RECEIVED

Jul 27 2020

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO BEAUFORT COUNTY
Court of Common Pleas
Jennifer B. McCoy, Post-Conviction Relief Judge
Kristi L. Harrington, Trial Judge

Appellate Case No. 2019-000676

STANLEY WRIGHT, Petitioner,

vs.

STATE OF SOUTH CAROLINA, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
S.C. Bar No. 103334
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

ISSUE PRESENTED ON CERTIORARI

Petitioner's Statement of Issue on Certiorari

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?

Respondent's Counterstatement of Issue on Certiorari

Did the post-conviction relief court properly find trial counsel was not ineffective for failing to argue evidence should be suppressed under South Carolina Code § 16-25-70(H), where this statute is inapplicable to Applicant's case, would not have resulted in suppression of the evidence, and the evidence was admissible under a Fourth Amendment analysis?

STATEMENT OF THE CASE

On November 17, 2011, a Beaufort County Grand Jury indicted Petitioner Stanley Wright 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.

On May 22-23, 2013, pre-trial motions were held before the Honorable Kristi Harrington. Samuel Bauer, Esquire, represented petitioner and Assistant Solicitor Benjamin Shelton of the Fourteenth Circuit Solicitor's Office represented the State. 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. Counsel 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."[1] 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.

Petitioner's case was called to trial on September 16-18, 2013, before the Honorable Maite Murphy in Beaufort County. At trial, Joenathan Chaplin and Charlie Johnson represented petitioner and Ben Shelton and Mary Concannon represented the state. 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. Judge Murphy agreed to let the motion go forward but limited the testimony to evidence not presented at the May 2013, hearing.

[1] Dispatch and the responding officers believed the situation to be a domestic disturbance, however, the 911 caller's complaint was that of malicious injury to property. The 911 caller did not report any domestic disturbance, nor did she file a complaint alleging one had occurred.

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. 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.

Following the trial, the jury found petitioner guilty as indicted and Judge Murphy sentenced petitioner to thirty years imprisonment.

Petitioner appealed his conviction, filing the notice of appeal on September 23, 2013. Petitioner was initially represented on appeal by Robert Pachak, Appellate Defender for the South Carolina Commission on Indigent Defense. Mr. Pachak filed an Anders Brief of Appellant on April 17, 2014. On October 27, 2014, Sonya Chachere-Compton and Valerie V. Vie, Esquires, filed Defendant's Motion for Leave to Amend Complaint and Brief in Support Thereof. The State filed its Return to Petitioner's motion on October 30, 2014. On November 10, 2014, the Court issued an order granting Pachak's motion to be relieved as counsel, substituting Chachere-Compton and Vie as counsel of record, striking all filings, and granting Petitioner thirty days to serve and file his initial brief and designation of matter. Petitioner filed the Initial Brief of Appellant on December 10, 2014. Petitioner re-field the Initial Brief of Appellant on March 27, 2015. Petitioner filed an Amended Initial Brief of Appellant on October 16, 2015. Respondent filed an Initial Brief of Respondent on February 5, 2016. Respondent filed the Final Brief of Respondent on October 20, 2016. Petitioner filed the Final Brief of Appellant on November 29, 2016. Ultimately, Petitioner's issues on appeal were the following: 1) Whether the court erred in failing to suppress evidence from Appellant's residence in response to a criminal domestic violence call, when the

evidence was not found in plain view in a room in which the police were searching and 2) Whether the trial erred in failing to suppress evidence from the Appellant's residence when exigent circumstance did not exist to make a warrantless search. The Court of Appeals affirmed Petitioner's conviction by Unpublished Opinion No. 2017-UP-224, filed on May 24, 2017. The Remittitur was issued to the lower court on June 12, 2017.

Thereafter, Petitioner filed an application for PCR on October 30, 2017. On December 4, 2018, an evidentiary hearing was held before the Honorable Jennifer McCoy. James Falk represented petitioner and Christian Saville, assistant attorney general, represented the state. Petitioner argued that trial counsel was ineffective for failing to contend that, as an additional grounds in support of his motion, South Carolina §16-25-79(H) would have prohibited the introduction of the evidence discovered incident to the protective seep in a domestic violence case.

On March 5, 2019, Judge McCoy signed an order denying post-conviction relief. Judge McCoy found §16-25-70(H) 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. On March 11, 2009, petitioner filed a motion to alter or amend pursuant to Rule 59(e), SCRCP. On April 4, 2019, Judge McCoy signed an order denying petitioner's motion.

