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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

Vincent Thomas Shivers,

APPELLANT.

Op. No. 2025-UP-042

APPELLATE CASE NO. 2022-000425

PETITION FOR REHEARING

On February 5, 2025, this Court issued an unpublished opinion in which it affirmed Appellant Vincent Shiver's convictions for murder and possession of a weapon during the commission of a violent crime. Pursuant to Rules 221 and 240, SCACR, Appellant respectfully submits that this Court may have overlooked or misapprehended several critical points and petitions this Court for rehearing.

In its opinion, this Court "[assumed] without deciding that the protections of the Fourth Amendment are invoked when law enforcement conducts a welfare check." However, it held "the trial court did not err by denying Shivers's motion to suppress because a preponderance of the evidence indicates law enforcement would have inevitably discovered the evidence.

I. This Court correctly assumed that the protections of the Fourth Amendment are invoked when law enforcement conducts a welfare check.

In this case, 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 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' 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. Furthermore, no exception to the warrant requirement applied at the moment he opened the fence gate.[1] Therefore, Deputy Hale's search of Shivers' 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.").

II. The record does not support the conclusion that law enforcement would have inevitably discovered the evidence in this case by lawful means.

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' 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 this Court 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.

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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)).

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. The Supreme Court of South Carolina 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, in conjunction with the arguments raised in the Final Brief of Appellant, Appellant Vincent Shivers respectfully requests that this Court rehear this matter, vacate its previous opinion, 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 Shiver's backyard, unless the State can establish by a preponderance of the evidence that the evidence would have been inevitably discovered.

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PROOF OF SERVICE

Pursuant to Rule 262, SCACR, and S.C. Sup. Ct. Order 2022-05-06-03, I certify that a copy of Appellant's Petition for Rehearing in this case has been served on the following individuals. I further certify that all parties required by Rule to be served have been served.

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