STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT/PETITIONER,

V.

ROGER BRUCE,

PETITIONER/RESPONDENT

APPELLATE CASE NO. 2013-001208

REPLY BRIEF OF PETITIONER/RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

ARGUMENT I IN REPLY

Petitioner's Fourth Amendment rights were violated because the victim's keys were obtained without Bruce's consent and without a second warrant.

A.

Petitioner did not give his consent to the police to take the keys out of his residence. Officer Beckett testified that they were doing a welfare check on the victim. He said, "we just asked him if we could come in and take a quick look and make sure that she wasn't inside, and he gave us permission to come in and take a look." (ROA p. 117, lines 8 – 16). The police were not given consent to take the car keys and they took the keys without a search warrant.

B.

Petitioner had a reasonable expectation of privacy in the keys that were in his residence. "A reasonable expectation of privacy exists in property being searched when the defendant has a relationship with the property or property owner." State v. Robinson, 396 S.C. 577, 722 S.E.2d 820 (Ct. App. 2012); State v. Flowers, 360 S.C. 1, 598 S.E.2d 725 (2004).

It should be noted that the trial court asked where the car was parked. The solicitor said it was parked on the driveway at the back of the apartment where petitioner and the victim lived. They had lived together for at least 14 years. These facts should be sufficient to establish that petitioner had a reasonable expectation of privacy. In State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987), the Court held all of the defendants had standing to object to the validity of a search that revealed drugs that were found in a mobile home because the State was attempting to introduce those drugs against the defendants. In State v.

Missouri, 361 S.C. 107, 603 S.E.2d 594 (2004), the Court held that a defendant had a reasonable expectation of privacy in his friend's apartment. An overnight guest has a reasonable expectation of privacy in another's home. Minnesota v. Olson, 495 U.S. 91, 110 S.Ct. 1684 (1990). Fourth Amendment protections apply not to just a house, but to property in the curtilage of the home. State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009). And in Brendlin v. California, 551 U.S. 249, 127 S.Ct. 2400 (2007), it was held that a passenger in a vehicle had standing a challenge to stop.[1]

More recently, the Supreme Court of the United States has abandoned the reasonable expectation of privacy analysis and has instead held that a vehicle is an "effect" for search or seizure purposes under the Fourth Amendment. In United States v. Jones, __U.S.__, 132 S.Ct. 945 (2012), a GPS tracking device was placed on a vehicle registered to the defendant's wife. The government went after the defendant for conspiracy to distribute and to possess with intent to distribute cocaine and cocaine base. The placing of the GPS device and the monitoring of it constituted a warrantless search under the Fourth Amendment.

Petitioner should be protected by the Fourth Amendment under the reasonable expectation of privacy analysis because he lived with the victim for 14 years in the same household and vehicle was on their property in the backyard. He should also be protected because the vehicle is an "effect" under the Fourth Amendment.

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[1] Respondent/petitioner cites Rakas v. Illinois, 439 U.S. 128, 133-34 (1978) for the proposition that petitioner/respondent had no standing to challenge the search of the victim's car. The cases cited above clearly show that Rakas is no longer good authority.

C.

Petitioner did not give consent to search the car. Petitioner did not by words or actions give the police consent to search the car. They took the keys to the car from petitioner's residence without permission and they opened the trunk of the car without permission with the keys they took from the residence.

ARGUMENT II IN REPLY

There was no evidence to support the trial court's ruling regarding inevitable discovery.

Respondent writes that "the factual basis supporting the trial court's inevitable discovery ruling was that if Starling had not hit the trunk release button, police would have still lawfully opened the trunk because it was clear Bruce, through his words and actions, consented to the trunk being opened." (Brief of Respondent, p. 11). There is no factual basis for this assumption. It is just speculation. As the court in Nix v. Williams wrote, the "inevitable discovery involves no speculative elements, but focuses on demonstrated historical facts capable of ready verification or impeachment." 467 U.S. at 444 n.5, 104 S.Ct. at 2501. And in United State v. Thomas, 955 F.2d 207, 209 (4th Cir. 1992), the court criticized the government for relying on a "string of conjecture." As petitioner noted in his final brief:

> The solicitor then tried to argue that previously Cpl. Hobgood had testified that appellant went for the keys to show them which key to open the trunk with before the police used the trunk release button. (ROA p. 121, line 22 – p. 122, line 11). Contrary to the solicitor's assertion, a review of Cpl. Hobgood's testimony from the day before does not show that appellant went for the keys to show them how to open the trunk. (ROA p. 33, line 7 – p. 38, line 2). Later in the trial, Cpl. Hobgood did testify that appellant tried to grab the keys and Hobgood did not know what appellant's intentions were so he pulled the keys back. (ROA p. 144, line 10 – p. 181, line 18).

Hence, the Court of Appeals was correct in finding that 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.

ARGUMENT III IN REPLY

Petitioner had a reasonable expectation of privacy in the trunk of the car and suppression is the appropriate remedy.

As outlined in Argument I(B), petitioner did have a reasonable expectation of privacy in the trunk of the car. In addition, since the police took the keys to the car without petitioner's consent and without a search warrant, everything that followed was the fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1981). In such a case, suppression is the appropriate remedy.

CONCLUSION

Petitioner's conviction should be reversed.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER/RESPONDENT.

This 25th day of August, 2014.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Reply Brief of Petitioner/Respondent in the above referenced case has been served upon Brendan J. McDonald, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of August, 2014.

Robert M. Pachak
Appellate Defender
S.C. Bar #4312

ATTORNEY FOR PETITIONER/RESPONDENT.

SUBSCRIBED AND SWORN TO before me
this 25th day of August, 2014.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022 .