STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Charleston County

Honorable R. Markley Dennis, Circuit Court Judge

Opinion No. 2021-UP-279 (S.C. Ct. App. Filed July 21, 2021)

THE STATE,

RESPONDENT,

V.

THERRON RENARD RICHARDSON,

APPELLANT

APPELLATE CASE NO. 2019-000114

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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INDEX

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on September 27, 2021.

QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred by affirming the trial judge's conclusion that the warrantless entry into Petitioner's residence was justified by the exigent circumstances exception to the Fourth Amendment where law enforcement's warrantless entry was based solely on a 911 call reporting a domestic violence in progress and the officers observed no corroborating evidence when they arrived at the unoccupied residence?

2.

Whether the Court of Appeals erred by holding that the white powder in Petitioner's bathroom was immediately incriminating and fell within the plain view exception to the warrant requirement where law enforcement exceeded the scope of the protective sweep by conducting a field test on the white powder and the results of the field test were used as a basis for obtaining a search warrant?

3.

Whether the Court of Appeals erred by affirming the trial judge's ruling that the evidence found in Petitioner's residence was admissible where law enforcement was responding to a domestic violence call and the evidence was not found in plain view in a room in which law enforcement were "interviewing, detaining, or pursuing a suspect" under S.C. Code Ann. § 16-25-70(H)(1)(a), and therefore the evidence found was inadmissible under the statute?

STATEMENT OF THE CASE

Petitioner was indicted by the Charleston County grand jury for trafficking cocaine, four counts of possession of a firearm by a person convicted of a crime of violence, and one count of possession of a weapon during the commission of a violent crime. R. 583-588. Petitioner's first jury trial was held before the Honorable Stephanie McDonald on November 13 – 15, 2012. At that time, Petitioner was represented by Donna K. Taylor and D. Lynn Bowley. The state was represented by Emmanuel Ferguson and Culver Kidd. Petitioner was convicted as charged and sentenced to thirty-years imprisonment for the trafficking cocaine offense and five-years imprisonment for each of the weapons charges. One of the weapons sentences was ordered to be served consecutively to the cocaine sentence.

Petitioner appealed his convictions and was represented by Robert Pachak of Appellate Defense. The Court of Appeals affirmed his convictions, finding the issue was not preserved for appellate review. State v. Richardson, Op. No. 2014-UP-471 (S.C. Ct. App. filed Dec. 8, 2014). Petitioner then filed a post-conviction relief action which was granted by the Honorable John C. Hayes, III. The state filed a petition for a writ of certiorari which was denied by the Supreme Court on May 24, 2018.

The state called Petitioner's case for retrial on January 14 – 16, 2019 before the Honorable R. Markley Dennis, Jr., R. 193. At his retrial, Petitioner was represented by Rodney D. Davis and Daniel Summa. The state was represented by J. Whitney Sowards and Lauren M. Frierson. Petitioner was convicted as charged and again given an aggregate sentence of thirty-five-years imprisonment.

The Court of Appeals affirmed Petitioner's convictions in State v. Richardson, Op. No. 2021-UP-279 (S.C. Ct. App. Filed July 21, 2021). Petitioner filed a petition for rehearing on

August 3, 2021. The Court of Appeals issued an order denying the petition for rehearing on September 27, 2021.

This petition for writ of certiorari to the South Carolina Court of Appeals follows.

ARGUMENT

1.

The Court of Appeals erred by affirming the trial judge's conclusion that the warrantless entry into Petitioner's residence was justified by the exigent-circumstances exception to the Fourth Amendment because law enforcement's warrantless entry was based solely on a 911 call reporting a domestic violence in progress and the officers observed no corroborating evidence when they arrived at the unoccupied residence.

