

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On 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.

APPENDIX

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2018-002133

THE STATE,

Appellant,

vs.

SYLVESTER FERGUSON, III,

Respondent.

RECORD ON APPEAL

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State of South Carolina) In the Court of General Sessions
) Eighth Judicial Circuit
County of Laurens) 2017-GS-30-0948
) 2017-GS-30-0949
) 2017-GS-30-0950

State of South Carolina,
Plaintiff,
vs.
Sylvester Ferguson, III,
Defendant.

)
)
)
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)
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)
)

Transcript of Record

November 26-27, 2018
Laurens, South Carolina

B e f o r e:

The Honorable Frank R. Addy, Jr., Judge; and a jury

A p p e a r a n c e s:

C. Dale Scott, Deputy Solicitor
Margaret G. Boykin, Assistant Solicitor
Attorneys for the Plaintiff

Joel T. Broome, Esquire
Tristan M. Shaffer, Esquire
Attorneys for the Defendant

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

1 DeYoung's speaking with you guys, okay?

2 MR. SHAFFER: Yes, sir.

3 THE COURT: All right. So that's how we'll handle
4 that.

5 MR. SHAFFER: Thank you, Your Honor.

6 THE COURT: Thank you. All right. Anything
7 further, Mr. Broome?

8 MR. BROOME: Not on -- not on those ---

9 THE COURT: Okay.

10 MR. BROOME: --- issues, Your Honor.

11 THE COURT: Yes, sir.

12 MR. BROOME: I'm going to get my voir dire from the
13 office.

14 THE COURT: Sure.

15 MR. BROOME: Handle that ---

16 MR. SCOTT: I got ---

17 MR. BROOME: --- real quick.

18 MR. SCOTT: Unless you changed it, I got a copy.

19 MR. BROOME: Oh. Did someone hand you one? Oh, you
20 got one from me.

21 (Whereupon, Mr. Broome and Mr. Scott conferred.)

22 THE COURT: And y'all are anticipating the pretrial
23 stuff should take approximately how many hours this
24 afternoon?

25 MR. SCOTT: I'm not quite sure what the -- I -- I

1 guess a suppression hearing.

2 MR. BROOME: Uh-huh.

3 MR. SCOTT: And ---

4 THE COURT: Okay.

5 MR. SCOTT: --- that -- we had probably two
6 witnesses. So I -- I wouldn't think an hour ---

7 THE COURT: Okay.

8 MR. SCOTT: --- something like that.

9 THE COURT: And then, is that really all we got, the
10 suppression hearing? Is there a Jackson ---

11 MR. BROOME: As far as beforehand?

12 THE COURT: Yes, sir.

13 MR. BROOME: No, sir -- yeah. Yes, sir. Yes ---

14 THE COURT: That ---

15 MR. BROOME: --- sir.

16 THE COURT: --- about it?

17 MR. BROOME: Sorry.

18 THE COURT: All right. No. That's all right.

19 All right. We'll take a break for a few moments.

20 Get your file. See if Chelsea wants to join, and we'll
21 take it from there, okay?

22 MR. BROOME: Thank you.

23 THE COURT: All right. Five minutes.

24 (Off the record from 12:00 p.m. until 12:13 p.m.)

25 THE COURT: All right. Ladies and gentlemen of the

1 jury panel, we're about to begin selection of a jury in
2 the case of *the State of South Carolina v. Sylvester*
3 *Ferguson, III*. And ladies and gentlemen, I've been
4 presented with three indictments that charge Mr. Ferguson
5 with the offense of manufacturing methamphetamine,
6 possession of methamphetamine, and possession of crack
7 cocaine.

8 At the outset, ladies and gentlemen, I want to let
9 you know that the fact that Mr. Ferguson was charged with
10 these offenses, was indicted, is, of course, not
11 evidence. All right? These indictments are nothing more
12 than pieces of paper. They're the formal means by which
13 a case is brought into this Court.

14 And in this case, Mr. Ferguson has pled not guilty
15 to all of these charges? All right? That means that in
16 the eyes of the law, he is not guilty of these offense
17 and the state has the burden of proving his guilt beyond
18 a reasonable doubt to the unanimous satisfaction of all
19 12 members who are ultimately selected on this particular
20 jury.

21 Now, going forward, ladies and gentlemen, I'm going
22 to introduce you to the attorneys that are involved in
23 this case who will be trying this case.

24 Mr. Scott, if you would care to introduce yourself
25 and Ms. Boykin to the jury panel, please, sir.

1 Since -- and as I indicated in chambers when this
2 matter came to my attention, because it was obviously not
3 Mr. DeYoung who imparted this information to the A.A.
4 with the public defender's office, I -- I don't feel that
5 Mr. Shaffer has any conflict and that he may participate
6 in -- in these proceedings.

7 All right. See y'all in about an hour. Thanks.

8 (Off the record from 12:55 p.m. until 2:17 p.m.)

9 THE COURT: Okay. We'll go back on the record in
10 the case versus -- the State v. Mr. Ferguson. The record
11 will reflect that Mr. Ferguson is not present at this
12 particular point. Obviously, he was here when we broke.
13 And I indicated that the jury would be back at three and
14 he needed to be back here at two. So we'll just simply
15 move along. And I assume that he must have had a flat or
16 something's unexpectedly delayed him.

17 We ready to go forward on the search issue,
18 Solicitor?

19 MR. SCOTT: Yes, sir.

20 THE COURT: All right. Y'all ready?

21 MR. BROOME: Yes, Your Honor.

22 THE COURT: All right. Solicitor, go ahead, please.

23 MR. SCOTT: Well, what ---

24 THE COURT: This is ---

25 MR. SCOTT: --- are the grounds for the -- what is

1 the motion exactly?

2 THE COURT: Okay. I ---

3 MR. BROOME: Oh, sorry. Yes.

4 THE COURT: Go ahead, please.

5 MR. BROOME: Your -- Your Honor, we'd move to
6 suppress the drugs and all items that were found inside
7 this appointment in violation -- we're moving to suppress
8 this. This violated my client's constitutional rights
9 under the United States Constitution, Amendment 4; and
10 also the South Carolina Constitution -- yeah -- saying
11 that -- basically arguing this is unreasonable search and
12 seizure. The South Carolina provision is the express-
13 right-to-privacy provision, which is Constitution Article
14 I, Clause 10.

15 And we're asking the Court to rule on those issues.

16 THE COURT: All right. Solicitor, are you ready to
17 go?

18 MR. SCOTT: I -- let me call Deputy Andrew Hall
19 first, Your Honor.

20 (Off the record briefly.)

21 MR. BROOME: And Your -- Your Honor, if they're
22 calling him first, I'd ask that the other officer be
23 sequestered during ---

24 THE COURT: Okay. Yeah.

25 MR. BROOME: --- this proceeding.

DIRECT EXAMINATION BY MR. SCOTT - ANDREW HALL 56

1 THE COURT: We -- we're going to -- was he a witness
2 on this ---

3 MR. SCOTT: This is my lead investigator.

4 THE COURT: Oh, okay. He can stay, then.

5 MR. BROOME: Okay.

6 THE COURT: That's fine.

7 MR. SCOTT: And this shouldn't be any other -- these
8 are -- I think they're just bystanders or ---

9 THE COURT: They -- they ---

10 MR. SCOTT: --- they're watching.

11 THE COURT: --- are. They're law students.

12 (Off the record briefly.)

13 (Whereupon, the witness came forward.)

14 ANDREW HALL, having been first duly sworn, testified
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q Okay. Deputy Hall, how long have you been with the
19 Laurens Sheriff's Office?

20 A For approximately four years.

21 Q Okay. You started off working at the detention
22 center; is that right?

23 A That's correct.

24 Q Okay. And then January of last year, were you just
25 doing road patrol?

1 A That's correct.

2 Q Okay. Specifically, January 17th of last year, say,
3 around noon -- right -- well, right around ten or eleven
4 o'clock a.m., do you remember that day?

5 A I do.

6 Q Okay. And do you remember being in Joanna that
7 morning?

8 A I do.

9 Q Okay. And do you remember being at a convenience
10 store in Joanna?

11 A Yes, sir, I do.

12 Q What convenience store was that?

13 A It's a Citgo on the corner of Highway 76 and
14 Whitmire Highway.

15 Q Okay. And do you remember why you were there?

16 A I just was on routine patrol and just riding around,
17 doing my routine checks.

18 Q Okay. Were you fueling up, or were you just
19 checking on the convenience store?

20 A Just -- just had pulled in the parking lot, just
21 checking and seeing what was going on.

22 Q Okay. Tell us what happened when you pulled up in
23 the parking lot.

24 A All right. So I -- I pulled into the parking lot.
25 There was a black male that had came walking up to the

1 store. He was not in a vehicle.

2 He waved me down. I drove over to him; got out. He
3 began telling me that there was a Trey Ferguson at the
4 apartments on Whitmire Highway that was supposedly
5 manufacture -- cooking methamphetamine.

6 So at that time I called Investigator Nations.

7 Q Okay. Well, for purposes of this hearing, did you
8 know who Trey Ferguson was at the time?

9 A I was familiar with him from the detention center.
10 Yeah.

11 Q Okay. So your in time at -- working in the
12 detention center, you were familiar with Trey Ferguson?

13 A Correct.

14 Q Do you know that to be Sylvester Ferguson, III?

15 A That's correct. Yes.

16 Q Okay. Upon gaining that information at the Citgo
17 from the black man -- well, first of all, do we know who
18 the black man was? Do you know his name?

19 A No, sir, I don't.

20 Q Okay. Was he somebody who was familiar -- you were
21 familiar with at the time of this ---

22 A No, sir. I -- I don't recall. No.

23 Q Okay. Was it just something where he -- he waved
24 you down because you were just a deputy ---

25 A Correct.

1 Q You weren't familiar with him, though?

2 A No. No, I was not.

3 Q And then, when you got the information from this
4 male, how did you -- what did you do with that
5 information?

6 A At that time I contacted Investigator Nations by
7 telephone and gave him the same information. And due to
8 that being a -- a -- a high-traffic area for drug
9 activity, I asked him if he was busy; if he'd like to
10 come and try to a knock-and-talk with me at the
11 apartment.

12 Q Okay. And the reason you didn't do it yourself is
13 because you were not a narcotics investigator at the
14 time?

15 A Correct. They're more well-versed in that field
16 than I am.

17 Q Okay.

18 A Yeah.

19 Q So you told Nations the identity of the person
20 supposedly cooking meth and the location where the meth
21 was supposedly being cooked?

22 A Correct.

23 Q Okay. And did you -- how soon -- from when you got
24 that information from the tipster, how soon was it that
25 you related that information to Deputy Nations?

1 A Immediately.

2 Q Okay. And then, do you recall how soon after that
3 that Nations showed up to do the knock-and-talk?

4 A I would say approximately within 20 to 30 minutes.

5 Q Okay. So within 20 minutes of receiving the tip, we
6 had investigators from Laurens County at that location to
7 do a knock-and-talk?

8 A Correct.

9 Q And then, were you present when they went up to the
10 house and did the knock-and-talk?

11 A Yes, sir, I was. I was still on the outside of the
12 residence. But I -- I went to the apartment with them.

13 Q Okay. And did -- describe that -- that apartment
14 complex.

15 A It's a brick and black building. It's a two-story
16 complex. And this particular was in the upper-left-hand
17 corner of the building.

18 Q Okay. And that information -- how did you get that
19 information?

20 A From ---

21 Q Which ---

22 A --- the individual at the gas station.

23 Q Okay. And you did not go inside to perform any of
24 the search?

25 A No, sir.

CROSS-EXAMINATION BY MR. BROOME - ANDREW HALL

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1 Q Okay. Answer any questions Mr. Broome has for you,
2 please.

3 CROSS-EXAMINATION

4 BY MR. BROOME:

5 Q You didn't write a report in this case, did you?

6 A No, sir, I did not.

7 Q Okay. And this case is about two years old; is that
8 right?

9 A It's about a year -- well, it's getting close ---

10 Q Getting close ---

11 A Yeah.

12 Q --- to two years?

13 You've been working for Laurens County this entire
14 time?

15 A Yes, sir.

16 Q Okay. And fair to say that this -- excuse me.
17 Since this time you've made multiple arrests on different
18 subjects?

19 A Yes, sir.

20 Q Okay. And you were actually trained how to write a
21 report at -- when you got your training up in Columbia,
22 right?

23 A Yes, sir.

24 Q Okay. And there's different reasons why you want to
25 write a report on a case. One of those would be there's

1 often a -- a large lapse in time between when an incident
2 happens and when we come to court, right?

3 A (No audible response.)

4 Q The court reporter needs "yes" or "no" ---

5 A Yes, sir.

6 Q --- answers. Sorry.

7 A I'm sorry.

8 Q Yeah.

9 A Yeah. I'm sorry.

10 Q She's taking everything we say ---

11 A Okay.

12 Q --- down.

13 So -- and sometimes several years will occur between
14 an arrest and when you get to court, right?

15 A Yes.

16 Q Okay. In this case, since you didn't write a
17 report, can you tell me how you refreshed your memory on
18 this case? Did you read any reports before you came to
19 court today?

20 A Yes, sir. I looked over the original incident
21 report.

22 Q Okay. Who wrote that report?

23 A Investigator Nations.

24 Q Okay. So you reviewed Investigator Nations' report
25 before coming to this Court, right?

1 A Correct.

2 Q Okay. And that would be partly to prepare for
3 questions that I may ask you, right?

4 A Somewhat.

5 Q And ---

6 A Yeah.

7 Q --- to answer questions that Mr. Scott would ask
8 you, right?

9 A Yes.

10 Q Okay. So since -- oh. And have you met with
11 Investigator Nations before today to talk about the case
12 at all?

13 A Not at all.

14 Q Okay. So you just read the report?

15 A (No audible response.)

16 Q And if you wanted to -- if you remembered something
17 differently that was not in the report, would you have
18 told Investigator Nations or Mr. Scott?

19 A I'm sorry. Can you say that again? I didn't hear
20 the ---

21 Q Sure.

22 A --- first part.

23 Q If -- you had a chance to review the report that
24 Investigator Nations wrote, right?

25 A (No audible response.)

CROSS-EXAMINATION BY MR. BROOME - ANDREW HALL

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1 Q Did you leave anything out?

2 THE COURT REPORTER: Your Honor, I'm -- I'm sorry.

3 MR. BROOME: Yeah.

4 THE COURT REPORTER: Mr. Broome ---

5 MR. BROOME: I'm sorry.

6 THE COURT REPORTER: --- I need verbal answers from
7 the witness.

8 THE COURT: Yeah.

9 MR. BROOME: From him?

10 THE COURT: If you ---

11 MR. BROOME: --- Okay.

12 THE COURT: --- if you could, yes ---

13 MR. BROOME: Sorry.

14 THE COURT: --- or no, as opposed to nodding ---

15 THE WITNESS: Okay.

16 THE COURT: --- or shaking ---

17 THE WITNESS: I'm sorry.

18 THE COURT: --- your head.

19 THE WITNESS: I'm running on low ---

20 MR. BROOME: I hear ---

21 THE WITNESS: --- sleep.

22 MR. BROOME: --- it.

23 THE COURT: That's all right.

24 MR. BROOME: I hear it.

25 THE COURT: Sorry. Go ahead.

1 Q You had a chance to review his report?

2 A Yes.

3 Q Right?

4 A (No audible response.)

5 Q You read it completely, right?

6 A Yes.

7 Q Before you came to court, did you have a chance to
8 say -- to tell Investigator Nations, "Hey, you might need
9 to add or take anything away from this report"?

10 A No.

11 Q Okay. Did it seem complete to you, from the way you
12 remember reading it?

13 A On my account, yes.

14 Q Okay. In the report can you show me where it says
15 that Trey -- that Sylvester Ferguson was cooking
16 methamphetamine? And do you need a copy of the report?
17 I can hand you one.

18 A I do.

19 Q Okay.

20 A Yes. Thank you.

21 Q There you go. Take your time. Just don't read out
22 loud.

23 A You said -- you want to see where it says ---

24 Q Yes.

25 A --- that he ---

1 Q Just take ---

2 A --- was cooking ---

3 Q --- a moment to read through there. Don't read out
4 loud.

5 A Got you.

6 Q But if you can show me where it says that he --
7 Sylvester Ferguson was cooking methamphetamine.

8 A It's -- I don't believe it's going to actually state
9 "cooking methamphetamine." It states "cooking dope,"
10 just ---

11 Q Okay.

12 A --- yes.

13 Q So just cooking dope, right?

14 A Correct.

15 Q And is -- that phrase is in quotation marks,
16 correct?

17 A Correct.

18 Q Does that mean you're attributing it to this black
19 male?

20 A Yes.

21 Q Okay. So the black males words were "cooking dope,"
22 correct?

23 A Correct.

24 Q Not "cooking methamphetamine"?

25 A Correct.

1 Q Correct?

2 A (No audible response.)

3 Q Okay. And how long were you with this unknown black
4 male: a few minutes?

5 A Yes.

6 Q Okay. And you said that you're familiar with Trey
7 Ferguson. The ---

8 A Yes.

9 Q --- the -- or not -- sorry -- not C.I. But just
10 this unknown black male, did he say "Trey Ferguson" or
11 "Sylvester Ferguson"?

12 A He said "Trey Ferguson."

13 Q He said "Trey Ferguson"?

14 A Yes.

15 Q Okay. Will you look at the report and tell me where
16 it says "Trey Ferguson in the report? And I know it's
17 not your report.

18 A It says "Sylvester Ferguson" ---

19 Q It just ---

20 A --- in here.

21 Q --- says "Sylvester" ---

22 A Yes.

23 Q --- "Ferguson"?

24 Does it indicate ---

25 A Right.

1 Q --- if it's Sylvester Ferguson -- I'm sorry. What
2 was your answer?

3 A I -- we all know him by "Trey." That's what he goes
4 by, so that's why.

5 Q Okay.

6 A I guess that's why I'm saying "Trey."

7 Q You're saying "Trey." But does that -- that's what
8 the unknown black male ---

9 A I don't specifically recall whether he said
10 "Sylvester" or "Trey."

11 Q Okay. Just based on the information you gave
12 Investigator Nations, he wrote "Sylvester Ferguson,"
13 correct?

14 A Yes.

15 Q Based on that report, does it say that it's
16 Sylvester Ferguson, III or Jr. or the first? Senior?

17 A In the narrative it does not.

18 Q Okay. So there's no monikers after that, correct?

19 A (No audible response.)

20 Q You mentioned that this was in a high-drug area.
21 Can you tell the Court how many drug arrests you've made
22 at this apartment building before that date?

23 A I mean, I don't know if I -- I said it's a high-
24 traffic area. It's just a known -- Joanna itself is --
25 is -- is a high-traffic area for methamphetamine ---

1 Q So -- so ---

2 A --- and specifically ---

3 Q --- if any ---

4 A --- the ---

5 Q --- if someone ---

6 A --- apartment ---

7 Q --- has -- gets pulled over for -- for speeding in
8 Joanna and their license has their residence as Main
9 Street, Joanna, you'd think that that person may be
10 involved in methamphetamine because they live there?

11 A No.

12 Q Okay.

13 A And I personally haven't made any arrests that
14 apartment ---

15 Q Okay.

16 A --- prior to that.

17 Q So when you mean -- you just meant the whole area of
18 Joanna -- and I'm just trying to flesh this out, because
19 you just -- you're the one who said it. High-traffic
20 area for drugs, is that what you meant?

21 A Correct.

22 Q Okay.

23 A Yeah.

24 Q The whole city?

25 A Joanna, in and of itself, yes.

1 Q Okay. So anyone in Joanna is a suspect for making

2 ---

3 A No.

4 Q That's what I want to ---

5 A No.

6 Q No?

7 A (No audible response.)

8 Q Okay. But you've never made an arrest that building
9 before?

10 A Correct.

11 Q Correct. Okay. Never arrested my client or seen
12 him there before, correct?

13 A No.

14 Q Okay.

15 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

16 Q That's everything that you recall about your meeting
17 with the anonymous black male, correct?

18 A Yes.

19 Q Okay. And just while you're up here, he did not
20 tell you whether or not Mr. Ferguson lived at that
21 apartment?

22 A No.

23 Q Okay. He did not tell you if Mr. Ferguson was
24 driving a car that day?

25 A No.

1 Q Did -- he didn't give you -- so he didn't say, "By
2 the way, he drives a Ford Taurus and it's green"? Did he
3 tell you that?

4 A No.

5 Q The -- and if he did, it would be in your -- the
6 report, right?

7 A Yes.

8 Q Or you would've told Investigator Nations ---

9 A Correct.

10 Q --- he would put it in his report ---

11 A Correct.

12 Q --- right?

13 He didn't say where he might be going later?

14 A No.

15 Q He didn't say, "Hey, by the way, he's going to leave
16 in 30 minutes and he's going to Ace Hardware"? Did he
17 say anything like that?

18 A No.

19 Q If he had, did he say anything about who he might be
20 with?

21 A I don't recall specifically ---

22 Q Did he ---

23 A --- to say ---

24 Q --- say if ---

25 A --- yes or ---

1 Q --- he was going to be with Henry Davis, by chance?

2 A I don't recall ---

3 Q Don't recall ---

4 A --- specifically.

5 Q --- that? Okay.

6 Did he give you the client's phone number?

7 A No.

8 Q Is that "no"?

9 A No.

10 Q Okay. Did he give you -- did he tell you, "By the
11 way, this is what he's wearing right now"?

12 A No.

13 Q Okay. Did he describe to you in any way the
14 manufacturing-of-methamphetamine process?

15 A No.

16 Q Okay. So he didn't say, "It's -- it's smelly over
17 there; I smell a bunch of gas; and they're cooking it
18 now"; right?

19 A No.

20 Q They didn't say that, right?

21 A No.

22 Q He didn't -- he wasn't able to -- did you ask him
23 any questions about that?

24 A No, I did not.

25 Q Okay. He -- and he didn't say about, "They're

REDIRECT EXAMINATION BY MR. SCOTT - ANDREW HALL 73

1 making large quantities of methamphetamine over there or
2 large quantities" -- or seeing -- strike that.

3 He didn't mention seeing large amounts of cash or
4 anything like that, right?

5 A Not that I recall.

6 Q Okay. So nothing about where he was going anytime
7 in the future, right?

8 A No.

9 Q Okay. No further questions.

10 THE COURT: All right. Anything on redirect?

11 REDIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Just the gist of it, from the tipster, was that
14 Sylvester Ferguson, who you also know as Trey Ferguson,
15 was cooking dope at that location?

16 A Correct.

17 Q Okay. And do you know Sylvester Ferguson, I?

18 A I do not. I'm not ---

19 Q You know ---

20 A --- familiar ---

21 Q --- Sylvester ---

22 A --- with his ---

23 Q --- Ferguson, II?

24 A I do not.

25 Q Do you know Sylvester Ferguson, III?

DIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 74

1 A Yes.

2 Q And you know him as what?

3 A Trey Ferguson.

4 Q Okay. And you're familiar with -- did you see him
5 when they arrested him that day? Were you still there?

6 A I did. Yes.

7 Q Okay. They person they pulled out, did you
8 recognize him as being the same Trey Ferguson back the
9 jail?

10 A Yes, I did.

11 Q Okay. Thank you.

12 THE COURT: Sir, thank you. You can step down.

13 THE WITNESS: Okay.

14 (Whereupon, the witness exited the witness stand.)

15 THE COURT: All right. Call your next witness,
16 please.

17 MR. SCOTT: Charles Nations, Your Honor.

18 (Off the record briefly.)

19 (Whereupon, the witness came forward.)

20 CHARLES NATIONS, having been first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SCOTT:

24 Q Okay. Investigator Nations, January 17th of last
25 year, you remember that date? And specifically, that

DIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 75

1 date at the incident location at 629 Highway 66,
2 Apartment 4, in Joanna?

3 A Yes, sir.

4 Q Okay. And tell -- tell everybody how you got to be
5 in that location around 11:13 a.m.

6 A Yes, sir. I was working in the narcotics-
7 investigative unit for the Laurens County Sheriff's
8 Office whenever I received a telephone call from Deputy
9 Hall at the time in regards to receiving a complaint from
10 a citizen. They stated that Sylvester Ferguson was
11 cooking -- cooking dope at the residence here at -- at
12 the apartment building located on Highway 66.

13 We guesstimated that it was going to be the
14 apartments down on the left. Because it's the only set
15 of apartment building down Highway 66 on the left-hand
16 side. So we decided, based upon this civilian complaint,
17 to do a knock-and-talk at the residence.

18 Mr. Hall had given the information that the citizen
19 stated that the apartment in question was going to be the
20 one on the top-left-hand side of the apartment building.

21 Q Okay. Is that Apartment 4?

22 A Yes, sir. Once we got there, we identified it as
23 being Apartment No. 4.

24 Q Okay. Were you familiar with Trey Ferguson at the
25 time?

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1 A Yes, sir.

2 Q Okay. Did -- did you know him as Sylvester
3 Ferguson, III, or Trey Ferguson?

4 A Both, honestly.

5 Q Okay. But whenever they said the name Sylvester
6 Ferguson and Trey Ferguson, you -- you know who they were
7 talking about?

8 A Yes, sir.

9 Q And did you respond to that apartment complex at
10 Highway 66?

11 A I did, sir.

12 Q Okay. Who were you with?

13 A We -- I went -- I believe Investigator Sweat at the
14 time was with us. And Deputy Hall came as well.

15 Q Okay. Tell -- what is a knock-and-talk?

16 A Well, basically, the knock-and-talk is where law
17 enforcement doesn't have grounds to obtain a search
18 warrant for a property. But they do have what is called
19 reasonable suspicion. And using reasonable suspicion, we
20 go to the residence and we knock on the door. We made
21 contact who -- you know, attempt to make contact with
22 somebody inside.

23 Q Okay. So just following up on the tip that the guy

24 ---

25 A Yes, sir.

1 Q --- at the gas station had given Hall?

2 A Yes, sir.

3 Q Okay. Well, did you -- did you go there with the
4 idea that I -- you know, I don't care what happens; I'm
5 going to arrest somebody when I get to this apartment?

6 A No, sir.

7 Q Okay. Well, what happens when you do the knock-and-
8 talk? Did you knock on the door?

9 A Yes, sir, I did.

10 Q Okay. In fact, there was a -- was there a window
11 open?

12 A Yes, sir. It did appear, if I'm -- can find it
13 here. It appeared that the front window of the apartment
14 was slightly resting open.

15 Q Okay. And so as you approached the door, you
16 noticed that that window was open near the door. What
17 happened when you approached the door?

18 A Whenever I approached, I -- we noticed that the
19 cylinder on the door lock for the deadbolt -- is what it
20 sounded like -- was cycling, like it was being unlocked
21 so that they heard that we come up the stairs.

22 Q Okay. So you didn't even get a chance to do the
23 knock portion of the knock-and-talk.

24 A You're correct. The knock side of it did not occur.

25 Q Okay. So the who comes out is who?

1 A The -- person who opened the door was later
2 identified as being Mr. Henry Davis.

3 Q Okay. What did you -- what, if anything, did you
4 ask Mr. Henry Lee Davis?

5 A The first thing I did was I established who I was.
6 And then I asked Mr. Davis if Mr. Sylvester Ferguson was
7 inside the residence. And he stated that he was.

8 Q Okay. Then what happened?

9 A Mr. Davis turned and, I -- I guess, was assuming
10 that we wanted to speak with Mr. Davis [sic]. He turned
11 and left the door standing open and pointed, "Yeah, he's
12 right in here."

13 And as he walked around the side of the door to go
14 get Mr. Ferguson, he come back. And Mr. Ferguson came
15 out of the back-left bedroom.

16 Q Okay. So is this what you're describing? He -- he
17 says, "Yeah, he's back here," and turns and walks away
18 from you ---

19 A Yes, sir.

20 Q --- leaving the door open?

21 A Yes, sir.

22 Q Well -- well, did you follow him?

23 A No, sir. I didn't actually follow him. What I did,
24 though, based upon the security of the investigation, was
25 I took one step inside the door so I could maintain eye

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1 contact with him, just to ensure, because you never can
2 tell these days.

3 Q Well -- okay. Could that have even been assumed
4 that he meant for you to follow him when he said ---

5 A Yes, sir.

6 Q --- "He's back" ---

7 A He ---

8 Q --- "this way" and ---

9 A --- pointed ---

10 Q --- started walking ---

11 A He pointed ---

12 Q --- away?

13 A --- this way. So we kind of stepped inside, just to
14 make sure that we was good.

15 Q But you didn't follow him. But you -- what you're
16 saying is Mr. Ferguson came from a back bedroom at that
17 time?

18 A Yes, sir.

19 Q Describe -- like, if you're looking in through the
20 front door, describe kind of the layout, just generally,
21 for the judge. If you -- if you walk over to the front
22 door and you're looking straight ahead, what are you
23 looking at?

24 A Yes, sir. If you walk straight into -- and the
25 front door is in front of you, the living room is what

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1 situates -- that's the first room that you'll enter into.
2 If you continue to walk straight, you would walk into the
3 kitchen area.

4 To the right side of the living room, the right
5 side, there's a small hallway. You walk down that
6 hallway. The first room to the left is a small bathroom.
7 The second room to the left is a bedroom. And there's a
8 -- a small -- it's supposed to be a bedroom to the right.

9 Q Okay. And -- and, I guess, I -- I'm in -- and I'm
10 talking with you. I'm describing it the back-right
11 bedroom, if you're ---

12 A The far ---

13 Q --- looking ---

14 A --- right-rear bedroom. Yes, sir.

15 Q Okay. And that was the bedroom that Trey Ferguson
16 or Sylvester Ferguson came from?

17 A Yes, sir.

18 Q Okay. And did he approach the front door where you
19 were standing?

20 A Yes, sir.

21 Q All right. And -- and then, what was the exchange
22 that happened when he come -- comes into view?

23 A The first thing we do was we kind of explained to
24 the both of them the reason why we was there: that we
25 had received a complaint. Both parties denied any

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1 knowledge of any kind of manufacturing of methamphetamine
2 or illegal activity.

3 I asked Mr. Ferguson if there was anything there
4 that would be in his possession that would be considered
5 to be illegal. He stated that there was not.

6 I asked Mr. Henry the same question. He stated
7 there was not.

8 With those two -- both stating that there was
9 nothing inside the residence, I kind of asked them -- I
10 said, "Okay. Since there's nothing here, you don't have
11 any problem if we do a walkthrough to ensure that there's
12 no illegal actually occurring inside the residence?"

13 And Mr. Ferguson at first was kind of hesitant. Mr.
14 Davis immediately jumped out and was like, "Yeah. Go
15 ahead and walk through. Do what you got to do."

16 And then Mr. Ferguson was kind of like, "Well, yeah.
17 Go ahead."

18 Q Okay. Were you ever able to ascertain who all lived
19 in the residence or ---

20 A Based upon the information that we got, when we kind
21 of kept moving forward, Mr. Davis wound up being the
22 person who leases the property.

23 Q Uh-huh.

24 A And he was renting the room out to Mr. Ferguson, I'm
25 assuming for monetary values. I'm not sure.

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1 Q Okay. Okay. But regardless, both of them
2 eventually gave consent for you to do a walkthrough?

3 A Yes, sir.

4 Q Okay. And what do you see as you walk in the house?
5 What do you personally -- I -- and I'm going to have
6 Sweat testify to the stuff. But what -- what did you
7 find?

8 A Yes, sir. Whenever I walked into the red room --
9 correction -- walked into the living room, I started
10 moving towards that bedroom that Sylvester had come from,
11 just trying to see if anything was dropped, anything of
12 that nature.

13 Well, when I passed by the bathroom, the bathroom
14 door was standing open. And I noticed a bottle of
15 lighter fluid that was sitting in the bathroom. That
16 kind of stood out to me. I know lighter fluid is used as
17 a solvent during the process of manufacturing
18 methamphetamines.

19 And so I walked into the bathroom. And then, laying
20 in the sink, in the drain portion of it was a -- it -- it
21 was a clear wrapper. But it contained kind of like a
22 yellowish, pasty-looking substance that, at first, I
23 believed was going to be crack cocaine.

24 Q Okay. And I -- while you're thinking like a
25 narcotics agent with the lighter fluid being kind of odd,

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1 but just -- isn't that kind of an odd place for anybody
2 to have lighter fluid, just in your bathroom?

3 A A -- in -- in my experience, it is, sir. Yes, sir.

4 Q But you were already thinking about the production
5 of methamphetamine, coupled with the tip that he's
6 cooking dope in the house?

7 A Yes, sir.

8 Q From the bathroom, where else did you go?

9 A From that point we did just kind of walk through the
10 bedroom side.

11 Q Okay.

12 A We actually -- Sgt. Sweat called me back out into
13 the living room. Because apparently, while I was doing
14 the walkthrough of the other side, there was some things
15 occurring in the living room. And I was called back into
16 the living room area. And that's when I was presented
17 with some other items that was laying in plain view that
18 Investigator Sweat had identified.

19 So we reached out to Sgt. Veal to go ahead and start
20 typing up a search warrant for the property.

21 Q Okay. So you did search the rest of the house with
22 a search warrant?

23 A Yes, sir.

24 Q All right. While you're waiting for the search
25 warrant to be in hand, what was going on with Mr.

1 Ferguson?

2 A Well, while we was all standing there in the living
3 room, Mr. Ferguson kept having this problem about putting
4 his hands in his pockets. He kept fumbling around. It
5 kind of seemed like he was kind of fidgety, like
6 something was going on. And he knew about it, but we
7 didn't.

8 So based upon his actions, Investigator Sweat did to
9 a Terry frisk of him, which is basically a pat-down for
10 weapons and any kind of other controlled substances or
11 illegal-activity contraband that person might have on
12 them that we could identify just through a pat-down.

13 Upon patting down Mr. Ferguson, Investigator Sweat
14 did identify a certain type of bottle in his pocket. And
15 the bottle was eventually removed. And illegal
16 controlled substances were found inside of his pocket.

17 Q Okay. Is that a -- was it a baggie that had, like,
18 a powder-type substance or one that had a rock-like
19 substance in it?

20 A Yes, sir. One baggie contained a white, off-color,
21 crystalish, powder-looking substance, which is very
22 common that of manufacturer methamphetamine.
23 Methamphetamine comes out in that form, rather than being
24 in an ice form.

25 And then, the second form was the off-white-color,

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1 rocklike substance that, based upon our training and our
2 experience, is consistent with that of crack cocaine.

