STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Maite Murphy, Circuit Court Judge
Honorable Kristi Lea Harrington, Circuit Court Judge
Appellate Case Tracking No. 2013-002090

The State, Respondent,

vs.

Stanley Wright, Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. The trial court did not err in refusing to suppress evidence obtained from Appellant's residence when exigent circumstances justified the warrantless search and the search was not unreasonable. In addition, section 16-25-70(H) of the South Carolina Code does not apply in this case and, even if it applied, any argument related to the section is not preserved for review on appeal. (Appellant's Issues 1 and 2).

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

The victim in this case called 911 seeking assistance because Appellant kicked a dent in her automobile. She called the Hilton Head 911 dispatch. The call was disconnected. The Hilton Head dispatch then provided the information to the Beaufort County 911 call center. The operator of the 911 call center then attempted to reach the victim. She was able to reach the victim, who was clearly distressed. The victim asked for an officer. After providing some basic information, she asked about making the report in person at the station. She indicated Appellant was the individual who kicked her car.

While on phone with the 911 operator, the victim is confronted by Appellant. Appellant becomes belligerent yelling at the victim. At one point he is heard telling her to leave and, then when she indicates she is on the phone with 911, he yells at her "how the fuck is the police on the phone." Immediately thereafter, the call is abruptly ended and the 911 operator is unable to get the victim back on the phone. (State's Exhibits 2&3 (CD of 911 calls)).

Officers were dispatched based on the 911 hang-up and the possibility of a domestic violence situation. (5/22T.31; State's Exhibit 4 (911 CAD records); R.___). While in route to the location, Deputy Archbell received updates from the 911 dispatcher. He was told a male subject could be heard in the background while the 911 operator was talking with the victim. The male subject "sounded aggressive or agitated." (5/22T.32; R.___). He was told the 911 operator could hear a struggle and then lost contact with the victim. Finally, he was informed the 911 operator was unable to regain contact with the victim. (5/22T.32; R.___).

Upon arriving at the scene, Deputy Archbell saw a male near the front door of the residence. As soon as Deputy Archbell made contact with the male, "he stepped out and abruptly shut the door behind him," (5/22T. 35; R.___). While speaking with Deputy Archbell the male was very nervous and kept looking back at the door. (5/22T.35; R.___). Deputy Archbell identified the male as Appellant. In his discussions with Deputy Archbell, Appellant admitted to having a verbal altercation with the victim after the victim threw a soda on his vehicle. (5/22T.36; R.___). As a result, Appellant admitted becoming agitated during the confrontation with the victim. (5/22T.37; R.___).

Corporal Collier arrived on scene after Deputy Archbell. Before he arrived at the scene, he learned a victim sounding in distress had been on the phone with 911 until the call lost. (5/22T.11; R.___). At the scene, Corporal Collier learned there was a verbal altercation between Appellant and a female. Appellant indicated the female was not at the scene. (5/22T.12; R.___). Deputy Archbell asked Appellant for consent to search his residence, and Appellant denied consent. (5/22T.12; R.___).

Corporal Irvin was asked to go to the ball field and attempt to locate anyone in distress who may have called 911. (T.92-95; R.___). The ball field was roughly one hundred to two hundred yards from the residence. (T.103; R.___). She indicated she could not locate anyone who appeared to be in distress and no once came up to her to report they needed assistance. (T.95-96; 102; R.___). She reported to the officers on scene at the residence that she was unable to locate anyone needing assistance at the ball park. (T.98; 142; R.___).

Corporal Collier made the decision to do a sweep of the residence in the event the female was inside in need of assistance since she had not been located. (5/22T.13;

R.___). Deputy Archbell indicated a strong smell of marijuana immediately inside the residence. (5/22T.39; R.___). During the sweep of the residence, Deputy Archbell and Corporal Collier went room by room through the residence and looked in places where a person could hide or be placed to determine whether the female victim was present. (5/22T.16; 39; R.___). Both officers testified they only looked in places they believed a person could fit, so they did not look in drawers or other areas. (5/22T.16-17; 39-40; R.___).

Corporal Collier opened the cabinet door to the master vanity because he believed it large enough a person could hide inside. (5/22T.17-18; R.__). When he opened it he observed a clear bag of what appeared to be marijuana and a purple Crown Royal that appeared to contain a white powdery substance, later determined to be cocaine. (5/22T.18-19; T.506-508; R.___).

