RECEIVED
Jul 29 2020
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Jennifer B. McCoy, Circuit Court Judge

STANLEY WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000676

SUPPLEMENTAL APPENDIX II

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

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Maite Murphy, Circuit Court Judge

THE STATE	
	Appellate Case No.:
-vs.-	2013-002090
STANLEY L. WRIGHT	
Defendant	

FINAL BRIEF OF APPELLANT

Sonya Chachere-Compton
State Bar of Georgia No. 118470
Valerie V. Vie
State Bar of Georgia No.: 727617
5682 Palazzo Way, Suite 102
Douglasville, Georgia 30134

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statues

STATEMENT OF ISSUE ON APPEAL

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.
2. Whether the trial erred in failing to suppress evidence from the Appellant's residence when exigent circumstances did not exist to make a warrantless search.

STATEMENT OF CASE

Appellant was convicted of possession with the intent to distribute marijuana, trafficking in cocaine, and possession of a weapon after a jury trial held in Beaufort County on September 16-18, 2013 before the Honorable Maite' Murphy. Respective sentences of five years, twenty-five and five consecutive years were imposed. Charlie Jay Johnson, Jr. and Joenathan S. Chaplin were the trial attorneys for Mr. Wright. Ben T. Shelton and Mary Concannon were the assistant solicitors.

This appeal follows:

B. The Facts

There are two transcripts submitted as part of the record. The transcript dated May 22-23, 2013 shall be referred to as "T-1". The transcript dated September 16-18, 2013 shall be referred to as "T-2".

On August 31, 2011 there was an altercation in the front yard between Mr. Wright and Ms. Parlagreco. Mr. Wright kicked Ms. Parlagreco's car and dented 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 2[redacted] Mitchellville Road. The phone disconnected and the 911 operator called back.

911 Operator:	Is there a domestic going on there?
Ms. Erin 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?
Ms. Erin Parlagreco:	No we are not fighting.
911 Operator:	OK
Ms. Erin Parlagreco:	I have to take my kids to football practice.

911 Operator:	OK Have you left yet?
Ms. Erin Parlagreco:	No
911 Operator:	OK. Do you need an officer?
Ms. Erin Parlagreco:	He's not getting away with kicking my car.
911 Operator:	You want me to send someone to make a report?
Ms. Erin Parlagreco:	Yes
911 Operator:	OK, What color is your house?
Ms. Erin Parlagreco:	A white trailer.
911 Operator:	OK. Single Wide?
Ms. Erin Parlagreco:	Double wide.
911 Operator:	What kind of car are you in? or
Ms. Erin Parlagreco:	An Acura.
911 Operator:	What color is the Acura?
Ms. Erin Parlagreco:	Can I just come down and make the report?
911 Operator:	You want to come down to the office?
Ms. Erin Parlagreco:	I'm coming now.
911 Operator:	OK You know where it is?
Ms. Erin Parlagreco:	Yes, on the south it
911 Operator:	Yes, and what's your name?

Ms. Erin Parlagreco: Erin Parlagreco
911 Operator: Erin you said

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

911 Operator: What's his name?

Ms. Erin Parlagreco: Stanley Wright

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

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

911 Operator: He's left already

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

Ms. 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. ("T-2" 112; R. 111).

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. ("T-2" 113-115; R. 112-114).

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. ("T-2" 129-130; R. 128-129).

Officer Archbell was dispatched to a domestic at 5:35pm. While enroute he received an update from dispatch that they could hear a male in background who sounded aggressive or agitated and that they could hear a struggle take place and lost contact with victim. Dispatch stated they tried again and lost contact and phone immediately disconnected. ("T-1" 31-32; R. 644-645). However the dispatch audio and the CAPS/CAD reports does 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" (See "T-1" R. 754,761).

Melanie Smith, communication coordinator at the dispatched center, testified that Officer Archbell confirmed that he was at the scene at 5:47 pm. Two minutes later Officer Jonathan Collier arrived at 5:49 pm. Officer Sally Irving arrived at the ball park at 6:01 pm. ("T-1" 68; R. 681).

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. ("T-1" 35; R. 648).

