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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County

Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VINCENT SHIVERS,

PETITIONER.

Op. No. 2025-UP-042

APPELLATE CASE NO. 2022-000425

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that a Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals.

QUESTION PRESENTED

Did the Court of Appeals err by affirming the trial court's decision to deny Petitioner's motion to suppress evidence gathered by law enforcement after Deputy Hale entered Shivers'ss 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 Petitioner Vincent Shivers's convictions for murder and possession of a weapon during the commission of a violent crime. (R. pp. 1484-1485). Shivers was arrested on September 5, 2019. (R. pp. 224-225). On March 21, 2022, the State called this case for trial. (R. p. 14, lines 1-12). Shivers made two pretrial motions to suppress evidence. (R. pp. 1531-1566). 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. (R. pp. 19-123, 349-351). The second motion was to suppress statements made to Canadian law enforcement, which the trial court also denied. (R. pp. 136-351).

Following a jury trial, Shivers was convicted of murder and possession of a weapon during the commission of a violent crime. (R. pp. 1484-1485). He was sentenced to seventy-five years and five years respectively, to be served concurrently. (R. p. 1506, lines 1-5). Thereafter, Shivers timely served and filed a notice of appeal.

On February 5, 2025, the Court of Appeals issued an unpublished opinion affirming Shivers's convictions. State v. Shivers, Op. No. 2025-UP-042 (S.C. Ct. App. filed February 5, 2025). Shivers filed a petition for rehearing on February 19, 2025. The Court of Appeals issued an Order denying the petition for rehearing March 12, 2025.

This Petition for Writ of Certiorari to the Court of Appeals follows.

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. (R. pp. 64-65). The welfare check was requested by Mr. Smith, the general manager of the Camping World location where Shivers was employed as a finance manager. (R. p. 21, lines 13-15; R. pp. 65-68).

After he received the call for service, Deputy Hale spoke with Mr. Smith on the phone. (R. pp. 91-92, lines 24-1). Based on that conversation, Deputy Hale knew the following information when he arrived at Shivers's home for the welfare check:

a. Shivers lived at the home with his girlfriend, Roselynn Cedeno. (R. p. 67, lines 1-8).

b. Mr. Smith believed that Ms. Cedeno did not have a job. (R. p. 67, lines 6-9).

c. Shivers did not show up for work on Monday, September 2, 2019. (R. p. 67, lines 18-21).

d. Shivers also had not shown up for work that morning, Tuesday, September 3, 2019. (R. p. 67, lines 18-21).

e. It was unusual for Shivers to miss work. (R. p. 68, lines 1-11).

f. Mr. Smith had attempted to contact Shivers by telephone and text message. (R. p. 67, lines 9-17).

g. Mr. Smith had already sent another employee to Shivers's home, but that employee did not have contact with anyone. (R. p. 92, lines 1-10).

Deputy Hale arrived at Shivers's home at 11:31 a.m. (R. p. 69, lines 17-20). He walked down the driveway to the front door. (R. p. 69-70). There was a blue Honda Accord in the driveway. (R. p. 68, lines 20-22). When he knocked on the door and rang the doorbell, no one

answered. (R. p. 70, lines 4-12). However, he could hear a dog barking and moving around inside the house near the front door. (R. p. 70, 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. (R. pp. 69-71). He found "the usual mail such as bills in envelopes" and a package addressed to Roselyn Cedeno, which listed her phone number. (R. p. 71, lines 5-18). Deputy Hale attempted to call the phone number listed on the package multiple times, but there was no answer. (R. p. 71, lines 16-18). Deputy Hale also called Mr. Smith again and determined that Shivers typically drove a Ford F-150 pickup truck. (R. p. 92-93).

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. (R. p. 72, lines 3-12). He did not see Shivers's vehicle in the driveway or the garage, (R. p. 93, lines 13-20), nor did he have any indication that someone was inside the home, (R. p. 74-75, 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. (R. p. 72, lines 13-21). However, he was not able to find any such accounts. (R. p. 72, lines 13-21). He also ran the license plate on the blue Honda Accord in the driveway, which came back to Roselynn Cedeno. (R. p. 73, lines 3-11).

After checking social media and running the license plate, Deputy Hale again walked back down the driveway to the house. (R. p. 72-73). When he approached the blue Honda Accord, he touched the hood of the car to get an indication if it had been recently driven. (R. pp. 73-74, lines 22-1). Because the hood was a "neutral heat," he determined the vehicle likely had not been driven recently. (R. p. 74, lines 1-5).

