STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Maite Murphy, Circuit Court Judge

THE STATE	:	
	:	Appellate Case No.:
	:	
-vs.-	:	2013-002090
	:	
STANLEY L. WRIGHT	:	
	:	
Defendant	:	

BRIEF OF APPELLANT

Sonya Chachere-Compton
State Bar of Georgia No. 118470
Valerie V. Vie
State Bar of Georgia No.: 727617
5682 Palazzo Way, Suite 102
Douglasville, Georgia 30134

ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Whether the court erred in failing to suppress evidence from appellant's residence in response to a criminal domestic violence call, when the evidence was not found in plain view in a room in which the police were searching.
2. Whether the trial erred in failing to suppress evidence from the Appellant's residence when exigent circumstances did not exist to make a warrantless search.
3. Whether trial counsel was ineffective for not interviewing witness who was present.

STATEMENT OF CASE

Appellant was convicted of possession with the intent to distribute marijuana, trafficking in cocaine, and possession of a weapon after a jury trial held in Beaufort County on September 16-18, 2013 before the Honorable Maite' Murphy. Respective sentences of five years, twenty-five and five consecutive years were imposed. Charlie Jay Johnson, Jr. and

Joenathan S. Chaplin were the trial attorneys for Mr. Wright. Ben T. Shelton and Mary Concannon were the assistant solicitors.

This appeal follows:

B. The Facts

There are two transcripts submitted as part of the record. The transcript dated May 22-23, 2013 shall be referred to as "T-1". The transcript dated September 16-18, 2013 shall be referred to as "T-2".

On August 31, 2011 there was an altercation in the front yard between Mr. Wright and Ms. Parlagreco. Mr. Wright kicked Ms. Parlagreco's car and dented it. The next door neighbor witnessed the commotion and told the two parties to stop and became loud and argumentative with his directives. Ms. Parlagreco was upset with the damage to her car and called 911. She gave the address of the house as 219 Mitchellville Road. The phone disconnected and the 911 operator called back.

911 Operator: Is there a domestic going on there?

Ms. Erin Parlagreco: No, he just kick my car and he is going to pay for it.

911 Operator: Are you all still fighting or has everything calmed down?

Ms. Erin Parlagreco: No we are not fighting.
911 Operator: OK

Ms. Erin Parlagreco: I have to take my kids to football practice.

911 Operator: OK Have you left yet?

Ms. Erin Parlagreco: No

911 Operator: OK. Do you need an officer?

Ms. Erin Parlagreco: He's not getting away with kicking my car.

911 Operator: You want me to send someone to make a report?

Ms. Erin Parlagreco: Yes

911 Operator: OK, What color is your house?

Ms. Erin Parlagreco: A white trailer.

911 Operator: OK. Single Wide?

Ms. Erin Parlagreco: Double wide.

911 Operator: What kind of car are you in? or
Ms. Erin Parlagreco: An Acura.

911 Operator: What color is the Acura?

Ms. Erin Parlagreco: Can I just come down and make the report?

911 Operator: You want to come down to the office?

Ms. Erin Parlagreco: I'm coming now.
911 Operator: OK You know where it is?
Ms. Erin Parlagreco: Yes, on the south it

911 Operator: Yes, and what's your name?

Ms. Erin Parlagreco: Erin Parlagreco
911 Operator: Erin you said

Ms. Erin Parlagreco: Look at my car, I don't care look at my car!

911 Operator: What's his name?

Ms. Erin Parlagreco: Stanley Wright

911 Operator: Stop arguing with him. Go ahead and leave

Ms. Erin Parlagreco: (huh!) It's not him it's the neighbor

911 Operator: He's left already

Commotion – Stanley Wright heard saying get out my yard, some cursing

Ms. Parlagreco: no, why inaudible . Phone hangs up

911 Operator: Calls back hears musical ringtone with kids sing "Twinkle Twinkle Little Star"

911 Operator: Our guy, no he doesn't have any warrants Stanley Wright

Ms. Parlagreco then told the 911 operator that she would not need a unit to come out that she would come to the station later and make the damage report. ("T-2", p.112, L. 10-11).

The park is located less than 100 yards from the residence. Ms. Parlagreco testified that she was approached by a female police officer at the park and informed her that she was okay. ("T-2", p.113, L, 5- p. 115, L. 13).

