

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES D. TINSLEY,

APPELLANT

FINAL BRIEF OF APPELLANT

DAYNE C. PHILLIPS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES D. TINSLEY,

APPELLANT

FINAL BRIEF OF APPELLANT

DAYNE C. PHILLIPS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL.....3

STATEMENT OF THE CASE.....4

STATEMENT OF FACTS.....5

ARGUMENT.....11

CONCLUSION.....16

CERTIFICATE OF COUNSEL.....17

TABLE OF AUTHORITIES

Cases

Carroll v. United States, 267 U.S. 132 (1925)..... 13, 14

Coolidge v. New Hampshire, 403 U.S. 443 (1971) 12, 14

Johnson v. United States, 333 U.S. 10 (1948) 13, 14

Katz v. United States, 389 U.S. 347 (1967) 12

Mapp v. Ohio, 367 U.S. 643 (1961)..... 11, 15

State v. Brown, 389 S.C. 473, 698 S.E.2d 811 (Ct. App. 2010) 11, 15

State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999) 12, 15

State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975) 11

State v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004)..... 12

United States v. Calandra, 414 U.S. 338 (1974) 11

United States v. Jacobsen, 466 U.S. 109 (1984)..... 10, 14

Walter v. United States, 447 U.S. 649 (1980)..... 14

Wong Sun v. United States, 371 U.S. 471 (1963) 12, 15

Constitutional Provisions

U.S. Const. amend. IV 11, 14

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in holding that the warrantless seizure of a locked camper on private property was proper and by allowing the person who sold the camper after it was seized to testify as to the VIN number of the camper to incriminate Appellant in his criminal trial when the officers did not have probable cause to seize the camper and the trial court had previously held to suppress the VIN number due to the officers' illegal search of the camper?

STATEMENT OF THE CASE

On October 26, 2007, James Tinsley was indicted by the Spartanburg County Grand Jury for knowingly receiving or possessing stolen goods, a camper, valued at more than five thousand dollars. R. 264

On November 8, 2010, Tinsley proceeded to trial before the Honorable Roger L. Couch and a jury, where he represented himself, pro se, along with standby counsel, assistant public defender Andrea Price. R. 1.¹ The State was represented by assistant solicitors Matt Kendall and Ryan McCarty. R. 1.

On November 10, 2010, the jury found Tinsley guilty of receiving stolen goods. Supp. R. 1, ll. 2-11. Judge Couch sentenced Tinsley to ten years imprisonment suspended to the service of three years followed by five years probation to run consecutively to his prior sentence. Supp. R. 2, ll. 1-13.

¹ There are two transcripts from two court reporters: (A) Pamela Green transcribed the first two days of trial and (B) Margaret Woods transcribed the last day of trial; however, Ms. Woods did not follow the pagination from the first transcript. Consequently, citation to the first transcript will be R. and the second transcript as Supp. R..

STATEMENT OF FACTS

Pretrial

Tinsley moved to suppress the warrantless search and seizure of the locked camper that he left on his grandmother's property, which also borders his father's property. R. 11, l. 20 – 13, l. 17; 75, l. 14 – 77, l. 13. Tinsley argued that his father and grandmother lacked the authority to consent to a search of the camper because: (1) the camper was not on his father's property; (2) his father and grandmother did not possess a key to the camper; and (3) his father and grandmother had never been inside of the camper. R. 12, ll. 9-14.

In response, the State argued: (1) that Tinsley lacked standing because he had no expectation of privacy within the confines of stolen property; (2) that Tinsley's father and grandmother had the authority to consent to a search of the camper because they had control over the premises; (3) that probable cause existed to justify the search; and (4) that the inevitable discovery doctrine is applicable to this case.² R. 13, l. 20 – 14, l. 16.

Suppression Hearing

Officer White

The State then called Officer Brian White of the Spartanburg County Sheriff's Office to testify in the suppression hearing. R. 14, l. 19 – 15, l. 7. Officer White testified that Tinsley's father called the Spartanburg County Sheriff's Office and requested that an officer come to his residence "because he had questions about a camper his son had left on the property." R. 15, l. 23 – 16, l. 2. On December 13, 2006, Officers White and Henry Beck went to see Tinsley's father at his residence in Greenville. R. 16, l. 6 – 17, l. 17.

² The State initially argued that the inevitable discovery doctrine applied since Tinsley did not initially contest the seizure of the camper. R. 14, ll. 13-16; 75, l. 14 – 77, l. 13.

