

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Sumter County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case No. 2012-212044

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S.C. Supreme Court

THE STATE,

Respondent,

vs.

ANDRE MAURICE MASSEY,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I.

The Court of Appeals correctly affirmed the trial judge's denial of Massey's suppression motion and motion for a mistrial because the probation agent's disclosure of Massey's address did not constitute a violation of S.C. Code Ann. § 24-21-290 and the exclusionary rule did not apply to such a violation even assuming one occurred. Furthermore, even if the exclusionary rule did apply to a violation of the statute, all of the evidence obtained during Massey's arrest and the search of his apartment would have inevitably been discovered through information already obtained by the officers prior to the agent's disclosure.

II.

The Court of Appeals properly affirmed Massey's mandatory sentence of life without parole following his armed robbery conviction because Massey had previously been convicted of earlier "most serious" offenses and the solicitor served timely pre-trial written notice to Massey and his counsel notifying them of the State's intention to seek a life sentence pursuant to the recidivist offender statute.

STATEMENT OF THE CASE

Procedural History

Petitioner Andre Maurice Massey was arrested following an investigation into an armed robbery. In July of 2008, the Sumter County grand jury indicted Massey for armed robbery and possession of a firearm or knife during the commission of a violent crime. Based on Massey's earlier convictions, the solicitor notified Massey and his counsel prior to trial of his intentions to seek a sentence of life imprisonment pursuant to S.C. Code Ann. § 17-25-45 if Massey was convicted. On August 3, 2009, a jury trial was commenced in the Sumter County court of general sessions with the Honorable George C. James, Jr., circuit court judge, presiding. At the conclusion of trial, Massey was convicted as indicted. The trial judge sentenced Massey to life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45 for the armed robbery conviction. Based on the imposition of a life sentence, Massey was not sentenced for the possession of a firearm offense. Massey then filed several post-trial motions, and the motions were denied in an order dated September 27, 2009. Thereafter, Massey timely filed and perfected an appeal.

Subsequently, the Court of Appeals unanimously affirmed Massey's convictions and sentence. State v. Massey, Op. No. 2012-UP-98 (S.C. Ct. App. filed Feb. 22, 2012). Massey petitioned the Court of Appeals for rehearing, and the petition was denied. Massey then filed a petition for a writ of certiorari in the Supreme Court

Factual History

On the afternoon of June 7, 2007, Herbert Huff was working at the Total Living Store in Sumter, S.C., when Petitioner Andre Maurice Massey entered the store. (R. pp. 102-103). After entering the store, Massey looked around at the store's selection of

men's clothing before going outside to speak with Latrell Billie, a woman who worked for an organization located next to Huff's store.¹ (R. p. 104; pp. 154-158). Massey then walked Billie to her car and casually told her it would be easy for him to rob Huff because Huff was always asleep. (R. p. 166). Billie parted ways with Massey around 5:00 p.m. and observed him ride away on a bicycle. (R. pp. 158-159).

At around 5:30 p.m., Massey re-entered the Total Living Store as Huff was preparing to close for the day. (R. p. 105). Carol Brunson and her children were shopping in the store at the time. (R. p. 105; pp. 145-146). Upon entering, Massey asked to see the men's suits, and Huff directed him to them. (R. p. 106). Shortly thereafter, Brunson and her children completed their purchases and left, and Huff began closing up the store for the evening. (R. p. 106). Brunson then returned to purchase another item and to make sure everything was okay based on her belief Massey had been behaving suspiciously. (R. p. 107; p. 146). Brunson bought a bar of soap, and Huff escorted her to the door. (R. pp. 107-108). After Brunson was gone, Huff turned around to walk back to the check-out counter. (R. p. 108).

Suddenly, Massey approached Huff, pulled out a small handgun, pointed it at Huff's face from roughly six to eight inches away, warned him not to do anything, and demanded his cash. (R. p. 108; p. 110; p. 118). While keeping the firearm aimed at Huff, Massey removed Huff's wallet and took out approximately \$22 in cash. (R. p. 108; p. 117). Massey then took \$389 in cash from the store's cash register. (R. pp. 108-109). After securing the money, Massey asked for a towel and wiped down every surface he had touched, including the cash register, the counter, and the doorknob. (R. p. 233).

¹ Billie's organization assisted people with job searches. (R. p. 161). During trial, Billie testified she knew Massey through helping him find a job. (R. pp. 155-156; p. 161). She further testified Massey regularly came back to thank her for her assistance. (R. p. 156).

Massey then fled from the store. (R. p. 110). Immediately thereafter, Huff called 911. (R. p. 110).

