

5

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 02 2017

APPEAL FROM CHESTER COUNTY
General Sessions

SC Court of Appeals

Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2016-000193

The State,

Respondent

v.

Charles David Hayes,

Appellant

FINAL REPLY BRIEF

[Redacted]

William G. Yarborough, III
522 N. Church Street
Greenville SC, 29601
Telephone (864) 331-1612
Fax (864) 370 0022

[Redacted]

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3

ARGUMENT IN REPLY

I. PAULINE HAYES ONLY CONSENTED TO THE SEARCH OF HER HOME OUT OF FEAR OF WRONGFUL ARREST, AND THEREFORE HER CONSENT WAS NOT VOLUNTARILY GIVEN.....4

II. OFFICERS EXCEEDED THE SCOPE OF THE CONSENT SEARCH WHEN THEY SEARCHED BEYOND MR. SIMPSON'S BELONGINGS IN THE LIVING ROOM.....6

III. THE ISSUE OF WHETHER THE SEARCH WARRANT WAS INVALID BECAUSE THE SHERIFF'S WIFE ISSUED IT IN HER CAPACITY AS A MAGISTRATE WAS PROPERLY PRESERVED AT TRIAL.....7

IV. APPELLANT'S COERCED CONFESSION AND ITS SUBSEQUENT USE AGAINST HIM AT TRIAL VIOLATED HIS RIGHT TO DUE PROCESS.....10

CONCLUSION.....11

TABLE OF AUTHORITIES

CASES

Jackson v. Denno, 378 U.S. 368, 376 (1964).....10

Johnson v. United States, 520 U.S. 461 (1997).....8, 9

Schneckloth v. Bustamonte, 412 U.S. 218, 218 (1973).....4

Shadwick v. City of Tampa, 407 U.S. 345, 350-51 (1972).....8

State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001).....4, 5

State v. Funderburk, 367 S.C. 236, 625 S.E.2d 248 (Ct. App. 2006).....5

State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003).....5

State v. Morris, 411 S.C. 571, 769 S.E.2d 854 (2015).....6, 7

State v. Sheppard, 391 S.C. 415, 706 S.E.2d 16 (2011).....7

ADVISORY COMMITTEE OPINIONS

Advisory Comm. on Standards of Judicial Conduct Op. No. 4-2011.....9

Advisory Comm. on Standards of Judicial Conduct Op. No. 19-1998.....9

ARGUMENT IN REPLY

I. PAULINE HAYES ONLY CONSENTED TO THE SEARCH OF HER HOME OUT OF FEAR OF WRONGFUL ARREST, AND THEREFORE HER CONSENT WAS NOT VOLUNTARILY GIVEN.

The record shows that Pauline Hayes did not voluntarily consent to the search of her home. A warrantless consent search is not valid unless the consent is voluntarily given. *Schneckloth v. Bustamonte*, 412 U.S. 218, 218 (1973). The Fourth Amendment is violated when the search exceeds the scope of the consent. *State v. Forrester*, 343 S.C. 637, 648, 541 S.E.2d 837, 843 (2001).

Mrs. Hayes gave very clear testimony at trial concerning the incidents leading up to and including her consent to search her home. She testified that when police initially requested her consent to search her home, Mrs. Hayes refused. However, police then threatened to arrest Mrs. Hayes and everyone who lived in the home if they had to obtain a warrant and found a gun in the home. Mrs. Hayes testified that she only consented after this threat was made, and furthermore, she testified that she was terrified during this interchange. (ROA, p. 398, lines 1-15).

In the Initial Brief of Respondent, it claims that “the overwhelming evidence presented at the suppression hearing and at trial provides ample support for the circuit court’s finding that Mrs. Hayes voluntarily consented to the initial search of her house.” However, Mrs. Hayes’ clearly testified that her consent to search was induced by a threat of arrest, an arrest that the police had no probable cause to make. This threat, coupled with Mrs. Hayes’ own terror at the thought of being arrested when she had done nothing wrong, coerced her into giving consent. The record supports that her consent was coerced, and therefore not voluntarily given. As a result, the evidence directly and indirectly resulting from this search must be suppressed.

II. OFFICERS EXCEEDED THE SCOPE OF THE CONSENT SEARCH WHEN THEY SEARCHED BEYOND MR. SIMPSON'S BELONGINGS IN THE LIVING ROOM

The evidence shows that Mrs. Hayes' consent for officers to search for a firearm used in the North Carolina armed robbery was limited to the living room where Simpson's clothes were located. Respondent correctly points out that a consensual search must not exceed the scope of the consent. *State v. Funderburk*, 367 S.C. 236, 625 S.E.2d 248, 250 (Ct. App. 2006) (citing *State v. Forrester*, 343 S.C. 637, 541 S.E.2d 837, 843 (2001)). Furthermore, Respondent correctly acknowledges that the scope of consent is measured by what a typical reasonable person would have understood by the discussions with the police officer leading to the consent. *State v. Mattison*, 352 S.C. 577, 575 S.E.2d 852, 856 (Ct. App. 2003). However, Respondent incorrectly applies these established rules to the evidence in the case at hand.