Relevant Facts

On October 17, 2010, Jason Bowen and Julius Alexander, both with the Charleston County Sheriff's Department, were dispatched to an "in-progress domestic call." R. 25, ll. 6 – 22; R. 111, ll. 21 – 25. The information they received was that "a female caller had locked herself in a bathroom and that a male subject was trying to get to her." R. 26, ll. 5 – 12. Although the caller gave an address located in West Ashley, the phone call originated from a location in downtown Charleston. R. 158, l. 15 – 159, l. 10. The 911 dispatcher, aware of this discrepancy, contacted Charleston City Police Department to ask them to respond to the location in downtown Charleston where the cell phone call originated. R. 159, l. 11 – 160, l. 16.

When Bowen and Alexander arrived at the address in West Ashley, Bowen approached the front door and knocked but did not get any response. R. 27, l. 8 – 28, l. 2. Bowen and Alexander both admitted that they did not see anyone else when they arrived at the residence nor did they hear any noise coming from inside. R. 29, l. 7 – 30, l. 7; R. 115, ll. 2 – 8. Alexander

claimed that when he walked around to the back of the home, the back sliding-glass door was "slightly cracked open." R. 115, ll. 2 – 8.

Bowen and Alexander made a warrantless entry into the home. R. 31, ll. 9 – 13; R. 116, l. 23 – 117, l. 8. As they entered, they looked in each of the rooms to see if any people were present. R. 31, l. 21 – 32, l. 1. Bowen stated that the reason he felt it was necessary to enter the home was because "we didn't know if there might be a person harmed in the residence that needed aid or some type of harm actively occurring that we needed to put a stop to." R. 32, ll. 2 – 12. They did not locate anyone inside the home despite looking in all the rooms, closets, and bathrooms. R. 32, l. 19 – 33, l. 16.

Bowen claimed that in one of the bathrooms there was a "drug-type scale that had some white residue on it." R. 33, ll. 20 – 22. He also said he found a safe in the closet that had "money strewn out on the floor in front of it" and that there was a bank bag with a "large number of cash bills in it." R. 33, l. 23 – 34, l. 1. Bowen further claimed that there were "guns laid out in a very particular fashion under the bed." R. 34, ll. 2 – 3. Bowen and Alexander's supervisor, Andrea Moniz, also responded to the scene. Moniz performed a field test on the white residue which was presumptively positive for cocaine. R. 440, l. 4 – 441, l. 6; R. 444, l. 12 – 445, l. 10.

Thomas Plyler with the Charleston County Sheriff's Office prepared the search warrant in this case based on the information relayed to him from Bowen and Alexander. R. 133, l. 21 – 134, l. 9; R. 137, ll. 13 – 24. Plyler included the positive field test in his affidavit that he presented to the magistrate to obtain the search warrant. R. 137, l. 25 – 138, l. 14; R. 571. Upon executing the search warrant, officers discovered just over two kilograms of cocaine. R. 367, ll. 17 – 24.

Motion to Suppress

Defense counsel made a pre-trial motion to suppress all the evidence obtained in the search of Petitioner's house. A hearing was held on January 10, 2019 before the Honorable Roger M. Young. R. 1 – 192.

At the end of the hearing defense counsel argued that the initial entry into Petitioner's home was warrantless and unreasonable. R. 164, l. 24 – 165, l. 2. Specifically, what the officers independently observed when they arrived on scene and what they were told by dispatch was insufficient for a warrantless entry. R. 165, ll. 3 – 10. Counsel pointed out that when the officers arrived on scene there was nothing broken, and they did not hear any sounds coming from inside the house. R. 165, ll. 11 – 12. When they knocked on the door there was no response and they even took the time to get a phone number off a work truck parked outside and called it in. The officers' actions demonstrated that they were not in a rush to get inside. R. 165, ll. 12 – 15. Counsel argued that the search was unreasonable both under the Fourth Amendment and the right to privacy under the South Carolina Constitution. R. 165, ll. 20 – 24.

Defense counsel further argued that even if the initial entry was not unreasonable, the officers exceeded the scope of a protective sweep by conducting a field test on the white residue. R. 169, ll. 1 – 25. Counsel pointed out that the officers' stated reason for going into the house was to search for a possible victim in need of aid or a suspect. R. 169, ll. 6 – 10. However, after clearing the house and confirming that there were no victims or suspects present, the officers proceeded to do a field test on the white residue found in the bathroom which exceeded the scope of the protective sweep. R. 169, ll. 19 – 23.