Subsequently, Detective Irene Culick, a senior detective in the violent crimes division of the Sumter Police Department, was dispatched to the robbery scene and spoke with Huff. (R. pp. 167-168). Although shaken by the crime, Huff informed Detective Culick he had been robbed by a man armed with a black two-shot Derringer pistol who took the store's cash and then wiped down the store to remove fingerprints. (R. pp. 168-170). Huff described the suspect as a muscular male in his late twenties to early thirties, approximately 5'10" tall, with a shoulder tattoo and earring, and wearing a white tank top along with white-striped black pants and a "doo rag." (R. pp. 118-121; p. 141; p. 171). Huff further advised the officer he saw the suspect speak with Billie earlier in the day. (R. p. 171). Detective Culick then contacted Billie and spoke with her about the incident. (R. pp. 171-172). Billie confirmed the details of Huff's description of Massey and provided the circumstances of her encounter with Massey that afternoon. (R. pp. 72-73; pp. 159-160; p. 166; p. 172). Billie also revealed Massey was on probation and registered as a sex offender. (R. p. 22).

After speaking with Billie, Detective Culick attempted to contact Massey's probation agent. (R. p. 94). While waiting to hear back from the agent, Detective Culick accessed Department of Motor Vehicle records and the sex offender registry and obtained two addresses for Massey. (R. pp. 94-95). Subsequently, Massey's probation agent contacted the officer and confirmed which of the officer's addresses for Massey was correct. (R. p. 22; p. 24; p. 30; p. 95). The probation agent then drove by Massey's home and determined he was there. (R. p. 25; p. 29).

Subsequently, multiple officers responded to Massey's apartment and arrested him when he answered their knock on the front door. (R. p. 35; p. 38; p. 47; p. 250). Massey was wearing a white tank top, had a shoulder tattoo, and had \$388 in cash in his pocket at the time of his arrest. (R. p. 30; pp. 174-175; p. 187). After Massey was arrested, officers asked him for consent to search the residence, but he declined. (R. p. 268). Several officers then secured the apartment while Detective Tod Sims and Detective Culick transported Massey to the law enforcement center and obtained a search warrant.² (R. p. 48; p. 50; pp. 173-174; p. 251).

At the law enforcement center, Detective Sims prepared a search warrant affidavit. (R. p. 50). The warrant affidavit recounted the details of the incident and the subsequent law enforcement investigation and identified Massey as the perpetrator of the armed robbery. (R. pp. 50-51). Regarding Massey's address, the affidavit stated: "The State Probation and Parole was given the information gathered from the witness and gave law enforcement a location of Andre Massey's residence which is [the address of Massey's apartment]. Law enforcement located Massey at the residence and took him into custody." (R. p. 51). A magistrate issued the warrant at 1:20 a.m. on June 8, 2007, and officers quickly returned to the apartment to execute the warrant. (R. pp. 52-54; p. 252). During the ensuing search, officers found a black two-shot Derringer pistol under a shirt on Massey's bed, white-striped black pants nearby, and a knit cap or "doo rag" on the couch. (R. pp. 54-55; p. 64; p. 253; pp. 257-259; pp. 294-295).

Meanwhile, Detective Culick informed Massey of his rights and interviewed him back at the law enforcement center. (R. pp. 173-174; p. 177). Initially, in his first

² Immediately following Massey's arrest, officers detained two other occupants of the apartment and performed a brief protective sweep of the premises. (R. pp. 33-35; p. 38; p. 42; p. 48; p. 250). No evidence or information was obtained during the roughly one-minute protective sweep. (R. p. 36; p. 40; p. 48; p. 60; p. 251; p. 258).

statement, Massey claimed the robbery was actually a scam perpetrated by “Tyrone” and Huff, the “old man.” (R. pp. 182-183; p. 357). Massey denied any responsibility for the robbery and asserted he was an “escape goat.” (R. pp. 183-184; p. 228; p. 357).

Following Massey’s initial statement, Detective Culick contacted the officers who performed the search of Massey’s apartment and learned about the evidence discovered there. (R. pp. 185-186). She then confronted Massey about the inconsistencies in his initial statement and the evidence discovered in his home, and he offered a revised statement. (R. p. 186; p. 188; pp. 230-231). In his second statement, Massey expressed remorse and admitted he committed the robbery while confirming the specific details of the crime. (R. pp. 191-192; p. 231; p. 358). Subsequently, Massey was indicted for armed robbery and possession of a firearm or knife during the commission of a violent crime, and he proceeded to trial. (R. pp. 2-3; pp. 360-361).

