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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Laurens County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2022-001125

THE STATE,

Petitioner,

vs.

SYLVESTER FERGUSON, III,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err by affirming the trial judge's erroneous ruling granting Ferguson's motion to suppress illegal drugs and other incriminating evidence recovered from an individual unit in a multi-unit apartment building based on an alleged violation of Ferguson's constitutional rights when the law enforcement officers reasonably approached the apartment building and engaged in a consensual encounter with one of the apartment's occupants prior to entering the apartment's curtilage after obtaining reasonable suspicion of criminal activity from a face-to-face tip provided by a non-anonymous concerned citizen that was fully consistent with the officers' knowledge of both Ferguson's prior criminal history and the high-crime nature of the area where Ferguson was reported to be actively engaged in the dangerous act of manufacturing methamphetamine?

STATEMENT OF THE CASE

Procedural History

In January of 2017, Respondent Sylvester Ferguson, III was arrested after illegal drugs and other incriminating evidence were found both in a search of an apartment located in Joanna, South Carolina, and in a search of Ferguson's clothing. In May of 2017, the Laurens County Grand Jury indicted Ferguson for possession of methamphetamine, possession of crack cocaine, and manufacturing methamphetamine. On November 26, 2018, Ferguson's case was called for trial in the Laurens County Court of General Sessions with the Honorable Frank R. Addy, Jr., circuit court judge, presiding. Ferguson was not present at that time, and the trial proceeded forward in his absence. At the outset of the trial proceedings, Ferguson's counsel moved for the illegal drugs and other incriminating evidence that had been discovered to be suppressed, and the trial judge conducted an in limine hearing on the matter. At the conclusion of the hearing, the trial judge granted the suppression motion, and the trial was aborted prior to the jury being sworn. The State then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing and oral argument—unanimously affirmed the trial judge's suppression ruling in a published opinion. State v. Ferguson, 436 S.C.

596, 874 S.E.2d 234 (Ct. App. 2022). Thereafter, the State timely filed a petition for rehearing. On July 15, 2022, the Court of Appeals denied the State's petition.

Factual History

Shortly before 11:00 a.m. on the morning of January 17, 2017, Deputy Andrew Hall of the Laurens County Sheriff's Office pulled his patrol vehicle into the parking lot of a convenience store located off Whitmire Highway while conducting routine patrol in Joanna, South Carolina. (App'x pp. 10-11; p. 14). When he did so, a man with whom Deputy Hall was not previously familiar approached the store on foot and began waving to get his attention. (App'x pp. 11-13). In response, Deputy Hall drove over to the man, exited his vehicle, and engaged in a face-to-face encounter with him for several minutes. (App'x p. 12; p. 21). During that conversation, the man reported "Trey" Ferguson, whom the deputy was familiar with from past encounters and recognized as Respondent Sylvester Ferguson, III, was cooking "dope" inside a two-story apartment building located on Whitmire Highway. (App'x p. 12; p. 14; p. 20; p. 22; p. 27; p. 89). Furthermore, the man indicated the specific apartment Ferguson was cooking methamphetamine inside of was situated on the upper left-hand side of the identified apartment building. (App'x p. 14; p. 27; p. 83; p. 89; pp. 185-186).

Upon receiving that information, Deputy Hall immediately contacted Investigator Charles Nations, who was a member of the Laurens County Sheriff's Office's narcotics unit, and alerted him of what had been relayed by the concerned citizen. (App'x pp. 13-14; p. 29; p. 108). At that time, Investigator Nations was already familiar with Ferguson, knew Ferguson had previously been involved with methamphetamine, had encountered Ferguson during an investigation into methamphetamine manufacturing that resulted in Ferguson's arrest, and had previously received tips about Ferguson being involved in methamphetamine production in the past, including one tip

indicating he was still actively purchasing the precursor ingredients involved in making methamphetamine. (App'x pp. 153-155; p. 160; p. 162; pp. 179-181; pp. 183-184; p. 191; p. 198). Concerned about the high degree of danger created by the methamphetamine manufacturing process, Investigator Nations met up with Deputy Hall, and the two headed over to the apartment building—which was located in an area known to have a high level of activity involving methamphetamine and drug trafficking—to follow up on the tip and attempt to initiate a "knock-and-talk" along with Investigator Steven Sweat, who was another experienced member of the narcotics unit and who was also familiar with Ferguson based on Ferguson's past involvement with drugs. (App'x pp. 13-14; pp. 22-23; pp. 28-31; pp. 82-84; pp. 88-91; p. 105; p. 108; p. 155; p. 175; pp. 182-184; p. 193).