Mr. Wright informed him that he and Ms. Parlagreco had a verbal altercation because she threw a soda on his car. ("T-1" 35; R. 648). 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. . ("T-1"13; R. 626).

When Officer Irving arrived at the scene, Archbell and Collier conducted a search of the residence. ("T-1" 37-38; R. 650-651). Officer

Collier testified that he performed the sweep within ten minutes after he arrived on the scene. ("T-1" 21; R. 634).

They went inside the resident looking only for the victim in a place someone could hide be placed. Some place big enough for a body to be placed in. ("T-1" 45-46; R. 658-659).

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 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 whereabouts. ("T-1" 25, 49-50; R. 638, 662-663). 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. ("T-1" 51; R. 664).

During the protective sweep the officers then went into Master Bedroom and looked underneath the sink of the bathroom vanity because they assert it appeared big enough for a body or person to fit in. Inside were

the purple bag and clear zip lock bag with green substance in it. ("T-1" 17-18; R. 630-631).

Officer Sally Irving testified that at 6:01 she arrived at the ball field to locate the 911 caller. The deputy on the scene told her to go to ballpark. She went to ballpark first then went to house afterwards. ("T-2" 97; R. 96).

She testified that she did not contact the victim. She did not remember talking to someone at the scene. ("T-2" 91; R. 90). She did not know victim so she looked for someone in distress. ("T-2" 92-93; R. 91-92). Officer Irving repeatedly testified on direct examination that she did not remember talking to anyone at the ball field. She testified that maybe she spoke to someone. It is possible that she spoke to someone but don't remember talking to anyone But if she did she did not get their name or if she spoke to anyone or not. Then she testified that she did not remember speaking to someone in distress. ("T-2" 93-96, 98; R. 92-95, 97).

After Irving left the ballpark, she went to the scene and told officers Archbell and Collier that she could not find someone who needed assistance at the ballpark or that came to her is distress. Officers Archbell and Collier entered the house to conduct the search. ("T-2" 94-98; R. 93-97).

Irving testified on cross by the solicitor that she didn't make contact with anyone that told her they had a connection with the incident location, no one said they wanted to press charges and she made no contact with anyone that said they had called 911. ("T-2" 105; R. 104).

Officer Irving refused to answer the question, "Is it your testimony that you did not talk to anyone?" ("T-2" 108; R. 107).

Argument

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.**

S.C. Code §16-25-70(H) states in part: "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."

Officer Archbell testified that he was dispatched to Mr. Wright's residence in response to a possible domestic violence 911 call on August 31, 2011. He was advised that the female caller was disconnected. When he arrived to Mr. Wright's residence, he saw Mr. Wright exiting his residence. Officer Archbell asked Mr. Wright about the caller and was advised that she was across the road at the ball field. ("T-1" 35R. 648). Shortly thereafter Officer Collier arrived. Officers Archbell and Collier testified that they entered the residence for the purpose of conducting a protective sweep to locate any possible victims. ("T-1" 13;R. 626). They testified that they searched closets, underneath beds or any place a victim could possibly be concealed. ("T-1" 21; R. 634). During the protective sweep the officers looked underneath a bathroom vanity where the found a bag of suspected

marijuana and a Crown Royal bag with a white powdery substance they suspected was cocaine.

If this court determines that the plain language of S.C. Code §16-25-70(H) which states that any evidence in plain view in a room where law enforcement officer is interviewing, detaining, or pursuing a suspect is admissible is applicable in the instant case, the question becomes whether the "plain view" doctrine applies to evidence found in this vanity when the officers clearly stated they were searching for an adult.

The vanity in this case is medium sized. It was bordered by a tub on the right and a wall on the left. It has three small doors in the front which is obvious to any reasonable mind that no adult could fit inside the doorway to this vanity unless the person was dismembered. There was no evidence of blood, bones or human matter anywhere in the residence to indicate dismemberment. The officers could not have reasonably believed that an adult was inside the vanity. (See R.753).

The contraband was not in "plain view" pursuant to the statue and case law therefore the evidence should have been suppressed.

2. The trial erred in failing to suppress evidence from the Appellant's residence when exigent circumstances did not exist to make a warrantless search.