Ms. Sonya Ford testified that a female police officer spoke with Ms. Parlagreco. Ms. Parlagreco and Ms. Ford both identified Officer Sally Irving as the female officer that appeared at the ball park and spoke with Ms. Parlagreco. Ms. Ford had a brief conversation with Officer Irving when she approached Ms. Parlagreco and Officer Irving as the talked at the car. ("T-2", p.129, L.18 - p. 130, L. 21).

Officer Archbell was dispatched to a domestic at 5:35pm. While enroute he received an update from dispatch that they could hear a male in background who sounded aggressive or agitated and that they could hear a struggle take place and lost contact with victim. Dispatch stated they tried again and lost contact and phone immediately disconnected. ("T-1", p.31, L.13 - p. 32, L. 24). However the dispatch audio and the CAPS/CAD

reports does not indicate that he was told that a struggle had taken place. The CAPS report states "ref to domestic… male half kicked 17s vehicle & damaged" (See Exhibit "B" and "C").

Melanie Smith, communication coordinator at the dispatched center, testified that Officer Archbell confirmed that he was at the scene at 5:47 pm. Two minutes later Officer Jonathan Collier arrived at 5:49 pm. Officer Sally Irving arrived at the ball park at 6:01 pm. ("T-1", p.68, L.10-25).

Upon his arrival Officer Archbell observed Mr. Wright coming out of the house. When he contacted Mr. Wright, Mr. Wright stepped out of the house and abruptly shut the door behind him. Officer testified that Mr. Wright kept looking back at the door and that he was nervous and breathing heavily. ("T-1", p.35).

Mr. Wright informed him that he and Ms. Parlagreco had a verbal altercation because she threw a soda on his car. ("T-1", p.35. L 19-24). Prior to Officer Collier walking up, Officer Archbell asked Mr. Wright could he search the house and Mr. Wright told him no. When Officer Collier walked up he informed Archbell that they needed to do a protective sweep to make sure she was not injured. . ("T-1", p.13. L 1-2).

When Officer Irving arrived at the scene, Archbell and Collier conducted a search of the residence. ("T-1", p.37. L 20-25 – p.38. L.17). Officer Collier testified that he performed the sweep within ten minutes after he arrived on the scene. ("T-1", p.21, L. 21-24).

They went inside the resident looking only for the victim in a place someone could hide be placed. Some place big enough for a body to be placed in. ("T-1", p.45, L11-25 – p.46, L.1-3).

Officers Archbell and Collier further testified that when they arrived at the scene they saw no evidence of a struggle. Mr. Wright's clothes were not torn, not bloody, no calls for help, no noise from house. But he was worried someone may be inside. The only evidence was what he received from dispatch. Mr. Wright told him that Erin had left. He was somewhere on the scene when Collier was talking to Mr. Wright about Erin whereabouts. ("T-1", p.25, L.11-22; p.49, L. 3-25 – p.50, L.1-16). He did not know if any officer did anything to verify Mr. Wright's statement that Erin had left. He did not see them do anything to verify. ("T-1", p.51, L.2-4).

The officers then went into Master Bedroom and looked in bathroom cabinet because it appeared big enough for a body or person to fit in. Inside

were the purple bag and clear zip lock bag with green substance and a purple bag to where you could see a little bit of white powder in the top. ("T-1", p.17, L.20-25 – p.18, L.1-24).

Officer Archbell was approached by a neighbor, David Aiken, who was still present and who had observed the entire altercation. Mr. Aiken overheard Mr. Wright informed the officers that everything was okay and that Ms. Parlagreco had already left to take her kids to the ball park. Mr. Aiken also informed the Officers that he witnessed the incident and Ms. Parlagreco was no longer there.

Off. Archbell told Mr. Aiken to shut up he did not want to hear from him. Officer repeatedly asked to go into the residence despite the fact all altercations took place in the front drive way. Mr. Wright refused to give access to his home. Mr. Wright told them that that there was no one inside. Mr. Aiken continued to tell the officers that she left and you should have passed her coming in. A female Officer pulled Mr. Aiken to the side and asked his name, phone number and address. Mr. Aiken provided her with the information. When he realized something was not right and went across

the street to get his camera and by the time he returned they were putting handcuffs on Mr. Wright. (See Exhibit "A" attached hereto).

Officer Sally Irving testified that at 6:01 she arrived at the ball field to locate the 911 caller. The deputy on the scene told her to go to ballpark. She went to ballpark first then went to house afterwards. ("T-2", p.97, L.17-20).

