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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY
Court of General Sessions

S.C. Supreme Court

Thomas A. Russo, Circuit Court Judge

Opinion No. 5110 (S.C. Ct. App. filed April 3, 1013), Appellate Case No. 2013-001208

THE STATE,

RESPONDENT/PETITIONER,

V.

ROGER BRUCE,

PETITIONER/RESPONDENT.

REPLY BRIEF OF RESPONDENT/PETITIONER

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ARGUMENT

- I. Despite Bruce's assertion to the contrary, the Court of Appeals erred when it determined the trial court made inadequate legal and factual determinations to support its ruling that the victim's body would have been discovered pursuant to the inevitable discovery doctrine

Bruce, via his response brief of Petitioner/Respondent contends only that there is no factual support for the argument that he consented to a search of Victim's trunk for purposes of the inevitable discovery rule claiming "it is just speculation." In reply, the State reiterates that additional consent was not required to search Victim's vehicle, but even assuming it was, Bruce, from the beginning of the incident up until the discovery of Victim's body in the trunk of her car, consented to the actions taken by authorities in this matter. As a result, the State submits evidence exists to support the trial court's ruling.

A. What is and is not at Issue in this Question

Initially, the State notes Bruce, consistent with his position before the Court of Appeals, is not arguing the trial court erroneously applied the inevitable discovery doctrine, but is instead merely arguing the State failed to meet its burden of proving inevitable discovery by a preponderance of the evidence.¹ Thus, this is simply a factual question of whether any evidence

¹ Bruce has never argued the trial court erroneously applied the inevitable discovery doctrine at any point in this litigation. Rather, Bruce's only argument before the Court of Appeals was that the State failed to prove, by a preponderance of the evidence, that Victim's body would have been discovered through lawful means, which is of course a factual question regarding the existence of evidence. See (App. 7-8) ("The prosecution bears the burden of showing by a preponderance of the evidence that the items seized would ultimately have been discovered lawfully even though it was obtained by an illegal seizure. The prosecution has not met that burden.") (internal citation omitted). Bruce's response brief, which simply reiterates this argument, is no different. (Resp. Br. of Pet./Resp. at 5). Moreover, while it is true the Court of Appeals ruled on the legal question of whether the inevitable discovery doctrine applied, the State submits doing so was error as this was a question the Court of Appeals was never asked to answer. See Atlantic Coast Builders and Contractors, LLC v. Lewis, 396 S.C. 323, 331 n.4, 730 S.E.2d 282, 286 n.4 (2012) ("If a question is not presented for our review, we should not answer it no matter how much we may want to do so. For as former Chief Judge Alex Sanders famously wrote, 'appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.'") (quoting Langley v. Boyter, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct.App.1984), quashed on other grounds, 286 S.C. 85, 332 S.E.2d 100 (1985)). Additionally, since Bruce has failed to submit any legal authority suggesting the trial court erred in applying the doctrine of inevitable discovery, this issue, to the extent it could be considered properly raised on appeal, should be considered as either conceded or abandoned. See York v. Dodgeland of Columbia Inc., 406 S.C.

supports the trial court's inevitable discovery ruling. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011); State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."). We believe that there is.

B. The State has Met this Court's Any Evidence Standard

The trial court's rationale in applying the inevitable discovery doctrine, that police would have subsequently discovered Victim's body in the trunk as a result of his consent to revealing its contents, meet's this Court's "any evidence" standard. In fact, the State submits that from the outset, when Bruce called Shane from Victim's cell phone to inquire about her whereabouts, the facts demonstrate that Bruce was not only cooperative, but in fact aided authorities in their search for Victim.

For instance, once authorities arrived in order to perform a welfare check, it is simply unquestionable that Bruce expressly consented to a search of the property for the purpose of finding Victim. (R. 117). Indeed, this has never been contested by Bruce or his defense counsel who in fact conceded there was consent to search the property at trial and failed to object or otherwise challenge the State's testimony regarding consent. (R. 118). See State v. Bryant, 372 S.C. 305, 315–16, 642 S.E.2d 582, 588 (2007) (stating an issue conceded at trial cannot be argued on appeal).

