STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Stephanie P. McDonald, Circuit Court Judge

Appellate Case No. 2012-213431

THE STATE, ...RESPONDENT

v.

THERRON R. RICHARDSON, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether Appellant's pretrial motion to suppress all evidence discovered during the search of his house, pursuant to section 16-25-70(H)(1)(a) of the South Carolina Code, is preserved for appellate review where any objection to the admission of such evidence was waived when Appellant affirmatively indicated he had "no objection" when it was introduced during trial, and to the extent Appellant's objection was preserved, whether the trial judge properly admitted the evidence where: (1) the officers did not enter Appellant's home under the authority of section 16-25-70(C), and (2) if they did enter under the authority of section 16-25-70(C), the evidence was specifically admissible under section 16-25-70(H) and suppression of the evidence in this case would not further the purpose behind section 16-25-70(H)?

STATEMENT OF THE CASE

Appellant was indicted at the April, 2011 term of the grand jury for Charleston County for trafficking cocaine (2011-GS-10-02320), possession of a firearm during the commission of a violent crime (2011-GS-10-02321), and four counts of unlawful possession of a firearm by a person convicted of a crime of violence (2011-GS-10-02323, -02324, -02325 & -02326). He was initially represented by Alicia Penn and Mary Ford of the Ninth Circuit Public Defender's Office, including during a May 9, 2012, pretrial suppression hearing before the Honorable R. Markley Dennis; however, he was ultimately represented at trial by Donna K. Taylor and D. Lynn Bowley, Esquires, of the Charleston County Bar. (R.p.1; R.p.145). On November 13-15, 2012, Appellant proceeded to trial by jury before the Honorable Stephanie P. McDonald pursuant to which he was found guilty as indicted. He was sentenced to thirty years' imprisonment for trafficking cocaine, a consecutive term of five years' imprisonment for one count of unlawful possession of a firearm (2011-GS-10-02323), and four concurrent terms of five years' imprisonment for each of the three remaining counts of unlawful possession of a firearm and the single count of possession of a firearm during commission of a violent crime, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.pp. 444-455; R.pp. 456-461; R.p.416, line 23-p.418, line 10). Appellant timely filed a notice of intent to appeal his convictions and sentences and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

STATEMENT OF FACTS

On October 17, 2010, at 11:15 a.m., Deputies Jason Bowen and Julius Alexander of the Charleston County Sheriff's Department were dispatched to Appellant's house in response to an emergency call. An unidentified female had called 911 at 11:09 a.m. claiming to be trapped in a bedroom at the residence after being attacked by her boyfriend. Upon arriving at the house at 11:24 a.m., the officers knocked and announced their presence but received no response. They then split up and walked around the residence, discovering a sliding glass door at the back that was partially open. The officers entered the house to try to locate the 911 caller and to conduct a protective sweep for anyone who might be a threat. They did not discover any people in the house; however, during the sweep they observed guns, a safe, a large sum of cash, a digital scale, and a white powdery residue that appeared to be cocaine. Based on these observations, the Sheriff's Department obtained a search warrant and the narcotics division conducted a search of the house. They discovered over 2,000 grams of cocaine, five loaded guns, over twenty thousand dollars in cash, digital scales, and other evidence of illegal drug activity, and charged Appellant with trafficking cocaine, possession of a firearm during the commission of a violent crime, and five counts of possession of a firearm by a person convicted of a violent crime. (R. pp.420-p.422).

On May 7, 2012, Appellant filed a motion to suppress all evidence obtained from his residence on grounds it was obtained in violation the Fourth Amendment to the United States Constitution and Article I, Section 10 of the South Carolina Constitution. A suppression hearing was held on May 9, 2012, before the Honorable R. Markley Dennis. Appellant was present and was represented by Alicia Penn and Mary Ford of the

Ninth Circuit Public Defender's Office. The State was represented by Assistant Solicitor Emmanuel Ferguson of the Ninth Circuit Solicitor's Office.

