STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2019-000114

THE STATE, Respondent,

v.

THERRON RENARD RICHARDSON, Appellant.

INITIAL BRIEF OF RESPONDENT

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Whether the issue of evidence found pursuant to a search warrant executed on Appellant's home was properly preserved for appeal when Appellant did not challenge the validity of the search warrant at trial? And if the issue was preserved for appeal, whether the evidence seized from Appellant's bathroom was properly admitted against him pursuant to the plain view exception to the warrant requirement when its incriminating nature was immediately apparent to law enforcement? And if the trial judge erred in admitting the evidence found in Appellant's bathroom, whether any error was harmless when the majority of the drugs introduced against Appellant at trial were obtained as the result of a properly executed search warrant?

III.

Whether the trial judge properly admitted the drug evidence found inside Appellant's home when the evidence was found pursuant to a validly executed search warrant and not pursuant to a violation of S.C. Code § 16-25-70? And if the trial judge had admitted the evidence pursuant to a violation of S.C. Code § 16-25-70, whether the evidence was properly admitted pursuant to S.C. Code § 16-25-70(H)(1)(a) because law enforcement was pursuing a suspect of domestic violence?

STATEMENT OF THE CASE

In April 2011, the Charleston County Grand Jury indicted Appellant for one count of trafficking cocaine in excess of 400 grams (2011-GS-10-2320), and one count of possession of a firearm during the commission of a violent crime (2011-GS-10-2321). Appellant originally stood trial on these indictments before the Honorable Stephanie McDonald on November 13-15, 2012. Appellant was convicted of both of the aforementioned crimes and an additional count of possession of a firearm by a person convicted of a violent crime. Appellant was sentenced to thirty years' imprisonment on the trafficking charge and an additional five years' imprisonment for one of the weapons charges that was to be served consecutively for an aggregate total of thirty-five years' imprisonment.

Appellant appealed his convictions. This Court found the issue that Appellant raised on appeal had not been properly preserved and affirmed Appellant's convictions. State v. Richardson, Op. No. 2014-UP-471 (S.C. Ct. App. 2014). Appellant filed an application for post-conviction relief on January 15, 2015. Appellant's post-conviction relief action was granted by the Honorable John C. Hayes on August 15, 2016. The State filed a petition for a writ of certiorari which was denied by the Supreme Court on May 24, 2018.

On January 10, 2019, the Honorable Roger M. Young heard Appellant's pre-trial motions to suppress the drug evidence found inside his home. Judge Young indicated that Judge Dennis agreed to bind himself to any decision made by Judge Young. (Tr. pretrial 192). Judge Young denied Appellant's motions via email on January 11, 2019. (Court's Exhibit #1). On January 14-16, 2019, Appellant proceeded to a retrial in the Charleston County Court of General Sessions with the Honorable R. Markley Dennis, presiding. Prior to Appellant's retrial, he was indicted by the Charleston County Grand Jury for one count of possession of a firearm by a person convicted

of a violent crime (2019-GS-10-879). Appellant stood trial for this indictment as well as trafficking in cocaine in excess of 400 grams (2011-GS-10-2320), and one count of possession of a firearm during the commission of a violent crime (2011-GS-10-2321). Appellant was represented by Rodney D. Davis, Esquire, and Daniel Summa, Esquire of the Ninth Circuit Public Defender's Office. The State was represented by Assistant Solicitors Whit Sowards and Lauren Frierson of the Ninth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of trafficking in cocaine in excess of 400 grams and both weapons charges. Following the verdict, the trial judge sentenced Appellant to thirty years' imprisonment for trafficking in cocaine and five years' imprisonment for each weapons charge. Each sentence ran concurrently with the others resulting in an aggregate sentence of thirty years' imprisonment. Appellant then timely filed a notice of appeal and an initial brief.