3 Q Okay. And just -- I think we all kind of
4 understand. But what is the concern from law enforcement
5 if you -- you just locate illegal contraband in
6 somebody's house. You let them know that you found these
7 things; you let them know you're getting a search
8 warrant. And the whole time, they got their hands in
9 their pockets and they ---

10 A Yes, sir.

11 Q --- keep putting them in and out. What -- what are
12 your concerns as law enforcement?

13 A Number one concern is going to be safety and
14 security. Yeah. We don't know what might be in his
15 pockets that could harm us or harm people in the
16 neighborhood or the apartment buildings around him.

17 Number two would be any kind of destruction of
18 evidence, whether it be crushing something or crumbling
19 up a piece of paper to -- you know, destruction of
20 anything that would be available to us.

21 Q Okay. And -- and did you conduct any further search
22 of the home before the search warrant was obtained?

23 A No, sir.

24 Q Okay. But then, after the search warrant was
25 obtained, did you search the rest of the house?

1 A Yes, sir.

2 Q And -- and just -- I don't know that we need to do
3 this for this suppression hearing. But briefly, kind of
4 inform the Court of some of the things that you found
5 thereafter.

6 A Yes, sir.

7 Q And this was after the search warrant was in hand.

8 A Yes, sir. Give me one second. I'm going to pull it
9 out.

10 (Off the record briefly.)

11 A Yes, sir. Once the search warrant was in hand,
12 located just outside the back door of the residence on
13 the back deck, there was a large mound of trash located
14 there. Inside the trash, we located three different HCl-
15 generator bottles, 20 ounces apiece.

16 In the bathroom sink, under -- in the cabinet, we
17 located one bottle of sulfuric acid, 32-ounce; a plastic
18 -- it -- it's a cap. It's a 20-ounce-bottle cap with a
19 tube that comes out of it, used for HCl generators. It
20 was found in a bag that was -- that also contained
21 paperwork of Sylvester Ferguson.

22 One clear-plastic tube located in an open kitchen
23 drawer near the refrigerator; a 3-one-pot reaction vessel
24 was located in the trash just outside of the back door of
25 the apartment. In different trash bags, a glass jar

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1 containing a clear, liquid substance that's found to be
2 flammable solvent located in the kitchen cabinet above
3 the left of the kitchen sink. Found a metal strainer
4 containing portions of what appeared to be a pill wash
5 from the production of methamphetamine. It was located
6 in the bedroom under the desk near a bag that contained
7 additional paperwork belonging to Sylvester Ferguson.

8 Located two 18-ounce containers located up under the
9 sink of Drano crystals; two clear-plastic bags; a pill
10 wash, one located in the hallway, one located in the
11 bedroom floor. When it refers to bedroom floor, we're
12 talking about that right-rear-far bedroom.

13 Q And that right-rear-far bedroom is where you found
14 the paperwork ---

15 A Yes, sir.

16 Q --- regarding Sylvester Ferguson?

17 A Yes, sir.

18 Q I think you found an application to work at Burger
19 King?

20 A Yes, sir.

21 Q And then, a receipt from voc rehab?

22 A Yes, sir.

23 Q And that had Sylvester Ferguson's name on it in that
24 back bedroom?

25 A Yes, sir.

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1 Q Okay. Go on.

2 A Let's see. We also found a -- one pack of coffee
3 filters in the cabinet left and above the sink. No
4 coffee maker was located inside the kitchen. Three
5 containers of iodized salts, one pound each, two located
6 in the trash on the back-porch balcony, one in the
7 kitchen on the counter on the left side of the
8 refrigerator.

9 One torn-open pack of ammonium-nitrate cold pack,
10 which was also located in the hallway. One plastic bag
11 of Epsom salt, located in a cabinet under the left side
12 of the kitchen sink. One 8-ounce container of lighter
13 fluid, located on kitchen counter left of sink. One 12-
14 ounce container was the container that I saw in the
15 bathroom.

16 The dark-in-color glass pipe was -- was laid --
17 laying on the living room table in plain view. One
18 clear-plastic container -- bag containing a white-in-
19 color powder-like substance that was removed out of
20 Sylvester Ferguson's pocket. And this is kind of going
21 back.

22 Three individual coffee filters, two located on
23 Sylvester Ferguson's person, one in the bedroom pants --
24 or in the bedroom, found in pants that belonged to
25 Sylvester Ferguson. Located three white tablets

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1 imprinted "TV 7295." They was located in the desk in the
2 right-rear bedroom.

3 One yellowish-brown tablet imprinted with letter
4 "S," located in the desk in the right-rear bedroom. One
5 clear vial with green-in-color lid, located in the right-
6 front pant pocket of Sylvester Ferguson's person. That's
7 what contained the narcotics from when we done the *Terry*
8 frisk.

9 A green-in-color box that was located under the
10 couch. One partially charred glass pipe, located in
11 above-listed green box. One portion of Brillo pad,
12 located in the green box.

13 A razor blade, located in the -- also from the green
14 box. Two T-handle wrench that were located next to the
15 green box under the couch. The screwdriver was located
16 under the couch.

17 Two portions of a white-in-color, wax-like
18 substance, located in the desk in the bedroom. And then,
19 a white-in-color bottle with a black straw inserted in
20 the side, located underneath the couch.

21 Q Okay. All those items were found at 629 Highway 66,
22 Apartment 4, in Joanna?

23 A Yes, sir.

24 Q And that's in Laurens County?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 90

1 Q All right. Please answer any -- and you -- you
2 arrested Mr. Ferguson and Mr. Henry -- Henry Davis at
3 that point?

4 A Yes, sir.

5 Q Thank you. Please answer any questions Mr. Broome
6 has for you.

7 CROSS-EXAMINATION

8 BY MR. BROOME:

9 Q You wrote a report in this case, correct?

10 A Yes, sir.

11 Q You write reports whenever you make an arrest?

12 A Yes, sir.

13 Q Okay. You do this for several reasons. One of them
14 is for recall, right? So as I asked Investigator Hall,
15 sometime there's a large lapse in time between an arrest
16 and when we come to court, right?

17 A Yes, sir.

18 Q Okay. Sometimes several years?

19 A Yes, sir.

20 Q Sorry. I -- if you need me to ask -- like, put it
21 in a question statement, I can. But it's "yes" or "no"
22 on that.

23 And during this time, you're working more than one
24 case, right?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 91

1 Q Yeah. You don't just sit on this case and wait
2 until trial happens. You're out working your daily job,
3 right?

4 A Correct.

5 Q Okay. And sometimes you'll work dozens -- maybe not
6 hundreds, but dozens of cases between an arrest and
7 trial.

8 A Yes, sir.

9 Q Okay. And so to keep track of all this information,
10 you have to write everything down.

11 A Yes, sir.

12 Q Right?

13 Okay. So you don't forget it.

14 A Yes, sir.

15 Q And you were taught, either on the job or at the
16 academy, that one reason you do this is because other
17 officers and investigators or detectives will often rely
18 on your report.

19 A Can you further explain the question?

20 Q Yeah. Sometimes other investigators or officers may
21 need to rely on your report to conduct further
22 investigation.

23 A Agreed. Yes, sir.

24 Q Right?

25 A To conduct ---

1 Q Okay.

2 A --- a further investigation.

3 Q Yeah.

4 A Yes, sir.

5 Q And sometimes they -- if -- before your
6 investigator, your report -- and that would be forwarded
7 on to Investigator Blackman or whoever, right?

8 A Yes, sir.

9 Q Okay. And they require -- you -- you probably
10 learned from them, if not on the job as well, that they
11 require all the important facts of the case.

12 A Yes, sir.

13 Q Okay. So therefore, you want to have the report be
14 complete and comprehensive, right?

15 A Yes, sir.

16 Q You don't want to leave anything important out?

17 A Try not to. Yes ---

18 Q Right?

19 A --- sir.

20 Q Try not to?

21 A Yes, sir.

22 Q That's why you write it down as soon as possible,
23 right?

24 A As -- will time permits. Yes, sir.

25 Q Yeah. Well, maybe not leave right away. But as

1 soon as you get a chance to get back to your office and
2 get to your computer, you want to write down what
3 happened, correct?

4 A As -- as reasonable as possible. Yes, sir.

5 Q Yeah. Because our memory gets worse with time,
6 right?

7 A I -- I don't completely agree with that, but okay.

8 Q Does your -- so your memory gets better with time?
9 You remember things better as time goes on -- that's what
10 I'm asking.

11 A No, sir. But based upon my training and things that
12 we've done, we have learned that if you take something
13 and something occurs, especially a situation that kind of
14 traumatizes you, you don't remember very much of it
15 within the first ten minutes. But if you give it 24 to
16 48 hours, you remember more detail as time goes on. Yes,
17 sir.

18 Q Were you traumatized by this event?

19 A I was not. No, sir.

20 Q Okay. So if you weren't traumatized by this event
21 -- and who taught you that, by the way?

22 A That -- that's passed down. That comes down from
23 the academy.

24 Q From the -- someone at the academy taught you a
25 course on it?

1 A It wasn't a full-grown course. It's just passed
2 down to us.

3 Q So it's just kind of like off-the-cuff remark, like,
4 "Hey, you might be traumatized as a human being, and then
5 we're going to remember things later on"?

6 A True. Yes, sir.

7 Q Okay. But do you know if that person was a
8 psychologist or a psychiatrist?

9 A He was actually a lawyer. Yes, sir.

10 Q He was a lawyer? Okay.

11 A Yes.

12 Q He didn't portray himself to be a psychiatric or a
13 medical doctor, did he?

14 A No. Not that I'm familiar with.

15 Q Okay.

16 A No, sir.

17 Q How many time did he spend on that topic with you?

18 A That much, I couldn't tell you.

19 Q Okay. But you weren't traumatized by this case?

20 A (No audible response.)

21 Q You often will review your reports prior to
22 testifying at trial, correct?

23 A I try to. Yes, sir.

24 Q Yeah. It -- it helps you recall the events that
25 you're not traumatized by when you come into court,

1 correct?

2 A Try.

3 Q Okay. And therefore, you can testify more
4 accurately, right, if you can read your report before
5 trial and go to review it, right, as opposed to not
6 reviewing anything?

7 A Yes, sir.

8 Q Yeah.

9 A Correct.

10 Q Okay. And you were taught over the years that the
11 solicitor gets a copy of your report, right?

12 A Yes, sir.

13 Q Okay. And it helps him get familiar with the case,
14 because he wasn't there, right?

15 A Yes, sir.

16 Q He relies on this report in making bond arguments
17 and motions to the Court, right?

18 A Yes, sir.

19 Q And you're not there for all these arguments, are
20 you?

21 A No, sir.

22 Q Okay. Did you prepare for this hearing at all?

23 A One in the last hour, two hours ---

24 Q Little bit?

25 A Yes, sir.

1 Q You got to read your report, though, didn't you?

2 A Briefly.

3 Q Okay. And when you're writing this report, just
4 going back, there's no time limit on this, is there, to,
5 like, enter a report? You're not under -- there's not a
6 shot clock, is there, like you got 24 seconds? If you
7 don't get this report done, no report?

8 A Based upon our policy, we are to have our reports
9 done before we leave shift.

10 Q Before you leave shif?

11 A Yes, sir.

12 Q Okay. So -- and the reason for that is you want to
13 have it done as quickly as possible so you don't forget
14 it?

15 A Not necessarily so we don't forget it; so that
16 something else doesn't occur and it takes your attention
17 away from this case ---

18 Q Okay.

19 A --- rather than if we're moving forward to another
20 case.

21 Q Okay. But usually, you get that stuff done and you
22 write your report ---

23 A In a reasonable amount ---

24 Q --- in a ---

25 A --- of time ---

1 Q --- reasonable ---

2 A --- yes, sir.

3 Q --- time as soon as possible, okay?

4 A (No audible response.)

5 Q You've got the copy of your report with you, I
6 assume?

7 A Yes, sir.

8 Q Okay. Can you read in there where it says that Mr.
9 Davis leases the property and was renting a room to Mr.
10 Ferguson?

11 A No, sir, I can't. It's not ---

12 Q Okay.

13 A --- it's not in the report.

14 Q You're familiar with supplemental reports, right?

15 A I am. Yes, sir.

16 Q Okay. What's that?

17 A It's an additional report that's ---

18 Q Yeah.

19 A --- typed at a later date in regards to an ongoing
20 investigation.

21 Q Yeah. And the reason for it is you get new
22 information like that. You can pop -- put in a report
23 for a different investigator, right?

24 A Yes, sir.

25 Q Or for Mr. Scott, right?

1 A Yes, sir.

2 Q Okay. Have you ever put that in a report anywhere?

3 A As much as I want to say I did, I did not.

4 Q Okay. Do you have a copy of the lease with you?

5 A I do not.

6 Q Is there a copy of the lease that has his name on it
7 that it's in your possession?

8 A Not in my possession.

9 Q Okay. How did you get that information again?

10 A That come from Mr. Davis.

11 Q Okay. So Mr. Davis told you that?

12 A (No audible response.)

13 Q When was that, the morning of his arrest?

14 A The day of.

15 Q So that ---

16 A Yes, sir.

17 Q --- was the day of his arrest?

18 A Yes, sir.

19 Q And it was not in the report, right?

20 A No, sir.

21 Q Okay. Were you wearing body camera at all?

22 A No. At the point in time, sheriff's office did not
23 issue us body cams.

24 Q Okay. You have a radio on your uniform when you
25 come in -- sorry. When you're on patrol, you often will

1 have a dispatch radio. So if you want in a failure to
2 stop for blue light or emergency or backup, whatever, you
3 can call dispatch; is that right?

4 A Correct.

5 Q Okay. Were you wearing -- you were wearing that
6 radio on this day, correct?

7 A I was not. I'm not uniform patrol.

8 Q You're not uniform patrol?

9 A (No audible response.)

10 Q Did Investigator Sweat have a ---

11 A He's not uniform patrol either.

12 Q Okay. So no one contacted dispatch?

13 A Yes. We contacted dispatch through our handhelds
14 ---

15 Q Okay.

16 A --- when we ---

17 Q Like ---

18 A --- went on ---

19 Q --- a walkie-talkie ---

20 A --- scene. Yes, sir.

21 Q Okay. Sorry. So you have a walkie-talkie?

22 A (No audible response.)

23 Q Is that like -- that's like a radio, right?

24 A It's a 800. Yes, sir.

25 Q Okay. So different frequency, but you use that to

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 100

1 contact dispatch?

2 A Yes, sir.

3 Q Okay. All right.

4 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

5 MR. BROOME: Your Honor, at this time, I'd like to
6 play the dispatch ---

7 THE COURT: Sure.

8 MR. BROOME: But -- I don't know. I got a CD, and I
9 also have it on ---

10 THE COURT: All right.

11 MR. BROOME: --- on digital format.

12 THE COURT: About how long is the -- is the
13 recording?

14 MR. BROOME: It's not very long. They -- they sum
15 up -- the important part is, like, less than three
16 minutes.

17 THE COURT: All right. Yeah. However you want to
18 do it, you can either play it on your computer. We don't
19 have the ---

20 MR. BROOME: Okay.

21 THE COURT: --- usual setup that we do with the
22 screen. And so ---

23 MR. BROOME: If this is just for the Court, I don't
24 ---

25 THE COURT: Sure.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 101

1 MR. BROOME: --- mind getting my external adapter to
2 play for the Court.

3 THE COURT: Yeah. I don't have -- I don't have a
4 CD-ROM player on my computer. Otherwise, I'd listen to
5 myself.

6 MR. BROOME: I've got it on my external hard drive,
7 I think.

8 (Off the record briefly.)

9 MR. BROOME: While I'm waiting on that, back to
10 questioning him while I ---

11 THE COURT: Go ahead.

12 MR. BROOME: --- pull this up.

13 THE COURT: Please.

14 Q Y'all have certain codes that you use for dispatch
15 that refer to different things you're doing. For
16 example, I think it's 1027. That refers to, like, a
17 license check; is that correct? Like a -- a driver's
18 license check. Or is it 1028?

19 A Negative. 1027 is ---

20 Q 1027?

21 A --- registered ---

22 Q That is for?

23 A That is just running information through driver's
24 license or name, date of birth.

25 Q Okay. So you would contact dispatch and say 1027 --

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 102

1 if you had a -- let's back up. If you had someone's
2 driver's license in your hand and you radio dispatch and
3 said, "I got 1027," and you gave the driver's license
4 number, what are they doing? What's dispatch doing?

5 A They're going to run it through the South Carolina
6 Department of Motor Vehicles online and then try to
7 cross-reference it with NCIC.

8 Q Okay.

9 MR. BROOME: I've got it, Your Honor. Want me just
10 come up here?

11 THE COURT: Yeah. That's probably ---

12 MR. BROOME: Okay.

13 THE COURT: --- I guess put it on the table and
14 maybe next to the court reporter so that what her
15 recording ---

16 MR. BROOME: Okay.

17 THE COURT: --- her tape recorder can take it down
18 too. Does that work?

19 THE COURT REPORTER: No, sir.

20 MR. BROOME: No?

21 THE COURT: No?

22 THE COURT REPORTER: I can't take down a recording
23 of a ---

24 THE COURT: Oh, that's ---

25 THE COURT REPORTER: --- recording.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 103

1 THE COURT: --- right.

2 THE COURT REPORTER: No, sir.

3 THE COURT: Well, don't worry -- you don't have to
4 worry about taking it down. Just ---

5 THE COURT REPORTER: I mean, I'll ---

6 THE COURT: --- play it.

7 THE COURT REPORTER: The record will include a
8 parenthetical that ---

9 THE COURT: There you go.

10 THE COURT REPORTER: --- a portion of audio ---

11 THE COURT: Let the ---

12 THE COURT REPORTER: --- was played ---

13 THE COURT: --- record reflect.

14 THE COURT REPORTER: --- in the courtroom.

15 MR. BROOME: Okay.

16 THE COURT: That works. Let's do it that way.

17 (Whereupon, a portion of audio recording was
18 published in open court.)

19 Q Now, was that you or was that Investigator Sweat?

20 A I didn't even hear the call number. But it wasn't
21 me.

22 (Whereupon, a portion of audio recording was
23 published in open court.)

24 Q Did you recognize that voice?

25 A (No audible response.)

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 104

1 Q It -- it sounded like Investigator -- or Officer
2 Hall.

3 A And -- and it very possibly could've been.

4 Q Did you ---

5 A Yes, sir.

6 Q --- hear the dispatch address on there?

7 A I didn't.

8 Q Okay.

9 A Yeah. I'm sorry. I was ---

10 Q That's fine.

11 A --- I was ---

12 Q I'll play ---

13 A --- listening ---

14 Q --- it again.

15 A --- to who ---

16 Q I'll start ---

17 A --- it was.

18 Q --- we're only ---

19 A I apologize.

20 Q --- 30 seconds in.

21 (Whereupon, a portion of audio recording was
22 published in open court.)

23 Q Okay. It said: "We're going to be on 629 Highway
24 66; upper-left apartment, no number on the door." Did
25 you hear that?

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 105

1 A I believe so. I believe that's what I heard.

2 Q Okay. And the voice on it said -- you have a
3 responder number that you have, right?

4 A We do.

5 Q What's yours?

6 A Now it's 226.

7 Q What was it back then?

8 A Hmm.

9 Q Was it 234?

10 A No, sir. I've never been 234.

11 Q So 255 or 263?

12 A Neither of any of them.

13 Q Or 219?

14 A Wasn't that either.

15 Q Okay. So if dispatch had any of those numbers on
16 there, it would ---

17 A Me ---

18 Q --- not be you?

19 A No, sir.

20 Q Okay.

21 (Whereupon, a portion of audio recording was
22 published in open court.)

23 Q That sounded like another officer saying, "That's an
24 affirmative on that location." Did you ---

25 A Okay.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 106

1 Q --- were you able to hear that?

2 A I -- somewhat.

3 Q Do you need to come down here so you can listen to
4 it?

5 A All right.

6 THE COURT: Yeah. If you need to get to closer to
7 ---

8 Q Yeah. It's no ---

9 A It's -- it just ---

10 Q --- there's no ---

11 A --- kind of ---

12 Q --- rules.

13 A --- it just kind of sounds muffled ---

14 Q We'll come ---

15 A --- especially if you ---

16 Q --- down.

17 A --- want me ---

18 Q It is ---

19 A --- to, like ---

20 Q --- my fault.

21 A --- like, yell.

22 (Whereupon, the witness exited the witness stand.)

23 THE COURT REPORTER: Mr. Broome?

24 MR. BROOME: Yes, ma'am.

25 THE COURT REPORTER: I -- I'm sorry.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 107

1 MR. BROOME: What's easiest for you.

2 THE COURT REPORTER: You keep interrupting him ---

3 MR. BROOME: Sorry.

4 THE COURT REPORTER: --- like constantly. And I'm
5 trying not to intercede, but it's -- it's getting
6 increasingly difficult for me to take down what he's
7 saying and what you're saying at the same time.

8 MR. BROOME: I'm sorry.

9 THE COURT REPORTER: It's okay. I just ---

10 MR. BROOME: Absolutely. I -- and I do appreciate
11 you telling me because ---

12 THE COURT: Yeah.

13 THE COURT REPORTER: I just -- I want you to have a
14 good record. I want the ---

15 MR. BROOME: Thank you.

16 THE COURT REPORTER: --- judge to ---

17 MR. BROOME: I know ---

18 THE COURT REPORTER: --- have a good ---

19 MR. BROOME: I know that.

20 THE COURT REPORTER: --- record.

21 MR. BROOME: I know.

22 THE COURT REPORTER: Okay.

23 MR. BROOME: Thank you.

24 THE COURT REPORTER: I'm sorry.

25 MR. BROOME: Just give me a ---

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 108

1 THE COURT: Yeah.

2 MR. BROOME: --- a look ---

3 THE COURT: Just slow down.

4 MR. BROOME: --- or wave something.

5 (Whereupon, a portion of audio recording was
6 published in open court.)

7 Q Whose voice is that?

8 A 234. I -- I can't -- I can't say 100 percent. I
9 can't.

10 Q Can I play it again for you?

11 A Yes, sir.

12 Q Okay. Can you hear what it -- if you can hear what
13 it says, help us.

14 (Whereupon, a portion of audio recording was
15 published in open court.)

16 A Sounded like 234.

17 Q Okay. Central 234, would that be an officer's
18 responding number?

19 A Should be a badge number.

20 Q Okay.

21 A Yes, sir.

22 Q Badge number?

23 A It should be.

24 Q Okay.

25 A If I recall right.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 109

1 Q Okay.

2 (Whereupon, a portion of audio recording was
3 published in open court.)

4 Q Okay. Do you recognize that voice? Is that your
5 voice?

6 A I mean, it may be. But I'm not 234. So that ---

7 Q Okay.

8 A --- I -- I'm going to say no.

9 Q What is 2 -- do you know what bravo -- one second --
10 stands for?

11 (Whereupon, a portion of audio recording was
12 published in open court.)

13 Q Okay. Is that your voice?

14 A No, sir.

15 Q Do you recognize what that voice is doing? Are they
16 reading out a license number?

17 A Correct.

18 Q Okay.

19 A I think I know who that is.

20 Q Okay.

21 (Whereupon, a portion of audio recording was
22 published in open court.)

23 Q Did you hear that first part?

24 A That first ---

25 Q What ---

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 110

1 A --- what ---

2 Q --- what dispatch just said.

3 A That first one said?

4 Q Yeah. What she just said.

5 A It was Sylvester Ferguson.

6 Q Okay. So that was Sylvester Ferguson?

7 A (No audible response.)

8 Q Okay.

9 (Whereupon, a portion of audio recording was
10 published in open court.)

11 Q What was the address?

12 A Back it up ---

13 Q Sure.

14 A --- something Morgan Street.

15 (Whereupon, a portion of audio recording was
16 published in open court.)

17 Q Okay. Did she say that it was "Sylvester
18 Ferguson, 217 Morgan Street, Joanna, ID only"? Is that
19 what you heard?

20 A I heard 217 Morgan Street, Joanna.

21 Q Okay. Morgan Street?

22 A Yes, sir.

23 (Whereupon, a portion of audio recording was
24 published in open court.)

25 Q Okay. Did you hear that ---

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 111

1 A I ---

2 Q --- dispatch voice?

3 A I did.

4 Q Okay. And what did she say?

5 A Say: "One Henry Davis, Apartment 629, Whitmire
6 Highway, Apartment 6" is what ---

7 Q Oh.

8 A --- she ---

9 Q Six.

10 A --- said.

11 Q Okay.

12 A Yes.

13 Q Thank you. All right. You can have a -- a seat.

14 (Whereupon, the witness reentered the witness
15 stand.)

16 Q Okay. So you asked for both of their IDs, and --
17 Mr. Ferguson and Mr. Davis, correct?

18 A Yes, sir.

19 Q And the only one that came back to that address was
20 Mr. Davis, correct?

21 A Correct.

22 Q Okay. Now -- pull my notes up. Speak a little bit
23 about the bedroom that you attributed to my client,
24 correct?

25 A (No audible response.)

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 112

1 Q Let's -- you mentioned there was a -- there's
2 actually -- you said there were several items in a room
3 that my client came from, right?

4 A Yes, sir.

5 Q Okay. Those items were actually in a bag in that
6 room, correct?

7 A Different locations inside that room. Not in a bag.
8 No, sir.

9 Q There ---

10 A Not ---

11 Q --- was not ---

12 A --- entirely.

13 Q There was nothing in a bag?

14 A No, no, no. Not -- not all of them were located in
15 a bag. No, sir.

16 Q Okay. There were items -- there was paperwork with
17 his name on it.

18 A Correct.

19 Q Okay. Did you take pictures of those?

20 A I -- we do have some photographs. Yes, sir.

21 Q Okay. Do you need to look at those pictures?

22 A Probably would be ---

23 Q For ---

24 A --- beneficial.

25 Q Okay. I think that -- well, I can pull them up in

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 113

1 digital form. The address on both of those piece of
2 papers was addressed to Mr. Ferguson, right?

3 A I believe so.

4 Q And the address on the pieces of paper was Morgan
5 Street in Joanna.

6 A I'll have to see the photographs in order ---

7 Q Okay.

8 A --- to identify.

9 MR. SCOTT: Your Honor, may I -- I don't know -- if
10 the argument is that Mr. Ferguson does not live there,
11 has no right to privacy here ---

12 MR. BROOME: I ---

13 MR. SCOTT: --- does he have any grounds or any
14 standing to argue against the suppression of the evidence
15 found in the location?

16 MR. BROOME: And I think we can get to that when I
17 finish my examination.

18 THE COURT: Let -- let ---

19 MR. BROOME: I mean ---

20 THE COURT: --- let's let him go ahead and finish
21 up. And you're -- you -- you do have a point, however,
22 obviously. But -- let -- let's see what we've got here.

23 MR. BROOME: Okay.

24 Q You said it was his bedroom. I think you -- you
25 said -- well, let me back up. You went to the bedroom.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 114

1 He didn't have his name on the wall or anything, did he,
2 Mr. Ferguson?

3 A Not that I can recall.

4 Q Okay.

5 A No, sir.

6 Q You said that the pants belonged to Sylvester
7 Ferguson.

8 A Yes, sir.

9 Q So there were pants in a room that you pulled out --
10 coffee filter out of, right?

11 A One search warrant was there for it.

12 Q Okay. There was nothing in that -- in those pants
13 with my client's name on it, correct?

14 A Correct.

15 Q Okay. Did you see the size of the pants? Like, did
16 you say, "Hey, these are 36/32s or 36/30s"?

17 A Actually, we did check the size of them, compared to
18 the size of Mr. Davis. Mr. Davis, being a very much
19 smaller in statue [sic], those are not his pants. Any --
20 any reasonable person would not believe that they're his
21 pants.

22 Q Did you -- okay. Did you write down -- so you
23 measured Mr. Davis's pants?

24 A No, sir.

25 Q You measured the pants that you found?

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 115

1 A I didn't measure them. No, sir.

2 Q I mean, you don't have to be a seamstress. All you
3 have to do is look in the tag and it says what the size
4 is.

5 A No. I understand that, sir.

6 Q Right. Did you put that anywhere in the report?

7 A No, sir.

8 Q Okay. So nowhere in the report did you document
9 that these were Mr. Davis's jeans and no reasonable
10 person could conclude otherwise?

11 A No, sir.

12 Q That's what your testimony is, right?

13 A (No audible response.)

14 Q Reading your report, who gave you permission to
15 enter the house in the first place?

16 A Mr. Davis actually is the one who answered the door.
17 And when he turned, he was kind of -- he -- it wasn't
18 like a, "Hey, come on in," kind of thing. It was a open
19 up the door; the door opened up for us; we asked if
20 Sylvester Ferguson was there. He stated that he was.

21 In my report I documented the fact that I asked if
22 we could speak with Mr. Ferguson. And he said yes. And
23 as he said yes, he left the door pushed and pushed the
24 door open and commenced to walk back towards that back
25 kitchen, then towards the bedroom.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 116

1 Q So the answer is no; he -- Mr. Davis did not -- you
2 did not ask him when you got there, "Hey, can I come it
3 house?"

4 A No. I didn't ask him.

5 Q Yeah.

6 A No, sir.

7 Q Because you -- you wrote a report. It's very
8 lengthy.

9 A Yes.

10 Q Okay. And you wrote (As read): "Deputy Nations
11 asked Henry if Sylver -- Sylvester was in the residence.
12 And Henry stated that he was."

13 Did you write that in your report? It's on the
14 bottom paragraph.

15 A Yes, sir. It -- it's going to be in ---

16 Q (As read): "Deputy Nations asked Henry if he could
17 get Sylvester to come to the door, and he stated that he
18 could. He turned around to call for Sylvester."

19 Did you write that?

20 A Yes, sir. I did write that.

21 Q Okay. (As read): ". . . leaving the -- comma,
22 leaving the door open."

23 You wrote that?

24 A Yes, sir.

25 Q Next sentence (As read): "Henry then began to walk

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 117

1 towards the kitchen. And Deputy Nations steps just
2 inside the door frame."

3 Did you write that?

4 A Yes, sir.

5 Q Okay. Now, when you were out there, you weren't
6 wearing that nice purple suit and shirt and tie, were
7 you?

8 A No, sir.

9 Q Okay. You had your uniform on, right?

10 A No, sir.

11 Q You did not have a uniform on?

12 A No, sir.

13 Q What were you wearing?

14 A As a narcotics investigator, we are established to
15 wear what we call plain clothes. But when we do knock-
16 and-talks, we wear a vest and a nameplate that
17 establishes who we are.

18 Q Okay. So you had something -- an identifier on you
19 saying I'm with the sheriff's office?

20 A Yes, sir.

21 Q You have a gun with you?

22 A No, sir.

23 Q How was Deputy Hall dressed?

24 A Deputy Hall was actually in uniform.

25 Q He was in uniform?

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 118

1 A Yes, sir.

2 Q He went inside the residence with you too.

3 A No, sir.

4 Q But -- Investigator Sweat did.

5 A Eventually. Yes, sir.

6 Q He was dressed with -- I'll get this right -- like,
7 a bulletproof vest that says "sheriff's office" on it,
8 right?

9 A If I believe correctly ---

10 Q You always ---

11 A --- if I ---

12 Q --- have your ---

13 A --- remember ---

14 Q --- badge on -- I'm sorry. What was the answer?

15 A If -- if I remember correctly, yes, sir.

16 Q Okay. You always wear your badge with you. Even if
17 you're undercover, you have your badge on you.

18 A Yes, sir.

19 Q Okay. You were wearing a gun?

20 A Yes, sir.

21 Q Okay. And when you asked for consent to search,
22 this was after you had stepped just inside the door
23 frame?

24 A We stepped inside the door frame to maintain eye
25 contact with Mr. Henry for two reasons: (1) for safety

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 119

1 and security of the officers; (2) Mr. Henry did not make
2 it that law enforcement could not enter the residence.
3 It was more of a gesture.

4 Q He gestured?

5 A (No audible response.)

6 Q How did he gesture?

7 A By his motion of when he pushed -- when we asked to
8 speak with Mr. Henry [sic] and he turned and called for
9 Sylvester, he then started walking towards him. He kind
10 of pushed the door on open and made the arm-gesturing
11 motion, which is what I saw. That's why I stepped inside
12 the door frame.

13 Q Can you read the bottom of the report again?

14 A Yes, sir.

15 Q Can you read where it says he made an arm gesture
16 for you to come in? Just read ---

17 A It ---

18 Q --- that out loud for us.

19 A It states (As read): "Henry then began to walk
20 towards the kitchen. Deputy Nations stepped just inside
21 the door frame. At this time -- at this time Deputy
22 Nations could see Sylvester coming into the living room
23 area. Deputy Nations greeted Mr. Sylvester and advised
24 who the deputies were.

25 "Deputy Nations then told Sylvester that he and the

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 120

1 deputy needed to speak with him, Sylvester, and Henry at
2 the same time."

3 Q Okay. Did you bring with you a consent-to-search
4 form? Are you familiar with those?

5 A I am familiar with them.

6 Q Okay. Because sometimes we have these swearing
7 contests about whether or not there was permission to
8 come in or not, right?

9 A (No audible response.)

10 Q But you got a piece of paper; you can give it to
11 someone. And they can sign their name to it, right?

12 A Yes, sir.

13 Q And it can go over all of their constitutional
14 rights with them, right?

15 A Yes, sir.

16 Q Including their permission of whether or not it's
17 voluntary for you to come in and do a search ---

18 A Correct.

19 Q --- right?

20 A Yes, sir.

21 Q Or to come and talk with them period, right?

22 A Correct. Yes, sir.

23 Q Okay. Did you do that in this case?

24 A We did -- I did not have a consent-to-search form
25 with me when was here on this property. No, sir.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 121

1 Q Was there any -- do you have -- you have a radio --
2 well, I think we established walkie-talkies, right?

3 A Yes, sir, we do.

4 Q Okay. That radio could be used to call another
5 officer?

6 A The -- no. You're ---

7 Q Right.

8 A --- I -- I agree with you. Yes, sir.

9 Q Right.

10 A But we did not, based upon the fact of both parties
11 were cooperating with us. So we did not feel the need
12 for the consent-to-search ---

13 Q But you could've done ---

14 A --- form.

15 Q --- that -- I'm sorry. What was that answer?

16 A For the consent-to-search form.

17 Q All right. But you could've done that and did not?

18 A Correct. We chose to get a search warrant instead.

19 Q No. I mean, you -- you chose not to get a consent-
20 to-search form for Mr. Davis or Mr. Ferguson, right?

21 A Correct. Because we wasn't asking for consent to
22 search.

23 Q You weren't asking for consent to search?

24 A No, sir. We was asking for consent to do to a
25 walkthrough to -- for items in plain view.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 122

1 Q Okay. You're -- we're -- you're not asking for
2 permission to come inside their house, their -- the house
3 -- the apartment? Is ---

4 A That ---

5 Q --- that how ---

6 A --- was once ---

7 Q --- it was?

8 A --- that was after we was already inside. Yes, sir.

9 Q Okay. If you go to a stranger's house and you knock
10 on the door and they open it, do you feel like -- and --
11 and you don't ask for them to come in, you feel like you
12 can just come inside the house?

