STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Beaufort County

Honorable Jennifer B. McCoy, Circuit Court Judge

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STANLEY WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000676

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# PETITION FOR WRIT OF CERTIORARI

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SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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The PCR court erred in finding trial counsel was not ineffective for failing to argue evidence should be suppressed under South Carolina Code § 16-25-70(H), where police responded as a result of a domestic hang-up, allegedly entered the home concerned about the caller's whereabouts, and found drugs while looking in a closed cabinet under the sink in petitioner's bathroom since the statute applied to the situation ..... 7

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## ISSUE PRESENTED

Did the PCR court err in finding trial counsel was not ineffective for failing to argue evidence should be suppressed under South Carolina Code § 16-25-70, where police responded as a result of a domestic hang-up, allegedly entered the home concerned about caller's whereabouts, and found drugs while looking in a closed cabinet under the sink in petitioner's bathroom since the statute applied to the situation?

## STATEMENT

In August 2011 police responded to a domestic call coming from petitioner's address. App. 89, ll. 8-15; 229, ll. 12-16; Supp. 22, ll. 7-12; 31, ll. 2-8. The caller, Erin Parlagreco, was petitioner's girlfriend at the time and they have three children together. App. 115, ll. 18-21. While on the phone with emergency services the call disconnected, which resulted in officers responding to petitioner's residence. Supp. 32, ll. 18-24. When police arrived, Parlagreco was not at the home. Petitioner told police she might be at the football field. Supp. 26, ll. 9-24. The responding officers, Mitchell Archbell and Jonathan Collier, decided to search petitioner's home to be sure Parlagreco was safe. Supp. 37, 1. 20-38, l. 11

While searching for Parlagreco, Collier opened a cabinet under the master bathroom sink, purportedly to look for Parlagreco, and discovered bags containing what looked like marijuana and cocaine. Supp. 17, l. 20-19, l. 13. After the search, responding officers handcuffed petitioner, called the drug unit, and requested a search warrant. Supp. 20, ll. 16-25. During a second search of petitioner's home police found a handgun. App. 231, ll. 15-16. Petitioner was arrested and charged with trafficking cocaine, possession of marijuana with intent to distribute, and possession of a weapon during the commission of a violent crime.

On November 17, 2011, a Beaufort County grand jury indicted petitioner for trafficking in cocaine 200 grams or more, but less than 400 grams, possession of marijuana with intent to distribute, and possession of a weapon during the commission of a violent crime. App. 661-66.

On May 22-23, 2013, pre-trial motions were held before the Honorable Kristi Harrington. Supp. 1. Samuel Bauer represented petitioner and Benjamin Shelton represented the state. Supp. 2. Counsel Bauer made a motion to suppress the drug evidence found on the basis that there were no exigent circumstances to justify the warrantless search of petitioner's home. Supp. 96, l.

22-97, l. 6.

During the suppression hearing, the state called witnesses including Officer Collier and Officer Archbell. Supp. 3. Collier, one of the two officers who searched petitioner's home, testified that he knew it was a domestic situation and as such his priority was the safety of both parties. Collier testified that petitioner told him Parlagreco was nearby at the ballfield. Supp. 26, ll. 9-24. Collier claimed the reason they conducted a search of petitioner's home was to make sure Parlagreco was safe. Supp. 23, l. 11-24, l. 23; 28, ll. 1-10.

Officer Archbell said he responded to a 911 call coded as a "domestic of some sort." Supp. 31, ll. 1-8. Archbell spoke with petitioner who told him he and Parlagreco had a verbal altercation at the residence and she threw a soda at his car. Supp. 36, ll. 19-23. When petitioner would not give consent for a search Archbell and Collier decided it was necessary to do a "protective sweep" of the home and make sure Parlagreco was safe. Supp. 37, 1. 20-38, l. 11.

During the search Archbell claimed they were clearing each room, checking in places where a person could be hiding or stored including underneath the beds, closets, and cabinets. Supp. 39, ll. 19-24. When they entered the master bathroom Collier said he opened a closed cabinet door and observed a clear bag containing green leafy substance and a partially opened Crown Royal bag containing white powder. Supp. 18, ll. 12-18; 41, l. 2-42, l. 4.

Counsel Bauer argued the drugs should be suppressed because the warrantless search violated petitioner's Fourth Amendment rights and there were no exigent circumstances justifying the warrantless search. Judge Harrington found the officers were lawfully in petitioner's home because they needed to enter the property to investigate a "domestic in progress." The judge also found the cabinet where the drugs were found was large enough that a person could fit there and thus the drugs fell within the plain view exception. Supp. 102, ll. 4-9.

Petitioner's case was called to trial on September 16-18, 2013, before the Honorable Maite Murphy in Beaufort County. App. 1. At trial, Joenathan Chaplin and Charlie Johnson represented petitioner and Ben Shelton and Mary Concannon represented the state. App. 1. During pre-trial motions the defense made a subsequent motion to suppress the drug evidence arguing newly discovered evidence would demonstrate that police did not have probable cause to enter petitioner's residence. App. 82, 5-22. Judge Murphy agreed to let the motion go forward but limited the testimony to evidence not presented at the May 2013, hearing. App. 88.