Through its exclusionary rule, the Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const. Amend. IV. The South Carolina Constitution also provides protection against unlawful searches and seizures. Art. I, 10. Any evidence that is seized in violation of the Fourth Amendment is excluded in both state and federal court. Mapp v. Ohio, 367 U.S. 643, (1961); State v. Forrester, 343 S.C. 637, (2001). State v. Abdullah, 357 S.C. 344 (2004).

The 4th Amendment allows a warrantless search where the search falls within one of the exceptions. In this case the court ruled that the facts in this case fell in the exigent circumstance exception. Exigent circumstance is a situation that requires immediate or emergency action. The facts in the instant case do not justify the exception.

In Brigham City, Utah v. Charles W. Stuart et al,547 U.S. 398 (2006), the US Supreme court held that the "police may enter a home without a warrant when they have an objectively reasonable basis for believing that an

occupant is seriously injured or imminently threatened with such injury". Objectively reasonable basis means some additional facts learned in the course of the investigation to support the exigency. (US v. Najar, 451 F3d 710 (10th cir. 2006). In the instant case no such objectivity was present. In US v. Davis, 290 F3d 1239 (10th cir. 2002), the Court held that the report of a domestic argument standing alone does not demonstrate exigent circumstances.

In the instant case the 911 dispatch operator was told by Ms. Parlagreco that there was no domestic and that she and Mr. Wright were not fighting. She stated that he kicked her car. She advised that she wanted to make a report. The dispatch operator told her not to argue with him. Ms. Parlargreco stated that she was not arguing with Mr. Wright but with a neighbor. She eventually told the dispatch not to send an officer because she would come down there to make a report. The telephone disconnects. This call was at 5:35 pm and the police were dispatched to the location.

Officer Archbell arrived to the scene at 5:47 pm and Officer Collier arrived at 5:49pm. Neither officer saw anything to indicate there had been a struggle. The officers were advised by Mr. Wright that Ms. Parlagreco had

left and gone to the ball field nearby. The neighbor was present during the altercation and was heard on the 911 wall. Ms. Parlagreco mentioned that the neighbor was present but the officers upon their arrival did not attempt to contact the neighbor or inquire as to his information. They failed to verify with the neighbor whether Ms. Parlagreco had left or not. Mr. Wright denied the officer's request to search his residence. Approximately ten (10) minutes later Officer Irving arrived at the ball field at 6:01 pm. searching for the victim. ("T-2" 97; R. 96). Officer Irving does not indicate how long she was at the ball park but testified repeatedly that she did not remember speaking to anyone and did not see anyone in distress. However Ms. Parlagreco and Ms. Ford testified that they spoke with Officer Irving at the ball park. ("T-2" 113-115; R. 112-114). ("T-2" 127-131; R. 126-130).

Officer Irving left the ball park and went to the scene. She testified that she advised that she did not see anyone in "distress". Therefore, the officers contend a search of the residence was initiated to search for the victim.

Appellant does not dispute that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they

reasonably believe that a person within is in need of immediate aid. *Mincey v. Arizona*, 437 U.S. 385 (1978). However based on the articulable evidence in this case the police could not reasonable believe that Ms. Parlagreco was in immediate need of aid.

Based on the timeline there was a minimum 12 minutes between the time the 911 call disconnect and the arrival of Archbell and an additional 15-20 minutes time from the arrival of Officer Archbell to the arrival of Officer Irving for a total of 30 or more minutes. There no evidence to indicate that Ms. Parlagreco was injured or being held without her consent. If in fact the officers believed that there were exigent circumstances to initiate a protective sweep, they would have entered house before a 30 plus minute lapse in time. One of the officers could have stayed with Mr. Wright or handcuffed him until the search/sweep was completed.

Ms. Paralagreco and Ms. Ford's testimony that they spoke with Officer Irving was not refuted. Officer Irving repeatedly testified that she did not remember talking with anyone. ("T-2" 91-98; R. 90-97). She then attempted to avoid the question by qualifying her response that she did not talk with anyone in "distress". When Officer Irving was pointedly asked,

"Is it your testimony that you did not talk to anyone?" she refused to answer the question and stated "I will not testify to that". ("T-2" 108; R. 107).

