

ORIGINAL

RECEIVED  
MAR 24 2014  
SC COURT OF APPEALS

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Lexington County

Clifton Newman, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

LEANDRO AGUIRRE,

APPELLANT

APPELLATE CASE NO. 2013-001052  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

BENJAMIN JOHN TRIPP  
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

**TABLE OF CONTENTS**

TABLE OF CONTENTS .....1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL .....3

STATEMENT OF THE CASE .....4

ARGUMENT.....5

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL .....10

**TABLE OF AUTHORITIES**

**Cases**

*Mapp v. Ohio*, 367 U.S. 643 (1961)..... 7, 8

*State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999) ..... 8

*State v. Provet*, 405 S.C. 101, 747 S.E.2d 453 (2013)..... 7

*State v. Wallace*, 269 S.C. 547, 238 S.E.2d 675 (1977) ..... 7

*United States v. Martinez–Fuerte*, 428 U.S. 543 (1976) ..... 6

*United States v. Mendenhall*, 446 U.S. 544 (1980) ..... 6

*Wilson v. Arkansas*, 514 U.S. 927 (1995)..... 7

*Wong Sun v. United States*, 371 U.S. 471 (1963) ..... 8

**Constitutional Provisions**

U.S. Const. amend. IV ..... 7

U.S. Const. amend. XIV ..... 7, 8

### **STATEMENT OF ISSUE ON APPEAL**

Did the evidence at the suppression hearing support the trial court's finding that Appellant voluntarily consented to a search of his shed where the two law enforcement officers confronted Appellant and his wife at their home; where Appellant and his wife testified without contradiction that one officer was gripping a sidearm and the other was pointing a shotgun; and where the officers handcuffed Appellant without Mirandizing him before obtaining written consent to the search?

## STATEMENT OF THE CASE

On December 5, 2012, the Lexington County Grand Jury indicted Appellant Leandro Aguirre on one count of trafficking marijuana between ten and one-hundred pounds and one count of altering, tampering with, or bypassing electric, gas, or water meters. R. 404 – R. 407. On April 24, 2013, Appellant proceeded to trial before The Honorable Clifton Newman and a jury. Aimee J. Zmroczek represented Appellant and Michael D. Ross represented the State. R. 12.

At the conclusion of the trial on April 25, 2013, the jury found Appellant guilty on both counts. R. 395, ll. 8-17. The trial judge sentenced him to six years imprisonment for the trafficking charge and thirty days concurrent for the second charge. R. 401, ll. 14-19.

## ARGUMENT

**THE EVIDENCE DID NOT SUPPORT THE TRIAL COURT'S FINDING THAT THE CONSENT TO SEARCH WAS VOLUNTARY BECAUSE THE UNCONTRADICTED TESTIMONY SHOWED THE OFFICERS ACCOSTED AND SURROUNDED APPELLANT AND HIS WIFE AT THEIR FRONT DOOR; BRANDISHED FIREARMS INCLUDING A SHOTGUN; AND PLACED APPELLANT IN HANDCUFFS WITHOUT MIRANDIZING HIM BEFORE HIS WIFE ACQUIESCED TO THE SEARCH IN WRITING.**

## STATEMENT OF FACTS

Prior to trial, Appellant moved to suppress evidence of marijuana plants found in a shed behind his residence. R. 35, ln. 20—R. 36, ln. 10. During an in-camera hearing, the State offered testimony that on October 7, 2011, a Mid-Carolina Electric Cooperative technician visited Appellant's residence to investigate electrical metering. R. 41, ll. 3-25. Before arriving at the residence, the technician called the Lexington County Sheriff's Office for security purposes. R. 45, ll. 17-21. Deputy Thomas Fine and Sergeant Kevin Blake arrived at the residence ahead of the tech and knocked on the door. R. 48, ll. 9-17; R. 8, ln. 8—R. 67, ln. 23. Appellant's wife answered. R. 68, ll. 16-18.

“When I opened the door, Officer Blake had a shotgun in his hand, and he was pointing like this at the door. He was the one here [sic], Officer Fine was behind, like on the side of him.” R. 137, ll. 9-13. Officer Fine had unsnapped his holster and was gripping his sidearm. R. 141, ll. 17-22. They instructed her to have Appellant come outside. R. 135, ll. 12-18.

When Appellant came outside, he also saw Officer Blake brandishing the shotgun. R. 138, ll. 13-20. In the meantime, the technician had arrived and finished his inspection, finding under the front of the house a spliced wire leading to a shed in the back yard. The technician had removed the splice, and he showed officers at the front of the house around

the time Appellant stepped out. R. 50, ln. 16—R. 51, ln. 1; R. 73, ll. 2-8. Around this time the officers cuffed Appellant's hands behind his back. R. 135, ll. 12-18; R. 151, ll. 3-6.

Both Appellant and his wife testified that Officer Blake then asked Appellant about the contents of the shed. He said that if Appellant did not claim the contents, they would arrest Appellant's wife and daughter. R. 237, ll. 20-22. Appellant then told the officers where the key to lock on the shed was, and they had Appellant's wife sign a consent-to-search form. R. 136, ll. 14-22. Inside the shed were marijuana plants and several fans and a heat pump wired to a breaker box. R. 55, ll. 5-15.

