STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Clarendon County
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

Appellant,

vs.

GREGORY LEON WRIGHT, ERNEST ANDERSON, ELIJAH CARROLL, ORLANDO COULETTE, RECO HAM, JENNIFER LYLES, and BOOKER WASHINGTON,

Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The circuit court erred as a matter of law in granting Respondents' motion to suppress because inadvertent discovery is not required for purposes of the plain view exception to the Fourth Amendment warrant requirement, and the evidence at issue was properly seized under the plain view and exigent circumstances exceptions to the warrant requirement.

STATEMENT OF THE CASE

In June, 2007, the Clarendon County Grand Jury indicted Respondents on one count of dogfighting. The matter was called for trial on July 14, 2008, before the Honorable R. Ferrell Cothran, Jr., Circuit Court Judge. The circuit court granted Respondents' motion to suppress evidence, substantially impairing further prosecution of the case, and the State of South Carolina timely filed this appeal.

STATEMENT OF FACTS

On November 26, 2006, the Clarendon County Sheriff's Office received an anonymous tip about dogfighting at a mobile home on Jackson Road in Clarendon County. Respondents Orlando Coulette ("Coulette") and Jennifer Lyles ("Lyles") lived in the mobile home, and when deputies rode by on the public highway, they saw a large number of vehicles parked there and spotlights in an area next to the mobile home.

Approximately forty-five minutes to an hour after receiving the anonymous tip, law enforcement drove to the address to investigate further. The mobile home was located down a dirt road shared by at least one other mobile home. The deputies initially had their car headlights off as they drove down the shared road, and when they turned them on they saw people and dogs running away from the mobile home. Two deputies saw a portable dogfighting pit in the area with the spotlights.

The deputies apprehended and detained the people who ran away, and captured as many loose dogs as possible. While securing the scene, deputies saw dogfighting paraphernalia, including the dog pit, dog muzzles, drugs and syringes, as well as several severely injured dogs. The individuals detained at the scene were then placed under arrest for dogfighting. Deputies obtained a search warrant the next day, and seized additional evidence from the yard and inside the mobile home.

On June 28, 2007, the Clarendon County Grand Jury indicted Coulette, Lyles and Respondents Gregory Wright ("Wright"), Ernest Anderson ("Anderson"), Elijah Carroll ("Carroll"), Reco Ham ("Ham") and Booker Washington ("Washington") on the following charges: one count of being present at a facility of animal fighting or baiting

(Anderson, Washington, Carroll, Coulette, and Lyles); one count of ill treatment of animals (Anderson, Washington, Carroll, Coulette and Wright); one count of animal fighting (Anderson, Washington, Carroll and Coulette); and one count of owning animals for the purpose of fighting (Coulette).[1] The matter was called for trial as to all Respondents and charges on July 14, 2008, before the Honorable R. Ferrell Cothran, Jr., Circuit Court Judge.

Prior to trial, Coulette and Lyles moved to suppress all evidence seized on the property on the ground law enforcement did not have sufficient probable cause to come on the property, and the subsequent seizures were unconstitutional under the Fourth Amendment. (Trial Transcript [TT], pp. 4-9; Record on Appeal [R.], pp. 4-9). The remaining Respondents joined in the motion, contending their seizure and subsequent arrests were premised on their presence at the scene and the illegally seized evidence. (TT, pp. 9-10; R., pp. 9-10).

The State asserted Respondents had no expectation of privacy in the driveway and the visible front area of the residence, and the people and dogs fleeing from the scene and the sound of dogs fighting in the woods, created exigent circumstances justifying the warrantless entry on the property. The State further asserted the evidence seized without a warrant was in plain view, and the arrests were based on that evidence. (TT, pp. 10-12; R., pp. 10-12). After argument from counsel, the State presented testimony from deputies involved in the incident. (TT, pp. 13-28; R., pp.13-28).

Sergeant Clay Conyers ("Sgt. Conyers") of the Clarendon County Sheriff's Office

[1]For purposes of this brief, the term "Respondents" will be used when necessary to refer to all Respondents collectively.

testified he was the day shift supervisor on duty on November 26, 2006, and his shift was just ending around 7:00 p.m. when the Sheriff's Office received the anonymous tip about dogfighting at a Jackson Road address. (TT, pp. 32-33; R., pp. 32-33). Since they were in the middle of a shift change, Sgt. Conyers instructed his deputies to stay over and wait at a church approximately two miles from the location just in case they were needed. (TT, pp. 50-51; R., pp. 50-51).