Several weeks before trial, the solicitor served written notice on Massey and his counsel of the State’s intention to seek life imprisonment pursuant to S.C. Code Ann. § 17-25-45 if Massey was convicted of armed robbery. (R. p. 347). The notice was served on Massey’s counsel on June 30, 2009, and was served on Massey on July 15, 2009. (R. p. 340; p. 341). Subsequently, prior to trial, Massey moved to quash the solicitor’s notice. (R. p. 4). In a pre-trial hearing, Massey claimed he did not learn he was facing life imprisonment without parole until the previous Monday before trial. (R. p. 7). However, he conceded he spoke with his counsel at some point about “two strikes” and acknowledged he had been served with written notice on July 15, 2009. (R. p. 7; p. 10). Massey then sought to have the notice quashed based on the fact it did not specify the sentence would be “without parole.” (R. p. 14). The trial judge took the matter under advisement. (R. pp. 17-18).

Subsequently, Massey challenged the propriety of the search and search warrant. (R. p. 19; p. 68). During an ensuing pre-trial hearing, Detective Culick testified she confirmed Massey's address with the assistance of his probation agent, and Detective Sims acknowledged he included that information in the search warrant affidavit. (R. pp. 22-24; pp. 50-51). In response, Massey asserted his constitutional rights were violated by the search based on the fact the warrant affidavit contained privileged information obtained in violation of S.C. Code Ann. § 24-21-290.³ (R. p. 77).

After reviewing the statute, the trial judge concluded the information provided by the probation agent was inadmissible. (R. p. 80). However, the trial judge found the statute did not render everything derived from the privileged information inadmissible. (R. p. 80). The trial judge further concluded Massey would have inevitably been discovered and arrested based on the fact Detective Culick had obtained his address from the D.M.V. records. (R. p. 80). Therefore, the trial judge declined to suppress the evidence obtained in the investigation as the fruits of an unlawful search. (R. p. 81).

Subsequently, Detective Culick testified further on how she obtained Massey's address. (R. p. 93). Detective Culick stated she checked D.M.V. records and the sex offender registry and obtained two addresses for Massey, one of which was the address where Massey was arrested, prior to speaking to the probation agent. (R. pp. 94-95). She further testified officers would have simply gone to both addresses to arrest Massey if the probation agent had not confirmed which address was accurate. (R. p. 95).

Following the testimony, the trial judge ruled the probation agent's information was privileged and could not be disclosed. (R. p. 99). However, he determined the

³ Massey also claimed his Fourth Amendment rights were violated because he denied consent to search the apartment and it was eventually searched anyway. (R. p. 68).

officers would have been led to Massey's address by the D.M.V. records and the sex offender registry regardless of the probation agent's disclosure. (R. p. 99). Based on the inevitability of Massey's discovery and arrest, the trial judge again denied Massey's suppression motion. (R. p. 100). However, the trial judge ruled the probation agent's information could not be introduced during trial. (R. p. 100).

Thereafter, during trial, Huff testified about the circumstances of the robbery and conclusively identified Massey in court as the perpetrator. (R. pp. 108-109; p. 119; p. 142). Additionally, the officers testified about their investigation, Massey's arrest, and Massey's incriminating statements. (R. p. 173; p. 184; p. 191; p. 249). Likewise, the items recovered in the search of Massey's apartment were introduced over Massey's objection. (R. pp. 257-258; p. 303). Following Detective Sims' testimony, Massey moved for a mistrial based on an alleged violation of his constitutional rights. (R. pp. 276-277). Massey asserted the warrant affidavit contained privileged information in violation of the statute and was, therefore, invalid. (R. pp. 278-279). Massey further argued everything recovered after the invalid warrant was obtained should have been excluded. (R. p. 281). However, Massey conceded the address on his driver's license was the same as the address of his apartment, which was the location of his arrest. (R. p. 283). The trial judge denied the motion, finding the technical violation of S.C. Code Ann. § 24-21-290 did not implicate any Fourth Amendment concerns. (R. pp. 284-285).

At the conclusion of trial, Massey was convicted of armed robbery and possession of a weapon during the commission of a violent crime. (R. p. 323). The trial judge took notice of Massey's objection to the imposition of a sentence pursuant to S.C. Code Ann. § 17-25-45 but found the written notice was sufficient based on the inclusion of language specifically referencing the statute. (R. pp. 324-325; p. 328). Based on Massey's prior

convictions for two counts of first-degree burglary, five counts of kidnapping, and one count of assault and battery with intent to kill, the trial judge sentenced Massey to a mandatory sentence of life without parole. (R. p. 9; p. 326; pp. 331-332).

Subsequently, in a post-trial motion, Massey contended the trial judge erred in denying his suppression motion and his motion to quash the statutory life without parole notice. (R. p. 354-355). In a subsequent order, the trial judge denied the motion. (R. p. 348). Regarding the sentencing notice, the trial judge found the notice provided was sufficient to fully advise Massey of his potential sentencing exposure upon conviction. (R. p. 348-349). Regarding the denial of the suppression motion, the trial judge ruled the statutory violation of S.C. Code Ann. § 24-21-290 did not constitute a violation of Massey's Fourth Amendment rights and did not warrant exclusion of the evidence. (R. pp. 350-351). Furthermore, the trial judge found the evidence would have been admissible under the independent source rule even if the violation had implicated Massey's constitutional rights. (R. pp. 351-352). Therefore, Massey's motion was denied. (R. p. 352).

