

TABLE OF CONTENTS

TABLE OF CONTENTS..... 1

TABLE OF AUTHORITIES..... 2

STATEMENT OF ISSUES ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT..... 5

CONCLUSION 8

CERTIFICATE OF COUNSEL..... 9

TABLE OF AUTHORITIES

Cases

Smith v. Ohio, 494 U.S. 541, 110 S.Ct. 1288 (1990) 7

State v. Abdullah, 357 S.C. 344, 592 S.E.2d 344 (2004) 7

State v. Banda, 371 S.C. 245, 251 639 S.E.2d 36, 39 (2006) 5

State v. Brown, 289 S.C. 581, 347 S.E.2d 882, (1986) 7

State v. Corley, 383 S.C. 232, 679 S.E.2d 187 (Ct. App. 2009)..... 5

State v. Culbreath, 300 S.C. 232, 387 S.E.2d 255 (1990)..... 7

State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840, (Ct. App. 2005)..... 5

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827, 829 (2001) 5

STATEMENT OF ISSUES ON APPEAL

Whether there was any evidence to support the trial judge's findings that the evidence should be suppressed because the requirements of the plain view doctrine were not met?

STATEMENT OF THE CASE

Respondents were indicted for dog fighting in Clarendon County. The case was called for trial on July 14, 2008. The Honorable R. Ferrell Cothran, Jr. granted respondents' motion to suppress evidence. The State has appealed.

ARGUMENT

There was evidence to support the trial judge's findings that the evidence should be suppressed because the requirements of the plain view doctrine were not met.

In State v. Corley, 383 S.C. 232, 679 S.E.2d 187 (Ct. App. 2009) this Court noted the following.

“In criminal cases, the appellate court sits to review errors of law only. We are bound by the trial court’s factual findings unless they are clearly erroneous. This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases.” State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citations omitted). In Fourth Amendment search and seizure cases, our review is limited to determining whether any evidence supports the trial court’s finding. State v. Banda, 371 S.C. 245, 251 639 S.E.2d 36, 39 (2006). Upon such review, an appellate court may reverse only when the trial court’s decision is clear error. State v. Pichardo, 367 S.C. 84, 95, 623 S.E.2d 840, 846 (Ct. App. 2005). Under the “clear error” standard, the appellate court will not reverse a trial court’s finding of fact simply because it may have decided the case differently. *Id.* at 96, 623 S.E.2d at 846.

383 S.C. at 239, 679 S.E.2d at 191.

At the suppression hearing in this case, Officer Conyers testified that the Sheriff’s office received an anonymous telephone tip on November 26, 2006, around 7:00 PM that there had been dog fighting at 1638 Jackson Road for several weeks. He said officers met at Rock Hill Baptist Church. He got another deputy to ride with him to see what they could find. He said they were too far away to hear anything but he could see a lot of lights, vehicles, and “stuff” in the yard. (ROA p. 32, line 20 – p. 34, line 15) There was a front porch light on at a mobile home and off to the right there were two big flood lights. They returned to the church and met with the other deputies, about eight of them. They paired two to a car and had their lights off coming down the road. It got so dark they had

to turn their lights on and saw a bunch of people running but did not see them doing anything. There were also some dogs running and he could hear some back in the woods fighting. (ROA p. 35, line 3 – p. 36, line 25) They rounded up who they could and towed the vehicles. They were at the scene around four (4) hours. (ROA p. 37, lines 5-21)

On cross-examination Office Conyers said from the roadway he could not observe any criminal activity. They had not corroborated anything from the anonymous complaint except for seeing lights. They did not have a search warrant. They went on private property before they observed any criminal activity. (ROA p. 38, line 6 – p. 39, line 24) When they detained the people they still did not have any evidence of criminal activity. (ROA p. 63, lines 15-19)

Office Thornton testified that he did not see the dogs fighting. (ROA p. 73, lines 21-23) From the road he could see no evidence of a crime. (ROA p. 74, lines 21-25; ROA p. 79, lines 8-9)

After officer Thornton testified, the solicitor admitted that the items seized were not in an open field but within the curtilage of the house. (ROA p. 81, line 25 – p. 82, line 13)