13 A I mean, if they close the door back, no, sir.

14 Q Okay. So it wouldn't be uncommon for you to go to
15 just my house or a stranger's house, knock on the door,
16 and just feel like, if you're dressed in plains [sic]
17 clothes, you can just walk right in?

18 A No, sir.

19 Q You never met with this unknown black male, did you?

20 A No, sir, I ---

21 Q Okay.

22 A --- did not.

23 Q You never had a chance to ask him any questions?

24 A No, sir.

25 Q Okay. And can we agree that you did not have

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 123

1 probable cause to get a search warrant before going to
2 that house?

3 A I agree.

4 Q Okay. And you are -- been an investigator for a
5 couple years now, right?

6 A That ---

7 Q More than that.

8 A Today, yes, sir.

9 Q Okay. You're in narcotics, and you're an
10 investigator in narcotics?

11 A Yes, sir.

12 Q So you're -- you've gone in front of a magistrate
13 many of times and gotten a search warrant, correct?

14 A Yes, sir.

15 Q You also handle confidential informants.

16 A Yes, sir.

17 Q Okay. Those are people who have charges pending,
18 maybe sometimes not, and -- with the county, right -- who
19 work with your agent -- agency, right?

20 A Yes, sir.

21 Q And you use them as vessels to get inside these
22 secret areas that you don't have access to, right?

23 A Yes, sir.

24 Q And you will often rely upon these confidential
25 informants you work with to get a search warrant?

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 124

1 A Yes, sir. I agree.

2 Q Okay. Right. This case is not a -- not a
3 confidential informant?

4 A No, sir.

5 Q Okay. You went -- all right. Once you got the
6 phone call from Deputy Hall, you agree with me, you just
7 went straight there, straight to the apartment?

8 A Yes, sir. To establish the knock-and-talk. Yes,
9 sir.

10 Q Okay. Straight there?

11 A (No audible response.)

12 Q You did not use a -- did you contact any
13 confidential informants to try and do a controlled drug
14 buy?

15 A No, sir.

16 Q Did you say, "Hey, you know what? Let's do a
17 surveillance of this apartment"? In ---

18 A No, sir.

19 Q --- other words -- sorry. I'm sorry. What was the
20 answer?

21 A No, sir.

22 Q No, sir?

23 A (No audible response.)

24 Q Do you know what -- what I mean by surveillance?

25 A Your meaning might be different than my meaning but

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 125

1 ---

2 Q Okay. So if a person says, "Hey, Joel Broome is
3 selling drugs at his apartment on Highway 6," and you go,
4 "Okay. Let's see if that's true." And you and
5 Investigator Sweat or who other -- whoever cop you choose
6 decide that you're going to go in plain clothes, like you
7 said that you often do, right?

8 A Yes, sir.

9 Q And in an unmarked car, maybe at night, watch that
10 house to see, hey, maybe if Mr. Ferguson is even going to
11 and from that residence. Does that make sense?

12 A Yes, sir.

13 Q Okay. So watching to see if that guy was even
14 coming there, did y'all do that?

15 A No, sir.

16 Q Okay.

17 A But the reason why we didn't do that is because it's
18 not a complaint in regards to the selling of the
19 narcotics from the residence. It was in regards to the
20 cooking of dope, in quotations, which we took it as the
21 cooking of methamphetamines. Therefore, if somebody was
22 cooking methamphetamines at the apartment, most of the
23 time, they will not, per se, continue to do this for an
24 extended amount of time.

25 Cooking methamphetamines is not a 24-hour process.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 126

1 It's actually a relatively slimmer-down process. It can
2 last anywhere between 45 minutes to two hours.

3 Q I ---

4 A In the one-pot method. Let me make sure I rephrase
5 that for you.

6 Q Okay. But you wrote, quote: Sylvester Ferguson was
7 cooking dope. Now, you didn't speak -- that's in your
8 report, correct?

9 A Yes, sir.

10 Q Okay. And you didn't speak to the unknown black
11 male, right?

12 A No, sir, I did not.

13 Q So safe to say that you attributed that quote from
14 Deputy Hall? Deputy Hall got that quote from the unknown
15 black male?

16 A Yes, sir. I would -- if -- if I put that in my
17 report as "cooking dope," then, yes, sir. That's the way
18 it was delivered.

19 Q If he had said "meth," would you have written
20 "meth"?

21 A I would have.

22 Q And you've been doing narcotics for a long time,
23 right?

24 A (No audible response.)

25 Q You're -- you're very experienced in narcotics

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 127

1 investigations.

2 A At this point I would consider myself.

3 Q Okay. You -- you didn't get to be an investigator
4 by chance. They didn't say, "Here's a badge and a gun;
5 go at it," right? You had to work for it ---

6 A Yes, sir.

7 Q --- right?

8 Dope can refer to multiple drugs.

9 A Yes, sir.

10 Q Okay. Dope can refer to marijuana -- it can be,
11 right?

12 A The word "dope," yes.

13 Q Yeah.

14 A Uh-huh.

15 Q It can also be methamphetamine, obviously.

16 A Yes, sir.

17 Q And it can also be crack and crack cocaine?

18 A Yes, sir.

19 Q Correct? Okay.

20 MR. BROOME: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

23 Q All right. So -- and just . . .

24 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

25 Q Okay. All right. And so the last thing you got

REDIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 128

1 from Deputy Hall was Sylvester Ferguson was cooking dope
2 and you put that in quotes, right?

3 A Yes, sir.

4 Q And that's all the information you got from Deputy
5 Hall?

6 A Except for the location.

7 Q And the location.

8 A We got the fact that Deputy Hall called me with the
9 information that Sylvester Ferguson was cooking dope at
10 the apartments on Highway 66.

11 Q Right. And then you went straight there.

12 A Once we got everything kind of around, yes, sir.

13 Q No further questions.

14 THE COURT: Redirect?

15 MR. SCOTT: Just briefly.

16 REDIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q Was -- it's like Mr. Broome said. You didn't get to
19 be an investigator by chance, did you?

20 A No, sir.

21 Q To be a good investigator, you go to be willing to
22 investigate, right?

23 A Yes, sir.

24 Q What would Sheriff Reynolds do if he found out you
25 got a tip that somebody was doing something illegal in

REDIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 129

1 his jurisdiction and you didn't at least investigate a
2 little bit?

3 A He would be upset. Yes, sir.

4 Q All right. So you didn't get to be a good
5 investigator by chance. You have to investigate at least
6 a little bit if ---

7 A Yes, sir.

8 Q --- you get a tip.

9 If I tell you there's a dead body in a house in your
10 jurisdiction, are you just going to not do anything about
11 that tip or are you going to do something about it?

12 A The -- we're going to follow up on it. Yes, sir.

13 Q Okay. And -- and that's all it was. You get a tip
14 that somebody's cooking dope and -- and as a narc, it's
15 either crack or meth, right?

16 A (No audible response.)

17 Q Is that right?

18 A Yes, sir.

19 Q What other kind of dope do you cook?

20 A Hmm.

21 Q Or at ---

22 A None ---

23 Q --- least in ---

24 A --- that I'm aware of, sir. As far as -- as far as
25 what we typically see ---

REDIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 130

1 Q Okay.

2 A --- from what we typically see. Now, there are
3 other narcotics. But they're -- they hadn't quite made
4 it to our jurisdiction yet.

5 Q And the tip that you professionally are required to
6 investigate was Trey, or Sylvester Ferguson, is in the
7 upper-left room of that apartment complex on Highway 66
8 and he's cooking dope?

9 A Yes, sir.

10 Q That was the information that you went to do the
11 knock-and-talk on, correct?

12 A Yes, sir.

13 Q Okay. Thank you.

14 THE COURT: All right, sir. You can step down.

15 (Whereupon, the witness exited the witness stand.)

16 THE COURT: All right. Gentlemen, the jury is here.
17 We're at 25 past 3. And I assume we have at least one
18 more witness to go, because we've got a search warrant
19 that we have to take up. Am I right?

20 MR. SCOTT: Two more. I've got Sweat, who went in
21 there with him; and then, Matt Veal, who actually got the
22 search warrant.

23 THE COURT: Right. I'm going to go ahead -- if the
24 -- unless there's some vehement objection, I'm going to
25 go ahead and cut the jury loose for the day, instead of

1 keeping them on ice back there. Because I'm expecting
2 that we would be going into about another hour's worth of
3 testimony and argument. Plus, I need to take a brief
4 break and take a cold pill.

5 So let's -- are y'all comfortable with me just going
6 back there and, especially in light of the fact that your
7 client's not present in the courtroom, can I just go back
8 there and tell the jury, "Hey, we're still at it; you
9 guys come back tomorrow morning at 9:30"?

10 MR. BROOME: No objection ---

11 MR. SCOTT: Yes, sir.

12 MR. BROOME: --- to that ---

13 THE COURT: All right.

14 MR. BROOME: --- Your Honor.

15 THE COURT: Let's do that. While we're doing that,
16 if you could perhaps just reach out to your client again;
17 make sure his -- his tires have been replaced or
18 whatever's ---

19 MR. SHAFFER: And ---

20 THE COURT: --- happened is good. So maybe he's
21 just confused. Or is he here? Or ---

22 MR. SHAFFER: And, Your Honor ---

23 THE COURT: --- do you ---

24 MR. SHAFFER: --- around two o'clock we received a
25 call saying that he was running late -- that ---

1 THE COURT: Okay.

2 MR. SHAFFER: --- that something came up and they
3 were running late.

4 THE COURT: All right. I -- I'm hopeful that they
5 would let him in the back door, but you may want to check
6 the lobby first. Okay?

7 We'll be at ease for five/ten minutes, okay, guys?

8 MR. BROOME: Thank you.

9 (Off the record from 3:25 p.m. until 3:39 p.m.)

10 THE COURT: All right. We -- we're back on the
11 record. Still, Mr. Ferguson is not here. So I guess
12 he's really running behind. Any luck in ---

13 MR. SHAFFER: Your ---

14 THE COURT: --- communicating with him or his
15 people?

16 MR. SHAFFER: We've had some communication with his
17 -- I think -- believe it's his girlfriend that -- the
18 female he was with earlier today. Our office has had
19 some communication. We do not know about whether --
20 where he's at right now. Obviously ---

21 THE COURT: So ---

22 MR. SHAFFER: --- we had that communication at two
23 o'clock. We've had more recent communication with her,
24 but we're not aware of where he's at right now.

25 THE COURT: All right. Well, I'm -- I'm certain

1 he'll show here before the close of business today. And
2 if he doesn't, that's obviously somewhat disconcerting.
3 Maybe I'll do something else at that point in time.

4 But we'll keep rolling with this, since the jury is
5 not here. Next witness.

6 MR. SCOTT: Deputy Steven Sweat, Your Honor.

7 THE COURT: All right. Come on up.

8 (Whereupon, the witness came forward.)

9 STEVEN SWEAT, having been first duly sworn,
10 testified as follows:

11 MR. BROOME: Your -- Your Honor, before we begin,
12 can we address the sequestration issue one more time? I
13 think -- I -- I know he's relieved from this hearing, I
14 think. But I don't -- I think he's under subpoena -- I'm
15 assuming he's going to testify for trial. I don't know
16 the state's case or how they're going to present it. I'm
17 asking ---

18 THE COURT: Sure.

19 MR. BROOME: --- that they ---

20 THE COURT: It ---

21 MR. BROOME: --- enforce that.

22 THE COURT: Gentlemen, it may be best, out of an
23 abundance of caution, for y'all just to go ahead and call
24 it a day. You can probably, I guess, maybe let him go or
25 something, if you wanted, Mr. Scott.

DIRECT EXAMINATION BY MR. SCOTT - STEVEN SWEAT 134

1 MR. SCOTT: Yeah. I'm -- I'm going to let Hall go.
2 And then, Nations is -- again, he's that lead
3 investigator ---

4 THE COURT: Right.

5 MR. SCOTT: --- on this case.

6 THE COURT: Nations can stay.

7 But, Mr. Hall, if you want to go ahead and take a
8 day. See you in the morning.

9 All right. Mr. Scott?

10 MR. SCOTT: Okay.

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Deputy Sweat, January 17th last year, you were with
14 the sheriff's department?

15 A Yes, sir.

16 Q And at that time how long had you been in law
17 enforcement?

18 A Well, working on ten years. I would've hit ten
19 years in August of '17.

20 Q Okay. Do you recall the tipster or at least the
21 information that Hall passed on regarding a tip that he
22 got from the male at the gas station?

23 A Yes. I got it from Investigator Nations. He wanted
24 to -- an assistance in following up on it.

25 Q All right. So it goes tipster to Hall to Nations

1 and then to you?

2 A Yes, sir.

3 Q What was the gist of the tip that you were said to
4 be?

5 A Long story short, there was individuals cooking meth
6 on Whitmire Highway in Joanna, which is in Laurens
7 County. One of the individuals was named to be Sylvester
8 Ferguson and was described as being the upper-left-hand
9 apartment as in facing the apartments from the roadway,
10 Whitmire Highway.

11 Q Okay. And -- and Highway 66, that's Whitmire ---

12 A Yes ---

13 Q --- Highway?

14 A --- sir.

15 Q Okay. And then, when they described the apartment
16 complex, did you know what apartment complex they were
17 talking about?

18 A Yes. It's very easy layout. I mean, it's the only
19 apartments on that road.

20 Q Okay. And it's illegal to cook dope,
21 methamphetamine, any kind of dope in Laurens County,
22 right?

23 A Yes, sir.

24 Q All right. And as a narcotics agent, when you get
25 information that somebody's cooking dope in Laurens

1 County ---

2 A In general, I try to follow up on it. A citizen
3 informant gives us information, and from our perspective,
4 they don't have anything to gain from it. It's generally
5 deemed to be somewhat reliable.

6 So from that point, yeah. You're going to follow up
7 on it.

8 Q Okay. But -- and -- and I -- I don't want to beat a
9 dead horse. But what would Sheriff Reynolds say if you
10 weren't busy, you weren't caught up on another case, and
11 you were in the area and you got information that
12 somebody's committing an illegal activity right down the
13 road? Would you just say, "Oh, I'll let somebody else
14 deal with it"?

15 A I don't think my boss man would be too happy with
16 that.

17 Q And so it's kind of your duty, isn't it, to ---

18 A Yes, sir.

19 Q --- follow up, especially on narcotics cases; is
20 that right?

21 A Yes, sir.

22 Q That's safe to say?

23 A (No audible response.)

24 Q And so -- let's see. About 11:15 or so on that
25 January 17th date, did you go to that apartment complex

DIRECT EXAMINATION BY MR. SCOTT - STEVEN SWEAT 137

1 at Highway 66 to follow up on information that Sylvester
2 Ferguson was cooking dope in the upper-left-hand unit of
3 that apartment complex?

4 A Yes, sir.

5 Q Okay. And upon arrival, tell -- tell us your
6 recollection of what went down when you arrived at the
7 location.

8 A Investigator Nations was lead on this case. We got
9 there. He went up; knocked on the door. Individual
10 answered the door.

11 I believe his last name was Davis. I can't recall
12 his full name off the top of my head. It's in my -- it's
13 in our notes on the incident report.

14 Regardless, Investigator Nations asked if Mr.
15 Ferguson was present. He said he was. At this point Mr.
16 Davis -- I think he stepped into the apartment a short
17 piece, hollered back. And from there Mr. Ferguson came
18 out from the back of the apartment.

19 At this point I'm not sure exactly where -- and
20 Investigator Nations had stepped just inside the doorway.
21 I was still on the balcony which leads up to that
22 apartment door.

23 Regardless, once we made contact with them, we told
24 them pretty much why were there, asked for consent to
25 search. Mr. Ferguson was initially hesitant. Mr. Davis

DIRECT EXAMINATION BY MR. SCOTT - STEVEN SWEAT 138

1 gave it to us, at which point Mr. Ferguson went along
2 with Mr. Davis.

3 From there we did a walkthrough the apartment, just
4 to see what was laying in plain view. Investigator
5 Nations went to the room -- back room of the apartment.
6 And while he was doing so, in the living room area, there
7 was a table.

8 If you're standing in the door facing inside the
9 apartment, there's a table off to my right-hand side. On
10 it I saw a -- a dark-in-color glass -- they call it a
11 bowl. It's really a pipe. But had what appeared to be
12 marijuana residue, in my experience, an item that is
13 consistent with the use of -- consumption of marijuana, I
14 think, there in plain view.

15 Q Okay. And did -- at that point were you aware of --
16 of some of the things that Deputy Nations found?

17 A He advised me of a -- there's an item or two that he
18 observed in the bathroom. And I can't recall exactly
19 what he told me he -- what else he may have seen. But I
20 do remember him seeing a couple items in the bathroom in
21 the residence that we're making note as -- as important.

22 Q Okay. So he found what he found in the bathroom.
23 You said you saw marijuana ---

24 A I

25 Q --- or at least a pipe laying ---

1 A Drug ---

2 Q --- in plain ---

3 A --- paraphernalia. Yes, sir.

4 Q Okay. On the living room ---

5 A Yeah. A table.

6 Q --- coffee table?

7 Okay. And at that point what did you two decide to
8 do, that being you and Deputy Nations?

9 A At that point a phone call was made to our
10 supervisor, who is Sgt. Veal. He wanted to get a search
11 warrant for the rest of the residence. We had a P.C. on
12 that point.

13 Q So what you do tell Henry Lee Davis and Sylvester
14 Ferguson while you're waiting to get that?

15 A Y'all need to hang out and wait for it to get here.
16 We got to get a search warrant for the house.

17 During this time Mr. Ferguson started fidgeting
18 about with his pockets. He put his hand in his pocket,
19 out of his pocket, touch around his pocket.

20 And I paid attention -- as a matter of fact, I told
21 him a couple times, "Quit putting your hands in your
22 pocket." I hadn't patted him down or nothing.

23 So he kept doing it anyway. And then, I was, like,
24 "All right. Well, I'm going to go ahead and pat you
25 down."

DIRECT EXAMINATION BY MR. SCOTT - STEVEN SWEAT 140

1 When I patted him down -- I can't recall which
2 pocket, off the top of my head. But in one of the
3 pockets, I felt what felt like a cylinder, a vial, if you
4 will, what ended up being a -- I come across items like
5 this in the past. They're commonly used to store dope
6 in: pills, meth, crack. I mean, you name it, I found a
7 lot of different kind of -- even weed -- different kinds
8 of dope in these vials.

9 I felt it. I had a good idea what it was; retrieved
10 it. Sure enough, I believe there was powder
11 methamphetamine and crack cocaine in that vial.

12 Q Okay. But what you're describing as he -- he's
13 fiddling around with his pockets. He's putting them in
14 and pulling them around, patting around ---

15 A Touching ---

16 Q --- his pockets?

17 A Yes.

18 Q And, in fact, you told him to stop doing that.

19 A Yes.

20 Q Was it making you nervous?

21 A Yes. I don't like it when people start putting
22 their hands in and out their pockets and stuff. I don't
23 know if they got a knife, gun, what. I hadn't patted
24 this guy down for weapons or anything. First thing on my
25 mind is, you know, are you going do something to me? I

1 mean, I don't know. And so ---

2 Q Okay.

3 A --- the other thing that comes into mind, too, is he
4 trying to drop -- see something. If he's trying to get
5 rid of evidence, you know, that I want to obtain, I don't
6 want it getting destroyed or getting eaten or anything of
7 -- of the sort.

8 So I want to pat him down and see what the heck's
9 going on here. Because he's obviously concerned about
10 what's going on in his pockets.

11 Q Okay. All right. There -- I have to -- let me kind
12 of fast-forward. But did -- y'all get the search warrant
13 eventually?

14 A Yes, sir.

15 Q And that was after you found this vial on Mr.
16 Ferguson's person?

17 A Yes, sir. Search warrant was granted.

18 Q Okay. And then, you search the rest of the house
19 after you get the search warrant?

20 A Yes, sir.

21 Q And did you find additional items that were -- you
22 saw as being kind of a -- components of a methamphetamine
23 ---

24 A I wouldn't ---

25 Q --- production ---

CROSS-EXAMINATION BY MR. BROOME - STEVEN SWEAT 142

1 A --- say -- say kind of. I would say blatantly.
2 Obvious reason, production of methamphetamine. Yes.

3 Q Okay. And did you find some paperwork that
4 associated Mr. Ferguson with one of the bedrooms?

5 A Yes, sir. If you're looking in from in the -- at
6 the -- the -- if you're looking at the apartment from the
7 front balcony, the far-back on the opposite-side corner
8 of the apartments, there was numerous items of paperwork
9 in there associated with the defendant.

10 Q Okay. You're talking about the back-right bedroom?

11 A Yes. We're at the front-left portion of the
12 apartment. The bedroom is back-right.

13 Q Okay. And -- and that had some paperwork involving
14 Mr. Ferguson?

15 A Yeah. His name was listed on several documents.
16 I'd have to look at the incident report to tell you
17 exactly what.

18 Q Okay. I -- please answer any question Mr. Broome
19 has for you.

20 A Yes, sir.

21 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

22 CROSS-EXAMINATION

23 BY MR. BROOME:

24 Q Just briefly, can you describe the cylinder that you
25 found in detail?

CROSS-EXAMINATION BY MR. BROOME - STEVEN SWEAT 143

1 A It was a cylinder. It was small. I believe it had
2 a green cap. Just off the top of my head, again, without
3 looking at the incident report, that's what comes to
4 mind.

5 Q Did you take pictures of it?

6 A I can't recall. I'd have to look through the photos
7 and tell you.

8 Q Did investigator -- did someone take pictures of ---

9 A I don't know.

10 Q You don't know?

11 A (No audible response.)

12 Q You don't remember?

13 A (No audible response.)

14 THE COURT REPORTER: Sir, I need a verbal answer.

15 THE COURT: Can you answer yes, please? Or yes or
16 no. She can't take down a head nod or a shaking ---

17 A I ---

18 THE COURT: --- your head.

19 A --- I don't know.

20 Q You don't know?

21 A (No audible response.)

22 Q Can you describe the shape of it.

23 A Cylindrical.

24 Q How'd it feel?

25 A Like a cylinder.

1 Q And was it hard or soft?

2 A It was hard.

3 Q Okay. Two inches long? Six inches long?

4 A Say, about two finger widths. Like, so -- so that's
5 going to be -- I don't know -- maybe inch and half/2
6 inches.

7 Q Okay. So 1 1/2 to 2 inches?

8 A (No audible response.)

9 Q You didn't see the -- a bulge in his pants or
10 anything like that before you went and searched him?

11 A Well, his pants were loosely fitting, so no.

12 Q Okay.

13 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

14 Q Can you tell us any other cases where you felt
15 something, like a similar type of object?

16 A I can't cite to certain cases, like, off of the case
17 number or anything. But I've, again, come across I don't
18 know how many instances of dope being kept in -- illegal
19 and controlled substances -- let me elaborate there --
20 found in small cylinders, whether they're in someone's
21 pocket, whether they're on a key chain.

22 Yeah. I've found -- I've found it numerous times in
23 objects like that in the past. And at that point I'd
24 been doing this 9 and -- close to 9 1/2 years.

25 Q When you searched Mr. Ferguson, you said that there

1 were two coffee filters?

2 A I haven't mentioned anything about coffee filters.

3 Yeah. I just -- I said that there was meth and crack in
4 his pocket.

5 Q Okay. Did you find -- were there filters found in a
6 -- on his person or anywhere else in the house?

7 A I know ---

8 Q In his ---

9 A --- that there ---

10 Q --- pants?

11 A --- were some coffee filters found. I want to -- I
12 can't cite off the top of my head for sure. But I
13 believe there was a pair pants in the bedroom that we
14 found some coffee filters in that were wadded up.

15 And I believe -- yeah. We cut -- it seems like we
16 tested one of them for the presence of meth in a field-
17 test kit, and it popped blue, which is positive.

18 Q Okay. Would it help if you had your report in front
19 of you? Do ---

20 A It would.

21 Q --- you have it? Okay. I've got one copy, I think.
22 Can you take a moment and just look at that.

23 A And this supplemental is in regards to another
24 vehicle. While ---

25 Q Okay.

CROSS-EXAMINATION BY MR. BROOME - STEVEN SWEAT 146

1 A --- we were ---

2 Q I'm sorry. I think I handed you the wrong one. Let
3 me ---

4 MR. SCOTT: I got it.

5 MR. BROOME: You got it?

6 MR. SCOTT: It's got some . . .

7 MR. BROOME: Thanks.

8 Q I'm going to hand you Solicitor Scott's copy.

9 A Okay.

10 Q Is that okay?

11 A All right. I'll look.

12 Q Thank you. Take a moment and let me know if you
13 recognize that report.

14 (Off the record briefly.)

15 A Yes. We found two located on his person. And we
16 also found another that was located in the back-right
17 bedroom in some pants. It was a total of three.

18 Q So three, one in a pair of pants, right?

19 A Yeah. Two ---

20 Q Okay.

21 A --- on him, one in the pair of pants in the bedroom.

22 Q Good. And it just says -- and your report just says
23 "in bedroom" -- I think I'm looking at the bottom -- "one
24 in bedroom in pants."

25 A Yes.

CROSS-EXAMINATION BY MR. BROOME - STEVEN SWEAT 147

1 Q Did you go through the pants and find anything else,
2 other than the filters?

3 A I don't know. Sink -- you have to bear with me.
4 There were a bunch of different items significant to this
5 case found in different areas. I just got to -- got to
6 make sure. It's been almost two years.

7 (Off the record briefly.)

8 A Yeah. The only items that were located -- I'm
9 sorry. What was the question again?

10 Q Did you find anything else, other than the filters,
11 in the jeans -- or in the pants?

12 A The -- in the bedroom?

13 Q Yeah. The bedroom pants.

14 A No.

15 Q Okay.

16 A I -- I don't see anything.

17 Q Having a chance to look at your report to refresh
18 your memory, did you notice any of my client's
19 belongings, anything with his name on it, in those pants
20 that you pulled the filter out of in the bedroom?

21 A Not off the top of my head. No. We did -- I -- I
22 did find several items in that same bedroom that were
23 associated with him: personal documents, a lot -- there
24 was a job application, I believe, that was listed to him.
25 And I can't recall off the top of my head where the item

1 was found. But it was, like, a -- like, a lunch bag or
2 the sorts.

3 But in it there was a -- I thought it may have been
4 laying beside it. Regardless, there were -- there was a
5 job application that had his name listed on it. And it
6 was found among the other items in this same bedroom that
7 had Mr. Ferguson's name on it.

8 Q But nothing else in his pants?

9 A (No audible response.)

10 Q Those -- those documents weren't in the -- in the --
11 in those pants that you found ---

12 A No.

13 Q --- searched?

14 Okay. Did you look inside the pants and see what
15 the measurements were, what size?

16 A I don't believe I did.

17 Q Okay. You understand that -- my question? I just
18 want to make sure you ---

19 A Yeah.

20 Q Okay. Yeah.

21 A I couldn't tell you what the ---

22 Q Yeah.

23 A --- size pants were. No, sir.

24 Q Sometimes mine fluctuates after Thanksgiving.

25 So -- and you didn't -- you had an opportunity -- my

1 client was wearing pants at the time, right?

2 A Yes, sir.

3 Q Okay. Not ---

4 A Yes, sir.

5 Q --- in his ---

6 A He was ---

7 Q --- undies?

8 A --- wearing pants. That's where we found the vial
9 that had the crack and the meth in it.

10 Q Okay. Do -- were you able to -- were they the --
11 tell if they were the same brand of jeans or pants at
12 all, as far as what he was wearing versus what was in the
13 back bedroom?

14 A Yeah. I don't know.

15 Q Okay. And you didn't search -- look at my client's
16 pants and see what size his pants were?

17 A I had found dope on his person already. That was
18 pretty indicative to me that he was involved, to some
19 degree, with the drug activity occurring.

20 Q But did you check his ---

21 A No.

22 Q --- pants? Okay.

23 MR. BROOME: Beg the Court's indulgence one second.

24 THE COURT: Yes, sir.

25 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

REDIRECT EXAMINATION BY MR. SCOTT - STEVEN SWEAT 150

1 MR. BROOME: Okay. No further questions. Thank
2 you.

3 THE COURT: Redirect?

4 MR. SCOTT: Just . . .

5 REDIRECT EXAMINATION

6 BY MR. SCOTT:

7 Q Was it a voc-rehab receipt? Was that the other
8 piece of paperwork you found?

9 A (No audible response.)

10 Q And was there an application from Burger King? Is
11 that what you found in that bedroom?

12 A Yes, sir.

13 Q What kind of hat was Mr. Ferguson wearing?

14 A A Chicago Bulls.

15 Q Is that what he looked like that day?

16 A Yes, sir.

17 Q All right. Mr. Ferguson -- did you see him today
18 when he was here?

19 A No, sir.

20 Q Okay. At least body type, how would you compare his
21 build to Henry Lee Davis?

22 A Mr. Ferguson was stocky. Mr. Davis was extremely
23 skinny.

24 Q And -- and Mr. Ferguson was wearing a Bulls hat?

25 A Yes, sir.

REDIRECT EXAMINATION BY MR. SCOTT - STEVEN SWEAT 151

1 Q What else did you find in that back bedroom -- back-
2 right bedroom?

3 A That Bulls hat that you're showing right there.

4 Q And both of them, the one he was wearing and the one
5 in that back bedroom, had the sticker on the bill?

6 A I'm -- I'm not sure.

7 Q Okay. But in that back bedroom where you found some
8 of the contraband, you had a voc-rehab letter addressed
9 to Sylvester Ferguson and an application for employment
10 at Burger King for Mr. Ferguson in that back bedroom.

11 A Yes, sir.

12 Q And ---

13 A That we found in the apartment.

14 Q --- what -- what do you know about Mr. -- did you --
15 were you familiar with Trey Ferguson or Sylvester
16 Ferguson before this?

17 A Yeah. To a degree. Not extremely. I know that
18 we've received complaints about him in the past. My
19 direct dealings with him involved a domestic dispute when
20 I was on uniform patrol. But from that it was all
21 second- and thirdhand information ---

22 Q So he ---

23 A --- just that he was involved with the -- the drugs.

24 Q Okay. Are you familiar with him being sort of
25 transient?

REDIRECT EXAMINATION BY MR. SCOTT - STEVEN SWEAT 152

1 A Moving around, staying wherever he lay his head,
2 yes.

3 Q Okay. And that Morgan Street address ---

4 A Matter of fact, that's where I had a -- I don't
5 know. No, no, no. That's not where I know him. I'm
6 sorry.

7 Q Is that one of his family members' names, to your
8 knowledge?

9 A If Morgan Street is the through street I'm
10 recalling, which is near Joanna Woods Elementary, yes.
11 He's got a relative that lives there. I want ---

12 Q Okay.

13 A --- to say it's his father. But I do know he has a
14 relative that lives over there.

15 Q Okay. And Mr. Henry Lee -- you've got the thing
16 right there. But do you remember Mr. Henry Lee Davis --
17 was he maybe in his 60s or something ---

18 A He's old.

19 Q --- like that?

20 He's an old guy?

21 A Yeah.

22 Q A very slight build ---

23 A Yeah. He was ---

24 Q --- old man?

25 A --- small.

REDIRECT EXAMINATION BY MR. SCOTT - STEVEN SWEAT 153

1 Q And -- well, I don't know. Mr. Broome may have
2 asked you, but did -- did you know -- those jeans in that
3 back bedroom, were -- did they appear to be those of a
4 thin man or those of a -- of a stockier-build man? Do
5 you ---

6 A I ---

7 Q --- recall?

8 A --- don't know.

9 Q Okay. All right. That's all I have for you.

10 A Okay.

11 THE COURT: All right, sir. Thank you. You can
12 step down.

13 THE WITNESS: Thank you.

14 (Whereupon, the witness exited the witness stand.)

15 THE COURT: Call your next witness, please.

16 MR. SCOTT: The state calls Matt Veal.

17 (Off the record briefly.)

18 (Whereupon, State's Exhibit 1 was marked for
19 identification.)

20 (Whereupon, the witness came forward.)

21 THE BAILIFF: How you doing, buddy?

22 THE WITNESS: Good.

23 MATT VEAL, having been first duly sworn,
24 testified as follows:
25

DIRECT EXAMINATION BY MR. SCOTT - MATT VEAL

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1 DIRECT EXAMINATION

2 BY MR. SCOTT:

3 Q Sgt. Veal, you have been with the sheriff's
4 department for how long?

5 A Just completed my 11th year, so just started 12
6 years at the sheriff's office.

7 Q Okay. You -- you're kind of Deputy Nations and
8 Deputy Sweat's supervisor for the narcotics unit?

9 A Yes, sir, I am.

10 Q All right. So January 17th, 2017, did you get
11 information that they were investigating a case at 629
12 Highway 66 in Joanna?

13 A I did.

14 Q Okay. And their call out to you was in regard to
15 what?

16 A That they possibly had a possible meth lab and some
17 other drugs inside the residence, and Nations had asked
18 if I could obtain a search warrant.

19 Q Okay. And did they brief you on some of the facts
20 and some of the things they observed ---

21 A Yes, sir, they did.

22 Q --- that day?

23 Okay. They've got a dispatch time of 11:13. That's
24 the time of arrival. Let me show you State's No. 1. Do
25 you recognize that?

1 A Yes, sir. It is the search warrant I had typed up.

2 Q Okay. And then, at what time did you obtain that
3 search warrant?

4 A I printed the search warrant at 11:43 a.m., and
5 Judge Lyles signed it at 11:50 a.m. on the 17th of --
6 January 17th, 2017.

7 Q Okay. So you had it typed up in 30 minutes, and it
8 was signed by the magistrate at what point?

9 A At 11:50 ---

10 Q Okay.

11 A --- a.m.

12 Q Okay. And -- and the -- did you respond with it to
13 629 Highway 66?

14 A Yes, sir. I took it there myself.

15 Q Okay. And then, had they begun searching the house
16 at that point?

17 A When I -- when I arrived on scene, I -- well,
18 actually, when it was called or when it was signed, I --
19 I had called them and advised that the warrant had been
20 -- had been signed by a judge. And I took it straight
21 out there. And I don't know if the searching had started
22 prior to me getting there or not. I'm -- I'm not -- I
23 can't recall that.