A few minutes later and just twenty to thirty minutes after the citizen provided the tip about Ferguson to Deputy Hall, the three officers arrived at the apartment building and, with Investigator Nations in the lead, began to ascend the exterior stairway to reach the building's second story, which contained a shared balcony connected to all the second-story units. (App'x p. 14; p. 30; pp. 71-72; pp. 90-91; pp. 158-159; p. 266). As they neared the top, Henry Davis, who was Ferguson's cousin and the apartment's lone lessee, opened the door to the apartment, began to leave for work, and saw the officers on the stairway.[1] (App'x p. 31; p. 52; p. 65; pp. 158-159; pp. 186-187; p. 194; p. 199; p. 201; pp. 205-209; p. 212). At that point, Investigator Nations identified himself, greeted Davis, and asked him if Ferguson was inside the apartment. (App'x p. 32; p. 69; p. 91; p. 159; pp. 186-187). In response to the question, Davis confirmed

[1] Initially, Investigator Nations mistakenly indicated he knocked on the apartment's door before making contact with Davis, but he then immediately clarified no knocking actually took place. (App'x p. 31; pp. 186-187). Consistent with Investigator Nations's clarification, Davis confirmed he opened his apartment's door while leaving for work and observed the officers on the stairwell. (App'x pp. 206-207).

Ferguson was inside, started to head back into the apartment to retrieve Ferguson, and gestured for Investigator Nations to follow him while leaving the door open. (App'x pp. 32-33; p. 69; p. 73; p. 91; p. 207). Investigator Nations then stepped just inside the apartment's doorway to maintain visual contact, and, shortly after that, Ferguson emerged from a back bedroom and came to the front with Davis. (App'x pp. 32-34; pp. 91-92; pp. 186-187).

Upon making contact with Ferguson, Investigator Nations explained why they were there and disclosed the substance of the citizen's complaint, and both Ferguson and Davis denied being involved in methamphetamine manufacturing or any other illegal activity. (App'x pp. 34-35; p. 91; p. 236). Investigator Nations then asked the men for permission to do a brief walkthrough of the apartment to make sure nothing illegal was occurring, and Davis immediately provided consent. (App'x pp. 35-36; pp. 75-76; pp. 91-92; pp. 187-188). Following that, Ferguson—after some initial hesitation—also provided consent to the investigators for a walkthrough search. (App'x pp. 35-36; pp. 91-92; pp. 187-188).

Once consent had been obtained, Investigator Nations and Investigator Sweat split up and conducted a quick sweep of the apartment.[2] (App'x pp. 36-37; p. 92). While doing so, Investigator Nations observed a lighter fluid bottle, which he knew was commonly associated with methamphetamine production, along with what appeared to be crack cocaine in plain view. (App'x p. 36). Meanwhile, Investigator Sweat located a pipe with marijuana residue on it in plain view on a table in the apartment's living room. (App'x p. 37; p. 92). Based on their observations, the officers contacted Sergeant Matt Veal, who was the supervisor of the narcotics unit, and asked him to obtain a search warrant for the apartment. (App'x p. 37; p. 93; p. 108).

[2] After he entered the apartment, Investigator Nations indicated he detected a musky and ammonia-like smell that was consistent with the odors created by the methamphetamine production process. (App'x pp. 174-175). However, he had been unable to detect that odor through an open window prior to making entry into the apartment. (App'x p. 173).

While the officers waited for the search warrant to arrive, Ferguson began behaving in a "fidgety" manner and repeatedly put his hands into his pockets despite being asked not to do so. (App'x p. 38; p. 93). Based on Ferguson's concerning behavior, Investigator Sweat conducted a frisk search of Ferguson and, during the search, felt a small vial he knew was commonly used to store drugs. (App'x pp. 38-39; pp. 94-97). At that point, Investigator Sweat removed the vial and discovered both methamphetamine and crack cocaine inside. (App'x p. 94; p. 103).

Thereafter, just over thirty minutes after Investigator Nations and the other officers had arrived at the apartment, Sergeant Veal obtained a search warrant and swiftly brought it over to the apartment building. (R. p. 26; p. 34; pp. 87-88; p. 90; p. 92; pp. 105-107). During the ensuing warrant-based search, the officers found numerous items associated with methamphetamine production, including three hydrogen chloride gas generators, a "one pot" bottle, a jar of solvent, a bottle of sulfuric acid, several containers of drain opener, multiple plastic tubes, a metal strainer, a "pill wash," more lighter fluid, some coffee filters, various containers of salt, and an open ammonium-nitrate pack. (R. pp. 37-39; pp. 92-93). Furthermore, officers located some paperwork associated with Ferguson in one of the apartment's bedrooms and found some coffee filters containing an unknown substance in a pair of Ferguson's pants. (R. p. 93; pp. 96-97). Based on the officers' discoveries, field testing was conducted on some of the substances found in the apartment, and they tested positive for methamphetamine. (R. p. 96). Both Ferguson and Davis were then arrested.[3] (R. p. 25; p. 41; p. 209).

Subsequently, Ferguson was indicted for a litany of drug-related charges, and his case proceeded forward to trial. (App'x p. 4; p. 7; pp. 274-279). At the outset of trial, defense counsel moved to suppress the drugs and other incriminating evidence found during the search of

[3] Davis's charges were later unconditionally dismissed. (App'x pp. 212-213).

the apartment pursuant to both the state and federal constitutions, and the trial judge conducted an in limine hearing on the matter. (App'x p. 9). During the course of the hearing, Deputy Hall recounted his face-to-face encounter with the concerned citizen along with the information provided by that individual, and the other officers discussed the actions they took in response to the citizen's tip, which ultimately led to the discovery of the incriminating evidence and Ferguson's arrest. (App'x pp. 10-84; pp. 88-106; pp. 108-111; pp. 153-198). In doing so, the officers explained they believed the tip they received was reliable based on the fact it was provided by a concerned citizen who had nothing to gain from it, noted they believed they had an imperative need to act based on the potential danger an active methamphetamine manufacturing operation could pose in an apartment building, and confirmed the tip of methamphetamine manufacturing was consistent with both their knowledge of Ferguson's past drug-related activities and the nature of the area in which the apartment building was located. (App'x pp. 13-14; pp. 22-23; pp. 29-30; p. 90; p. 105; pp. 153-155; pp. 162-163; pp. 182-184; p. 191; p. 193). Furthermore, in addition to the officers' testimony, Davis testified about what occurred on the date of the incident, confirmed he encountered several officers on his apartment building's stairwell after opening his own door to leave for work, and indicated he spoke with those officers and provided them with consent to enter his apartment.[4] (App'x pp. 199-213).

In light of the testimony elicited during the hearing, defense counsel argued all the incriminating evidence should be suppressed based on a purported violation of Ferguson's

[4] During his testimony, Davis also stated he lived alone in the apartment and asserted Ferguson was merely visiting on the morning of the incident. (App'x pp. 202-205; p. 208; p. 212). However, according to Investigator Nations, the officer had received information indicating Ferguson—who was known to move from residence to residence—was renting a room from Davis. (App'x p. 35; pp. 154-155). Based on Investigator Nations's testimony in that regard, the trial judge determined Ferguson had a possessory interest in the apartment and could properly raise a constitutional challenge to the propriety of the officers' actions. (App'x p. 218).

constitutional rights. (App'x p. 113). As support for that particular contention, defense counsel asserted the officers needed reasonable suspicion in order to conduct a "knock-and-talk" pursuant to South Carolina law while maintaining the tip the officers received was not sufficient to establish reasonable suspicion due to the alleged absence of required corroboration, predictive information, or information demonstrating the tipster was reliable or trustworthy. (App'x pp. 113-115; p. 137; pp. 140-142; pp. 224-225). Furthermore, defense counsel maintained the officers were required to have reasonable suspicion in order to even approach the apartment in any manner and, therefore, violated Ferguson's constitutional rights despite the fact they did not actually knock on the apartment's door. (App'x p. 221; pp. 224-225; p. 231).

In rebuttal, the solicitor contended no "knock-and-talk" occurred in Ferguson's case because Davis came outside and verified Ferguson was inside the apartment before the officers had left the apartment building's common area and made it to the unit's door. (App'x p. 124; pp. 238-239). Beyond that, the solicitor asserted the "fresh" tip provided by the concerned citizen was sufficient to establish reasonable suspicion when considered in conjunction with the other circumstances, such as the officers' awareness of Ferguson's past connection to criminal activity and the apartment being located in a high-crime area, due to the fact it was not anonymous but, instead, was provided in a face-to-face encounter that enabled Deputy Hill to personally evaluate the credibility of an individual who was directly providing information to him.[5] (App'x p. 126; pp. 128-129; pp. 146-147; p. 236; pp. 250-252).

Upon considering the matter, the trial judge granted defense counsel's motion to suppress. (App'x p. 248; pp. 257-259). In doing so, the trial judge correctly found the officers'

[5] Furthermore, the solicitor argued exigent circumstances supported the officers' actions, but the trial judge found no exigency existed based on the testimony indicating the officers did not detect any odors associated with the methamphetamine manufacturing process from the apartment's open window. (App'x p. 252; p. 254).

actions in Ferguson's case were not "indiscriminate" in the manner the South Carolina Supreme Court noted would be constitutionally problematic in its decision in State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015), and, instead, were based on specific information the officers had received about a specific individual. (App'x p. 133). Nonetheless, the trial judge interpreted the Counts decision to hold reasonable suspicion was necessary whenever law enforcement officers engaged the occupants of a residence in any manner and determined the officers did not possess reasonable suspicion when they approached the apartment's door in Ferguson's case. (App'x p. 235; p. 246; p. 248). In reaching that determination, the trial judge concluded the tip the officers relied upon was "anonymous" and lacked corroboration.[6] (App'x pp. 129-130; pp. 148-149; pp. 247-248; pp. 255-256). Furthermore, the trial judge found the tip was unreliable because the officers did not know the tipster's identity and did not question the tipster to determine where he obtained his information. (App'x pp. 233-234; pp. 236-237; p. 247; p. 255). However, the trial judge conceded the issue was "a very close call" and invited the solicitor to appeal the ruling. (App'x p. 245; p. 248; p. 256). The solicitor then did just that. (App'x pp. 248-249; p. 280).

However, on appeal, the Court of Appeals affirmed. State v. Ferguson, 436 S.C. 596, 599, 874 S.E.2d 234, 235 (Ct. App. 2022). In doing so, the Court of Appeals—relying on its interpretation of the Counts decision—initially found the officers were constitutionally required to develop reasonable suspicion to believe Ferguson was manufacturing methamphetamine before approaching the apartment *building* in order to conduct a "knock-and-talk." Id. at 606, 874 S.E.2d at 239. Next, the Court of Appeals looked to the circumstances present and concluded the officers did not, in fact, form the requisite reasonable suspicion before doing so.

[6] As to how the tip might have been corroborated, the trial judge suggested the officers could have asked the "druggies" at the jail if Ferguson had been supplying methamphetamine. (App'x p. 248).

Id. In reaching that conclusion, the Court of Appeals determined the citizen informant's tip—although not "purely anonymous"—lacked "any indicia of accuracy or credibility." Id. at 606-607, 874 S.E.2d at 239. Furthermore, the Court of Appeals—while emphasizing its view "an officer's impression that an individual is engaged in criminal activity, *without confirmation*, does not amount to reasonable suspicion"—determined the officers failed to corroborate or "buttress" the tip through independent investigation. Id. Based on those findings and conclusions, the Court of Appeals held the trial judge did not err by suppressing the evidence discovered inside the apartment. Id. at 608-609, 874 S.E.2d at 240.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In search and seizure cases, the appellate court reviews the trial judge's determinations under a clear error standard and will affirm those determinations if they are supported by the evidence. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). However, the appellate court is *not* barred from conducting its own review of the record to determine whether the trial judge's decision in a search and seizure case is supported by the evidence and will reverse when the trial judge's ruling is clearly legally erroneous. State v. Cheeks, 400 S.C. 329, 334, 733 S.E.2d 611, 614 (Ct. App. 2012); see State v. Adams, 409 S.C. 641, 654, 763 S.E.2d 341, 348 (2014) (reversing the trial judge's denial of a suppression motion where the trial judge's ruling was clearly legally erroneous); Narcisco v. State, 397 S.C. 24, 28, 723 S.E.2d 369, 371 (2012)

("[T]his Court is not barred from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence.").

ARGUMENT

The Court of Appeals erred by affirming the trial judge's erroneous ruling granting Ferguson's motion to suppress illegal drugs and other incriminating evidence recovered from an individual unit in a multi-unit apartment building based on an alleged violation of Ferguson's constitutional rights because the law enforcement officers reasonably approached the apartment building and engaged in a consensual encounter with one of the apartment's occupants prior to entering the apartment's curtilage after obtaining reasonable suspicion of criminal activity from a face-to-face tip provided by a non-anonymous concerned citizen that was fully consistent with the officers' knowledge of both Ferguson's prior criminal history and the high-crime nature of the area where Ferguson was reported to be actively engaged in the dangerous act of manufacturing methamphetamine.

Following an in limine suppression hearing, the trial judge ruled the illegal drugs and other incriminating evidence recovered in Ferguson's case should be excluded from trial after finding Ferguson's constitutional rights were violated by the law enforcement officers' actions in approaching an apartment building purportedly without reasonable suspicion of criminal activity, and the Court of Appeals affirmed that ruling on appeal. Contrary to the conclusions of both the trial judge and the Court of Appeals, the evidence and testimony presented during the suppression hearing established the officers possessed reasonable suspicion of criminal activity prior to entering the apartment's curtilage and making contact with Ferguson based on the existence of the following circumstances: (1) a concerned citizen informant provided a face-to-face tip to an officer in a public place such that anyone passing by or in the vicinity could have witnessed the encounter, and, by virtue of the face-to-face nature of the interaction, the officer was in a position to both directly evaluate the credibility of the tip firsthand and potentially track

down—in the small community of Joanna[7]—the informant, whom he was now familiar with by sight, to hold him accountable if the tip proved to be false; (2) the tip indicated Ferguson was at that time manufacturing methamphetamine inside a two-story apartment building located on a specific highway, which constituted dangerous illegal activity; (3) the officers who responded to the tip were aware Ferguson had been connected to methamphetamine activity in the past, which was fully consistent with and corroborative of what had been reported in the tip; and (4) the officers were further aware Joanna was known to have a high level of both methamphetamine-related activity and drug trafficking, which was also fully consistent with and corroborative of the information relayed through the tip. As a result, the officers' actions were constitutionally proper and did not constitute an unreasonable invasion of Ferguson's right to privacy, the trial judge's ruling to the contrary was clearly erroneous as a matter of law, and the Court of Appeals erred by affirming that erroneous ruling on appeal. The State's petition for a writ of certiorari should be granted, both the Court of Appeals's decision and the trial judge's suppression ruling should be reversed, and Ferguson's case should be remanded for trial.

Generally speaking, it is not typically reasonable from a constitutional standpoint for a person to enter the private property of another without leave. Florida v. Jardines, 569 U.S. 1, 7-8 (2013). However, through longstanding and deeply-ingrained customs and practices, the citizens of the United States—and South Carolina—have extended an implicit license to their fellow citizens, including their fellow citizens serving as law enforcement officers, that permits visitors to approach their homes in an effort to make contact with them. Id. at 8; see Kentucky v. King, 563 U.S. 452, 469 (2011) ("[W]hen law enforcement officers who are not armed with a warrant

[7] According to the United States Census Bureau, Joanna had a total population of just over 1,500 people at the time of the national census in 2020. U.S. Census Bureau, Profile for Joanna CDP, South Carolina, https://data.census.gov/cedsci/profile?g=1600000US4536790.

knock on a door, they do no more than any private citizen might do."). Based on that implicit license, a law enforcement officer is constitutionally permitted *under the Fourth Amendment* to enter a home's curtilage and approach a home in an attempt to speak with or question an occupant so long as the officer's entry and approach is conducted in an objectively reasonable manner consistent with the implicit license, and such entries and approaches do not constitute searches and seizures for Fourth Amendment purposes. See State v. Wright, 391 S.C. 436, 444, 706 S.E.2d 324, 328 (2011) (instructing a law enforcement officer may lawfully go to a person's home and door to interview that person); see also Jardines, 569 U.S. at 9 n. 4 ("[I]t is not a Fourth Amendment search to approach the home in order to speak with the occupant, *because all are invited to do that*."). Thus, as far as the federal constitution is concerned, an officer can typically "approach [a] home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave" without encroaching upon the Fourth Amendment. Jardines, 569 U.S. at 8.

Importantly though, in State v. Counts, 413 S.C. 153, 167, 776 S.E.2d 59, 67 (2015), this Court addressed the question of whether a law enforcement officer's approach of a home to knock on its door and speak with an occupant for investigative purposes constitutes a violation of the South Carolina Constitution. See S.C. Const. art. I, § 10 ("The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated[.]"). After analyzing the issue, a majority of this Court determined "there must be some threshold evidentiary basis for law enforcement to approach a private residence" based on "the potential for abuse" that could occur if officers were permitted to approach citizens' homes "*indiscriminately*" without any limitations. Counts, 413 S.C. at 172, 776 S.E.2d at 69 (emphasis added). As a result, the

majority articulated a new rule of criminal procedure in South Carolina holding "law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence *and* knocking on the door." Id. at 172, 776 S.E.2d at 70 (emphasis added). Accordingly, despite the fact a "knock-and-talk" would be constitutionally proper under the Fourth Amendment due to the implicit license extended by our citizenry, officers in South Carolina must possess reasonable articulable suspicion before conducting a "knock-and-talk" when investigating a potential crime. Id.

As to what "reasonable articulable suspicion" has been recognized to mean, it is a flexible standard grounded in common sense that simply requires a showing of "a *minimal* level of objective justification" in order to be satisfied. Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (emphasis added); see State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) ("The term reasonable suspicion requires a particularized and objective basis that would lead one to suspect another of criminal activity" (citation and internal quotations omitted)). Significantly, the reasonable suspicion standard "is a *very* low bar." United States v. Ramos, 826 F. App'x 131, 133 (3d Cir. 2020) (emphasis added); see Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing even the higher probable cause standard "is not a high bar"). Thus, pursuant to that standard, the presence of factors seemingly consistent with innocent behavior can—and frequently does—suffice to establish the existence of reasonable suspicion to believe criminal activity *may* be afoot when those factors are viewed collectively as required. United States v. Sokolow, 490 U.S. 1, 9 (1989); see United States v. Pack, 612 F.3d 341, 356 (5th Cir. 2010) ("Requiring police to have particularized facts that support a finding that 'criminal activity may be afoot' is different from requiring the police to articulate particularized facts that support a finding that a particular specific crime *is* afoot." (emphasis added)).

In the case sub judice, the officers received a face-to-face tip from a concerned citizen relaying information about Ferguson's current location and indicating Ferguson was presently engaged in an inherently-dangerous criminal activity inside a multi-unit apartment building. See United States v. Blount, 123 F.3d 831, 835 (5th Cir. 1997) (en banc) ("[A]bsent specific reasons for police to doubt his or her truthfulness, an ordinary citizen, who provides information to police at a crime scene or during an ongoing investigation, may be presumed credible *without subsequent corroboration*." (emphasis added)); State v. Hudgins, 672 S.E.2d 717, 719 (N.C. Ct. App. 2009) (recognizing information relayed to an officer through a face-to-face encounter can provide reasonable suspicion because it enables the officer to judge the credibility of the tipster firsthand); see also Hatcher v. State, 762 N.E.2d 170, 173 (Ind. Ct. App. 2002) (characterizing the manufacturing process used to produce methamphetamine as "inherently dangerous"); cf. State v. Sailo, 910 S.W.2d 184, 188 (Tex. App. 1995) ("[T]he informant, although unknown to the officers, was sufficiently reliable because he came forward in person to give the officers the information."). Significantly, the information provided by the concerned citizen was *also* fully consistent with the officers' knowledge of both the nature of the area where Ferguson was reported to be manufacturing the methamphetamine and Ferguson's past connections to illegal activity involving methamphetamine. See United States v. Calvetti, 836 F.3d 654, 667 (6th Cir. 2016) (recognizing a prior criminal history can constitute a "strong" indicator of criminal activity for purposes of a reasonable suspicion analysis); United States v. Lender, 985 F.2d 151, 154 (4th Cir. 1993) ("While the defendant's mere presence in a high crime area is not by itself enough to raise reasonable suspicion, an area's propensity toward criminal activity is something that an officer may consider."). Although that information might not have alone been sufficient to rise to the level of probable cause, it was sufficient to give the officers an objectively-reasonable

basis to go to the apartment building where the dangerous activity was reported to be occurring for investigative purposes. See Wardlow, 528 U.S. at 123 (instructing the reasonable suspicion standard only requires "a minimal level of objective justification"); see also State v. Jones, 435 S.C. 138, 145, 866 S.E.2d 558, 562 (2021) (affirming the probable cause standard is not a high bar to meet). In fact, from the perspective of responsible law enforcement designed to protect the citizens the officers had a duty to serve, the information provided to the officers necessarily *required* them to take some action to quickly investigate the citizen's tip and confirm or dispel whether dangerous criminal activity was actively ongoing in an apartment building potentially inhabited by people other than the ones reported to be engaged in the hazardous process of methamphetamine production. See Adams v. Williams, 407 U.S. 143, 145 (1972) ("The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, . . . it may be the essence of good police work to adopt an intermediate response."); see also Graham v. Connor, 490 U.S. 386, 396-397 (1989) ("The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving[.]"). Moreover, the tempered and limited actions the officers did ultimately undertake in response to the in-person citizen tipster's troubling report could not reasonably be described as indiscriminate, which was this Court's primary concern when rendering its decision in Counts.[8] See Counts, 413 S.C. at 172, 776 S.E.2d at 69 ("Because the privacy interests in one's home are the most sacrosanct, we believe there must be some threshold evidentiary basis for law enforcement to approach a private residence. Otherwise, we foresee the potential for abuse if

[8] Notably, both the trial judge and defense counsel agreed the officers' actions in Ferguson's case were *not* indiscriminate. (App'x pp. 133-134).

law enforcement targets a neighborhood and *indiscriminately* knocks on doors with the hope of discovering contraband without a search warrant." (emphasis added)).

Despite that, the trial judge found the officers' actions to be constitutionally unreasonable, and, in affirming that ruling on appeal, the Court of Appeals initially found—while focusing in insolation on a portion of this Court's holding in the Counts decision—the need for reasonable suspicion was triggered prior to the officers' first contact with Davis, who provided consent immediately after encountering the officers, by virtue of the officers' actions in merely beginning their approach of Davis's apartment *building*. See Counts, 413 S.C. at 172, 776 S.E.2d at 70 ("[W]e hold that law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to *approaching the residence* and knocking on the door." (emphasis added)). Importantly though, the encounter with Davis occurred *outside* Davis's individual apartment's curtilage since the officers were on the multi-unit apartment building's shared stairwell when Davis exited his apartment, realized they were there, and verified to them Ferguson was inside just as the citizen tipster had reported. See United States v. Brooks, 645 F.3d 971, 975-976 (8th Cir. 2011) (holding a staircase connected to a multi-family dwelling was not part of the curtilage of Brooks's individual apartment since it was a common area shared by all the dwelling's tenants and noting it is "well-settled" there exists no generalized expectation of privacy in the common areas of apartment buildings); see also United States v. Dunn, 480 U.S. 294, 300 (1987) (explaining the question of whether an area constitutes the curtilage of a home such that it is entitled to the special constitutional protections afforded to a person's residence hinges on "whether the area harbors the intimate activity associated with the sanctity of a man's home and the privacies of life" (citation and internal quotations omitted)). That critical fact is incredibly important because: (1) this Court's holding in Counts was focused on and solely

addressed a situation in which officers were in an apartment's curtilage by virtue of being physically present at the apartment's door when they made contact with an individual under investigation, which meant this Court was *not* addressing—and, thus, could not have been resolving—any questions concerning a situation in which officers had not yet encroached upon a residence's curtilage at the time of the constitutionally-challenged conduct; and (2) the officers in Ferguson's case were able to corroborate a key piece of the information provided by the in-person informant *before* they entered a portion of the apartment considered to be constitutionally sacrosanct, which meant significant corroboration was present before the need for reasonable suspicion was triggered.[9] See Oliver v. United States, 466 U.S. 170, 180 (1984) (explaining "only the curtilage" of a home is entitled to the special constitutional protections afforded to a person's residence while further noting such a rule is consistent with respect for an individual's reasonable expectations of privacy); see also Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.' " (citation omitted)). As a result, the Court of Appeals's conclusion the informant's tip "lacked *any* indicia of reliability" was inaccurate, and the officers were in possession of sufficient information to meet the reasonable suspicion standard's minimal requirements such that the trial judge's ruling granting the suppression motion should have been reversed instead of affirmed on appeal. Ferguson, 436 S.C. at 608, 874 S.E.2d at 240 (emphasis added); see Navarette v. California, 572 U.S. 393, 397 (2014) ("[T]he level of suspicion the [reasonable

[9] Significantly, the officers' confirmation of Ferguson's presence in the apartment *prior to* them entering the apartment's curtilage is particularly significant since the Court of Appeals justified its conclusion reasonable suspicion was lacking in part on the basis the officers purportedly "had no reason to suspect Ferguson of being inside the apartment" and "did not . . . know that he was inside." Ferguson, 436 S.C. at 608, 874 S.E.2d at 240.

suspicion] standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause[.]" (citations and internal quotations omitted)).

Furthermore, even if the officers' mere approach of the residence was sufficient to trigger a need for reasonable suspicion before they were able to corroborate Ferguson's presence at the apartment from outside its curtilage, both the trial judge's suppression ruling and the decision of the Court of Appeals were nevertheless still clearly erroneous because the officers did, in fact, possess reasonable suspicion when the information known to them is properly evaluated in light of the low bar set out by the reasonable suspicion standard. Looking to the information known to the officers before they headed to the apartment building where Ferguson and his illegal drugs were found, the officers had received a *face-to-face* tip from a concerned citizen who had done nothing to hide his identity or remain anonymous to law enforcement. See United States v. Heard, 367 F.3d 1275, 1280 (11th Cir. 2004) (holding a tip offered by an informant through a face-to-face encounter may provide a law enforcement officer with reasonable suspicion). By personally engaging in a face-to-face encounter with Deputy Hall, the concerned citizen in Ferguson's case enabled the officer to directly evaluate the credibility of the tip firsthand and determine for himself whether the information provided was sufficiently reliable. See United States v. Perkins, 363 F.3d 317, 323 (4th Cir. 2004) ("Where the informant is known or where the informant relays information to an officer face-to-face, an officer can judge the credibility of the tipster firsthand and thus confirm whether the tip is sufficiently reliable to support reasonable suspicion."); cf. Giles v. Commonwealth, 529 S.E.2d 327, 329-330 (Va. Ct. App. 2000) ("Although Officer Devoti did not obtain the women's names or addresses, their reports were not an anonymous tip. He stood face to face with them and listened to their accounts. He was able

to assess their credibility and the reliability of their information."). Furthermore, since the concerned citizen was—just as the Court of Appeals recognized—*not* anonymous and, instead, was fully visible to the officer, the concerned citizen exposed himself to potential liability in the event the tip had been untruthful. See State v. Driggers, 322 S.C. 506, 511, 473 S.E.2d 57, 60 (Ct. App. 1996) ("[A] non-confidential informant should be given higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false."); cf. Navarette, 572 U.S. at 400 (finding an anonymous 911 call reporting erratic driving was sufficient to establish reasonable suspicion for a stop based, in part, on the fact the call provided "some safeguards against making false reports with immunity" since the caller *potentially* could have been traced and identified under the circumstances). Under such circumstances, the tip provided to the officers was categorically different than an anonymous tip and was sufficiently reliable *by itself* to warrant a limited investigative response from the officers. See Milbin v. State, 792 So. 2d 1272, 1274 (Fla. Dist. Ct. App. 2001) ("A witness who provides information to a police officer through 'face to face' communication is deemed to be sufficiently reliable."); State v. Fudge, 42 S.W.3d 226, 232 (Tex. App. 2001) (finding a law enforcement officer possessed sufficient reasonable suspicion to justify an investigatory detention based on the fact he received unsolicited information about criminal activity in a face-to-face manner from an individual who was neither connected to police nor a paid informant, which made the information provided "inherently reliable"); cf. State v. Hutz, 144 So. 3d 618, 621 (Fla. Dist. Ct. App. 2014) ("The officer received information from the security guard through face to face communication. The security guard thus was a citizen informant *whose tip was sufficiently reliable by itself to provide the officer with reasonable suspicion* to conduct an investigatory stop of the defendant without further

investigation or corroboration." (emphasis added)). Therefore, the trial judge's ruling the face-to-face tip—which was incorrectly treated by the trial judge as anonymous—was not sufficiently reliable to establish reasonable suspicion was clearly erroneous, and, resultantly, the Court of Appeals erred by affirming that erroneous ruling on appeal. See Illinois v. Gates, 462 U.S. 213, 230 (1983) (rejecting the idea an informant's veracity, reliability, and basis of knowledge are elements that "should be understood as entirely separate and independent requirements to be rigidly exacted in every case" when a probable cause analysis is being conducted).

Beyond that, corroborating the information supplied by the concerned citizen and further supporting the existence of reasonable suspicion, the officers were aware the general area where Ferguson was reported to be engaged in the manufacture of methamphetamine was an area known to have a high level of both methamphetamine-related activity and drug trafficking. See Wardlow, 528 U.S. at 124 (recognizing the nature of particular area and its connection to criminal activity is a pertinent factor in a reasonable suspicion analysis); Milledge v. State, 422 S.C. 366, 377, 811 S.E.2d 796, 802 (2018) ("A person's presence in a known high-crime area is one relevant consideration in analyzing reasonable suspicion[.]"). More importantly though, the officers were also aware Ferguson had personally been connected to *the exact type of activity* described in the tip in the past based on their knowledge of him. See United States v. Lewis, 920 F.3d 483, 493 (7th Cir. 2019) ("Criminal histories can support reasonable suspicion."); United States v. Green, 897 F.3d 173, 187 (3rd Cir. 2018) (recognizing an individual's criminal history—although not alone sufficient to establish reasonable suspicion—"is a valid factor" in a reasonable suspicion analysis with a value that "is enhanced when the prior offenses relate to the crime being investigated"); United States v. Simpson, 609 F.3d 1140, 1147 (10th Cir. 2010) ("In conjunction with other factors, criminal history *contributes powerfully to the reasonable*

suspicion calculus." (citations, internal quotations, and brackets omitted)); United States v. Sprinkle, 106 F.3d 613, 617 (4th Cir. 1997) ("[A]n officer can couple knowledge of prior criminal involvement with more concrete factors in reaching a reasonable suspicion of current criminal activity."). In light of their knowledge of independent information corroborative of the information reported by the non-anonymous concerned citizen during the face-to-face encounter, the officers—much like the officers in Counts—possessed sufficient information to satisfy the minimal requirements of the reasonable suspicion standard such that it was entirely reasonable for them to follow up and investigate the tip, and both the trial judge's and the Court of Appeals's conclusions to the contrary erroneously elevated the level of information needed to establish the existence of reasonable suspicion beyond what is actually required.[10] See Kansas v.

[10] In finding the information known to the officers to be insufficient to satisfy the reasonable suspicion standard, the Court of Appeals cited multiple times—including once with emphasis—to the following quote that originally appeared in its subsequently-reversed decision in State v. Taylor, 388 S.C. 101, 116, 694 S.E.2d 60, 68 (Ct. App. 2010): "[A]n officer's impression that an individual is engaged in criminal activity, *without confirmation*, does not amount to reasonable suspicion." (emphasis added). Notably though, the Fourth Circuit Court of Appeals authority identified in Taylor as support for that particular quote did *not* actually contain or articulate such a proposition. See Sprinkle, 106 F.3d at 613-620 (containing no statement indicating or suggesting confirmation of criminal activity is necessary for reasonable suspicion to exist). Even more importantly, a requirement for confirmation of criminal activity before reasonable suspicion could exist would be strikingly at odds with the standard itself, which only requires an officer to be in possession of sufficient articulable facts to reasonably believe criminal activity *may* be afoot. See Sokolow, 490 U.S. at 7 (instructing the reasonable suspicion standard merely requires an officer to possess "a reasonable suspicion supported by articulable facts that criminal activity may be afoot" and noting what is required to satisfy that standard "is considerably less than *proof of wrongdoing* by a preponderance of the evidence" (emphasis added and citations and internal quotations omitted)). In fact, if such a confirmation requirement did exist, the seminal case articulating the reasonable suspicion standard—Terry v. Ohio, 392 U.S. 1 (1968)—could not have been decided as it was since the officer in that case had confirmed *nothing* prior to physically seizing Terry and his confederates for investigatory purposes. Cf. Terry v. Ohio, 392 U.S. 1, 28 (1968) (holding an officer's actions in effectuating a detention and frisk search were constitutionally reasonable because they were not "the product of a volatile or inventive imagination" or "undertaken simply as an act of harassment" and, instead, were reasonably tempered based on the officer observing Terry and his confederate repeatedly walk by and look in a store window in a manner that appeared suggestive of criminal activity to the officer). As a

Glover, __ U.S. __, 140 S. Ct. 1183, 1190 (2020) (rejecting an interpretation of what is required to satisfy the reasonable suspicion standard because the rejected interpretation "would considerably narrow the daylight between the showing required for probable cause and the 'less stringent' showing required for reasonable suspicion"); see also W. Logan Caldwell, Criminal Law—Reasonable Suspicion: Not Just Based on Training and Professional Experience, 96 N.D. L. Rev. 63 (2021) ("While the two standards remain different, the reasonable suspicion standard has been inching upward, requiring officers provide more evidence or have more training to justify a simple investigatory traffic stop. The United States Supreme Court in Glover reiterated and anchored reasonable suspicion as a very low threshold." (footnote omitted)); cf. Phillips v. Allen, 668 F.3d 912, 914 (7th Cir. 2012) (rejecting Phillips's suggestion police needed to do more to investigate in order to have *probable cause* to arrest him as a "weak" argument and explaining "[p]olice need not run down all leads before making an arrest—especially not when a crime is violent and leaving the perpetrator at large may endanger other persons").

Accordingly, because the officers possessed reasonable suspicion of criminal activity prior to entering the apartment's curtilage in response to the concerned citizen's tip, both the trial judge and the Court of Appeals clearly erred as a matter of law by finding the officers' actions were unreasonable and violative of Ferguson's constitutional rights. See S.C. Const. art. I, § 10 (prohibiting only *unreasonable* searches, seizures, and invasions of privacy); see also United States v. Christmas, 222 F.3d 141, 145 (4th Cir. 2000) ("A community might quickly succumb to a sense of helplessness if police were constitutionally prevented from responding to the face-to-

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result, the Court of Appeals conducted its reasonable suspicion analysis in a fundamentally flawed manner by referring to, relying upon, and emphasizing that particular quote from Taylor, which itself was a decision that was *reversed* on the basis its reasonable suspicion analysis was legally wrong. See State v. Taylor, 401 S.C. 104, 113, 736 S.E.2d 663, 667 (2013) (holding "the court of appeals erred in finding that police did not have reasonable suspicion to justify an investigatory stop").

face pleas of neighborhood residents for assistance. Officers in turn are entitled to investigate such reports without jeopardizing their personal safety. Any other constitutional rule would destroy the basis for effective community police work."); cf. Counts, 413 S.C. at 173, 776 S.E.2d at 70 (finding a "knock-and-talk" to be constitutionally reasonable where "the officers were not randomly knocking on Counts' door but had reasonable suspicion to support their decision to approach Counts' residence and conduct the 'knock and talk' "). The State's petition for a writ of certiorari should be granted, both the Court of Appeals's decision and the trial judge's suppression ruling should be reversed, and Ferguson's case should be remanded for trial.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be granted. In requesting this relief, counsel for Petitioner certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

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