Following the trial judge's denial of his post-trial motion, Massey timely appealed his convictions and sentence. Thereafter, the Court of Appeals affirmed, finding the trial judge did not abuse his discretion in denying Massey's motions, the exclusionary rule was not applicable to a violation of S.C. Code Ann. § 24-21-290, and the solicitor satisfied the notice requirements of S.C. Code Ann. § 17-25-45. State v. Massey, Op. No. 2012-UP-98 (S.C. Ct. App. filed Feb. 22, 2012).

ARGUMENT

I.

The Court of Appeals correctly affirmed the trial judge's denial of Massey's suppression motion and motion for a mistrial because the probation agent's disclosure of Massey's address did not constitute a violation of S.C. Code Ann. § 24-21-290 and the exclusionary rule did not apply to such a violation even assuming one occurred. Furthermore, even if the exclusionary rule did apply to a violation of the statute, all of the evidence obtained during Massey's arrest and the search of his apartment would have inevitably been discovered through information already obtained by the officers prior to the agent's disclosure.

Massey contends the Court of Appeals erred in affirming the trial judge's denial of his suppression motion and mistrial motion. Massey maintains the trial judge should have granted his motions because the probation agent allegedly violated S.C. Code Ann. § 24-21-290 by disclosing his address to the officers. Massey further asserts the alleged violation rendered his arrest and all subsequent evidence inadmissible as the fruits of an unlawful arrest and search. Initially, the probation agent's disclosure of Massey's address did not constitute a violation of Section 24-21-290 because Massey's address was not the type of information intended to be privileged under the statute. Furthermore, even if the information was privileged, the trial judge properly denied Massey's suppression motion and mistrial motion because the exclusionary rule did not apply to a violation of the statute, meaning all of the obtained evidence was admissible regardless of any alleged statutory violation. Additionally, even if the exclusionary rule had been implicated, all of the challenged evidence would have inevitably been discovered based on the information already obtained by the officers, which included Massey's name and address, and was, therefore, properly admitted during trial. The trial judge did not abuse his discretion in denying Massey's suppression motion and motion for a mistrial, and the Court of

Appeals properly affirmed the trial judge's rulings. Massey's petition for a writ of certiorari should be denied.

A. Alleged Violation of the Statutory Privilege Regarding Probation Agents

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

"A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for a prejudicial abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

Similarly, the grant or denial of a mistrial lies within the sound discretion of the trial court, and the ruling will not be disturbed on appeal absent an abuse of discretion or an error of law. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627-628 (2000). A mistrial should not be granted unless absolutely necessary, and instead, all other methods to cure any possible prejudice should be exhausted before granting the motion. State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). "The granting of a motion for mistrial is an extreme measure which should be taken only where an incident is so

grievous that prejudicial effect can be removed in no other way.” State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999); see State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983) (“The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public’s interest in a fair trial designated to end in just judgment.”).

Pursuant to S.C. Code Ann. § 24-21-290, information received by probation agents during the discharge of their duties is privileged. The statute instructs:

All information and data obtained in the discharge of his official duty by a probation agent is privileged information, is not receivable as evidence in a court, and may not be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive reports unless ordered by the court or the director.

S.C. Code Ann. § 24-21-290. The purpose of this statute “is to foster open lines of communication between the probation agent and client.” Hutto v. State, 387 S.C. 244, 248, 692 S.E.2d 196, 198 (2010); see, e.g., 98 C.J.S. Witnesses § 366 (“[I]n some jurisdictions, a statutory privilege does attach to information and data obtained in the discharge of official duties by probation and parole agents, the purpose of which is to permit interviewees to express themselves fully without fear of disclosure or reprisal.”). In order to achieve the goal of the statute of fostering open communication, information given by a probationer to his probation agent is “inadmissible **as evidence in court** with no exception.” State v. Hook, 356 S.C. 421, 425, 590 S.E.2d 25, 27 (2003) (emphasis added).

However, “Section 24-21-290 only creates a statutory privilege and does not implicate a constitutional right[.]” Hutto, 387 S.C. at 250, 692 S.E.2d at 199. The exclusionary rule does not apply and is not triggered by a violation of the statute. Id. Thus, even where a technical violation of the statute has occurred, such a violation does

not warrant the exclusion of any evidence obtained as a result of the disclosure of privileged information. Id. In the context of the application of the exclusionary rule, the “exclusion of evidence should be limited to violations of constitutional rights and not to statutory violations, at least where the appellant cannot demonstrate prejudice at trial resulting from the failure to follow statutory procedure.” State v. Chandler, 267 S.C. 138, 143, 226 S.E.2d 553, 555 (1976).