Sgt. Conyers conferred with the night shift supervisor, Sergeant McCoy (Sgt. McCoy"), and then drove past the Jackson Road address to check it out. From the public road, he could see a number of vehicles parked in the yard, and two big flood lights in an area beside the mobile home. (TT, pp. 34-35; R., pp. 34-35).

After confirming there were a large number of people present and dogs barking loudly at the location, the deputies gathered at the church paired up in separate cars and drove to the Jackson Road location to investigate the dogfighting information. Past experience indicated participants often bet money at dogfights, and weapons are likely present where betting takes place. (TT, p. 62; R., p. 62). Due to the dangers associated with dogfighting, the time of night and the large number of cars in the yard, eight to nine deputies rode to the location in five cars because safety was a real concern. (TT, pp. 34-35, 141; R., pp. 34-35, 141). They left the church approximately forty-five minutes to an hour after receiving the anonymous tip. (TT, pp. 35, 52-53; R., pp. 35, 52-53).

Sgt. Conyers testified the deputies had their car headlights off when they entered the shared dirt road, but it was too dark to drive so they had to cut them on. When they turned the headlights on, he saw "a bunch of people" and some dogs running away.

After he got out of his car, he also heard dogs fighting in the woods behind the residence. (TT, pp. 35-36; R., pp. 35-36).

Corporal Bernie Thornton ("Cpl. Thornton") testified he initially received the anonymous tip information from the dispatcher, and gave it to Sgt. Conyers and Sgt. McCoy. The day shift and night shift deputies then gathered at a church a short distance from the location, and after Sgt. Conyers observed cars and floodlights at the mobile home, the deputies paired up and drove there. (TT, pp. 64-66; R., pp. 64-66).

As they drove down the shared dirt road with their headlights off, Cpl. Thornton saw people running away toward the woods, and dogs running away from a dog pit illuminated by the floodlights. As the deputies arrived, people were trying to dismantle the dog pit. The deputies apprehended the people who ran away, but were unable to get to dogs they could hear fighting in the woods. One of the dogs eventually came out of the woods with fresh injuries and blood on him. (TT, pp. 66-69, 71-74, 79-80; R., pp. 66-69, 71-74, 79-80).

Deputy Matthew Mims ("Deputy Mims") testified the primary discussion at the church involved the supervisors instructing the deputies to be careful, stay in groups of two and be cautious of loose dogs. (TT, pp. 106, 109-111, 118-120; R., pp. 106, 109-111, 118-120). He stated he was approximately one-third of the way down the shared dirt road when he clearly saw the dog pit on the right side of Coulette's mobile home in the area illuminated by the floodlights. He also saw two people dismantling the dog pit, and other people "scattering." The deputies were unable to drive up to the front of Coulette's mobile home because the part of the dirt road between his residence and the

first mobile home was blocked by parked cars, so they pulled up behind those cars and jumped out to chase the people running away. (TT, pp. 107-109, 114-115; R., pp. 107-109, 114-115).

Sgt. McCoy testified that after Sgt. Conyers saw cars and lights at the location, he had the dispatcher contact the person who called in the dogfighting tip and ask if he/she could hear any dogs. The dispatcher told him the caller could hear dogs at the mobile home. (TT, pp. 126-128; R., pp. 126-128).

He further testified he saw people and dogs running away when he was approximately halfway down the shared dirt road. While trying to secure the scene, he saw the dog pit with blood and dog hair in it, as well as several injured dogs. (TT, pp. 129-132; R., pp. 129-132).

Sergeant Dan Cutler ("Sgt. Cutler") testified he was the investigations supervisor on November 26, 2006, and was called to the Jackson Road location after deputies found evidence of dogfighting there. He stated he had worked dogfighting cases for approximately four years, and dogfights usually only last between thirty minutes to an hour, so the time frame for stopping one in progress is very short. Bets are pre-made, the challengers show up with their dogs and turn them loose in a pit, the money is disbursed and everyone leaves quickly. (TT, pp. 164-165; R., pp. 164-165).

When he arrived at the location, Sgt. Cutler saw a "break-down fighting ring" that had been knocked down, and had fresh blood and dog hair on the panels. While he was standing in the yard, a dog with severe fresh lacerations crawled out of the woods and into a pick-up truck parked on the property. At that point, Sgt. Cutler advised Sgt.