Likewise, there is no question that Bruce, who identified the keys found in plain view on the table as being those of the Victim, did not withdraw or modify his consent to search the property once he identified the keys as Victim's. See Florida v. Jimeno, 500 U.S. 248, 251 (1991) (stating that a general consent authorizes the search of any area that may contain the

67, 97, 749 S.E.2d 139, 154 (Ct. App. 2013) (explaining that a litigant's summary conclusion without citation to authority results in the issue being abandoned on appeal).

object of the search). To the contrary, Bruce consistently aided authorities in performing their welfare check, and in fact silently followed authorities to Victim's vehicle.

Additionally, while authorities were not required to ask Bruce for consent to search Victim's vehicle, both because he lacks standing to object to a search of Victim's vehicle² and because his general consent to search the property did not require additional consent under Jimeno,³ there is nothing within the record to show Bruce ever withdrew or modified his consent. Again the question of consent was never a disputed fact and defense counsel simply never questioned this testimony.

Instead, the evidence in the record supports the trial court's inevitable discovery ruling regarding consent. Specifically, the record reflects that immediately following the trial court's denial of Bruce's objection, the solicitor elicited testimony from Officer Beckett indicating Bruce offered to help authorities open the trunk and was in fact reaching for Victim's keys to show Hobgood which key would open the trunk to Victim's vehicle at the time the trunk was opened. (R. 126-27, 145, 156-58, 168-69). Notably, Beckett testified Bruce was attempting to show Corporal Hobgood which key opened the trunk of Victim's car immediately before Officer Starling hit the trunk release button on Victim's key ring. (R. 126-27). Hobgood later corroborated this, adding that Bruce actually offered to show him which key opened the trunk right before Starling hit the trunk release button. (R. 145). This was confirmed on cross-examination and again during Starling's direct examination. (R. 156-58, 168-69).

Moreover, even after the trunk was opened and Victim's body was discovered, Bruce continued to cooperate with authorities. Understanding this, the State submits there is evidence

² See Argument II(B) in Respondent/Petitioner's July 14, 2014 brief at pages 18-23 for more detail regarding the standing issue.

³ See Jimeno, 500 U.S. at 252 (explaining that once authorities receive general consent to search a particular place, they are not required to repeatedly ask for consent to open specific items found on the property).

supporting the trial court's inevitable discovery ruling and as such, asks this Court to affirm the trial court's ruling on this matter and reverse the Court of Appeals' ruling. See Wright, 391 S.C. at 442, 706 S.E.2d at 326 ("When reviewing a Fourth Amendment search and seizure issue, this court must affirm if there is any evidence to support the trial court's ruling and will reverse only where there is clear error.").

II. Bruce's claim in Argument II(A), that the State needed to request his consent to take the keys that were found in plain view and identified by him as being the Victim's, is entirely without legal support

Bruce, arguing against the State's additional sustaining grounds asserted in Argument II(A) that there was consent to search the residence, states, via argument II(A) of his response brief, that he did not give consent to police to take Victim's keys out of their residence. Br. of Pet./Resp. at 6. In reply the State notes the following:

- Bruce, by identifying the keys as being Victim's prior to the authorities even touching them, would lack standing to seek suppression of the alleged seizure of the keys under Horton v. California, 496 U.S. 128, 133 (1990);⁴
- In any event, because Bruce clearly gave authorities general consent to search the property, he waived the Fourth Amendment's warrant requirement meaning authorities were not required to seek additional permission to pick the keys up per Jimeno, 500 U.S. at 251-52;
- Further, even if Bruce had not waived his Fourth Amendment protections by generally consenting to a search of the property, authorities did not need to seek a warrant for Victim's keys since they were indisputably in plain view, which as

⁴ See Horton, 496 U.S. at 133 ("The right to security in person and property protected by the Fourth Amendment may be invaded in quite different ways by searches and seizures. A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property.") (emphasis added).

noted in Horton, is an exception to the Fourth Amendment's warrant requirement;⁵

- Finally, even assuming Bruce had standing to challenge the alleged seizure of Victim's keys; did not waive his Fourth Amendment rights despite generally consenting to a search of the residence; and Victim's keys were not subject to the plain view exception, Bruce's failure to raise, dispute, or even advance any argument at trial for suppression on these grounds, results in the issue being conceded as explained in Bryant.⁶

Accordingly, because neither the law, nor the facts of this case support Bruce's argument on this issue, the State submits the assertions contained in Bruce's Argument II(A) should be rejected. Instead, the State maintains the pertinent analysis here is that Bruce, by all accounts, gave general consent to authorities to search the residence, and authorities, who were lawfully in the residence pursuant to the consent search, lawfully seized Victim's keys which were in plain view, at which point they used Victim's keys to perform a search of the vehicle, a search which Bruce lacks standing to challenge.