24 Q Okay. But did you provide any additional oral
25 testimony to the judge, other than what's in that report?

1 A Let me read it just -- if you don't mind.

2 (Off the record briefly.)

3 A I basically wrote in the affidavit exactly what
4 Nations would've told me that happened from Investigator
5 Sweat and himself.

6 Q Okay. Would you read that affidavit into the
7 record.

8 A (As read): "On 01/17/2017 Investigator Sweat and
9 Investigator Nations went to location listed to be
10 searched in reference to drug activity. Upon arrival was
11 given consent to search the residence for persons and
12 noticed, in plain view, what appeared to be a bag of
13 crack cocaine. Investigator Sweat also noticed subject,
14 Trey Ferguson, was putting his hands in his pockets and
15 asked not to several times.

16 "Investigator Sweat conducted a *Terry* frisk of Mr.
17 Ferguson and found a hard object in his front pocket.
18 When the item was removed, he believed it to be
19 methamphetamine in a glass vial. Also in plain view was
20 a marijuana-smoking pipe with residue. After lawful
21 consent to go into residence, investigators believe that
22 more items may be located within apartment."

23 Q Okay. And did you participate in the search, along
24 with Nations and Sweat?

25 A I believe I helped just a little bit. But mostly,

1 what I was doing was staying with the occupants while
2 Sweat and Nations was -- was doing the -- the majority of
3 the searching.

4 Q Okay. So ---

5 A That way, officers with the people -- were with the
6 subjects inside at the time ---

7 Q Okay.

8 A --- for officer -- officer safety. Excuse me.

9 Q All right. So you stayed with Sylvester Ferguson
10 and Henry Lee Davis while they pretty much performed the
11 search?

12 A Yes, sir.

13 Q Do you recall what you observed, if anything?

14 A I don't recall anything, other than maybe when Sweat
15 -- maybe Sweat or Nations was looking in the trash and
16 they found some of the bottles. And I -- they asked me
17 to -- you know, my opinion on what I thought that was.
18 And I told them I thought it would be -- be some meth
19 trash, so -- or some HCl generators.

20 Q Okay. Thank you.

21 MR. SCOTT: Your Honor, the state offers this search
22 warrant as State's 1 for purpose of this hearing.

23 THE COURT: All right. For purposes of this
24 hearing, it'll be in -- it'll be received by the Court as
25 an exhibit. It's not in evidence yet.

DIRECT EXAMINATION BY MR. SCOTT - MATT VEAL

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1 MR. SCOTT: Okay.

2 Q And that's all I have. Please answer any questions
3 from Mr. Broome.

4 A Yes, sir.

5 THE COURT: Mr. -- Mr. Broome?

6 MR. BROOME: No questions.

7 THE COURT: All right, sir. You can step down.

8 THE WITNESS: Thank you, Your Honor.

9 (Whereupon, the witness exited the witness stand.)

10 THE COURT: Solicitor, any additional witnesses on
11 this?

12 MR. SCOTT: No, Your Honor.

13 THE COURT: Was there anyone that the -- I assume
14 the defense does not intend to call anyone on this
15 question?

16 MR. BROOME: No, Your Honor.

17 THE COURT: All right. Care to go ahead and argue
18 it?

19 MR. BROOME: Sure. Let me hand up my motion, Your
20 Honor. I want to serve this on Mr. Scott. May I
21 approach?

22 THE COURT: Please.

23 MR. BROOME: Okay. Would you like to read first and
24 then hear from me?

25 THE COURT: Yes. Let me read first and ---

1 MR. BROOME: Okay.

2 THE COURT: --- then I'll hear from you.

3 MR. BROOME: Let me -- I'll be here.

4 (Off the record briefly.)

5 THE COURT: All right. Mr. Broome, I've had a
6 chance to look at your motion. Go right ahead, sir.

7 MR. BROOME: Thank you ---

8 THE COURT: Obviously, you ---

9 MR. BROOME: --- Your Honor.

10 THE COURT: --- you preface the motion on both the
11 4th Amendment of the U.S. Constitution and the South
12 Carolina Constitution's right to privacy, as well as its
13 corollary, the 4th Amendment, that's understood. So go
14 ahead and proceed.

15 MR. BROOME: Thank you, Your Honor. And so we're --
16 we're moving to suppress -- I'm moving to suppress this
17 all -- everything found. Because they violated my
18 client's constitutional rights under the South Carolina
19 Constitution.

20 So if you read *Counts*, the specific language that I
21 use and the language comes from that -- that case says:
22 Look, we have a heightened sense of privacy in South
23 Carolina, afforded more than the 4th Amendment. Okay?
24 And that's what the *Weaver* case says.

25 And they address it. And they say: Look. It's

1 very clear. Before they get -- from a tip or -- or
2 otherwise, before law enforcement approaches a specific,
3 targeted residence to investigate illegal activity, they
4 must have a reasonable suspicion.

5 So that's the standard that we have to go for. The
6 standard is not what Sheriff Reynolds thinks it should be
7 or what he -- his interpretation of the law or what their
8 duty is. The law is the law.

9 And they have to something other than, "Hey, Joel
10 Broome's cooking dope. Let's go check it out and knock
11 on the door." And therefore, they can just have carte
12 blanche to do that.

13 They address that in *Counts*. They have to -- and
14 what we're looking for and that's -- the reasons I asked
15 the questions of Investigator Nations and Investigator
16 Hall is when you're looking at reasonable suspicion for a
17 *Terry* stop or an investigative stop or a knock-and-talk
18 case, what they're looking for is predictive behavior.
19 Okay?

20 So it's not enough to be like -- just like in the
21 *Florida v. J.L.* case, it's -- SCOTUS interpreted it back
22 in 2000. It's not enough to say, "Frank Addy is standing
23 at the corner on him. He's wearing a red shirt. Go
24 search him."

25 They have to do something -- there has to be some

1 measure of reliability. Otherwise, anyone can say -- and
2 -- and -- and this is not from what -- there was no
3 testimony to say this was an emergency situation or,
4 like, you know, DSS called or something like that. Okay?

5 Very specific, my client, cooking dope. We don't
6 know -- and the officers conceded on cross-examination --
7 dope could be marijuana. Dope could mean crack. Dope
8 could mean methamphetamine. They didn't write it
9 anywhere in their report. They came forward today and
10 testified that -- and that -- well, now it was
11 methamphetamine.

12 But be that as it may, they have to do something to
13 corroborate this person. They didn't ask him any
14 questions. This is -- if this were a confidential
15 informant, that'd be one thing.

16 And they -- they conceded -- Investigator Nations
17 conceded, when I asked him, "Did you have probable cause
18 to get a search warrant?" "No, I did not."

19 They would've gotten one or they at least tried to
20 do that. So reasonable suspicion is not person over
21 there is cooking dope; go check it; that -- that's
22 enough.

23 If that were the case, what they could've done is
24 the things I suggested. They have controlled --
25 confidential informants. They know who they are. They

1 know how to use them. They have binoculars and unmarked
2 cars, and they don't have to wear -- they can surveil
3 this place.

4 So this person didn't tell this -- "We don't know
5 anything about this guy." We don't know how old he is,
6 really anything at all about him. And there's nothing in
7 the record to show that he's trustworthy and reliable.

8 And so that's why I asked the questions of -- do we
9 -- did this guy say anything that would show Judge Addy
10 that he's reliable?

11 Could he tell the Court -- could -- does this guy
12 tell the officers, "Hey, he's going to Ace Hardware at 11
13 a.m. And when he gets there, he's going to buy, you
14 know, T-wrenches and all this stuff to make
15 methamphetamine. And from there, he's going there."

16 They didn't -- the person wasn't able to describe
17 how methamphetamine is used. For all we know, this
18 person was the one using methamphetamine. Maybe he got
19 caught. Maybe he's a confidential informant and they
20 haven't told us and he's giving that information to
21 police to save himself.

22 I think that's the reason why the Courts have
23 interpreted the way they have. So in South Carolina, we
24 have that heightened sense of privacy. And it's just --
25 the issue is an unreasonable -- or a heightened sense of

1 privacy. So ---

2 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

3 MR. BROOME: And I'm happy to answer any other
4 questions that the Court has for me.

5 THE COURT: Before I let Mr. -- before I let the
6 solicitor respond, let me take a quick look at *Counts*
7 again, please.

8 (Off the record briefly.)

9 THE COURT: Solicitor, it looks like you're
10 reviewing *Counts* as well. Do you need some more time to
11 look at it?

12 MR. SCOTT: Yes, sir. It's 18 pages. I'm looking
13 at it right now. I've had some connectivity issues. I
14 -- I ---

15 THE COURT: Do you ---

16 MR. SCOTT: --- can argue ---

17 THE COURT: --- need to look at my -- I've got it up
18 on mine, if you're -- if you're having trouble pulling
19 ---

20 MR. SCOTT: I've ---

21 THE COURT: --- it up.

22 MR. SCOTT: --- I've got it now.

23 THE COURT: Okay.

24 MR. SCOTT: It took me a minute to sign onto ---

25 MR. BROOME: I've got ---

1 MR. SCOTT: --- Westlaw.

2 MR. BROOME: --- a copy, too, if you need one.

3 THE COURT: Do you want to finish reviewing it
4 before -- I can get some water in the back and we can ---

5 MR. SCOTT: Yeah. That'd be fine.

6 THE COURT: All right.

7 MR. SCOTT: I mean ---

8 THE COURT: Let's take five, and you finish -- you
9 finish your review. We'll be at ease for a few minutes.

10 Before we go on ease, though, your -- your primary
11 argument is under *Counts* and the -- and the right to
12 privacy under the South Carolina Constitution, as opposed
13 to the federal Constitution. I realize that you're
14 raising both arguments, but the -- the tip of your spear
15 is truly the right-to-privacy issue, correct?

16 MR. BROOME: Well said. Tip ---

17 THE COURT: All right.

18 MR. BROOME: --- Your -- yes, Your Honor. And --
19 and I'll see how you go from there. But there is another
20 -- I -- I will be arguing based upon how you rule. Yeah.
21 That's the first one.

22 THE COURT: Right.

23 MR. BROOME: Primary, right. And then go from
24 there.

25 THE COURT: Your -- your fallback is then going to

1 be: Okay. Well, the search warrant was invalid because
2 of the lack of a sufficient -- sufficiency of the
3 affidavit, the standard ---

4 MR. BROOME: The -- they came in -- they came in
5 without permission and ---

6 THE COURT: Correct.

7 MR. BROOME: --- from there. So ---

8 THE COURT: I -- I understand that.

9 MR. BROOME: Yes, sir.

10 THE COURT: Right. Your argument, though, is that
11 we don't even get there because there wasn't sufficient
12 reasonable suspicion to support a knock-and-talk in the
13 first place ---

14 MR. BROOME: Yes, sir.

15 THE COURT: --- bottom line?

16 MR. BROOME: Yes, sir, bottom line.

17 THE COURT: All right. Five minutes. Be right
18 back.

19 (Off the record from 4:29 p.m. until 4:47 p.m.)

20 THE COURT: All right. We'll go back on the record,
21 if we could, in Mr. Ferguson's case. Mr. Scott, you
22 ready to address Mr. Broome's point here?

23 MR. SCOTT: Yes. But if -- if Your Honor does have
24 any further questions, if you're kind of iffy, I would
25 ask to be afforded, you know, the opportunity to brief

1 some cases tonight. But I -- I am prepared to argue, at
2 least on face value of this case and my understanding of
3 the law.

4 THE COURT: Sure. Go ahead. My -- and my clerk and
5 I were talking about this. And I'm -- I'm hesitant to --
6 to delay ruling on this for the simple reason that we
7 need to make a decision tonight about what we do with
8 regard to the jury.

9 I'm assuming we got something behind this. And so
10 if we're going to impanel another jury -- assuming for
11 the moment that Mr. Broome is correct, if we're going to
12 impanel another jury, I need to make that call this
13 evening.

14 MR. SCOTT: Okay.

15 THE COURT: So let's -- why don't we play with what
16 we have on ---

17 MR. SCOTT: Okay.

18 THE COURT: --- the table.

19 MR. SCOTT: I'm fine with that. The -- all right.
20 The first threshold question I kind of -- it occurred to
21 me, as Mr. Broome was questioning some of the witnesses,
22 is the threshold question: Does he have standing? In
23 order to suppress evidence resulting from an illegal
24 search and seizure, defendant must demonstrate a
25 legitimate expectation of privacy in connection with the

1 search.

2 And I'm -- I'm looking at an older, 1991 -- *State v.*
3 *Austin*, 306 S.C. 9. And again, a legitimate expectation
4 of privacy is necessary to trigger the 4th Amendment
5 protections.

6 If -- if he is, on the one hand, saying, "I live at
7 Morgan Street; I don't live there," but, on the other
8 hand, challenging the 4th Amendment issue in hand, has he
9 met that threshold question yet?

10 In order to have a reasonable expectation of
11 privacy, a -- a defendant must have a subjective --
12 subjective expectation of the object or place of the
13 challenged search.

14 THE COURT: Reasonable expectation of privacy,
15 though, traditionally falls under a 4th Amendment
16 analysis. I don't know that you necessarily engage in
17 exactly the same analysis when you're talking about the
18 South Carolina Constitutional right to privacy, which is
19 much more explicit, because one of the cases alluded to
20 in *Counts*, I believe, involved an officer approaching a
21 woman on the street, asking to -- they'd had concerns
22 about perhaps her having a weapon in her purse; asked to
23 visually inspect the purse. Purse got opened. And then
24 the officer rummaged around inside and came upon some
25 crack.

1 And the Supreme Court of South Carolina basically
2 said that act of going inside the purse, which is perhaps
3 an imperfect analogy to what we have in this case, but
4 the -- it -- it's one thing to peek in the purse. It's
5 quite another to -- to make entry into the purse. That
6 ---

7 MR. SCOTT: Did she give consent in that particular
8 ---

9 THE COURT: She said ---

10 MR. SCOTT: --- case?

11 THE COURT: --- "Sure, you may look in it."

12 MR. SCOTT: Okay. The analogy I would draw more so
13 would be Judge Addy is at Dale's Scott's house. Matt
14 Veal has information that Dale Scott -- or rather, Frank
15 Addy is selling dope or doing whatever out of my house.
16 They come to my house and I allow them inside. I -- I
17 don't know that you have expectation of privacy in my
18 home, unless you're -- there's some evidence maybe you're
19 an overnight guest or something like that, perhaps.

20 If you are a mere invitee and they -- they go over
21 to investigate your criminal activity at my house, I
22 allow them inside, I think that is more of the analogy
23 that we are dealing with in this particular case.

24 THE COURT: I -- my assumption, was though, that the
25 state's theory was that -- that Mr. Ferguson was actually

1 residing there. It's a bit of a reach for the Court to
2 say that you can have it both ways, that ---

3 MR. SCOTT: Well, I ---

4 THE COURT: --- if the state's theory of the
5 underlying case is that he was a resident there ---

6 MR. SCOTT: I think he gets a mere-presence
7 argument, no matter how we try this thing. I -- I can't
8 say whether he lived there or not. Certainly, he -- he
9 -- his belongings were there. We would argue that --
10 that the belongings would include some of the contraband
11 there.

12 That's my first question. And -- and, you know, I
13 -- I put that before the Court without having really
14 researched it. But I think that's the threshold
15 question.

16 But then, getting past that, I -- I just -- my
17 periphery -- or my -- that's not the word I want to use.
18 But my -- glazing over the *Counts* case, I do see a couple
19 noteworthy things. That -- that was a tip that there was
20 illegal distribution out of the house. And some of the
21 court's -- or the defense argument there was, you know,
22 why -- why didn't they do surveillance; why didn't they
23 send in C.I.s.; and then, that law enforcement created
24 the exigent circumstances.

25 In our case it was Sylvester Ferguson right now is

1 cooking dope in that house. Within 20 minutes of that
2 tip, they do a knock-and-talk. Noteworthy, too, in the
3 *Counts* case, he -- he refused to really open the door.
4 In fact, he asked them to identify themselves. They had
5 to show the badge and he opened it.

6 Henry Lee Davis, as law enforcement was approaching,
7 unlocked the door, opened it, and came out onto the
8 balcony before they could even do the knock portion of
9 the knock-and-talk. You heard that during the testimony,
10 I believe, from Nations. That's noteworthy.

11 They asked, "Is -- is -- is there anything" -- well,
12 first of all, they asked, "Is Sylvester Ferguson there?"

13 Henry Lee Davis says, "Yes, he is," and calls him
14 from the back.

15 They ask both of them if there's anything illegal
16 going on. They say, "No."

17 "May we search?" And then consent was given at that
18 point.

19 THE COURT: And I appreciate that. But as I read
20 *Counts*, what *Counts* says -- it doesn't say it as
21 explicitly as I'm about to. But you never get to the
22 second question -- all 4th Amendment analysis rests on
23 the question of whether the police are lawfully where
24 they're supposed to be at the time they observe
25 something, smell something, see something. So the --

1 every bit of 4th Amendment analysis begins with that
2 point.

3 What *Counts* says is you have to have reasonable
4 suspicion to be present to even institute the knock-and-
5 talk.

6 MR. SCOTT: All right. So are ---

7 THE COURT: And in ---

8 MR. SCOTT: --- they unlawfully present at an
9 apartment complex where he can't establish residency?

10 THE COURT: All right. The ---

11 MR. SCOTT: My analogy, again, is -- I'm going to
12 read your case to you. I'm going to read the *Forrester*
13 and I'm going to read the analysis here. I -- I've been
14 giving a ---

15 THE COURT: It ---

16 MR. SCOTT: --- limited opportunity. But my analogy
17 -- I -- and I think it -- it's kind of -- it might be
18 farfetched; I don't think it is. But I go up to Veal and
19 say, "There's a dead body at 123 Main Street. Somebody's
20 got to look into this. Somebody do something."

21 It's like a welfare check. I mean, they can do
22 these welfare checks.

23 THE COURT: But *Counts* actually distinguishes the
24 dissent by Pleicones and *Counts* touches on that. We're
25 not talking about a welfare check. We're not talking

1 about more of a civil aspect to the jurisdiction of the
2 sheriff's department, where they're just simply seeing if
3 somebody's okay.

4 What *Counts* differentiates between is that this is a
5 criminal investigation, as opposed to a welfare check.

6 MR. SCOTT: Well, and *Counts* was different too,
7 because it was almost like they were trying their best to
8 get to this guy. They knew something was going on. They
9 were going -- they had a complaint. They tried some
10 unsuccessful C.I. buys, right?

11 Is that how you read it? That -- that's -- and then
12 ---

13 THE COURT: Right.

14 MR. SCOTT: --- they even establish surveillance.
15 And so this Court looked at that *Counts* case. And
16 ultimately, they ruled it was okay. But they -- they --
17 it was more of an ongoing investigation, with the knock-
18 and-talk kind of as a ruse to get in there and get
19 consent.

20 These guys have a fresh tip, okay? In the *Counts*
21 case, they way I just kind of looked at it, June of 2007,
22 there's this anonymous tip, coupled with a couple
23 unsuccessful buys.

24 Well, it almost looks like law enforcement's -- they
25 -- they've got it in for this guy, because they get

1 another tip. They start doing surveillance. They start
2 doing all these other things. And it looks like they're
3 just trying to circumvent a search warrant, right?

4 That's how it looked to me in the *Counts* -- or at
5 least how -- that's how the Court appeared to come down
6 on it.

7 THE COURT: You said "circuit warrant," but you
8 meant search warrant. So go ahead.

9 MR. SCOTT: Circumvent a search warrant.

10 THE COURT: Right.

11 MR. SCOTT: In -- in this case, again, it -- it's --
12 it's an -- a fresh event. It's an -- it's an act
13 happening right then and there.

14 Because the way I understood it, he's cooking dope
15 over there. They go over to knock on the door. They
16 didn't have to answer.

17 And here's the other thing. Even if they hadn't --
18 even if they had knocked on the door, they had to open it
19 and say, "Can we come take a look in?"

20 They could've said, "No. You can pack sand and get
21 off my porch." They allowed them to come in -- Henry Lee
22 Davis did who, it sounded to me under cross-examination,
23 was the one who had the address -- who was on the lease
24 and had the address in his name, who, I would argue,
25 would be the one that the evidence has shown had the

1 closest connection with the home.

2 I -- I think there are some -- there are some
3 differences between *Counts* and our current case. And in
4 other words, it -- that -- this -- that was an ongoing --
5 I think I made my point -- where it just -- it appeared
6 the Court came down on them, because it looked like they
7 were trying to circumvent the search warrant. Whereas
8 ours is just investigating a fresh crime.

9 And a tip that has the name -- the guy's nickname,
10 Trey Ferguson, who law enforcement knew him as -- is --
11 his birth name is Sylvester Ferguson, III. They say
12 "Trey Ferguson." They say "the upper-left unit of the
13 apartment located at Highway 66." And -- and then they
14 -- they indicate "cooking dope."

15 Had I read this particular case, I would've elicited
16 testimony from them that they knew he had a prior
17 methamphetamine conviction on his record. But I was not
18 afforded with this brief before the arguments.

19 I -- I think there's another ---

20 THE COURT: Even then ---

21 MR. SCOTT: --- thing ---

22 THE COURT: --- I'm not sure that that really -- so
23 long as he's got a -- I mean, a conviction for possessing
24 meth is entirely different from ---

25 MR. SCOTT: It was a ---

1 THE COURT: --- cooking ---

2 MR. SCOTT: --- PWID. It was a PWID. And I -- I
3 think, if -- if they can connect him to possessing meth,
4 he's got possession-meth charge in this case as well.
5 But, of course, you're right. They were -- they were
6 investigating the manufacture.

7 I just think a tip with that amount of detail --
8 where the guy -- where the guy is going to be located,
9 his nickname -- you know, and -- and all they're doing,
10 according to the testimony, is coming up the steps when
11 the door is opened and they're greeted by Henry Lee
12 Davis.

13 THE COURT: Right. And as strange as it -- as it
14 seems to be, though -- and again, this is a 2015 case in
15 a very undeveloped field of South Carolina jurisprudence.

16 But the holding in *Counts* essentially says: If you
17 lack reasonable suspicion, you have no business going
18 onto the property to conduct a knock-and-talk to begin
19 with; that even if -- as you say -- I mean, the -- the
20 logical extension of *Counts* is that law enforcement, even
21 with that anonymous tip, absent some investigation, some
22 effort to independently corroborate the truthfulness of
23 it or the reliability of it -- because, again, we're
24 dealing with an anonymous tip, which, under the law is,
25 for lack of a better explanation, inherently unreliable.

1 It's anonymous. It's not as reliable as if you've got
2 somebody's name saying, "Hey, I'm Frank Addy. I just
3 came from the apartment in Joanna where Joel Broome has
4 been staying for the last couple of days. And he's up
5 there cooking some meth in some two-liter bottles.
6 Here's my cell phone number if you ever need me."

7 Okay. That's reliable, actionable information that
8 would justify the knock-and-talk. The biggest problem
9 here is, like *Counts*, we're dealing with two anonymous
10 tips.

11 MR. SCOTT: I found the *Wright* case. I don't know
12 if it's been ---

13 THE COURT: *Wright* was relied ---

14 MR. SCOTT: --- eviscerated ---

15 THE COURT: --- upon ---

16 MR. SCOTT: --- by this.

17 THE COURT: Well, it was relied upon in *Counts*. It
18 was -- they ---

19 MR. SCOTT: Right.

20 THE COURT: --- discussed *Wright* in *Counts*. So ---

21 MR. SCOTT: Yes, sir. And so that was kind of -- I
22 need to review that, too, to see if -- you know, that --
23 that -- similar to federal precedent, this Court has
24 found that police have the investigative authority to
25 approach the front door of a home in order to investigate

1 an anonymous tip.

2 THE COURT: That's only under federal law, though.
3 And you're not -- you're outside the explicit right to
4 privacy. And that's what *Counts* is all about. They --
5 they say that: Yes. The police can go anywhere that any
6 John Q. Public can go.

7 South Carolina says differently. There's a higher
8 standard in this state, simply because we have that
9 explicit right to privacy.

10 MR. SCOTT: Wasn't that a state case? *Wright* was a
11 -- I got a ---

12 THE COURT: I thought ---

13 MR. SCOTT: --- 391 ---

14 THE COURT: --- *Wright* was -- I thought *Wright* was
15 the federal one saying that the police could do ---

16 MR. SCOTT: It's 391 S.C. 436. I just ---

17 THE COURT: Okay.

18 MR. SCOTT: --- and again ---

19 THE COURT: I'm wrong ---

20 MR. SCOTT: --- my notes ---

21 THE COURT: --- then.

22 MR. SCOTT: --- I wrote them down pretty quickly
23 here.

24 THE COURT: Okay. Yeah. Yeah. I think that *Wright*
25 was 2011; *Counts*, 2015. They're both Supreme Court.

1 MR. SCOTT: Yeah. They yellow-flagged it. I don't

2 ---

3 THE COURT: Yeah. I bet you they did. My clerk
4 says they did.

5 All right. Now, Mr. Broome, one -- one thing I do
6 want you to address: One part of the -- the *Counts*
7 opinion -- and I cannot tell if this is mere dicta or if
8 this is -- I'm kind of treating this as dicta, because
9 it's not central to their holding.

10 But one of the things that they're concerned about
11 in *Counts* is: (A) You have -- any time you have an
12 officer approach a home, there is some measure of
13 coercion involved, okay? So if the police officer --
14 they basically say that somebody dressed as a police
15 officer is different from somebody dressed as a door-to-
16 door salesman to try and sell you an Amway product. Okay.
17 So that's one thing that they have an issue with.

18 But in terms of what the South Carolina Supreme
19 Court is trying to prevent in *Counts* in defining this as-
20 yet undefined -- or as-yet unfully -- or not fully-
21 defined right to privacy -- what they're trying to
22 prevent -- and they explicitly say this -- is officers
23 targeting a specific neighborhood, knocking on doors,
24 simply trying to hope that someone comes to the door and,
25 when the door is opened, they notice the bong on the

1 kitchen table and a two-liter bottle with the hose
2 sticking out of it.

3 You want to speak to that? Because that -- that's
4 the only thing that they say that they're really trying
5 to prevent, is door-to-door law enforcement, for lack of
6 a better characterization.

7 MR. BROOME: Well, I think that they -- now, where
8 is that, Your Honor? Is that ---

9 THE COURT: It is -- hold on. Paragraph 11 on
10 *Counts* decision -- I'm looking on Westlaw.

11 MR. BROOME: Okay. So page 172.

12 THE COURT: It's at page 172 of the South Carolina
13 cite.

14 MR. BROOME: Where they're talking about "We foresee
15 the potential for abuse," that language?

16 THE COURT: Yes. Otherwise -- and I -- I kind of
17 read this as dicta. (As read): "Otherwise, we foresee
18 the potential abuse if law enforcement targets a
19 neighborhood and indiscriminately knocks on doors with
20 the hope of discovering contraband without a search
21 warrant."

22 Clearly, this is not an indiscriminate type of a
23 situation. They're not knocking on all the doors of this
24 apartment complex. They get specific information as to a
25 specific apartment, a specific individual. That's what

1 I'm getting.

2 MR. BROOME: Yeah.

3 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

4 MR. BROOME: Well, Mr. -- Tristan's whispering in my
5 ear. But I think that's the reason we have the
6 exclusionary rule as a prophylactic measure to prevent
7 these issues.

8 And going on, reading further into the *Counts* case,
9 they are very clear on what their specific holding is,
10 which is before target -- before approaching a targeted
11 residence, if that makes it clearer. It seems to be
12 that's very -- very clear, if they're going to a specific
13 place, which they have. In this -- well, in this case
14 there's been testimony, "We are going to this specific
15 place"; that this is the standard that -- of review that
16 we need to apply.

17 THE COURT: Let -- let's ---

18 MR. BROOME: And I may be missing the argument.

19 THE COURT: No, no, no. I think -- I think -- I
20 think you kind of are. But let's -- let's move on.
21 Let's try to change this a little bit.

22 The testimony so far has been that the door -- or
23 the window next to the door was partially open when the
24 officers approached. Let's assume for a moment that we
25 get the exact same facts and that the officers decide,

1 "Well, hey, let's at least walk by there and check this
2 out." Upon approaching the door, out of the window, they
3 smell the distinctive chemical odor of methamphetamine
4 being processed, an odor which with -- they are familiar
5 with from their extensive dealings with meth labs.

6 At that point in time, I think you would concede
7 that they have the right to do a knock-and-talk. Because
8 they've been told that was being made there. So there's
9 come exigency.

10 And (B) you've got the smell emanating from the
11 apartment, similar to the situation where the door is
12 opened and you smell instantly the strong odor of
13 marijuana coming from the house. You've otherwise got
14 lawful authority, either for a welfare check or some
15 other reason to be there.

16 But then, you open the door. And you're hit in the
17 face -- do you want to ---

18 MR. BROOME: I just ---

19 THE COURT: --- play with that?

20 MR. BROOME: I disagree with that, respectfully. I
21 think ---

22 THE COURT: Okay.

23 MR. BROOME: --- what the -- what the Court is
24 saying is prevent that because of -- there wasn't
25 testimony in this case. But in the briefing for *Counts*,

1 the appellate argument relies on a 7th Circuit case,
2 *Terry v. Johnson*. And that case was very similar -- I
3 can get the cite. It's -- I don't know if it's relied on
4 in *Counts*. It's part of the -- the lawyers' briefing.

5 Obviously, not 4th -- 4th Circuit, but 7th Circuit,
6 and the facts are pretty similar. It was a knock-and-
7 talk case. They guy opened the door before they got
8 there.

9 And what distinguished it -- it was when the guy
10 opened the door, the -- the client on trial is in a room.
11 And they see stuff in plain view. And the issue that
12 *Johnson* has, which I think our courts have, is: Look,
13 this knock-and-talk is so -- I mean, the -- the point of
14 -- the point of what they're trying to do is what Mr.
15 Scott said.

16 They're trying to circumvent the warrant. So the
17 officers in that case -- and the judges in the 7th
18 Circuit said: Look, isn't the whole point of them going
19 there is trying to drum up something, some probable
20 cause? So if someone opens the door and you're saying
21 it's legal, we got no reasonable suspicion, right?
22 Blanket allegation: someone's cooking meth.

23 You get there and the cop opens it and sees drugs in
24 plain view. No. They can't ignore it. And they're not
25 going to.

1 And at that point they're going to go in and arrest.
2 And I see your point. But what's -- the -- the language
3 in *Counts* says is they got to have something to
4 corroborate that tip before they even go there.

5 And *Counts* goes on to affirm because there's more
6 reliable information in *Counts* in that case, as far as
7 what tips, more information, and all of that stuff. The
8 *Johnson* case, which is not cited in *Counts*, so it's kind
9 of talking. But that -- that is what that court was
10 concerned with. And I think that's what our courts are
11 concerned with, is it -- it doesn't matter if it happens
12 to be true. Okay?

13 So if -- if they -- if they have -- if -- if you can
14 smell it or not, the issue that *Counts* says, the hold --
15 specific holding is reasonable suspicion before going
16 over there. So if they get there and they smell
17 something, my argument is so what. They -- it -- it --
18 they got to -- they got to corroborate it. And they got
19 to find out it's reliable before they even get to that,
20 before they go and they smell anything.

21 And ---

22 THE COURT: I -- I would disagree with you. I think
23 that the -- the -- the very -- it's the idea of the
24 coerced nature of the knock-and-talk, the rapping on the
25 door. And so -- and then, trying to initiate that

1 contact and that conversation, that's what they're having
2 an issue with.

3 Because they're saying this is an investigative
4 technique where officers are different as a matter of
5 common practice from the Amway salesman. So it's the
6 coercive nature of the confrontation or of the
7 communication between the officer and the occupant that
8 gives us the violation, potentially, of the right to
9 privacy.

10 I -- I think that the officer -- if -- if you drive
11 by -- some homes in Laurens County are located no more
12 than ten feet from the street. You get the tip; the
13 officer drives by with his windows down because he smells
14 meth being made and sees puffs of smoking coming out of
15 the window. I think that you're corroborating a lot at
16 that point in time to justify the very minimal standard
17 of reasonable suspicion necessary to support a knock-and-
18 talk.

19 Let's -- let's segue onto one different question,
20 then, and -- and then I may turn it back over to -- to
21 Mr. Scott. What is reasonable suspicion in this context?
22 Because reasonable suspicion has always been addressed in
23 the context of a 4th Amendment analysis.

24 So we'd use the same sort of definition as it
25 relates to the -- and -- and if that is the case, if

1 we're using the same definition for reasonable suspicion
2 as we would use in a 4th Amendment analysis, what does
3 that mean, in the context of South Carolina's explicit
4 right to privacy? What is reasonable suspicion? Because
5 I'm having a hard time really wrapping my mind around
6 that.

7 How would you define it?

8 MR. BROOME: I -- I -- they need to have sufficient
9 indicia of reliability, okay, that criminal activity is
10 happening.

11 THE COURT: Okay.

12 MR. BROOME: That's the way I would rely. I've got
13 a case that's -- and I'll -- I'll hand a copy of this,
14 which is kind of similar. So it's the *State v. Green*
15 case, Your Honor. They're talking about anonymous
16 callers and a traffic stop. And they're ---

17 THE COURT: They're talking ---

18 MR. BROOME: --- talking about ---

19 THE COURT: --- about what? I'm sorry.

20 MR. BROOME: Can you hear me?

21 THE COURT: Now I can. Yeah.

22 MR. BROOME: Okay. Sorry.

23 It's *State v. Green*, which talks about ---

24 THE COURT: Is that the ---

25 MR. BROOME: --- reasonable ---

1 THE COURT: --- highway traffic stop on 26 case?

2 MR. BROOME: What's that?

3 THE COURT: Is that the 26 stop here, just north of
4 Laurens ---

5 MR. BROOME: No. I'm ---

6 THE COURT: --- a few ---

7 MR. BROOME: --- trying to ---

8 THE COURT: --- years ago?

9 MR. BROOME: This is a case from ---

10 THE COURT: Maybe ---

11 MR. BROOME: --- 2000.

12 THE COURT: --- two years?

13 MR. BROOME: I don't know what circuit this is out
14 of.

15 THE COURT: Oh. I'm thinking of something
16 different, then.

17 MR. BROOME: But on the -- they do a -- it's an
18 anonymous-caller case on the last paragraph. And they --
19 the Court discusses -- it says (As read): "The anonymous
20 caller provided police with a client's name, description
21 of the car he was driving, location he would be departing
22 from. These items are readily observable" -- yada, yada,
23 yada -- "and do not supply sufficient indicia of
24 reliability to establish reasonable suspicion to justify
25 an investigatory stop."