The defense called witnesses including Officer Sally Irvin, another officer that responded to the scene that day, and Erin Parlagreco, the caller. Parlagreco testified that she called 911 because her car had been damaged by petitioner. At the time, she was leaving to take her children to football practice at the ballfield located less than half a mile from petitioner's home. App. 110-12. Parlagreco said she spoke with Irvin at the ballfield on the day of the incident and identified her in the courtroom. She stated that she told Officer Irvin she was fine and did not wish to press charges against petitioner. App. 112, l. 5-113, l. 20.

Officer Irvin testified she responded to petitioner's home and was sent to search for Parlagreco at a nearby ballfield. Irvin denied having spoken to Parlagreco at the ballfield but said she could not remember if she spoke to anyone during her search for Parlagreco. App. 92, l. 11-93, l. 20. Irvin claimed when she returned to petitioner's residence, she reported to Archbell and Collier that she had not located Parlagreco. App. 105, 9-12.

Defense counsel Chaplin argued police knew Parlagreco was not in the home and therefore there were no exigent circumstances permitting officers to search petitioner's home without a warrant. App. 142-44. Judge Murphy denied the motion to suppress finding Irvin's

testimony that she never spoke with Parlagreco at the ballfield credible. The judge also found the facts of this case met the requirement, as outlined in Judge Harrington's ruling, of exigent circumstances due to an escalating domestic violence incident. App. 147, ll. 10-24.

Following trial, the jury found petitioner guilty as indicted and Judge Murphy sentenced petitioner to thirty years' imprisonment. App. 600-01; 667-69.

Thereafter, petitioner filed an application for PCR on October 30, 2017. App. 603-08. On December 4, 2018, an evidentiary hearing was held before the Honorable Jennifer McCoy. App. 616. James Falk represented petitioner and Christian Saville, assistant attorney general, represented the state. App. 616.

At the evidentiary hearing, trial counsel Chaplin said the underlying reason for police presence at petitioner's home that day was a "domestic issue." App. 622, ll. 9-24. Trial counsel testified he moved to suppress the drug evidence on the basis that there was no probable cause for police to be inside petitioner's home. App. 626, ll. 1-3. He argued at trial, there were no exigent circumstances because police had spoken to Parlagreco before they searched petitioner's home and plain view was inapplicable because officers searched an area, under the sink, where a person would not fit. App. 626, ll. 15-20. When asked whether he considered arguing the drugs should be suppressed under the statute, 16-25-70(H), trial counsel maintained his co-counsel raised the issue during opening and closing. App. 626, ll. 4-24. PCR counsel Faulk argued trial counsel was ineffective for failing to contend that, as additional grounds in support of his motion, South Carolina Code § 16-25-70(H) would have prohibited the introduction of the evidence discovered incident to the protective sweep in a domestic violence case.

On March 5, 2019, Judge McCoy signed an order denying PCR. App. 643-52. Judge McCoy found § 16-25-70 was inapplicable to petitioner's case and would not have been grounds

for suppression because the section only applies to warrantless searches administered to a complaint filed under the article related to CDV and petitioner was not ultimately charged with CDV. App. 650-51.

On March 11, 2019, petitioner filed a motion to alter or amend pursuant to Rule 59(e), SCRCP. App. 653-58. On April 4, 2019, Judge McCoy signed an order denying petitioner's motion. App. 659-60.

This appeal follows.

## ARGUMENT

The PCR court erred in finding trial counsel was not ineffective for failing to argue evidence should be suppressed under South Carolina Code § 16-25-70(H), where police responded as a result of a domestic hang-up, allegedly entered the home concerned about the caller's whereabouts, and found drugs while looking in a closed cabinet under the sink in petitioner's bathroom since the statute applied to the situation.

**Discussion**

Chapter 25 of the South Carolina Code deals with the crime of domestic violence. Section 16-25-70(H) provides, "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 Ann. § 16-25-70.

The PCR court erred finding Section 16-25-70 inapplicable to these facts. Petitioner's arrest was the direct result of evidence that police found while conducting a warrantless search in response to a domestic 911 hang-up call. In the order of dismissal, the court stated, "[t]he provision only applies to warrantless searches administered pursuant to a complaint filed under the article related to domestic violence." App. 651. The order simply concludes petitioner was never charged with domestic violence. However, the statute does not require petitioner be charged with domestic violence it only requires the warrantless search be conducted pursuant to a domestic violence *complaint*. Thus, the statute is applicable to this case because the complaint was domestic. Throughout the record the solicitor and the court refer to the incident as a domestic situation. The call was coded by emergency services as domestic, and in fact, both responding officers testified the reason they were at petitioner's address was for a domestic call and they needed to enter the home without first obtaining a warrant because they feared for

Paralgreco's safety due to the nature of the call.