Officer White admitted that he and Officer Beck were unable to find the public V.I.N. number after conducting a “walk around inspection” of the camper. R. 20, ll. 13-24. However, Officer White maintained that Tinsley’s father and grandmother gave consent to search the camper, but that the camper was locked, so he called a locksmith to cut the lock off the camper. R. 16, ll. 9-20; 20, l. 25 – 21, l. 13.

After the lock was cut off, the officers entered the camper and found the V.I.N. number and were able to determine that it matched the V.I.N. number of a stolen camper from Holiday Camper in Spartanburg County. R. 18, ll. 1-8. The officers then seized the camper and returned it to Holiday Camper. R. 18, ll. 9-10.

Officer White maintained that he was able to link Tinsley to the stolen camper without the VIN number because “during the course of [his] investigation [he had] been told that the stolen camper from Holiday Camper was now marked with decals that said James Tinsley’s Racing, Dirty South Racing,” which this camper possessed. R. 18, ll. 16-21. However, Officer White also acknowledged that he knew Tinsley had an enclosed racing trailer with identical racing decals. R. 23, ll. 18-20.

This prompted Tinsley to ask Officer White, “[I]f something matches a description and there’s more than one of them, you can say for certain that one of them is stolen?” R. 24, ll. 11-13. Officer White replied, “That’s why we went [inside the camper] to determine the V.I.N. number to . . . show who it belonged to.” R. 24, ll. 14-15. However, despite his confidence in finding the stolen camper, Officer White stated that he “didn’t know whether it was a North Carolina camper or the Holiday Camper.” R. 25, ll. 7-8.

Tinsley also asked Officer White, “Can you point out the facts and describe the facts that would call a reasonable person to believe that this camper was stolen” R. 28, ll.

18-21. In response, Officer White maintained that several people had told him about Tinsley living in the stolen camper from Holiday Camper and that Tinsley “had put stickers on it to make it [Tinsley’s] racing trailer.” R. 28, l. 22 – 29, l. 5.

James Tinsley, Senior (Appellant’s Father)

The State then called Tinsley’s father, to testify in the suppression hearing. R. 30, ll. 13-19. Tinsley’s father testified that someone had told him he needed to inquire about the camper, so after he took his son to North Carolina to surrender himself for a different crime, he called “Detective Beck who works for Spartanburg County.” R. 32, ll. 3-15; 47, ll. 1-10.

Tinsley’s father testified: (1) that the camper was not on his property; (2) that the camper had a “tongue lock” on it; (3) that he did not have a key to open the lock; (4) that he did not have any belongings in the camper; and (5) that he had never used the camper. R. 36, l. 2 – 37, l. 22; 46, ll. 6-7. Tinsley’s father also testified that Officer White assured him that he had the authority to sign the consent to search form. R. 38, ll. 4-7.

Additionally, Tinsley’s father testified that although the officers never showed him a search warrant for the camper, after he consented to the search, he and the officers watched the locksmith cut off the “tongue lock” with a side grinder. R. 38, ll. 18-19.

Trial Judge’s Ruling

The trial judge held that the officers conducted an illegal search of the camper by not obtaining a search warrant and granted Tinsley’s motion to suppress the V.I.N. number. R. 77, l. 17 – 78, l. 19. Specifically, the trial judge found: (1) that the camper was “not mobile;” (2) that the camper was on private property; and (3) that “the people [who] controlled the premises did not have . . . the right to grant the breaking of the lock [on the camper].” R. 77, l. 17 – 78, l. 19.

However, the trial judge also held that he was “not suppressing the taking of the vehicle,” and that “anything the officers could have seen in plain view” from outside of the camper did not violate the Fourth Amendment because the officers “had a right to be on the premises.” R. 80, l. 2 – 81, l. 8.

Trial

Paul Thomas

The State then called Paul Thomas, the service manager at Holiday Camper, to testify as its first witness. R. 82, l. 21 – 83, l. 19. Thomas testified that he is the supervisor of Holiday Camper’s service department, which does all of the repairs and takes inventory. R. 83, l. 23 – 84, l. 1. Thomas also testified that he came into work on October 12, 2006, he found the lock cut off on the gate and two campers were missing: (1) “a motor home and [a] travel trailer.” R. 84, ll. 5-13; 88, ll. 10-19.