During the suppression hearing, the State first played a tape recording of the 911 call and then presented testimony from Deputy Bowen. (R.p.11, line 25-p.13, line 23). Bowen was working patrol duty on October 17, 2010, when he was dispatched to a Charleston County address for an "in-progress domestic violence call." He was told a female called 911 because her boyfriend had choked her and she had locked herself in a room inside the house for her safety. Bowen explained his primary goal in any domestic call is "person safety." Deputy Alexander was also dispatched to the address and arrived at the house simultaneously with Bowen. Bowen approached the front door where he noticed a "key-type deadbolt" instead of a doorknob, which is highly unusual and made him afraid someone was "controlling" the 911 caller and could be keeping her locked in the house. Bowen knocked on the door several times with increasing intensity and loudness but did not get a response. Bowen and Alexander then decided to "cover" the house to see if there were any open windows or other doors. Alexander discovered a sliding glass door in the rear that was partially open. The officers entered the house to secure the scene and to make sure nobody inside was harmed. They searched the house for places they thought people could be hiding because they were concerned about an injured person or a person in danger. During the search they found no people but saw a scale with white powder residue and razor blades in the bathroom, a safe and money strewn about in a closet, and several guns on the floor under a bed. They secured the scene and waited for their supervisor to arrive. (R.p.13, line 19-p.23, line 20).

On cross-examination, Bowen acknowledged he did not see anyone flee from the house and saw no broken windows or bullet holes on the house, or footprint marks on the door. He also did not hear any screaming, footsteps, or toilets flushing before they entered. (R.p.28, line 10-p.29, line 1). However, on re-direct Bowen explained that the fact they did not hear anything could mean a victim was unconscious and lying in the house, or that she was staying quiet due to fear. (R.p.35, line 12-p.38, line 25). Appellant then called several witnesses, including Deputy Alexander, to the stand. Alexander corroborated Bowen's account of the events which led to the search of Appellant's house. (R.p.65, line 13-p.76, line 15). Later that day the Sheriff's Department obtained a search warrant for the house based on the observations made by Bowen and Alexander, and the narcotics team executed a search which ultimately led to the charges against Appellant. (R.p.324, line 8-p.328, line 2).

After hearing testimony and oral arguments, and reviewing the exhibits and parties' written submissions, Judge Dennis orally announced: "I am just suppressing this evidence today." (R.p.99, line 22-p.100, line 20). However, upon further consideration, Judge Dennis issued a written order denying the motion to suppress by finding "the warrantless search & seizure to be proper, reasonable and not violative of Defendant's constitutional rights." (R.pp.419-427; R.p.100, line 1).

On June 29, 2012, Appellant filed a motion to reconsider. (R.pp.428-437). Then, on August 13, 2012, Appellant filed a motion to exclude the same evidence, but on different grounds, arguing it was obtained in violation of the criminal domestic violence (CDV) provisions of the South Carolina Code. (R.pp. 438-443). On August 28, 2012, Judge Dennis convened a hearing on Appellant's motions. Appellant was present and

was represented by Mary Ford of the Ninth Circuit Public Defender's Office and Donna Taylor, Esquire. The State was represented by Assistant Solicitors Emmanuel Ferguson and Culver Kidd of the Ninth Circuit Solicitor's Office. After hearing arguments from Appellant, Judge Dennis denied the motion to reconsider and declined to rule on the motion to suppress on statutory grounds, finding the new motion was premature and should be raised to the trial judge. (R.p.103-p.113).

On November 13, 2012, the case was called for trial before the Honorable Stephanie P. McDonald; however, with consent of the parties, Judge Dennis conducted jury qualification and selection while Judge McDonald handled a prior commitment. Appellant was present and represented by Donna K. Taylor and D. Lynn Bowley, Esquires. (R.p.145-p.174). Later that day, Judge McDonald assumed her role as presiding trial court judge and heard pre-trail motions, including Appellant's motion to exclude/suppress the evidence pursuant to the CDV statute. After hearing arguments from both parties, reviewing section 16-25-70 of the Code, and reviewing two published opinions which addressed the statute,[1] Judge McDonald found the officers did not enter Appellant's residence pursuant to the authorization of the CDV statute and denied the motion to suppress. (R.p.153, line 1-p.169, line 10). The jury was then sworn and the case proceeded to trial. (R.p.175, line 1-p.176, line 8).

During the course of trial, the State sought to introduce various items into evidence, all of which were found either during the initial protective sweep or the subsequent search of Appellant's house. These included: (1) plastic baggies, scales, boxes, spoons and other items associated with the sale and distribution of narcotics; (2)

[1] State v. Cannon, 336 S.C. 335, 520 S.E.2d 317 (1999); State v. Roberts, 340 S.C. 238, 530 S.E.2d 899 (Ct. App. 2000).

bills, receipts, and other items linking Appellant to ownership of the house, (3) several guns, clips and ammunition; and (4) more than 2,000 grams (two kilograms) of cocaine. In each instance, Appellant stated he had "no objection" to the items introduced, and the evidence was admitted "without objection." (R.p.335, lines 1-11; p.344, lines 1-8; p.348, lines 7-15; p.353, lines 1-6; p.358, lines 3-9; p.359, lines 3-10). After the State concluded its case in chief, Appellant asked to "renew all prior arguments" including his request to exclude evidence under the CDV statute. The trial judge reiterated her earlier ruling to admit the evidence: "in light of the purpose and function of the domestic violence statute as well as the Supreme Court State v. Cannon decision." (R.p.403, line 13-p.405, line 5).