The judge ruled that the officers' initial entry of the home was reasonable and justified by exigent circumstances. R. 171, l. 2 – 172, l. 11. Specifically, the judge found that the 911 call

from a woman who alleged she was hiding in the bathroom from her boyfriend which then got disconnected made it reasonable for the officers to make a warrantless entry under the exigent circumstances exception. "[T]here could have been a dead body, or there could have been an unconscious body, somebody who couldn't respond. Maybe they were tied up or bound up or hidden in a closet or hidden in a room." R. 171, ll. 20 – 23.

The judge also ruled that the money, guns, and white powder on the scale in the bathroom, were observed by the officers in plain view, and were enough for the officers to have probable cause to get a warrant. R. 173, ll. 8 – 18. Defense counsel agreed that if the judge found that the officers' warrantless entry was reasonable under exigent circumstances that the money, guns, and white powder were all seen in plain view. R. 178, l. 21 – 179, l. 3. However, defense counsel argued that when the officers performed a field test on the white powder, they exceeded the scope of the protective sweep because it was unrelated to the purpose of their initial entry and they were beginning a new and unrelated drug investigation. R. 179, ll. 4 – 19.

Lastly, defense counsel argued that the evidence should have been suppressed based on S.C. Code Ann. § 16-25-70(H) because it was discovered during a warrantless search and the officers were not interviewing, detaining, or pursuing a domestic violence suspect. R. 183, l. 20 – 184, l. 13. The assistant solicitor responded that the officers' primary reason for the warrantless entry was to render aid to a potential victim and not to pursue a domestic violence suspect. R. 187, ll. 11 – 19. The assistant solicitor further argued that the officers did not make entry pursuant to the domestic violence statute but instead made entry under the exigent circumstances exception. R. 189, ll. 2 – 7.

Regarding the exigent circumstances exception, the assistant solicitor maintained that the 911 call from a woman claiming to have locked herself in a bathroom in fear of her boyfriend

was enough for the officers to enter the home without a warrant. R. 189, l. 8 – 190, l. 4. "I don't think they had the luxury of waiting for a search warrant at that point." R. 190, ll. 2 – 4. In response to defense counsel's argument about exceeding the scope of the protective sweep, the assistant solicitor argued that law enforcement needed to do a field test before getting a warrant:

> Detective Plyler testified that he would have insisted that they obtain a field test because he's not going to go to a magistrate and ask for a search warrant based on cocaine residue *unless he knows that's what it is*. Or at least with a high degree of certainty based on a field test that that's what that substance is.

R. 191, ll. 2 – 7 (emphasis added). Judge Young took the matter under advisement and ultimately denied defense counsel's motion to suppress. R. 570. Specifically, Judge Young ruled that exigent circumstances justified the initial warrantless entry and that the evidence which was seized after entry was not in violation of S.C. Code Ann. § 16-25-70(H) because the items "were not seized as a result of a warrantless search but rather were the result of a search warrant issued upon a finding of probable cause by a magistrate." R. 570.

During the state's case in chief, defense counsel renewed all his pretrial objections to the search of Petitioner's residence prior to the testimony of Deputy Ferguson. R. 334, ll. 7 – 20. The reason for this was that all the items seized in the search of Petitioner's home were to be admitted through Ferguson. The judge noted defense counsel's objection and overruled it. R. 335, ll. 1 – 25. As the state introduced the evidence obtained from the search of Petitioner's residence, including the cocaine that was found, defense counsel renewed his prior objections on the record. R. 349, l. 21 – 350, l. 15; R. 354, ll. 9 – 25; R. 357, ll. 1 – 5; R. 360, l. 8 – 361, l. 2; R. 364, l. 8 – 365, l. 16; R. 372, l. 22 – 373, l. 4.