At the close of the suppression hearing, Appellant argued that he never consented to a search of the shed. R. 170, l. 1-3. The trial judge ruled that based on the preponderance of the evidence, Appellant and his wife voluntarily consented to a search the shed. R. 171, ll. 11-14.

#### DISCUSSION

The evidence did not support the trial court's finding that the consent to search was voluntary because the uncontradicted testimony showed the officers accosted and surrounded Appellant and his wife at their front door; brandished firearms including a shotgun; and placed Appellant in handcuffs without Mirandizing him before his wife acquiesced to the search in writing. "The purpose of the Fourth Amendment is . . . 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'" *United States v. Mendenhall*, 446 U.S. 544, 553–54 (1980) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976)). The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const.

amend. IV. “[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable.” *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995). The Fourth Amendment is applicable to the States through the Due Process Clause of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643 (1961).

“A warrantless search is reasonable within the meaning of the Fourth Amendment when voluntary consent is given for the search.” *State v. Provet*, 405 S.C. 101, 113, 747 S.E.2d 453, 460 (2013). “Whether a consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the [totality of the circumstances].” *State v. Wallace*, 269 S.C. 547, 550, 238 S.E.2d 675, 679 (1977). Factors to consider include the defendant’s behavior or actions that are inconsistent with consent; whether the defendant had specific knowledge of a right not to consent; whether the defendant was advised of his Miranda rights; and whether the defendant was in police custody, subject to a show of police force, or surrounded by police. *Id.* at 551-53, 238 S.E.2d at 677. “When the defendant disputes the voluntariness of his consent, the burden is on the State to prove the consent was voluntary.” *Provet* at 113, 747 S.E.2d at 460.

In this case, no evidence establishes that Appellant’s or his wife’s consent to the officers’ search of the shed was voluntary. To the contrary, the evidence presented overwhelmingly shows the consent was coerced. Deputy Fine and Sergeant Blake Appellant’s wife at her front door, one pointing a shotgun and the other earnestly gripping his sidearm. Soon thereafter the officers cuffed Appellant’s hands behind his back. No testimony showed that the officers Mirandized Appellant or informed him or his wife of the right to decline a search. The only recorded evidence of the consent was Appellant’s wife’s


signature on a consent-to-search form, which the officer's obtained after cuffing Appellant. Further, Appellant and his wife both testified that Officer Blake had already threatened to arrest Appellant's wife and daughter if they did not consent to the search. The State offered no testimony to specifically rebut this assertion. The evidence overwhelmingly shows the consent was a product of the officer's coercion, both express and implied. Concluding that Appellant and his wife freely and voluntarily consented to the search requires a wholesale disregard for their testimony at the suppression hearing.

The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine. *See Wong Sun v. United States*, 371 U.S. 471, 484 (1963); *see also State v. Nelson*, 336 S.C. 186; 519 S.E.2d 786 (1999) (finding evidence is not admissible under the "fruit of the poisonous tree" doctrine when the police exploit an unlawful search to seize evidence that would not have otherwise come to light). The Fourteenth Amendment incorporates the rule of excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). Accordingly, the trial court should have excluded the evidence of the contents of the shed from Appellant's trial.

### **CONCLUSION**

For the foregoing reasons, Appellant requests that the Court reverse the ruling of the trial court, exclude the evidence of the contents of the shed, and remand for a new trial.

Respectfully submitted,

  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of March, 2014.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Lexington County  
Clifton Newman, Circuit Court Judge  
\_\_\_\_\_

RECEIVED  
MAR 24 2014  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LEANDRO AGUIRRE,

APPELLANT

\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Leandro Aguirre states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on , and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Leandro Aguirre.

Respectfully submitted,

  
\_\_\_\_\_  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of March, 2014.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Lexington County  
Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEANDRO AGUIRRE,

APPELLANT

APPELLATE CASE NO. 2013-001052

**RECEIVED**

MAR 24 2014

**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**


**SC Court of Appeals**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Motion Hearing Transcript (April 22, 2013)
- (3) Entire Trial Transcript (April 24, 2013)
- (4) Entire Trial Transcript (April 25, 2013)

I certify that this designation contains no matter which is irrelevant to this appeal.

March 24th, 2014

  
Benjamin John Tripp  
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

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

March 24, 2022

  
\_\_\_\_\_  
Benjamin John Tripp  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

**RECEIVED**  
MAR 24 2014  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

MAR 24 2014

SC Court of Appeals

Appeal from Lexington County  
Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

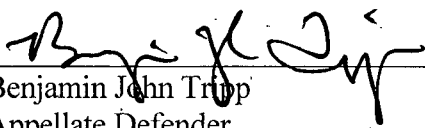
V.

LEANDRO AGUIRRE,

APPELLANT

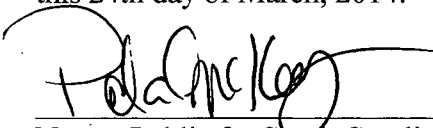
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Leandro Aguirre, #355216 at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827 this 24th day of March, 2014.

  
Benjamin John Trip  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 24th day of March, 2014.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.