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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

THERRON RENARD RICHARDSON,

APPELLANT

APPELLATE CASE NO. 2019-000114

Appeal from Charleston County

Honorable R. Markley Dennis, Circuit Court Judge

Opinion No. 2021-UP-279

PETITION FOR REHEARING

On July 21, 2021 this Court affirmed the trial judge's decision to allow the introduction of evidence which was seized from Petitioner's residence in violation of the Fourth Amendment to the United States Constitution, article I section 10 of the South Carolina Constitution, and section 16-25-70 of the South Carolina Code. State v. Richardson, Op. No. 2021-UP-279 (S.C. Ct. App. Filed July 21, 2021). Pursuant to Rule 221(a), SCACR, Petitioner respectfully requests this Court rehear the matter considering the significant points overlooked and/or misapprehended by this Court discussed below.

Exigent Circumstances

In affirming Petitioner's convictions, this Court found that the trial judge did not err in finding that exigent circumstances existed for officers to enter Petitioner's home without a warrant because "the substance of the [911] call and the appearance that someone was inside the home was sufficient for an objectively reasonable officer to enter [Petitioner's] home without a warrant and search for a victim or suspect." This Court noted that the initial 911 call was from a woman who claimed that she was locked in her bedroom and scared that her boyfriend would harm her. However, this Court overlooked the fact that the 911 call originated from a location that was several miles away from the address given by the caller which was known by the 911 dispatcher. R. 158, l. 15 – 160, l. 16.

This Court also noted the presence of a truck in the yard and the cracked backdoor as indicative of the presence of an individual inside the home but ignored the responding officers' admissions that they did not see anyone or hear anything coming from inside the house. R. 29, l. 7 – 30, l. 7; R. 115, ll. 2 – 8. The officers did not see or hear anything when they got to Petitioner's house that corroborated the 911 call. In fact, the 911 call was discredited by the fact that it originated from a location that was in a different location than Petitioner's house. Therefore, the officers did not have an objectively reasonable belief that an occupant was seriously injured or in imminent danger. See Brigham City, Utah v. Stuart, 547 U.S. 398 (2006) (holding that officers' warrantless entry into residence was reasonable where they personally observed juveniles drinking beer in the backyard and saw a fight break out inside through a window).

Petitioner's case is substantially different from the authorities relied on by this Court in affirming Petitioner's convictions. In State v. Abdullah, 357 S.C. 344, 592 S.E.2d 344 (Ct. App.

2004), this Court found that exigent circumstances justified the warrantless entry into a residence to render aid to possible victims. Specifically, in Abdullah, the officers were called to the scene of a burglary and gunfire. When the officers arrived, they encountered the defendant who was uncooperative along with multiple bullet holes in the walls of the residence. Because of these corroborating circumstances viewed by the officers on the scene, this Court found that exigent circumstances existed for the officers to enter the residence to assist potential victims. Id. at 351-52, 592 S.E.2d at 348. None of the corroborating circumstances present in Abdullah were present in Petitioner's case. Instead of encountering an unruly subject claiming to be a victim, in Petitioner's case the officers encountered nobody and saw nothing that would justify their warrantless entry.

Petitioner's case is also readily distinguishable from State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009). In Herring, police responded to a strip club where the manager had just been shot to death by a patron who then fled the scene. Other employees gave the officers the license plate of the vehicle that was driven by the shooter which the officers used to find the defendant's registered address. When the officers arrived at the defendant's home they looked through an open garage window where they saw the vehicle. The officers then obtained a search warrant for the house. Id. at 206-07, 692 S.E.2d at 493. The Herring Court found that the officer looking in the garage window was justified by exigent circumstances and noted that the officers were looking for a suspected murderer who was believed to be armed and dangerous and they already knew the make and model of his vehicle, his license tag number, his business address and his home address. Id. at 210-11, 692 S.E.2d at 495.

The warrantless entry and subsequent search of every room in Petitioner's residence was very different factually from the "peek" into Herring's garage window. The entry into

Petitioner's home was a much greater intrusion into his right to privacy under the South Carolina Constitution and was not justified by any exigent circumstances. S.C. Const. art. I, § 10. Any initial perceived exigency by the 911 call was negated by what the officers observed at Petitioner's house. Therefore, the trial judge's decision was not supported by any evidence in the record. See State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000).

