

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THERRON R. RICHARDSON,

APPELLANT

APPELLATE CASE NO. 2012-213431

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying defense counsel's motion to suppress evidence seized from appellant's residence in response to a criminal domestic violence call by the police, when the evidence was not found in plain view in a room in which the police were "interviewing, detaining, or pursuing a suspect" under S.C. Code § 16-25-70(H)(1)(a) and where the evidence found was inadmissible in a court of law as the statute mandates?

STATEMENT OF THE CASE

Appellant was convicted of trafficking in cocaine, four (4) counts of possession of a firearm by a person convicted of a crime of violence, and one (1) count of possession of a firearm during commission of a violent crime after a jury trial held before the Honorable Stephanie McDonald on November 13 – 15, 2012, in Charleston County. Appellant was sentenced to thirty (30) years on the cocaine charge and to five (5) years on the weapons charges. One of the weapon charges was ordered to be served consecutively to the cocaine sentence. Donna K. Taylor, Esquire, and D. Lynn Bowley, Esquire, were the trial attorneys. Emmanuel Ferguson, Esquire, and Culver Kidd, Esquire, were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in denying defense counsel's motion to suppress evidence seized from appellant's residence in response to a criminal domestic violence call by the police when the evidence was not found in plain view in a room in which the police were "interviewing, detaining, or pursuing a suspect" under S.C. Code § 16-25-70(H)(1)(a), and the evidence was not admissible in a court of law as provided by the statute.

Pursuant to a prior motion to suppress evidence seized from appellant's residence under the Fourth Amendment to the United States Constitution and Article I, § 10 of the South Carolina Constitution, a hearing was held before the Honorable R. Markley Dennis, Jr., on May 9, 2012.¹

Deputy Bowers with the Charleston County Sheriff's Department testified at the hearing that on October 17, 2010, he was dispatched to 1956 Old Fort Avenue on an "in-progress domestic violence call." He learned "a female had called in and said that her boyfriend had choked her and that she had locked herself in a room inside the house for her safety." (R. 14, line 1 – R. 15, line 12). Deputy Alexander also arrived at the scene. Deputy Bowen approached the front door and noticed that there was no doorknob, just a deadbolt lock which he thought was unusual. He knocked on the door and got no response. He went to the side of the house and a door there also had no doorknob, just a deadbolt lock. They went to the back of the house and found a sliding glass door that was partially open. They entered the house and began to look for people. (R. 15, line 23 – R. 19, line 18). They did not find anyone in the house. During the search of the house, they found a scale with white powder residue on it on a counter in the bathroom off the master bedroom. There was a razor blade next to the scale. They looked inside the closet and found a safe on the floor. It was closed, but money was strewn in front of it. They noticed money in an open bank bag lying on

¹ The discussion concerning the statutory issue commences at R. 6, infra.

the floor. Under the bed in the master bedroom they saw several guns. They secured the scene and waited for Sergeant York to get there. She was briefed when she arrived and she called the drug investigation unit. (R. 20, line 16 – R. 22, line 24). Deputy Bowen said he asked dispatch to triangulate where the call had come from and it showed from Romney Street, some twenty minutes away. (R. 33, line 23 – R. 34, line 9). Deputy Alexander also testified that he responded to the call of a domestic disturbance. (R. 65, line 20 – R. 66, line 3).

On June 19, 2012, Judge Dennis issued an order denying the defendant's motion to suppress evidence taken from appellant's house. He found exigent circumstances because the police were responding to a 911 call about a heated domestic dispute. Judge Dennis also found that the guns, cash, digital scales, and white powder were found in plain view when the police performed a protective sweep of the house. Thus, there was no Fourth Amendment violation in this case.

On August 13, 2012, appellant, now represented by new attorneys, filed a motion to exclude the same evidence because it was obtained in violation of S.C. Code § 16-25-70(H)(1)(a). On August 28, 2012, a motion to reconsider the admissibility of the evidence was heard by the Honorable R. Markley Dennis, Jr., based on the criminal domestic violence statute. Judge Dennis denied the motion without prejudice. (R. 111, lines 11 – 17).

