THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Doyet A. Early, III, Circuit Court Judge

Appellate Case No.2012-213596

The State.....Respondent

v.

Cleophas N. Edwards, Jr.....Defendant/Appellant

INITIAL REPLY BRIEF OF APPELLANT

AIKEN & HIGHTOWER, P.A.

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The State's argument that S.C. Code § 24-21-430 and U.S. v. Knights, 534 U.S. 112 (2001) justify this search does not withstand close examination of the text of the statute and the facts of Knights. Law enforcement did not have reasonable suspicion permitting them to search the suitcase because at the time of the search, they had no particularized and objective facts suggesting that the suitcase contained any evidence of a crime. The government cannot meet its burden under the well-recognized harmless error standard for trial errors.

ARGUMENT

I. S.C. Code § 24-21-430 and Knights

S.C. Code § 24-21-430 states that "the probationer must permit the search or seizure, without a search warrant, based on reasonable suspicions, of the probationer's person, any vehicle that the probationer owns or is driving, and any of the probationer's possessions." S.C. Code § 24-21-430 does not authorize a warrantless search of a probationer's residence. Without question, the search of the red Acer laptop occurred in the residence of Edwards (Edwards). This fact compels the application of a probable cause standard to the search of the red Acer laptop. In Arizona v. Hicks, 480 U.S. 321 (1987), discussed more fully in Edwards' opening brief (Appellant's Brief, p. ___) , the United States Supreme Court observed that "a dwelling place search no less than a dwelling place seizure, requires probable cause." 480 U.S. at 328.

Knights does not establish that all probationers' residences can be searched on reasonable suspicion. In Knights, the Supreme Court held that a warrantless search of a probationer's apartment could be conducted on reasonable suspicion. 480 U.S. at 121. However, the Knights Court based this holding, in part, on the fact that Knights was subject to a probation condition permitting the search. The Court in Knights explained its holding by noting that "[w]hen an

officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable." 480 U.S. at 121 (emphasis added).

The State makes much of Court's Exhibit 1, the search and seizure agreement form that Edwards signed as a probationer. (Resp. Brief p. ____) The search and seizure agreement form merely tracks the language of S.C. Code § 24-21-430. Neither S.C. Code § 24-21-430 nor the search and seizure agreement form, permitted a search within Edwards' residence on less than probable cause. Law enforcement did not have probable cause to believe that the red Acer laptop was evidence of a crime, and the trial court erred in denying Edwards' Motion to Suppress that evidence.[1]

II. Reasonable suspicion to search the suitcase

Reasonable suspicion for a search exists if the probability that a crime is being committed is sufficiently high that a particular search is reasonable. U.S. v. Cortez, 449 U.S. 411 (1981). To be reasonable, a suspicion must have a "particularized and objective basis." Cortez, 449 U.S. at 417. Law enforcement did not have sufficient facts to have a reasonable suspicion that the suitcase searched contained evidence of a crime. Indeed, law enforcement had no evidence that the suitcase in particular contained evidence of a crime. The rule that the State advocates would permit a search of all of a probationer's possessions so long as there was a reasonable suspicion that the probationer may have been involved in some crime. Law enforcement did not have reasonable suspicion to support the search of the suitcase because they had no particularized or

[1] In its Brief, the State makes an argument under the plain view. When the officers arrived to arrest Edwards on a warrant alleging a probation violation, the red Acer laptop was certainly in plain view, but the serial number was not. To get the serial number, the officer had to pick up the red Acer laptop and turn it on its side. The officer's handling of the red Acer laptop was a search under Hicks

objective basis to believe that the suitcase contained any evidence of a crime. The trial court erred in denying Edwards' Motion to Suppress the contents of the suitcase.

III. Harmless error

"[B]efore a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." Chapman v. California, 386 U.S. 18, 24 (1967). In other words, the harmless error decision turns on "whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction." Fahy v. Connecticut, 375 U.S. 85, 86-87. The government bears the burden of establishing harmlessness under this standard. Chapman, 386 U.S. at 24-25 ("constitutional error ... casts on someone other than the person prejudiced by it a burden to show that it was harmless").

The State asserts three items of evidence, when taken together meet its burden of establishing that there was no reasonable possibility that the DNA results from the suitcase samples might have contributed to Edwards' conviction – 1) Edwards' confession 2) the hoodie with the victim's blood on it; and 3) the knife with a mixture of blood on it of which the victim was the major contributor. (Resp. Brief p.___) By making this argument, the State improperly focuses on the evidence that would have remained after the proper exclusion of the DNA results from the suitcase samples. The proper focus should be on the evidence erroneously admitted. Exclusion of the DNA results from the suitcase samples would have deprived the State of three of its four DNA results. It cannot be said that evidence of these DNA results could not possibly have contributed to Edwards' conviction.

CONCLUSION

For the reasons stated in Edward's main Brief and the reasons stated in this Reply Brief, this Court should reverse the judgment of conviction and remand this case for a new trial.

Respectfully Submitted,

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Columbia, SC
July 7, 2014

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PROOF OF SERVICE OF APPELLANT'S INITIAL REPLY BRIEF

I hereby certify that I served Appellant's Initial Reply Brief in the above captioned appeal on the Respondent by depositing a copy of that papers in the U.S. Mail, postage prepaid, on July 7, 2014, addressed to its attorney of record, Donald J. Zelenka, S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211-1549.

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Arthur K. Aiken, Esq. ***A. Bea Hightower, Esq.***

July 7, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: State of South Carolina v. Cleophas Edwards
Appellate Case No.: 2012-213596

Dear Ms. Kitchings:

Enclosed for filing please find the original and one (1) copy of the Proof of Service, Appellant's Initial Reply Brief in the above-referenced matter. Please return a date-stamped copy to our office in the enclosed, self-addressed, stamped envelope at your earliest convenience.

By copy of this letter, I have served the enclosed on counsel for the State, Donald J. Zelenka. Please call me if you have any questions or need any clarification regarding these enclosures.

Thank you for your help.

Sincerely,

Arthur K. Aiken
art@aikenandhightower.com

Enclosures as stated

cc: Donald J. Zelenka (w/enclosure)

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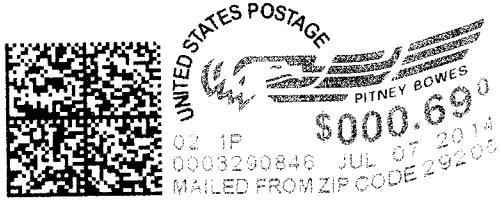

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