STATEMENT OF FACTS

On October 17, 2010, the Charleston County 911 center received an emergency call from Tameika Wilson who claimed to have locked herself in a bedroom after being attacked by her boyfriend. (State's Exhibit #3, #5). Deputy Jason Bowen and Deputy Julius Alexander of the Charleston County Sheriff's Office were dispatched to 1956 Old Fort Avenue where Wilson claimed she was located. (Tr. pre-trial 25, 111; trial 109, State's Exhibit #3). The 911 call was made from a cell phone that was subsequently disconnected which prohibited law enforcement from calling the number back. (Tr. pre-trial 57, 114). When Deputies Bowen and Alexander arrived at the Old Fort Avenue address, they observed a vehicle parked in the driveway. The deputies knocked on the door, but received no response. (Tr. pretrial 27-28). Bowen and Alexander then moved to the back of the house and noticed a sliding glass door was slightly ajar. (Tr. pretrial 115). Bowen and Alexander made the decision to enter the home without a search warrant. Bowen articulated his reasoning for entering the home during the following exchange:

> Assistant Solicitor Sowards: ...maybe in greater detail you could – can tell (sic) the judge why did you feel it necessary to enter the home at that point?
>
> Bowen: With a domestic situation, particularly in an in-progress on-going situation, the information that we had that a woman was fearful enough to have locked herself in the bathroom, we didn't know if there might be a person harmed in the residence that needed aid or some type of harm actively occurring that we needed to put a stop to.
>
> Assistant Solicitor Sowards: So you were looking for a potential victim?
>
> Bowen: We were.
>
> Assistant Solicitor Sowards: And would it be fair to say that while that was your goal, you were also looking for any potential suspects as well?
>
> Bowen: Yes, absolutely.

(Tr. pretrial 32, lines 4-18). Alexander offered a similar rationale for why he and Bowen entered Appellant's residence:

Assistant Solicitor Sowards: And you said going into the residence. What was the purpose of going into the residence?

Alexander: To check the safety of the victim and any other persons that were potentially in the house.

Assistant Solicitor Sowards: Could that have been the apprehension of a suspect?

Alexander: Yes.

Assistant Solicitor Sowards: Or rendering aid to a victim?

Alexander: Yes.

Assistant Solicitor Sowards: Was your primary purpose in entering to search for anything other than a person?

Alexander: No, it was just a protective sweep.

(Tr. pretrial 116-17, lines 23-8).

Bowen and Alexander limited their search to areas of the house where a person could be hiding. (Tr. trial 127, 162-63). When Bowen and Alexander entered the master bathroom, they saw in plain view a small amount of white powder on top of a digital scale. (Tr. trial 127, 162). The officers also discovered guns underneath a bed and a large amount of cash on the floor and inside a bank bag. (Tr. pretrial 33-34). Bowen and Alexander immediately suspected that "there might have been some type of drug activity that had occurred or was occurring at that residence." (Tr. pretrial 34, lines 5-7). Bowen and Alexander continued their search of the house for the 911 caller or her assailant, but discovered that no one was home. (Tr. pretrial 17). After completing their search, Alexander and Bowen called their supervisor, Andrea Moniz, to seek further instructions. (Tr. pretrial, 118). Moniz arrived and performed a field test on the white powder found in the bathroom. The sample tested presumptively positive for cocaine. (Tr. trial 293-94).

Approximately fifteen minutes after Bowen and Alexander arrived at 1956 Old Fort Avenue, 911 operator Miriam Cousino noticed a GPS signal from the cell phone call "pinged" on

an address near 102 N. Romney Street in downtown Charleston. (Tr. pretrial 167, State's Exhibit #5). Cousino then notified the Charleston Police Department so they could investigate that location as well. (Tr. pretrial 158-161). However, Bowen and Alexander were never notified about the possible alternate location. (Tr. pretrial 29-30, 160-61). Furthermore, Moniz testified that the protocol of the Sheriff's Office would have required Bowen and Alexander to enter Appellant's property to search for a victim or suspect even if they had been made aware of a GPS signal indicating a discrepancy in location. (Tr. trial 293).

Detective Thomas Plyer of the Charleston County Sheriff's Office was contacted and asked to obtain a search warrant. Plyer and Lieutenant Fletcher Ferguson obtained and executed the search warrant and found approximately two kilograms of cocaine inside Appellant's residence. (Tr. trial 214-16, 268-69). The suspected drugs were collected and tested by Anita Moore of the City of Charleston Police Department and determined to be cocaine. (Tr. trial 260). Officers also located a residential lease in Appellant's name along with Appellant's birth certificate and social security card inside the residence. (Tr. trial 172-73, 197, 202). Appellant did not challenge the search warrant at trial. (Tr. trial 183-84). .

