.Ct. at 2501. And in United State v. Thomas, 955 F.2d 207, 209 (4th Cir. 1992), the court criticized the government for relying on a “string of conjecture.” As petitioner noted in his final brief:

The solicitor then tried to argue that previously Cpl. Hobgood had testified that appellant went for the keys to show them which key to open the trunk with before the police used the trunk release button. (ROA p. 121, line 22 – p. 122, line 11). Contrary to the solicitor’s assertion, a review of Cpl. Hobgood’s testimony from the day before does not show that appellant went for the keys to show them how to open the trunk. (ROA p. 33, line 7 – p. 38, line 2). Later in the trial, Cpl. Hobgood did testify that appellant tried to grab the keys and Hobgood did not know what appellant’s intentions were so he pulled the keys back. (ROA p. 144, line 10 – p. 181, line 18).

Hence, the Court of Appeals was correct in finding that 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.

ARGUMENT II

The record below shows that (A) Petitioner did not give his consent for the police to take the keys out of his residence; (B) Petitioner had a reasonable expectation of privacy in the keys that were in his house; and (C) Petitioner did not give his consent to search the car.

A.

Petitioner did not give his consent to the police to take the keys out of his residence. Officer Beckett testified that they were doing a welfare check on the victim. He said, “we just asked him if we could come in and take a quick look and make sure that she wasn’t inside, and he gave us permission to come in and take a look.” (ROA p. 117, lines 8 – 16). The police were not given consent to take the car keys and they took the keys without a search warrant.

B.

Petitioner had a reasonable expectation of privacy in the keys that were in his residence. “A reasonable expectation of privacy exists in property being searched when the defendant has a relationship with the property or property owner.” State v. Robinson, 396 S.C. 577, 722 S.E.2d 820 (Ct. App. 2012); State v. Flowers, 360 S.C. 1, 598 S.E.2d 725 (2004).

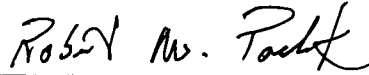
C.

Petitioner did not give consent to search the car. As noted in Argument I, petitioner did not by words or actions give the police consent to search the car. They took the keys to the car from petitioner’s residence without permission and they opened the trunk of the car without permission with the keys they took from the residence.

CONCLUSION

Respondent/Petitioner's writ should be denied.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER/RESPONDENT.

This 3rd day of July, 2013

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THE STATE,

RESPONDENT/PETITIONER,

V.

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APPELLATE CASE NO. 2013-001208

CERTIFICATE OF SERVICE

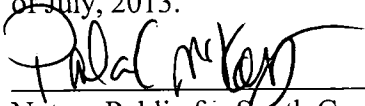
I certify that a true copy of the return to petition for writ of certiorari in this case have been served on Brendan J. McDonald, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of July, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER/RESPONDENT

SWORN TO BEFORE ME this 3rd day
of July, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022