Officer Irving statement that she did not speak to anyone "in distress" does not grant an exception to 4th amendment exception to justify a warrantless search. There was nothing to justify the warrantless search. There was an eyewitness that said that the victim had left. Mr. Wright informed them she had left and gone to the nearby ball park. The victim had informed the dispatch that she was leaving. The incident had occurred outside and there was no evidence of violence to indicate that someone was hurt. Officer Irving advised that she had not seen anyone at the ballpark in "distress". More than 30 minutes time had elapsed before they initiated the search. It was not reasonable for the officers to believe that a protective sweep for the victim was necessary.

The issues of exigent circumstances and domestic disturbances have been reviewed in several cases. In US v. Davis, 290F3D 1239 (10th cir. 2002), the Court of Appeals affirmed the suppression of the drugs and guns found following a warrantless search. In Davis the police responded to a

domestic dispute call. When the police arrived to the residence, they heard no noise and saw no sign of a disturbance. Mr. Davis came to the door with blood shot eyes and alcohol on his breath. He explained that he had disciplined his child. He refused to allow the officers entry into the house and blocked the officer's view inside the residence. The officers entered and found 58 grams of crack and stolen guns. The Court found that Mr. Davis' conduct was not threatening or aggressive. The Court noted that the State has the burden to offer facts showing an exigency.

In Lundstrom v. Romero, 616 F. 3d 1108 (10th Cir. 2010), police responded to a 911 call that a woman was screaming and a toddler was being beaten by plaintiff. The officer arrived to conduct a welfare check. She did not observe an ongoing altercation. The plaintiff denied that there were any children in his house. The officer did not see any children and an occupant of the house also told the officer that there were no children there. The Court found that there were no exigent circumstances to justify requiring the plaintiff to come outside and allow the officers to search. Also in Storey v. Taylor, 696F.3d 987(10th Cir. 2012) the court found no exigency existed to excuse compliance with the 4th Amendment. In Storey the police were

called to a domestic dispute. Mr. Storey informed the officers that his wife was not there because she had gone to pick up the children from school. He refused to exit his residence or talk with police further. He was arrested for refusing to obey the police command. The Court stated that officers responding to a domestic dispute must show something more than an argument to show an objectively reasonable basis to believe there is an immediate need to protect the lives of others. Storey, at 994.

The Courts have found that exigent circumstances existed when significant facts in addition to a report of domestic violence dispute such as gunfire from two different sources, broken glass, ongoing shouting, reporting of physical beating not just arguing. Storey, at 995.

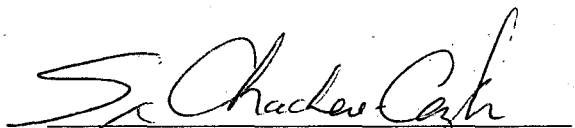
In the instant case there were no additional facts to the report of a domestic dispute. There was nothing to indicate a struggle. The officers had been sent there in reference to a "kicked" car and dropped call. The argument occurred outside in the yard. The officers arrived shortly after being dispatched. They had been informed by Mr. Wright and a neighbor that the 911 caller had left the premises. Mr. Wright informed them that she had gone to the ball park. Officer Irving cannot recall if she spoke with 911

Caller or anyone at the ballpark. She can only recall that she did not speak with anyone in "distress" if she in fact spoke to anyone. Therefore the officers had no objectively reasonable basis to believe there is was an immediate need to protect the lives of others. The stated reasons given by the officer that Mr. Wright acted nervous and kept looking at the front door of his residence is not the type of additional facts the courts have found to justify a search of a residence.

Conclusion

For all of the reasons stated herein it is respectfully requested that the Court of Appeals reverse the order of the trial court denying Mr. Wright's Motion to Suppress, order that the motion be granted, the conviction reversed in its entirety or that the case is remanded on the issue of ineffective assistance of counsel.

Respectfully submitted, this ___ day of _____, 2016.