She testified that she did not contact the victim. She did not remember talking to someone at the scene. ("T-2",p.91, L.12-25). She did not know victim so she looked for someone in distress. ("T-2", p.92-93). Officer Irving repeatedly testified on direct examination that she did not remember talking to anyone at the ball field. She testified that maybe she spoke to someone. It is possible that she spoke to someone but don't remember talking to anyone But if she did she did not get their name or if she spoke to anyone or not. Then she testified that she did not remember speaking to someone in distress. ("T-2", p.93, L.14-24; p.94, L.15-20; p.95, L.9-22; p.96, L.2-17; p.98, L.19-25).

After Irving left the ballpark, she went to the scene and told officers Archbell and Collier that she could not find someone who needed assistance

at the ballpark or that came to her is distress. Officers Archbell and Collier entered the house to conduct the search. ("T-2", p.94, L.1-2 - p.98, L.4-14).

Irving testified on cross by the solicitor that she didn't make contact with anyone that told her they had a connection with the incident location, no one said they wanted to press charges and she made no contact with anyone that said they had called 911. (T-2, p.105, L.11-25).

Officer Irving refused to answer the question, "Is it your testimony that you did not talk to anyone?" ("T-2", p.108, 2-8).

Argument

1. **Whether the court erred in failing to suppress evidence from appellant's residence in response to a criminal domestic violence call, when the evidence was not found in plain view in a room in which the police were searching.**

S.C. Code §16-25-70(H) states in part: "Evidence discovered as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in a court of law:
(1) if it is found:
(a) in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect; or

(b) pursuant to a search incident to a lawful arrest for a violation of this article or for a violation of Chapter 3, Title 16; or
(2) if it is evidence of a violation of this article.

An officer may arrest and file criminal charges against a suspect for any offense that arises from evidence discovered pursuant to this section. Unless otherwise provided for in this section, no evidence of a crime found as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in any court of law."

Officer Archbell testified that he was dispatched to Mr. Wright's residence in response to a possible domestic violence 911 call on August 31, 2011. He was advised that the female caller was disconnected. When he arrived to Mr. Wright's residence, he saw Mr. Wright exiting his residence. Officer Archbell asked Mr. Wright about the caller and was advised that she was across the road at the ball field. ("T-1", p.35). Shortly thereafter Officer Collier arrived. Officers Archbell and Collier testified that they entered the residence for the purpose of conducting a protective sweep to locate any possible victims. ("T-1", p.13. L 1-2). They testified that they searched closets, underneath beds or any place a victim could possibly be concealed. ("T-1", p.21, L 21-24). During the protective sweep the officers looked underneath a bathroom vanity where the found a bag of suspected marijuana

and a Crown Royal bag with a white powdery substance they suspected was cocaine. (See Exhibits "D-H" attached hereto).

If this court determines that the plain language of S.C. Code §16-25-70(H) which states that any evidence in plain view in a room where law enforcement officer is interviewing, detaining, or pursuing a suspect is admissible is applicable in the instant case, the question becomes whether the "plain view" doctrine applies to evidence found in this vanity when the officers clearly stated they were searching for an adult.

The vanity in this case is approximately 20 inches in width, 26 inches in height and 59 inches long. It was bordered by a tub on the right and a wall on the left. It has three small doors in the front which is obvious to any reasonable mind that no adult could fit inside the doorway to this vanity unless the person was dismembered. (See Exhibits D-H). There was no evidence of blood, bones or human matter anywhere in the residence to indicate dismemberment. The officers could not have reasonably believed that an adult was inside the vanity. The contraband was not in "plain view" pursuant to the statue and case law therefore the evidence should be suppressed.

2. **The trial erred in failing to suppress evidence from the Appellant's residence when exigent circumstances did not exist to make a warrantless search.**

Through its exclusionary rule, the Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const. Amend. IV. The South Carolina Constitution also provides protection against unlawful searches and seizures. Art. I, 10. Any evidence that is seized in violation of the Fourth Amendment is excluded in both state and federal court. Mapp v. Ohio, 367 U.S. 643, (1961); State v. Forrester, 343 S.C. 637, (2001). State v. Abdullah, 357 S.C. 344 (2004).

The 4th Amendment allows a warrantless search where the search falls within one of the exceptions. In this case the court ruled that the facts in this case fell in the exigent circumstance exception. Exigent circumstance is a situation that requires immediate or emergency action. The facts in the instant case do not justify the exception.