STANDARD OF REVIEW

"When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011). "The appellate court will reverse only when there is clear error." State v. Missouri, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004).

ARGUMENT

I.

The trial judge properly admitted the drug evidence found inside Appellant's home because law enforcement lawfully entered Appellant's home under the exigent circumstances of locating and assisting a victim of an ongoing domestic violence attack or locating a suspect of domestic violence.

Appellant contends the trial judge erred in admitting the drug evidence found inside Appellant's home because law enforcement's warrantless entry into Appellant's home was not reasonable under the exigent circumstances exception to the Fourth Amendment. Appellant's argument is meritless. Law enforcement lawfully entered Appellant's residence to search for a potential victim inside in need of immediate assistance, or an assailant. The warrantless entry was objectively reasonable for law enforcement to ensure that no one inside was in immediate danger. During their search for a victim or assailant, Bowen and Alexander noticed what they suspected to be cocaine in plain view. Once they completed their search for a potential victim or assailant, law enforcement waited until a search warrant could be obtained before searching any further inside Appellant's home. Law enforcement's entry into Appellant's home was reasonable under the exigent circumstances exception to the Fourth Amendment.

The Fourth Amendment to the United States Constitution protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Cont. amend. IV. Similarly, the South Carolina Constitution also protects citizens "against unreasonable searches and seizures and unreasonable invasions of privacy." S.C. Const. art. I, § 10. However, the Fourth Amendment only prohibits unreasonable searches and seizures. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977). "Therefore the touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). "To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the

part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.'" Heien v. North Carolina, 574 U.S. 54, 60-61 (2014)(quoting Brinegar v. United States, 338 U.S. 160, 176 (1949)). "Generally, a warrantless search is *per se* unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures." State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). However, a warrantless search "will withstand constitutional scrutiny where the search falls within one of several well-recognized exceptions to the warrant requirement." Id.

One of the recognized exceptions to the warrant requirement is the exigent circumstances doctrine. "The exigent circumstances doctrine provides an exception to the Fourth Amendment's protection against warrantless searches, but only where from an objective standard, a compelling need for official action and no time to secure a warrant exist." State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004). "A warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside a dwelling." State v. Herring, 387 S.C. 201, 210, 692 S.E.2d 490, 495 (2009). "One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006).

Here, law enforcement received a call from a female caller who reported that she was seeking refuge in a bathroom from an in-progress domestic attack. (Tr. pre-trial 11, 32; State's Exhibit #3, #5). Bowen and Alexander each testified that an ongoing domestic violence attack is a dangerous situation for both a potential victim and for law enforcement. (Tr. pretrial, 32, 116-17). Alexander opined that a domestic violence call was one of the more dangerous calls that law enforcement receives and called such calls "the number one cop killer." (Tr. 112, line 12). This

particular call carried a heightened urgency because the phone call had been disconnected. (Tr. pre-trial 57, 114). Alexander feared that the caller could be "harmed or tied up or even death (sic) at that point." (Tr. pretrial 114, lines 16-17).

It is objectively reasonable for law enforcement to enter a home without a warrant to prevent an attack that is in progress. Appellant argues the trial judge erred in admitting the evidence found in Appellant's home because law enforcement saw nothing on the scene that corroborated the phone call. (Initial Brief of Appellant 10). Appellant's argument establishes an impossible standard for law enforcement to follow that is not required by our State or Federal Constitutions. Law enforcement is not expected to be perfect, nor are they held to a standard of omniscience. Law enforcement does not have to wait outside a residence where they think an ongoing assault is taking place or may have taken place until they hear a noise coming from the house or get someone to answer the door as Appellant argues in his brief. (Initial Brief of Appellant 10). Bowen and Alexander would have been negligent if they had remained outside during an ongoing assault. Bowen and Alexander properly entered Appellant's home in order to prevent what they believed to be an ongoing assault.