SONYA CHACHERE-COMPTON
State Bar of Georgia Number: 118470

Valerie V. Vie w/ express permission

VALERIE V. VIE
State Bar of Georgia No. 727617

Attorneys for Appellant Stanley Wright
5682 Palazzo Way, Suite 102
Douglasville, Georgia 30134
(770) 949-1102

RECEIVED
NOV 29 2016
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Maite Murphy, Circuit Court Judge

THE STATE	:	
	:	Appellate Case No.:
-vs.-	:	2013-002090
STANLEY L. WRIGHT	:	
Defendant	:	

CERTIFICATE OF COUNSEL

The undersigns certifies that this Final Brief of Appellant complies with Rule 211(b) SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled " Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This the 12th day of November, 2016.

SONYA CHACHERE-COMPTON
State Bar of Georgia Number: 118470

Attorney for Appellant Stanley Wright
5682 Palazzo Way, Suite 102
Douglasville, Georgia 30134
(770) 949-1102

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Maite Murphy, Circuit Court Judge
Honorable Kristi Lea Harrington, Circuit Court Judge
Appellate Case Tracking No. 2013-002090

The State, Respondent,

vs.

Stanley Wright, Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. The trial court did not err in refusing to suppress evidence obtained from Appellant's residence when exigent circumstances justified the warrantless search and the search was not unreasonable. In addition, section 16-25-70(H) of the South Carolina Code does not apply in this case and, even if it applied, any argument related to the section is not preserved for review on appeal. (Appellant's Issues 1 and 2).

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

The victim in this case called 911 seeking assistance because Appellant kicked a dent in her automobile. She called the Hilton Head 911 dispatch. The call was disconnected. The Hilton Head dispatch then provided the information to the Beaufort County 911 call center. The operator of the 911 call center then attempted to reach the victim. She was able to reach the victim, who was clearly distressed. The victim asked for an officer. After providing some basic information, she asked about making the report in person at the station. She indicated Appellant was the individual who kicked her car.

While on phone with the 911 operator, the victim is confronted by Appellant. Appellant becomes belligerent yelling at the victim. At one point he is heard telling her to leave and, then when she indicates she is on the phone with 911, he yells at her "how the fuck is the police on the phone." Immediately thereafter, the call is abruptly ended and the 911 operator is unable to get the victim back on the phone. (State's Exhibits 2&3 (CD of 911 calls)).

Officers were dispatched based on the 911 hang-up and the possibility of a domestic violence situation. (5/22T.31; State's Exhibit 4 (911 CAD records); R. 644; 754. While in route to the location, Deputy Archbell received updates from the 911 dispatcher. He was told a male subject could be heard in the background while the 911 operator was talking with the victim. The male subject "sounded aggressive or agitated." (5/22T.32; R. 645). He was told the 911 operator could hear a struggle and then lost contact with the victim. Finally, he was informed the 911 operator was unable to regain contact with the victim. (5/22T.32; R. 645).

Upon arriving at the scene, Deputy Archbell saw a male near the front door of the residence. As soon as Deputy Archbell made contact with the male, "he stepped out and abruptly shut the door behind him," (5/22T. 35; R. 648). While speaking with Deputy Archbell the male was very nervous and kept looking back at the door. (5/22T.35; R. 648). Deputy Archbell identified the male as Appellant. In his discussions with Deputy Archbell, Appellant admitted to having a verbal altercation with the victim after the victim threw a soda on his vehicle. (5/22T.36; R. 647). As a result, Appellant admitted becoming agitated during the confrontation with the victim. (5/22T.37; R. 648).

Corporal Collier arrived on scene after Deputy Archbell. Before he arrived at the scene, he learned a victim sounding in distress had been on the phone with 911 until the call lost. (5/22T.11; R. 624). At the scene, Corporal Collier learned there was a verbal altercation between Appellant and a female. Appellant indicated the female was not at the scene. (5/22T.12; R. 625). Deputy Archbell asked Appellant for consent to search his residence, and Appellant denied consent. (5/22T.12; R. 625).

Corporal Irvin was asked to go to the ball field and attempt to locate anyone in distress who may have called 911. (T.92-95; R. 91-94). The ball field was roughly one hundred to two hundred yards from the residence. (T.103; R. 102). She indicated she could not locate anyone who appeared to be in distress and no once came up to her to report they needed assistance. (T.95-96; 102; R. 94-95; 715). She reported to the officers on scene at the residence that she was unable to locate anyone needing assistance at the ball park. (T.98; 142; R. 97; 141).

