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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JULIUS QUINTEZ MANIGAULT,

APPELLANT

APPELLATE CASE NO. 2015-000092

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

During the defense motion to suppress evidence obtained as a result of a warrantless search of a vehicle, did the trial judge err in refusing to require the State to introduce evidence to support the State's argument that the search met an exception to the warrant requirement?

STATEMENT OF THE CASE

In February of 2014, the Charleston County Grand Jury indicted Appellant Manigault for possession with intent to distribute marijuana and assault on a police officer while resisting arrest, indictments #2014-GS-10-1009, 1010. On January 8, 2015, Appellant proceeded to jury trial before the Honorable R. Lawton McIntosh. Cantrell Frayer and Luke Malloy represented Appellant at trial. Kelley Yong and Jenna Newman prosecuted the case. The jury returned with verdicts of guilty on both charges. Judge McIntosh sentenced Appellant to ten (10) years suspended upon the service of five (5) years with five (5) years probation for the marijuana charge and nine (9) years concurrent for the assault charge. A timely notice of intent to appeal was served on January 15, 2015. This appeal follows.

ARGUMENT

During the defense motion to suppress evidence obtained as a result of a warrantless search of a vehicle, the trial judge erred in refusing to require the State to introduce evidence to support the State's argument that the search met an exception to the warrant requirement.

Prior to trial Appellant moved to suppress evidence based on an unlawful search. (R. p. 43, lines 2-8). Appellant argued that the State had the burden of proving that the search met an exception to the warrant requirement. (R. p. 43, lines 10-13). The judge responded, "You need to present your prima facie argument and then they can respond to it. They don't have to just go forward." (R. p. 43, lines 14-16). Appellant argued that the search was illegal based on Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009). (R. p. 48 lines 9-19). The State argued that the search of the vehicle met the inventory search exception to the warrant requirement. (R. p. 53, lines 21-24). The trial judge ruled without hearing testimony, "I'm going to deny your motion to suppress. This is an appropriate search under the circumstances. I'll note your objection. If you would like to proffer anything else for the record Mr. Malloy with regard to . . ." (R. p. 54, lines 9-13). Appellant did not proffer any testimony. The trial judge erred in not requiring the State to present testimony at the suppression hearing.

On appeal from a suppression hearing, the appellate court is bound by the circuit court's factual findings if any evidence supports the findings. State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). In an appeal from a motion to suppress evidence based on Fourth Amendment grounds, an appellate court may conduct its own review of the record to determine whether the evidence supports the circuit court's decision. See State v. Khingratsaphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002) (stating

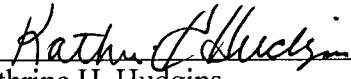
“Brockman does not hold the appellate court may not conduct its own review of the record to determine whether the trial judge's decision is supported by the evidence”). In the present case the State failed to present testimony or evidence to support the trial judge's decision to deny the motion to suppress. There is no evidence for this Court to review.

Generally, a warrantless search is per se unreasonable and thus violative of the Fourth Amendments prohibition against unreasonable searches and seizures. State v. Bultron, 318 S.C. 323, 331, 457 S.E.2d 616, 621 (Ct.App.1995). However, a warrantless search will withstand constitutional scrutiny where the search falls within one of a few specifically established and well delineated exceptions to the Fourth Amendment exclusionary rule. *Id.*, 318 S.C. at 331-32, 457 S.E.2d at 621. In such cases, the burden is upon the State to justify a warrantless search. State v. Bailey, 276 S.C. 32, 35, 274 S.E.2d 913, 915 (1981). In the present case the State failed to meet its burden to justify the warrantless search.

CONCLUSION

Based on the above argument, this Court should reverse the conviction and sentence and remand for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of September, 2015.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Julius Quintez Manigault states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Lawton McIntosh, which was held on January 8-9, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Julius Quintez Manigault.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of September, 2015.

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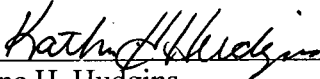
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentencing sheets;
- (2) Entire trial transcript, Volumes 1 and 2;
- (3) State's Exhibit #5 – Dashcam video – to be transported;
- (4) Motion for Reconsideration of Sentence.

I certify that this designation contains no matter which is irrelevant to this appeal.

September 10th, 2015


Kathrine H. Hudgins
Appellate Defender

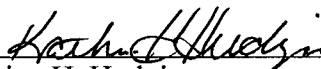
South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

September 10th 2015



Kathrine H. Hudgins
Appellate Defender

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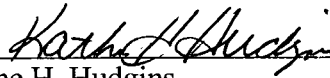
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APPELLANT

APPELLATE CASE NO. 2015-000092

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Julius Quintez Manigault, #362635 at Wateree River Correctional Institution, this 2nd day of September, 2015.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of September, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021