III. Bruce's contention from Argument II(B), that Bruce has a reasonable expectation of privacy in keys that were in his residence, is a question of fact which defense counsel must prove at trial and even assuming such an expectation of privacy exists, is irrelevant in this case

Bruce, in argument II(B) of his response brief, suggests he has a reasonable expectation of privacy in Victim's keys, which he contends, gives him standing to challenge authorities'

⁵ See Horton, 498 U.S. at 134 ("It is well established that under certain circumstances the police may seize evidence in plain view without a warrant."); State v. Brown, 289 S.C. 581, 588, 347 S.E.2d 882, 886 (1986) ("[O]bjects falling within the plain view of a law enforcement officer who is rightfully in position to view these objects are subject to seizure and may be introduced in evidence."); State v. Abdullah, 357 S.C. 344, 352-53, 592 S.E.2d 344, 349 (Ct. App. 2004) (concluding that evidence found in an individual's apartment was in plain view when police encountered the evidence while conducting a protective sweep of the premises); Wright, 391 S.C. at 445-46, 706 S.E.2d at 328 (holding that evidence found while securing a scene indicating the defendant was involved in dogfighting was admissible under the plain view exception).

⁶ Bryant, 372 S.C. at 315-16, 642 S.E.2d at 588 (stating an issue conceded at trial cannot be argued on appeal).

subsequent search of the trunk of Victim's vehicle. Br. of Pet./Resp. at 6-7. The State disagrees for the following reasons:

- Bruce, as the individual seeking suppression, bears the burden of proof in establishing that he has a legitimate expectation of privacy, something which he simply failed to do in this case;⁷
- The question of whether a legitimate expectation of privacy exists is a question of fact⁸ that defense counsel never attempted to raise in this case;
- Bruce's reliance on past case law showing a legitimate expectation of privacy can exist in a residence does not demonstrate a legitimate expectation of privacy exists in another individual's keys that are found inside the residence in this case, *especially where there was consent to search the residence*;
- Further, while the case law may indicate Bruce had a legitimate expectation of privacy in the residence he shared with the Victim, Bruce cannot show he suffered a violation of *his* Fourth Amendment rights when authorities, who, as discussed previously, were lawfully inside the residence as a result of Bruce's consent to search the residence, took Victim's keys, which were in plain view;
- Relying on the distinction recognized in Horton, as well as McKnight, that an individual's interest opposing seizure (interference with a possession) is different

⁷ See State v. Crane, 296 S.C. 336, 341, 372 S.E.2d 587, 589 (1988) (explaining a *defendant* must demonstrate "a legitimate expectation of privacy in connection with the searched premises" in order to challenge the constitutionality of a search) (emphasis added); State v. McKnight, 291 S.C. 110, 114-15, 352 S.E.2d 471, 473 (1987) (stating a *defendant* who seeks to have evidence suppressed on Fourth Amendment grounds "*must establish* that his *own* Fourth Amendment rights were violated" by "demonstrate[ing] a legitimate expectation of privacy in connection with the searched premises.") (emphasis added).

⁸ See State v. Austin, 306 S.C. 9, 17, 19, 409 S.E.2d 811, 816, 817 (Ct.App.1991) (stating whether a legitimate expectation of privacy exists "depends on a factual determination" and "is a question of fact").

from an individual's interest opposing search (privacy)⁹ it is difficult to understand how Bruce could, on these facts, prove he had a legitimate expectation of privacy in Victim's keys as he now claims, especially where he concedes he gave authorities to consent search the residence which waive any potential Fourth Amendment protections he may have had.

Moreover, Bruce's suggestion that the Supreme Court of the United States no longer utilizes the reasonable expectation of privacy analysis simply lacks merit. Indeed, U.S. v. Jones, -- U.S. --, 132 S.Ct. 945 (2012) stands for the narrow proposition that the government, by trespassing onto Jones' property and affixing a GPS device onto a vehicle which Jones drove exclusively, engaged in an unreasonable search that violated Jones' Fourth Amendment rights. Jones, -- U.S. at --, 132 S.Ct. at 949 (explaining the Government's installation of a GPS tracking device on a target vehicle that was registered in Jones' wife's name, but was used "exclusive[ly]" driven by Jones, was a trespass and thus a search under the Fourth Amendment). Perhaps most notably, the Jones majority, despite declining to apply the legitimate expectation of privacy test from Katz v. U.S., 389 U.S. 347 (1967), explained it need not make such a determination on standing *since the record demonstrated Jones was the exclusive driver of the vehicle and the Government did not appeal from the D.C. Circuit's ruling that Jones had standing to challenge the alleged search.* Jones, -- U.S. at --, n.2, 132 S.Ct. at 949, n.2 (emphasis added). In short, the Jones Court was not asked to determine the question of standing, but instead relied on the unappealed ruling of the D.C. Circuit finding that Jones had standing under the Katz test.