Thomas maintained that one of the missing campers was “a 2007 Fleetwood Nitrous toy hauler,” which had a bumper pull. R. 84, ll. 18-23. Thomas also maintained that he has sold approximately five of those types of campers in the last six years since he has worked at Holiday Camper, and that it had a “reverse design.” R. 85, ll. 2-12.

The State asked Thomas, “Now, at some point that trailer was returned to you, is that correct?” Thomas replied, “Yes, sir.” R. 88, ll. 21-23. The State then asked Thomas, “[H]ow were you able to make that determination?” Thomas replied, “Because the decals were changed on it . . . and we looked through the trailer.” R. 89, ll. 17-21.

The State subsequently showed Thomas a picture of a camper with decals, and Thomas confirmed that the camper in the picture was same camper that was returned to Holiday Camper. R. 90, ll. 2-16. Thomas claimed that he was certain it was the stolen

camper from Holiday Camper because of “the uniqueness of the front end.” R. 90, l. 17 – 91, l. 9.

Outside the Presence of the Jury

The State then requested a bench conference, and the trial judge sent the jury out of the courtroom. R. 92, ll. 12-22. The State argued that since Thomas is not a government official, he could testify as to the V.I.N. number of the stolen camper matching the V.I.N. number of the camper subsequently returned to Holiday Camper with the decals on it. R. 93, l. 1 – 94, l. 10. In response, Tinsley objected as to the relevance of the testimony, and then later stated to the trial judge, “I’ll leave that to your discretion, Your Honor.” R. 95, ll. 4-6; 98, ll. 17-18.

Before making a ruling on whether Thomas could testify as to the V.I.N. number on the camper, the trial judge restated his prior ruling:

“Well, my ruling yesterday was that the police would have been justified in seizing that trailer itself based on the external evidence that’s been testified to today, what they were looking for, the uniqueness of it, and how it had been described by witnesses from the decals that were on it and things of that nature without ever entering the cause all that was in plain view on property they had been invited to go on. The actual entry into taking of the V.I.N. number to confirm it, I ruled it was not properly done.

R. 84, ll. 11-19. The trial judge then held that he would allow Thomas to testify as to the V.I.N. number on the camper the officers seized and returned to Holiday Camper since he had held the seizure was proper and Thomas was not acting as an agent of the State when he recorded the V.I.N. number. R. 99, l. 4 – 100, l. 8. The trial judge cited *United States v. Jacobsen*, 466 U.S. 109 (1984), in his determination. R. 100, ll. 2-3.

Tinsley asked the trial judge to note his objection, and the trial judge responded, "Yes, sir, your objection is noted and I understand this is a question that will probably be decided by someone else." R. 100, ll. 9-13. Tinsley then argued that the officers did not have probable cause to seize the camper based upon the testimony presented during the suppression hearing. R. 100, ll. 18-20. Consequently, the trial judge restated his ruling:

In an abundance of caution I made the ruling that I made, and in this particular case it's my finding that once the item has been returned to the owner, the owner's actions, thereafter, are not State actions, and, therefore, not subject to the Fourth Amendment, and, therefore, I'll allow [Thomas] to testify that later on, after the item had been returned to them, that they determined that the V.I.N. number was the V.I.N. number of the stolen item.

R. 101, l. 22 – 102, l. 5.

The jury then returned to the courtroom. R. 102, ll. 13-14.

Paul Thomas (continued)

The State presented a document with the specifications of the camper that was returned to Holiday Camper to Thomas; subject to Tinsley's previous objection. R. 102, l. 21 – 103, l. 11. Thomas testified that he recognized the document and that the camper's V.I.N. and model number was located on the document. R. 103, l. 14 – 104, l. 24. Thomas also testified that the V.I.N. and model number on the document matched the V.I.N. and model number of the camper stolen in October of 2006. R. 104, ll. 4-18.

ARGUMENT

The trial court erred in holding that the warrantless seizure of a locked camper on private property was proper and by allowing the person who sold the camper after it was seized to testify as to the VIN number of the camper to incriminate Tinsley in his criminal trial because the officers did not have probable cause to seize the camper and the trial court had previously held to suppress the VIN number due to the officers' illegal search of the camper.

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, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.³ Consequently, the United States Supreme Court created the exclusionary rule to safeguard Fourth Amendment rights. *United States v. Calandra*, 414 U.S. 338 (1974).

