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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN WILLIAM DOBBINS,

APPELLANT

APPELLATE CASE NO. 2013-002134

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether police officers without a warrant violated the Fourth Amendment by entering Petitioner's backyard and home in order to search for a third party.

STATEMENT OF THE CASE

On February 24, 2012, the Laurens County Grand Jury indicted Appellant John William Dobbins, Jr. on counts of manufacturing methamphetamine, possession with intent to distribute methamphetamine, and unlawful disposal of methamphetamine waste, as well as two counts of possession of a controlled substance. R. 329-338. On September 9, 2013, Appellant appeared at trial before The Honorable Donald B. Hocker and a jury. Rauch Wise represented Appellant and Ruston Neely and Dale Scott represented the State. R. 1.

At the conclusion on the trial on September 11, 2012, the jury found Appellant guilty on all counts. R. 1; R. 310, lines 3-21. Judge Hocker sentenced Appellant to concurrent sentences of twenty-five years for the methamphetamine manufacturing and possession charges, five years for the disposal charge, and one year each for the possession of controlled substance charges. R. 326, line 15—R. 327, line 4.

ARGUMENT

THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS BECAUSE THE OFFICERS VIOLATED THE FOURTH AMENDMENT BY ENTERING PETITIONER'S BACKYARD AND HOME WITHOUT A WARRANT.

FACTS

At trial the State alleged that on November 24, 2011, officers from the Laurens County Sheriff's Office were investigating a domestic dispute at a home in the town of Waterloo. At around 3:00 a.m., searching for the dispute's aggressor, Shayla Gaines, the officers visited a camper home in which she purportedly resided. Claiming to notice the smell of cooking methamphetamine, the officers knocked on the door. Appellant briefly opened the door and shut it. The officers forcibly entered and found inside a "meth lab" and methamphetamine. R. 77, line 23—R. 82, line 3.

Prior to trial, Appellant moved to suppress the evidence seized from his on grounds that the officer's entry into his home without a warrant violated the Fourth Amendment. App. 23, line 15—App. 31, line 8. Testimony was then presented that upon arriving at Appellant's residence, one of the four officers "went to the rear of the camper just to make sure everything was secured back there. [He] could immediately smell an odor . . . associated with methamphetamine labs." App. 34, lines 2-6; App. 38, lines 3-5; App. 99, line 18. The officers were then concerned with finding Gaines and investigating the presence of methamphetamine. App. 35, lines 1-5. The officers knocked on the front door. "He had come to the door. As soon as we said we were looking for Ms. Gaines he abruptly shut the door." App. 35, lines 11-13. The trial judge denied the motion to suppress concluding exigent circumstances justified the officers' entry into Petitioner's home. App. 65, lines 17-20.

DISCUSSION

The trial court erred in denying the motion to suppress because the officers violated the Fourth Amendment by entering Petitioner's backyard and home without a warrant. 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, 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. "[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). "The burden of establishing probable cause as well as the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures is upon the prosecution." *State v. Bultron,* 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995).

Importantly, the intrusion by the government into a private residence and its curtilage is a search of the gravest ilk. *Camara v. San Francisco,* 387 U.S. 523, 529-30 (1967); *Florida v. Jardines*, 133 S. Ct. 1409 (2013). Law enforcement generally may not search a residence or its curtilage without probable cause and either a warrant or warrant exception. Still, based on the "habits of the country," an "implicit license typically permits [a] visitor [such as a police officer] to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Jardines* at 1415. Due to the Fourth Amendment's utmost protection of privacy

in the home and curtilage, the license must be considered narrow in scope in time, space, and means. Id. ("[A]n officer's leave to gather information is sharply circumscribed when he steps off those thoroughfares and enters the Fourth Amendment's protected areas. . . . . [The] license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. . . . But introducing a trained police dog to explore . . . is something else. There is no customary invitation to do that."); id. at 1420-22 (Alito, J. dissenting) ("The law of trespass generally gives members of the public a license to use a walkway to approach a front door of a house and to remain there for a brief time. . . . Of course, this license has certain spatial and temporal limits.").

Exigent circumstances excusing a warrant to search the residence of a third party do not exist simply because officers reasonably believe a suspect or fugitive is inside. *Steagald v. United States*, 451 U.S. 204, 213-14 (1981).

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 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). 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*

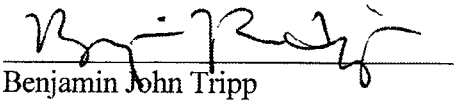
State v. Sachs, 264 S.C. 541, 560, 216 S.E.2d 501, 511 (1975); *State v. Brown*, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010).

In this case, the State had the burden to prove that the officers could enter Petitioner's curtilage and home without a warrant. The only exigent circumstances they alleged were the need to find Gaines and investigating the presence of methamphetamine. As to finding Gaines, as explained in *Steagald*, no exigent circumstances justified their entry into Petitioner's backyard or home to search for a third party, even if she was the suspect of a domestic dispute. As to the methamphetamine, the officers did not have occasion to investigate its presence until they entered Petitioner's backyard and smelled its odor. No testimony showed that they smelled the odor at the front door, which Petitioner immediately shut after opening it. As explained in *Jardines*, without an exigent circumstance justifying entry into the backyard, the officers violated the Fourth Amendment by exceeding the scope of the implied license permitting approach to the front door only. Accordingly, the State adduced no evidence to support their intrusions under the Fourth Amendment, and the seizure of evidence from Petitioner's home resulted directly and indirectly from their violations. The trial court erred in concluding to the contrary and denying Petitioner's motion to suppress, and this Court should reverse.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial Court's denial of his motion to suppress and issue an order of acquittal.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of August, 2015.

CERTIFICATE OF COUNSEL

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

August 21, 2015

Benjamin John Tripp
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of August, 2015.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of August, 2015.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.