ARGUMENT

I. The trial court did not err in refusing to suppress evidence obtained from Appellant's residence when exigent circumstances justified the warrantless search and the search was not unreasonable. In addition, section 16-25-70(H) of the South Carolina Code does not apply in this case and, even if it applied, any argument related to the section is not preserved for review on appeal. (Appellant's Issues 1 and 2).

Appellant contends the trial court erred in refusing to suppress the drug evidence located in his residence during a warrantless search. He maintains the evidence was not admissible pursuant to section 16-25-70(H) of the South Carolina Code. Further, he contends the warrantless search was unconstitutional because it was not supported by exigent circumstances. Any issue related to the application of section 16-25-70 is not preserved for review on appeal, and, even if preserved, the section is not applicable in the instant case. Further, the warrantless search was reasonable and supported by the exigent circumstances of the officers needing to determine the welfare and safety of Appellant's victim.

Section 16-25-70 Preservation

First, any argument related to section 16-25-70 of the South Carolina Code is not preserved for review on appeal. Appellant never raised the statute or application of the statute during trial, and therefore, it is blatantly not preserved for review on appeal. See State v. Jennings, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) ("For an issue to be properly preserved it has to be raised to and ruled on by the trial court."); State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (finding an issue not properly

preserved for appeal where one ground was raised below and another ground was raised on appeal).

Section 16-25-70 Merits

On the merits, section 16-25-70 does not apply in the instant case. Even if the issue had been raised to the trial court, it would not have been a ground for suppression of the evidence. Section 16-25-70(A) and (B) allow for arrest for domestic violence related offenses based on probable cause or the presence of injury. The statute continues in relevant part:

> (H) 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.

S.C. Code Ann. § 16-25-70 (Supp. 2014)(emphasis added).[1]

[1] The statute was recently amended in 2015. The amendments only affected Subsections (A) and (B), and, therefore, do not alter the analysis of the language contained in Subsection (H).

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)).

> All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted).

"The legislature's intent should be ascertained primarily from the plain language of the statute. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." State v. Dupree, 354 S.C. 676, 693, 583 S.E.2d 437, 446 (Ct. App. 2003) (internal citation omitted). "Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language." City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) (citing Timmons v. Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970)).

The language of Subsection (H) is clear and unambiguous. The provision only applies to warrantless searches administered pursuant to a complaint filed under the article related to criminal domestic violence. The complaint filed in the instant case originated as a complaint for malicious injury to property based on the victim's call that Appellant kicked and dented her car.

While the 911 operator and other officers may have believed a domestic dispute arose due to the arguments between parties and the fact the 911 call was cut off and unable to be reconnected, their subjective belief regarding the nature of the events did not change the complaint being filed, which was always one based on malicious injury to property. In Whren v. United States, 517 U.S. 806 (1996), the United States Supreme Court explained: "Not only have we never held . . . that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary." Id. at 812. The Court continued: "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." Id. at 813 (citing Scott v. United States, 436 U.S. 128, 136, 138 (1978)). Even if the subjective intentions of the officers were to respond to a domestic dispute, the **original complaint** remained one based on injury to property and not one for criminal domestic violence. The victim never filed a complaint for domestic violence, and Appellant was not arrested for or charged with criminal domestic violence. As a result, based on the clear, explicit language of Subsection (H), it is inapplicable in this case because the search did not arise pursuant to a complaint filed for domestic violance.

Further, carte blanche application of Subsection (H) would lead to the absurd result that abusers have more protection related to evidence of other crimes than other individuals. See Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) (finding courts will reject an interpretation of a statute leading to an absurd result

clearly unintended by the legislature). The South Carolina Supreme Court noted their concern based on the language of the prior version of Subsection (H) when they stated:

> We are concerned about the effect of § 16–25–70(H). The plain meaning of the statute precludes the admission of evidence of crimes, other than criminal domestic violence, seized as a result of a warrantless search conducted pursuant to § 16–25–70(C). In the case before us today, if the officer had entered respondent's home under the authority of § 16–25–70(C), the crack cocaine found in respondent's pocket would have arguably been inadmissible pursuant to § 16–25–70(H). Similarly, as noted by the amicus curiae, if the police make a warrantless entry into a home under the authority of § 16–25–70(C) and observe in plain view a weapon which is recognized as the weapon in an unrelated murder, the weapon could be inadmissible under § 16–25–70(H) since murder is not a violation of the Act.