At 11:57 a.m., about 26 minutes after he first arrived at Shivers's home, Deputy Hale decided to check the backyard. (R. pp. 100-101). 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. (R. pp. 99-100). Deputy Hale could not see anything by looking over or through the fence, (R. p. 99-100), and the gates were shut, (R. p. 98, lines 7-17).

Deputy Hale opened the fence gate and entered the backyard. (R. p. 97-98). He did not see any vehicles or people in the backyard, but he continued to search the area. (R. pp. 75-76, lines 22-2). The back of the home had a ground floor and a large deck that went up to the second floor. (R. pp. 76-77).

When he approached the bottom floor of the home, he observed a room with lights on. (R. p. 76, 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." (R. p. 76, lines 10-14). However, he did not see anyone inside the room. (R. p. 76, 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. (R. p. 77, lines 1-9). When he got to the second floor, he walked through an open gate onto the top patio. (R. p. 77, lines 1-9). The top patio led straight to a bedroom. (R. p. 77, 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." (R. p. 77, 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. (R. p. 78, lines 1-4). When he did not receive a response, he entered the bedroom through an unlocked door. (R. p. 78).

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. (R. p. 79, lines 1-12). He then looked under the sheet and determined that it was a female. (R. p. 79, lines 13-18).

He also saw "several empty shell casings from a pistol on the left side of the body." (R. p. 78, lines 13-15).

After calling for backup, Deputy Hale performed a protective sweep of the home. (R. p. 82, lines 2-17). Once backup and first responders arrived, and the scene was secured, a search warrant for the home was obtained. (R. pp. 1016-1017).

Officers also entered Shivers and his Ford F-150 into NCIC as missing, (R. p. 1030, lines 15-20), obtained a search warrant for his cell phone, (R. p. 563, lines 12-22), and obtained his American Express records, (R. p. 564, lines 14-20). Through those sources, officers determined that Shivers had crossed into Canada in his Ford F-150, (R. pp. 566-569), and purchased an airline ticket to London, (R. pp. 574-575). Based on that information and the evidence collected from the home, officers obtained an arrest warrant for Shivers. (R. pp. 575-576, lines 13-1).

Shivers was subsequently detained by Canadian authorities at the Pearson International Airport in Toronto, Canada, on a Canadian "immigration warrant." (R. pp. 917-923). 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. (R. p. 926, 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." (R. p. 929, 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. (R. 19-123, 1531-1548). Shivers's 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. (R. pp. 108-109, 116-119, 122-123). His

counsel also argued that law enforcement exceeded the scope of the search warrant by conducting an unreasonably long six-day search of Shivers's residence. (R. pp. 108-109, 116-119, 122-123).

Second, Shivers made a motion to suppress the statements he made to Canadian authorities. (R. pp. 136-304, 1549-1566). Shivers's 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. (R. pp. 301-304, 339-347).

The trial court ultimately denied both suppression motions. (R. pp. 349-351). Regarding the evidence seized from Shivers's 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." (R. pp. 350-351). 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." (R. pp. 351, lines 13-15). Regarding Shivers's 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. (R. pp. 349-350).

Trial

The evidence gathered from the search of Shivers home and his subsequent statements to Canadian authorities were admitted into evidence at trial. (R. pp. 926-929, 1507-1524).

ARGUMENT

The Court of Appeals erred by affirming the trial court's decision to deny Shivers's motion to suppress evidence gathered by law enforcement after Deputy Hale entered Shivers's fenced backyard without a warrant or an objectively reasonable basis for believing someone inside the home required emergency assistance.

Vincent Shivers's 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's backyard. Therefore, if this Court determines that the trial court erred in denying Shivers's motion to suppress evidence seized from inside his home, both convictions should be reversed.

In its opinion, the court of appeals "[assumed] without deciding that the protections of the Fourth Amendment are invoked when law enforcement conducts a welfare check." State v. Shivers, Op. No. 2025-UP-042 (S.C. Ct. App. filed February 5, 2025). However, it held "the trial court did not err by denying Shivers'ss motion to suppress because a preponderance of the evidence indicates law enforcement would have inevitably discovered the evidence." Id.

This Court should reverse the court of appeals and hold that the protections of the Fourth Amendment were invoked by the welfare check in this case and the record does not support the application of the inevitable discovery doctrine.

I. Deputy Hale exceeded the scope of his implied license to perform a welfare check at Shivers's 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.

The purpose of Deputy Hale's visit to Shivers's 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 are not given 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's 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's 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's 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's 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's 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's home. Furthermore, no exception to the warrant requirement applied at the moment he opened the fence gate.[1] Therefore, Deputy Hale's search of Shivers's backyard violated the Fourth Amendment, and all evidence seized as a result should have been suppressed. 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.").