At the end of trial, the jury found Appellant guilty on all counts and Appellant asked to renew any motions he had previously made. The trial judge said she stood by her prior rulings and denied the motions. (R.p.413, line 11-p.415, line 24). Appellant was sentenced to thirty years' imprisonment for trafficking cocaine, a consecutive term of five years' imprisonment for one count of unlawful possession of a firearm, and four concurrent terms of five years' imprisonment for each of the three remaining counts of unlawful possession of a firearm and the single count of possession of a firearm during the commission of a violent crime. (R.pp.456-461; R.p.416, line 23-p.418, line 10).

ARGUMENT

I.

Appellant's pretrial motion to suppress all evidence discovered during the search of his house, pursuant to section 16-25-70(H)(1)(a) of the South Carolina Code, is not preserved for appellate review because any objection to the admission of such evidence was waived when Appellant affirmatively indicated he had "no objection" when it was introduced during trial, and to the extent Appellant's objection was preserved, the trial judge properly admitted the evidence because: (1) the officers did not enter Appellant's home under the authority of section 16-25-70(C), and (2) if they did enter under the authority of section 16-25-70(C), the evidence was specifically admissible under section 16-25-70(H) and suppression of the evidence in this case would not further the purpose behind section 16-25-70(H).

Appellant contends the trial court erred in denying his motion to suppress evidence seized from his residence following a police response to a 911 emergency call because 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 section 16-25-70(H)(1)(a), which makes such evidence inadmissible in a court of law by the statute. The State disagrees and submits Appellant's argument should be dismissed for a number of reasons.

Initially, the State submits the trial court's decision to deny Appellant's pretrial suppression motion and to admit the contraband discovered during the search of his house is not preserved for appellate review because all such evidence was admitted with "no objection" during trial. In any event, even if the issue is preserved, the trial judge properly denied the pretrial suppression motion and admitted the drugs, weapons, and other items into evidence because the deputies did not enter Appellant's home under the authority of section 16-25-70(C), and therefore, the exclusionary provisions of section

16-25-70(H) do not apply. Furthermore, to the extent the officers did enter under authority of section 16-25-70(C), the evidence was properly admitted pursuant to section 16-25-70(H) because: (1) it was found in "plain view of a law enforcement officer in a room in which the officer [was] . . . pursuing a suspect," and (2) the purpose behind the statute would not be furthered by suppression in Appellant's case. For all of these reasons, Appellant's convictions should be affirmed.

Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Generally, a motion in limine seeks a pretrial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993). "However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the

objection." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001); see State v. Wiles, 383 S.C. 151, 156-57, 679 S.E.2d 172, 175 (2009) ("This exception is based on the fact that when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection.").

In the instant case, any issue with the admission into evidence of the narcotics, firearms, and other items discovered during the search of Appellant's house was not properly preserved for appellate review. At the outset of trial, Appellant made a motion in limine seeking the suppression of the evidence discovered through the search, and the trial judge issued a preliminary ruling denying the suppression motion after conducting a pretrial hearing on the matter. Thereafter, each time the solicitor moved to introduce the item from Appellant's house into evidence during trial, Appellant did not renew his pretrial objection and instead affirmatively stated he had "no objection." See State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."). By indicating he had "no objection" to the narcotics, firearms, or other items when the evidence was introduced during trial, Appellant expressly waived his pretrial objection to the introduction of that evidence. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not

preserved for appellate review."); State v. Burton, 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) ("This testimony was admitted without objection. Because Burton failed to object, he is barred from raising this issue on appeal."). Accordingly, any issue related to the introduction of the evidence discovered during the search of Appellant's house cannot properly be raised or reviewed on appeal. Dicapua, 373 S.C. at 455-456, 646 S.E.2d at 152.

Authority for Entry of Appellant's House

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Chapter 25 of Title 16 of the South Carolina Code sets forth general provisions regarding CDV. It permits a warrantless arrest of a person: "if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony pursuant to the provisions of Section 16-25-20(A) or (D), 16-25-65, or 16-25-125, even if the act did not take place in the presence of the officer." S.C. Code Ann. § 16-25-70(A) (Supp. 2010). It goes on to provide that:

> In effecting a warrantless arrest under this section, a law enforcement officer may enter the residence of the person to be arrested in order to effect the arrest where the officer has probable cause to believe that the action is reasonably necessary to prevent physical harm or danger to a family or household member.

S.C. Code Ann. § 16-25-70(C) (Supp. 2010) (emphasis added). Thus, the statute contemplates warrantless entry of a residence to effect a warrantless arrest. The entry may naturally result in a "plain view" warrantless search of the room where the arrest is made, and the arrest itself may naturally result in a warrantless search of the person

"incident to arrest." The statute goes on to address the admissibility of evidence discovered during these likely warrantless searches as follows:

> 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 Ann. § 16-25-70(H) (Supp. 2010).

As recognized by our Supreme Court, the warrantless search admissibility provisions in subsection (H) are only triggered if the warrantless search was actually conducted pursuant to subsection (C). State v. Cannon, 336 S.C. 335, 339, 520 S.E.2d 317, 319 (1999). Subsection (C) allows the officers to enter the residence in order to effect an arrest. Here, the officers entered Appellant's residence under exigent circumstances to protect the life and safety of a potential victim. Because they did not enter Appellant's home in order to effect an arrest, they did not enter the home under the authority of subsection 16-25-70(C), and subsection 16-25-70(H) does not apply. Id.

Admissibility of Evidence Under Section 16-25-70(H)

To the extent Appellant contends the officers did enter his home under authority of section 16-25-70(C), in an effort to effect a warrantless arrest, then the evidence found in "plain view" was admissible under section 16-25-70(H) because it was discovered in a room where the officers were pursuing a suspect. It is intellectually dishonest for Appellant to invoke section 16-25-70(C) to contend Bowen and Alexander were attempting to effect an arrest (of a person), and then turn around and gloss over section 16-25-70(H) to contend the officers were not pursuing a suspect (also a person) simply because they did not find that suspect or make an arrest. The two positions are logically inconsistent and Appellant's argument should be discounted. If the officers entered Appellant's house under the authority of section 16-25-70(C), then the evidence discovered in the house was admissible under the clear and unambiguous language of section 16-25-70(H). If they did not enter Appellant's house under the authority of section 16-25-70(C), then, as explained above, section 16-25-70(H) does not apply. Cannon, 336 S.C. at 339, 520 S.E.2d at 319.

In his brief, Appellant relies on Cannon and notes the Supreme Court's expressed concern about the effect of section 16-25-70(H) under the plain meaning of the statute.[2] He alleges that: "In the almost fourteen years since then, the legislature has not seen fit to change this statute." (Brief of Appellant, p.8). This allegation is not accurate. In 1998, when Cannon committed his crime, the statute's broad exclusionary provision simply stated: "No evidence other than evidence of violations of this article found as a result of a warrantless search is admissible in a court of law." S.C. Code Ann. § 16-25-70(H) (Supp. 1998). In 2002 Act No. 329, which became effective on June 18, 2002, the

[2] Cannon, 336 S.C. at 340 n.4, 520 S.E.2d at 319 n.4.

Legislature substantially amended section 16-25-70(H) to specifically allow admission of evidence found during a warrantless search conducted under the authority of section 16-25-70(C), if it is discovered in plain view or incident to arrest. This amendment occurred well after Cannon was decided by the Supreme Court and appears to be a direct reaction to the concerns raised in footnote four.

Purpose Behind Section 16-25-70(H)

This Court has found that: "the ostensible purpose behind section 16-25-70(H) is to promote victims' access to protection from domestic violence unimpeded by the fear that unrelated criminal charges may result from summoning police assistance." State v. Roberts, 340 S.C. 238, 241, 530 S.E.2d 899, 901 (Ct. App. 2000). Although Bowen and Alexander were responding to a domestic violence call and would presumably have relied upon the authority of section 16-25-70(A) to arrest a CDV perpetrator, they did not, as was the case in Roberts, "rely upon authority of section 16-25-70(A) to arrest" Appellant or conduct the search. Id. Instead, they entered Appellant's home under exigent circumstances and ultimately arrested Appellant for drug and weapons charges, not CDV. Because the goal of 16-25-70(H) would not be furthered by suppression in Appellant's case, the trial court properly denied his motion to suppress.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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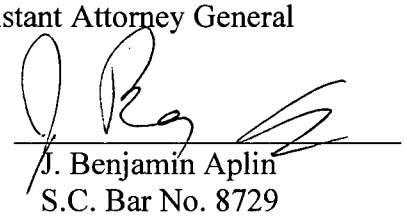
BY: 
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated January 10, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 10th, day of January, 2014.

Angela Bennett
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