STATEMENT OF FACTS

On August 31, 2011 there was an altercation in the front yard between Mr. Wright and Ms. Parlagreco. Mr. Wright kicked Ms. Palagreco's car and denied it. The next door neighbor witnessed the commotion and told the two parties to stop and became loud and argumentative with his directives. Ms. Parlagreco was upset with the damage to her car and called 911. She gave the

address of the house as 219 Mitchellville Road. The phone disconnected and the 911 operator called back.

911 Operator: Is there a domestic going on there?

Parlagreco: No, he just kick my car and he is going to pay for it.

911 Operator: Are you all still fighting or has everything calmed down?

Parlagreco: No we are not fighting.

911 Operator: Ok

Parlagreco: I have to take my kids to football practice.

911 Operator: Ok have you left yet?

Parlagreco: No

911 Operator: Ok. Do you need an officer?

Parlagreco: He's not getting away with kicking my car.

911 Operator: You want me to send someone to make a report?

Parlagreco: Yes

911 Operator: Ok, what color is your house?

Parlagreco: A white trailer

911 Operator: Ok, single wide?

Parlagreco: Double wide

911 Operator: What kind of car are you in?

Parlagreco: An Acura

911 Operator: What color is the Acura?

Parlagreco: Can I just come down and make the report?

911 Operator: You want to come down to the office?

Parlagreco: I'm coming now

911 Operator: Ok, you know where it is?

Parlagreco: Yes, on the south it

911 Operator: Yes, what's your name?

Parlagreco: Erin Parlagreco

911 Operator: Erin you said

Parlagreco: Look at my car, I don't care look at my car!

911 Operator: What's his name?

Parlagreco: Stanley Wright

911 Operator: Stop arguing with him. Go ahead and leave

Parlagreco: (huh!) It's not him it's the neighbor

911 Operator: He's left already

Commotion- Stanley Wright heard saying get out of my yard, some cursing

Parlagreco: No, why inaudible. Phone hangs up

911 Operator: Calls back hears musical ringtone with kids sing "Twinkle Twinkle Little Star"

911 Operator: Our guy, no he doesn't have any warrants Stanley Wright

Ms. Parlagreco then told the 911 operator that she would not need a unit to come out that she would come to the station later and make the damage report. (R. 112).

The park is located less than 100 yards from the residence. Ms. Parlagreco testified that she was approached by a female police officer at the park and informed her that she was okay. (R. 113-115). Ms. Sonya Ford testified that a female police officer spoke with Ms. Parlagreco. Ms. Parlagreco and Ms. Ford both identified Officer Sally Irving as the female officer that appeared at the ball park and spoke with Ms. Parlagreco. Ms. Ford had a brief conversation with Officer Irving when she approached Ms. Parlagreco and Officer Irving as the talked at the car. (R. 129-130).

Officer Archbell was dispatched to a domestic at 5:35pm. While en route he received an update from dispatch that they could hear a male in the background who sounded aggressive or agitated and that they could hear a struggle take place and lost contact with the victim. Dispatch stated they tried again and lost contact and phone immediately disconnected. (R. 645-56). However, the dispatch audio and the CAPS/CAD reports do not indicate that he was told that a

struggle had taken place. The CAPS report states "ref to domestic… male half kicked 17s vehicle & damaged." (R. 755, 762).

Melanie Smith, communication coordinator at the dispatched center, testified that Officer Archbell confirmed that he was at the scene at 5:47pm. Two minutes later Officer Jonathan Collier arrived at 5:49pm. Officer Sally Irving arrived at the ball park at 6:01pm. (R. 682). Upon his arrival Officer Archbell observed Mr. Wright coming out of the house. When he contacted Mr. Wright, Mr. Wright stepped out of the house and abruptly shut the door behind him. Officer testified that Mr. Wright kept looking back at the door and that he was nervous and breathing heavily. (R. 659).

Mr. Wright informed him that he and Ms. Parlagreco had a verbal altercation because she threw a soda on his car. (R. 649). Prior to Officer Collier walking up, Officer Archbell asked Mr. Wright could he search the house and Mr. Wright told him no. When Officer Collier walked up he informed Archbell that they needed to do a protective sweep to make sure she was not injured. (R. 627). When Officer Irving arrived at the scene, Archbell and Collier conducted a search of the residence. (R. 651-652). Officer Collier testified that he performed the sweep within ten minutes after he arrived on the scene. (R. 635). They went inside the residence looking only for the victim in a place someone could hide or be placed. Some place big enough for a body to be placed in. (R. 659-660).