McCoy to place the people detained on the property under arrest for dogfighting. (TT, pp. 158-160; R., pp. 158-160).

The deputies could still hear dogs in the woods so they continued searching for dogs and people, as well as dogs that might be injured. In addition to the dog pit and wounded dogs, Sgt. Cutler saw in plain view muscle-inducing vitamins, drugs, syringes, dog muzzles, and a dog suspension collar. (TT, pp. 161-164, 173-178; R., pp. 161-164, 173-178).

The next day, Sgt. Cutler obtained a warrant to search Coulette's residence and the surrounding property for additional evidence of illegal dogfighting. The probable cause for the warrant was premised on the evidence seized the previous night. When they executed the warrant, deputies seized dogs and other evidence related to dogfighting. (TT, pp. 162-165, 178, Search Warrant dated 11/27/2006; R., pp.162-165, 178, 234-238).

Coulette testified his mobile home was one of three mobile homes located on the shared dirt road. The shared road extends approximately 850 feet from the paved road, and then turns to the right in front of the first mobile home, and Coulette's residence is approximately 250 feet further down the road. (TT, pp. 180-81, Defendants' Exhibit 1 [map]; R., pp. 180-181).[2]

After hearing the testimony, the circuit court granted the motion to suppress, finding the exigent circumstances exception did not apply, and the plain view exception was precluded because discovery of the evidence was not inadvertent. Since the search

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[2]Defendants' Exhibits 1 (map) and 2 (photograph) were transported to the Court for consideration.

warrant for the mobile home was obtained based on evidence seized without a warrant, the court suppressed all the State's evidence, effectively precluding further prosecution of the State's case. (TT, pp. 195-200; R., pp. 195-200). The State timely filed this appeal.

ARGUMENT

" \l 2**The circuit court erred as a matter of law in granting Respondents' motion to suppress because inadvertent discovery is not required for purposes of the plain view exception to the Fourth Amendment warrant requirement, and the evidence at issue was properly seized under the plain view and exigent circumstances exceptions to the warrant requirement.**

The circuit court suppressed the State's evidence in this case based solely on its finding the plain view exception did not apply because the deputies' discovery of the evidence was not inadvertent.[3] The State submits the circuit court's ruling was based on an error of law, and should be reversed.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Gaster, 349 S.C. 545, 564 S.E.2d 87, 93 (2002) (citations omitted). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." State v. McDonald, 343 S.C. 319, 540 S.E.2d 464, 467 (2000) (*quoting* Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528, 539 [2000]); State v. Moore, 377 S.C. 299, 659 S.E.2d 256, 259 (Ct. App. 2008). On appeal from a motion to suppress evidence based on Fourth Amendment grounds, appellate court review is limited to determining whether any evidence supports the circuit court's decision. State v. Bowman, 366 S.C. 485, 623 S.E.2d 378, 386 (2005); Moore, 659 S.E.2d at 259-260.

The Fourth Amendment protects against unreasonable searches and seizures.

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[3]The search warrant obtained the following day was premised on evidence seized at the scene the previous night. Therefore, if this Court reverses the suppression of evidence seized from the property without a warrant, suppression of the evidence seized pursuant to the search warrant must also be reversed.

U.S. Const. amend. IV. For Fourth Amendment purposes, "[a] search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property." Horton v. California, 496 U.S. 128, 133 (1990) (*citing* U.S. v. Jacobsen, 466 U.S. 109 [1984]); *see also* Moore, 659 S.E.2d at 260.

Warrantless searches and seizures are *per se* unreasonable absent a recognized exception to the Fourth Amendment warrant requirement. Mincey v. Arizona, 437 U.S. 385, 390 (1978); State v. Abdullah, 357 S.C. 344, 592 S.E.2d 344, 348 (Ct. App. 2004). The recognized exceptions include plain view and exigent circumstances. *See* State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995), *cert. denied*, 516 U.S. 1131(1996) (plain view); State v. Brown, 289 S.C. 581, 347 S.E.2d 882, 886 (1986) (exigent circumstances).

A. Plain View Exception

Under the plain view exception, objects falling within the plain view of a law enforcement officer lawfully in a position to view them are subject to seizure and admissible as evidence. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999). Consistent with prevailing federal law prior to 1990, South Carolina Fourth Amendment case law regarding the plain view exception currently requires: (1) the initial intrusion affording authorities the plain view was lawful; (2) discovery of the evidence was inadvertent; and (3) the evidence's incriminating nature was immediately apparent to the seizing authorities. State v. Culbreath, 300 S.C. 232, 387 S.E.2d 255, 257 (1990).