In Brigham City, Utah v. Charles W. Stuart et al,547 U.S. 398 (2006), the US Supreme court held that the "police may enter a home without a

warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury". Objectively reasonable basis means some additional facts learned in the course of the investigation to support the exigency. US v. Najar, 451 F3d 710 (10th cir. 2006) In the instant case no such objectivity was present. In US v. Davis, 290 F3d 1239 (10th cir. 2002), the Court held that the report of a domestic argument standing alone does not demonstrate exigent circumstances.

In the instant case the 911 dispatch operator was told by Ms. Parlagreco that there was no domestic and that she and Mr. Wright were not fighting. She stated that he kicked her car. She advised that she wanted to make a report. The dispatch operator told her not to argue with him. Ms. Parlargreco stated that she was not arguing with Mr. Wright but with a neighbor. She eventually told the dispatch not to send an officer because she would come down there to make a report. The telephone disconnects. This call was at 5:35 pm and the police were dispatched to the location. Officer Archbell arrived to the scene at 5:47 pm and Officer Collier arrived at 5:49pm. Neither officer saw anything to indicate there had been a

struggle. The officers were advised by Mr. Wright that Ms. Parlagreco had left and gone to the ball field nearby. The neighbor, Mr. Aiken also informed them that she had left. Mr. Wright denied the officer's request to search his residence. Approximately ten (10) minutes later Officer Irving arrived at the ball field at 6:01 pm. searching for the victim. ("T-2", p.97, L. 17-20). Officer Irving does not indicate how long she was at the ball park but testified repeatedly that she did not remember speaking to anyone and did not see anyone in distress. However Ms. Parlagreco and Ms. Ford testified that they spoke with Officer Irving at the ball park. ("T-2", p.113, L. 5 - p. 115, L-22). ("T-2", pp.127-131).

Officer Irving left the ball park and went to the scene. She testified that she advised that she did not see anyone in "distress". Therefore, the search was initiated to search for the victim.

Appellant does not dispute that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. *Mincey v. Arizona*, 437 U.S. 385 (1978). However based on the articulable evidence

in this case the police could not reasonable believe that Ms. Parlagreco was in immediate need of aid.

Based on the timeline there was a minimum 12 minutes between the time the 911 call disconnect and the arrival of Archbell and an additional 15-20 minutes time from the arrival of Officer Archbell to the arrival of Officer Irving for a total of 30 or more minutes. There no evidence to indicate that Ms. Parlagreco was injured or being held without her consent. If in fact the officers believed that there were exigent circumstances to initiate a protective sweep, they would have entered house before a 30 plus minute lapse in time. One of the officers could have stayed with Mr. Wright or handcuffed him until the search/sweep was completed.

Ms. Paralagreco and Ms. Ford's testimony that they spoke with Officer Irving was not refuted. Officer Irving repeatedly testified that she did not remember talking with anyone. She then attempted to avoid the question by qualifying her response that she did not talk with anyone in "distress". When Officer Irving was pointedly asked, "Is it your testimony that you did not talk to anyone?" she refused to answer the question and stated "I will not testify to that". ("T-2", p.108, L. 2-8).

Officer Irving statement that she did not speak to anyone "in distress" does not grant an exception to 4th amendment exception to justify a warrantless search. There was nothing to justify the warrantless search. There was an eyewitness that said that the victim had left. Mr. Wright informed them she had left and gone to the nearby ball park. The victim had informed the dispatch that she was leaving. The incident had occurred outside and there was no evidence of violence to indicate that someone was hurt. Officer Irving advised that she had not seen anyone at the ballpark in "distress". More than 30 minutes time had elapsed before they initiated the search. It was not reasonable for the officers to believe that a protective sweep for the victim was necessary.

The issues of exigent circumstances and domestic disturbances have been reviewed in several cases. In US v. Davis, 290F3D 1239 (10th cir. 2002), the Court of Appeals affirmed the suppression of the drugs and guns found following a warrantless search. In Davis the police responded to a domestic dispute call. When the police arrived to the residence, they heard no noise and saw no sign of a disturbance. Mr. Davis came to the door with

blood shot eyes and alcohol on his breath. He explained that he had disciplined his child. He refused to allow the officers entry into the house and blocked the officer's view inside the residence. The officers entered and found 58 grams of crack and stolen guns. The Court found that Mr. Davis' conduct was not threatening or aggressive. The Court noted that the State has the burden to offer facts showing an exigency.