Officers Archbell and Collier further testified that when they arrived at the scene they saw no evidence of a struggle. Mr. Wright's clothes were not torn, not bloody, no calls for help, no noise from the house. But he was worried someone may be inside. The only evidence of this belief was what he received from dispatch. Mr. Wright told him that Erin had left. He was somewhere on the scene when Collier was talking to Mr. Wright about Erin's whereabouts. (R. 639, 663-664).

He did not know if any officer did anything to verify Mr. Wright's statement that Erin had left. He did not see them do anything to verify. (R. 665).

During the protective sweep the officers then went into the master bedroom and looked underneath the sink of the bathroom vanity because they assert it appeared big enough for a body or a person to fit in. Both officers testified they only looked in places they believed a person could fit, so they did not look in drawers or other areas.

Corporal Collier opened the cabinet door to the master vanity because he believed it large enough a person could hide inside. When he opened it he observed a clear bag of what appeared to be marijuana and a purple Crown Royal bag that appeared to contain a white powdery substance, later determined to be cocaine. (R. 631-632).

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is **any** evidence in the record to support them. Smalls, 422 S.C. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed de novo without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court properly found trial counsel was not deficient for failing to argue evidence should be suppressed under South Carolina Code § 16-25-70(H), where this statute is inapplicable to Applicant's case, would not have resulted in suppression of the evidence, and the evidence was admissible under a Fourth Amendment analysis

Petitioner contends 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. However, the PCR court properly found trial counsel was not deficient for failing to argue the evidence should be suppressed under South Carolina Code §16-25-70(H), where the statute is inapplicable to petitioner's case and would not have resulted in the suppression of the evidence.

The PCR court properly found §16-25-70(H) does not apply to the facts of petitioner's case. The aforementioned statute allows for arrest for domestic violence related offenses based on probable cause or the presence of injury. The relevant part of the statute for the instant analysis is 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 Ann. §16-25-70 (Supp. 2014) (emphasis added). The PCR court found that the language of subsection (H) is clear and unambiguous, the provision only applies to warrantless searches administered pursuant to a complaint filed under the article related to criminal domestic violence. During petitioner's trial, law enforcement testified petitioner was never charged with criminal domestic violence. App. p. 218, l. 1. Trial counsel testified at the PCR hearing that petitioner was never charged with criminal domestic violence. Further, the testimony from law enforcement was that they responded to the residence due to a 911 hang-up, not a domestic violence complaint and that there never was a domestic violence complaint. App. p. 183, p. 209. The PCR court found that the search conducted in petitioner's case was not pursuant to this statute, but instead was properly done relying on the exigency doctrine and the plain view exception. The PCR court ultimately concluded the outcome of the proceeding at trial or on appeal would not have been different had counsel made this argument and petitioner failed to satisfy the second prong of Strickland as he was not prejudiced by any of the alleged deficiencies on the part of counsel.

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. V. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)).

> All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted).

"The legislature's intent should be ascertained primarily from the plain language of the statute. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." State v. Dupree, 354 S.C. 676, 693, 583 S.E.2d 437, 446 (Ct. App. 2003) (internal citation omitted). "Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language." City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) (citing Timmons v. Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970)).

The language of the statute is clear and unambiguous, the provision only applies to warrantless searches administered pursuant to a complaint filed under the article related to domestic violence. In the instant case, the original complaint to law enforcement was for malicious injury to property, petitioner was alleged to have kicked and dented the victim's vehicle.

Petitioner argues that the statute is applicable to his case, because he contends the incident was a domestic situation and the parties involved considered it to be a domestic incident. Petitioner cites the following in the support of this position: the solicitor and the court referring to the incident as a domestic situation, the 911 call being coded as domestic, and the responding officers testifying 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 Parlagreco's safety due to the nature of the call. However, the subjective beliefs of the parties regarding the nature of the event does not change the underlying complaint filed by the victim, which was always for malicious injury to

property. In Whren v. United States, 517 U.S. 806 (1996), the United States Supreme Court explained: "Not only have we never held… that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary." Id. At 812. The Court continued: "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." Id. At 813 (citing Scott v. United States, 436 U.S. 128, 136, 138 (1978)). Even if the subjective intentions of the officers were to respond to a domestic dispute, the original complaint remained one based on the injury to property and not one for criminal domestic violence. The victim never filed a complaint for domestic violence and petitioner was never arrested for or charged with domestic violence. Therefore, trial counsel was not deficient for failing to make a suppression argument which he had no legal or factual basis to support said argument. Further, petitioner has failed to prove that counsel making such an unsupported argument would have resulted in a different outcome of the proceeding, as the lower court would have denied the motion and the appellate court would properly affirm the ruling on appeal.