The Fourteenth Amendment incorporates the rule of excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). The exclusionary rule provides that evidence seized in violation of the Fourth Amendment must be excluded from trial. *Id.*; *See State v. Sachs*, 264 S.C. 541, 560, 216 S.E.2d 501, 511 (1975); *see also State v. Brown*, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010). Additionally, the exclusionary rule also prohibits the use of evidence obtained directly or indirectly through an unlawful search or

³ When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial judge's ruling if there is any evidence to support the ruling. *State v. Missouri*, 361 S.C. 107, 603 S.E.2d 594 (2004). Additionally, an appellate court will reverse only when there is clear error. *Id.*

seizure under the fruits of the poisonous tree doctrine. See *Wong Sun v. United States*, 371 U.S. 471, 484 (1963); see also *State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999) (finding that if the police exploit an unlawful search to seize evidence that would not have otherwise come to light, that evidence is the "fruit of the poisonous tree," and is not admissible)

Furthermore, the United States Supreme Court has held that "searches [and seizures] 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." *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnote omitted); See *Coolidge v. New Hampshire*, 403 U.S. 443, 91 (1971); see also *State v. Weaver*, 361 S.C. 73, 80-81, 602 S.E.2d 786, 790 (Ct. App. 2004). "The exceptions are "jealously and carefully drawn,' and there must be 'a showing by those who seek exemption...that the exigencies of the situation make the course imperative.'" *Coolidge*, 403 U.S. at 91. More specifically, the burden is on the State to justify a warrantless search or seizure, and the recognized exceptions have included: (1) search incident to a lawful arrest; (2) "hot pursuit;" (3) "stop and frisk;" (4) "automobile exception;" (5) the "plain view" doctrine; and (6) consent. *Id.*

However, despite these exceptions, the United States Supreme Court has definitely emphasized its concern with warrantless searches and seizures:

"The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. *Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of*

ferreting out crime.

Johnson v. United States, 333 U.S. 10, 14-15 (1948) (emphasis added). The Supreme Court of the United States has also addressed the warrant requirement's effect on the seizing officer: "*In cases where the securing of a warrant is reasonably practicable, it must be used and when properly supported by affidavit and issued after judicial approval protects the seizing officer against a suit for damages. In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.*" *Carroll v. United States*, 267 U.S. 132, 156 (1925) (emphasis added).

In this case, it is uncontested that the locked camper was on private property and was seized without a warrant. R. 36, l. 2 – 37, l. 22. The record also suggests that no exigent circumstances existed to justify prompt action on behalf of the officers, and as for the warrant exceptions, only two exceptions are in dispute: (1) the plain view doctrine and (2) the private individual/independent source doctrine. R. 80, l. 2 – 81, l. 8; 101, l. 22 – 102, l. 5.

Officers Did Not Have Probable Cause Based On Plain View

Although Officer White maintained that "during the course of [his] investigation [he had] been told that the stolen camper . . . was now marked with [racing] decals . . .," his testimony proved that he did not have probable cause to seize the locked camper on private property because he admitted: (1) that after conducting a "walk around inspection" of the camper, he was unable to find a public V.I.N. number to identify the camper as stolen; (2) that he conducted the warrantless search of the camper to "show who it belonged to;" (3) that he "didn't know whether it was a North Carolina camper or the Holiday Camper;" and

(4) that he knew Tinsley owned an enclosed racing trailer with identical racing decals as the camper. R. 18, ll. 16-21; 20, ll. 13-24; 23, ll. 18-20; 24, ll. 14-15; 25, ll. 7-8.

Thus, the trial judge erroneously held that the warrantless seizure of a locked camper on private property was proper under the Fourth Amendment because the officers failed to secure a search warrant or establish that probable existed to seize the camper. R. 77, l. 17 – 81, l. 8; 94, ll. 11-19; *See Coolidge v. New Hampshire*, 403 U.S. at 91; *see also Johnson v. United States*, 333 U.S. at 14-15; *Carroll v. United States*, 267 U.S. at 156.

Private Individual/Independent Source Doctrine Does Not Apply

The private individual/independent source doctrine does not apply because this case is distinguishable from that doctrine's normal application. *See United States v. Jacobsen*, 466 U.S. 109 (1984). This is because Thomas, the private individual, did not search the camper until after the seizure had occurred, instead of prior to any government involvement. R. 88, l. 21 – 89, l. 21; 103, l. 14 – 104, l. 18; *See Id.*; *see also Walter v. United States*, 447 U.S. 649, 662 (1980). Accordingly, the reason the private individual/independent source doctrine does not apply in this case is because the subsequent search and the evidence obtained by Thomas is directly linked to and affected by the trial judge's prior ruling that the seizure of the camper was proper. R. 77, l. 17 – 81, l. 8.