The August 13, 2012, motion was heard by the Honorable Stephanie McDonald on November 13, 2012. The cited code section is as follows:

- (H) Evidence discovered as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in a court of law:
 - (1) if it is found:
 - (a) in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect; or
 - (b) pursuant to a search incident to a lawful arrest for a violation of this article or for a violation of Chapter 3, Title 16; or

(2) if it is evidence of a violation of this article.

An officer may arrest and file criminal charges against a suspect for any offense that arises from evidence discovered pursuant to this section.

Unless otherwise provided for in this section, no evidence of a crime found as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in any court of law.

S.C. Code § 16-25-70 (H)(1)(a)(emphasis added).

It is clear that the officers were responding to a criminal domestic violence call. The above statute provides for officers responding to a CDV call with an exception to the warrant requirement in certain limited, clearly defined circumstances. In the absence of those specific circumstances, no evidence of a crime the officers may have seen is admissible in a court of law. The statute clearly states that evidence discovered in a warrantless search pursuant to a CDV complaint is admissible in a court of law if it “is in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect.” (Emphasis added). Certainly there was no “interviewing, detaining, or pursuing a suspect” because no one was in or around the residence. When a “statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning.” Gail v. Arial, 381 S.C. 341, 673 S.E.2d 418 (2009); State v. Gains, 380 S.C. 23, 667 S.E.2d 728 (2008). (R. 438, August 13, 2012, Motion to Exclude Evidence).

The trial judge violated the above rule by forcing a different interpretation than what the statute states. She cited S.C. Code § 16-25-70(c) which deals with effecting a warrantless arrest which the officers were not doing in this case. She then reasoned that the officers did not enter the residence pursuant to the authorization of the CDV statute! (R. 168, line 6 – R. 169, line 10). Earlier on, the trial judge stated that it was hard for her to believe that the legislature meant to give

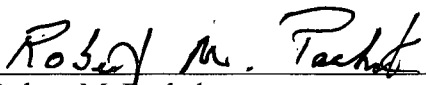
greater protections than were provided by the Fourth Amendment. (R. 157, lines 2 – 5). But, the legislature did precisely this when it enacted S.C. Code § 17-13-140(1985) and the South Carolina Supreme Court held that the legislature was free to do this in State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). And as far back as 1999, the South Carolina Supreme Court in State v. Cannon, 336 S.C. 335, 520 S.E.2d 317 (1999) expressed concern over the “plain meaning” of S.C. Code § 16-25-70(H) and its applicability to situations like those presented in appellant’s case. In the almost fourteen years since then, the legislature has not seen fit to change this statute. It is obvious that they do not want the police to use the CDV statute as a ruse to rummage at will. In State v. Roberts, 340 S.C. 238, 530 S.E.2d 899 (Ct.App. 2000), just a year after State v. Cannon, the South Carolina Court of Appeals also recognized the plain meaning effect of S.C. Code § 16-25-70(H), albeit under a different factual scenario.

At the conclusion of the State’s case, defense counsel renewed its motion to exclude the evidence that was seized based on the CDV statute and the evidence the trial heard during the course of the trial concerning the officers’ CDV response to the scene. The trial judge said, “I may be wrong” but it was just her interpretation that the officers entered the house pursuant to exigent circumstances. Then she said, “It may have been pursuant to the statute as well.” She interpreted the CDV statute differently than the courts in State v. Cannon and State v. Roberts and she did not give it the “plain meaning” it deserved. She agreed that “it could be interpreted differently by another court.” (R. 403, line 13 – R. 404, line 17).

CONCLUSION

Based on the foregoing argument, the items seized by the officers should have been suppressed and appellant's convictions should be reversed.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of January, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 9, 2014

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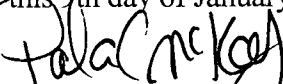
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of January, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of January, 2014

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.