

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable Stephanie P. McDonald, Circuit Court Judge
Appellate Case No. 2013-001430

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AUG 12 2014

SC Court of Appeals

THE STATE,

Appellant,

vs.

WALTER MAURICE BASH,

Respondent.

**MOTION TO PERMIT THE DELIVERY
OF A DEMONSTRATIVE AID
FOR INCLUSION IN THE RECORD ON APPEAL**

Appellant (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In February of 2011, Respondent Walter Maurice Bash was arrested after officers located narcotics in his vehicle, and he was subsequently indicted by the Berkeley County grand jury for one count of trafficking in cocaine in an amount greater than 400 grams and one count of trafficking in cocaine base. Prior to trial, Respondent filed a motion seeking the suppression of the narcotics discovered during the investigation, and a hearing was conducted on the motion on June 11, 2013, in the Berkeley County court of general sessions before the Honorable Stephanie P. McDonald, circuit court judge. During the hearing before the circuit court judge, the State used a large map of the location where the incident took place as a demonstrative aid. Although

the map was not filed with the Berkeley County Clerk of Court or marked as an exhibit, the map was relied upon by the parties in arguing the merits of the suppression motion and by the circuit court judge in granting the suppression motion, which is the ruling currently being appealed in the case before this Court.¹ As a result, the State properly designated the demonstrative aid for inclusion in the Record on Appeal. See Rule 210(c), SCACR (“The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal.”).

II.

As the demonstrative aid was properly designated for inclusion in the Record on Appeal, was presented to the circuit court judge, and is relevant to the resolution of the State’s appeal, the Record on Appeal cannot be properly completed without its inclusion. For that reason and because the demonstrative aid was not filed with the Berkeley County Clerk of Court, the undersigned counsel for Appellant obtained the original demonstrative aid presented during the circuit court proceedings from the solicitor, and the demonstrative aid is currently in the possession of the undersigned counsel and located at the South Carolina Office of the Attorney General. Accordingly, the State respectfully asks this Court to permit the State to deliver the demonstrative aid to this Court for inclusion in the Record on Appeal and for this Court to accept the filing of the demonstrative aid for consideration in this appeal.

WHEREFORE, Appellant prays that the Court will allow the State to deliver a demonstrative aid presented to the circuit court judge but not filed with the Berkeley County Clerk of Court to this Court; accept the filing of the demonstrative aid to the Court for

¹ A copy of several transcript pages referencing the demonstrative aid has been attached to this motion as Exhibit “A.”

consideration in the appeal; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

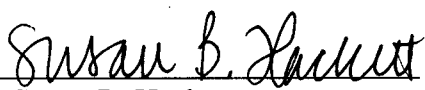
MARK R. FARTHING
Assistant Attorney General

By: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

August 12, 2014

I consent:

By: 
Susan B. Hackett

ATTACHMENT “A”

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2 COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT

3

4 STATE OF SOUTH CAROLINA,)
5 vs.) Case No.: 2012-GS-08-1823
6 WALTER M. BASH,) 2012-GS-08-1824
7 Defendant.)

ORIGINAL

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TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE JUDGE STEPHANIE McDONALD
ON JUNE 11, 2013

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ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

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State versus Walter M. Bash
June 11, 2013

1 Q Did the tip indicate where this drug activity
2 was taking place?

3 A It did. It was on the property of 497, or on
4 it.

5 Q So what did you do when you went by there? How
6 many people were there?

7 A Excuse me?

8 Q What did you do?

9 A We actually located the house and noticed that
10 there were some males behind the house in a grassy area.
11 So instead of actually approaching the house and
12 conducting a knock-and-talk investigation, we just
13 simply drove towards the backyard in a grassy spot
14 behind the backyard where the individuals were -- there
15 were several individuals back there -- and simply got
16 out of the vehicle to meet with those folks.

17 Q For purposes of describing this -- this
18 address, would it assist your testimony to use a map for
19 demonstrative purposes?

20 A Sure.

21 MR. PATTERSON: Your Honor, if I might?

22 THE COURT: You may. Sure.

23 (Mr. Patterson is setting up the easel.)

24 MS. GAY: Yeah, I've seen it.

25 MR. PATTERSON: Okay.

State versus Walter M. Bash
June 11, 2013

1 situation, the porch was considered the curtilage. This
2 is an area of yard that's beyond a fenced-in area.

3 MS. GAY: Your Honor, this is an area of yard,
4 as we can see in this map, that has a car that they put
5 there, that has a shed that they put there, that is -- I
6 mean, I've got pictures that I showed you. But all of
7 this -- okay. There's even an outback building right
8 here. This alleged public road curves in to her private
9 property right here. This is this lady's yard. All of
10 it is this lady's yard. They're having their barbecue
11 right here.

12 THE COURT: Yeah. I mean, I'm looking at
13 the map that the State put up to ask the officers
14 about. You know, I'm with Beatty, Kittredge, and Short
15 in State v. Taylor. I realize there's a split; however,
16 I'm feeling pretty comfortable about this one. The
17 motion to suppress is granted.

18 What else do we need to go over? Anything
19 else?

20 MR. PATTERSON: Just one more thing. We'd
21 like to raise one issue of standing where this -- in
22 Minnesota v. Carter, this particular defendant was not
23 the homeowner; he's not the property owner. He's merely
24 present on the scene. And in this particular case, it
25 says, One who is merely present with the consent of the

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Motion to Permit the Delivery of a Demonstrative Aid for Inclusion in the Record on Appeal on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, 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 12th day of August, 2014.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

August 12, 2014

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Walter Maurice Bash – Appellate Case No. 2013-001430

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Motion to Permit the Delivery of a Demonstrative Aid for Inclusion in the Record on Appeal, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Susan B. Hackett, Esquire
Victim Services

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SC Court of Appeals