Furthermore, a logical interpretation of the Fourth Amendment is that it does not imply that searches are constitutionally more important or more protected than seizures. *See* U.S. Const. amend. IV. Instead, a plain reading of the Fourth Amendment implies their equivalence, and any attempt to parse the Fourth Amendment's protection of searches versus seizures trivializes the significant protections afforded by that amendment. Consequently, to allow the seizure of the camper after finding the officers had conducted an

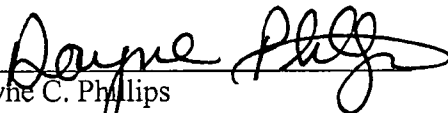
illegal search ignores what inevitably and invariably would occur: a search follows a seizure as night follows day.

Thus, the trial judge erroneously allowed Thomas to testify as to the V.I.N. number of the camper after it was seized, despite the trial judge's prior ruling to suppress the V.I.N. number due to the officers' illegal search of the camper. R. 94, ll. 11-19; 99, l. 4 – 102, l. 5. See *Mapp*, 367 U.S. at 655; see also *Wong Sun v. United States*, 371 U.S. at 484; *State v. Brown*, 389 S.C. at 483, 698 S.E.2d at 816; *State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (finding that if the police exploit an unlawful search to seize evidence that would not have otherwise come to light, that evidence is the "fruit of the poisonous tree," and is not admissible.).

CONCLUSION

For the foregoing reasons, James Tinsley's convictions should be reversed and this case remanded to the Spartanburg County Court of General Sessions for a new trial.

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

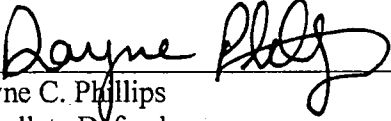
ATTORNEY FOR APPELLANT

This 8th day of May, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 8, 2012



Dayne C. Phillips
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES D. TINSLEY,

APPELLANT

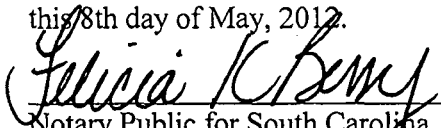
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of May, 2012.

Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of May, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES D. TINSLEY,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

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

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

County Courthouse
180 Magnolia Street, 3rd Floor
Spartanburg, S. C. 29306-2335
(864) 596-2575

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 2

ARGUMENT

 The bill of sale produced from resale of the stolen trailer and
 testimony concerning the VIN number on the bill of sale was
 properly admitted at trial, where the bill of sale was not seized
 by law enforcement but instead created by the victim after the
 trailer was recovered, where to the extent a search occurred to
 produce the VIN number on the bill of sale, it was the product
 of a private search, and further, if any evidence was the result
 of an improper search, any taint was attenuated sufficiently so
 that the bill of sale was not the fruit of an illegal search. 6

CONCLUSION 11

TABLE OF AUTHORITIES

Cases:

Burdeau v. McDowell, 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed 1048 (1921) 6

Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) 6

Hudson v. Michigan, 547 U.S. 586, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006) 9

Peters v. State, 302 S.C. 59, 393 S.E.2d 387 (1990) 7

State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000) 6

State v. Cohen, 305 S.C. 432, 409 S.E.2d 383 (1991) 6, 7, 8

State v. Moore, 377 S.C. 299, 659 S.E.2d 256 (Ct. App. 2008) 9

State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999) 9

United States v. Gray, 491 F.3d 138 (4th Cir. 2007) 9

United State v. Haqq, 278 F.3d 44 (2d Cir. 2002) 8

Wong Sun v. United States, 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) 9, 10

STATEMENT OF ISSUE ON APPEAL

The bill of sale produced from resale of the stolen trailer and testimony concerning the VIN number on the bill of sale was properly admitted at trial, where the bill of sale was not seized by law enforcement but instead created by the victim after the trailer was recovered, where to the extent a search occurred to produce the VIN number on the bill of sale, it was the product of a private search, and further, if any evidence was the result of an improper search, any taint was attenuated sufficiently so that the bill of sale was not the fruit of an illegal search.