Officer Mims testified next. He said as they approached up the road with their lights off he saw bright lights by the side of the residence. He saw people running and a dog box. (ROA p. 107, lines 3-23)

Sgt. McCoy testified that he seized a dog box. He said when they met at the church the plan was to ride up Jackson Road and see what was going on. (ROA p. 126, line 11 – p. 127, line 16) Sgt. Conyers told him he could hear dogs fighting when he went

there first. (ROA p. 128, lines 1-5) Sgt. McCoy said when he drove up to Jackson Road his windows were up and he could not hear a dog fight. (ROA p. 130, lines 2-4) He could see dogs and people fleeing the area. (ROA p. 131, lines 8-10)

On cross-examination Sgt. McCoy corrected his previous testimony and said Sgt. Conyers just told him he heard dogs barking, not fighting. (ROA p. 143, lines 3-16; ROA p. 155, line 24 – p. 156, line 11)

After the presentation of testimony, the assistant attorney general admitted that the State did not have probable cause to search. (ROA p. 195, line 9 – p. 196, line). The trial court found the plain view doctrine would apply. Under this doctrine “objects falling within the plain view of a law enforcement officer who is rightfully in a position to view these objects are subject to seizure and may be introduced into evidence.” State v. Brown, 289 S.C. 581, 588, 347 S.E.2d 882, 885 (1986). This plain view exception requires “that (1) the initial intrusion which offered the plain view was lawful; (2) the discovery of the evidence was inadvertent; and (3) the incriminating [nature of the] evidence was immediately apparent to the seizing authorities.” State v. Abdullah, 357 S.C. 344, 352-353, 592 S.E.2d 344, 349 (2004); State v. Culbreath, 300 S.C. 232, 237, 387 S.E.2d 255, 257 (1990).

The trial judge found that the discovery of the evidence was not inadvertent. The police went there without a search warrant to specifically find evidence. (ROA p. 197, line 15 –p. 199, line 1) This was basically a raid by the police without probable cause and without a search warrant. A search does not become constitutional because of the fruits it yields. Smith v. Ohio, 494 U.S. 541, 543 110 S.Ct. 1288, 1290 (1990). The trial

judge used sound discretion in holding the evidence inadmissible. This court should respect his ruling.

CONCLUSION

The decision of the trial judge should be upheld.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR RESPONDENTS.

This 23rd day of March, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability 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.”

March 23, 2010

Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

APPELLANT,

V.

GREGORY WRIGHT, et. al,

RESPONDENT

FINAL BRIEF OF RESPONDENT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR RESPONDENTS.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

R. Ferrell Cothran, Jr., Judge

THE STATE,

APPELLANT,

V.

GREGORY WRIGHT, et. al,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Respondent in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; this 23rd day of March, 2010.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR RESPONDENTS.

SUBSCRIBED AND SWORN TO before me
this 23rd day of March, 2010.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: August 15, 2010.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

November 22, 2010

Deborah R.J. Shupe
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Gregory Leon Wright

Dear Ms. Shupe

Enclosed please find two copies of the Final Brief of Respondent in the above entitled case, which I have filed today with the South Carolina Court of Appeals.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/fkb

Enclosure



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

November 22, 2010

Booker T. Washington, III
730 Ripper Lane
Sumter, SC 29150

Re: Your appeal

Dear Mr. Washington:

Enclosed please find a copy of the Final Brief of Respondent in your case, which I have filed with the South Carolina Court of Appeals.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/fkb

Enclosure



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

November 22, 2010

Ernest Anderson, Jr.
90 Mikado Road
Mayesville, SC 29104

Re: Your appeal

Dear Mr. Anderson:

Enclosed please find a copy of the Final Brief of Respondent in your case, which I have filed with the South Carolina Court of Appeals.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/fkb

Enclosure



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

November 22, 2010

Gregory Leon Wright
4915 Silo Drive
Sumter, SC 29150

Re: Your appeal

Dear Mr Wright:

Enclosed please find a copy of the Final Brief of Respondent in your case, which I have filed with the South Carolina Court of Appeals.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/fkb

Enclosure