Discussion

The Court of Appeals erred in affirming the trial judge's erroneous ruling allowing the state to admit evidence which was obtained in violation of Petitioner's Fourth Amendment

rights. "The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures." State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001). When evidence against a criminal defendant is obtained in violation of the Fourth Amendment it cannot be used against him in court. Weeks v. United States, 232 U.S. 383 (1914). The Supreme Court of the United States made this exclusionary rule applicable to the States in Mapp v. Ohio, 367 U.S. 643 (1961). "Therefore, all citizens enjoy this federal constitutional protection in every criminal proceeding." Forrester, 343 S.C. at 643, 541 S.E.2d at 840.

The South Carolina Constitution also contains a provision protecting people from unreasonable searches and seizures. S.C. Const. art. I, § 10. However, our State Constitution goes further than the United States Constitution by including an express right of the people against "unreasonable invasions of privacy." Id. "Thus, this Court can interpret the state protection against unreasonable searches and seizures in such a way as to provide greater protection than the federal Constitution." Forrester, 343 S.C. at 644, 541 S.E.2d at 840.

"It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006) (internal quotations omitted). One exception to the warrant requirement of the Fourth Amendment is when "the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable." Mincey v. Arizona, 437 U.S. 385, 393-394 (1978) (internal quotations omitted). The Supreme Court has specifically applied this exception in holding that a warrantless entry of a home is constitutionally permissible if the officer has an objectively reasonable belief that an occupant is seriously injured or in imminent danger. Brigham City, Utah, 547 U.S. at 400.

The Court of Appeals erred in holding that the officers had an objectively reasonable belief that there was an injured person inside the residence in need of immediate aid. The officers only had information that a woman called 911 to report that she locked herself in a bathroom to get away from her boyfriend and the address that was given by the caller. Contrary to the holding of the Court of Appeals, when the officers arrived on scene, they saw nothing that corroborated the phone call. Both officers testified that they did not hear any noise coming from inside the house. R. 29, l. 7 – 30, l. 7; R. 115, ll. 2 – 8. They knocked on the door several times and did not get a response. R. 27, l. 8 – 28, l. 2.

Furthermore, and importantly, the 911 dispatcher was aware that the caller making these allegations had called from a phone which "pinged" off a cell tower in downtown Charleston, even though the address reported by the caller was in West Ashley, several miles away. The 911 dispatcher found this fact significant enough to report it to the Charleston City Police Department to ask them to investigate the location from which the call appeared to have originated. R. 158, l. 8 – 160, l. 8.

This demonstrates that the state, through the 911 dispatcher, was aware of the dubious nature of the call. They had enough reason to doubt the location given by the caller to send law enforcement officers to a different location several miles away. This fact negates any perceived exigency on the part of the state because they understood the call may have been phony. The Court of Appeals overlooked this crucial fact in its analysis.

Further, Petitioner's case is substantially different from the authorities relied on by the Court of Appeals in affirming Petitioner's convictions. In State v. Abdullah, 357 S.C. 344, 592 S.E.2d 344 (Ct. App. 2004), the Court of Appeals 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, the Court of Appeals 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 justified 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 officer's 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 Court in Herring 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 which is protected 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 Court of Appeals erred in holding that the trial judge's decision was supported by the record.

2.

The Court of Appeals erred by holding that the white powder in Petitioner's bathroom was immediately incriminating and fell within the plain view exception to the warrant requirement because law enforcement exceeded the scope of the protective sweep by conducting a field test on the white powder and the results of the field test were used as a basis for obtaining a search warrant.

Discussion

Another exception to the Fourth Amendment's warrant requirement is the plain view doctrine: "[I]n certain circumstances a warrantless seizure by police of an item that comes within plain view during their lawful search of a private area may be reasonable under the Fourth Amendment." Arizona v. Hicks, 480 U.S. 321, 323 (1987) citing Coolidge v. New Hampshire, 403 U.S. 443 (1971). "It is, of course, an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed." Horton v. California, 496 U.S. 128, 136 (1990). Furthermore, the incriminating character of the evidence which is seized must be immediately apparent. Id. "Any search following warrantless entry for emergency reasons . . . must then be limited by the type of emergency involved. It cannot be used as the occasion for a general voyage of discovery unrelated to the purpose of the entry." U.S. v. Moss, 963 F.2d 673, 678 (4th Cir. 1992).

