THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Doyet A. Early, III, Circuit Court Judge

Appellate Case No.2012-213596

The State.....Respondent

v.

Cleophas N. Edwards, Jr.....Defendant/Appellant

INITIAL BRIEF OF APPELLANT

AIKEN & HIGHTOWER, P.A.

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II. **DID THE TRIAL COURT ERR IN ADMITTING IN EVIDENCE CLOTHING AND SHOES THAT WERE CONTAINED IN A SUITCASE THAT WAS SEARCHED BY LAW ENFORCEMENT OUTSIDE OF THE DEFENDANT'S HOUSE WHEN LAW ENFORCEMENT DID NOT HAVE REASONABLE SUSPICION THAT THE SUITCASE CONTAINED EVIDENCE OF OR FRUITS OF A CRIME?**

III. **DID THE TRIAL COURT ERR IN ADMITTING IN EVIDENCE THE RESULTS OF THE DNA ANALYSIS OF SAMPLES FROM THE CLOTHES AND SHOES TAKEN FROM THE SUITCASE AND THE RESULTS OF THE SHOE IMPRINT COMPARISON OF THE SHOES TAKEN FROM THE SUITCASE UNDER THE "FRUIT OF THE POISONOUS TREE" DOCTRINE?**

STATEMENT OF THE CASE

This is a criminal case. On May 25, 2011, the Orangeburg County Grand Jury returned three true billed Indictments charging the Appellant, Cleophas N. Edwards (Edwards), with murder, burglary in the first degree and possession of a weapon during the commission of a violent crime. Edwards was tried for these alleged crimes in the Orangeburg County Court of General Sessions on December 10, 11, 12 and 13 of 2012. The jury found Edwards guilty on all counts, and the trial judge sentenced Edwards to life imprisonment for murder and concurrent terms of life imprisonment for burglary in the first degree and five (5) years imprisonment for possession of a weapon during the commission of a violent crime. This appeal follows.

STATEMENT OF THE FACTS

On February 3, 2011, the victim was killed in her home at 1398 Goff Avenue in Orangeburg, South Carolina. (Tran. P. 20) Members of the victim's family reported several items missing from the home including a red Acer laptop computer. (Tran. P. 20) The box that the

computer came in was located at the scene, and a serial number for the laptop computer was recorded from the box. (Tran. pp. 20-21) Deputy Ryan Harter of the Orangeburg Sheriff's Department handled getting the serial number for the stolen computer relayed to the appropriate person so that it could be recorded at the National Crime Information Center (NCIC). (Tran. pp. 20-21)

South Carolina Probation, Parole and Pardon Services (SCPPPS) Agents had a Warrant for the arrest of Edwards for a probation violation of failure to report. (Tran. p. 21) On February 16, 2011, the SCPPPS agents went to Edwards' house at 1347 Campus Drive in Orangeburg, South Carolina to arrest Edwards. (Tran. p. 21) Several Orangeburg County Sheriff's deputies including Deputy Harter assisted in the arrest of Edwards. (Tran. p. 21) Neither the SCPPPS agents nor the Orangeburg County Sheriff's deputies had a search warrant for Edwards' house. (Tran. p. 28)

When the officers entered Edward's house, they found Edwards siting on the floor with a red Acer laptop computer in his lap. (Tran. p. 22) After Edwards was secured, Deputy Harter picked up the red Acer laptop computer, flipped it over and recorded its serial number. (Tran. pp. 26-28) Deputy Harter then contacted the headquarters of the Orangeburg County Sheriff's Department to find out whether the red Acer laptop computer taken from Edwards was the computer taken from the victim's home. (Tran. p. 24) The serial numbers matched. (Tran. p. 25)

The Orangeburg County Sheriff's Department then secured a Search Warrant for Edwards' house. As the officers searched Edwards' house, two individuals showed up at the house with a suitcase that they claimed belonged to Edwards. The suitcase never crossed the threshold of Edwards' house (Tran. pp. 32-34). Law enforcement searched the suitcase and

seized it. (Tran. pp. 398-400) The suitcase contained shoes and clothing allegedly belonging to Edwards. (Tran. pp. 385-390)

Samples from the shoes and clothing from the suitcase were taken for DNA analysis. The DNA analysis showed the victim's DNA on the clothes and shoes from the suitcase. The treads on the shoes from the suitcase were compared with shoe imprints left at the crime scene. (Tran. pp. 404-424) While the SLED shoeprint analyst did not declare a match, he did testify that the shoe imprints left at the scene were made by shoes with the same tread pattern and the same wear patterns as the shoes from the suitcase. (Tran. 404-424)

Trial counsel made a Motion to Suppress the red Acer laptop computer and objected when it was offered during the trial. (Tran. pp. 8-29, 208) Trial counsel also made a Motion to Suppress the contents of the suitcase (clothing and shoes) (Tran. pp. 30-40) The trial court denied both Motions to Suppress and overruled all objections to the above evidence. (Tran. pp. 97 and 210).