Corporal Collier made the decision to do a sweep of the residence in the event the female was inside in need of assistance since she had not been located. (5/22T.13; R.

626). Deputy Archbell indicated a strong smell of marijuana immediately inside the residence. (5/22T.39; R. 652). During the sweep of the residence, Deputy Archbell and Corporal Collier went room by room through the residence and looked in places where a person could hide or be placed to determine whether the female victim was present. (5/22T.16; 39; R. 629; 652). Both officers testified they only looked in places they believed a person could fit, so they did not look in drawers or other areas. (5/22T.16-17; 39-40; R. 629-630; 652-653).

Corporal Collier opened the cabinet door to the master vanity because he believed it large enough a person could hide inside. (5/22T.17-18; R. 630-631). When he opened it he observed a clear bag of what appeared to be marijuana and a purple Crown Royal that appeared to contain a white powdery substance, later determined to be cocaine. (5/22T.18-19; T.506-508; R. 631-632; 505-507).

ARGUMENT

I. The trial court did not err in refusing to suppress evidence obtained from Appellant's residence when exigent circumstances justified the warrantless search and the search was not unreasonable. In addition, section 16-25-70(H) of the South Carolina Code does not apply in this case and, even if it applied, any argument related to the section is not preserved for review on appeal. (Appellant's Issues 1 and 2).

Appellant contends the trial court erred in refusing to suppress the drug evidence located in his residence during a warrantless search. He maintains the evidence was not admissible pursuant to section 16-25-70(H) of the South Carolina Code. Further, he contends the warrantless search was unconstitutional because it was not supported by exigent circumstances. Any issue related to the application of section 16-25-70 is not preserved for review on appeal, and, even if preserved, the section is not applicable in the instant case. Further, the warrantless search was reasonable and supported by the exigent circumstances of the officers needing to determine the welfare and safety of Appellant's victim.

Section 16-25-70 Preservation

First, any argument related to section 16-25-70 of the South Carolina Code is not preserved for review on appeal. Appellant never raised the statute or application of the statute during trial, and therefore, it is blatantly not preserved for review on appeal. See State v. Jennings, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) ("For an issue to be properly preserved it has to be raised to and ruled on by the trial court."); State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (finding an issue not properly

preserved for appeal where one ground was raised below and another ground was raised on appeal).

Section 16-25-70 Merits

On the merits, section 16-25-70 does not apply in the instant case. Even if the issue had been raised to the trial court, it would not have been a ground for suppression of the evidence. Section 16-25-70(A) and (B) allow for arrest for domestic violence related offenses based on probable cause or the presence of injury. The statute continues in relevant part:

> (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).[1]

[1] The statute was recently amended in 2015. The amendments only affected Subsections (A) and (B), and, therefore, do not alter the analysis of the language contained in Subsection (H).

"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 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. The complaint filed in the instant case originated as a complaint for malicious injury to property based on the victim's call that Appellant kicked and dented her car.

While the 911 operator and other officers may have believed a domestic dispute arose due to the arguments between parties and the fact the 911 call was cut off and unable to be reconnected, their subjective belief regarding the nature of the events did not change the complaint being filed, which was always one based on 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 injury to property and not one for criminal domestic violence. The victim never filed a complaint for domestic violence, and Appellant was not arrested for or charged with criminal domestic violence. As a result, based on the clear, explicit language of Subsection (H), it is inapplicable in this case because the search did not arise pursuant to a complaint filed for domestic violance.

Further, carte blanche application of Subsection (H) would lead to the absurd result that abusers have more protection related to evidence of other crimes than other individuals. See Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) (finding courts will reject an interpretation of a statute leading to an absurd result

clearly unintended by the legislature). The South Carolina Supreme Court noted their concern based on the language of the prior version of Subsection (H) when they stated:

> We are concerned about the effect of § 16–25–70(H). The plain meaning of the statute precludes the admission of evidence of crimes, other than criminal domestic violence, seized as a result of a warrantless search conducted pursuant to § 16–25–70(C). In the case before us today, if the officer had entered respondent's home under the authority of § 16–25–70(C), the crack cocaine found in respondent's pocket would have arguably been inadmissible pursuant to § 16–25–70(H). Similarly, as noted by the amicus curiae, if the police make a warrantless entry into a home under the authority of § 16–25–70(C) and observe in plain view a weapon which is recognized as the weapon in an unrelated murder, the weapon could be inadmissible under § 16–25–70(H) since murder is not a violation of the Act.