⁹ See Horton, 496 U.S. at 133 ("The right to security in person and property protected by the Fourth Amendment may be invaded in quite different ways by searches and seizures. A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property.") (emphasis added); McKnight, 291 S.C. at 114-15, 352 S.E.2d at 473 (explaining a defendant must establish that *his* Fourth Amendment rights were violated by a search of the premises at issue).

Accordingly, the State submits Bruce's claims advanced in argument II(B) of his response brief should, like his argument in argument II(A), be rejected. Again, the State submits that, for purposes of its argument regarding additional sustaining grounds, authorities were lawfully in the residence, lawfully seized Victim's keys, and executed a lawful search of Victim's vehicle where they found her body, a search which Bruce lacks standing to challenge.

IV. Bruce's claim that he did not give consent to search Victim's vehicle is irrelevant

Finally, Bruce, in argument II(C) of his response brief argues against the State's additional sustaining ground that Bruce lacked standing to challenge the search of Victim's vehicle, and further contends he did not give consent to search Victim's vehicle. With respect to the factual question of whether Bruce had standing to contest the lawful search of Victim's vehicle, the State, consistent with Argument II(B) in its' July 14, 2014 brief states that Bruce lacked standing to challenge the search for the following reasons:

- As previously argued, Bruce, as the defendant, is tasked with demonstrating, as a factual matter, that he has a legitimate expectation of privacy in the premises searched in order to have standing for purposes of the Fourth Amendment;
- Defense counsel never attempted to introduce any evidence suggesting Bruce had a legitimate expectation of privacy in Victim's vehicle;
- Indeed, there was no testimony showing Bruce regularly used the vehicle, had an ownership interest in the vehicle, registered the vehicle, or insured the vehicle. In fact, Bruce did not even have a driver's license (R. 223);
- Instead, the only facts in the record show that Victim drove the vehicle nearly exclusively, (R. 90, 101-02, 218-19, 236, 245), had the vehicle registered in her name (R. 305), and was the only insured driver on the vehicle (R. 306);

Additionally, even assuming that Bruce had a legitimate expectation of privacy in the trunk of Victim's Vehicle, the State, consistent with Argument II(C) of its' July 14, 2014 brief, submits Bruce never expressly revoked or limited his consent to the search. In fact, rather than expressly revoke or limit his consent, Bruce, following his general consent to search, continued cooperating with authorities by:

- Declining to limit the scope of his general consent;
- Aiding the officers in their search of the residence;
- Explaining the keys on the table were Victim's as was the cell phone;
- Accompanying authorities on their way to the vehicle;
- Once at the vehicle attempting to show authorities which key opened the trunk to Victim's vehicle.

(R. 49-50, 50-51, 118, 119, 126, 144, 145, 156-57, 167, 168).

Accordingly, the State submits Bruce did not have Fourth Amendment standing to challenge the search of the vehicle, but even if he did, Bruce's Fourth Amendment Rights were not violated since he gave a general consent to search the property and never withdrew or even appeared to withdraw his consent.

CONCLUSION

For the aforementioned reasons, the State respectfully requests this Court to reverse the judgment of the Court of Appeals and reinstate Bruce's conviction and sentence as imposed by the trial court.

Respectfully Submitted,

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JOHN W. McINTOSH

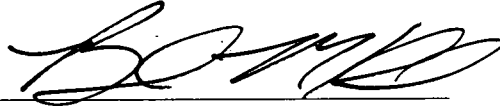
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CERTIFICATE OF SERVICE

I, Brendan McDonald, counsel for the Respondent/Petitioner, certify that I have served the within *Reply Brief of Respondent/Petitioner*, on opposing counsel by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney:

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I further certify that all parties required by Rule to be served have been served on this 21st day of August, 2014.



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