1. Inadvertent Discovery

South Carolina's case law regarding the plain view exception to the Fourth

Amendment warrant requirement is premised on Coolidge v. New Hampshire, 403 U.S. 443 (1971), which established the inadvertent discovery element of a plain view analysis. *See* State v. Dingle, 279 S.C. 278, 306 S.E.2d 223, 227 (1983). In Horton v. California, 496 U.S. 128 (1990), however, the United States Supreme Court discarded the Coolidge inadvertent discovery requirement for Fourth Amendment purposes. *See* Moore, 659 S.E.2d at 262, n. 3 (Horton concluded plain view exception may apply even if discovery of evidence was not inadvertent); In Re: Thomas B.D., 326 S.C. 614, 486 S.E.2d 498, 501, n.3 (Ct. App. 1997) (same).[4]

In discarding the "inadvertent discovery" requirement, the Supreme Court found "evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." 496 U.S. at 139. "The fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by the terms of a warrant or a valid exception to the warrant requirement." *Id.*

The Court further noted the inadvertence requirement was premised on a belief it was necessary to prevent police from conducting general searches, but found the requirement a warrantless search be limited by the exigencies justifying its initiation more adequately restricts the possibility of general searches. *Id.* at 139-140. "[R]eliance on privacy concerns that support [the prohibition against general searches and warrants] is misplaced when the inquiry concerns the scope of an exception that

[4]To the extent South Carolina law still requires inadvertent discovery, the State will move to argue against precedent at the appropriate time in the appellate process.

merely authorizes an officer with a lawful right of access to an item to seize it without an warrant." *Id.* at 141-142. Thus, under Horton, a police officer's subjective belief he might see evidence of a particular crime does not invalidate seizure of evidence when the officer is lawfully in a place from which he sees the evidence, and does not exceed the scope of the justification for his presence in order to seize it.

A majority of states have now followed the Supreme Court's lead in Horton and abolished the inadvertence requirement of the plain view doctrine. *See*, *e.g.*, Smith v. State, 649 So.2d 1312, 1315 (Ala. Crim. App. 1994); Fultz v. State, 972 S.W.2d 222, 223-225 (Ark. 1998); State v. Gallegos, 96 Cal.App.4th 612, 622-623 (Cal. Ct. App. 2002); People v. Koehn, 178 P.3d 536, 537 (Colo. 2008); State v. Sailor, 635 A.2d 1237, 1240 (Conn. App. Ct. 1994); Jones v. State, 648 So.2d 669, 677 (Fla. 1994); Nichols v. State, 435 S.E.2d 502, 505-506 (Ga. Ct. App. 1993); People v. Mitchell, 650 N.E.2d 1014. 1021-1022 (Ill. 1995); Clark v. State, 648 N.E.2d 1187, 1192 (Ind. Ct. App. 1995); Hazel v. Commonwealth, 833 S.W.2d 831, 833 (Ky. 1992); State v. Hall, 652 So.2d 1086, 1089-1090 (La. Ct. App. 1995); Wengert v. State, 771 A.2d 389, 395-397 (Md. 2001); People v. Cooke, 487 N.W.2d 497, 498-499 (Mich. Ct. App. 1992); State v. Lembke, 509 N.W.2d 182, 184 (Minn. Ct. App 1993); State v. Rowland, 73 S.W.3d 818, 824 (Mo. Ct. App. 2002); State v. Shurter, 468 N.W.2d 628, 630-632 (Neb. 1991); State v. Williams, 874 P.2d 12, 17 (N.M. 1994); State v. Church, 430 S.E.2d 462, 465 (N.C. Ct. App. 1993); BPOE Lodge 0170 Gallipolis v. Liquor Control Comm'n, 596 N.E.2d 529, 531-532 (Ohio Ct. App. 1991); State v. Davis, 891 P.2d 600, 605 (Okla. Ct. App 1994); State v. Ainsworth, 801 P.2d 749, 753 (Or. 1990); Commonwealth v. McCullum,

602 A.2d 313, 320-321 (Pa. 1992); State v. Pratt, 641 A.2d 732, 738 (R.I. 1994); State v. Cothran, 115 S.W.3d 513, 525 (Tenn. Crim. App. 2003); Green v. State, 866 S.W.2d 701, 704-705 (Tex. Ct. App. 1993); State v. Trudeau, 683 A.2d 725, 727 (Vt. 1996); Carson v. State, 404 S.E.2d 919. 921 (Va. Ct. App. 1991); State v. Graffius, 871 P.2d 1115, 1119 (Wash. Ct. App. 1994); State v. Julius, 408 S.E.2d 1, 7 (W. Va. 1991); State v. Richardson, 456 N.W.2d 830, 839 (Wis. 1990). This Court should now join those jurisdictions in recognizing the Fourth Amendment plain view exception no longer requires "inadvertent discovery."