STATEMENT OF THE CASE

Appellant Tinsley was indicted by the Spartanburg County Grand Jury for knowingly receiving or possessing stolen goods valued at more than five thousand dollars. Tinsley represented himself *pro se* at trial which started November 8, 2011 and ended on November 10, 2011 with the jury finding Tinsley guilty as charged. The Honorable Roger L. Couch sentenced Tinsley to ten years imprisonment, suspended to three years imprisonment and five years probation, all to run consecutive to his Oconee County convictions. The appeal from the Oconee County convictions are currently pending in this Court.

The first two days of trial were transcribed by Pamela Green, the last day by Margaret Woods. Consequently, the transcript of the third day of trial does not continue pagination from the second day of trial, but is separately paginated.

STATEMENT OF FACTS

Appellant Tinsley hid a stolen trailer on his Father's and eighty-six year old grandmother's property. Tinsley's grandmother was worried she would get in trouble.

Paul Thomas is the Service Manager for Holiday Camper and he testified as the first witness before the jury. Two camper trailers were discovered to be missing on the morning of October 13, 2006. The gate was crushed open and the lock was cut. One of these trailers was a 2007 Fleetwood Nitrous toy hauler. It had a bumper poll, which was uncommon. Thomas had sold only about five such trailers in six years time. The trailer has a unique design. ROA. p. 83-86.

By the time a Holiday Camper truck driver picked the trailer up, all the decals were changed on the trailer. The trailer was not admitted into evidence at trial – after being returned, it was subsequently sold. The VIN number on the bill of sale of this recovered trailer matched the VIN number that Holiday Camper reported to the Sheriff's Office when it went missing. ROA. pp. 88-92; pp. 103-104.

Tinsley's father, James D. Tinsley, Sr. (Father), testified. Father testified that he lived on South Welcome Road in Greenville. Tinsley's eighty-six year old grandmother lives next door. Tinsley called Father on December 2, 2006 and asked if he could bring a trailer over to store on the property. Father never saw the trailer before – it was a different one from the one Father last saw at Tinsley's residence. Tinsley brought the trailer over on December 2, 2006. The trailer had all his stickers all over it and a sticker for Dirty South Motor Sports with his name and telephone number on it. ROA. pp. 108-113.

Thomas Lindler, who worked the third shift with Tinsley at the Ina Bearing, U.S.A.

plant, testified that Tinsley asked him if he knew how to hot-wire an RV. On a later occasion, Tinsley asked Lindler if he would steal a dual purpose camper that Tinsley wanted to use when traveling for his go-cart racing. Tinsley would be able to haul his equipment and have somewhere to stay when he raced out of state. Lindler did not steal a trailer. Then one night, Tinsley told Lindler that Tinsley was having two guys steal a trailer for him that night while he was working. That same night, Tinsley left work early. Lindler went over to Tinsley's house in Spartanburg the next morning following his shift and saw two men he had never seen before. ROA. pp. 130-133; p. 154 (Lindler telling Tinsley on cross-examination: "I don't know when exactly you received it because I was not there. All I know is when you told me you were receiving it . . .").

Sargent Danny Shields was looking for an enclosed trailer and a friend told him about one he had seen. So Sargent Shields, along with Deputy Tim Tucker went to look at the trailer that was located behind a commercial building. They were wearing clothing that clearly identified them as being with the Sheriff's Office. A man named "Bill" met them, but said he thought the trailer was already sold and said it belonged to James Tinsley. It was a dual purpose trailer designed for go-carts or motorcycles. It bore a sticker that read "James Tinsley Racing" on the side. Sargent Shields left his business card with Bill. Sargent Shields identified a photo of the trailer as being the trailer he saw behind the commercial building. ROA. pp. 172-176.

Shields and Tucker seemingly provided Detective White a break in the case. Shields and Tucker told him they saw a trailer matching the description of one of the stolen trailers about five days earlier. However, it was moved when Detective White checked the location.

The trailer then showed up at Tinsley's grandmother's house. Tinsley's father called them and asked them to look at a trailer on the grandmother's property – his father thought it might be stolen. It matched all the descriptions given by Holiday Camper. Holiday Camper sent a representative who identified the camper and Detective White released the camper to them. The camper was worth in excess of \$20,000. ROA. pp. 186-190. On cross-examination, Tinsley asked Investigator White if it was possible that Tinsley stole the trailer himself and Shields answered: "It is possible." Investigator White agreed with Tinsley's statement: "I mean the camper was at my grandmother's in Greenville". ROA. p. 198.