1 And I liken them going to the house as like a *Terry*
2 stop of the house. It's like a -- it -- it's kind of
3 like a car. Like, for a traffic stop to be valid, you
4 have to have probable cause for a moving violation or
5 reasonable suspicion that ---

6 THE COURT: It's kind of like a *Terry* frisk of a
7 home ---

8 MR. BROOME: *Terry* ---

9 THE COURT: --- is what ---

10 MR. BROOME: --- frisk ---

11 THE COURT: --- you're saying.

12 MR. BROOME: --- of a home. There. Maybe -- maybe
13 better. And so before they can do that, you have to have
14 sufficient indications of reliability. And that's the
15 focus of -- of *Counts*.

16 So I read the case. And they're kind of similar.
17 There's an anonymous tipster. And the Court says just
18 because the anonymous tipster provided the guy's name, a
19 car he was driving, where he'd be leaving from, that
20 didn't supply sufficient information. It says (As read):
21 "The officer made no personal observations and had no
22 reason, aside from the anonymous tip, to suspect Green of
23 illegal conduct."

24 I think that reasonable standard means, in these
25 cases, they need some sort of predictive information.

1 And that's what the *Green* case says. So it's somewhat
2 analogous -- analogous. It -- it says -- so basically,
3 in this case there's no way for the officers to test the
4 credibility of the tipster.

5 So what facts did the -- did the -- did the police
6 have to support the allegation that Sylvester Ferguson
7 was cooking dope in the apartments on Highway 26 [sic]?
8 That's how I would define the reasonable . . .

9 THE COURT: Okay. I'm looking at the third page of
10 what was handed up to the Court. Mr. Scott, it -- it
11 talks about (As read): "In the present case, the
12 anonymous caller . . . " And let's assume, for a moment,
13 that *Green* is analogous, even though we're dealing with
14 the exigency of automobile exceptions more than -- but
15 let's assume that it's applicable as it relates to the
16 properly defining reasonable suspicion.

17 I'm reading it. (As read): "In the present case,
18 the anonymous -- the anonymous caller provided the police
19 with Green's name, description of the car he was driving,
20 and a location he'd be departing. These items are
21 readily observable, do not supply sufficient indicia of
22 reliability to establish reasonable suspicion to justify
23 an investigative stop. The officer made no personal
24 observations and had no reason, aside from the anonymous
25 tip, to suspect Green of illegal conduct. Additionally,

1 the anonymous caller provided no predictive information,
2 leaving the police without any means to test" -- I think
3 there's a typo in this opinion, because it says -- "to
4 test the -- his knowledge or credibility." I think
5 they're -- whoever transcribed this -- or whatever --
6 that can't be right.

7 "Simply stating that Green would leave location A on
8 a certain road does not rise to the level of predictive
9 information when there are only two possible exits on
10 that road" -- blah, blah, blah.

11 MR. SCOTT: Oh. Your Honor, that -- I think that --
12 in that case there's actually detention. There's a stop.

13 And the knock-and-talk is just "Is anything going on
14 in here? No? Okay. Thank you. Have a nice day."

15 This was actually a detention where they frisked
16 these individuals and found a gun.

17 THE COURT: I understand ---

18 MR. SCOTT: We ---

19 THE COURT: --- that. But we -- I'm using it as --
20 as ---

21 MR. SCOTT: Well ---

22 THE COURT: --- a -- a way to define was reasonable
23 suspicion is.

24 MR. SCOTT: Here -- here's the only issue I have.

25 THE COURT: Sure.

1 MR. SCOTT: And -- and -- and this is becoming a
2 pattern, I think. When we have these preliminary
3 motions, it's a very vague notion of "We're just -- we --
4 we're -- we're contesting the suppression of the drugs
5 and dah, dah, dah."

6 Had I known the exact reason for the suppression, we
7 probably could've got into the fact they knew he had been
8 involved with methamphetamine before. We could've got
9 into the fact that the guy -- the -- the C.O. had worked
10 with him when he was at the jail before and had prior
11 knowledge of him.

12 THE COURT: But I ---

13 MR. SCOTT: We could've ---

14 THE COURT: --- I got ---

15 MR. SCOTT: --- gotten into these things.

16 THE COURT: He testified as to the prior knowledge.
17 Oh.

18 MR. SCOTT: Well, specifically, that he -- he has
19 been known to dabble in methamphetamine. We could've
20 gotten into exigent circumstances, including law
21 enforcement being highly concerned with volatility of
22 methamphetamine labs and finding a -- the importance of
23 investigating these things.

24 But what I was left with was "We're just contesting
25 the dope and the suppression of it."

1 I'd be happy to brief this. I'd be happy to proffer
2 some more information, if Your Honor needs to hear some
3 more from these guys.

4 THE COURT: I assume that the defense, for purposes
5 of this motion, are not going to contest that cooking
6 meth in a two-liter bottle is volatile and could possibly
7 explode. I think Mr. Broome is not going to win much,
8 even if he were to contest that. Because I think the
9 Court could take judicial notice that -- that there's
10 really no good, safe way to cook meth.

11 Are we good on that, Mr. Broome?

12 MR. BROOME: I -- I think so.

13 THE COURT: Yeah.

14 MR. SCOTT: And -- so that ---

15 THE COURT: I'm -- I'm happy ---

16 MR. SCOTT: --- that's what ---

17 THE COURT: --- to let you, if you wish. One option
18 for the Court is to let the -- the jury call back
19 tomorrow morning for a possible two o'clock report. The
20 problem is I've got the other jury. I told them to be
21 here at -- at nine o'clock.

22 And it's going to have to be later in the afternoon.
23 It'd have to be three o'clock, because I forgot I have a
24 lunch meeting tomorrow that I have to attend. So I'll be
25 done at probably 2. I can be back here at 2:45.

1 If -- if you -- if you want to -- I'm happy to
2 afford you some time to do some additional research.
3 Because like you, I felt like this was -- the focus of
4 this was going to be more on the search warrant and
5 possibly on the *King* aspect -- *State v. King* aspect of
6 investigative hearsay, which we haven't even heard that
7 objection yet. But we've got an issue with an anonymous
8 person specifically referring to Mr. Ferguson and that's
9 hearsay. And obviously, that's not coming in.

10 So we've got issues with: Okay. We asked
11 specifically for Mr. Ferguson. That's going to have to
12 be deleted from the state's case-in-chief as well.

13 And I was thinking, when you first started, that
14 that was going to be the crux of -- of what their
15 argument was. If you want some additional time and you
16 want to proffer some additional testimony tomorrow
17 morning, I'll be more than happy to let you, is what I'm
18 telling you.

19 MR. SCOTT: Okay. It -- it just -- and -- and my
20 understanding, just briefly, reading that case is -- is
21 the constitutional safeguards in South Carolina are so we
22 don't go to the -- the projects and go knocking on every
23 door, door to door, just hoping we're going to see
24 something within plain sight.

25 Here, we have an indication that there is a fresh

1 crime being committed. And it is one that is potentially
2 very dangerous for those in the home, certainly around
3 the home. And -- and so if you tell law

4 THE COURT: And admittedly ---

5 MR. SCOTT: --- enforcement ---

6 THE COURT: --- it's an apartment complex where
7 you're assuming that some other people are living, as
8 opposed to a trailer in the middle of a five-acre tract
9 of land. If the trailer goes up, anybody who is in there
10 is going to get hurt. Apartment complex goes up, you've
11 got other people living in the apartment complex. So
12 perhaps there's an even greater concern there from a law
13 enforcement perspective ---

14 MR. SCOTT: Yes, sir.

15 THE COURT: --- based under the type of property
16 that we're concerned with. Again, I'm -- I'm really
17 reading -- and I'm hearing that you want some more time
18 to think this through, and I'm going to give it to you,
19 unless you tell me you really don't.

20 But the -- the two competing ideas that I've got in
21 my mind are this: *Counts* says -- and I'm -- I'm not sure
22 if it's dicta. And I'm not sure if it's the foundation
23 for how they rule. It feels more foundational than
24 dicta. I don't know. But it might just be dicta.

25 But they say: The reason that we're reaching this

1 decision is we don't want drive-by law enforcement. Them
2 going into a neighborhood and knocking on each and every
3 door in the hopes that whoever comes to the door, they
4 see something, smell something, observe something that
5 then gives them the exigent circumstances or the
6 reasonable suspicion. So we don't want drive-by law
7 enforcement. I understand that. That's what they
8 explicitly say in *Counts*.

9 The flip side of that is they could've, if they
10 wanted, limited their holding to that kind of concern,
11 and never used the reasonable-suspicion language that
12 they used. Reasonable suspicion is a term of art. It
13 means more than just a hunch. It -- it means something
14 that you independently corroborated through some means.
15 Either you go to the garbage can and, "Hey, we got this
16 tip that this guy was making garbage, so on trash day we
17 drove by his house, glanced through his garbage, and
18 found some two-liter bottles" ---

19 MR. SCOTT: Well, that's probable cause there, I
20 mean. That's ---

21 THE COURT: Well ---

22 MR. SCOTT: --- beyond ---

23 THE COURT: Yeah. I -- I ---

24 MR. SCOTT: --- reasonable suspicion.

25 THE COURT: --- I know. But you're -- you -- you're

1 nowhere close to probable cause. But at least at that
2 point in time, you've done something to corroborate it.
3 That's what I'm getting at. The -- it -- it -- it has to
4 be more -- I'm reading *Counts*. And as it relates to the
5 right of privacy -- not 4th Amendment, but as it relates
6 to the right of privacy in South Carolina, they are
7 saying it needs to be more than just "some guy told me"
8 or "a little birdie told me."

9 And that -- and, you know, that's understandable.
10 You want to ruminate on this overnight and play with it a
11 little bit?

12 MR. SCOTT: Yeah. I don't want you to shoot it down
13 right here and now without giving me a chance.

14 THE COURT: I'll give you all night long, then.
15 Very ---

16 MR. SCOTT: Okay.

17 THE COURT: --- good.

18 (Off the record briefly.)

19 MR. SHAFFER: Your Honor -- oh, I'm sorry. Just for
20 ---

21 THE COURT: You need ---

22 MR. SHAFFER: --- the record ---

23 THE COURT: --- this on the record or ---

24 MR. SHAFFER: --- the -- there's a couple things
25 that we wanted to point out for the record. First of

1 all, about nine o'clock this morning, we said that we
2 were challenging it. It was a knock-and-talk case. So
3 that probably should've tipped off the solicitor that it
4 was a knock-and-talk challenge when we said it in
5 chambers.

6 THE COURT: I -- I ---

7 MR. SHAFFER: Also ---

8 THE COURT: --- I'm going to give him some
9 additional time. If he needs to reopen the record, we
10 can always do that in the ---

11 MR. SHAFFER: And ---

12 THE COURT: --- morning but ---

13 MR. SHAFFER: --- and, Your Honor, the only other
14 thing I would like to point out is the fact that the
15 officers have already said that they've got no additional
16 information related to reasonable suspicion. They asked
17 that -- I mean, Joel asked that question of them, is
18 whether or not there is anything additional that this
19 anonymous person told them. And they said no. I've ---

20 THE COURT: And -- and I -- I understand that. But
21 ---

22 MR. SHAFFER: Okay.

23 THE COURT: --- even if Mr. Broome had used a term
24 of art like reasonable suspicion, I get what Mr. Scott is
25 saying here. Okay? There was some prior knowledge of

1 the gentleman, your client, who, by the way, still isn't
2 here yet. So he really needs to be.

3 And I'd much prefer to avoid having to send him an
4 engraved invitation, especially if the Court is leaning
5 the way the Court's leading. But he hadn't been here.
6 So I'm going to go ahead and issue a bench warrant
7 anyway.

8 So we'll issue a bench warrant for Mr. Ferguson. If
9 he shows up tomorrow morning, I'll rescind it. But as of
10 now, he's getting a bench warrant, because he hadn't been
11 here. And I've been having to be here. Darn it, he
12 should too.

13 So issue a bench warrant for Mr. Ferguson.

14 And your point's taken. I'm going to give him some
15 time to chew on this. I would give y'all additional time
16 too. It's fair.

17 MR. SHAFFER: Thank you, Your Honor.

18 THE COURT: See y'all in the morning.

19 MR. BROOME: Thank you, Your Honor.

20 (Whereupon, the proceedings adjourned at 5:23 p.m.)
21
22
23
24
25

1 TRIAL DAY 2 - 11/27/18

2 (Whereupon, the proceedings resumed at 9:59 a.m.)

3 (Whereupon, State's Exhibit 2 was premarked for
4 identification prior to the resumption of the
5 proceedings.)

6 THE COURT: Okay. We'll go back on the record in
7 the *State v. Mr. Ferguson*. First, just a couple of
8 housekeeping motions: Looks like Mr. Ferguson is still
9 running behind, I assume, or ---

10 MR. BROOME: Still running behind, Your Honor.

11 THE COURT: Very strange. I think I did issue a
12 bench warrant yesterday, so we'll see how all this plays
13 out.

14 Additionally, the -- my law clerk informed me this
15 morning that one of our jurors, Ms. Norman, Juror 131,
16 her mother was admitted to the ICU last night. And so I
17 instructed the clerk of court to excuse her for the
18 remainder of the week. Because obviously, she has more
19 critical matters to attend to.

20 When we left off last evening, I was affording the
21 state an opportunity to brief the issue, reflect a little
22 bit more, and, if they wanted, offer any kind of
23 additional testimony in light of the motions made. And
24 the law was discussed yesterday. How do you want to
25 proceed, Solicitor?

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1 MR. SCOTT: I would ask to recall Nations on a brief
2 set of issues regarding this narrow -- narrow issue we're
3 dealing with now that weren't readily apparently relevant
4 to me early on, but -- but perhaps would be now; and
5 then, the Henry Lee Davis fella, the guy who answers the
6 door whenever officers arrive.

7 THE COURT: So, Mr. Nations, if you want to come on
8 back up and have a seat, please. Of course, you're still
9 under oath.

10 (Whereupon, the witness came forward.)

11 (Off the record briefly.)

12 CHARLES NATIONS, having been previously duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q Okay. Deputy Nations -- okay. Upon receiving the
17 tip that -- that we talked about yesterday, January 17th
18 of last year, were you at that time aware of who Trey
19 Ferguson was?

20 A Yes, sir.

21 Q Okay. And -- and how were you aware of who Mr.
22 Ferguson was?

23 A We -- we had received additional complaints in
24 regards to Mr. Ferguson in the past. Back whenever I was
25 working uniform patrol, as well as prior to working

DIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 200

1 uniform patrol, I did what the sheriff's office calls
2 "ride-alongs," to where I was working with Lt.
3 Higginbotham, Deputy Lee Moyd, then; Sgt. Garrison, then;
4 a whole group of guys on that shift. It was a night
5 shift.

6 The first time I ever encountered Mr. Ferguson, we
7 was actually -- went to a location in -- in Joanna, I
8 believe it was, or it might've been actually rural
9 Clinton. But we went to the location down there because
10 of the fact Lt. Higginbothm and Deputy Moyd received
11 information that Sylvester Ferguson was possibly
12 manufacturing methamphetamines. It was on this night.

13 And I wasn't allowed to get out of the car or enter
14 into the residence. But it was the first time that I
15 actually had contact with Mr. Ferguson. And there was
16 narcotics found on that date.

17 Once I come out onto the road in August of 2013, I
18 went actually working on Lt. Higginbotham's shift. We
19 still obtained information that was ongoing that
20 Sylvester Ferguson was still purchasing the precursor of
21 manufacturing methamphetamines.

22 We continuously -- we tried to located him, because
23 he is more of a loner-type person. He bounces from house
24 to house. He doesn't stay in one certain location.

25 So we were constantly trying to find him in the

DIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 201

1 Joanna-Clinton area. Because he moved between Joanna,
2 Whitmire, and Newberry.

3 Q Okay. But so on the day in question, January 17th
4 of last year, you had some prior knowledge of Sylvester
5 Ferguson being involved with narcotics; and,
6 specifically, methamphetamine?

7 A Yes, sir.

8 Q Okay. There was some testimony, I believe from
9 Hall, yesterday regarding Joanna and the prevalence of
10 methamphetamine-type crimes in Joanna. Can you speak to
11 that?

12 A Yes, sir. The Joanna area itself, not every person
13 there is considered a -- to be involved in the narcotics
14 realm. But there is a higher precedents, as far as
15 Joanna, due to the fact of where Whitmire comes in. You
16 got Kinards that comes in. You're kind of right there on
17 the border of the county.

18 So you see a lot more traffic moving back and forth
19 and a lot more narcotics actually get moved through that
20 area. So we make a lot more arrests involving narcotics
21 kind of in that central location.

22 Q Okay. And -- and so would you say there's a high --
23 I guess, a -- a high occurrence of methamphetamine-
24 related crimes in Joanna?

25 A Yes, sir, I would.

DIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 202

1 Q All right. And -- and I want you to tell the judge:
2 On that day, January 17th, while you're dealing with Mr.
3 Ferguson in Unit 4, what do you observe in the parking
4 lot of the complex -- the apartment complex?

5 A Yes, sir. While we was dealing with the situation
6 at hand, we had actually kind of stepped out onto the
7 side -- I guess what you'd call a stoop -- of the
8 apartment. We noticed that a vehicle pulled up a couple
9 doors down, kind of like right across the parking lot
10 from us but against the apartment.

11 And we actually witnessed a suspect there that we
12 had a lot of warrants on for possession of
13 methamphetamine. And then we attempted to make contact
14 with him then. But they kind of pulled out real quick
15 and took off down the road.

16 And it was actually attached to this case, to where
17 we made the stop on that vehicle because he had active
18 warrants and found an additional amount of
19 methamphetamine, as well as marijuana.

20 Q Okay. So what you're saying, while you're
21 investigating the meth lab associated with Mr. Ferguson,
22 an unrelated individual pulls up in the parking lot; you
23 realize you have warrants -- active warrants on one of
24 the passengers in the car?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 203

1 Q You guys effect a traffic stop, and you find
2 methamphetamine on them too?

3 A Yes, sir.

4 Q And they had originated in the parking lot of the
5 same apartment complex where Mr. Ferguson's meth lab was
6 discovered?

7 A Correct, sir.

8 Q And let me show you State's No. 2.

9 A Yes, sir.

10 Q What is that?

11 A This is -- yeah, this is the apartment -- the set of
12 apartments where this incident occurred.

13 Q Okay. Let me hold it.

14 A (Complied.)

15 Q And it looks like there's just a street-view kind of
16 picture of the apartment complex?

17 A Yes, sir. It appears to be from the highway.

18 Q And this concrete pavement down here, is that where
19 the individual you just talked about pulled up and then
20 ---

21 A Yes, sir.

22 Q Could ---

23 A I would say approximately just to the right of the
24 -- I believe it's a Ford truck sitting there.

25 Q Okay.

DIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 204

1 A Yes, sir.

2 Q All right. And so the unit where Mr. Ferguson was
3 located is where?

4 A If you -- the top-left-hand side.

5 Q Okay. And the tipster -- the information you have
6 where Mr. Ferguson would be located was where?

7 A At the top-left-hand side.

8 Q Okay. I'm looking at two sets of stairs that go up
9 to the second level.

10 A Yes, sir.

11 Q And which one of those sets of steps did you take
12 when you were approaching the unit where Mr. Ferguson was
13 to be located?

14 A The left side, sir.

15 Q Okay. And at what point -- let -- and this second
16 level, the balcony, is there any partition between the
17 units or is it just one continuous balcony?

18 A It -- it's a continuous balcony. There may be,
19 like, a little railing or something that goes up to the
20 perch. But there's no kind of partitions that separate.

21 Q Okay. So if you wanted to go to Unit 5 or 6 -- 4,
22 5, or 6, you could approach any of those units from that
23 top balcony?

24 A Correct, sir.

25 Q Tell the judge what happened as you were -- or -- or

DIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 205

1 at what point, rather, did the door to Unit 4 open?

2 Where were you on this property when the door opened?

3 A Just at the -- like, right at the top of the steps.

4 I hadn't even made it onto the walkway.

5 Q Okay. What about Sweat? Was he in front of you or

6 ---

7 A No, sir.

8 Q --- behind you?

9 A I was the first officer going up the steps. No one
10 was in front.

11 Q You had not even made it to the balcony when the
12 door opened and Mr. Henry Lee Davis spoke with you; is
13 that ---

14 A Correct.

15 Q Okay. And at that point was that when you called
16 out and asked if Mr. Ferguson was in the unit with him?

17 A Well, of course, I -- I kind of walked on towards
18 him. And then I asked him. I did.

19 Q Okay. And -- and then -- then we sort of go from
20 there. The testimony yesterday is -- is what occurred
21 once you made contact with Mr. Davis?

22 A Yes, sir.

23 Q Okay.

24 MR. SCOTT: That -- that's the additional testimony
25 I wanted to elicit from Deputy Nations, Your Honor.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 206

1 THE COURT: All right. Mr. Broome?

2 CROSS-EXAMINATION

3 BY MR. BROOME:

4 Q All of -- you spoke about receiving information
5 about my client making meth. That would be before 2013;
6 is that your testimony?

7 A Not before 2013. No, sir.

8 Q Okay. Do you have a -- yesterday you testified that
9 any time you -- well -- well, let me back up. Just a
10 second ago, you testified that you went to a scene in
11 Joanna or rural Clinton and my guy was there and you made
12 an arrest for him for narcotics; is that correct?

13 A I did not. No, sir.

14 Q Someone did?

15 A Someone did, correct.

16 Q Okay. Yesterday you testified that anytime you make
17 an arrest, you go out to the scene and you write an
18 incident report.

19 A Correct.

20 Q Okay. Do you have those incident reports with you?

21 A No, sir. But the reason why, sir, is because of the
22 fact I was not on uniform patrol. As I stated before, I
23 was conducting what they call a ride-along, to where I
24 was working for the sheriff's office, but I was still
25 distinguished to the detention center. So I would come

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 207

1 out and I would ride along to gain information to prepare
2 myself for being able to transition to uniform patrol.

3 So we -- I did not do an incident report. Those
4 officers on scene that made that arrest did do an
5 incident report.

6 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

7 MR. BROOME: Your Honor, at this time we'd ask for
8 the state to produce them. He -- he may not have written
9 a report. But someone wrote a report if they made an
10 arrest. And I'd ask for the state to -- to produce those
11 reports for us.

12 (Off the record briefly.)

13 THE COURT: While they're getting that, can ---

14 MR. BROOME: Sure.

15 THE COURT: --- you ask him some additional
16 question, perhaps?

17 MR. BROOME: I will, Your Honor. Where was I?
18 Okay.

19 Q Earlier -- or yesterday, you were in the courtroom
20 when Deputy Hall testified, right?

21 A I was here. Yes, sir.

22 Q Okay. And I asked him -- he testified that Joanna
23 was a high-traffic area for narcotics activity. Do you
24 remember that?

25 A I believe he stated it was high-traffic, if I

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 208

1 remember correctly.

2 Q Okay. High -- high -- and -- and then, you just a
3 second ago kind of clarified what that meant. But do you
4 remember when I asked him about if he had ever made any
5 arrests at this specific location before?

6 A You may have. I ---

7 Q Okay. Actually, I asked him if he had ever arrested
8 -- if he had ever been to 629 Highway 66 in Joanna. And
9 his testimony was no. Do you remember that?

10 A I believe so.

11 Q Okay. Have you ever made any arrest at this
12 particular ---

13 A I have not ---

14 Q --- location?

15 A --- until this day. But I did make an arrest next
16 door.

17 Q Okay. You mentioned that my client had made a --
18 many purchases precursor for methamphetamine. Are you
19 referencing Sudafed itself?

20 A Sudafed -- well, ephedrine itself.

21 Q Okay.

22 A Correct.

23 Q Can you produce the -- his NPLeX records?

24 A We can, I mean ---

25 Q Okay. Do ---

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 209

1 A --- if ---

2 Q --- you ---

3 A --- we need to.

4 Q Okay.

5 A But it would be from 2014. Yes, sir.

6 Q Okay. But you -- you haven't presented that -- you
7 haven't brought that with you to court?

8 A Not today. No, sir.

9 Q Okay. This second fellow or person you said arrived
10 and had meth on him. You -- this person showed up to the
11 apartment complex well after you and Deputy Sweat had
12 already come to the apartment complex, correct?

13 A I -- I can't say the -- an exact time of when that
14 occurred. I can't. No, sir.

15 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

16 Q Is that the basis for why you went to the door, this
17 man pulling up in a car?

18 A No, sir.

19 Q Okay. So you had already had another basis to go to
20 Apartment 4 on 629 Highway 66, correct?

21 A To go to those apartments. Yes, sir.

22 Q Okay.

23 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

24 Q Okay. So this was already after you had gone to the
25 door of Apartment 4, is when this car showed up, correct?

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 210

1 A Correct.

2 Q Okay.

3 MR. BROOME: Beg the Court's indulgence while we're

4 ---

5 THE COURT: Yes, sir.

6 MR. BROOME: --- waiting on those reports.

7 (Off the record briefly.)

8 MR. BROOME: May I approach the witness, Your Honor?

9 THE COURT: Sure.

10 MR. BROOME: I have got a copy of -- let me mark
11 this for Defense Exhibit 1, just for this pretrial
12 hearing.

13 (Whereupon, Defendant's Exhibit 1 was marked for
14 identification.)

15 MR. SCOTT: What -- what was the document? I'm
16 sorry.

17 MR. BROOME: It's a -- the ---

18 MR. SHAFFER: CAD.

19 MR. BROOME: --- CAD log.

20 MR. SCOTT: Oh.

21 MR. BROOME: Thank you. May I approach the witness,
22 Your Honor?

23 THE COURT: Please.

24 MR. BROOME: Okay.

25 Q I'm to hand you a document. This is the Laurens

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 211

1 County 911 Department Command Log. Take a moment to read
2 that, without reading it out loud. And let us know if
3 that refreshes your memory, as far as the exact time that
4 you arrived at that apartment location and the exact time
5 that the male suspect in the car arrived.

6 A (No audible response.)

7 Q Oh, sorry. I was looking down. Yes, sir.

8 A Yes. What's your question?

9 Q Okay. The -- looking at the CAD log, was there an
10 address for this location -- for this report?

11 A For ---

12 Q At the ---

13 A --- the ---

14 Q --- very top front of the page?

15 A Correct. For the on-scene is 629 Whitmire Highway
16 4, Joanna, South Carolina.

17 Q Okay. Is there a call time or date on it?

18 A There is. 1/17/2017, at 11:13:40.

19 Q Okay. At -- is there a reporter's name on the ---

20 A Um ---

21 Q --- I'm looking at the first page in the middle.

22 A I guess, Jodi Shea, I guess.

23 Q It says "Reporter Sweat."

24 A Oh, I'm -- I'm ---

25 Q Do you ---

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 212

1 A --- sorry.

2 Q --- see that?

3 A I'm ---

4 Q Yeah.

5 A --- sorry. Initial reporter is going to be Deputy
6 Sweat.

7 Q Okay. So he'd be the person calling this -- this
8 radio traffic in; is ---

9 A Correct.

10 Q --- that correct?

11 Okay. Looking at the second page ---

12 A Yes.

13 Q --- first line, it says -- what's the date and time
14 up there?

15 A January 17, 2017; 11:13:40.

16 Q Okay. And it says (As read): "Called out that this
17 -- at this location. No further information." Correct?

18 A Correct.

19 Q And at 11:13:57, 263 -- No. 263 calls out (As read):
20 "On scene, Whitmire Highway."

21 A Correct.

22 Q Is that a badge number?

23 A It is.

24 Q Okay. Do you know ---

25 A Or it's ---

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 213

1 Q --- whose badge ---

2 A --- a call ---

3 Q --- number ---

4 A --- number.

5 Q Call number?

6 A Yes.

7 Q Okay. Would that have been your call number back
8 then?

9 A Not 263.

10 Q Are you -- are any of your -- is your call number
11 any of those numbers on there?

12 A You know, during the point in time on this specific
13 time, we was taking over a new administration. Our call
14 numbers kind of got changed around a pretty good bit.

15 Q Uh-huh.

16 A I ---

17 Q Let me ---

18 A --- can't ---

19 Q --- ask you this.

20 A I ain't going to lie. I got to thinking about it
21 last night. It's very possible -- I do believe I was 234
22 at that point in time.

23 Q You would agree with me that you were on scene that
24 day at this address?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 214

1 Q Okay. And you would've made some sort of radio
2 contact with dispatch that day?

3 A I -- I -- I believe I would have.

4 Q Okay.

5 A Yes, sir.

6 Q And at 11:20:21 it says (As read): "Two BM
7 investigative detention"?

8 A Correct.

9 Q Does ---

10 A For ---

11 Q --- that stand ---

12 A --- two ---

13 Q --- for ---

14 A --- bravo mikes.

15 Q --- two black males in investigative detention?

16 A Correct. Yes, sir.

17 Q Okay. And then, at the very bottom, it says (As
18 read): "12:45:54." Do you see that?

19 A I do.

20 Q Okay. It -- that would be the -- it says (As read):
21 "To Laurens County and from DMV." Do you see that part?

22 A I do.

23 Q Okay. And that'd be when they're running the
24 license plate of the car that had been there, this second
25 car that had shown up.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 215

1 A Correct.

2 MR. SCOTT: Judge, if ---

3 Q Okay.

4 MR. SCOTT: --- if I may -- I -- I don't want to
5 interrupt. I -- and I -- I hate to. I -- the state
6 would concede, they were there for the Ferguson issue.
7 The reference to the other car was simply to indicate
8 that there was ---

9 THE COURT: To support the fact that there is drug
10 ---

11 MR. SCOTT: Yes, sir.

12 THE COURT: --- activity in Joanna.

13 MR. SCOTT: Right. And -- and ---

14 THE COURT: Right.

15 MR. SCOTT: --- they -- they were not there for that
16 guy. That just happened while they were there for
17 Ferguson. We concede that the reason they were there was
18 for Ferguson.

19 THE COURT: Right.

20 MR. SCOTT: And that only occurred just
21 happenstance.

22 THE COURT: Right. I -- I -- I don't take the fact
23 that they observed the car and the other person that they
24 had to arrest, I don't take that as evidence of
25 surveillance, as discussed in *Counts* or something like

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 216

1 that.

2 MR. BROOME: Yeah.

3 THE COURT: So if that's the point you're trying to
4 make, we're good.

5 MR. BROOME: While we're waiting on that -- thank
6 you ---

7 THE COURT: Sure.

8 MR. BROOME: --- Your Honor.

9 Q May I have this? And I -- and ---

10 A Yes, sir.

11 Q --- I will leave this for the Court.

12 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

13 MR. BROOME: Do we have the reports yet?

14 MR. SCOTT: Yeah.

15 MR. BROOME: Oh. Thank you.

16 I'm going to let Mr. Shaffer look through those,
17 Your ---

18 THE COURT: Sure.

19 MR. BROOME: --- Honor. I want to ask a couple more
20 questions.

21 Q Earlier, you also -- so you testified that you were
22 familiar with my client based on some narcotics activity.
23 Are you aware of any prior record for narcotics
24 convictions for him for methamphetamine?

25 A No, sir.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 217

1 Q Okay.

2 A At the point in time, no, sir.

3 Q You mean back on January 17th?

4 A No, sir. At the point in time back whenever we was
5 gaining information on him, I was not familiar of any
6 kind of convictions at that point in time. No, sir, I
7 wasn't. But it -- come January the 17th, I was familiar
8 with the fact that he had been arrested for
9 methamphetamine.

10 Q Oh. I'm asking you: Does have prior conviction for
11 methamphetamine?

12 A Oh, when I went, I did not have criminal history.
13 No, sir.

14 Q Are you aware today that -- if he has any prior
15 convictions for methamphetamine?

16 A He does have a prior conviction for a narcotics-
17 related charge. I can't say for sure methamphetamine.

18 Q The question again is -- and -- and you have access
19 to NCIC today with you?

20 A Not today with ---

21 Q Okay.

22 A --- me. No, sir.

23 Q Can you -- you've got his NCIC in front of you. The
24 question, again, remains: Does he have a prior
25 conviction for methamphetamine? Not narcotics, but

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 218

1 methamphetamine.

2 A Based upon reading his criminal history, it appears
3 that he was -- he was convicted of drug manufacture and
4 distribution, etc., of a cocaine base, first offense; a
5 court disposition: five years, suspended to one year,
6 two years probation. The drug manufacture and
7 distribution, etc., of cocaine base, that is an all-
8 incumbent charge that also would include methamphetamine,
9 if I'm not mistaken, that statute does.

10 Q The statute may include that. But there is a
11 different chemically between crack cocaine and
12 methamphetamine ---

13 A No. I -- I agree with you. But just reading the
14 statute, which you asked me to look at his criminal
15 history, that's the way it's listed.

16 Q Okay. And if he had pled to methamphetamine, would
17 that -- that would've been on the sentencing sheet,
18 correct?

19 A I'm assuming, on a sentencing sheet, but not on
20 criminal history.

21 Q Okay. But you agree that difference between cocaine
22 base -- because the statute is cocaine base or meth --
23 crystallized, correct?

24 A Correct.

25 Q So it's ---

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 219

1 A You know ---

2 Q --- one or the other?

3 A Correct. But if you read the criminal history, it
4 doesn't specify here.

5 Q Okay.

6 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

7 MR. SCOTT: The state conceded is a crack-related
8 conviction, Your Honor.

9 MR. BROOME: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. BROOME: Mr. Shaffer is still looking through
12 these reports.

13 Q When you arrived on scene, the window was open to
14 the apartment?

15 A I -- I could see that it was cracked open. Yes ---

16 Q Cracked ---

17 A --- sir.

18 Q --- open? I think you wrote that in your report.

19 A Yes, sir.

20 Q You did not -- you've been to many incident
21 locations where people were actively making
22 methamphetamine.

23 A I would say that I've been to a couple of scenes.
24 Yes, sir.

25 Q You're familiar with the smell that the chemicals

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 220

1 emit when someone is making methamphetamine.

2 A Yes, sir. I would say I am.

3 Q When you arrived on that stoop outside of this
4 apartment right here -- well, when you first pulled up,
5 I'm assuming you pulled into this driveway right here?