State v. Cannon, 336 S.C. 335, 340 n.4, 520 S.E.2d 317, 319 n.4 (1999).

Fourth Amendment Warrantless Search

A trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence, and an appellate court may reverse only when there is clear error. State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013); see also, State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004) ("On appeal from a suppression hearing, this court is bound by the circuit court's factual findings if any evidence supports the findings."). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, . . .

." U.S. Const. amend. IV. It is the "basic rule that 'searches 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.'" Arizona v. Gant, 556 U.S. 332, 338 (2009)(quoting Katz v. United States, 389 U.S. 347, 357 (1967)). However, because the ultimate touchstone of the Fourth Amendment is "reasonableness," the warrant requirement is subject to certain exceptions. State v. Herring, 387 S.C. 201, 210, 692 S.E.2d 490, 494 (2009).

"[A] search or seizure carried out on a suspect's premises without a warrant is per se unreasonable, unless the police can show ... the presence of 'exigent circumstances.'" Coolidge v. New Hampshire, 403 U.S. 443, 474-75 (1971). An "exigent circumstance" exists when "real immediate and serious consequence" could occur if the police delay their action in order to obtain a warrant. Welsh v. Wisconsin, 466 U.S. 740, 751 (1984) (citations omitted). "The rationale underpinning the exigent circumstances doctrine is that when faced with an immediate and credible threat or danger, it is inherently reasonable to permit police to act without a warrant." United States v. Yengel, 711 F.3d 392, 396 (4th Cir. 2013). "One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. 'The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006) (citing Mincey v. Arizona, 437 U.S. 385, 393-394 (1978)).

The United States Supreme Court, in a case regarding a competing answers regarding consent to search by co-tenants, recognized the seriousness of domestic violence in the United States[2] and explained:

> No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence; so long as they have good reason to believe such a threat exists, it would be silly to suggest that the police would commit a tort by entering, say, to give a complaining tenant the opportunity to collect belongings and get out safely, or to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur, however much a spouse or other co-tenant objected. (And since the police would then be lawfully in the premises, there is no question that they could seize any evidence in plain view or take further action supported by any consequent probable cause . . . .).

Georgia v. Randolph, 547 U.S. 103, 118 (2006). "[T]he person making entry must have had an objectively reasonable belief that an emergency existed that required immediate entry to render assistance or prevent harm to persons or property within." United States v. Moss, 963 F.2d 673, 678 (4th Cir. 1992). "[T]he Supreme Court's standard of reasonableness is comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." Roy v. Inhabitants of Lewiston, 42 F.3d 691, 695 (1st Cir. 1994).

The officers in the current case clearly had a reasonable belief the female victim may be in danger or injured in the residence. The 911 operator reported a domestic dispute occurring while on the phone with the victim. The operator indicated the male subject became aggressive and agitated. The officers knew the 911 call ended abruptly and the victim was not able to be reconnected with 911. The female was not seen by the

[2] The Court presented substantial and significant statistics and information regarding the plague of domestic violence in the United States. See Georgia v. Randolph, 547 U.S. 103, 117-118 (2006).

officers. Most significantly, after learning the information from the 911 operator about the nature of the call and arriving on scene, Deputy Archbell witnessed Appellant "abruptly" shut his door upon seeing the officer, and during their conversation, continue to nervously look at the front door to the residence.

According to Corporal Collier, it typically takes anywhere from two to four hours to obtain a warrant. (5/22T.21; R.___). Waiting any significant length of time, when there is a distinct and reasonable possibility a victim may be inside the house, should not be required. This is particularly true when the facts and circumstances known to the officers at the time indicated a need to act to locate the female victim and ensure her safety, especially given Appellant's suspicious behavior upon seeing Deputy Archbell.

"Courts have recognized the combustible nature of domestic disputes, and have accorded great latitude to an officer's belief that warrantless entry was justified by exigent circumstances when the officer had substantial reason to believe that one of the parties to the dispute was in danger." Tierney v. Davidson, 133 F.3d 189, 197 (2nd Cir. 1998); see also State v. Greene, 162 Ariz. 431, 784 P.2d 257, 259 (1989) (en banc) ("These calls commonly involve dangerous situations in which the possibility for physical harm or damage escalates rapidly. . . . The call itself creates a sufficient indication that an exigency exists allowing the officer to enter a dwelling if no circumstance indicates that entry is unnecessary."); State v. Lynd, 771 P.2d 770, 773 (Wash. Ct. App. 1989) (concluding that entry was reasonable where there had been a hang-up call to 911 and the husband, who was outside the house, reported that he and his wife had been arguing).