In Lundstrom v. Romero, 616 F. 3d 1108 (10th Cir. 2010), police responded to a 911 call that a woman was screaming and a toddler was being beaten by plaintiff. The officer arrived to conduct a welfare check. She did not observe an ongoing altercation. The plaintiff denied that there were any children in his house. The officer did not see any children and an occupant of the house also told the officer that there were no children there. The Court found that there were no exigent circumstances to justify requiring the plaintiff to come outside and allow the officers to search. Also in Storey v. Taylor, 696F.3d 987(10th Cir. 2012) the court found no exigency existed to excuse compliance with the 4th Amendment. In Storey the police were called to a domestic dispute. Mr. Storey informed the officers that his wife was not there because she had gone to pick up the children from school. He

refused to exit his residence or talk with police further. He was arrested for refusing to obey the police command. The Court stated that officers responding to a domestic dispute must show something more than an argument to show an objectively reasonable basis to believe there is an immediate need to protect the lives of others. Storey, at 994.

The Courts have found that exigent circumstances existed when significant facts in addition to a report of domestic violence dispute such as gunfire from two different sources, broken glass, ongoing shouting, reporting of physical beating not just arguing. Storey, at 995.

In the instant case there were no additional facts to the report of a domestic dispute. There was nothing to indicate a struggle. The officers had been sent there in reference to a "kicked" car and dropped call. The argument occurred outside in the yard. The officers arrived shortly after being dispatched. They had been informed by Mr. Wright and a neighbor that the 911 caller had left the premises. Mr. Wright informed them that she had gone to the ball park. Officer Irving cannot recall if she spoke with 911 Caller or anyone at the ballpark. She can only recall that she did not speak with anyone in "distress" if she in fact spoke to anyone. Therefore the

officers had no objectively reasonable basis to believe there is was an immediate need to protect the lives of others. The stated reasons given by the officer that Mr. Wright acted nervous and kept looking at the front door of his residence is not the type of additional facts the courts have found to justify a search of a residence.

3. Whether trial counsel was ineffective for not interviewing witness who was present at the scene.

David Aiken was present during the argument between Mr. Wright and Ms. Parlagreco. His voice was heard in the background of the 911 call. He is reference by Ms. Parlagreco as the neighbor. He was present when the police arrived and informed them that Ms. Parlagreco had left. He also spoke with the female officer who took his name, telephone number and address. However Mr. Aiken is not mentioned in any of the police reports.

The trial attorney failed to interview Mr. Aiken. Mr. Aiken's testimony supports that fact that there was no objectively reasonable basis to search Mr. Wright's residence.

The United States Supreme Court has established a two-pronged test to establish ineffective assistance of counsel. The defendant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. Strickland v. Washington, 466 U.S. at 687, 104 S.Ct. 2052; Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Counsel's performance under the first prong of the Strickland test is judged under the standard of "reasonableness under prevailing professional norms." Id. at 688, 104 S.Ct. 2052. Criminal defense attorneys have a duty reasonable investigate their cases. This includes at a minimum interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318 (2007).

Mr. Wright's trial counsel rendered inadequate assistance by failing to contact Mr. Aiken who was a material witness. It would have been reasonable to contact him.

The second prong to prove of ineffective assistance of counsel is whether the defendant was prejudiced by the deficient performance of his counsel. To prove the prejudice that is needed to succeed on a claim of

ineffective assistance of counsel, the attorney's error must have had an effect on the judgment. See Strickland, 466 U.S. at 691, 104 S.Ct. 2052

The appellant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694, 104 S.Ct. 2052.

In the instant case, none of Mr. Wright's prior attorneys interviewed Mr. Aiken. Although he is not listed in the police reports, he is clearly heard on the 911 call. He had pertinent information that was not heard by the trial court in the Motion to Suppress. It is reasonable that the trial court upon hearing his testimony along with the other witnesses' testimonies would have ruled that there were no exigent circumstances to authorize a search of Mr. Wright's residence.

Conclusion

For all of the reasons stated herein it is respectfully requested that the Court of Appeals reverse the order of the trial court denying Mr. Wright's Motion to Suppress, order that the motion be granted, the conviction

reversed in its entirety or that the case is remanded on the issue of ineffective assistance of counsel.

Respectfully submitted, this 9 day of Dec, 2014.

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