ARGUMENT

I. THE TRIAL COURT ERRED IN ADMITTING THE RED ACER LAPTOP COMPUTER IN EVIDENCE WHEN THE RED ACER LAPTOP COMPUTER WAS SEARCHED WITHOUT PROBABLE CAUSE DURING A WARRANTLESS SEARCH OF EDWARDS' APARTMENT.

A. The manipulation of the laptop computer by Deputy Harter was a search under the Fourth Amendment that required probable cause.

In Arizona v. Hicks, 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed. 2d 347 (1987), the United States Supreme Court held that the slight movement of stereo equipment to reveal serial numbers during a warrantless search of an apartment constituted a search under the Fourth Amendment. Hicks, 480 U.S. at 324, 325, 107 S.Ct. at 1152-1153. The manipulation of the red laptop computer in this case likewise constitutes a search under the Fourth Amendment. In Hicks, the

Court also held that this type of search required probable cause. Hicks, 480 U.S. at 326-327, 107 S.Ct. at 1153-1154.

B. Deputy Harter did not have probable cause to search the red Acer laptop computer.

Probable cause for a search requires a fair probability that the search will yield evidence of a crime or fruits of a crime. Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L. Ed.2d 527 (1983). At the time that Deputy Harter searched the red laptop computer, Deputy Harter had before him only an item that bore a resemblance to an item that had been taken in a crime. Other than the fact that the red Acer laptop taken from Edwards at his apartment was the same color and model as the one taken from the crime scene, Deputy Harter had no fact or inference creating a probability that the search of the red Acer laptop would yield evidence of a crime.

For this Court to find that the search of the red Acer laptop was supported by probable cause, it would have to empower law enforcement to search every red Acer laptop in Orangeburg, South Carolina. This cannot be and is not the law. At the time that he searched the red Acer laptop computer, Deputy Harter did not have information rising to the level of probable cause to believe that the search of the red Acer laptop computer would yield evidence of a crime, and the trial court erred in refusing to suppress the red Acer laptop computer.

II. THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE CLOTHING AND SHOES THAT WERE CONTAINED IN A SUITCASE THAT WAS SEARCHED OUTSIDE OF EDWARDS' APARTMENT BECAUSE LAW ENFORCEMENT DID NOT HAVE REASONABLE SUSPICION THAT THE SUITCASE CONTAINED EVIDENCE OF OR FRUITS OF A CRIME.

According to S.C. Code § 24-21-430, probationers "must permit the search or seizure, without a warrant, based on reasonable suspicion, of...any of the probationer's possessions." Reasonable suspicion requires an "articulable suspicion" that the item to be searched and seized contains evidence of a crime or the fruits of a crime. Reid v Georgia, 448 U.S. 438, 440, 100

S.Ct. 2752, 65 L.Ed.2d 890 (1980). Reasonable suspicion for a search requires "a particularized and objective basis" that would lead one to believe that the search would yield evidence of or fruits of a crime. State v Khingratsaiphon, 353 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) (quoting, US v Cortez, 449 U.S. 411, 418, 101 S.Ct. 690, 66L.Ed2d 621 (1981)). "Reasonable suspicion is more than a general hunch but less than what is required for probable cause." State v Willard, 374 S.C. 129, 134, 647 S. E.2d 252, 255 (Ct. App. 2007) (citing, State v. Butler, 343 S.C. 198, 539 S.E.2d 414 (Ct. App. 2000)

The trial court must analyze the totality of the circumstances surrounding a search and seizure and not find a search and seizure unjustified based merely on a "piecemeal refutation of each individual fact and inference." State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) (quoting, US v. Branch, 537 F.3d 328, 337 (4th Cir. 2008)). "Just as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion." Taylor, 401 S.C. at 108, 736 S.E.2d at 665 (quoting, U.S. v. Mason, 628 F. 3d 123, 129 (4th Cir. 2010)).

