THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

Scott Sprouse, Circuit Court Judge

Case Nos. 2015-002459

STATE OF SOUTH CAROLINA,

Respondent,

v.

DEBRA LYNNE SHERIDAN,

Appellant.

REPLY BRIEF OF APPELLANT

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I. APPELLANT PROPERLY PRESERVED THE ISSUE THAT THE WARRANTLESS SEARCH VIOLATED HER CONSTITUTIONAL RIGHTS.

Despite Respondent's argument to the contrary, the Appellant properly argued that the warrantless search violated her constitutional rights. "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge." State v. Dunbar, 356 S.C. 138, 141, 587 S.E.2d 691, 694 (2003). "Evidence seized in violation of the Fourth Amendment must be excluded from trial." State v. Freiburger, 620 S.E.2d 737, 740, 366 S.C. 125, (2005). Generally, a warrantless search is per se unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures. State v. Weaver, 649 S.E.2d 479, 482, 374 S.C. 313 (S.C., 2007). Appellant made a motion to dismiss the case for lack of search warrant. Transcript p. 11, lines 22-25. Appellant's motion was denied, and the trial moved forward. Transcript p. 17, line 1. Counsel for the Respondent argued that Appellant made no reference to either constitution in her motion prior to trial. However, the basis for Appellant's motion to dismiss is that Appellant's constitutional rights were violated because there was no search warrant. As Appellant argued in the initial brief, not only was there no warrant, but there was also no applicable exception to the warrantless search. This issue was raised and ruled upon by the Trial Judge. Transcript p. 11, lines 22-25; Transcript p. 17, line 1. Therefore, Appellant properly preserved the issue of whether or not the warrantless search violated Appellant's constitutional rights.

II. APPELLANT WAS UNFAIRLY PREJUDICED BY THE ADMISSION OF THE PHOTOGRAPHS, BECAUSE THE TRIAL JUDGE ORDERED THAT APPELLANT CANNOT OPERATE AN ANIMAL SHELTER.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. Although Appellant was found not guilty for the cruelty to animals charges, the Trial Judge's Order prohibiting Appellant from operating an animal shelter shows that the Appellant was unfairly prejudiced by the introduction of the photographs. Respondent argues that this ruling was well within the Trial Judge's discretion, because Appellant was found guilty on both the methamphetamine and rabies charges. However, it is undisputed that Appellant had no prior drug charges. Transcript p. 367, 13-18. Furthermore, it was also undisputed at trial that it is common for animals to not wear rabies tags in animal shelters, because this causes severe safety hazards. Transcript p. 42, 2-14. The probative value of these photographs is substantially outweighed by unfair prejudice. Therefore, Appellant was unfairly prejudiced by the admission of these photographs.

III. THE POLICE OFFICERS UNREASONABLY RELIED ON THE AGREEMENT AS THE BASIS FOR THE WARRANTLESS SEARCH.

The definitive standard of the Fourth Amendment is reasonableness. See McHam v. State, 404 S.C. 465, 746 S.E.2d 41, 49 (S.C., 2013). To qualify as reasonable, generally a search or seizure must be conducted pursuant to a valid warrant. See State v. Weaver, 649 S.E.2d 479, 374 S.C. 313 (S.C., 2007). The police officers unreasonably relied on the Agreement, and abused any power that may have been provided by the Agreement. The Agreement clearly provides that Appellant had until June 15, 2016 to comply with the Agreement. State's Exhibit 33. Nonetheless, the police officers deemed it necessary to search Appellant's home well in

advance of this deadline. The police officers' actions amounted to a gross abuse of power. The police officers used the language in the Agreement as a means to gain unfettered discretion to conduct warrantless searches at Appellant's home. Under the guise of a wellness check, the police officers wrongfully entered the Appellant's residence and performed an illegal search. As previously stated in the Initial Brief of Appellant, it is not proper for police officers to conduct wellness checks as a means to examine the presence of criminal activity. The officers knew or should have known that wellness checks are not to be utilized as criminal investigative techniques. Instead, the officers improperly used the Agreement as a means to gain access to Appellant's residence without the proper justification or consent. Therefore, the police officers unreasonably relied on the Agreement as a basis for the warrantless search.

IV. THE APPELLANT DID NOT CONSENT TO THE WARRANTLESS SEARCH.

Whether consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances. State v. Dorce, 320 S.C. 480, 465 S.E.2d 772, 773 (S.C. App., 1995). The State bears the burden of establishing voluntariness of the consent. Id. Counsel for the Respondent argues that the police officers conducted the search pursuant to what they believed to be consent previously given by the Appellant. However, Appellant's signature does not appear anywhere on the Agreement. State's Exhibit 33. It would not have been reasonable for the police officers to believe that Appellant consented to a set of terms when her signature is nowhere to be found on the document memorializing the terms. Furthermore, it would be unreasonable to assume that any purported consent from the Agreement was given voluntarily, due to the nature of the proceeding for which the Agreement was drafted. Lastly, no evidence was presented at trial to suggest that

Appellant to consented to the warrantless search when the team of police officers arrived at her home. Therefore, Appellant did not consent to the warrantless search.

V. THE TRIAL COURT ABUSED ITS DISCRETION BY ORDERING THAT APPELLANT CANNOT OPERATE AN ANIMAL SHELTER.

"An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." Fields v. REGIONAL MEDICAL CTR. ORANGEBURG, 363 S.C. 19, 26, 609 S.E.2d 506 (S.C., 2005). By ordering that Appellant could not operate an animal shelter, the Trial Judge abused his discretion. The Trial Judge chose to prohibit Appellant from owning an animal shelter despite the fact that Appellant had no prior criminal record. Although Appellant was convicted of violating the rabies statute, it was undisputed that this statute that commonly goes unfollowed by other animal shelters due to serious safety hazards. Transcript p. 42, 2-14. Moreover, Appellant was able to prove that the dogs were current with their rabies shots by producing the rabies certificates at trial. Transcript p. 256, lines 20-25; Transcript p. 257, lines 1-10. As previously stated, the reason that the animal shelters do not keep rabies tags on their dogs is to avoid safety hazards. Working with animals was Appellant's passion and livelihood, and she ran a very successful animal shelter. Furthermore, Appellant's only conviction regarding animals from the trial at issue was for violating a statute that no other animal shelters follow. Therefore, there was no evidentiary support for the Trial Court's decision to prohibit Appellant from operating an animal shelter.

CONCLUSION

For the aforementioned reasons, Appellant requests that this matter be reversed and remanded to the lower court.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served a copy of the *Reply Brief of Appellant* on The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on May 1, 2017, addressed to Ranee Saunders, Esq., P.O. Box 11549, Columbia, SC 29211-1549.

May 15, 2017

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Notes and Comments:

Enclosed, please find a copy of the Reply Brief of Appellant and Proof of Service for the above-referenced case. The originals are being placed in today's mail. If you have any questions or concerns, please call my office, using the information above.