In Hutto v. State, Hutto cut his arms and hands while breaking into the home of a ninety-one-year-old woman. Id., 387 S.C. at 246, 692 S.E.2d at 197. Hutto then sexually-assaulted and robbed the elderly woman before fleeing. Id. About a month later, Hutto’s probation agent visited his home on a routine visit and observed the cuts on Hutto’s arms and hands. Id. at 246-247, 692 S.E.2d at 197. Subsequently, the probation agent provided that information to law enforcement when he learned they were looking for a suspect with similar injuries. Id. at 247, 692 S.E.2d at 197. Using that information, officers were able to obtain a positive identification of Hutto from the victim and obtain a warrant for a sample of Hutto’s blood. Id. Testing confirmed Hutto’s blood matched the evidence collected from the crime scene, and he was convicted of numerous offenses. Id.

Following his conviction, Hutto sought post-conviction relief on the basis his trial counsel was ineffective for failing to seek the suppression of the testimony and evidence related to the probation agent’s observations. Id. On appeal, this Court affirmed the denial of Hutto’s application for relief, finding the agent’s observations were not intended to be covered by the statutory privilege of Section 24-21-290. Id. at 248, 692 S.E.2d at 198. This Court concluded the information obtained was not reliant upon the probation agent’s relationship with Hutto, meaning its exclusion was not intended by the legislature and would not serve the goals of the statute. Id. This Court further rejected Hutto’s

contention the statutory exclusion should have been applied to everything obtained through the use of the allegedly privileged information, including the identification evidence leading to Hutto's arrest and the evidence obtained through the execution of the search warrant. Id. at 250, 692 S.E.2d at 198-199. This Court specifically held the exclusionary rule did not apply to a violation of the statute and no constitutional rights were implicated by a violation even assuming one had occurred. Id. at 250, 692 S.E.2d at 199.

In the case sub judice, Massey's probation agent provided Massey's address to Detective Culick to assist in the investigation by confirming which of the two addresses the officer already had for Massey was correct. The probation agent's act of providing Massey's address to the officer did not constitute a violation of Section 24-21-290. Much like in Hutto, Massey's address was not the kind of information intended to be privileged by the legislature. Section 24-21-290 is designed to encourage open lines of communication between a probation agent and probationer. However, a probationer is required to provide his address to a probation agent, and an open relationship between the two is in no way impacted by a probationer providing purely administrative information like a name or address to his agent. See S.C. Code Ann. § 24-21-430 (listing conditions of probation and requiring a probationer to permit a probation agent to visit his home).⁴ Therefore, the statute's goal of encouraging open lines of communications between the

⁴ Notably, although not applicable to Massey's case, the legislature amended S.C. Code Ann. 24-21-430 subsequent to Massey's conviction to **require** all probationers to submit to the warrantless search and seizure of their person, vehicle, and possessions when requested by either a probation agent or any law enforcement officer. See Act No. 151, § 10, 2010 S.C. Acts & Joint Resolutions (amending Section 24-21-430 to require a person on probation to submit to warrantless searches conducted by probation agents or other law enforcements officers of the probationer's person, automobile, and possessions). Therefore, under the current law, Massey would not have been permitted to deny consent to search his apartment upon his arrest and the officers would not have been required to obtain a warrant to conduct the search.

parties is not weakened, jeopardized, or affected by the agent disclosing basic administrative information like an address to law enforcement.

Massey's address was a piece of information readily available from multiple sources and should not have been afforded privileged status merely because it was also available through the probation agent. Massey's disclosure of his address to the probation agent had no connection to the legislative intent behind the statute of fostering open lines of communication between Massey and his agent. Furthermore, the probation agent's ability to obtain Massey's address was not reliant upon the openness of the agent's relationship with Massey. See Hutto, 387 S.C. at 248, 692 S.E.2d at 198 ("The information obtained was not reliant upon the probation agent/client relationship."). Instead, Massey was required to initially provide his address along with other basic administrative information to his agent before their relationship could even begin. Thus, under the circumstances, there was no valid reason to afford administrative information like the information provided in Massey's case privileged status under the statute.

The legislature did not intend the statutory privilege to prevent a probation agent from confirming a suspect's address during a police investigation, and the goals of the statute would not be served by such a ruling. Instead, an overly broad application of the statute in this manner would achieve an absurd result not intended by the legislature and entirely disconnected from the goals of the statute. See State v. Sweat, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention."). Therefore, Massey's address should not have been considered privileged information, and its disclosure by the probation agent did not constitute a violation of the statute.