State v. Cannon, 336 S.C. 335, 340 n.4, 520 S.E.2d 317, 319 n.4 (1999).

Fourth Amendment Warrantless Search

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. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

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, 466 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 persons 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 a competing answers regarding consent to search by co-tenants, recognized the seriousness of domestic violence in the United States[2] 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). "[T]he 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). "[T]he 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 current case clearly had a reasonable belief the female victim may be in danger or injured in the residence. The 911 operator reported a domestic dispute occurring while on the phone with the victim. The operator indicated the male subject became aggressive and agitated. The officers knew the 911 call ended abruptly and the victim was not able to be reconnected with 911. The female was not seen by the

[2] The Court presented substantial and significant statistics and information regarding the plague of domestic violence in the United States. See Georgia v. Randolph, 547 U.S. 103, 117-118 (2006).

officers. Most significantly, after learning the information from the 911 operator about the nature of the call and arriving on scene, Deputy Archbell witnessed Appellant "abruptly" shut his door upon seeing the officer, and during their conversation, continue to nervously look at the front door to the residence.

According to Corporal Collier, it typically takes anywhere from two to four hours to obtain a warrant. (5/22T.21; R. 634). Waiting any significant length of time, when there is a distinct and reasonable possibility a victim may be inside the house, should not be required. This is particularly true when the facts and circumstances known to the officers at the time indicated a need to act to locate the female victim and ensure her safety, especially given Appellant's suspicious behavior upon seeing Deputy Archbell.

"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." Tierney 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, Tierney, 133 F.3d at 198 ("[T]he 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, 1086 (7th Cir. 1995) ("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) ("[T]he 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."); Magnuson v. Cassarella, 813 F.Supp. 1321, 1324 (N.D. Ill. 1992) ("[E]xigent 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) ("[T]he 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 the statement from the victim that nothing is wrong, they are certainly not required to accept at face value the statement of the likely suspect that the female victim was fine and just not present at the residence.

Appellant also argues the officers could have done more to determine whether an exigency existed, including talking to the neighbor or allowing Appellant to take them to the ball field. As the Fourth Circuit stated:

> [T]o 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 judgments by officers about risks and dangers are protected. Deference to those judgments 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 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.").

Accordingly, the trial court did not err in the instant case in finding the facts and circumstances known to the officers at the time of their entry into Appellant's property

created exigent circumstances justifying the warrantless search for the female victim. During the search, the officers could reasonable conduct their search and any evidence located during the lawful search was properly admitted into evidence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY: _____
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 20, 2016

RECEIVED
OCT 20 2016
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Maite Murphy, Circuit Court Judge
Honorable Kristi Lea Harrington, Circuit Court Judge
Appellate Case Tracking No. 2013-002090

The State, Respondent,

vs.

Stanley Wright, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: _____
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 20, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Stanley Wright, Appellant.

Appellate Case No. 2013-002090

Appeal From Beaufort County
Maité Murphy, Circuit Court Judge

Unpublished Opinion No. 2017-UP-224
Submitted March 1, 2017 – Filed May 24, 2017

AFFIRMED

Valerie Vanessa Vie and Sonya R. Chachere-Compton, both of Douglasville, Georgia; and Calvin Andrew Carroll, of Carroll Law Firm, LLC, of Charleston, all for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General William M. Blitch, Jr., both of Columbia; and Solicitor Isaac McDuffie Stone, III, of Bluffton, all for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Schumpert*, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) ("A ruling in limine is not a final ruling on the admissibility of evidence."); *id.* ("Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review."); *State v. Burton*, 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) (holding a ruling made during an in camera hearing to determine the admissibility of the victim's sister's testimony was not sufficient to preserve the issue when, after the in camera hearing, testimony was given by two other witnesses, a break was taken, and then the victim's sister testified without objection).

AFFIRMED.[1]

WILLIAMS and KONDUROS, JJ., and LEE, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.