Appellant further argues that any exigency was negated because 911 operator Miriam Cousino subsequently noticed a discrepancy in the location of the cell phone that made the 911 call. However, Appellant ignores the fact that this discrepancy was not discovered until approximately fifteen minutes after Bowen and Alexander arrived at Appellant's address. (Tr. pretrial, 167; State's Exhibit #5) Furthemore, Appellant also ignores the fact that neither Alexander nor Bowen knew about the GPS discrepancy. (Tr. pretrial 29-30, 160-61). However, trial counsel for Appellant acknowledged at trial that the GPS discrepancy was never reported to Bowen and Alexander. (Tr. pretrial 166). On appeal, Appellant attempts to impute knowledge of

the discrepancy to Bowen and Alexander based on what a 911 operator discovered 15 minutes after Bowen and Alexander arrived at Appellant's residence. Even if Bowen and Alexander had learned of the discrepancy, their supervisor testified that the protocol of the Sheriff's Office would have required them to enter the property to search for a victim or suspect anyway. (Tr. trial 293). Judge Young properly recognized that it was objectively reasonable for Bowen and Alexander to enter Appellant's home when he made the following ruling during the suppression hearing:

> The Court: And I think there's plenty of evidence based on what I heard today that says they had exigent circumstances to go into that house to look to see if there was, in fact, somebody who was the victim of a domestic violence crime.

(Tr. pretrial 172, lines 7-11). Because there is evidence in the record to support Judge Young's ruling, Appellant's convictions and sentences should be affirmed.

II.

Because Appellant did not challenge the validity of the search warrant used to search his home at trial, any issue relating to the validity of the search warrant or evidence seized pursuant to the search warrant is not preserved for appeal. However, the evidence seized from Appellant's bathroom was properly admitted against him pursuant to the plain view exception to the warrant requirement because its incriminating nature was immediately apparent to law enforcement. However, even if the trial judge erred in admitting the evidence found in Appellant's bathroom, any error was harmless because the majority of the drugs introduced against Appellant at trial were obtained as the result of a properly executed search warrant.

Appellant next argues the trial judge erred in admitting the evidence found in Appellant's home because law enforcement exceeded the scope of their search under the plain view exception to the Fourth Amendment by conducting a field test on the white powder found in Appellant's bathroom. Accordingly, Appellant argues the positive field test was improperly used as a basis of the warrant. Appellant's argument fails for three reasons. First, Appellant did not challenge the validity of the search warrant at trial. (Tr. trial 183-84). Therefore, any issue as to

the validity of the search warrant and whether the trial judge erred by admitting the results of the search warrant is not preserved for appeal. If Appellant had challenged the sufficiency of the search warrant, the presence of white powder on a scale with money and guns lying on the floor would have been sufficient for a magistrate to find probable cause existed to search the residence regardless of whether law enforcement had performed a field test on the powder. Secondly, to the extent Appellant is arguing the trial judge erred in admitting the results of the field test or erred in admitting the drugs found on the scale in Appellant's bathroom[1], the trial judge appropriately denied Appellant's motion because the drugs found on the scale in Appellant's bathroom were properly seized under the plain view exception to the warrant requirement. Bowen and Alexander had a right to be in Appellant's home to search for a victim or suspect of domestic violence, and the incriminating nature of the white powder on a scale with money and guns on the floor was immediately apparent to them. (Tr. pretrial 34). Therefore, law enforcement was entitled to immediately seize the suspected drug material and perform a field test on it. Third, even if the trial judge erred in admitting the cocaine found on the scale or the results of the field test, any error is entirely harmless because approximately two kilograms of cocaine were subsequently found inside Appellant's residence pursuant to a search warrant that Appellant did not challenge. (Tr. 214-216). Therefore, the results of the trial would not have been any different had the small amount of drugs on the scale or the field test been excluded.

[1] The record is not clear as to the weight of the drugs on the scale, but the first bag entered into evidence most likely contained the cocaine found on top of the scale because it was photographed next to the positive field test swab. The first bag entered weighed approximately 41 grams. The majority of the two kilograms were found elsewhere in the house. (Tr. trial 214-16).

Error Preservation/Waiver

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). A defendant who expressly consents to the admission of evidence in a trial waives that issue on appeal. State v. Johnson, 298 S.C. 496, 498, 381 S.E.2d 732, 733 (1989). "The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal." State v. Freiburger, 366 S.C. 125, 135, 620 S.E. 2d 737, 742 (2005). "Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review." State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011).