6 A Yes, sir. To the left side.

7 Q When you got out of the car, did you smell the
8 methamphetamine smell?

9 A I -- I do not -- or at least I did not note it.

10 Q Did you smell it when you got up to the stoop and
11 the window was open?

12 A At that point in time, by the time I made it to the
13 stoop, I was already in contact with Mr. Miller. So I
14 was not over to the window at that point in time. No,
15 sir.

16 Q Did you smell methamphetamine when you were outside
17 the door?

18 A No, sir.

19 Q Did you ever smell the chemicals -- the
20 methamphetamine smell ---

21 A Not ---

22 Q --- for lack ---

23 A --- not until we got into the residence, kind of
24 closer to that hallway area.

25 Q Oh. So you smelled it in the hallway.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 221

1 A Yeah. It -- you're not really smelling the -- the
2 actual chemicals involved inside of it. What you're
3 smelling is -- is where it kind of lounges around. It --
4 it -- cooking methamphetamine leaves a film on the walls.

5 And it kind of gives you this musky kind of ammonia-
6 type smell. And it -- it'll actually leave it inside of
7 a residence. Yes, sir.

8 Q Did you write anywhere in your incident report that
9 we spoke about yesterday that you noted a musky smell of
10 ammonia in the apartment?

11 A Not -- not in the report. No, sir.

12 Q Okay. But today you remember it being 2 1/2 --
13 almost 2 years later, you remember there being a musky-
14 ammonia smell?

15 A Yes, sir. Because it's kind of what gave me the
16 basis to even ask.

17 Q You've been -- I -- I know Investigator Veal. He's
18 not here. But I know he's been to a -- a lot of active
19 meth labs. If there's a meth lab present, there is a
20 danger of explosion or fire, correct?

21 A Correct.

22 Q And if you have information or you see or smell
23 methamphetamine being cooked, what you're supposed to do
24 is call 911 -- or call fire. That would be something
25 that you would do, correct?

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 222

1 A Correct.

2 Q And you would want to get everyone out of the
3 building, correct?

4 A Correct.

5 Q And you would want to bring in those Tyvek suits,
6 right?

7 A Correct.

8 Q You -- for the Court's indulgence, do you know what
9 the Tyvek suits -- can you describe those for him?

10 A Yes, sir.

11 Q I think he knows.

12 THE COURT: (Indicated.)

13 Q Okay.

14 A Yeah.

15 Q Mask, suit on?

16 A (No audible response.)

17 Q All right. It's like that movie "Outbreak." We
18 don't have any -- we don't want this disease in here. We
19 don't want these chemicals in our face, right?

20 A (No audible response.)

21 Q Did y'all call any of those people in? Did you call
22 the suits in?

23 A We -- we actually didn't bring the suits in, because
24 it wasn't an actively cooking meth lab.

25 Q Okay. Didn't call before you went over there to

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 223

1 Apartment 4? Didn't call and say, "There" -- let me back
2 up.

3 There is a company that, I guess, deals with that,
4 that the state made contracts with; is that right?

5 A Correct. Phillips Recovery.

6 Q Phillips -- okay. Did you call them to come out to
7 the scene and say ---

8 A Prior to?

9 Q Uh-huh. Before you came to the apartment.

10 A No, sir.

11 Q Okay. So you never ---

12 A But the reason why is because we're trained, being
13 clandestine-lab technicians. We're actually trained to
14 handle that. And we call Phillips Recovery if we recover
15 a live meth lab that is actively cooking or a product
16 with lithium. And that is for them to come out and take
17 possession of it. Yes, sir.

18 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

19 Q All right. So your -- your job first is to
20 investigate ---

21 A Correct.

22 Q --- an allegation?

23 And then call in people, if it's an emergency?

24 A Correct.

25 Q Okay.

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 224

1 MR. BROOME: And I'm sorry, Your Honor. I just --
2 I'm looking at these reports. I'm sorry.

3 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

4 MR. BROOME: Mr. Shaffer is looking up an -- an
5 issue. I -- I -- I don't know how many more questions I
6 have, outside of looking through this -- looking to see
7 the status of these 2013 -- these reports that were just
8 given to my -- us.

9 THE COURT: Do you need some time to review those?

10 MR. BROOME: Yeah. A little bit. He's trying to
11 review the disposition, but ---

12 MR. SHAFFER: Five ---

13 THE COURT: Okay.

14 MR. SHAFFER: --- minutes should be ---

15 MR. BROOME: Yeah.

16 MR. SHAFFER: --- plenty, Your Honor.

17 THE COURT: All right. We'll be at ease for five
18 minutes. Feel free to step down and move about.

19 We'll go back on the record in about five minutes.
20 Y'all just let my clerk know when you're ready, and she
21 can text me. I'm going to make a quick phone call, okay?

22 (Off the record from 10:28 a.m. until 10:37 a.m.)

23 THE COURT: We'll go back on the record. Mr.
24 Broome, you still have the floor.

25 MR. BROOME: Thank you, Your Honor. I'll be -- I'll

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 225

1 -- I'll be brief. I had a chance to review the incident
2 reports that the state has provided me.

3 CROSS-EXAMINATION BY MR. BROOME CONTINUED.

4 Q Have you had a chance, Investigator Nations, to read
5 these reports that were provided to me?

6 A No, sir.

7 Q Okay. Do you know the date ---

8 MR. BROOME: May I approach the witness?

9 THE COURT: Please.

10 MR. BROOME: Thank you.

11 Q Just the date of this, because I think there was
12 some uncertainty on the date of when this happened. I
13 want -- just going to hand you the -- that synopsis page.
14 Can you tell us what date it was that this ride-along
15 happened involving my client?

16 A This synopsis is showing April 24th, 2013.

17 Q Okay. So almost four years -- may I have that back,
18 please?

19 A Oh.

20 Q Sorry.

21 A Yes, sir.

22 Q Sorry. So about almost four years before this
23 incident, correct?

24 A Correct.

25 Q And he was not the only person arrested, was he?

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 226

1 A (No audible response.)

2 Q I may need to hand this back to you.

3 A Yeah. I was fixing to say, I'm ---

4 Q I took it away from you.

5 A Yeah.

6 Q Is there another subject listed in that report?

7 A There is one on this general-sessions docket. Yes,
8 sir.

9 Q What's the name on that?

10 A The docket -- okay. There is one other one on the
11 report. And the report says Demetric Chantrone Conner.

12 Q Demetric Conner?

13 A Yeah.

14 Q Okay.

15 A Yes, sir.

16 Q Do you know what the outcome of Mr. Ferguson's
17 charges were?

18 A I -- I do not. I'm just basing it off this criminal
19 history. That's why we charged him with a second.

20 Q You had the NCIC in front of you earlier you were
21 looking ---

22 A I ---

23 Q --- at the ---

24 A --- I do.

25 Q Okay. If you read on there, I think it says that

CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 227

1 these charges were dismissed at the preliminary hearing.

2 Is that what -- that's what it says?

3 A 2013 -- April 21st -- that was a prelim -- prelim --
4 prelim. It appears so. Yes, sir.

5 Q Okay. And the standard evidence at a preliminary
6 hearing is probable cause, right?

7 A I agree.

8 Q You've testified at plenty of those, I'm sure ---

9 A Yes, sir.

10 Q --- right?

11 Do you know the outcome of Mr. -- what was his name?
12 Cooper? Conner?

13 A Conner.

14 Q Do you know the outcome of his case?

15 A I do not.

16 Q Would you believe me if I told you that the state
17 actually tried him on that case?

18 A I mean, I would hope you wouldn't lie to me, so ---

19 Q I would not, as an officer of the Court. I would
20 not lie to you. If you need time to look that
21 information up, I don't want to drag this out any longer.
22 But Mr. Scott could probably ask it on redirect.

23 MR. BROOME: That's all the questions I have. Thank
24 you.

25 THE COURT: Mr. Scott?

REDIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 228

REDIRECT EXAMINATION

BY MR. SCOTT:

Q You -- they were touching base on if you're responding to an emergency.

A Yes, sir.

Q And would you consider -- and -- and you don't know if it's an emergency till you go investigate; is that correct?

A That's correct.

Q And as a narcotics agent, do you have some concern when you hear information regarding a meth lab in an apartment complex?

A Absolutely. Yes, sir.

Q What is your concern when you hear that?

A Number one concern is a meth lab itself is -- is very hazardous, as far as explosions-wise. In the one-pot side or whether it's a -- a red-pea side. It doesn't matter. They're very volatile explosions.

The second concern is going to be from the actual HCl generator itself, which reverts -- which produces a hydrochloric acid, hydrochloride gas from the generator. That is extremely toxic and can, in fact, cause extremely harm to persons -- individuals as -- all the way leading up to death. So ---

Q Let me ask you this: What -- as a narcotics agent,

REDIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 229

1 what would you consider the higher prior, as far as
2 responding to quickly information regarding somebody
3 selling dope out of an apartment or information of
4 somebody manufacturing methamphetamine out of apartment?

5 A It is absolutely 110 percent the manufacturing of
6 methamphetamine. That is what -- that is your higher
7 risk to other persons around you. That's why, on this
8 date, we decided that it was imperative that we needed to
9 go to this residence to validate the complaint. It's
10 either: (A) validated; or (B) you know, maybe
11 disconcerting. So that's -- that was why we responded as
12 quickly as we did.

13 Q Okay.

14 A There was -- we did not have time to set up
15 surveillance, C.I.s, anything of that nature, due to the
16 fact that if this is in an apartment complex, it is --
17 has other individuals living around it, innocent people
18 that have nothing to do with the actual manufacturing of
19 methamphetamine that was being put in harm's way.

20 Q So your testimony is at the time of hearing the
21 information regarding the tip, you had prior knowledge
22 that Mr. Ferguson had been involved with methamphetamine
23 and methamphetamine labs; is that correct?

24 A We knew that he had been involved with purchasing
25 the precursors that is the number one needed thing to

REDIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 230

1 manufacturer methamphetamine. Yes, sir.

2 Q Okay. You knew his nickname was Trey Ferguson?

3 A Yes, sir.

4 Q You knew Joanna had high incidents of
5 methamphetamine-related crime?

6 A Yes, sir.

7 Q And you, with your experience as a narcotics agent,
8 understood the exigency and the importance and the timing
9 being of the essence regarding methamphetamine labs?

10 A Yes, sir.

11 Q Okay. Thank you.

12 MR. BROOME: Briefly recross, Your Honor.

13 THE COURT: Okay. Can I take a few shots here
14 before ---

15 MR. BROOME: Yeah.

16 THE COURT: --- you go ---

17 MR. BROOME: Oh, yeah.

18 THE COURT: And then I'll ---

19 MR. BROOME: Absolutely.

20 THE COURT: --- let you go then? Okay. Or just a
21 couple questions.

22 When Deputy Hall initially contacted you by phone,
23 what was it specifically that he related to you? What --
24 based on your memory, how did that conversation go? What
25 did he tell you?

1 THE WITNESS: If I remember correctly, he told me
2 that he was at the convenience store and he was
3 approached by a male. And the male stated that Sylvester
4 Ferguson -- he may have said "Trey"; I'm not sure -- but
5 stated that Sylvester Ferguson was at the -- was at the
6 apartments on Whitmire Highway and he was cooking dope.
7 He told -- Deputy Hall told me that it was going to be
8 the left -- upper-left-corner apartment cooking the dope
9 there.

10 So based upon what we knew about Mr. Ferguson, we
11 went to the location: (1) concerned of a meth lab; (2)
12 the cooking-dope side, we -- we had a good feeling it was
13 either going be methamphetamine or it would be crack
14 cocaine.

15 THE COURT: Okay. The -- to the best of your
16 ability, word for word, what did -- what did Deputy Hall
17 specifically say to you -- and if you can remember it
18 verbatim or as close to verbatim as you can -- about the
19 cooking of dope? What -- what were his words to you when
20 you met that call?

21 THE WITNESS: To the best of my recollection, Your
22 Honor, he stated that he had a black male approach him.
23 And the guy told him, "Hey, Sylvester Ferguson is up here
24 cooking dope at the apartments."

25 And Deputy Hall then asked him, "Well, which

1 apartment?"

2 And that's when the male said, "It's going to be the
3 upper-left side. I don't know what apartment number that
4 actually is."

5 THE COURT: Okay. Secondly, you walk up the stairs.
6 You see Davis come out at the apartment. You see Mr.
7 Davis come out of the apartment. Explain to me that
8 interaction. He comes out of the apartment. You're --
9 yeah. I think you testified you were at the top of the
10 stairs?

11 THE WITNESS: When he come out of the apartment, I
12 had just made it to the top of the stairs.

13 THE COURT: All right. What happens then?

14 THE WITNESS: Basically, he opens up the door. And
15 he steps up. And I -- I greeted him. I said, "Hey, how
16 you doing?"

17 And he said, "I'm okay. Can I help you?"

18 And I stated, "Yes, sir. Is Sylvester Ferguson --
19 is -- is he here?"

20 And that's when he stated, "Yes, sir. He's inside."

21 And that's when he turned and called to him. And
22 then he walked into the door and pushed the door open.

23 And when he pushed the door open, that's whenever I just
24 took one -- I didn't step all the way into the house. I
25 took one step and put it just inside the threshold so I

1 could keep eyes on Mr. Davis and identify whether Mr.
2 Ferguson was in there. And that was for our safety.

3 THE COURT: Right. Okay. So then Mr. Ferguson
4 comes out and you're having a conversation with Mr.
5 Ferguson and Mr. Davis?

6 THE WITNESS: Yes, sir.

7 THE COURT: What happens then?

8 THE WITNESS: We took -- have a conversation.
9 Basically, I advised him that, "Hey, you know, we're
10 here. We got to have a discussion with both of you and
11 both of you being here present now. We got information
12 stating that y'all are around here, cooking dope, whether
13 might be making methamphetamines."

14 And Mr. Davis is, like, "No, sir. We didn't -- I'm
15 -- I'm not doing any of that."

16 And Mr. Sylvester Ferguson was, like, "Nah. We --
17 we don't cook dope or anything of that nature."

18 And I was, like, "Cool. So there's nothing here
19 involving any type of illegal narcotics, manufacturing
20 methamphetamines, cooking cocaine, anything of that
21 nature?"

22 And he said, "No, sir."

23 And that's when I said, "Okay. Well, since y'all
24 don't have anything here of that nature, then you
25 wouldn't have a problem if I made a quick walkthrough of

1 the house, just to -- to either validate this complaint
2 or throw this one out in the woodshed that you're not
3 doing anything?"

4 And that's when Mr. Davis said, "No, sir. You can
5 walk around."

6 And Mr. Ferguson himself was actually kind of
7 hesitant. He kind of looked to Mr. Davis. And then he
8 said, "Well, yeah. Go ahead."

9 So that's when we done the walkthrough, where we
10 seen things in plain view.

11 THE COURT: Okay. And this conversation took place
12 where in the house or where in ---

13 THE WITNESS: Standing -- I was still standing just
14 in front of the door, like the doorframe is still
15 standing here. I'm just -- I'm right there at it.

16 THE COURT: So you're ---

17 THE WITNESS: And ---

18 THE COURT: --- just outside the threshold?

19 THE WITNESS: No. I had one foot inside the
20 threshold and ---

21 THE COURT: Okay.

22 THE WITNESS: --- the other foot outside the
23 threshold.

24 THE COURT: Okay.

25 THE WITNESS: Because I was still communicating with

RECROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 235

1 them.

2 THE COURT: Got you.

3 THE WITNESS: Yes, sir.

4 THE COURT: Your turn, Mr. Broome.

5 MR. BROOME: Thank you.

6 RECROSS-EXAMINATION

7 BY MR. BROOME:

8 Q I'm going to hand you back the -- let's talk again
9 about 2013 methamphetamine situation. Remember we just
10 talked about that?

11 A Yes, sir.

12 Q Okay. I'm going to hand you this incident report.

13 MR. SCOTT: And, Judge, I've got a copy of this, if
14 you care to look along with it. I got an extra copy of
15 the ---

16 THE COURT: Sure.

17 MR. SCOTT: --- incident report.

18 MR. BROOME: Oh, that'd be great. Thanks, Dale.

19 Q I want to hand you one, and I've only got one. But
20 let me just ask the question first.

21 A Okay.

22 Q Let me look at it. On the dispatch date is going to
23 be April 21st, 2013. Will you look at the report.

24 A Okay.

25 Q Is that -- is that what it says?

RE CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 236

1 A It -- it states that. Yes, sir.

2 Q What date in the incident report on the second
3 sentence does the call come in of a possible meth lab?
4 Is it two days before? one day before?

5 A It does state that on 4/20. Yes, sir.

6 Q Okay. So what's the rest of that -- so you've got
7 an anonymous tip on April 20th of 2013 that there's a
8 meth lab going on?

9 A I didn't. But ---

10 Q It's loss -- law enforcement.

11 A Law enforcement. Yes, sir.

12 Q That officer. And they waited a whole day to go
13 over there to investigate, per that report, that you were
14 a ride-along on; is that true?

15 A Give me one second.

16 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

17 A It would appear that the call come in sometime on
18 4/20. I -- I just don't know what time.

19 Q It's very specific. If you look at the very top,
20 there's a dispatch time and date on there. Can you go to
21 the top of that?

22 A The dispatch date is 4/21. The dispatch time is
23 2104.

24 Q And that's military time, correct?

25 A Yeah. That's 9:04 p.m. Yes, sir.

RE CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 237

1 Q Okay. It doesn't say in the report what time the
2 tip came in on the 20th, right?

3 A No, it doesn't. It just says that it come in on the
4 20th.

5 Q So it could've come in at 9 a.m. on the 20th of
6 April that you have an active meth lab, correct? Is that
7 what the report says?

8 A It -- it -- it doesn't say that it come in at 9 a.m.
9 It states that it -- coming in anonymous tip on April the
10 20th, 2013.

11 Q It says active meth lab, right?

12 A It says about methamphetamine being manufactured at
13 a residence by subject, Trey Sylvester Ferguson. It also
14 continued -- states that Laurens County Sheriff's Office
15 had three arrest warrants for the subject, Ferguson, and
16 Sgt. Josslyn obtained copies of the warrants before the
17 deputies arrived at the incident location.

18 Q Okay. So sheriff's office waited at least 24 hours
19 before going over to investigate this meth lab back in
20 2013, correct? On this -- at least in this situation.

21 A That -- I'm -- possibly.

22 Q You -- at -- have you ever waited or done some
23 investigation -- back -- let me strike that.

24 You've received tips about meth labs on other cases,
25 correct?

RE CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 238

1 A I have received tips about meth labs. Yes, sir.

2 Q And some of those have come from, like, confidential
3 informants.

4 A Again, yes -- yes, sir.

5 Q Sometimes, right?

6 A (No audible response.)

7 Q And you use those confidential informants sometimes
8 to get search warrants; is that correct?

9 A Based upon -- it depend on the circumstance,
10 honestly.

11 Q Or an arrest warrant, maybe, if it's distribution.
12 But is that fair to say?

13 A Depending on the circumstance.

14 Q Okay. Have you ever waited more than 20 minutes to
15 go investigate a meth lab?

16 A An active meth lab, no, sir.

17 Q Any meth lab.

18 A Any meth lab, when -- when we get calls in reference
19 to dump sites, things of that nature, we may -- may take
20 us a little longer. We try to get more prepared for
21 that-type stuff.

22 Q Okay.

23 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

24 Q Do you -- do you always go knock on the door
25 immediately after received a tip that there's a meth lab?

RECROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 239

1 Do you do that in every case?

2 A We got the information that said that Mr. Ferguson
3 was -- was cooking dope. To me the word "cooking" means
4 that it's going on, not that he has been cooking dope;
5 that he is cooking dope. So when we obtained a tip of
6 that nature, that he -- that someone is cooking dope, we
7 try to pay as close to attention as quickly as possible.

8 Q So the question remains: Do you do this in every
9 case?

10 A If we get information regarding the facts that
11 someone is actively cooking dope, we try to get there as
12 quickly as possible.

13 Q So in every case that you get tipped that -- a tip
14 that someone could possibly -- making meth, you go
15 immediately and investigate; is that your testimony?

16 A That they are actively cooking meth.

17 Q One way or the other, both making or not.

18 A If they're not making meth at that point in time and
19 we have time to investigate, if they are making meth at
20 that point in time, the exigent circumstances, or the
21 persons around them, is what kind of determines on how
22 quickly we respond.

23 Q All right. As a law enforcement officer, your
24 overarching concern is for the safety of the public,
25 correct?

RE CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 240

1 A Correct.

2 Q Okay. How many of these doors did you knock on when
3 you got out there, other than Apartment 4?

4 A Only one.

5 Q Okay. Did you speak to any of these ---

6 A Actually ---

7 Q --- witnesses ---

8 A --- actually, let me rephrase that. We never
9 knocked on any door. Mr. Davis actually come out.

10 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

11 Q You testified for Mr. Scott that your concern is
12 that, you know, active meth lab, something could explode;
13 this is danger, right?

14 A Correct.

15 Q But you did not attempt to go to -- once you got to
16 this house, to go to any of these neighbors and say,
17 "We're with law enforcement, and we've got a tip that
18 someone's making meth in your apartment building; we need
19 you to leave while we figure this out." Did you do that?

20 A No, sir. But the reason why is that once we got to
21 the apartment, we did not detect the actual odor of the
22 active meth lab at that point in time.

23 Q All right. My next question, then, would -- would
24 be: You didn't smell the odor. And then, if there was
25 an emergency, then why would you ask permission to go

RECROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 241

1 into the house to search, if you've got an active meth
2 lab?

3 A Well, at that point in time, we're already there.
4 We've already -- the -- what we would -- what we assumed
5 at the point in time, the occupant already made contact
6 with us before we'd ever made contact with him.

7 So while we're already there, we was, like, "Well,
8 we're here. We don't smell the active meth lab. But
9 we'll go ahead and investigate the complaint."

10 Q Okay. If you had been concerned for active meth
11 lab, you would not have asked consent for search to go
12 inside the rest of the apartment, would you, though?

13 A Sir?

14 Q Would you have asked for his consent to search the
15 apartment ---

16 A If ---

17 Q --- if there was a danger, if you -- if you thought
18 that there was an active meth lab?

19 A If I walked up -- and this is just kind of my
20 opinion. But if I would have walked up and smelled the
21 odor of ammonia, we would have evacuated the area around
22 them and obtained a additional search warrant for the
23 property at that point in time.

24 Q Lastly -- sorry.

25 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

RE CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 242

1 MR. BROOME: Beg the Court's indulgence.

2 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

3 Q Okay. So you just testified that you walked up. If
4 you would've smelled the odor, you've got a search
5 warrant, correct?

6 A Correct.

7 Q Okay. You did not call in for a search warrant at
8 that time, did you, when ---

9 A No, sir.

10 Q --- you first walked in?

11 Where was Mr. Ferguson standing in the apartment
12 when you asked him for consent to search?

13 A He had actually come along closer to the -- right
14 when you go into the apartment, the apartment kind of
15 opens up to the right. So -- the living room does. He
16 was standing -- I believe it was a couch kind of longways
17 here. And he was standing kind of just to the right of
18 that between the kitchen and the living room, I guess you
19 would say, less than five foot/ten foot, somewhere around
20 in there.

21 Q So it was in the living room area where y'all had
22 them both together?

23 A Correct.

24 Q And ---

25 A And ---

RE CROSS-EXAMINATION BY MR. BROOME - CHARLES NATIONS 243

1 Q --- the door was still open during this time?

2 A Yes, sir.

3 Q This is January; is that right?

4 A Yes, sir.

5 Q It's pretty cold in January?

6 A It actually wasn't that cold ---

7 Q Not that ---

8 A --- in there ---

9 Q --- cold ---

10 A No ---

11 Q --- that day?

12 A --- sir.

13 Q You remember that specifically?

14 A (No audible response.)

15 Q Okay. And ---

16 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

17 MR. BROOME: Court's indulgence, Your Honor.

18 THE COURT: Yes, sir.

19 MR. BROOME: Two seconds.

20 THE COURT: Sure.

21 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

22 MR. BROOME: All right. No further questions.

23 THE COURT: All right. Nothing else?

24 MR. SCOTT: Well, just ---

25

REDIRECT EXAMINATION BY MR. SCOTT - CHARLES NATIONS 244

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Are you aware that that prior incident from 2013,
that involved a trailer in a rural area of town, as
opposed to an apartment complex ---

A Yes, sir.

Q --- where -- okay.

MR. SCOTT: Thank you. That's all I have.

THE COURT: All right, sir. Thanks. You can step
down.

(Whereupon, the witness exited the witness stand.)

THE COURT: Call your next witness.

MR. SCOTT: The state calls Henry Lee Davis.

(Off the record briefly.)

(Whereupon, the witness came forward.)

THE BAILIFF: How you doing?

THE WITNESS: All right.

THE BAILIFF: Come right up here.

THE WITNESS: (Complied.)

THE BAILIFF: Your Honor, Lynn's out. Would you ---

HENRY DAVIS, having been first duly sworn,
testified as follows:

THE COURT: Have a seat please, Mr. Davis.

THE WITNESS: (Complied.)

THE BAILIFF: Mr. Davis, pull up a little bit

DIRECT EXAMINATION BY MR. SCOTT - HENRY DAVIS 245

1 closer.

2 THE WITNESS: (Complied.)

3 THE BAILIFF: This lady has to take down everything
4 you say. So kind of speak clearly, okay?

5 THE WITNESS: All right.

6 DIRECT EXAMINATION

7 BY MR. SCOTT:

8 Q Mr. Davis, what's your full name?

9 A Henry Louis Davis.

10 Q Louis?

11 A Yes.

12 Q Oh, okay. I've been calling you Henry Lee. It's
13 Henry Louis Davis?

14 A Yes.

15 Q This is State's Exhibit 2. Do you -- you recognize
16 that?

17 A Yes.

18 Q Okay. What -- what is that a picture of?

19 A Apartment.

20 Q Apartments?

21 A Yeah.

22 Q All right. You ever lived in those apartments?

23 A Yes.

24 Q Which unit did you live in?

25 A Apartment 6.

DIRECT EXAMINATION BY MR. SCOTT - HENRY DAVIS 246

1 Q Which one is that?

2 A The one on the corner.

3 Q Say again?

4 A The one on the corner.

5 Q On the corner?

6 A (No audible response.)

7 Q Which corner?

8 A That corner.

9 THE COURT: He's indicating what?

10 MR. SCOTT: Okay.

11 Q Okay. Will -- will you get up here and point to it?

12 Is it ---

13 THE COURT: Or you point to the one he just pointed
14 to on that.

15 Q Is this your apartment?

16 A Right there. Yes, sir.

17 Q This one?

18 A Yeah. Apartment 6.

19 Q Okay. Have you ever been in this apartment?

20 A I had moved in that Apartment 6 and then they moved
21 in that apartment right there.

22 Q Okay. And do you remember the date the police
23 officers came to your apartment there?

24 A No. I couldn't remember it.

25 Q You what?

DIRECT EXAMINATION BY MR. SCOTT - HENRY DAVIS 247

1 A I couldn't remember it.

2 Q You can't remember?

3 A Unh-unh.

4 Q Okay. Do you remember who Sylvester Ferguson is?

5 A Yes.

6 Q Okay. Who is he?

7 A The -- Sylvester is a -- his name is Trey.

8 Q Okay.

9 A Trey Ferguson.

10 Q Okay. How are you related to him?

11 A By his brother.

12 Q By his brother?

13 A Yeah.

14 Q All right. Are you cousins or something?

15 A Yes, cousin.

16 Q You're cousins?

17 A Yes.

18 Q January 17th, 2017, police officers came to this
19 apartment complex. Do you remember that day?

20 A (No audible response.)

21 Q All right. Sylvester -- do you remember talking
22 just a minute ago about this case?

23 A Yes.

24 Q Have you suddenly forgotten about it?

25 A No.

DIRECT EXAMINATION BY MR. SCOTT - HENRY DAVIS 248

1 Q Okay. You remember when law enforcement came to
2 your apartment that day?

3 A Right.

4 Q And do you remember Sylvester Ferguson being in the
5 room with you?

6 A Right.

7 Q Okay. Are you suddenly having trouble remembering
8 it, now that you're in court?

9 A No.

10 Q Okay. You just swore to the bible, okay?

11 A Right.

12 Q All right. You got to testify to what you remember,
13 okay?

14 A (No audible response.)

15 Q All right. What was he doing there that day?

16 A He was visiting that day.

17 Q He was visiting?

18 A Yes.

19 Q All right. Did he live there with you?

20 A No.

21 Q Okay. Did you invite him over that day?

22 A No.

23 Q Okay. Mr. Davis, what was he doing there that day?

24 A Well, he's supposed to be visiting. And now he
25 don't -- I didn't know when exactly -- what he planned to

1 do.

2 Q Okay. What did ---

3 A All right.

4 Q --- you see him doing while he was there?

5 A Well, I hadn't seen him do nothing, really. I
6 didn't see him do nothing. But he was, like -- oh -- oh
7 -- I don't know if he was cooking dope or what he was
8 doing.

9 Q Okay. Were you cooking dope in there?

10 A No.

11 Q Did he live there with you?

12 A No.

13 Q Did he spend the night there that night?

14 A No.

15 Q Okay. When -- what time did he get there that day?

16 A He got there about five in the evening.

17 Q Five in the evening?

18 A Yeah.

19 Q All right. Well, this happened 11 a.m.; officers
20 got to your house. How long had he been at your house
21 when officers got there?

22 A He been there a good while.

23 Q Okay. You said he didn't spend the night.

24 A No, he didn't spend the night.

25 Q Okay. Did he get there that morning at some point?

DIRECT EXAMINATION BY MR. SCOTT - HENRY DAVIS 250

1 A Well, he came in the evening. And then he left.

2 Q Okay.

3 A And then he came back in the morning.

4 Q Okay. So he had been there the night before; he
5 left.

6 A Right.

7 Q Do you know where he was staying?

8 A Unh-unh.

9 Q You don't know where he was staying?

10 A No.

11 Q And then he came back on the morning the police got
12 there?

13 A Yes.

14 Q Okay. Who rented this unit right here?

15 A Who rented it?

16 Q Yeah.

17 A They left.

18 Q Well, what were you doing in that unit?

19 A I was -- I had -- I moved out of one apartment to
20 the other apartment.

21 Q Okay. So you had moved into that apartment?

22 A Yes.

23 Q How -- how long had you been living in that
24 apartment when the police got there?

25 A Not long.

1 Q Not long?

2 A No.

3 Q Okay. Did you pay the rent?

4 A Yes.

5 Q Did Mr. Ferguson help you with the rent? Did he
6 give you money for the rent?

7 A No.

8 Q How often did he come to visit?

9 A Not very often.

10 Q Okay. How old are you?

11 A Fifty-eight.

12 Q You're 58 years old?

13 A Yeah.

14 Q Do you know how to make methamphetamine?

15 A No.

16 Q Do you have any prior convictions for
17 methamphetamine manufacture?

18 A No.

19 Q All right. Did -- did you work at that time?

20 A Yes.

21 Q All right. Where did you work?

22 A I was working for Tony -- Tony Smith.

23 Q All right. What do you do for Tony Smith?

24 A I worked on his farm.

25 Q On a farm?

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1 A Yes.

2 Q All right. Now, were you going to work that day
3 that the law enforcement got there?

4 A I was getting ready to go to work that day.

5 Q All right. So were you about to leave Mr. Ferguson
6 in your house while you left?

7 A Well, he said he was going stay there till I got
8 back.

9 Q Okay.

10 THE COURT: He said what, sir?

11 Q Repeat it for the judge.

12 A He said -- he -- he said he wanted to stay till I
13 got back.

14 Q He said he was going to stay till you got back?

15 A Yeah.

16 Q All right. And do you remember opening the door and
17 getting ready to leave?

18 A Yes.

19 Q Tell everybody what you saw when you opened the door
20 and you were fixing to leave.

21 A All right. When I got ready to leave, I looked dead
22 in the police face.

23 Q You looked in their face?

24 A Yes.

25 Q All right. All right. So when you opened that

1 door, where were they?

2 A Coming up the step.

3 Q Coming up the step?

4 A Yes.

5 Q All right. And do you remember them speaking with
6 you?

7 A Yes.

8 Q Okay. Did -- did they ask you about coming inside
9 the house?

10 A Yes.

11 Q And did you tell them they could come take a look?

12 A Yes, I did.

13 Q Okay. Because -- is that because you weren't
14 cooking any meth and you didn't have anything to hide?

15 A Right.

16 Q Okay. Okay. And -- and you knew what Mr. Ferguson
17 was going to be doing in your house while you were at
18 work?

19 A Well, I -- I wasn't planning on it he said --
20 whether he was cooking dope. But I figured that's what
21 he going do.

22 Q Okay. And you figured he was doing it, but you
23 allowed him to do it anyway?

24 A I ain't know he was doing it.

25 Q But you figured he was doing it?

CROSS-EXAMINATION BY MR. SHAFFER - HENRY DAVIS 254

1 A Yes.

2 Q Okay. And -- and just be -- to be clear, you lived
3 there by yourself?

4 A Yes.

5 (Whereupon, Mr. Scott and Ms. Boykin conferred.)

6 Q Okay. And -- and you opened the door as the police
7 were coming up the steps and you began talking with them;
8 is that right?

9 A Yes.

10 Q Okay. And you, the person who lived there, allowed
11 them to come inside?

12 A Yes.

13 Q Okay. And they asked to speak with Mr. Ferguson
14 when they got there? Did they tell you they were looking
15 for Mr. Ferguson?

16 A Yes.

17 Q Okay. All right. Answer any questions Mr. Shaffer
18 has for you.

19 THE COURT: Mr. Shaffer?

20 CROSS-EXAMINATION

21 BY MR. SHAFFER:

22 Q Mr. Davis, you said that Mr. Ferguson wasn't living
23 there, correct?

24 A Right.

25 Q He wasn't renting a room out?

1 A No.

2 Q He wasn't keeping his clothing there?

3 A No.

4 Q So he just came over to visit that day, right?

5 A Right.

6 Q Carrying the clothes he had on, right?

7 A Right.

8 Q Didn't have a change of clothes there, right?

9 A Nah.

10 Q You said that he was -- you -- you basically assumed
11 he was cooking dope, but you didn't know for sure, right?

12 A Right.

13 Q You're just speculating that he was cooking dope?

14 A Right.

15 Q So when the officers came up the steps, you knew
16 that they were coming to your house, right?

17 A Right.

18 Q So you knew that they were coming to knock on your
19 door?

20 A Right.

21 Q And that's why you had went ahead and opened the
22 door, right?

23 A No. I was coming out the door.

24 Q Huh?

25 A I was coming out the door.

CROSS-EXAMINATION BY MR. SHAFFER - HENRY DAVIS 256

1 Q You were just coming out the door?

2 A Yes.

3 Q But you knew they were heading toward you, right?

4 A Right.

5 Q How far away from your door were they when ---

6 A Oh. I guess the -- the step wasn't right -- the
7 step right there ---

8 Q All right.

9 A All right. See -- see -- see where the steps at?

10 Q Which -- which steps? If you don't mind -- do you
11 mind coming down and showing us?

12 (Whereupon, the witness exited the witness stand.)

