

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SEP 23 2019

SC Court of Appeals

Appeal from Charleston County

R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM HOLMES,

APPELLANT.

APPELLATE CASE NO. 2018-001642

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT

Because State v. Wright was not binding appellate precedent that authorized Patrolman Sherwood's actions, the good-faith exception to the exclusionary rule stated in Davis v. United States does not apply here.

The State believes that State v. Wright was binding appellate precedent that authorized Patrolman Sherwood to perform this knock and talk without reasonable suspicion. (Resp. Br. pp. 16-17, 19-21). However, as the State correctly points out in its initial brief, “[i]t is, of course, settled law that ‘a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.’” (Resp. Br. p. 18) (Citing Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972)).

Because the right-to-privacy provision of the South Carolina Constitution was not argued or mentioned in our Supreme Court's opinion in Wright, it was not binding appellate precedent that Patrolman Sherwood could properly rely upon here. In Wright, our Supreme Court only addressed the plain view and exigent circumstances exceptions to the Fourth Amendment's warrant requirement. State v. Wright, 391 S.C. 436, 441, 706 S.E.2d 324, 326 (2011).

Furthermore, Wright did not involve a knock and talk. Instead, the officers in Wright investigated a wooded area near a mobile home after receiving an anonymous tip that dogfighting was taking place there. See id. 391 S.C. at 440-41, 706 S.E.2d at 325-26. Ultimately, the Court in Wright held that the trial court improperly granted the defendant's motion to suppress evidence because the deputies lawfully entered private property after receiving an anonymous tip and personally observing numerous vehicles and spotlights shining near the mobile home. Id. 391 S.C. at 445, 706 S.E.2d at 328.

The State relies on dicta contained in the Wright opinion to support its argument that Patrolman Sherwood's actions here were consistent with binding appellate precedent.

Specifically, the State argues that Wright authorizes officers to “*obviously* go to a resident's door

to speak with someone inside.” (Resp. Br. pp. 19-20). However, whether the deputies in Wright could perform a knock and talk was not an issue properly before the Court because the defendant’s trial counsel conceded that issue. See id. (Respondent’s “defense counsel admitted that the police may lawfully knock on the front door after receiving a complaint.”); State v. Benton, 338 S.C. 151, 156, 526 S.E.2d 228, 231 (2000) (“[A]n issue conceded in the trial court cannot be argued on appeal.”) (citing TNS Mills, Inc. v. South Carolina Dep’t of Revenue, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998)).

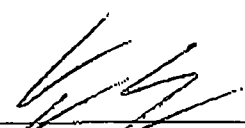
Not only was the knock-and-talk issue not properly before the Court in Wright, but that case is factually distinguishable from the present case based on the amount of information available to the officers before entering the private property. Here, unlike the deputies in Wright, Patrolman Sherwood was not acting on an anonymous tip, nor did he personally observe any plain view evidence of criminal activity in the 15 minutes he waited before knocking. Although the Court in Wright did state that those deputies could “obviously go to a resident’s door,” the presence of the anonymous tip appears to have played an important role in the Court’s reasoning, as evidenced by other portions of its dicta. See Wright, 391 S.C. at 444, 706 S.E.2d at 328 (“A police officer without a warrant is privileged to enter private property *to investigate a complaint or a report of an ongoing crime.*”) (emphasis added) (internal quotations and citations omitted); Id. 391 S.C. at 445, 706 S.E.2d at 328 (“However, even absent [the deputies’ plain view] observations, the police had the investigative authority to approach the front door of the mobile home *in order to investigate the anonymous tip.*”) (emphasis added).

Because the Court in Wright did not address whether a knock and talk was proper under the South Carolina Constitution, and because Wright is factually distinguishable from the present case, Wright was not binding appellate precedent that Patrolman Sherwood could properly rely

upon when he performed this knock and talk without reasonable suspicion. Therefore, the good-faith exception to the exclusionary rule stated in Davis v. United States, 564 U.S. 229, 131 S. Ct. 2419 (2011), is inapplicable here.

CONCLUSION

For the reasons stated above, and for the reasons stated in Appellant's initial brief, this Court should reverse Holmes's convictions and remand this matter for a new trial with instructions that the Trial Court suppress all evidence seized following this knock and talk.



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September 23, 2019

Attorneys for Appellant

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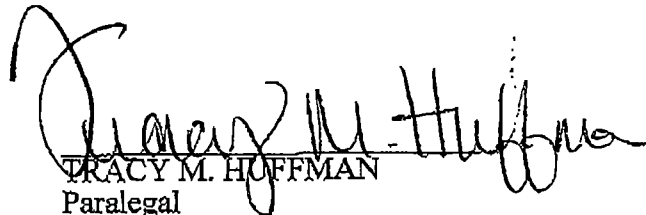
APPELLATE CASE NO. 2018-001642

PROOF OF SERVICE

I, Tracy M. Huffman, certify I have served the within Initial Reply Brief of Appellant by sending two copies of the same to:

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I further certify all parties required by Rule to be served have been served. This 23rd day of September, 2019.



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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate Street
Columbia, SC 29201

RE: State v. William Holmes – Appellate Case No. 2018-001642

Dear Clerk:

I am enclosing an original and one copy of the Initial Reply Brief of Appellant in the above-referenced case.

Sincerely,



Jason T. Yonge, Esquire
Bar Number 102869

JTY:tmh
Enclosures

cc: William Holmes
Robert M. Dudek, Esquire

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