Respondent argues that an objectively reasonable person in Mrs. Hayes position would understand that the search would include any areas and containers in which a firearm could be hidden. However, this is simply not the case. Mrs. Hayes told officers that Mr. Simpson's belongings were in the living room. Furthermore, Mrs. Hayes told officers that the back bedroom was Appellant's bedroom, clearly identifying that it was not Mr. Simpson's room. An objectively reasonable person would understand that the search for Mr. Simpson's would include the belongings of Mr. Simpson, but not the private bedroom of another individual in the home unless she clearly expressed that the consent included that room. Therefore, the police should have understood that the consent to search was limited to the items that Mrs. Hayes specifically identified as belonging to Mr. Simpson.

Respondent claims that police only learned that Simpson had been staying on the couch in the living room after police suspended the search and got a search warrant. Respondent also claims that Mrs. Hayes told police that Simpson ran out of the back bedroom when the officers arrived

the second time, and she put his clothes in the living room. Respondent refers to eight (8) excerpts from the trial transcript in order to support these claims. (ROA, vol I pp. 42-43, 157-161, 186-190, 218-219, 229-234, and vol II, pp. 288-289, 296-298, 383-385). However, none of the referenced excerpts from the transcript support Respondents claims. In fact, most of these excerpts do not even mention the events surrounding Respondent's claims. Therefore, Respondent's claims that the police only learned that Simpson had been staying in the living room and that Mrs. Hayes told police that Simpson ran out of the back bedroom when the officers returned to Mrs. Hayes' home are not supported by the record.

Respondent also argues that the search for the firearm encompassed any area of the house in which a firearm might be located, relying on the South Carolina Supreme Court's ruling in *State v. Morris*, 411 S.C. 571, 769 S.E.2d 854 (2015). However, this case deals entirely with the scope of a search of an automobile, not a private home. Respondent applies *Morris* to the present case, arguing ". . . in light of Simpson's presence in the house, the consent to search for the firearm used in the armed robbery . . . encompassed any area of the house in which a firearm might be located." However, it is unclear how *Morris*, which involved the warrantless search of a car under the automobile exception to the warrant requirement, has any relation to the search of Appellant's bedroom in the present case. *Id.* The court in *Morris* specifically addresses the automobile exception, which it states exists "in recognition of 'the ready mobility of automobiles and the potential that evidence may be lost before a warrant is obtained' and 'the lessened expectation of privacy in motor vehicles which are subject to government regulation.'" *Id.* at 580, 769 S.E.2d at 859. The court clearly differentiates warrantless searches of automobiles from searches of the home. Therefore, this case-law cannot be used to justify Respondent's argument that the consent to search for the firearm used in the armed robbery encompassed any area of the house in which a

firearm might be located. In fact, police officers exceeded the scope of the consent search, and violated Appellant's and Mrs. Hayes' constitutional rights in doing so.

III. THE ISSUE OF WHETHER THE SEARCH WARRANT WAS INVALID BECAUSE THE SHERIFF'S WIFE ISSUED IT IN HER CAPACITY AS A MAGISTRATE WAS PROPERLY PRESERVED AT TRIAL.

Respondent argues that the issue of whether the search warrant was invalid because the sheriff's wife issued it in her capacity as a magistrate was not preserved for appellate review. Appellant raised this issue at the suppression hearing during questioning of Lt. Neal. The court ruled in favor of the State, and Appellant was not permitted to question the witness further in order to establish that the magistrate who issued the warrant was married to the Chester County Sheriff.

According to *State v. Sheppard*, a party must obtain a ruling from the trial judge in order to preserve an issue for appellate review. 391 S.C. 415, 706 S.E.2d 16 (2011). Appellant raised this issue during questioning of Lt. Neal, but was precluded from pursuing this line of questioning. Appellant properly stated that the questions went to the legal requirement of a fair and impartial magistrate. The court ruled on the State's objection that Appellant could not pursue that line of questioning. (ROA, p. 45, lines 11-15, and p. 46, lines 1-10).

