

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Edward Miller, Circuit Court Judge

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S.C. Supreme Court

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

MICHAEL HENDERSON,

APPELLANT

APPELLATE CASE NO. 2014-001254

ANDERS BRIEF OF APPELLANT PURSUANT
TO WHITE V. STATE

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Petitioner's motion to suppress evidence found in a burn pile in Petitioner's front yard where the investigating officer testified he did not see the evidence upon his initial intrusion into Petitioner's residence but where he claimed he only saw it as he was exiting the property after Petitioner instructed him to leave.

STATEMENT OF THE CASE

On October 19, 2010, the Greenville County Grand Jury indicted Petitioner Michael W. Henderson for possession of methamphetamine with intent to distribute and unlawful conduct towards a child. App. 538-541. On December 7, 2011, Petitioner proceeded to trial before The Honorable Edward Miller and a jury. Chase Harbin represented Petitioner, and Kayce McCall and Ryan Holloway represented the State. App. 1. The jury found Petitioner guilty on both counts. App. 475, lines 12-23. Judge Miller sentenced Petitioner to concurrent ten year sentences for the convictions. App. 530.

On April 23, 2012, Petitioner filed an application for post-conviction relief (PCR) alleging ineffective assistance of counsel. App. 493-500. The State filed a return on August 31, 2012. App. 501-505. On April 25, 2014, Petitioner proceeded to an evidentiary hearing before The Honorable D. Garrison Hill. Rodney W. Richey represented Petitioner and Karen C. Ratigan represented the State. App. 506. At the outset the parties stipulated that Petitioner was entitled to a direct appeal of his conviction pursuant to *White v. State*.¹ App. 509, lines 3-22. On May 22, 2014, the PCR court issued an order of dismissal concluding Petitioner did not knowingly voluntarily waive his right to an appeal and was therefore entitled to a belated review pursuant to *White v. State*. App. 529—App. 537.

¹ 263 S.C. 110, 208 S.E.2d 35 (1974).

ARGUMENT

THE RECORD SHOWS THAT GODFREY DID NOT DISCOVER THE MATERIALS IN THE BURN PILES IN PLAIN VIEW, AND THEREFORE HIS WARRANTLESS SEARCH OF PETITIONER'S YARD VIOLATED THE FOURTH AMENDMENT.

STATEMENT OF FACTS

At trial the State alleged that on March 30, 2010, Deputy Travis Godfrey with the Greenville County Sheriff's Office conducted a warrantless search of Petitioner's home based on a tip from an informant. Five days prior to the search, Godfrey had arrested the informant upon finding him driving a vehicle with a stolen tag. According to Godfrey, the informant "proceeded to tell me that he had used drugs in the past and told me that there was drug activity" at Petitioner's home address. App. 115, line 4—App. 117, line 13; App. 119, line 4—App. 120, line 4. Godfrey claimed he followed up on the tip as soon as he could. As he approached Petitioner's front door, he noticed three burn piles outside. App. 120, line 10—App. 121, line 21. Godfrey knocked on the front door and entered the home. Inside he found Petitioner, his wife, and their two children. He asked if he could search the home, and Petitioner said no. App. 121, line 22—App. 122, line 10.

Godfrey said that when he was instructed to leave, on his way off of Petitioner's property, he suddenly saw suspicious items in the burn pile, such as blister packs and cut batteries. App. 123, lines 15-23. He radioed in to his office and reported what he saw for purposes of securing a warrant. App. 125, lines 1-8; App. 137, line 22—App. 139, line 14. After obtaining a warrant for the home, investigating officers testified they found inside a small amount of methamphetamine, a small caliber rifle, a small bore shotgun, a pistol, and a digital scale. App. 141, line 13—App. 142, line 1; App. 143, line 1—App. 144, line 13; App. 202, lines 2-12.

Prior to trial, Petitioner moved to suppress the evidence found in his home on grounds that Godfrey's search violated the Fourth Amendment. App. 90, line 4—App. 99, line 12. The trial judge denied the motion. App. 114, lines 8-14.