Even in light of the totality of the circumstances prevailing, law enforcement did not have reasonable suspicion to search and seize the suitcase. Law enforcement received the suitcase from untested sources and relied on their claims that the suitcase belonged to Edwards. Indeed, the serendipitous appearance of the suitcase outside Edwards' house during the search should have given law enforcement pause. Moreover, the mere fact that law enforcement had received a suitcase allegedly belonging to Edwards could not have given them an articulable suspicion that it contained evidence of a crime or the fruits of a crime.

Granted, suitcases often contain personal effects like clothing and shoes, but clothing and shoes in general hardly qualify as evidence of or fruits of a crime. To have a particularized and

objective basis to believe that the suitcase contained shoes and clothing that were evidence of or the fruits of a crime, law enforcement had to have facts and inferences giving them an articulable reason to believe that the suitcase contained not just any clothes and shoes but instead bloody clothes and shoes. The mere fact that law enforcement had a suitcase allegedly belonging to Edwards was not alone sufficient to give them more than a mere hunch that the suitcase contained bloody clothes and shoes. A mere general hunch is not enough for reasonable suspicion. Law enforcement did not have reasonable suspicion that the suitcase contained evidence of this crime or fruits of this crime at the time that they searched and seized the suitcase; therefore, the trial court erred when it refused to suppress the evidence taken from the suitcase (shoes and clothing).

III. THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE THE RESULTS OF THE DNA ANALYSIS OF SAMPLES FROM THE CLOTHES AND SHOES TAKEN FROM THE SUITCASE AND THE RESULTS OF THE SHOE IMPRINT COMPARISON OF THE SHOES TAKEN FROM THE SUITCASE UNDER THE "FRUIT OF THE POISONOUS TREE" DOCTRINE.

The trial court should also have suppressed evidence having as its source the clothes and the shoes (DNA evidence from the clothes and shoes and shoe imprint evidence from a comparison of the treads on shoes to shoe imprints left at the scene) under the "fruit of the poisonous tree" doctrine recognized in Wong Sun v US, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed2d 441 (1963). The "fruit of the poisonous tree" doctrine requires exclusion of evidence that is "come at by exploitation" of information gleaned from illegal conduct by law enforcement officers. Wong Sun, 371 U.S. at 488, 83 S.Ct. at 427, 9 L.Ed.2d at 458. 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." State v. Copeland, 321 S.C. 318, 325 468 S.E.2d 620, 624 (1996).

The DNA evidence from the clothes and shoes and the shoe imprint evidence would not have come to light but for the illegal search and seizure of the suitcase. Law enforcement would not have discovered the clothes and shoes without the illegal search and seizure of the suitcase. Without the clothes and shoes, the government would not have the DNA evidence and the shoe imprint evidence. The DNA evidence and the shoe imprint evidence were generated by exploitation of the fruits (the clothes and shoes) of the illegal search and seizure of the suitcase. The "fruit of the poisonous tree" doctrine compels exclusion of the DNA and shoe imprint evidence. The trial court erred in admitting in evidence the DNA evidence and the shoe imprint evidence.

CONCLUSION

For the forgoing reason Edwards prays that this Court reverse his convictions and remand this case to the trial court for a new trial.

Respectfully Submitted,

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December 23, 2013

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APPELLANT'S INITIAL DESIGNATION OF MATTER

Appellant makes the following initial designation of matter to be included in the record on appeal:

TRANSCRIPT EXCERPTS

Trial Transcript pp. 1-100

Trial Transcript pp. 208-213

Trial Transcript pp. 331-476

Respectfully Submitted,

(SIGNATURE ON THE FOLLOWING PAGE)

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PROOF OF SERVICE OF APPELLANT'S INITIAL BRIEF AND APPELLANT'S INITIAL DESIGNATION OF MATTER

I hereby certify that I served Appellant's Initial Brief and Appellant's Initial Designation of Matter in the above captioned appeal on the Respondent by depositing a copy of those papers in the U.S. Mail, postage prepaid, on December 23, 2013, addressed to its attorney of record, Donald J. Zelenka, S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211-1549.

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Arthur K. Aiken ***A. Bea Hightower***

December 23, 2013

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: State v Cleophas Edwards
2012-213596

Dear Ms. Kitchings:

Enclosed for filing please find the original of the Appellant's Initial Brief in the above case. Also enclosed are the following:

(1) Appellant's Initial Designation of Matter; and
(2) Proof of Service of Appellant's Initial Brief and Appellant's Initial Designation of Matter

By copy of this letter I am serving the attorney for the Respondent Thank you for your help. Please call or email with any questions.

Sincerely,

Arthur K. Aiken
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Enclosures as stated

cc: Donald J. Zelenka