


THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL
APR 18 2013
SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ROGER BRUCE,

APPELLANT

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

Opinion No. 5110

Appellate Case No. 2011-197635

PETITION FOR REHEARING

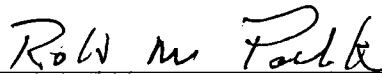
Pursuant to Rule 221(a), petitioner petitions this Court for rehearing concerning the following points that may have been overlooked or misapprehended. The opinion of the Court asks the lower court to determine if petitioner “had a legitimate expectation of privacy in the trunk of Creel’s car...” The Fourth Amendment violation, however, occurred at the moment the police seized the car keys in petitioner’s apartment without his consent and without a search warrant. Everything that followed after that was the fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1981). The lower court is then asked to determine if the error is harmless. But a trial judge is not to sit in judgment of his own decision. State v. Floyd, 303 S.C.

298, 400 S.E.2d 145 (1991). It is the job of the reviewing court to determine if an error is harmless. State v. Black, 400 S.C. 10, 732 S.E.2d 880 (2012); State v. Salley, 398 S.C. 160, 727 S.E.2d 740 (2012); Ex parte Crymes, 630 So.2d 125 (Ala. 1993); Driven v. Com., 361 S.W.3d 877 (Ky. 2012).

The lower court is also asked to make additional findings, but the State should not be allowed to introduce any new evidence as the solicitor had his chance to make the record he did make. Any further attempts to introduce additional facts raises the question of double jeopardy and collateral estoppel. Burks v. United States, 437 U.S. 1, 98 S.Ct. 2141 (1978); Williams v. State, 314 Ga. App. 840, 846, 726 S.E. 2d 66, 71 (Ga. App. 2012). The record in this case is insufficient to support the admissibility of any evidence seized from petitioner's residence in violation of the Fourth Amendment and any evidence that was the fruit of the poisonous tree is also inadmissible.

The petition for rehearing should be granted.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

This 18th day of April, 2013.

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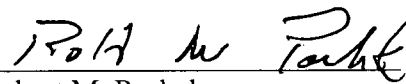
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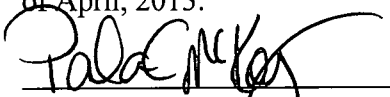
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Brendan J. McDonald, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of April, 2013.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 18th day
of April, 2013.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.