Detective Henry Beck assisted Detective White in the investigation and actually received the phone call from Tinsley's father about the possibly stolen camper on December 12, 2006. They went to the property on December 13, 2006. A Holiday Camper representative looked at the trailer, identified it as theirs, and towed it away. Tinsley's father said that Tinsley brought the trailer to the property on December 2, 2006. It so happens that Detective Beck already had spoken with Tinsley on December 5, 2006. Detective Beck asked Tinsley if he knew anything about the campers at Bill Dotson's. Tinsley said he saw them there. But he did not tell Detective Beck that he traded or bought a trailer from Bill Dotson, which was one of Tinsley's defenses at trial along with the apparent defense that the State failed to prove that he did not steal the trailer himself rather than receive it. ROA. pp. 201-206. Tinsley's cross-examination yielded testimony from Detective Beck that he was investigating the theft of multiple campers, that altogether four campers were recovered, and also an RV was recovered in North Carolina. ROA. p. 207.

Tinsley recalled his father to the stand to help explain further about his father's call

to the Sheriff's Office:

Well, we had some conversation with a law enforcement officer in another jurisdiction and the question came up about the camper and it was that officer that told me that I should get in contact with Detective Beck and ask him. You and I talked about that and I told ya that I felt like we needed to find out for sure, you know, the provenance or whatever you wanna call it of that camper and you agreed with that and after I had the discussion with the other officer I told you what the officer had relayed to me that I should contact Detective Beck about it and you told me well go ahead and do whatever you need to do and that's how I came to call Detective Beck, that's how I knew that Detective Beck existed is because I learned it from another source.

2d ROA. p. 17, lines 2-14.

ARGUMENT

The bill of sale produced from resale of the stolen trailer and testimony concerning the VIN number on the bill of sale was properly admitted at trial, where the bill of sale was not seized by law enforcement but instead created by the victim after the trailer was recovered, where to the extent a search occurred to produce the VIN number on the bill of sale, it was the product of a private search, and further, if any evidence was the result of an improper search, any taint was attenuated sufficiently so that the bill of sale was not the fruit of an illegal search.

Appellant Tinsley complains that the trial court erred in allowing the State to admit into evidence and publish the bill of sale for the trailer that was sold after it was recovered from Father's property. However, at most, the VIN number found on the bill of sale was the result of a private search, and further, it would not be considered fruit of the poisonous tree to the extent it could be considered the result of an illegal search because the "taint" would be attenuated.

Evidence secured by private searches, even if arbitrary, will not be excluded from a criminal trial. Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); Burdeau v. McDowell, 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed 1048 (1921); State v. Cohen, 305 S.C. 432, 409 S.E.2d 383 (1991). "The Fourth amendment does not bar a search and seizure, even an arbitrary one, effected by a private party on his own initiative." State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000). It does, however, bar evidence arising from such intrusions if the private party acted as an instrument or agent of the government. Id.

In Cohen, this Court further stated that:

it may be said that pre-search contacts between a government official and private citizen, whether or not apparently intend-

ed by the government to prompt the citizen to render some type of assistance, are not deemed sufficient to make a search by the private citizen other than a 'private' search. Even where the government encouragement was rather strong and specific, yet short of an explicit request for a search, courts have been inclined to declare the search private nonetheless if there was in addition a legitimate private purpose behind the search. [citation omitted].

Id. at 385. The "totality of the circumstances" include, but are not limited to: "the citizen's motivation for the search or seizure; the degree of governmental involvement, such as advice, encouragement, knowledge about the nature of the citizen's activities, and the legality of the conduct encouraged by the police." Id. In other words, more than the mere presence of a police officer or even subtle encouragement is necessary to constitute the government action. See Peters v. State, 302 S.C. 59, 393 S.E.2d 387 (1990) (sister-in-law first discovered LSD hidden in the defendant's home on her own while visiting; that the police later directed her to go back and retrieve some of it for them was not a government search).