Appellant did not preserve any objections to the search warrant or the drugs found during the search warrant because he did not challenge the search warrant at trial. (Tr. 183-84). However even if we assume that Appellant did preserve any issues with the search warrant on appeal, law enforcement would have secured a search warrant even without a field test being done. See Nix v. Williams, 467 U.S. 431, 444 (1984) ("if the government can prove that the evidence would have been obtained inevitably and, therefore would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings."). The combination of white powder on top of a digital scale along with money and guns being found on the floor was enough evidence for a magistrate to find probable cause to search Appellant's home for drug related material.

Plain View

"Under the plain view exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence." Wright, 391 S.C. at 443, 706 S.E.2d at 327. To satisfy the plain view exception, two requirements must be met: "(1) the initial intrusion which afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities." Id.

Here, the cocaine in Appellant's bathroom was found by law enforcement during a lawful intrusion to Appellant's home to search for a victim of domestic violence or a possible assailant. As previously argued in this brief, law enforcement's intrusion was objectively reasonable based on the exigency of preventing an ongoing domestic attack. Once they were inside Appellant's residence, law enforcement saw white powder in plain view on a digital scale in the bathroom. (Tr. trial 127). Based on the combination of white powder on top of a scale along with money and guns lying on the floor, law enforcement immediately suspected that some type of drug activity may be occurring at Appellant's residence. (Tr. pretrial 34). Bowen and Alexander then appropriately seized the white powder in Appellant's bathroom and performed a field test on it. (Tr. trial 127, 162-63). Because law enforcement appropriately seized the suspected drug material, they did not exceed the scope of the plain view exception by performing a field test on the powder.

Harmless Error

An "error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the

entire case." State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). "Error is harmless when it could not reasonably have affected the result of the trial." Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (quoting State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971)). "The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence." State v. Kirton, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008).

Even if the trial judge had excluded the field test and the cocaine found on top of the scale, the remaining two kilograms of cocaine found inside Appellant's home would still have been entered against him at trial. As previously noted, Appellant did not challenge the search warrant at trial. (Tr. trial 183-84). Therefore, any evidence that was seized as a result of the search warrant would have been admitted against Appellant regardless of the trial judge's decision to admit the drugs found by Bowen and Alexander. Approximately two kilograms of cocaine were found as a result of the search warrant. (Tr. trial 214-16). Two kilograms is equal to two thousand grams. Accordingly, the amount of cocaine introduced against Appellant well exceeded the four hundred gram amount for which Appellant was standing trial. It is unlikely the jury would have failed to convict Appellant if the field test or small amount of cocaine found in the bathroom were suppressed by the trial judge. Any error by the trial judge in admitting the results of the field test or the cocaine in the bathroom was harmless. Appellant's convictions and sentences should be affirmed.

III.

The trial judge properly admitted the drug evidence found inside Appellant's home because the evidence was found pursuant to a validly executed search warrant and not pursuant to a violation of S.C. Code § 16-25-70. However, even if the trial judge had admitted the evidence pursuant to a violation of S.C. Code § 16-25-70, the evidence was properly admitted pursuant to S.C. Code § 16-25-70(H)(1)(a) because law enforcement was pursuing a suspect of domestic violence.

Finally, Appellant claims the trial judge erred in admitting the evidence found inside Appellant's residence because the evidence was found in the course of a domestic violence investigation. Accordingly, Appellant argues the evidence does not meet the requirements for admissibility under S.C. Code § 16-25-70(H). Appellant's argument fails for two reasons. First, the evidence discovered in Appellant's home was not seized as a result of a warrantless search pursuant to S.C. Code § 16-25-70(H), but rather it was seized pursuant to a search warrant issued by a magistrate. However, even if the evidence was discovered as the result of a warrantless search administered pursuant to a violation of S.C. Code § 16-25-70, the evidence was nonetheless admissible under S.C. Code § 16-25-70(H) because it was discovered in a room where officers were pursuing a suspect. Thus, the evidence found in Appellant's home was admissible under the plain language of S.C. Code § 16-25-70(H)(1)(a).