"Evidence of extreme danger in the form of shots fired, screaming, or blood is not required for there to be some reason to believe that a safety risk exists." Fletcher v. Town of Clinton, 196 F.3d 41, 49-50 (1st Cir. 1999); see also, Tierney, 133 F.3d at 198 ("[T]he absence of blood, overturned furniture or other signs of tumult" did not render the officer's belief that danger existed unreasonable and did not require the officer "to withdraw and go about other business, or stand watch outside the premises listening for the sounds of splintering furniture."); United States v. Brown, 64 F.3d 1083, 1086 (7th Cir. 1995) ("We do not think that the police must stand outside an apartment, despite legitimate concerns about the welfare of the occupant, unless they can hear screams. Doubtless outcries would justify entry, but they are not essential.").

Additionally, courts have recognized the importance of locating the parties to the dispute, and the ability of officers determining for themselves whether any danger has passed. See e.g., United States v. Bartelho, 71 F.3d 436, 442 (1st Cir. 1995) ("[T]he police were not required to take [the victim's] statements at face value, given her demeanor, their training regarding domestic violence, and [the neighbor's] report."); Magnuson v. Cassarella, 813 F.Supp. 1321, 1324 (N.D. Ill. 1992) ("[E]xigent circumstances do not end merely because the victim indicates that she is no longer in danger. That is a determination for the officer to make independently in light of the totality of the circumstances."); State v. Raines, 778 P.2d 538, 542–43 (1989) ("[T]he fact that the occupants appeared to be unharmed when the officers entered did not guarantee that the disturbance had cooled to the point where their continued safety was assured. Until they had an opportunity to observe [the boyfriend] and talk to him, they had no knowledge of his condition and state of mind."). Clearly, if the officers are not

required to accept the statement from the victim that nothing is wrong, they are certainly not required to accept at face value the statement of the likely suspect that the female victim was fine and just not present at the residence.

Appellant also argues the officers could have done more to determine whether an exigency existed, including talking to the neighbor or allowing Appellant to take them to the ball field. As the Fourth Circuit stated:

> [T]o accept arguments like these would be to put too great a burden on officers tasked with responding to emergencies. There is a danger that in the light of day we can forget that in emergencies, "the business of policemen and firemen is *to act*, not to speculate or meditate on whether the report is correct. . . . When policemen, firemen or other public officers are confronted with evidence which would lead a prudent and reasonable official to see a need to act to protect life or property, they are authorized to act on that information, even if ultimately found erroneous."

Hunsberger v. Wood, 570 F.3d 546, 556 (4th Cir. 2009) (quoting Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963) (Burger, J.) (italics in original)). "On the spot reasonable judgments by officers about risks and dangers are protected. Deference to those judgments may be particularly warranted in domestic disputes." Fletcher, 196 F.3d at 50. Additionally, the fact they were unsuccessful in finding the female inside does not vitiate the reasonableness of their entry into the home. See e.g., Heien v. N. Carolina, 135 S. Ct. 530, 536 (2014) ("To be reasonable is not to be perfect"); Hunsberger, 570 F.3d at 556 ("When policemen . . . are confronted with evidence which would lead a prudent and reasonable official to see a need to act to protect life or property, they are authorized to act on that information, even if ultimately found erroneous.").

Accordingly, the trial court did not err in the instant case in finding the facts and circumstances known to the officers at the time of their entry into Appellant's property

created exigent circumstances justifying the warrantless search for the female victim. During the search, the officers could reasonable conduct their search and any evidence located during the lawful search was properly admitted into evidence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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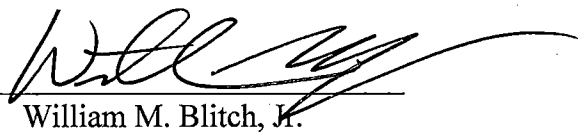
BY: 
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February 5, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County
Honorable Maite Murphy, Circuit Court Judge
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The State, Respondent,

vs.

Stanley Wright, Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served. This 5th day of February, 2016.

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RE: State v. Stanley L Wright
Appellate Case Tracking No. 2013-002090

Dear Counsel:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

William M. Blitch, Jr.
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Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services