In the instant case, detectives responded to Father's request to go to Father's property and view the camper. Detective White attempted to find a VIN number on the outside of the trailer, but there was not one. Detective White testified he believed the trailer could have been seized at that point. However, they gained access to the trailer by having a locksmith remove the lock. Detective White determined it matched the description of the stolen camper and called a Holiday Camper representative. The representative looked at the trailer and determined it was the company's property. The Sheriff's investigators allowed Holiday Camper to pull their own trailer away.¹ ROA. pp. 15-21; pp. 85-91; pp. 188-190; pp. 202-

¹ Paul Thomas testified that the camper was recovered from Whitehorse Road (ROA. p. 88), but then admitted he did not go there himself. Based on testimony

203.

Paul Thomas, the service manager for Holiday Camper testified that after the trailer was recovered, Holiday Camper subsequently sold the trailer, and a bill of sale was prepared. The bill of sale was put into evidence and had a VIN number. ROA. pp. 103-105.

Tinsley's arguments for suppression fail because the trailer was not put into evidence, and the bill of sale was prepared after the trailer was recovered by Holiday Camper and therefore was not subject of a search. "[T]he well-settled common-law rule is that a thief in possession of stolen goods has an ownership interest superior to the world at large, save one with a better claim to the property." United State v. Haqq, 278 F.3d 44, 50 (2d Cir. 2002).

To the extent Holiday Camper employees performed a "search" of their own property to determine the VIN number for the sale of their own property, this search was a private search outside the confines of a government search. The act of preparing a bill of sale for sale of the trailer was under Holiday Camper's initiative and not at law enforcement's behest. Accordingly, the search was a private search not protected by the Fourth Amendment. Cohen, supra.

The trial court correctly found that the seizure of the trailer was proper. Father contacted law enforcement to come to his property because of his own suspicions that the trailer left on his property was stolen. The record reflects that Tinsley was a suspect in thefts of other trailers and stickers bearing his name were on the trailer. Given the absence of a

of the officers that the representative was allowed to take the trailer after coming to the scene and identifying it, and the absence of testimony that law enforcement towed the trailer themselves, it appears that testimony the trailer was recovered from Whitehorse Road is erroneous.

VIN number on the outside of the trailer and the fact that the trailer met the description of the stolen trailer, law enforcement had probable cause to seize the trailer. Further, the search inside the trailer was proper also. State v. Moore, 377 S.C. 299, 659 S.E.2d 256 (Ct. App. 2008) (finding law enforcement had justification under the automobile exception to seize and search vehicle on Moore and his brother's property that matched the description of vehicle involved in a fatal hit and run accident, based on a combination of information). In the instant case, the same exigent circumstances that apply to a motor vehicle exists, because the trailer was readily mobile by virtue of being in a state where it would be easily towed away.

Further, even assuming the search inside the trailer and even the "seizure" of the trailer were illegal, the claim fails because publication of the bill of sale would not be considered fruit of the poisonous tree. The "fruit of the poisonous tree" doctrine holds that evidence produced by or directly derived from an illegal search is generally inadmissible against the defendant due to its original taint. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). However, in Wong, "the United States Supreme Court has declined to hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police." State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999).

"Even if the evidence is the product of an unconstitutional search, it is nonetheless admissible if the causal connection between the evidence and the illegal conduct is attenuated." United States v. Gray, 491 F.3d 138, 154 (4th Cir. 2007) (citing Hudson v. Michigan, 547 U.S. 586, 126 S.Ct. 2159, 2164, 165 L.Ed.2d 56 (2006)).

"The question is thus 'whether, granting establishment of the primary illegality, the

evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.”

Wong Sun, 371 U.S. at 488.

In the instant case, the trailer was returned to the rightful owner and the rightful owner recorded the VIN number in the course of business. It is apparent from the record that this was done without any intention of law enforcement exploiting whatever illegality occurred from their previous search inside the trailer. Accordingly, the record does not support that the publication of the bill of sale may be considered fruit of the poisonous tree.

Accordingly, the conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General


JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY:



DAVID SPENCER

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

ATTORNEYS FOR RESPONDENT

April 30, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES D. TINSLEY, JR.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

By: 

DAVID SPENCER

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

ATTORNEYS FOR RESPONDENT

April 30, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES D. TINSLEY, JR.,

Appellant.

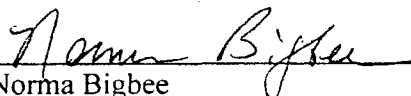
PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within **Final Brief of Respondent** on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Dayne C. Phillips, Esquire
SC Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 30th day of April, 2012.


Norma Bigbee
Legal Assistant

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