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[1] Neither the community caretaking nor the emergency aid exceptions to the Fourth Amendment's warrant requirement apply here. 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 . . . to permit warrantless entry into the home." Caniglia v. Strom, 141 S.Ct. 1596, 1600 (2021) (internal quotation marks omitted). The emergency aid exception does not apply because Deputy Hale 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" after his 26-minute investigation at the front of the home. See Michigan v. Fisher, 558 U.S. 45, 47 (2009) (quoting Mincey v. Arizona, 437 U.S. 385, 392 1978)).

II. The exclusionary rule applies to all evidence flowing from Deputy Hale's unconstitutional entry into Shivers's backyard, and the record 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's home and the statements he made to Canadian authorities, flowed from Deputy Hale's unconstitutional entry into Shivers's backyard. If Deputy Hale had not entered Shivers's 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.

The court of appeals erred by holding that the inevitable discovery doctrine applied in this case.

The issue of inevitable discovery was never raised and ruled upon in this case because the trial court improperly ruled that Deputy Hale's entry into Shivers's backyard was constitutional. Although 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). Unlike State v. Cardwell, which the court of appeals cited in its opinion, the State did not prove by a preponderance of the evidence that law enforcement would have inevitably discovered the evidence in this case.

In Cardwell, a computer technician was repairing Cardwell's laptop when the local police chief stopped by to drop off packages. State v. Cardwell, 425 S.C. 595, 597, 824 S.E.2d 451, 452 (2019). While the chief was there, an image depicting a naked child in a bra went across the computer screen. Id., 425 S.C. at 597-98, 824 S.E.2d at 452. The chief asked the computer technician to click on the image, which turned out to be a video showing two naked children dancing with a naked adult. Id., 425 S.C. at 598, 824 S.E.2d at 452. The chief contacted another law enforcement agency that ultimately took possession of the laptop and opened a criminal investigation. Id.

At trial, Cardwell made a motion to suppress the video file, which was denied. Id. This Court affirmed the trial court's ruling on two grounds. First, it held that there was no Fourth Amendment violation because the plain view doctrine applied. Id., 425 S.C. at 600-01, 824 S.E.2d at 454. Second, it held that the video evidence was admissible pursuant to the inevitable discovery doctrine even if it was unlawfully obtained. Id., 425 S.C. at 601-02, 824 S.E.2d at 454. The Court reasoned that because the computer technician was statutorily required to report Cardwell to law enforcement once the police chief told him about the sexually explicit image, and the computer technician testified at trial that he was aware of this reporting requirement, the video would have

been inevitably discovered by lawful means. Id. The Court noted that "[w]hile there are Fourth Amendment concerns regarding both [the police chief's and the subsequent investigator's] search, or viewing of the video without a warrant, those concerns arise out of conduct that occurred *after* [the computer technician] became aware of the image." Id. (emphasis in original).

In this case, unlike Cardwell, none of the evidence presented at trial was lawfully discovered *before* the Fourth Amendment violation. Deputy Hale discovered Ms. Cedeno's body *after* he unconstitutionally entered the backyard without a warrant. (R. pp. 75-79). Officers then entered Shivers and his Ford F-150 into NCIC as missing, (R. p. 1030), obtained a search warrant for his cell phone, (R. p. 563), and obtained his American Express records, (R. p. 564). Through those sources, officers determined that Shivers had crossed into Canada in his Ford F-150, (R. pp. 566-569), and purchased an airline ticket to London, (R. pp. 574-575). Based on that information and the evidence collected from the home, officers obtained an arrest warrant for Shivers. (R. pp. 575-576). He was subsequently detained by Canadian authorities at the Pearson Airport in Toronto, Canada, where he made two statements to Canadian authorities. (R. pp. 917-929).

Not only was this evidence discovered after, and as a direct result of, the Fourth Amendment violation here, but there was no evidence presented at trial that some specific person would have inevitably discovered this evidence within a specific timeframe. See Nix v. Williams, 467 U.S. 431, 448-450 (1984) (The Court held that a body would have been inevitably discovered where a search party had been looking for the body before the constitutional violation and there was testimony that the search would "have taken an additional three to five hours to discover the body.").

Instead, this Court is left to speculate that someone would have inevitably discovered Ms. Cedeno's body at an unknown time in the future; that the forensic, financial, and digital evidence

subsequently obtained by law enforcement would still be available, and that Canadian authorities would still have found Shivers at the airport where he would give the same statements.

CONCLUSION

For the reasons stated above, this Court should reverse Shivers's 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's backyard, unless the State can establish by a preponderance of the evidence that the evidence would have been inevitably discovered.

Respectfully Submitted:

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