Third, Petitioner appears to misconstrue the "plain view" exception as applied in this case, arguing that counsel was deficient for failing to argue the evidence was not found in plain view as outlined in §16-25-70(H)(1)(a) which states that evidence is admissible if found "in plain view of law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect." However, counsel was not deficient for failing to make this argument as this statute does not apply to the instant case and the evidence was properly admitted under the more typical plain view exception to the warrant requirement.

As with the previous issue, petitioner must show that counsel erred by not making the plain view argument in support of suppressing the evidence and that if the lower court denied the motion it would have been overturned on appeal. First, the lower court would have been improper to grant the motion and suppress the evidence under this argument; however, we will evaluate the merits of the claim as if it were before the appellate court as a properly preserved issue.

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…." U.S. Const. amend. IV. It is the "basic rule that 'searches 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.'" Arizona v. Gant, 556 U.S. 332, 338 (2009) (quoting Katz v. United States, 389 U.S. 347, 357 (1967)). However, because the ultimate touchstone of the Fourth Amendment is "reasonableness," the warrant requirement is subject to certain exceptions. State v. Herring, 387 S.C. 201, 210, 692 S.E.2d 490, 494 (2009).

"A search or seizure carried out on a suspect's premises without a warrant is per se unreasonable, unless the police can show… the presence of 'exigent circumstances.'" Coolidge v. New Hampshire, 403 U.S. 443, 474-75 (1971). An "exigent circumstance" exists when "real immediate and serious consequence" could occur if the police delay their action in order to obtain a warrant. Welsh v. Wisconsin, 446 U.S. 740, 751 (1984) (citations omitted)."The rationale underpinning the exigent circumstances doctrine is that when faced with an immediate and credible threat or danger, it is inherently reasonable to permit police to act without a warrant." United States. V. Yengel, 711 F.3d 392, 396 (4th Cir. 2013). "One exigency obviating the requirement of a warrant is the need to assist person who are seriously injured or threatened with such injury. 'The

need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency."" Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006) (citing Mincey v. Arizona, 437 U.S. 385, 393-394 (1978)).

The United States Supreme Court, in a case regarding competing answers regarding consent to search by co-tenants, recognized the seriousness of domestic violence in the United States and explained:

> No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence; so long as they have good reason to believe such a threat exists, it would be silly to suggest that the police would commit a tort by entering, say, to give a complaining tenant the opportunity to collect belongings and get out safely, or to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur, however much a spouse or other co-tenant objected. (And since the police would then be lawfully in the premises, there is no question that they could seize any evidence in plain view or take further action supported by any consequent probable cause…).

Georgia v. Randolph, 547 U.S. 103, 118 (2006). "The person making entry must have had an objectively reasonable belief that an emergency existed that required immediate entry to render assistance or prevent harm to persons or property within." United States v. Moss, 963 F.2d 673, 678 (4th Cir. 1992). "The Supreme Court's standard of reasonableness is comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." Roy v. Inhabitants of Lewiston, 42 F.3d 691, 695 (1st Cir. 1994).

The officers in the instant case clearly had a reasonable belief that the female victim may be in danger or injured inside the residence searched. The 911 operator reported a domestic dispute occurring while on the phone with the victim, the operator indicated the male subject became aggressive, the officers knew the 911 call ended abruptly, the victim was not reconnected with 911, the female was not seen at the premises by the officers, and an officer witness petitioner

abruptly shut his door upon seeing officers and continued to look back at the front door of the residence.

"Courts have recognized the combustible nature of domestic disputes, and have accorded great latitude to an officer's belief that warrantless entry was justified by exigent circumstances when the officer had substantial reason to believe that one of the parties to the dispute was in danger." Tierny v. Davidson, 133 F.3d 189, 197 (2nd Cir. 1998); see also State v. Greene, 162 Ariz. 431, 784 P.2d 257, 259 (1989) (en banc) ("These calls commonly involve dangerous situations in which the possibility for physical harm or damage escalates rapidly… The call itself creates a sufficient indication that an exigency exists allowing the officer to enter a dwelling if no circumstance indicates that entry is unnecessary."); State v. Lynd, 771 P.2d 770, 773 (Wash. Ct. App. 1989) (concluding that entry was reasonable where there had been a hang-up call to 911 and the husband, who was outside the house, reported that he and his wife had been arguing.)

"Evidence of extreme danger in the form of shots fired, screaming, or blood is not required for there to be some reason to believe that a safety risk exists." Fletcher v. Town of Clinton, 196 F.3d 41, 49-50 (1st Cir. 1999); see also, Tierny, 133 F.3d at 198 ("The absence of blood, overturned furniture or other signs of tumult" did not render the officer's belief that danger existed unreasonable and did not require the officer "to withdraw and go about other business, or stand watch outside the premises listening for the sounds of splintering furniture."); United States v. Brown, 64 F.3d 1083, 2086 (7th Cir. 2995) ("We do not think that the police must stand outside an apartment, despite legitimate concerns about the welfare of the occupant, unless they can hear screams. Doubtless outcries would justify entry, but they are not essential.")