In *State v. Cannon*, the Court of Appeals held evidence of drugs seized from defendant's person during search incident to a warrantless arrest for criminal domestic violence was not admissible. 329 S.C. 163, 495 S.E.2d 218 (Ct. App. 1997). The court found "that evidence had nothing whatever to do with a violation of any criminal offense embraced within the article concerned with criminal domestic violence," and therefore, the trial court should not have admitted it." *Id.* at 165, 495 S.E.2d at 219. On appeal this Court reversed the court of appeals decision. *State v. Cannon*, 336 S.C. 335, 520 S.E.2d 317 (1999). The Court concluded § 16-25-70 was inapplicable to that case because the arresting officer entered the home at the invitation of the victim, who also lived in the home, and not under the authority of 16-25-70. *Id.* at 339, 520 S.E.2d at 319.

This case is distinct from *Cannon* because neither petitioner, nor Parlagreco, consented to a search of the home. Officers asked for permission to search the home allegedly because they were concerned for Parlagreco due to the nature of the 911 call. Petitioner refused to give consent and officers entered the home without his consent or a warrant. Unlike *Cannon*, the drugs were not found on petitioner's person in a search incident to arrest. Petitioner was not arrested until after officers searched through a closed cabinet in his bathroom and found drugs.

In *State v. Roberts* the Court of Appeals held the portion of the CDV statute limiting admissibility of evidence resulting from a warrantless search of a CDV suspect did not apply to that case. 340 S.C. 238, 530 S.E.2d 899 (2000). In *Roberts*, officers were responding to a call about a disturbance at an apartment complex and found defendant lying down, intoxicated. *Id.* at 239, 530 S.E.2d at 900. The officer intended to charge him with public intoxication when he learned defendant had assaulted a family member. *Id.* The officer charged defendant with CDV

and public drunkenness and he was taken to jail. *Id.* When police conducted an inventory search of defendant, they found drugs in his pocket. *Id.* The Court of Appeals reasoned, suppression of the drugs found in defendant's pocket was not warranted noting "the officers who arrested [defendant] were not responding to a report of CDV but to a reported 'disturbance'' making the facts of *Roberts* distinct from *Cannon*. *Id.* at 241, 530 S.E.2d at 901. Here, unlike *Roberts*, police were responding to a domestic call and their search was conducted because of the nature of domestic calls.

Historically, the home has been the place most protected from unreasonable searches and seizures. The Fourth Amendment to the United States Constitution protects the people's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; cf. S.C. Const. art. I, § 10. At its core, the Fourth Amendment "stands [for] the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511, 81 S.Ct. 679, 5 L.Ed.2d 734 (1961). Accordingly, warrantless searches and seizures inside a person's home are presumptively unreasonable absent a recognized exception to the warrant requirement. *United States v. Karo*, 468 U.S. 705, 714–15, (1984); *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011).

Another factual difference between this case and both *Cannon* and *Roberts* is that here, petitioner's home was searched. Both *Cannon* and *Roberts* describe situations where individuals were searched incident to arrest. Here, the trial court found that locating Parlagreco was an exigent circumstance that allowed officers to enter petitioner's residence without a warrant or his consent and search. While on that search officers opened cabinets in petitioner's bathroom and found drugs under the sink.

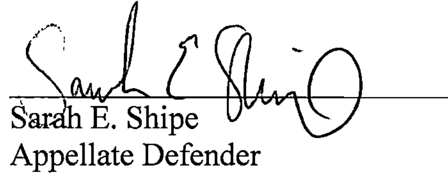
Moreover, the plain view exception does not apply in this case. The evidence was

discovered in a closed cabinet under the sink in the master bathroom of petitioner's home. Section 16-25-70(H)(1)(a) provides, evidence is admissible if found "in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect." None of the above applies in this case. Petitioner was outside his home when police arrived and there was no testimony that he was attempting to flee.

Under section 16-25-70(H) this evidence was inadmissible and trial counsel was ineffective because he failed to object on that statutory basis. But for trial counsel's failure to support the motion to suppress by arguing this statute the evidence would have been suppressed.

## CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of March, 2020.

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CERTIFICATE OF SERVICE

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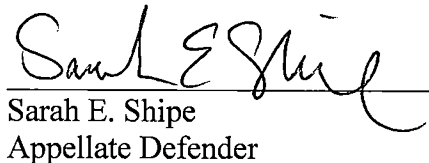
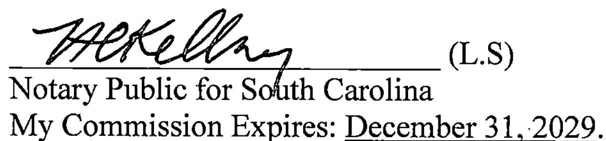
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari, a copy of the Appendix, and a copy of the Supplemental Appendix in the above referenced case has been served upon Benjamin Limbaugh, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari, a copy of the Appendix, and a copy of the Supplemental Appendix have been served on Stanley Leonard Wright, #337175, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 4th day of March, 2020.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me this 4th day of March, 2020.



_______________ (L.S)
Notary Public for South Carolina
My Commission Expires: December 31, 2029.