However, assuming arguendo a statutory violation occurred, the Court of Appeals correctly affirmed the trial judge's determination that Massey was not entitled to suppression of the evidence. As this Court instructed in Hutto, Massey's constitutional rights were not implicated by a statutory violation even if one did occur. Assuming the probation agent was not statutorily permitted to provide Massey's address to the officers, the agent's disclosure did not entitle Massey to the exclusion of any evidence obtained with the allegedly privileged information. See Hutto, 387 S.C. at 250, 692 S.E.2d at 199 (“[A]ssuming arguendo there was a violation, such violation would not warrant the exclusion of evidence obtained from the information disclosed.”). Just as the subsequently-obtained identification evidence and search warrant were not tainted by the disclosure of alleged privileged information in Hutto, Massey's arrest, his statements to law enforcement, and the search warrant were not tainted by his probation agent's disclosure of his address to law enforcement.⁵ Therefore, regardless of whether or not the

⁵ To the extent Massey is contending the warrant was rendered invalid by a statutory violation of S.C. Code Ann. § 24-21-290, the search warrant was properly issued after the officers presented substantial information to the magistrate establishing a probable cause basis for the issuance of the warrant. See State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (“Suppression is appropriate in only a few situations, including when an affidavit is ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’” (quoting United States v. Leon, 468 U.S. 897, 923 (1984))). The information in the affidavit established Massey committed the armed robbery, was arrested at his apartment, and possibly could have concealed evidence of the crime there. The fact officers confirmed the address of Massey's known residence through his probation agent was entirely unnecessary to establish a probable cause basis for the issuance of the search warrant. See State v. Herring, 387 S.C. 201, 212, 692 S.E.2d 490, 496 (2009) (“We find the affidavit sufficient to establish probable cause for police to look for Herring, a murder weapon, and the Toyota Forerunner at his known residence.”). Additionally, although a violation of the **warrant** statute itself can potentially render a warrant invalid, the officers in Massey's case complied with the requirements of the warrant statute in obtaining the search warrant by submitting a written warrant affidavit. See State v. McKnight, 291 S.C. 110, 113-114, 352 S.E.2d 471, 473 (1987) (finding exclusion appropriate where the officers made no good faith efforts to comply with the requirements of the warrant statute by failing to prepare a written warrant affidavit). Furthermore, even assuming the agent's disclosure of allegedly privileged information rendered the warrant affidavit defective or invalid, the officers reasonably believed the search warrant was valid after fully complying with the requirements of the warrant statute and acted in good faith when they executed the search warrant. See Herring, 387 S.C. at 215, n. 6, 692 S.E.2d at 497 (“Given our recognition of an exception for officers' good faith attempt to comply with the affidavit requirement, we find no reason not to extend such a good faith exception to a warrant reasonably believed to be valid, but later determined invalid. Accordingly, even if we were to determine the affidavit was improper, we would find the SLED agents acted in good faith and

probation agent violated the statute by revealing Massey's address, none of the evidence obtained afterwards was rendered inadmissible during trial. The trial judge correctly denied Massey's suppression motion and motion for a mistrial, and the Court of Appeals properly affirmed the trial judge's rulings. Massey's petition for a writ of certiorari should be denied.

B. Inevitable Discovery and the Independent Source Doctrine

The inevitable discovery doctrine has been adopted as an exception to the exclusionary rule. Nix v. Williams, 467 U.S. 431, 444 (1984). If the prosecution can establish by a preponderance of the evidence that information or evidence would have inevitably been discovered by lawful means, then the discovered evidence, even if obtained by unlawful means, is admissible. Id. "Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial." Id. at 446. Likewise, "the independent source doctrine allows admission of evidence that has been discovered by means wholly independent of any constitutional violation." Id. at 443. "[T]he prosecution is not to be put in a better position than it would have been in if no illegality had transpired. By contrast, the derivative evidence analysis ensures that the prosecution is not put in a worse position simply because of some earlier police error or misconduct." Id.

In Massey's case, Massey contends the probation agent's disclosure of his address violated Section 24-21-290 and warranted the exclusion of all the evidence obtained afterwards, including his arrest, his statements to law enforcement, and everything recovered during a search of his apartment. Massey maintains the search warrant was rendered invalid because it contained the information provided by the probation agent.

reasonably believed the warrant valid, such that the search should be upheld."'). Therefore, the evidence discovered after the execution of the search warrant was properly admitted during trial.

Assuming the probation agent's actions violated the statute and even assuming the exclusionary rule was triggered by the violation, all the evidence recovered following the agent's disclosure of the allegedly privileged information would have inevitably been discovered regardless of the claimed statutory violation.