DISCUSSION

The Record shows that Godfrey did not discover the materials in the burn piles in plain view, and therefore his warrantless search of Petitioner's yard violated the Fourth Amendment. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. "The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance." *Camara v. San Francisco*, 387 U.S. 523, 529-30 (1967) (quoting *Johnson v. U.S.*, 333 U.S. 10 (1948)).

"[T]he Fourth Amendment's ultimate touchstone is 'reasonableness.'" *Brigham City, Utah v. Stuart*, 547 U.S. 398, 398 (2006). "[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). *See also Coolidge v. New Hampshire*, 403 U.S. 443, 91 (1971); *State v. Weaver*, 361 S.C. 73, 80–81, 602 S.E.2d 786, 790 (Ct. App. 2004). "The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption...that the exigencies of the situation make the course imperative.'" *Coolidge*, 403 U.S. at 91.

The South Carolina Supreme Court has held that under the “plain view” exception, evidence is subject to a warrantless *seizure* if “the initial intrusion which afforded the authorities the plain view was lawful and . . . the incriminating nature of the evidence was immediately apparent to the seizing authorities.” *State v. Wright*, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011). Importantly, the intrusion by the government into a private residence and its curtilage is of the gravest ilk. *Camara v. San Francisco*, 387 U.S. 523, 529-30 (1967); *Florida v. Jardines*, 133 S. Ct. 1409 (2013).

The United States Supreme Court created the exclusionary rule to safeguard Fourth Amendment rights. *United States v. Calandra*, 414 U.S. 338 (1974). The exclusionary rule provides that evidence seized in violation of the Fourth Amendment must be excluded from trial. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). The Fourteenth Amendment incorporates the rule of excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. *Id.*; *see also State v. Sachs*, 264 S.C. 541, 560, 216 S.E.2d 501, 511 (1975); *State v. Brown*, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010). The exclusionary rule also prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine. *Wong Sun v. United States*, 371 U.S. 471, 484 (1963); *see also State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999).

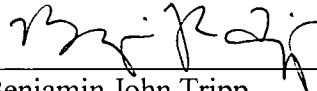
In this case, the Record shows that Godfrey did not discover the materials in the burn piles in plain view. While Godfrey testified that he noticed the burn piles as he approached Petitioner’s home, he was not close enough to see specific materials in the pile. Indeed, he claimed he only saw them after leaving the home, which happened to be when Petitioner attempted to end his investigation by denying further permission to

search. Thus, the record shows circumstantially and actually that Godfrey's initial intrusion into Petitioner's property did not afford an immediately apparent view of the materials in the pile. Godfrey could have only seen the materials through an unconstitutional search of Petitioner's curtilage, and the trial judge erred in concluding differently.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court reverse the trial court's denial of his motion to suppress, reverse his convictions, and dismiss the charges against him.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of February, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Edward Miller, Circuit Court Judge

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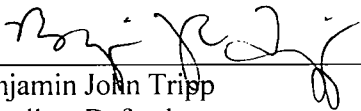
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Henderson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge D. Garrison Hill, which was held on April 25, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Michael Henderson.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

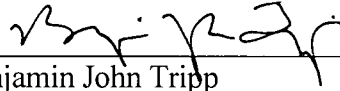
ATTORNEY FOR APPELLANT

This 4th day of February, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant pursuant to White v. State complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 4, 2015



Benjamin John Tripp
Appellate Defender

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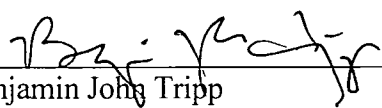
V.

MICHAEL HENDERSON,

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CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant pursuant to White v. State in the above referenced case has been served upon Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant pursuant to White v. State have been served on Michael Henderson, #348971 at Macdougall Correctional Institution, this 4th day of February, 2015.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of February, 2015.



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