13 A All right. I had to go up step.

14 Q So ---

15 A That was ---

16 Q --- which steps were they on? It looks like there's
17 two sets of steps.

18 A All right. Now, this kind of step, I had to go up.

19 Q All right. Well, are you talking about the steps on
20 your left when you're looking at that picture?

21 MR. SCOTT: Your Honor, he's pointing to the steps
22 on the left.

23 THE WITNESS: Yeah.

24 Q Okay. But you -- so looking at this -- this picture
25 of the house ---

CROSS-EXAMINATION BY MR. SHAFFER - HENRY DAVIS 257

1 MR. SHAFFER: And is this a exhibit?

2 MR. SCOTT: Uh-huh. Two.

3 Q State's Exhibit 2, he was coming up the -- the cops
4 were coming up the steps on your left, right?

5 A Right.

6 Q And which one's your apartment door?

7 A That.

8 Q Right there at the end?

9 A Right.

10 Q So you were from there -- there to there?

11 A (No audible response.)

12 Q Were they looking at your door, coming up the steps?

13 A They had -- they'd be facing it.

14 Q Okay. They were facing your door?

15 A That -- when they come up the step, they faced --
16 yeah. They ---

17 Q Oh.

18 A --- faced right.

19 Q Okay. And your door is the only door at the end of
20 that ---

21 A Yeah.

22 Q --- that area, right?

23 A Right.

24 Q Okay. You can go ahead and have a seat. I'm sorry.
25 (Whereupon, the witness resumed the witness stand.)

CROSS-EXAMINATION BY MR. SHAFFER - HENRY DAVIS 258

1 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

2 Q Now, you said that Mr. Ferguson wasn't renting your
3 apartment?

4 A No.

5 Q Wasn't keeping clothing there?

6 A No.

7 Q Didn't have a change of clothes there?

8 A No.

9 Q And you wouldn't have told the cops that he was
10 renting that place, would you?

11 A No.

12 Q So you never told any cops that he was renting that
13 place?

14 A Unh-unh.

15 Q He wasn't on the lease, was he?

16 A (Gestured.)

17 Q He wasn't on the lease, was he?

18 A No.

19 Q Now, you were charged in this as well, right?

20 A Yes.

21 Q But they dismissed your charges last year, right?

22 A Right.

23 Q Do you know why your charges were dismissed?

24 A Because I didn't have nothing to do with it.

25 Q Okay.

CROSS-EXAMINATION BY MR. SHAFFER - HENRY DAVIS 259

1 THE COURT: What did he say? I'm sorry.

2 MR. SHAFFER: I think he said, "I -- I didn't have
3 anything to do with it."

4 THE COURT: Okay.

5 Q Before they dismissed your charges, did they tell
6 you you'd have to come testify in court?

7 A No.

8 Q Did you give any statements to law enforcement
9 before they -- they dismissed your charges?

10 A No.

11 Q Did they promise you anything to ---

12 A No.

13 Q --- before they dismissed your charges?

14 A No.

15 Q Never talked to any law enforcement agents?

16 A No.

17 Q Never talked to the solicitor's office?

18 A No.

19 Q You never had your attorney go talk to them for you?

20 A No.

21 Q They just dismissed them themselves.

22 A Ms. Kate Chancellor dismissed it.

23 Q I'm sorry. Tell me again?

24 A Kate Chancellor. Ms. Kate Chancellor.

25 Q Kate -- Kate Kendall?

1 A Chancellor.

2 Q Chelsea McNeill?

3 A Huh?

4 Q Were you represented by the public defender's
5 office?

6 A Yes.

7 Q You were represented by Kate Kendall, right?

8 A Right.

9 Q And Kate Kendall got them to dismiss the charges?

10 A Yes.

11 Q Have you ever done any confidential-informant work
12 or anything like that for the ---

13 A No.

14 Q And you never had any conversations with the
15 solicitor's office about why they dismissed it?

16 A No.

17 Q And no one ever told you why they dismissed the
18 charges.

19 A Well, they didn't say I ain't -- I ain't nothing to
20 do with it because they don't feel like I know how to
21 cook dope to mess with nothing like that.

22 Q Okay. Who told you that?

23 A (Gestured.)

24 Q Who told you that?

25 A You know what? That when they -- didn't really

CROSS-EXAMINATION BY MR. SHAFFER - HENRY DAVIS 261

1 dismissed it because -- dismiss it -- dismiss or ---

2 Q I'm sorry. Could you say that again? I can't
3 understand what you're saying. I'm sorry.

4 A That what -- that what was said in the courtroom
5 when -- when they dismissed the case -- dismissed my
6 case.

7 Q That's what they said in the courtroom when they
8 dismissed your case?

9 A Yeah.

10 Q That's correct?

11 A (No audible response.)

12 Q Is that a "yes"?

13 A Yes.

14 Q Okay. I'm sorry. This lady is taking down
15 everything you're saying. I just want to make sure she's
16 getting it.

17 A Oh.

18 MR. SHAFFER: Court's indulgence.

19 THE COURT: Yes, sir.

20 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

21 MR. SHAFFER: No further questions at this time.

22 THE COURT: Any redirect?

23 MR. SCOTT: No, Your Honor.

24 THE COURT: All right. Sir, thank you. You can
25 step down.

1 THE WITNESS: All right.

2 (Whereupon, the witness exited the witness stand.)

3 THE BAILIFF: Watch your step, sir.

4 THE COURT: All right. Any additional witnesses
5 from the state?

6 MR. SCOTT: No, sir.

7 THE COURT: All right. We'll let -- we'll let Mr.
8 Davis walk out.

9 (Off the record briefly.)

10 THE COURT: Wait where you were, Mr. Davis, okay?

11 THE WITNESS: All right.

12 THE COURT: The jury has been back there, cooling
13 their heels since 9:30. I think I should probably tell
14 the bailiff to let them go until at least 3. Because I
15 got to be out of here in about an hour anyway, give or
16 take. And we got to figure this out.

17 Tell the jury to come back at three o'clock, okay?

18 THE BAILIFF: Three o'clock?

19 THE COURT: Offer my apologies.

20 THE BAILIFF: Okay.

21 THE COURT: We'll be at ease for a few moments.

22 (Off the record from 11:15 a.m. until 2:36 p.m.)

23 THE COURT: All right. We'll may -- we're going to
24 go back on the record, if we may. Record will reflect
25 that my clerk -- first of all, we did have a conversation

1 in chambers with the attorneys before we took a break for
2 lunch. And I did get a feel -- and, of course, I'm going
3 to allow you to put your arguments on the record here in
4 a moment concerning the search issues involved in this
5 case.

6 My clerk did review the cases presented by the
7 state. We discussed those when I was heading back this
8 way after my lunch meeting in Greenwood on the phone. So
9 she's briefed me on those that the state has handed up.

10 Between the time that our meeting concluded and now
11 and what I -- what I really think the -- the focus of
12 this needs to be, the state, in the chambers meeting,
13 made the point that in this situation, even though the
14 intention of the officers was to go out there and to do a
15 knock-and-talk, the -- the knock-and-talk never actually
16 took place.

17 And the more I thought about that, the more -- I
18 don't want to say appealing, but the more intrigued I was
19 with that argument. I would agree, generally speaking --
20 and I'm going to turn the floor over to Mr. Broome in
21 just a second. But under the case law of South Carolina,
22 had this completely anonymous tip resulted in a knock-
23 and-talk, where they gained entry into the apartment, I
24 think that suppression of all the drugs would be
25 appropriate.

1 But we have somewhat of an intervening event, in the
2 sense that Mr. Davis came out, engaged the officer in
3 conversation, and ultimately they came into the apartment
4 at his behest. So I think that that is very significant.
5 You know, we -- we danced around the standing issues.

6 Obviously, Mr. Davis testified a few moments ago.
7 as I indicated in chambers, I think that Mr. Davis is
8 trying to distance himself from this case as much as
9 possible. And so as far as the standing issue, to the
10 extent that it applies to the right to privacy under the
11 South Carolina Constitution, I'm -- I'm going to take Mr.
12 Nations' word over that of Mr. Davis, for the simple
13 reason that -- that Mr. Davis is clearly trying to simply
14 get as far away from this as he possibly can.

15 And so I -- I think that at some point in time, he
16 did inform the officer -- and the physical evidence
17 recovered at the scene would seem to indicate -- that Mr.
18 Ferguson has some possessory interest in that apartment.
19 He had some right to be there as a tenant or a sublettee
20 or something like that. So I'm taking the officer's word
21 on that issue over that of Mr. Davis.

22 But again, Mr. Broome, when I -- when I turn to you,
23 if -- if you want to focus on -- on that question, I
24 think that this issue may turn on exactly what the South
25 Carolina Supreme Court is trying to do: whether they're

1 either trying to preserve right to privacy under South
2 Carolina law or whether they're trying to deter bad
3 police conduct under a traditional Fourth Amendment
4 suppression kind of analysis. What -- what is their aim
5 in the -- the case that you cited to us and that we've
6 been dancing around all week so far.

7 But happy to hear from you.

8 MR. BROOME: The case -- *Counts*?

9 THE COURT: Yeah.

10 MR. BROOME: They talk -- there's Paragraph B --
11 it's on page 164. And they talk about the knock-and-talk
12 technique in the context of the Fourth Amendment search.

13 I take the position that what our Supreme Court is
14 saying is it's the procedure itself, which is I don't
15 think that they want -- and -- and they -- they go on and
16 talk about what it is. (As read): "One police tactic"
17 -- and I won't -- I won't read the whole thing. But --
18 and that's what Justice Kittredge was concerned with --
19 was concerned with during oral argument and -- in this
20 case, is basically this is a procedure that gets around
21 and circumvents the warrant requirement.

22 And the point of it is not so much that they have to
23 come up and go -- (demonstrated) -- "Police." I think,
24 if the state -- for that to be a knock-and-talk. I think
25 that's kind of -- that's the nomenclature for it. It's

1 what we call it to refer to that procedure that they use.

2 If -- my opinion is, I think under the -- under
3 *Counts* case, if it required a very strict technical
4 reading of knock, then the police could just come up and
5 go, "Police -- it's the" -- and if you don't have any eye
6 hole or anything like that, they can just say, "Well, we
7 don't -- we don't have to knock. Look, we don't have to
8 knock. We can just say that we're here, and we don't
9 have to knock."

10 Because then, it's not a knock-and-talk, when the
11 whole point of it is -- and this is their -- and what
12 they're coming up and -- and the facts of this case is --
13 is there's multiple officers with SWAT vests on -- I
14 don't -- SWAT's probably not the right word. I think
15 they -- it -- it was either bulletproof vests or some
16 sort of ---

17 THE COURT: Tactical.

18 MR. BROOME: --- tactical gear, guns and badges
19 drawn, for the purpose of gaining consent to get into the
20 house to determine whether or not there was drugs inside
21 that house. That's the whole point of it. They consent
22 -- they consented -- conceded -- excuse me -- during
23 argument and testimony that they did not have probable
24 cause to get a search warrant.

25 And that's the Court's concern. So I take the

1 position that someone comes out and opens the door. The
2 state does not then become rewarded because they person,
3 just by chance, opens the door. "

4 We're here to come look for Frank -- we got a tip
5 that Frank Addy is selling heroin. We get there; he
6 comes out the door."

7 "Oh, excuse me, officers."

8 We're good. You know, we were there. The testimony
9 is we were there to do that. We were going to come in
10 and talk to those people. They were specifically at that
11 portion, the upstairs, second-floor portion of the
12 apartment, the only apartment in that corner. Mr.
13 Davis's testimony was, when he came out, the two officers
14 right outside on that walkway.

15 And they testified they didn't go anywhere else.
16 When I asked Mr. -- Investigator Nations today, "Did you
17 go and knock on any of those other doors to talk about
18 this emergency?"

19 "No, I did not."

20 So they went straight up; went straight there.

21 That's how I read the -- the -- the cause -- the pause
22 for concern for the Courts is: We need a prophylactic
23 measure to prevent these situations. And we're not going
24 to reward the state just because someone opens the door
25 and comes on out. That's -- that's how I view it.

1 And so I don't think that they wanted to take a very
2 -- I think they could've addressed that. They maybe
3 could've taken the possibility to address, in these
4 jurisprudence articles that they cite, you know, that the
5 -- it requires a knock. That -- if that's what the
6 Court's asking. Am -- am I correct in that, as you're
7 asking -- just because the -- he opened the door and came
8 out, they never got to knock on the door in the first ---

9 THE COURT: That -- that ---

10 MR. BROOME: --- place?

11 THE COURT: --- that's essentially when I'm -- I --
12 I am getting to that. I -- I think that maybe the -- and
13 this is almost a metaphysical question. But at what
14 point does a knock-and-talk become a -- become a knock-
15 and-talk? Because I agree that you stand outside the
16 door and you say, "Hey, police. Open up." That's the
17 equivalent of a knock, okay?

18 But in this case, we've got kind of a different sort
19 of a situation than maybe your residence or my residence,
20 where you have a pathway that leads down my property and
21 to my door. In this case we have an apartment complex.
22 The communal area is the area immediately outside the
23 door. It's a long stretch, I presume, of concrete that
24 anyone could congregate on, regardless of whether you
25 rent a unit on the second floor. Somebody on the first

1 floor could come up to the second floor and just hang out
2 for the view.

3 So that's kind of an open space. It's available to
4 anyone, including law enforcement. And if that is the
5 case, and if what the Supreme Court is worried about is
6 the police invading your right to privacy, even by maybe
7 going onto your curtilage or approaching the front door.
8 Maybe you walk halfway down the sidewalk to my house and
9 you yell, "Hey, police. Open up."

10 You know, that -- that's a knock-and-talk. Yeah.
11 But you've got that invasion halfway down. In this case
12 we've got the area immediately outside Mr. Davis's door
13 being communally owned or accessible to the public or
14 accessible to anybody who lives there or anybody who just
15 wants to walk up there.

16 How does it -- does that change the analysis? Does
17 that alter *Counts*? How does *Counts* deal with that ---

18 MR. BROOME: I don't ---

19 THE COURT: --- from a ---

20 MR. BROOME: --- think ---

21 THE COURT: --- practical level?

22 MR. BROOME: Well, factually, there was nowhere -- I
23 just want to point out, there's was nowhere for him to go
24 when he opened the door. It's the second floor. There's
25 two staircases.

1 But the only staircase for him to get out was
2 blocked by these two officers. There was a railing
3 behind him. So unless he wanted to jump off or go back
4 inside the house, there was kind of really nowhere to go
5 to deal with that.

6 No. It doesn't change my analysis of it. Because I
7 -- I've been beating this drum over and over again. I
8 think that the state, again, has to have a reasonable
9 suspicion -- the Court took great concern with this case
10 and took time. And I know that the Supreme Court, just
11 like Your Honor, chooses their words very carefully.

12 They chose a specific holding in this case that they
13 -- you need to have reasonable suspicion. I know we
14 didn't define it. I know they didn't define it. And so
15 I think probably, maybe what they intended was: We're
16 going to define that; probably, they're going to guess at
17 totality of the circumstances.

18 And there's going to be a difference between a C.I.
19 versus anonymous tip. Okay? So put that aside.

20 Before approaching a targeted residence -- because
21 of the facts in *Counts* were not an indiscriminate "Hello,
22 hello, hello. We're looking for Counts."

23 They're looking for Ferguson. They have a -- a
24 specific address in their mind, just like in *Counts*,
25 these apartments at Benedict, a college -- or wherever

1 nearby. We have a specific address here.

2 So they chose to write those words: Listen, we have
3 got to have some evidentiary review of the standard for
4 police before they go and do this procedure. Before they
5 go and approach the house, they have to corroborate this
6 information.

7 To me, it seems clear -- and maybe I'm -- I -- I'm
8 missing it, because -- and let me pull the actual
9 holding. It's on page 170 -- I know we've spoken of it
10 at length -- 172. (As read): "Yet rather than
11 enunciating an unyielding rule or eliminating the knock-
12 and-talk in its entirety, we hold that law enforcement
13 must have reasonable suspicion of illegal activity" -- so
14 not welfare checks, not any of this other stuff -- "at a
15 targeted residence prior to approaching the residence and
16 knocking on the door."

17 Now, I know the Court said "knocking on the door."
18 I think they refer to that as doing the ---

19 THE COURT: Engaging ---

20 MR. BROOME: --- knock-and-talk ---

21 THE COURT: --- in maybe ---

22 MR. BROOME: --- procedure.

23 THE COURT: I -- I'm ---

24 MR. BROOME: Sorry.

25 THE COURT: --- sorry. I spoke over you. But at --

1 maybe you mean that as engaging the residence or ---

2 MR. BROOME: I -- I mean that -- exactly. Engaging
3 on the residence and -- and going there to speak to
4 whoever they're trying to target at that residence.

5 And give me one second. There's another reference
6 to it -- footnote. They restate their holding, and I'm
7 trying to find it.

8 Here we go. Footnote 7, last page, they're
9 addressing the welfare-check section. And they're
10 addressing the concurrence -- concerned about, "Hey, what
11 about welfare checks? We getting rid of those?"

12 "No. We're good. We can do that. Let me tell you
13 why."

14 Again, they're going to reemphasize (As read):
15 "Thus" -- they -- and they cite that -- it -- it's in the
16 bottom -- last paragraph; it ends with the *Jardines* cite
17 --- "our decision should not be misconstrued, as done by
18 the concurrence, to prevent law enforcement from
19 conducting welfare checks at residence. We emphasize
20 that our holding is limited to requiring law enforcement
21 to have a reasonable suspicion of illegal activity before
22 approaching a targeted residence and conducting the
23 knock-and-talk criminal investigative technique."

24 So I know it's in a footnote. But here, they're
25 going: It's the technique that we're concerned about.

1 Justice Kittredge, Justice Beatty had these concerns
2 about police using this technique to get around it.

3 I don't think it was a situation where they -- they
4 would in -- in -- anticipate the state going, "Well, now
5 we don't have to knock. We can just go there" -- and I'm
6 saying this over and over again -- "but we just don't --
7 we don't have to knock. As long as we don't knock, we're
8 okay. We don't have reasonable suspicion. But if we get
9 there without it and don't knock or someone comes out or
10 we -- the person that comes out of the residence gets in
11 a car and -- and drives off, when that's a different --
12 we're okay."

13 I think, when you read holding in the body of the
14 decision versus the Footnote 7 right there, seems to me,
15 putting those two -- knocking on the door versus the
16 knock-and-talk investigative technique, where they
17 reemphasize their holding. They're concerned with the
18 technique itself. I -- I -- I'd -- that's -- that's my
19 opinion.

20 THE COURT: All right. But under traditional
21 search-and-seizure analysis -- correct me if I'm wrong --
22 let's assume for a moment that the warrant that you get
23 to search a house is bad, okay? The affidavit is
24 insufficient. So warrant is *void ab initio* and has no
25 force whatsoever.

1 Police are on the way to a place to serve that
2 warrant. And as they pull up on the street and step out
3 of their patrol cars, they're going to serve it on my
4 house. And I walk out the front door.

5 And the police say, "Excuse me. You Mr. Addy?"

6 "Yes, I am."

7 "Would you mind if we search your house, look around
8 a little bit?"

9 "No, not at all."

10 For whatever reason, I give consent. That cures the
11 bad search, doesn't it? The bad search warrant, rather.
12 It doesn't -- the fact that they had a bad search warrant
13 doesn't render the consent -- and what ---

14 MR. BROOME: I think ---

15 THE COURT: --- I'm getting ---

16 MR. BROOME: --- it -- it's ---

17 THE COURT: --- at here is ---

18 MR. BROOME: --- I mean -- go ahead. Sorry.

19 THE COURT: If -- if -- if they objective is to
20 protect the right to privacy ---

21 MR. BROOME: Uh-huh.

22 THE COURT: --- under the Constitution of South
23 Carolina, as opposed to deter bad police conduct -- and
24 -- and that's where I'm -- I'm struggling and what the
25 intention of *Counts* is.

1 If the intention is to preserve the sanctity of
2 privacy, then the remedy does not necessarily equate with
3 suppression. Because if I waive that right to privacy,
4 or if my privacy rights are less compelling, under the
5 South Carolina law -- forget federal law ---

6 MR. BROOME: Uh-huh.

7 THE COURT: --- because I still think I have a
8 limited right of privacy, even if I'm not in my own home.
9 I still have a limited right of privacy if I'm a guest in
10 someone else's home. Exactly what that privacy interest
11 is under South Carolina law, I admittedly don't know.
12 But it -- it's -- it's -- it's still there, I think.

13 MR. BROOME: Uh-huh.

14 THE COURT: And if the purpose of *Counts* is to
15 protect that right to privacy, there's no point in
16 punishing bad police conduct, like you normally have in a
17 Fourth Amendment analysis, where you have a bad search
18 warrant. Because the objective of the exclusionary rule
19 is to punish insufficient or nefarious police conduct by
20 suppressing the evidence.

21 And maybe, again, that's a distinction without
22 difference. But in -- in this case, arguably -- and what
23 I think Mr. Scott was arguing in chambers and what he's
24 going to argue in the next few moments is -- any bad
25 intention that they had, even though they intended to go

1 out there and intended to do the knock-and-talk, they
2 were still in a place where they had the right to be.
3 They were in a communal area on that property. They had
4 not -- at the moment that they engaged with Mr. Davis,
5 had not yelled into the house, had not knocked on the
6 door, had not engaged in this investigative technique.

7 So even though that was their intention, the
8 intention becomes irrelevant when the engage Mr. Davis,
9 who comes out of his house and asks, "Hey, is Mr.
10 Ferguson in there?"

11 Davis said, "Yeah." Motions, presumably, for them
12 to come on in. Davis goes to the back; calls for
13 Ferguson. Ferguson comes out.

14 So does that intervening chain of events negate the
15 flaw that would otherwise render the knock-and-talk and
16 the drugs discovered inadmissible?

17 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

18 MR. BROOME: Well -- well, then, we have the issue
19 that we discussed in chambers about permission for them
20 to even come inside the house. And when my client comes
21 in, we have differing facts and different testimony from
22 the investigator.

23 Day one he read his report. He stepped inside the
24 doorframe. There was no permission to come in, asked for
25 or granted. The consent centered around: "Now that

1 we're inside, you don't mind if we clear this out and do
2 a walkthrough?"

3 Consent to search versus consent to enter, and that
4 differed today, when he had one foot -- one foot in the
5 door, one foot out.

6 I take the position that they don't have a right to
7 be there if they don't have reasonable suspicion to be
8 there to confirm this anonymous tip in the first place.

9 I know that you and Mr. Scott had that conversation.
10 He said -- he asked your opinion. You said that he did.
11 I disagree, based upon the holding.

12 And -- and maybe reasonable people surely could,
13 because, as we've noted, I don't think there's been any
14 other cases that have cited *Counts* since then. But ---

15 THE COURT: The only ---

16 MR. BROOME: --- I think ---

17 THE COURT: --- citing references I found were 63
18 cites to appellate briefs. And that's it.

19 MR. BROOME: Uh-huh. So I take the position that
20 they're -- that they're not. I -- I -- it's unclear to
21 me because of the -- it's -- it's an apartment. At what
22 point it becomes -- excuse me.

23 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

24 MR. BROOME: Oh, that's true. *Counts* was an
25 apartment. *Counts* was an apartment complex. It was the

1 Benedict apartment complex.

2 Thank you, Mr. ---

3 MR. SHAFFER: Uh-huh.

4 MR. BROOME: And Mr. Shaffer wants ---

5 MR. SHAFFER: Your -- Your Honor, I read the
6 transcript. I -- I actually, for a very brief period of
7 time, represented Mr. Counts before leaving appellate
8 defense and handing it over to Dayne Phillips, who
9 briefed it. But I had read it.

10 Yeah. It was Benedict -- Benedict -- or Allen
11 Benedict Court Apartments.

12 THE COURT: Okay. Hmm. Well, maybe *Counts* is a
13 little bit closer than -- I was focusing so much on
14 discerning what the holding meant. I kind of missed
15 that.

16 MR. SHAFFER: And I don't think that it's actually
17 in the case, Your Honor. I ---

18 THE COURT: No.

19 MR. SHAFFER: --- I just ---

20 THE COURT: It actually ---

21 MR. SHAFFER: --- happen to know that from -- and --
22 and ---

23 THE COURT: Two controlled buys from the apartment
24 in Allen Benedict Court.

25 MR. SHAFFER: Oh, okay. It is ---

1 THE COURT: Yeah.

2 MR. SHAFFER: --- in the case, then.

3 THE COURT: All right. Mr. Scott, let me hear from
4 you or Ms. Boykin.

5 MR. SCOTT: Okay. Well, I -- I think the -- I think
6 that was a wonderful analogy, Judge. I think analogies
7 help kind of describe some of these nuanced legal
8 arguments.

9 But I -- I -- I think the search warrant deficiency,
10 they failed to list, let's say, an affidavit, the
11 veracity of a C.I. It -- it perhaps has stale
12 information or -- or some other lack of -- of deficient
13 affidavit for the search warrant. And as they're going
14 to execute it, something happens where the guy comes
15 outside and eventually gives consent to search.

16 That cures the deficiency. I'm not willing to
17 consent yet that there was no reasonable suspicion. And
18 I've -- I've listed a number of cases: *Navarette v.*
19 *California*, I -- I think, was a good one. The -- let me
20 see.

21 THE COURT: And -- and the cases -- I think you
22 handed it to my clerk that we referenced a moment ago --
23 went to the issue of a face-to-face informant who yet
24 remains anonymous, as opposed to one who simply phones it
25 in or -- or lobs it in and maintains their identity.

1 She -- she looked at those. And the one common
2 theme, as we were talking about it when I was coming back
3 from Greenwood, the one common theme in all of those is
4 that even though the tipster was initially anonymous,
5 there was always some way for the police to figure out
6 who that person was or hold the person accountable for
7 fraudulent or false or erroneous information.

8 So you had, like the hotel case with the gun that we
9 were talking about in chambers, there -- there was always
10 the -- the police had, in fact, made contact with that
11 individual; may not have gotten their name. But they --
12 they knew that she occupied Hotel Room X in this
13 particular hotel room. And so there could've been some
14 accountability to her if what she said about the guy with
15 the gun turned out to be a lie.

16 So I don't know that that really holds as much water
17 as -- as ---

18 MR. SCOTT: Well, they ---

19 THE COURT: --- your ---

20 MR. SCOTT: --- were unnamed at trial. In fact, at
21 -- at some point, the dissent called them genderless.
22 And then, they had to be correct and say, "Well, that
23 person was a he."

24 So they were clearly unavailable at trial. They
25 were unnamed. Perhaps law enforcement had some way of

1 getting in touch with them. But that really wasn't
2 fleshed out in these cases.

3 THE COURT: That's not the concern, though, whether
4 they're unnamed at trial. The concern is whether they're
5 unnamed or unidentifiable when the tip is given.

6 MR. SCOTT: Well, I -- I would believe that their
7 name would be given in these opinions, had law
8 enforcement known them. I -- I think they failed to get
9 it. And that's why -- and -- and I -- I kind of cited
10 some of that language how law enforcement -- it --
11 there's no constitutional requirement for them to get
12 that information.

13 And I -- I had that cited. I -- I know that's a --
14 kind of a messy, informal memo. But ---

15 THE COURT: Well, I ---

16 MR. SCOTT: --- furthermore ---

17 THE COURT: --- I -- I -- I -- I hate to say it.
18 But I'm kind of already ruling against you on the
19 question of whether there was sufficient reasonable
20 suspicion in this scenario in light of what was done.
21 Because, as we discussed in chambers, there was so much
22 more that could've been done.

23 MR. SCOTT: Well ---

24 THE COURT: And so if -- if you're relying on ---

25 MR. SCOTT: Okay. Well, I ---

1 THE COURT: --- knock-and-talk ---

2 MR. SCOTT: --- I just want to ---

3 THE COURT: --- in *Counts* ---

4 MR. SCOTT: --- I want ---

5 THE COURT: --- you're ---

6 MR. SCOTT: Okay.

7 THE COURT: --- you're going ---

8 MR. SCOTT: I just ---

9 THE COURT: --- to lose.

10 MR. SCOTT: --- wanted to make a clear record,
11 though. That *Perkins* case was interesting. (As read):
12 "It -- law enforcement in a face-to-face encounter with
13 an informant can judge the credibility of the tipster
14 firsthand and thus confirm whether the tip is
15 sufficiently reliable to support reasonable suspicion."

16 And clearly, they had done that. But I'll get to
17 your point, if ---

18 THE COURT: Well ---

19 MR. SCOTT: --- we're in ---

20 THE COURT: --- yeah. And -- and that's all well
21 and good. But in this case we have no effort to
22 ascertain the identity of the person who gives the tip.
23 You know ---

24 MR. SCOTT: They ---

25 THE COURT: --- it -- it is a simple statement by

1 the tipster: Person X is making meth in Location Y.

2 There was never an: "Okay. Well, how do you know
3 this? Who are you? When did this happen? Did you
4 personally observe this? Did you hear it from somebody
5 else? Are you -- how are you getting your information?"

6 MR. SCOTT: I wish they had done that. But it's not
7 required, is -- is the dicta in the language I had
8 mentioned earlier. And it's in the brief. And I'll ---

9 THE COURT: Yeah.

10 MR. SCOTT: Regardless, let -- let me -- let me move
11 ahead, because Your Honor clearly wants me to move ahead.

12 The *Counts* case does not, as the defense argued,
13 talk about engaging in the residence, is what, I think,
14 defense was arguing earlier. They clearly talk about a
15 knock-and-talk and the technique. If there has to be a
16 threshold for law enforcement to conduct a -- a knock-
17 and-talk, there needs to be a threshold definition of
18 what a knock-and-talk is. Okay?

19 And looking at the memo and motion to suppress --
20 and I think it comes from *Counts*. But the defense motion
21 clearly says (As read): "A knock-and-talk occurs when a
22 law enforcement officer approaches a residence by a route
23 available to the general public, knocks on the front door
24 of the residence, and speaks with an occupant of the
25 residence, who responds to the knocking."

1 Okay? And that's 68 Am. Jur. 2d Searches and
2 Seizures at 21 -- 2110.

3 That comes right from the motion to suppress. So
4 there needs to be some threshold definition of what a
5 knock-and-talk is before we can determine whether they
6 engaged in a knock-and-talk.

7 THE COURT: I -- I ---

8 MR. SCOTT: Right?

9 THE COURT: --- I've defined that as engagement.
10 They have approached the residence for purposes of
11 engaging with the -- with the occupant. And whether
12 that's by ringing the doorbell, knocking on the door, or
13 shouting through the door, "Hey, police. Will you" ---

14 MR. SCOTT: Okay.

15 THE COURT: --- "open the door," that's -- it's
16 engagement, not necessarily a rap ---

17 MR. SCOTT: Okay.

18 THE COURT: --- on the door.

19 MR. SCOTT: All right. Well, that's what the
20 definition in the -- in the motion says. But they --
21 they did -- they participated in none of those things
22 Your Honor just mentioned. And -- and we did talk about
23 it in chambers that were they there lawfully, were they
24 there on the -- that step lawfully. And I think Your
25 Honor's language from the bench earlier is accurate.

1 Yes, they were there legally.

2 And when Mr. Davis came out and engaged with them,
3 he said he was on his way to work; opened the door. No
4 indication that even knew they were there till he opened
5 the door and was walking out. And he said they were on
6 the steps. He hadn't even -- they hadn't even approached
7 the second level yet, which was corroborated by their
8 testimony earlier outside of his presence.

9 I don't think we even get to the knock-and-talk. I
10 think there was a chance encounter by an occupant, the
11 legal resident of that apartment complex, speaking with
12 law enforcement, who were not on his property yet, a
13 common area -- not even curtilage. It was a common area
14 of an apartment complex.

15 And then, that leads to him giving consent to come
16 inside. Their first question is: "Is Sylvester Ferguson
17 in there?"

18 And he affirms. "Yes, he is."

19 I -- I don't think, you know, we really even get to
20 the knock-and-talk analysis. There was neither knocking
21 nor talking until Mr. Davis came outside and approached
22 them in a public space.

23 THE COURT: Will you help square that with what's in
24 Footnote 7, I think it was, of *Counts*, where they say ---

25 MR. SCOTT: "Although the concurrence. . .?"

1 THE COURT: Hold on one second.

2 MS. BOYKIN: Uh-huh.

3 THE COURT: (As read): "We emphasize that our
4 holding is limited to requiring law enforcement to have
5 reasonable suspicion of illegal activity before
6 approaching a targeted residence and conducting the
7 knock-and-talk criminal investigation."

8 You're saying that both of those are required before
9 *Counts* is implicated? In other words ---

10 MR. SCOTT: I'm ---

11 THE COURT: --- they can conduct surveillance; they
12 can approach the residence to conduct surveillance, so
13 long as they stayed on communal property; but so long as
14 they didn't engage in any sort of conversation with the
15 occupants, they're not in violation of *Counts*?

16 MR. SCOTT: I'm -- I'm sorry, Your Honor. I was
17 trying to talk with Margaret ---

18 THE COURT: Read that ---

19 MR. SCOTT: --- read this ---

20 THE COURT: --- first.

21 MR. SCOTT: --- and hear you.

22 THE COURT: Read that first.

23 MR. SCOTT: All right.

24 THE COURT: Talk to ---

25 MR. SCOTT: This is ---

1 THE COURT: --- Margaret first ---
2 MR. SCOTT: Are we ---
3 THE COURT: --- and then ---
4 MR. SCOTT: --- talking about ---
5 THE COURT: --- talk to me.
6 MR. SCOTT: --- the "Finally, the concurrence's fear
7 . . ." Is that the part of this ---
8 THE COURT: I'm looking at Footnote 7 ---
9 MR. SCOTT: Oh.
10 THE COURT: --- last sentence. It's Footnote 7.
11 MR. SCOTT: Okay. Right. Well, that -- I -- I --
12 how do I square that? They never were able to conduct
13 the knock-and-talk. They were showing up and, you know,
14 I -- we talked about earlier. In *Counts* they say:
15 "Well, you could've done surveillance. You could've sent
16 C.I.s in."
17 How was this more -- if we're protecting privacy,
18 how is them walking up a set of steps more violative --
19 violative -- violative?
20 THE COURT: Violative.
21 MR. SCOTT: --- of ---
22 THE COURT: She'll ---
23 MR. SCOTT: --- of their ---
24 THE COURT: --- fix it.
25 MR. SCOTT: --- constitutional right to privacy

1 under our constitution than it would be sending in agents
2 of law enforcement or standing outside the stoop and
3 listening in through the window, all of which, I would
4 argue, they would be legally able to do. Standing on
5 that stoop outside of the apartment complex in a public
6 area.