In this case, Bowen and Alexander entered the residence to see if there was a person in need of aid or a possible suspect of domestic violence. R. 32, ll. 2 – 12. Therefore, their protective sweep of the home was limited to looking in places where a person could reasonably be found. They were not permitted to begin a new drug investigation which was unrelated to the reason for their initial entry. Moss, 963 F.2d at 678.

However, upon seeing the white powder in the bathroom, the officers did exactly this; they expanded their protective sweep into a drug investigation by conducting a field test on the powder. Although the plain view doctrine requires that the incriminating character of the item seized be immediately apparent, both the trial judge and the assistant solicitor in this case seemed to acknowledge that the officers could not know if the powder was incriminating until *after* conducting a field test.

In response to defense counsel's argument that the officers exceeded the scope of their protective sweep in conducting a field test on the white powder, the judge said:

> Well, wouldn't that be something that you'd think would be . . . what a reasonable police officer would do, would be to do a field test on it before they wasted a magistrate's time?
>
> Because if they did a field test on it and it came back, no, this is just baby powder, then you would go, okay, well, we, you know, we would be wasting our time going and getting a magistrate to issue a search warrant.
>
> In fact, they would have to probably affirmatively misrepresent what they were putting on a search warrant in order to have a false report on a field test and then still go before a magistrate. So I would think they kind of have a duty to field test it.

R. 179, l. 21 – 180, l. 8. The assistant solicitor made a similar point in arguing that one of the officers testified that he would have insisted on doing the field test before wasting a magistrate's time requesting a search warrant because without the field test, they could not be sure what the white powder was. R. 191, ll. 2 – 7.

This argument from the assistant solicitor and the comments by the trial judge indicate that the incriminating character *was not* immediately apparent to the officers. This is exactly why the officers conducted a field test prior to getting the search warrant. Because the field test of the white powder was beyond the scope of the officers' initial protective sweep, which was to look for a person in need of aid, the seizure of the powder could not be justified under the plain view doctrine.

In finding that the white powder was in "plain view," the Court of Appeals relied on State v. Abdullah, 357 S.C. 344, 592 S.E.2d 344 (Ct. App. 2004). However, Abdullah is distinguishable from Petitioner's case because in Abdullah, the officers observed bags of marijuana whereas in Petitioner's case the officer's observed white powder. 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 conducted a field test 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 Court of Appeals erred in holding that the powder was in plain view.

3.

The Court of Appeals erred by affirming the trial judge's ruling that the evidence found in Petitioner's residence was admissible because law enforcement was responding to a domestic violence call and the evidence was not found in plain view in a room in which law enforcement were "interviewing, detaining, or pursuing a suspect" under S.C. Code Ann. § 16-25-70(H)(1)(a), and therefore the evidence found was inadmissible under the statute.

Discussion

S.C. Code Ann. § 16-25-70(H)(1)(a) provides that:

> (H) Evidence discovered as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in a court of law:
>
> (1) if it is found:
>
> (a) in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect; or
>
> (b) pursuant to a search incident to a lawful arrest for a violation of this article or for a violation of Chapter 3, Title 16; or
>
> (2) if it is evidence of a violation of this article.
>
> An officer may arrest and file criminal charges against a suspect for any offense that arises from evidence discovered pursuant to this section.
>
> Unless otherwise provided for in this section, no evidence of a crime found as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in any court of law.

S.C. Code Ann. § 16-25-70 (H).

In this case, Bowen and Alexander both stated that they were responding to a domestic violence call. The statute cited above provides for an exception to the warrant requirement to

allow officers to enter a residence in certain limited situations. The statue further provides that evidence discovered in such a warrantless entry is not admissible in any court of law unless it "is in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect." Id.

