

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Maite Murphy, Circuit Court Judge

RECEIVED

APR 17 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STANLEY WRIGHT,

APPELLANT

APPELLATE CASE NO. 2013-002090

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing 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 possession with intent to distribute marijuana, trafficking in cocaine, and possession of a weapon after a jury trial held before the Honorable Maité Murphy on September 16 – 18, 2013, in Beaufort County. Respective sentences of five (5) years, twenty-five (25) years, and five (5) consecutive years were imposed. Charlie Jay Johnson, Jr., Esquire, and Joenathan S. Chaplin, Esquire, were the trial attorneys. Ben T. Shelton, Esquire, and Mary Concannon, Esquire, were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in failing 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.

Officer Archbell with the Beaufort County Sheriff's office testified that on August 31, 2011, he responded to appellant's residence on 219 Mitchellville Road. He was responding to a possible criminal domestic violence 911 call where the female caller hung up the phone. When he arrived at the scene, he saw appellant exiting the house. Corporal Collier also arrived on the scene. They did a protective sweep of the residence to make sure whoever called was not hurt or injured. He said when they do a protective sweep, they look into any place that someone can either be placed into or hide in. They went into the master bedroom and checked under the bed. Then they went into the adjoining master bathroom. There was a large vanity. Inside of it, they found a bag of suspected marijuana and a Crown Royal bag that had a white powdery substance in it which they suspected to be cocaine. (R. p. 181, line 17 – R. p. 186, line 25). Both of the items were tested as positive for drugs. The marijuana was admitted into evidence. (R. p. 447, lines 3 – 4). And, the cocaine was admitted into evidence. (R. p. 511, lines 1 – 2).

Both of the items should not have been admitted into evidence. S.C. Code § 16-25-70 deals with warrantless arrests or searches and the admissibility of evidence. Section H provides:

- (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 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 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).


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.

The evidence in this case was not in plain view and it was not in a room in which the officer was interviewing, detaining, or pursuing a suspect.

CONCLUSION

Because the evidence was wrongly admitted, appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender.

ATTORNEY FOR APPELLANT

This 17th day of April, 2014.

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IN THE COURT OF APPEALS

Appeal from Beaufort County
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THE STATE,

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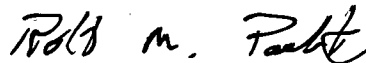
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Stanley Wright 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 Maite Murphy, which was held on September 18, 2013, 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 Stanley Wright.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of April, 2014.

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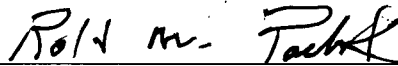
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (September 16 – 18, 2013)

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

April 17th, 2014



Robert M. Pachak
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."

April 17, 2014

Robert M. Pachak

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Appellate Defender

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CERTIFICATE OF SERVICE

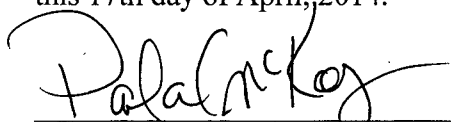
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Stanley Wright, #337175 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 17th day of April, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of April, 2014.

 (L.S.)

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