Under Horton, the plain view exception requires the court to determine whether the officers' entry on the property was lawful and the incriminating nature of the evidence was apparent. Both requirements are met in this case, and the circuit court's suppression of the State's evidence should be reversed.

2. Initial Intrusion was Lawful

In the circuit court, Respondents asserted the deputies did not have probable cause to believe any criminal activity was occurring on the property, and therefore, they were not lawfully on the property when they saw the evidence at issue. On the contrary, the deputies' observations from the main highway and the dirt road shared by the three mobile homes, combined with the tip regarding dogfighting, amply justified their initial intrusion on the property.

a. Reasonable Expectation of Privacy

As a threshold matter, none of the Respondents had any reasonable expectation of privacy as to things visible from the public highway or the shared dirt road. Katz v.

United States, 389 U.S. 347, 351 (1967) ("What a person knowingly exposes to the public ... is not a subject of Fourth Amendment protection."); *see also* State v. Merrill, 252 Neb. 510, 563 N.W.2d 340 (1997) (defendant had no reasonable expectation of privacy in his driveway when visibility and accessibility to the driveway from the public road were not limited in any way); State v. Digilormo, 505 So.2d 1154, 1156 (La. 1987) (defendant had no reasonable expectation of privacy at the scene of a dogfight located one quarter to one-half mile within a closed, locked gate).

In this case, there were no gates or fences between Coulette's residence and the public highway or the shared dirt road. Therefore, anything visible from those roadways was open to public view, and Respondents could not have any reasonable expectation of privacy from those vantage points. *See* U.S. v. Humphries, 636 F.2d 1172 (9th Cir. 1980) (government agent's presence on defendant's driveway did not violate any reasonable expectation of privacy where the automobile in question was visible from the street and the driveway was not enclosed by a fence, shrubbery, or other barrier); *see also* United States v. Dunn, 480 U.S. 294, 304 (1987) (there is no constitutional difference between police officer's observations from a public place and observations from open fields); Hester v. United States, 265 U.S. 57, 59 (1928) (Fourth Amendment protection does not extend to open fields); Williams v. Garrett, 722 F.Supp. 254 (W.D. Va. 1989) (a landowner does not have a reasonable expectation of privacy in a rural driveway, particularly where the owner has not blocked the driveway or posted "No Trespassing" signs).[5]

[5]Coulette testified there were "No Trespassing" and "Beware of Dog" signs made of "metal tubing" posted on the left side of the driveway leading to his residence. (TT, pp.

b. Investigative Authority

Further, as Coulette's counsel conceded before the circuit court, law enforcement could justifiably go all the way up to Coulette's front door to investigate the anonymous tip regarding dogfighting on the property. (TT, p. 20; R., p. 20). *See* United States v. Daoust, 916 F.2d 757, 758 (1st Cir.1990) (officers generally may "go to a person's home to interview him"); Giacona v. United States, 257 F.2d 450, 456 (5th Cir. 1958) (police officer's entry on private property in the performance of his duty is justifiable); Clark v. City of Montgomery, 497 S.2d 1140, 1142 (Ala. Crim. App. 1986) (police officer is privileged to enter private property without a warrant to investigate a complaint); 24 *C.J.S.* Criminal Law §2404 (Westlaw June 2009); 1 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 2.3(b), at 475 (3d ed.1996) ("It is not improper for a police officer to call at a particular house and seek admission for the purpose of investigating a complaint or conducting other official business."). If the deputies could properly drive up to the front door of Coulette's residence to investigate the dogfighting tip, driving on the shared dirt road leading to Coulette's residence, from which they saw the dogfighting pit and people and dogs running away, clearly did not exceed their investigative authority.[6]

c. Exigent Circumstances

182-183; R., pp. 182-183). Two deputies specifically testified they did not see any such signs as they approached the property. (TT, pp. 113, 135; R., pp. 113, 135). In any event, by the time the deputies got to that part of the shared dirt road, the visible evidence of illegal activity and the exigent circumstances justified their initial entry on the property even if the signs were there.