Plain View

This Court found that the white powder on a digital scale in the bathroom was in plain view before the officers conducted a field test on the powder because "[v]iewed alongside the guns, cash, and the fact that the white powder was on a small digital scale, the incriminating nature of the [powder] was immediately apparent." This Court overlooked the fact that the officers did not have any idea what the white powder was until after they conducted a field test on it. The officers' actions implicitly acknowledged that the incriminating nature of the powder was not immediately apparent, and both the trial judge and the solicitor recognized this fact.

As the trial judge pointed out, seeking a search warrant prior to conducting the field test would have been a waste of the magistrate judge's time because the white powder could have been "just baby powder." R. 179, l. 21 – 180, l. 8. The solicitor agreed with the trial judge that the officers could not be sure what the white powder was without conducting a field test on it. R. 190, l. 16 - 191 l. 7. The clearest indication that the incriminating nature of the white powder was not immediately apparent to the officers is the fact that they had to manipulate the powder to determine it was cocaine before attempting to secure a search warrant. This Court misapprehended the record in concluding that the white powder was in plain view because the officers had to conduct a field test on the substance before they determined it was incriminating.

In finding that the white powder was in "plain view," this Court relied on State v. Abdullah, 357 S.C. 344, 592 S.E.2d 344 (Ct. App. 2004). This Court overlooked the stark difference in Petitioner's case, where the officers observed white powder, and Abdullah, where the officers observed bags of marijuana. In Abdullah, the officers knew immediately that the substance was marijuana. Id. at 352-53, 592 S.E.2d at 349. In Petitioner's case, the officers did not know what the white powder was which was why they had to conduct a field test on it before attempting to obtain a warrant.

Petitioner's case is also distinguishable from State v. Dobbins, 420 S.C. 583, 595, 803 S.E.2d 876, 882 (Ct. App. 2017), which held that methamphetamine and numerous items associated with manufacturing methamphetamine were in the officer's plain view because the officer was "experienced in methamphetamine detection" and smelled the overwhelming and distinct odor of methamphetamine being actively manufactured when he arrived at the defendant's residence. The Dobbins Court found it significant that the officer testified that he was familiar with the "one in a million" smell of methamphetamine from prior experience and that the officer smelled the strong odor of the drug when he arrived on the scene. None of these factors were present in Petitioner's case as the officers did not testify to any familiarity with any unique odor associated with the white powder. Again, this is the reason the officers conducted a field test on the powder; *they did not know what it was*. The trial judge's determination that the powder was in plain view was clearly erroneous. See Arizona v. Hicks, 480 U.S. 321 (1987).

S.C. Code Ann. § 16-25-70(H)(1)(a)

This Court held that the officers who entered Petitioner's house without a warrant were doing so for the purpose of preventing harm to a potential domestic violence victim or to arrest a potential domestic violence suspect. This Court further found that the drugs were found

in a room where the potential suspect "could have been." Because of that, this Court found that S.C. Code § 16-25-70 did not preclude the admission of the evidence against Petitioner at his trial.

This Court misapprehended this statute to the extent that it found the drugs were admissible because they were found in a room where a suspect "could have been." The statute does not permit evidence to be admitted against a suspect if it is found in a room where a suspect might or could be. Instead, the statute provides that evidence is admissible if it is found "in a room in which the officer is interviewing, detaining, or pursuing a suspect." S.C. Code 16-25-70 (H)(1)(a). An officer's speculation that a suspect could be in a particular location is not equivalent to actively pursuing a suspect into a particular room. The officers were not pursuing a suspect in Petitioner's case because they had no information indicating that anyone was present inside the residence, nor did they see anyone outside the residence who fled inside the residence for them to pursue.

Based upon the specific points overlooked and/or misapprehended by this Court in its opinion discussed above, Appellant requests this Court to rehear the matter.

Respectfully Submitted,

ADAM SINCLAIR RUFFIN
Appellate Defender

This 2nd day of August, 2021.

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Scott Matthews, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and a copy of the Petition for Rehearing has been served upon Therron Renard Richardson, #191713, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 2nd day of August, 2021.

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT