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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2019-000114

THE STATE, Respondent,

vs.

THERRON RENARD RICHARDSON, Appellant.

RETURN TO PETITION FOR REHEARING

On July 21, 2021, this Court affirmed the convictions of Appellant for trafficking in cocaine in excess of 400 grams, possession of a firearm by a person convicted of a violent crime, and possession of a firearm during the commission of a violent crime. State v. Richardson, Opinion No. 2021-UP-279 (S.C. Ct. App. filed July 21, 2021). Thereafter, Appellant filed a petition for rehearing with this Court on August 2, 2021. The State's return to Appellant's petition for rehearing follows.

Appellant asserts this Court erred in the following three holdings from its opinion: (1) this Court's determination that the trial court did not err in concluding exigent circumstances existed allowing officers to enter and search Appellant's home without a warrant, (2) this Court's determination that law enforcement officers did not exceed the scope of their protective sweep of Appellant's home by performing a field test on suspected cocaine in plain view, and (3) this Court's determination that the trial court did not err in finding the evidence seized from

Appellant's home was admissible because officers were pursuing a suspect when they entered Appellant's home. Contrary to Appellant's assertion, this Court correctly affirmed Appellant's convictions on each of the aforementioned grounds. Appellant's allegations of error will be discussed sequentially below.

Exigent Circumstances

First, Appellant complains that by finding the officers who entered Appellant's home acted reasonably based on the substance of the 911 call received and the appearance that someone was inside Appellant's home, 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." (Petition for Rehearing 2). Appellant's argument is plainly contradicted by the record. While a discrepancy in call location was later discovered, Appellant ignores the fact that this discrepancy was not discovered until approximately fifteen minutes after Officer Bowen and Officer Alexander arrived at Appellant's address. (R. 167, 577-82). Appellant also ignores the fact that neither Alexander nor Bowen knew about the GPS discrepancy. (R. 29-30, 160-61). Indeed, trial counsel for Appellant acknowledged at trial that the GPS discrepancy was never reported to Bowen and Alexander. (R. 166). In his petition for rehearing, Appellant continues to attempt to impute knowledge of the discrepancy to Bowen and Alexander based on what a 911 operator discovered 15 minutes after Bowen and Alexander arrived at Appellant's residence. This Court correctly found Appellant's argument unavailing and properly held it was objectively reasonable for Bowen and Alexander to enter Appellant's residence.

Appellant also asserts this Court "ignored the responding officers' admissions that they did not see anyone or hear anything coming from inside the house." (Petition for Rehearing 2).

Appellant again proposes an impossible standard for law enforcement to follow that is not required by our State or Federal Constitutions. Law enforcement officers are not expected to be perfect, nor are they held to a standard of omniscience. Law enforcement does not have to, nor should they, wait outside a residence where they think an ongoing assault is taking place or may have taken place until they hear a noise coming from the house or get someone to answer the door. To do otherwise, as Appellant suggests, would require law enforcement to be negligent in their duty to serve and protect the public.

Plain View

Next, Appellant argues this Court erred in finding the white powder found on a scale in Appellant's bathroom was in plain view and the incriminating nature of the powder was immediately apparent. Appellant asserts "this Court overlooked the fact that the officers did not have any idea what the white powder was until they conducted a field test on it." (Petition for Rehearing 4). Again, Appellant's argument is plainly contradicted by the record. Far from not having "any idea what the white powder was until they conducted a field test on it", Officer Bowen testified the presence of a scale, money, and guns led him to believe there was drug activity occurring at the residence. (R. 33-34). This Court properly held that the incriminating nature of the white powder was immediately obvious to the officers.

However, even if Appellant's argument is correct, Appellant fails to recognized that any error by the trial judge was entirely harmless in light of the approximately two kilograms of cocaine that were subsequently found inside Appellant's residence pursuant to a search warrant that Appellant did not challenge at trial. (R. 334-35, 365-67).

S.C. Code § 16-25-70(H)(1)(a)

Appellant finally argues this Court erred by affirming the trial judge's holding that evidence seized from Appellant's house was properly admitted because officers were pursuing a suspect of criminal domestic violence when they entered the home. Appellant specifically takes issue with this Court's finding that officers found the cocaine in a room where a CDV suspect could have been. Contrary to Appellant's assertion, an officer's reasonable belief that a suspect could be in a particular location is equivalent to actively pursuing a suspect. Bowen and Alexander were not omniscient, nor is law enforcement expected to be. Bowen and Alexander entered the residence with the specific purpose of locating a victim or a suspect of domestic violence. (R. 32, 116-17). Just because law enforcement did not find anyone inside Appellant's home, does not mean they weren't pursing a suspect when they entered the house. This Court correctly held the CDV statute did not preclude the admission of the evidence seized from Appellant's home.

However, even if the CDV statute did preclude the admission of evidence seized from Appellant's home, such a preclusion would only apply to the amount of cocaine found in plain view on the digital scale. As previously argued, approximately two kilograms of cocaine were found in Appellant's residence pursuant to a properly executed search warrant that Appellant did not challenge at trial. (R. 365-67, 419-20). Therefore, any error in the admission of the cocaine found in Appellant's bathroom would be entirely harmless.

CONCLUSION

For all of the foregoing reasons, the State requests the panel deny the petition for rehearing, and affirm Appellant's convictions and sentences.

Respectfully submitted,

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August 11, 2021

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PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Return to Petition for Rehearing on Appellant by email to the address listed in AIS.

I further certify that all parties required by Rule to be served have been served.
This 11th day of August, 2021.

LEIGH ANN STONE
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Leigh Ann Stone

From: Leigh Ann Stone
Sent: Wednesday, August 11, 2021 2:41 PM
To: aruffin@sccid.sc.gov
Cc: Scott Matthews; William Blitch; sleverett@sccid.sc.gov
Subject: The State v. Therron R. Richardson (2019-000114)
Attachments: RICHARDSON Therron R.-Cover Letter-Return to Petition for Rehearing (02670225xD2C78).PDF; RICHARDSON Therron R.-Return to Petition for Rehearing (02670230xD2C78).PDF

Good Afternoon Mr. Ruffin,

Attached please find a copy of the Return to Petition for Rehearing in The State v. Therron R. Richardson (2019-000114) along with its cover letter. This return will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

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