Prior to the involvement of the probation agent in the investigation, Detective Culick identified Massey as the perpetrator of the armed robbery and obtained two addresses for Massey from D.M.V. records and the sex offender registry. Assuming the probation agent had not confirmed which address Massey actually resided at, the officers would have gone to both addresses to arrest Massey. Furthermore, Massey conceded the address on his driver's license was the correct address where he resided. Therefore, the officers unquestionably had all the information they needed to locate Massey and would have arrested him for the crime regardless of the probation agent's disclosure and confirmation of Massey's correct address. The probation agent's disclosure merely enabled law enforcement to complete their investigation in the most efficient manner possible under the circumstances and in no way violated Massey's constitutional rights. Exclusion of the evidence was not warranted and would have unfairly placed the officers in a far worse position than they would have been if no statutory violation occurred. See Id. at 444 ("If 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. Anything less would reject logic, experience, and common sense.").

Based on the information obtained by the officers from independent sources with no connection to any statutory privilege, Massey's arrest was inevitable with or without the assistance of his probation agent. If the address provided by the probation agent had

not been included in the search warrant affidavit, the officers would have independently determined the correct address from the information they had already obtained from other sources and included that address in the warrant affidavit. Thus, the officers had probable cause for the search and sufficient information to obtain a search warrant independent of the alleged statutory violation. Therefore, even if a statutory violation occurred, the evidence subsequently obtained through the investigation was properly admitted under the inevitable discovery and independent source doctrines. See Hutto, 387 S.C. at 250, 692 S.E.2d at 199 (ruling evidence obtained after an alleged violation of Section 24-21-290 was properly admitted where the disclosure of the privileged information was not the only source that led to the discovery of the evidence). The trial judge properly denied Massey's suppression motion and mistrial motion, and the Court of Appeals correctly affirmed the trial judge's rulings. Massey's petition for a writ of certiorari should be denied.

II.

The Court of Appeals properly affirmed Massey's mandatory sentence of life without parole following his armed robbery conviction because Massey had previously been convicted of earlier "most serious" offenses and the solicitor served timely pre-trial written notice to Massey and his counsel notifying them of the State's intention to seek a life sentence pursuant to the recidivist offender statute.

Massey contends the Court of Appeals erred in affirming his sentence of life without parole. Massey alleges the trial judge improperly imposed a sentence of life without parole under S.C. Code Ann. § 17-25-45 because Massey claims he allegedly did not receive proper notice of the State's intention to seek the sentence prior to trial. Although Massey has acknowledged he received written notice that referenced the recidivist offender statute and that indicated the State would seek life imprisonment pursuant to the statute upon conviction, Massey maintains the notice was insufficient because it did not explicitly include the words "without parole." To the contrary, the written notice was not defective despite the absence of the language desired by Massey. The language included in the notice was fully sufficient to convey the State's intentions regarding sentencing to Massey. Massey received timely notice prior to trial of his eligibility for a life sentence pursuant to the recidivist offender statute, and the trial judge properly sentenced him accordingly. The Court of Appeals committed no error in affirming Massey's sentence. Massey's petition for a writ of certiorari should be denied.

Under S.C. Code Ann. § 17-25-45(A), a defendant convicted of a most serious offense must be sentenced to life imprisonment without the possibility of parole if the defendant has one or more prior convictions for a most serious offense or two or more prior convictions for a serious offense. Armed robbery, kidnapping, first-degree burglary, and assault and battery with intent to kill are all considered to be "most serious" offenses. S.C. Code Ann. § 17-25-45(C)(1).

Before a defendant can be sentenced to life imprisonment pursuant to the statute, “[t]he State is required by law to inform [the] defendant that it plans to apply the recidivist statute.” State v. Burdette, 335 S.C. 34, 38, 515 S.E.2d 525, 527 (1999). The notice requirement is codified under S.C. Code Ann. § 17-25-45(H), which instructs: “Where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant’s counsel not less than ten days before trial.” However, the statute does not enunciate any required language or contents that must be included in such notice. Burdette, 335 S.C. at 39, 515 S.E.2d at 527.

“The purpose of § 17-25-45(H) is to assure that a defendant and his counsel have actual notice that the State is seeking a sentence under the recidivist statute at least ten days prior to trial.” James v. State, 372 S.C. 287, 294, 641 S.E.2d 899, 903 (2007). In order to meet the statutory notice requirements, the solicitor is **only** required to notify the defendant that the recidivist sentencing statute will be applied upon sentencing. Burdette, 335 S.C. at 39-40, 515 S.E.2d at 528. Actual notice is sufficient even where written notice is not provided. James, 372 S.C. at 294-295, 641 S.E.2d at 903.

In the case at bar, Massey and his counsel were timely notified in writing more than ten days before trial of the State’s intentions to seek a life sentence pursuant to the recidivist offender statute upon Massey’s conviction for armed robbery based on his earlier convictions for “most serious” offenses. The written notice admittedly provided to Massey and his counsel listed Massey’s prior convictions along with his new indictment for armed robbery and instructed him the State would be seeking life imprisonment while specifically referencing S.C. Code Ann. § 17-25-45. Nothing more

was required of the State to place Massey on notice of his eligibility for a life sentence under the recidivist offender statute.

To the extent Massey is challenging the written notice as statutorily deficient based on the absence of language stating the life sentence would be “without parole,” there is no requirement such language must be included in the solicitor’s notice. See Burdette, 335 S.C. at 39, 515 S.E.2d at 527 (“The statute, however, does not address the content requirement of such notice.”). Instead, the solicitor was only required to notify Massey the State intended to apply the recidivist offender statute upon his conviction, and the solicitor unquestionably met that burden in Massey’s case by including a direct reference to the applicable statutory provision in the notice. See, e.g., Id. at 40, 515 S.E.2d at 528 (“Specifically listing the triggering charge from the current case is unnecessary because Defendant has been fully informed of the charges against him in the indictment, and he has been informed that the State will apply the recidivist statute.”).

To the extent Massey is asserting the notice was deficient because it did not put him on actual notice the State was seeking life imprisonment without parole as opposed to a life sentence with the possibility of parole, the notice given informed him the State was seeking a sentence pursuant to the recidivist offender statute, which mandated a sentence of life imprisonment without parole. Nothing more was required or necessary to inform Massey of the sentence he was facing upon conviction.

Furthermore, even assuming Massey did not actually understand his sentence would be for life without the possibility of parole, his ignorance of the law affords him no relief. See Gregory v. Gregory, 292 S.C. 587, 589-590, 358 S.E.2d 144, 146 (Ct. App. 1987) (“The legal axiom that ignorance of the law is no excuse has long been the law of this nation and state.”); see also State v. Latimore, 390 S.C. 88, 98, 700 S.E.2d 456, 462

(Ct. App. 2010) (“[E]ven if we presume Latimore was not notified of the changes to the statutory scheme, ignorance of the law is no excuse”). Assuming any confusion regarding the potential sentence existed, Massey simply needed to ask his counsel or refer to the statute cited in the written notice to understand the nature of the life sentence.⁶ Cf. Burdette, 335 S.C. at 40, 515 S.E.2d at 528 (“Determining which of the indicted offenses triggers the statute merely requires looking at the list of offenses listed in section 17-25-45.”). Massey’s alleged failure to do so did not render the notice provided to him deficient.

Based on the timely provision of written notice to Massey and his counsel notifying them Massey would be sentenced under the recidivist offender statute if convicted, the trial judge properly sentenced Massey to life imprisonment without the possibility of parole when Massey was convicted of armed robbery, which constituted a subsequent conviction for a most serious offense. The solicitor completely satisfied the statutory notice requirements by serving written notice, and Massey was properly sentenced for his crimes. See Id. at 39-40, 515 S.E.2d at 528 (“Once the indictment informs a defendant of the charges against him, section 17-25-45(H) **only** requires the solicitor to inform the defendant that the recidivist sentencing statute will be applied upon conviction.” (emphasis added)). Accordingly, the Court of Appeals properly affirmed Massey’s life sentence. Massey’s petition for a writ of certiorari should be denied.

⁶ Notably, Massey conceded he received timely notice and was aware he was potentially facing life imprisonment without the possibility of parole prior to trial. (R. p. 7; p. 10). Furthermore, Massey acknowledged he discussed “two strikes” with his counsel. (R. p. 7). However, defense counsel refused to specifically disclose what he told Massey about the recidivist offender statute or about Massey’s sentencing exposure. (R. p. 18).


CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 18, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Sumter County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case No. 2012-212044

THE STATE,

Respondent,

vs.

ANDRE MAURICE MASSEY,

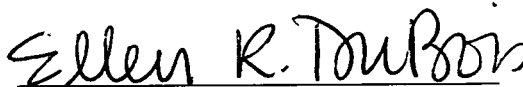
Petitioner.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 18th day of July, 2012.



ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
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ALAN WILSON
ATTORNEY GENERAL

RECEIVED

JUL 18 2012

July 18, 2012

S.C. Supreme Court

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

State v. Andre Maurice Massey – Appellate Case No. 2012-212044

Dear Ms. DuRant:

I am enclosing two (2) copies of the Return to Petition for Writ of Certiorari, along with proof of service, in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/erd
Enclosures

cc: ~~Honorable Daniel E. Shearouse (original and six copies enclosed)~~
Honorable Jenny A. Kitchings (one copy enclosed)
Victim Services