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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of General Sessions

Thomas L. Hughston, Jr., Circuit Court Judge

Appellate Case No. 2018-000561
Lower Court Case No. 2016-GS-10-02883

The State .....Respondent,

v.

General T. Little.....Appellant.

APPELLANT'S PETITION FOR REHEARING OF THE COURT'S SUBSTITUTED OPINION

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Pursuant to Rule 221(a), SCACR, Appellant General T. Little (Dr. Little) petitions the Court rehear its substituted decision in State v. Little, Op. No. 2021-UP-196 (S.C. Ct. App. filed July 21, 2021). For the reasons that follow, the Court should grant rehearing, issue another substituted opinion, reverse Dr. Little's murder conviction, and remand for a new trial.[1]

ARGUMENT

Dr. Little writes only to address the new ground included in the Court's substituted opinion. See id. at 2 (affirming the circuit "court's admission of evidence found in Little's vehicle and home" on statute constitutional grounds as well (citing State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007) ("The focus in the state constitution is on whether the invasion of privacy is reasonable." (emphasis added))). Respectfully, the Court erred in relying upon Weaver to find officers' illegal search in this case was reasonable. It was not.

To begin, the Court overlooked that our supreme court's analysis in Weaver hinged on the fact that, as of 2007, "there ha[d] never been a clear statement by the United States Supreme Court that a warrant is required before a vehicle is searched in a private place." 374 S.C. at 322 n.2, 649 S.E.2d at 483 n.2. But that is no longer the case. E.g., Collins v. Virginia, 138 S. Ct. 1663, 1672 (2018) (holding that "searching a vehicle parked in the curtilage involves not only the invasion of the Fourth Amendment interest in the vehicle but also an invasion of the sanctity of the curtilage"). Further, Weaver was decided under the automobile exception to the warrant requirement, which does not apply when a vehicle is parked on private property. Id. Here, the State argues exigent circumstances justified its unlawful search of Dr. Little's vehicle parked within the curtilage.

[1] For the sake of brevity, Dr. Little expressly incorporates by reference all arguments raised in his June 24, 2021 petition for rehearing and suggestion for rehearing en banc of the panel's June 9, 2021 opinion, as well as the July 13, 2021 reply in support, as additional grounds on which the Court should grant rehearing. Because the panel granted the petition for rehearing—instead of denying it when withdrawing and substituting the opinion—this filing is necessary to preserve the state constitutional argument on which this Court did not rule in its initial opinion but did via one sentence in the substituted opinion.

Although this Court cannot overrule precedent from the Supreme Court of South Carolina, the Court need not go there. Rather, it can merely distinguish Weaver on the grounds set forth above and leave the question regarding the continued viability of Weaver for another day.

Deputy Colburn testified he searched the vehicle twice over a 90-second period. And his purported justification was to ensure office safety. But he could have ascertained no one was hiding in the vehicles in only a few seconds. By the time he walked around Dr. Little's vehicle the second time, Deputy Colburn undoubtedly had already ascertained nobody was hiding in the vehicle. The State never argued to the contrary. Accordingly, the justification manufactured by the State after the fact is a façade. Deputy Colburn was there to conduct a warrantless search to discover evidence to use against Dr. Little, and this trespass constituted an unreasonable invasion of privacy. See S.C. CONST. art. I, § 10. And to this day, the State has never articulated any exigent circumstances that purportedly justified Detective Muirhead's subsequent illegal search.

In sum, Deputy Colburn's scrupulous and illegal search of the vehicle parked in the curtilage of Dr. Little's home was not reasonable. Deputy Colburn testified that Dr. Little was not a suspect, he did not believe Dr. Little was hiding, and he did not believe Dr. Little was armed and dangerous. Further, Deputy Colburn had backup on the scene. Yet he made multiple laps around Dr. Little's vehicle with a flashlight for over 90 seconds, paying such close attention to the interior of the vehicle that he was able to notice a smudge on the inside of a door and towels in the floorboard. With all due respect, that is not a sweep to ensure officer safety. Instead, he was plainly conducting a search for evidence. Cf. Elkins v. United States, 364 U.S. 206, 223 (1960) (stating "[i]f the government becomes a lawbreaker, it breeds contempt for the law"). And seeing a vehicle's passenger side window down and its right rear tire parked slightly off the driveway could not have given an officer a good faith belief Dr. Little or any other person posed a danger to

those on his premises. Perhaps that is why the circuit court noted Deputy Colburn never explained why it did. (R. pp. 160–61). A conclusory assertion of officer safety, standing alone, is insufficient to show probable cause for exigent circumstances. But that is all the circuit court had. Respectfully, this Court erred by affirming in summary fashion. Suppression was required.

CONCLUSION

When objectively viewing the totality of the circumstances, Deputy Colburn was searching the vehicles parked in the curtilage of Dr. Little's home to obtain evidence, not conducting a sweep to ensure officer safety. His trespass and meticulous 90-second search unconstitutionally invaded Dr. Little's right to privacy, and it was neither reasonable nor justified under the circumstances. See S.C. CONST. art. I, § 10. The Court should therefore grant rehearing, issue another substituted opinion, and reverse and remand to the court of general sessions for a new trial.

Respectfully submitted,

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