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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL LEE BIRCH,

APPELLANT.

APPELLATE CASE NO. 2012-213215

INITIAL REPLY BRIEF OF APPELLANT

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE IN REPLY

The inevitable discovery doctrine does not apply where the officer would not have been in a position to discover Appellant's identity and the outstanding warrants on Appellant absent the illegal search and seizure of Appellant.

ARGUMENT IN REPLY

The inevitable discovery doctrine does not apply where the officer would not have been in a position to discover Appellant's identity and the outstanding warrants on Appellant absent the illegal search and seizure of Appellant.

In its Respondent's Brief, the State argues that even if the search and seizure of Appellant Darrell Lee Birch violated the Fourth Amendment, the drug evidence would have been inevitably discovered during a search incident to Birch's arrest since he had some outstanding warrants.

The exclusionary rule exists to deter police misconduct and constitutional violations. See Nix v. Williams, 467 U.S. 431, 442-43 (1984) Despite the illegality of search, "[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 ... then the deterrence rationale has so little basis that the evidence should be received." Id. at 444. Therefore, once it is determined that the evidence was illegally seized, the burden shifts to the State to prove that an exception to the exclusionary rule applies. If the State fails to meet its evidentiary burden then the evidence must be suppressed.

Here, the inevitable discovery doctrine does not apply. Officer Grice only discovered Birch's identity and that there was an outstanding warrant for his arrest after the illegal search and seizure. Officer Grice testified that when he entered Byron Horne's residence, there was an individual in the front room wearing a ball cap, coat, and jeans. At this point, Officer Grice did not know the identity of this individual. Officer Grice claimed that the individual had his left hand in his pants pocket and that Officer Grice told the individual several times to remove his hand. Officer Grice said that when the individual

refused to remove his hand from his pocket, Officer Grice "forcibly removed his hand and when [he] did an object fell out on the floor." Tr. 85, l. 11 – 86, l. 8.

After this container, which later was discovered to contain crack cocaine, fell on the floor, Officer Grice then removed the individual's ball cap and said he recognized the individual as Darrell Birch and knew that the Marion County Combined Drug Unit for looking for Birch. Tr. 87, ll. 1-8.

But for this illegal search and seizure, Officer Grice would not have known that the person standing in Horne's house and minding his own business had outstanding warrants on him. But for this illegal search and seizure, Officer Grice would not have known that this individual was the person for whom the Drug Unit was looking. But for this illegal search and seizure, Officer Grice would not have had an independent and lawful reason for searching Birch's person. The only reason Officer Grice learned that the person in Horne's house was Birch was because Officer Grice illegally yanked Birch's left hand out of his pocket and then illegally pulled Birch's ball cap off his head to reveal his identity after a container fell to the floor from Birch's pocket.

In State v. Moralez, 300 P.3d 1090, 1094 (Kan. 2013), the Supreme Court of Kansas held that law enforcement's discovery of the defendant's outstanding arrest warrant "did not sufficiently purge the taint of his unlawful detention." In that case, during what began as a voluntary encounter, two law enforcement officers retained the defendant's identification and detained him while conducting a warrants check, all without any reasonable suspicion of criminal activity. After discovering an outstanding warrant for the defendant, the officers arrested him and seized marijuana from his pocket. The defendant was charged with

felony possession of marijuana. The trial court denied the defendant's motion to suppress the marijuana as the fruit of an unlawful detention. Id.

The Kansas Supreme Court, in reversing the trial court's suppression ruling and the defendant's conviction, observed the following with respect to the discovery of outstanding warrants during a defendant's unlawful detention:

> Stated more succinctly, the preceding unlawful detention does not taint the lawful arrest on the outstanding warrant, nor does it prevent the officer from conducting a safety search pursuant to that arrest; *but it does taint any evidence discovered during the unlawful detention or during a search incident to the lawful arrest.*
>
> Were it otherwise, law enforcement officers could randomly stop and detain citizens, request identification, and run warrants checks despite the lack of any reasonable suspicion to support the detention, knowing that if the detention leads to discovery of an outstanding arrest warrant, any evidence discovered in the subsequent search will be admissible against the defendant in a criminal proceeding unrelated to the lawful arrest.

Id. at 1102 (emphasis added).

In Birch's case, the unlawful seizure of Birch by Officer Grice and Officer Grice's forcible removal of Birch's hand from his pocket and cap from his head taints the evidence discovered after Officer Grice realized the seized individual was Birch and that there were outstanding warrants out on Birch. Officer Grice would not have been in a position to learn that Birch was an individual wanted on outstanding warrants absent the illegal search and seizure of Birch. The inevitable discovery doctrine therefore does not apply, and the evidence seized as a result the unlawful search should be suppressed and Birch's convictions based on that evidence reversed. See State v. Grayson, 336 S.W.3d 138, 150–51 (Mo. 2011) (concluding officer's discovery of arrest warrant did not attenuate taint of unlawful stop, and neither independent source doctrine nor inevitable discovery applied); State v. Dixon, 218 S.W.3d 14 (Mo. Ct. App. 2007) (holding evidence must be

excluded when officer learned of a warrant prior to actually effectuating the arrest, when the officer would not have been in a position to do so absent the illegal seizure of the defendant); State v. Topanotes, 76 P.3d 1159, 1163–64 (Utah 2003) (observing fact or likelihood that makes discovery inevitable must arise from circumstances other than those disclosed by illegal search itself).

CONCLUSION

For the reasons set forth herein and in Appellant Darrell Lee Birch's Appellant's Brief, Appellant respectfully requests that the evidence seized in violation of the Fourth Amendment be suppressed and his convictions reversed. Alternatively, Appellant requests that his convictions be reversed and the case be remanded for a new trial.

Respectfully submitted,

Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of January, 2014.

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THE STATE,

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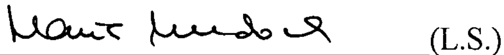
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Darrell Birch, # 12A2970, at Clinton Correctional Facility, PO Box 2000, Dannemora, NY 12929, this 21st day of January, 2014.

Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of January, 2014.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.