Additionally, courts have recognized the importance of locating the parties to the dispute, and the ability of officers determining for themselves whether any danger has passed. See e.g.,

United States v. Bartelho, 71 F.3d 436, 442 (1st Cir. 1995) ("The police were not required to take the victim's statements at face value, given her demeanor, their training regarding domestic violence, and the neighbor's report."); Manguson v Cassarella, 813 F.Supp. 1321, 1324 (D.D. Ill. 1992) ("Exigent circumstances do not end merely because the victim indicates that she is no longer in danger. That is a determination for the officer to make independently in light of the totality of the circumstances.") State v. Raines, 778 P.2d 538, 542-43 (1989). ("The fact that the occupants appeared to be unharmed when the officers entered did not guarantee that the disturbance had cooled to the point where their continued safety was assured. Until they had an opportunity to observe the boyfriend and talk to him, they had no knowledge of his condition and state of mind.") Clearly, if the officers are not required to accept from the victim that everything is fine, they certainly are not required to accept at face value petitioner's statement that the victim is fine and that she is not present at the residence.

Further, the officers were not required to take any additional actions in an effort to determine whether an exigency existed, properly relying on their own reasonable judgements. The Fourth Circuit has stated:

> To accept arguments like these would be to put too great a burden on officers tasked with responding to emergencies. There is a danger that in the light of day we can forget that in emergencies, "the business of policemen and firemen is to act, not to speculate or meditate on whether the report is correct… When policemen, firemen, or other public officers are confronted with evidence which would lead a prudent and reasonable official to see a need to act to protect life or property, they are authorized to act on that information, even if ultimately found erroneous."

Hunsberger v. Wood, 570 F.3d 546, 556 (4th Cir. 2009) (quoting Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963) (Burger, J.) (italics in original)). "On the spot reasonable judgements by officers about risks and dangers are protected. Deference to those judgements may be particularly warranted in domestic disputes." Fletcher, 196, F.3d at 50. Additionally, the fact they were

unsuccessful in finding the female inside does not vitiate the reasonableness of their entry into the home. See e.g., Heien v. N. Carolina, 135 S. Ct. 530, 536 (2014) ("To be reasonable is not to be perfect"); Hunsberger, 570 F.3d at 556 ("When policemen… are confronted with the evidence which would lead a prudent and reasonable official to see a need to act to protect life or property, they are authorized to act on that information, even if ultimately found erroneous.").

Once law enforcement was lawfully in the house, their seizure of evidence including the marijuana and cocaine was lawful under the plaint view exception of the warrant requirement. Under the "plain view" exception to the warrant requirement, objects failing 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 into evidence. State v. Wright, 416 S.C. 353, 368, 785 S.E.2d 479, 488 (Ct. App. 2016). The two elements required to satisfy the exception are (1) the initial intrusion that afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities. Id. The trial court properly found the facts of this case satisfied both criteria and an appellate court reviewing the finding would have found the same. First, law enforcement's entry into the residence was lawful under exigent circumstances. While conducting the lawful search for the potentially endangered person, the officers saw a clear bag of marijuana and a Crown Royal bag of white powder in a vanity which was large enough to contain an endangered person. The incriminating nature of this evidence was immediately apparent. Therefore, the drug evidence was properly seized under the plain view exception after law enforcement legally entered the residence pursuant to the exigency.

A trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence, and an appellate court may reverse only when there is clear error. State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013); see also State v. Abdullah, 357 S.C. 344, 349 592

S.E.2d 344, 347 (Ct. App. 2004) ("On appeal from a suppression hearing, this court is bound by the circuit court's factual findings if any evidence supports the findings.") The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 354, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

Therefore, the PCR court properly found that trial counsel was not deficient for failing to argue evidence should be suppressed under South Carolina Code § 16-25-70(H), where this statute is inapplicable to Applicant's case and would not have resulted in suppression of the evidence. Further, Petitioner has failed to prove prejudice resulted from the alleged deficiency, as the result of the proceeding would not have been different had trial counsel moved to suppress the evidence on the aforementioned basis.

CONCLUSION

For the foregoing reasons, this Court should deny this Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

BENJAMIN HUNTER LIMBAUGH
S.C. Bar No. 103334
Assistant Attorney General

By:_____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

July 27, 2020