[6]The circuit court even indicated what the deputies "observed from the first stretch of [the shared road] may be a lawful observation." (TT, p. 197; R., p. 197).

In addition, the circumstances that developed after the deputies were on the shared dirt road justified intrusion on the property surrounding Coulette's residence in order to capture fleeing suspects and dogs, ensure public safety and prevent the further destruction of evidence. It is well established police officers may act without a warrant when the exigencies of the situation make it imperative to do so. *E.g.*, McDonald v. United States, 335 U.S. 451, 456 (1948); *see also* Michigan v. Tyler, 436 U.S. 499 (1978). A warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing, or where there is a risk of danger to police or others. Minnesota v. Olson, 495 U.S. 91, 100 (1990); Abdullah, 592 S.E.2d at 348; *see also* Maryland v. Buie, 494 U.S. 325, 337 (1990) (allowing a protective sweep of a house during an arrest where the officers have a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene); Brown, 347 S.E.2d at 886 (police may be justified in conducting a protective sweep of a crime scene where the potential for danger exists).

While the anonymous tip alone did not establish probable cause for an arrest or search, probable cause was established when the deputies saw the dogfighting pen and people and dogs running away into the surrounding woods.[7] The deputies' visual observations corroborated the tip regarding dogfighting on the property, and gave them ample reason to believe the crime of dogfighting was in progress. At that point, public

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[7]The circuit court erroneously interpreted the State's concession the anonymous tip alone did not create probable cause as a concession there was no probable cause at the time the deputies actually went on Coulette's property. Throughout the motion hearing, the State asserted the search and seizure was supported by exigent circumstances and plain view. (TT, pp. 10-12,23, 84-85; R., pp. 10-12, 23, 84-85).

safety and the possibility evidence would be destroyed justified immediate action. *See* State v. Shelton, 741 So.2d, 473, 477 (Ala. Crim. App. 1999) (exigent circumstances exist whenever an object to be searched is mobile or moveable). The deputies saw some people already trying to dismantle the dogfighting pen, and all the evidence seized that night (dogs, harnesses, syringes, drugs, etc.) was easily moveable or disposable.[8]

3. Incriminating Nature of Evidence was Immediately Apparent

Once the deputies saw the dogfighting pit, people running into the woods when they saw the police cars, and the injured dogs, the incriminating nature of the evidence they saw in plain view was apparent. When law enforcement is investigating a report of dogfighting and then sees a dogfighting pen in the yard, people fleeing the scene, dogs either on chains in the front yard or running from the fighting area, and hears dogs fighting in the surrounding woods, the incriminating nature of injured dogs, dog harnesses, syringes and drugs used in connection with dogfighting, is readily apparent.

Based on the foregoing, the circuit court erred as a matter of law in finding the evidence at issue was not admissible under either the plain view or exigent circumstances exceptions to the Fourth Amendment warrant requirement. The deputies' initial entry on the property was justified by the circumstances, and the evidence they saw in plain view was lawfully seized. Accordingly, the suppression of evidence seized from the property initially, and pursuant to the subsequent search warrant, should be reversed and the case remanded to the circuit court for trial.

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[8]The possibility evidence would disappear was heightened because Lyles was allowed to remain in the mobile home that night because she had a newborn child. (TT, p. 173; R., p. 173).

CONCLUSION

Based on the foregoing, Appellant State of South Carolina respectfully submits the circuit court's ruling suppressing the State's evidence should be reversed, and the matter remanded for a trial on the merits.

Respectfully submitted,

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March 22, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Clarendon County
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

Appellant,

vs.

GREGORY LEON WRIGHT, ERNEST ANDERSON, ELIJAH CARROLL, ORLANDO COULETTE, RECO HAM, JENNIFER LYLES, and BOOKER WASHINGTON,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within Final Brief of Appellant on Respondents by depositing one copy each in the United States mail, postage prepaid, addressed to:

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March 22, 2010

Via Hand-Delivery
The Honorable Tanya A. Gee
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Re: State v. Gregory Leon Wright, et al.

Dear Ms. Gee:

Enclosed for filing are the original and nine copies of the Final Brief of Appellant, with proof of service, in the above-referenced case. Please return the clocked-in copy via our courier.

Sincerely,

Deborah R.J. Shupe
Assistant Attorney General

DRJS/erd

Enclosures

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