S.C. Code § 16-25-70(A) provides law enforcement with authority to arrest a person without an arrest warrant if the law enforcement officer has probable cause to believe that a domestic violence offense has been committed. S.C. Code § 16-25-70(A). S.C. Code § 16-25-70(C) gives law enforcement authority to enter the residence of a person when effecting a warrantless arrest, if law enforcement has probable cause to believe that action is necessary "to prevent physical harm or danger to a family or household member." S.C. Code § 16-25-70(C). Thus, the statue contemplates warrantless entry of a residence to effect a warrantless arrest. If law enforcement makes a warrantless entry, then S.C. Code § 16-25-70(H) address the

admissibility of evidence discovered during that entry. S.C. Code § 16-25-70(H) reads as follows:

> (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 § 16-25-70(H). If an officer does not enter a person's home under the authority of S.C. Code § 16-25-70(C), Section S.C. Code § 16-25-70(H) does not apply. State v. Cannon, 336 S.C. 335, 339, 520 S.E.2d 317, 319 (1999).

Here, the evidence seized inside Appellant's home was admissible pursuant to a validly executed search warrant. Bowen and Alexander responded to 1956 Old Fort Avenue in reference to a caller reporting an in-progress domestic attack. (Tr. pretrial 32). The officers used the exigent circumstances of the domestic violence call to enter Appellant's home without a warrant. However, Appellant was not charged with a violation of S.C. Code § 16-25-70. Therefore, the provisions of S.C. Code § 16-25-70(H) are inapplicable to the evidence found in Appellant's home. Bowen and Alexander witnessed a white powder on a scale in plain view in the master bathroom. (Tr. trial 127, 162). Rather than continue to search Appellant's residence for drugs and drug paraphernalia, Bowen and Alexander contacted Plyler to obtain a search warrant. (Tr. trial

268). Plyer and Ferguson obtained and executed the search warrant and found approximately two kilograms of cocaine. (Tr. trial 214-16, 269). Appellant did not challenge the validity of the search warrant at trial (Tr. trial 183-84). Appellant stood trial for the two kilograms of cocaine that was found inside his house, not the minimal amount that was found on a scale in his bathroom. The two kilograms of cocaine that were admitted against Appellant at trial were found during the execution of a search warrant, not the initial search of Bowen and Alexander in response to a domestic violence call. Prior to getting a search warrant, Bowen and Alexander appropriately limited their search to areas where a person could be hiding because they were responding to a domestic violence call rather than searching for drugs. (Tr. trial 127, 162-63). The only drugs found during the initial search of the home was the small amount of cocaine found in plain view on the scale. Therefore, if the trial judge erred in refusing to suppress any of drugs found in Appellant's home pursuant to S.C. Code § 16-25-70(H), it would only be the small amount of cocaine found on the scale in Appellant's bathroom and not the two kilograms of cocaine for which Appellant was tried and convicted.

Even if all of the cocaine in Appellant's home was found as a result of a warrantless search pursuant to S.C. Code § 16-25-70, the trial judge appropriately admitted the drugs under the exception in S.C. Code § 16-25-70(H)(1)(a). Section 16-25-70(H)(1)(a) provides that evidence discovered as a result of a warrantless search is admissible if it is found "in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect." S.C. Code § 16-25-70(H)(1)(a). Here, Bowen and Alexander were pursuing a suspect. (Tr. trial 32, 116-17). Appellant argues that "Bowen and Alexander were not interviewing, detaining, or pursuing a suspect because there were no persons present inside or outside of the residence when they arrived." (Initial Brief of Appellant 20). Appellant's argument

is illogical. Bowen and Alexander could not determine that no one was inside the residence until they went inside the residence to search for a victim or an assailant. Just because law enforcement did not find anyone inside does not mean they weren't pursing a suspect when they entered the house. Bowen and Alexander each testified that their primary concern in entering the house was locating a victim or a suspect. (Tr. pretrial, 32, 116-17). Therefore, they were pursuing a suspect when they entered the bathroom and saw suspected cocaine in plain view. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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January 23, 2020

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable R. Markley Dennis, Jr. Circuit Court Judge

Appellate Case No. 2019-000114

THE STATE, Respondent,

v.

THERRON RENARD RICHARDSON, 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:

Adam S. Ruffin, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This twenty-third day of January, 2020.

Sally Ellison

SALLY ELLISON
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ALAN WILSON
ATTORNEY GENERAL

January 23, 2020

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RE: State v. Therron Renard Richardson
Appellate Case No. 2019-000114

Dear Mr. Ruffin:

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

Sincerely,

Scott Matthews

Scott Matthews
Assistant Attorney General
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JSM/ab
Enclosures

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