Furthermore, even if this issue was not properly preserved for appellate review, the Appellant should be granted review on this issue according to the doctrine of plain error. According to *Johnson v. United States*, an appellate court can correct an error not raised at trial if there is (1) error, (2) that is plain, (3) that affects substantial rights, and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Johnson v. United States*, 520 U.S. 461, 466-67 (1997). The court's failure to address the issue concerning the relationship between the issuing magistrate and the Chester County Sheriff is a plain error which affected Appellant's

substantial rights and seriously affected the fairness, integrity, and public reputation of Appellant's judicial proceedings.

Magistrates must be impartial, severed, and disengaged from activities of law enforcement such that independent judgment is not distorted. *Shadwick v. City of Tampa*, 407 U.S. 345, 350-51 (1972). Appellant provided ample evidence that the relationship between the issuing magistrate and the sheriff should have rendered the warrant invalid. See Appellant's Initial Brief, pp. 19-22. Respondent, in its initial brief, does not contend that the issuing magistrate's relationship with the sheriff was not improper. Furthermore, Respondent does not even attempt to defend the validity of the warrant and the resulting search. Presumably, Respondent does not address the validity of the warrant because the warrant cannot be proven valid. Therefore, warrant was clearly invalid, and the court's failure to address the validity of the warrant was in error.

According to *Johnson*, the error must be "clear under current law." 520 U.S. at 466-67. Appellant provided exhaustive State and Federal case-law which established the clear error in the warrants validity. Appellant also provided numerous standards set by the South Carolina Advisory Committee on Standards of Judicial Conduct concerning magistrate impartiality. These standards further support that the warrant was improper and invalid based on the magistrate's relationship with the sheriff. The error here is therefore clear under current law. Therefore, the error satisfies the second requirement under *Johnson. Id.*

The third prong under *Johnson* requires that the error affects substantial rights. *Id.* The issuance of the invalid warrant substantially affected Appellant's constitutional rights under the Fourth Amendment. The invalid warrant resulted in an unreasonable search of Appellant's belongings, a clear violation of Appellant's Fourth Amendment rights. Therefore, the error clearly affects Appellant's substantial constitutional right.

The fourth and final prong under *Johnson* requires that the error “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* The South Carolina Advisory Committee on Standards of Judicial Conduct concludes that warrants issued by magistrates who appear impartial creates the appearance of impropriety, which would dampen the public’s confidence in the judiciary. Advisory Comm. on Standards of Judicial Conduct Op. No. 4-2011; Op. No. 19-1998. The court’s error therefore seriously affects the public reputation of judicial proceedings, casting doubt on the judiciary’s ability to protect individuals from violations of their Fourth Amendment rights. Therefore, the final prong under the *Johnson* test is satisfied. As a result, even if this issue was not properly preserved for appeal, this error should be subject to review under the plain error doctrine.

IV. APPELLANT’S COERCED CONFESSION AND ITS SUBSEQUENT USE AGAINST HIM AT TRIAL VIOLATED HIS RIGHT TO DUE PROCESS.

Respondent argues that Appellant’s confession was freely and voluntarily given. However, the record shows that Appellant’s confession was actually the result of threats to him and his family, and was therefore not voluntarily given. A criminal conviction even partially founded upon an involuntary confession is a deprivation of due process and thus, must be suppressed. *Jackson v. Denno*, 378 U.S. 368, 376 (1964).

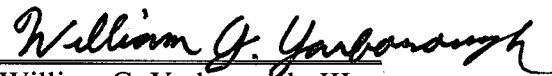
The evidence shows that Appellant’s confession was coerced by police. Appellant only claimed possession of the narcotics found in the home after police threatened to arrest him and his mother. Appellant further testified that he would say anything to protect his mother. Considering the totality of the circumstances, Appellant’s waiver of his *Miranda* rights and resulting confession were not voluntarily made. Appellant’s explicit assertion that he was only claiming the fruits of the search to protect his mother from wrongful arrest unequivocally demonstrates that he was

coerced to claim ownership. Therefore, the court erred in holding that the State met their burden to demonstrate that Appellant's waiver of his *Miranda* rights and confession were voluntarily made.

CONCLUSION

The trial court erred in denying suppression of the fruits of illegal searches and seizures. Appellant's mother did not voluntarily consent to the search of her home. The officers exceeded the scope of the consent during their search. The search warrant was patently invalid because the sheriff's wife issued it in her capacity as a magistrate, and this issue was properly preserved at trial. Finally, Appellant's coerced confession and its subsequent use against him at trial violated his right to due process. Therefore, Appellant respectfully submits the judgment and conviction of the circuit court must be reversed.

RESPECTFULLY SUBMITTED THIS 31 of July, 2017.



William G. Yarborough, III
Attorney for Appellant
522 North Church Street
Greenville, SC 29601
(864)331-1612 Office
(864) 370-0022 Fax
WGYarborough@gmail.com
SC Bar# 10271

Greenville, South Carolina