Here, Bowen and Alexander were not interviewing, detaining, or pursuing a suspect because there were no persons present inside or outside of the residence when they arrived. Judge Young's ruling that the items were seized pursuant to a valid search warrant was erroneous because the search warrant itself was based on evidence that had been illegally seized. R. 570. Furthermore, the initial entry was not based on exigent circumstances but rather on the statute referenced above.

When a "statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning." Gay v. Ariail, 381 S.C. 341, 673 S.E.2d 418 (2009) citing State v. Gains, 380 S.C. 23, 667 S.E.2d 728 (2008). Judge Young attempted to sidestep the statute by ruling that the entry was based on exigent circumstances and that the evidence was seized pursuant to a warrant. However, the supposed exigent circumstances were a "domestic in progress" which implicated the domestic violence statute, and the warrant was based on an unconstitutional field test which belied the contention that it could fall under the plain view doctrine.

In State v. Cannon, 336 S.C. 335, 520 S.E.2d 317 (1999) the Supreme Court upheld the introduction of crack cocaine found during a search incident to arrest of a defendant for criminal domestic violence. In Cannon, the Court found that the officer's warrantless entry of the defendant's home was pursuant to his mother's consent as opposed to authority under the statute.

For this reason, the Court found that the drugs were admissible. However, in a footnote, the Court said:

> We are concerned about the effect of § 16–25–70(H). The plain meaning of the statute precludes the admission of evidence of crimes, other than criminal domestic violence, seized as a result of a warrantless search conducted pursuant to § 16–25–70(C). In the case before us today, if the officer had entered respondent's home under the authority of § 16–25–70(C), the crack cocaine found in respondent's pocket would have arguably been inadmissible pursuant to § 16–25–70(H). Similarly, as noted by the amicus curiae, if the police make a warrantless entry into a home under the authority of § 16–25–70(C) and observe in plain view a weapon which is recognized as the weapon in an unrelated murder, the weapon could be inadmissible under § 16–25–70(H) since murder is not a violation of the Act.

State v. Cannon, 336 S.C. 335, 340, 520 S.E.2d 317, 319, n.4 (1999).

One year later in State v. Roberts, 340 S.C. 238, 530 S.E.2d 899 (Ct. App. 2000), this Court found that the domestic violence statute did not apply where the police responded to a reported "disturbance" instead of a domestic violence call. Once on scene, the officers arrested the defendant for public drunkenness, disorderly conduct, and domestic violence. When officers searched the defendant 'incident to arrest', they found crack cocaine. The Roberts Court found that the crack cocaine should not have been suppressed because the police did not use the statute in arresting or searching the defendant. Id.

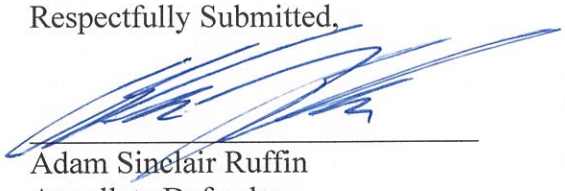
Cannon and Roberts are both distinguishable from this case. Here, the officers did not have consent to enter, as was the case in Cannon, and they were explicitly responding to a "domestic in progress," unlike in Roberts where police were responding to a "disturbance." The officers' warrantless entry was pursuant to S.C. Code Ann. § 16-25-70 because they were responding to a domestic violence call, but they were not "in a room in which the officer [was] interviewing, detaining, or pursuing a suspect" when they observed the white powder. S.C. Code

Ann. § 16-25-70 (H). Therefore, the court erred in admitting the evidence over defense counsel's objection and Appellant's convictions should be reversed. See S.C. Code Ann. § 16-25-70 (H); State v. Roberts, 340 S.C. 238, 530 S.E.2d 899 (Ct. App. 2000); State v. Cannon, 336 S.C. 335, 520 S.E.2d 317 (1999).

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court grant his petition for writ of certiorari to the Court of Appeals to allow full briefing on the issues presented.

Respectfully Submitted,



Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of October, 2021.