7 THE COURT: Hmm. Okay.

8 MR. SCOTT: I -- I ---

9 THE COURT: Well ---

10 MR. SCOTT: --- just don't think it -- it -- the
11 definition of knock-and-talk -- we need to have some
12 threshold understanding of what a knock-and-talk is if
13 we're going to talk about this being a knock-and-talk.
14 And the law clearly says a knock-and-talk technique is
15 approaching a residence, knocking on the front door, and
16 engaging the people inside.

17 THE COURT: Because what they're trying to prevent
18 is the coercive nature of law enforcement, the very fact
19 that it's a cop talking to you. They're trying to
20 prevent that coercion from then be subterfuge for the
21 person consenting the search or gaining entry in ---

22 MR. SCOTT: The fear in the *Counts* -- and -- and we
23 talked about this -- it's just randomly knocking. They
24 talk about random knocking on doors in hopes that
25 eventually, you know -- in a targeted neighborhood, they

1 talk about.

2 That doesn't even talk about anonymous tips or any
3 -- I -- I think the fear is law enforcement going to door
4 to door: "Hey, everything okay? Anything going on in
5 here? Is that a weed pipe over there? Come with me."

6 I think that's the fear that they talk about in that
7 case. Hold on.

8 THE COURT: I think that's the fear Kittredge in
9 that case. I think Beatty's may be of -- may have been
10 more -- Justice Beatty's may have been more expansive
11 than that of Kittredge, from what I heard about the --
12 the video of the oral arguments.

13 MR. SCOTT: I'm -- I had a thought. And then it
14 just -- Judge, I'm -- I -- I think I've made my point. I
15 -- I -- oh, I had a thought. And it was a good one.

16 The -- yeah. The fear, Your Honor, is law
17 enforcement -- the coercive nature of law enforcement
18 showing up to your door, pounding on the door, we don't
19 have any of that here. And I understand that fear. You
20 know, the -- the Girl Scout-cookie person is a different
21 situation than a cop wearing a bulletproof vest banging
22 on your door.

23 We don't have that. We have, again, Mr. Davis going
24 on to work. "What are you guys doing? Well, how's it
25 going, guys? Is Ferguson there?"

1 "Well, yeah."

2 It -- we didn't have the coercive nature of law
3 enforcement banging on your door. He could've walked on
4 and said, "He ain't here. You know, and I'm -- I'm out
5 of here."

6 He was free to talk or free to not talk. I -- I
7 just find it wholly different from what they describe in
8 that case. And they talk about that coercive --
9 inherently coercive nature of law enforcement at your
10 door. And -- and this is a chance encounter, though, is
11 what this is on a stairwell.

12 THE COURT: Do you have the arrest warrant, Lynn?

13 CLERK OF COURT: Arrest warrant?

14 THE COURT: Yeah. Or not ---

15 CLERK OF COURT: Oh.

16 THE COURT: --- the arrest warrant, the search
17 warrant -- search warrant.

18 CLERK OF COURT: Okay.

19 THE COURT REPORTER: It's State's 1.

20 (Off the record from 3:08 p.m until 3:16 p.m.)

21 THE COURT: All right. In *Counts* one thing that the
22 Court finds significant -- this Court, not necessarily
23 the Supreme Court. But it's referenced in the opinion.
24 The lieutenant who performed the search in *Counts*, when
25 asked what a knock-and-talk is, said: "A knock-and-talk

1 is a common investigative technique used by the sheriff's
2 department during which officers approach a residence and
3 explain an allegation to someone who has been accused of
4 wrongdoing."

5 So physically knocking, physically rapping,
6 physically ringing the doorbell, physically calling out
7 to the person inside is not necessary, according to the
8 lieutenant in *Counts* and, presumably, according to the
9 Supreme Court of South Carolina. Again, it's that
10 engagement by law enforcement that I think is significant
11 in *Counts*. It's going out to a piece of property, to a
12 location, and seeking engagement with the occupants of
13 the house when there is insufficient reasonable suspicion
14 under the law.

15 I could easily see the South Carolina of South
16 Carolina, at some point in time, saying that we're going
17 to have to define this on a case-by-case basis. Because
18 obviously, one's privacy interest shifts, depending upon
19 where that person is, depending upon where that person
20 happens to be.

21 In the present case, I think the defendant's point
22 about Footnote No. 7 and that language that he read a few
23 moments ago is probably well-placed. And, of course,
24 this is a very close call.

25 But as I read *Counts* and as I understand what *Counts*

1 requires this Court to do -- not what the Court wants to
2 do, but what *Counts* requires this Court to do, the *Count*
3 -- *Counts* decision requires me to ask: Was there
4 reasonable suspicion of illegal activity at the time the
5 police attempted to engage the occupants of that house?
6 Whether that engagement took place at the doorway,
7 whether it took place on the property outside the
8 doorway, whether it took place as they were walking up
9 the stairway is immaterial.

10 It's the engagement of the occupants by police that
11 triggers the need for reasonable suspicion. In this case
12 we have admitted a face-to-face tip. The state has
13 offered some -- or some case law that indicates that
14 face-to-face conversations with law enforcement are more
15 reliable.

16 I think my clerk's reading of those cases is -- is
17 more perhaps appropriate. Obviously, a person who has no
18 fear of criminal reprisals from the police if they give
19 the police false information may have a greater capacity
20 to lie, a greater motive to lie, and less of a worry
21 about repercussion if they lie than someone whose
22 identity is, in fact, known.

23 And that -- that goes for whether tip is a 911 call,
24 face to face, whatever the case may be. So that's simply
25 the nature of the law. That's the nature of human

1 experience.

2 In this case, regrettably, we do not know the
3 identity of the individual who approached the officer at
4 the filling station. Could be someone who owed Mr.
5 Ferguson money and Mr. Ferguson was demanding payment of
6 that money. It could be somebody who had a beef with
7 him. Could be somebody who smoked meth with him the
8 night before. Could be a competitor of his. I don't
9 know.

10 And regrettably, because we don't know who that
11 individual is, we don't have greater indicia of
12 reliability is, as far as what he told the police. We
13 also don't know temporally whether he saw it the night
14 before, whether he saw it moments before the police
15 officer was approached. We don't know whether he saw it
16 a week before. And that question apparently was never
17 asked.

18 And the evidence that was seized from the house,
19 clearly it was not an active meth lab. That was not what
20 was going on right there. The bottles were discovered on
21 the outside. Mr. Ferguson could've been cooking it the
22 night before. My point is: We just don't know.

23 I think *Counts* requires -- not this Court -- but
24 *Counts* requires that the police engage in some sort of
25 independent confirmation -- perhaps surveillance; perhaps

1 they could've run his rap sheet; perhaps they could've
2 checked to see if he'd been buying Sudafed. All these
3 things could've been done pretty quickly.

4 They could've confirmed with the apartment owner who
5 was on the lease for that particular unit. They could've
6 perhaps asked some of the druggies who were in the jail,
7 "Hey, have you been getting any meth from Mr. Ferguson
8 lately?" They could've done something.

9 But upon receiving the tip, the anonymous tip from
10 an unknown individual, regrettably, as *Counts* requires
11 them to do, the police did not follow up on those
12 corroborative techniques. Twenty minutes later, they're
13 at his door, seeking to engage the occupants of that
14 house.

15 Solicitor, I have no problem whatsoever with anybody
16 appealing any decision I make. If I get it wrong, I want
17 it to get right in the end.

18 The drugs are suppressed.

19 MR. SCOTT: Okay.

20 THE COURT: We're done.

21 MR. SCOTT: Well, I do want to put this on ---

22 THE COURT: Yes, sir.

23 MR. SCOTT: --- the record, Your Honor. And we do
24 intend to file a notice of ---

25 THE COURT: Please.

1 MR. SCOTT: --- appeal. Because clearly, we are all
2 -- all trying to search for what this *Counts* case
3 envisions. Because we've argued in chambers. We've
4 argued out here.

5 If an investigator is hamstrung and can't
6 investigate a crime that potentially has exigent
7 circumstances and poses a risk of danger to other members
8 of society, then that is something we need to get
9 straight on.

10 I do want to put on the record that I have cited the
11 case of *Minnesota v. Carter*, 525 U.S. 83; and the state
12 case, *State v. Robinson*, 410 S.C. 519, first of all, for
13 the proposition that Mr. Ferguson has no standing to
14 challenge this knock-and-talk procedure in this
15 situation.

16 The evidence, as I recall -- and the transcript will
17 show otherwise if I'm incorrect -- was that Nations was
18 asked in cross-examination about where he had heard that
19 Mr. Ferguson was renting from Mr. Davis. He indicated he
20 was unsure. Upon further questioning, he indicated that
21 he thought maybe Mr. Davis had told him. And again, that
22 was something he recollected but was unsure of, based on
23 his testimony.

24 Today Mr. Davis got up here and testified under oath
25 that no; Mr. Ferguson did not rent; Mr. Ferguson did not

1 live there; Mr. Ferguson was not an overnight guest; Mr.
2 Ferguson has simply stopped by that day and, apparently,
3 at some point the night before but had not spent the
4 night. And we rely on those cases. Because we don't
5 think we even get to the point where he has standing to
6 challenge the knock-and-talk.

7 Then, we -- we did provide the Court with the cases
8 of *U.S. v. Lawing*, 703 F.3d 229. That's a 2012 case.
9 Also, *U.S. v. Griffin*, 589 F.3d 148, a 2009 case. We
10 provided the Court with *Jackson v. United States*, 157
11 A.3d 1259, a 2017 case. And *Navarette -- Navarette -- N-*
12 *a-v-a-r-e-t-t-e -- v. California*. That is a 134 S. Ct.
13 1683 case, 2014.

14 The various propositions in those cases -- those are
15 those are federal cases. And they deal with the
16 heightened veracity of a face-to-face, unnamed tipster,
17 as opposed to an anonymous tipster over a telephone call
18 or -- or some other form of communication.

19 And some of those cases talk about how an officer
20 can judge the credibility of the tipster firsthand and
21 thus confirm whether the tip is sufficiently reliable to
22 support the reasonable suspicion.

23 In our case we had officers taking the tipster's
24 information regarding a location where Mr. Ferguson would
25 be. He ultimately was there. And that -- that, coupled

1 with their knowledge of his history of being involved
2 with narcotics, coupled with their understanding that
3 Joanna had a high incidence of methamphetamine-related
4 crime -- we did offer those cases for those propositions;
5 and that those cases -- reasonable suspicion was found.

6 We offer those cases for reasonable suspicion being
7 a -- a -- a very minimum requirement for much lower than
8 probable cause for officers responding to investigate
9 criminal activity.

10 Furthermore -- and the Court noted as well -- the
11 Court made some very good points. The Court talked about
12 analogies between deficient search warrants being cured
13 before they could be executed by individuals intervening
14 and homeowners intervening and giving consent to come
15 inside. And that -- that curing any defect in the search
16 warrant, we find that a very -- a -- a -- an analogy that
17 -- that we think is operable here.

18 If there was any kind of deficiency in the knock-
19 and-talk procedure, if there was determined that there
20 was not reasonable suspicion, that was cured when the
21 homeowner, Mr. Davis, came outside and engaged with law
22 enforcement and spoke with them on a public stoop on
23 stairwell and then gave consent for them to come inside.

24 We think that if there was not reasonable suspicion
25 -- well, there was never a knock-and-talk. Counts talks

1 about what a knock-and-talk is. It's not an approach-
2 and-talk. It's a knock-and-talk.

3 And I -- I do -- I do -- I understand the -- the
4 Court's ruling and what a lieutenant said in a case. But
5 -- but the -- the language from the Court of what a
6 knock-and-talk is, is clearly rapping on a front door and
7 engaging somebody when they open the door. And -- and
8 that -- that goes to the fear of coercive nature of law
9 enforcement approaching your door, knocking, and then
10 engaging with you.

11 (Whereupon, Mr. Scott and Ms. Boykin conferred.)

12 MR. SCOTT: And so I -- I -- I think -- and in
13 closing, Your Honor, I -- I think we've put on the record
14 and we've made argument that, first of all, Mr. Ferguson
15 did not have standing to challenge the knock-and-talk.
16 Second of all, there was reasonable suspicion given by
17 the tipster. Third of all, a knock-and-talk never
18 actually occurred.

19 And -- and it's for these reasons, Your Honor, that
20 we will file a notice of appeal.

21 (Whereupon, Mr. Scott and Ms. Boykin conferred.)

22 MR. SCOTT: Oh. Further -- Your Honor, and I'm
23 sorry. And I did mention it before. The exigent
24 circumstances of manufacturing meth was testified to,
25 which is -- is noteworthy as well.

1 THE COURT: All right. All right. I've given the
2 state an opportunity to make a record. So go ahead.

3 MR. SHAFFER: Your Honor, obviously, there's a bunch
4 of additional things I could say sustaining this. I will
5 note that the Court ruled in chambers, I believe, that it
6 was not a situation where they were doing this for
7 exigent circumstances, based off the testimony of the
8 officers.

9 Some case law that might support that is a -- *United*
10 *States v. Purcell*. That's P-u-r-c-e-l-l. It's 526 F.3d
11 953. It's a 2008 case from the Sixth Circuit Court of
12 Appeals. Obviously, I -- I know the -- I just wanted to
13 make sure that the record was clear.

14 I'm not going to go into every -- every case that
15 would support our argument and it would support the
16 Court's ruling. But there's multiple rulings ---

17 THE COURT: Right.

18 MR. SHAFFER: --- multiple issues on it.

19 (Whereupon, Mr. Broome and Mr. Shaffer conferred.)

20 THE COURT: And you are correct. While Mr. Broome
21 is talking to you, just so that I can speak to the
22 record, I did indicate in chambers that based upon the
23 testimony of Investigator Nations, by virtue of the fact
24 that if he had gone out there, he testified -- if he --
25 if he had gone out there and had he smelled an active

1 meth lab, the chemical smell, he, in all likelihood,
2 would've gotten a search warrant, which sort of negates
3 the exigency of immediately going into the search warrant
4 to prevent the possible detonation of the meth contents
5 being cooked.

6 So you -- you're -- you're correct. I think that
7 testimony, if -- if anything, perhaps his going out there
8 and simply walking up the stoop and, through that open
9 window in this case, smelling some meth residue, that
10 that may have been sufficient to simply support the
11 knock-and-talk or the engagement with the occupants of
12 the -- of the house.

13 But be that as it may, clearly, under the facts of
14 this case or under the testimony that I've heard, there
15 was not exigency. Because the window was open; there was
16 no chemical smell. And clearly, that was borne out by
17 the fact that once they got inside, there was no active
18 meth lab.

19 Don't fault them for being concerned about that in
20 any way, shape, or form. Don't fault them for looking to
21 investigate that or interdict in that sort of a situation
22 where you have a -- meth potentially being cooked in a
23 big apartment complex.

24 But again, I'm stuck with what the testimony was.
25 And that's what the testimony was.

1 You want to supplement the record any further with
2 anything, gentlemen?

3 MR. SHAFFER: (Shook head from side to side.)

4 THE COURT: No?

5 MR. SHAFFER: No, Your Honor.

6 MR. BROOME: No, Your Honor.

7 THE COURT: All right. Again, I want to explain --
8 because we do have the benefit of law enforcement being
9 present. First, I don't relish doing this. I'm doing
10 this because it's what the law requires me to do, by my
11 reading of the law. If I am wrong, I will be corrected.

12 Second of all, the record will reflect that the jury
13 in this case has not been sworn. Double jeopardy has not
14 attached. So should I be incorrect, there is a remedy,
15 especially since Mr. Ferguson has not been kind enough to
16 join us these last two days.

17 Third, I want to emphasize that if we're dealing
18 with a reliable confidential informant, the results may
19 very well be different. In this case what the Court's
20 ruling hinges on is the fact that no one knew who the
21 initial tipster was who made this report. And none of
22 that information from that initial anonymous tipster was
23 corroborated.

24 So as long as the tipster is known to law
25 enforcement, if their identity is know, perhaps they've

1 provided information in the past that's been reliable,
2 knock-and-talk, under my reading of *Counts*, knock-and-
3 talk remains a viable investigative technique. If it's
4 anonymous, that's problematic, however.

5 And in the "for what it's worth" category, I may
6 have done similarly because, again, *Counts* is a new case.
7 It's breadth has yet to be fully defined. We will see.

8 And on the plus side, we have a better chance of
9 getting a definition if the state appeals than if the
10 defense does. So there you go. They have more of a
11 chance of taking the case if the state's appealing, as
12 opposed to if the defense appealed.

13 Very good. Let us have the jury, please.

14 (Off the record briefly.)

15 (Whereupon, the jury entered the courtroom at 3:34
16 p.m.)

17 THE BAILIFF: All jurors present, Your Honor.

18 THE COURT: All right. Thank you.

19 Ladies and gentlemen, let me bring you up to speed
20 on kind of where we are and what has transpired while you
21 have enjoyed each other's company and, hopefully, some
22 donuts that I asked the clerk to get you this morning.
23 Okay?

24 Understand, ladies and gentlemen, that -- that in my
25 job, I've come to believe and I've come to realize the

1 truth of the statement that man plans and God laughs.

2 Okay? Don't know if that's a familiar phrase to you.

3 But I promise you, it is very true.

4 When we began this case yesterday with jury
5 selection, I was told -- and I alluded to this when I
6 dismissed you prior to lunch yesterday -- that there were
7 some matters that I needed to take up concerning issues
8 in this case that did not involve and that I was, knock
9 on wood, hoping that we would be able to get this case to
10 you at three o'clock yesterday. Well, obviously, that
11 didn't happen. I had you back here at 9:30 this morning,
12 hoping to get it to you; that didn't happen.

13 What we've been arguing over, ladies and gentlemen,
14 and what we've been going through out here is basically a
15 -- a -- an argument over the law. In this case there was
16 a search and a seizure. And based upon a case that came
17 out in 2015 from the South Carolina Supreme Court, I have
18 ruled that, essentially, the search that was conducted
19 that yielded the drugs and the other evidence of -- of
20 drug use, the search, under the law, was improper. Okay?

21 And so I have suppressed that -- the fruits of that
22 search. This all stems from something that's explicit in
23 the South Carolina Constitution, and it's not
24 specifically in the federal constitution. But in South
25 Carolina, our constitution has an explicit right to

1 privacy. And up until 2015, up until three years ago,
2 the South Carolina Supreme Court had never defined that
3 and never really touched on it and never really talked
4 about the investigative technique -- in this case it was
5 called a knock-and-talk -- that had been used and applied
6 in *Counts* and in this case. All right?

7 *Counts* is brand new law. It's something new for all
8 of us. And it took me a while to work through it.

9 Understand, ladies and gentlemen, that probably like
10 most of you, most of what I do in my life, I really don't
11 want to do it. All right? I'm being -- I very often
12 don't want to wake up. I don't want to come to court. I
13 don't want to hear a lot of horror stories about all the
14 bad things that happen in Laurens or in Greenwood or in
15 Abbeville or in Charleston, okay?

16 But it's my job. So I wake up. And just like you,
17 you go to work when you wake up. Why? Because you got
18 to do it. You got to make money.

19 Don't like disciplining your children. Don't like
20 maybe doing some of the things your wife likes to do,
21 your husband likes to do, your significant other likes to
22 do. But we do them anyway. Why? Because it's required
23 of it.

24 I don't like suppressing the evidence in this case,
25 ladies and gentlemen. It was required by law. That's

1 why I did it. Didn't want to do it; had to. Okay?

2 This in no way should reflect negatively on law
3 enforcement you -- that you have here in Laurens County.
4 I've been practicing law since 1993. I've been
5 practicing law in the eighth circuit here in
6 Laurens/Greenwood/other places since 1993. Y'all have
7 great police here. You have great law enforcement.
8 Don't think that this in any way reflects poorly upon
9 them. All right?

10 So what I'm telling you is -- and it took me five
11 minutes to do it. Sorry. But after keeping you waiting
12 this long, heck, I may as well take five minutes. You're
13 good for the day. All right?

14 We're again in scramble mode. So I need you to call
15 that number that's on your juror summons, the number
16 that's on that juror-information card, this evening after
17 six o'clock. Follow what those instructions are.

18 I'm told that the solicitor is going to make an
19 effort to get another case ready for trial for tomorrow.
20 I'm thinking that that can still happen. And whether or
21 not I'm the judge or the judge -- the other judge who's
22 visiting down here from Anderson, he may end up trying
23 this case tomorrow. I may end up trying it. I'm not
24 entirely sure at this point in time.

25 But regardless, I'm -- I'm confident that they will

1 have another case for trial. So call that number
2 tonight. Follow whatever those instructions are, as far
3 as your report time tomorrow morning. Okay?

4 Again, apologize for your inconvenience. I hope you
5 enjoyed the donuts. I hope that they were tasty. And if
6 I could've inconvenienced you less, I promise you, I
7 would've done so. All right?

8 Y'all take care. Have a good day. Leave those
9 badges with us. See y'all around -- around sometime.
10 Okay?

11 (Whereupon, the jury exited the courtroom at 3:39
12 p.m.)

13 THE COURT: Off the record.

14 (Off the record briefly.)

15 THE COURT: Anything before we close the record on
16 this case?

17 MR. SHAFFER: Can you rescind the bench warrant? I
18 don't want him to get picked up while the case is being
19 appealed and sit for two years.

20 THE COURT: Even though he has it coming, I think
21 you're probably correct. The case has been dismissed in
22 some way, shape, or form. I have to lift the bench
23 warrant. You're probably right.

24 Very good. Madam clerk, do that, please. All
25 right.

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(Off the record briefly.)

THE COURT: All right. Y'all take care.

(Whereupon, the proceedings concluded at 3:40 p.m.)

--- END OF TRANSCRIPT OF RECORD ---

STATE OF SOUTH CAROLINA

County/Municipality of LAURENS

SEARCH WARRANT

Date/Time 01/17/2017

Officer SGT MATTHEW A VEAL

=====



APPX 262

0.2-1

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

R. 260

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY

OF LAURENS

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

PREMISES TO BE SEARCHED IS LOCATED AT 629 WHITMIRE HWY APARTMENT #4, LAURENS COUNTY GIS PARCEL # 714-00-00-011. THE APARTMENTS ARE BROWN IN COLOR AND NUMBERED WITH THE NUMBER 4 ON THE DOOR. SEARCH IS TO INCLUDE THE APARTMENT, PERSONS, VEHICLES, AND OUTBUILDINGS ASSOCIATED WITH APARTMENT #4.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

PROPERTY SOUGHT IS TO INCLUDE BUT NOT LIMITED TO ANY AND ALL ITEMS OF EVIDENTIARY VALUE PERTAINING TO THE SALE/TRADE OF ILLEGAL NARCOTICS (PARTICULARLY METHAMPHETAMINE, CRACK COCAINE, AND MARIJUANA) SUCH AS ILLEGAL NARCOTICS, SCALES, MONIES, LETTERS, PAPERS, DOCUMENTS, PACKAGING MATERIALS USED FOR THE STORAGE / TRANSPORTATION / SALE OF ILLEGAL NARCOTICS, DRUG PARAPHERNALIA, WEAPONS, ETC.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

LAURENS

, S.C.

dated: 1-17-17 Time: 11:50 AMPaul D. Tyler

Signature of Judge

(L.S.)

PR-2

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

AFFIDAVIT

R. 261

Personally appeared before me, one SGT. MATT VEAL
no, being duly sworn, says that there is probably cause to believe that certain property subject to seizure under provisions
of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

PROPERTY SOUGHT IS TO INCLUDE BUT NOT LIMITED TO ANY AND ALL ITEMS OF EVIDENTIARY VALUE PERTAINING TO THE SALE/TRADE
OF ILLEGAL NARCOTICS (PARTICULARLY METHAMPHETAMINE, CRACK COCAINE, AND MARIJUANA) SUCH AS ILLEGAL NARCOTICS, SCALES,
MONIES, LETTERS, PAPERS, DOCUMENTS, PACKAGING MATERIALS USED FOR THE STORAGE / TRANSPORTATION / SALE OF ILLEGAL
NARCOTICS, DRUG PARAPHERNALIA, WEAPONS, ETC.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

PREMISES TO BE SEARCHED IS LOCATED AT 629 WHITMIRE HWY APARTMENT #4, LAURENS COUNTY GIS PARCEL # 714-00-00-011. THE
APARTMENTS ARE BROWN IN COLOR AND NUMBERED WITH THE NUMBER 4 ON THE DOOR. SEARCH IS TO INCLUDE THE APARTMENT,
PERSONS, VEHICLES, AND OUTBUILDINGS ASSOCIATED WITH APARTMENT #4.

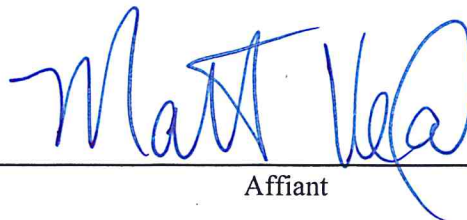
REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

ON 01/17/2017 INVESTIGATORS SWEAT AND INVESTIGATOR NATIONS WENT TO LOCATION LISTED TO BE SEARCHED IN REFERENCE TO
UG ACTIVITY. UPON ARRIVAL WAS GIVEN CONSENT TO SEARCH RESIDENCE FOR PERSONS AND NOTICED IN PLAIN VIEW WHAT
APPEARED TO BE A BAG OF CRACK COCAINE. INVESTIGATOR SWEAT ALSO NOTICED SUBJECT, TRAY FERGUSON, WAS PUTTING HIS HANDS
IN POCKETS AND WAS ASKED NOT TO SEVERAL TIMES. INVESTIGATOR SWEAT CONDUCTED A TERRY FRISK OF MR FERGUSON AND FOUND A
HARD OBJECT IN FRONT POCKET. WHEN THE ITEM WAS REMOVED HE BELIEVED IT TO METHAMPHETAMINE IN A GLASS VILE. ALSO IN
PLAIN VIEW WAS A MARIJUANA SMOKING PIPE WITH RESIDUE. AFTER LAWFUL CONSENT TO GO INTO RESIDENCE INVESTIGATORS
BELIEVE MORE ITEMS MAY BE LOCATED WITH APARTMENT.

Sworn to and Subscribed before me

this 17 day of JANUARY, 2017.

Signature of Judge

Time: 11:50AM
AffiantAddress P.O BOX 68LAURENS SC 29360Phone 864-984-4967

Date Printed: 01/17/2017 11:43:52 AM

APP'X 264

PR-3

RETURN

I received the attached Search Warrant _____, and have executed it as follows:

On January 17, 2017 at 12:30 o'clock PM, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with _____

Name of person searched or "at the place of search" with.

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

one vial w/ green in color cap, 2-pills marked "TV 7295" 1-pill marked "S 716" 2-pill fragments
 Dark in color glass pipe w/ burnt residue one make-shift pipe 2-Alan wrenches, 1-screw driver 2-off
 white rock-like substances off white-rock like substance in plastic bag, one blue in color
 bottle cap w/ hole, 2-coffee filters, off white-powder substance in plastic bag, Green and
 white in color box containing one glass pipe, razor blade portion of copper wood
 3-generator bottles, 1-sulfuric acid, 1-cap with tubing, 1-clear tube 3-one-pot meth labs,
 1-glass jar with clear liquid, 1-metal strainer, 2-18 oz drain-o crystals, 2-clear
 bags containing pill wash, 1-pack of coffee filters, 3-one pound containers of
 iodized salts, 1-pack ammonium nitrate (cold pack), 1-plastic bag of epsom salts,
 1-8oz container of lighter fluid, 1-12oz container of lighter fluid.

This inventory was made in the presence of Inv. S Sweat

AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 19TH

day of JANUARY, 2017.

P D Lyle

Signature of Judge

(L.S.)

(Signature of Officer Executing Warrant)

Date Printed: 01/17/2017 11:43:52 AM

Time: 2:00pm



R. 264

JAH
6/10/18

LAURENS COUNTY



911 Department

Joey Avery, ENP, CEM
EMA Director
JAVERY@Co.Laurens.SC.USTavi H. Hughes
911 Administrative Assistant
Thughes@Co.Laurens.SC.US

CFS - Command Log

Printed on October 30, 2018

CFS # 2017-00003236
Call Taker Jodi Shea
Location 629 WHITMIRE HWY APT 4, JOANNA, SC
Location Details
Primary Incident Code 1086 : Out of Vehicle, Subject to Call
Mod
Use Caution No
Primary Disposition Arrest Made
Zone 3
Call Time 01/17/17 11:13:40
Completed Time 01/17/17 15:05:40

Reporters

263 /SWEAT (Initial Reporter)

Sex
DOB
Address
Report Time 01/17/17 11:13:40
How Reported OFFICER
From Phone
Contact Phone
Comments

Other Names

Vehicles

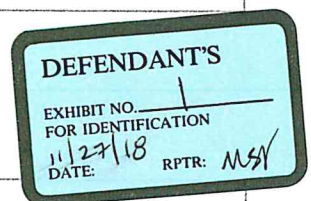
Responders

219	D2 - Shea, Jodi	LCSO (Primary)
234	D2 - Shea, Jodi	LCSO (Primary)
255	D2 - Shea, Jodi	LCSO (Primary)
263	D2 - Shea, Jodi	LCSO (Primary)

Response Times

Assigned 01/17/17 11:13:57 *
Enroute 01/17/17 11:13:57 *
Arrived 01/17/17 11:13:57
Completed 01/17/17 15:05:40

IR / External Agency Numbers



APP'X 267

SA
6 Nov 16

Command Log

01/17/17 11:13:40 | Shea, Jodi | CALLED OUT AT THIS LOCATION. NO FURTHER INFO
 01/17/17 11:13:57 | Shea, Jodi | 263 | On Scene - WHITMIRE HWY
 01/17/17 11:14:03 | Shea, Jodi | 234 | On Scene
 01/17/17 11:20:21 | Shea, Jodi | 234 | 2 BM INV DETN
 01/17/17 11:32:10 | Shea, Jodi | 255 | On Scene
 01/17/17 12:45:54 | Garrett, Jenny | TO: LAUCC002-152042 20170117 12:44:59 07318673FF
 FROM: DMV3-8811519 20170117 12:44:59 201500E15A
 TXREF SC030013P201500E15A
 XREF
 ID NO [REDACTED] ACN: [REDACTED]
 COUEY, JAMIE LYNN
 [REDACTED]
 [REDACTED]
 [REDACTED]
 SEX F HGT 5 04 WGT 130 BIRTH [REDACTED]
 SSN [REDACTED] RACE WHITE
 STATUS-DL:SUSPENDED CDL:DISQUALIFIED
 **** IDENTIFICATION ONLY **** ISSUED 08/07/2016 ACN [REDACTED]
 ** MORE **
 01/17/17 12:45:57 | Garrett, Jenny | TO: LAUCC002-152043 20170117 12:44:59 0731867400
 FROM: DMV3-8811520 20170117 12:44:59 201500E15A
 TXREF SC030013P201500E15A
 XREF
 OLN = 0007734169 ACN: 1011526600071551
 SUSP Owner Operating an Uninsured M BEG 08/08/2015 END INDEFINITE CAU 05/05/2015
 SUSP Driving Under Suspension BEG 05/07/2016 END 11/07/2016 CAU 05/05/2015
 SUSP Driving Under the Influence BEG 11/06/2015 END 05/06/2016 CAU 05/05/2015
 SUSP Implied Consent BEG 05/05/2015 END 11/05/2015 CAU 05/05/2015
 SUSP Cancellation of Insurance BEG 03/11/2015 END INDEFINITE CAU 01/29/2015
 SUSP Failure to Pay Property Tax BEG 08/21/2012 END 12/07/2012 CAU 08/01/2012
 SUSP Failure to Pay Traffic Ticket BEG 11/21/2011 END 02/17/2012 CAU 08/24/2011
 SUSP Cancellation of Insurance BEG 01/04/2008 END 01/05/2008 CAU 11/14/2007
 SUSP Failure to Pay Traffic Ticket BEG 10/20/1997 END 01/04/1999 CAU 03/31/1997
 ** END OF INQUIRY **
 01/17/17 12:46:09 | Garrett, Jenny | NCIC CLEAR ON COUEY, JAMIE LYNN
 01/17/17 13:17:58 | Shea, Jodi | 234 | Create External Number - Dept: L01. Remark / Run#: 0000000435. ESN: 7311.
 01/17/17 13:18:18 | Shea, Jodi | 219 | On Scene
 01/17/17 13:47:39 | Shea, Jodi | 219 | Available
 01/17/17 13:48:36 | Shea, Jodi | 263 | Available
 01/17/17 14:09:29 | Shea, Jodi | 255 | Available
 01/17/17 14:09:46 | Shea, Jodi | 255 | On Scene
 01/17/17 14:10:01 | Shea, Jodi | 255 | 1095 2BM
 01/17/17 14:14:35 | Shea, Jodi | 255 | Enroute - 1095 ADDITIONAL WM
 01/17/17 14:22:59 | Shea, Jodi | 219 | On Scene
 01/17/17 14:23:14 | Shea, Jodi | 263 | On Scene
 01/17/17 14:42:43 | Shea, Jodi | 255 | 35B
 01/17/17 14:53:49 | Shea, Jodi | 255 | Available
 01/17/17 15:05:20 | Shea, Jodi | 234 | Available
 01/17/17 15:05:29 | Shea, Jodi | 263 | Available
 01/17/17 15:05:39 | Shea, Jodi | 219 | Available
 01/17/17 15:05:40 | Shea, Jodi | 219 | Complete - Closed Call.

get
16 Nov
.18

R. 266

CLQ

Requested At
Sent To
Status
Received At
Location
Accuracy

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LAURENS	)	
	)	INDICTMENT NOs.:
State of South Carolina	)	17-GS-30-948; -949; -950; -951
	)	
v.	)	Motion to Suppress
	)	
Sylvester Ferguson, III	)	
	)	
Defendant.	)	
	)	

FACTS

On January 17th, 2017, an unnamed black male stopped Laurens County Sheriff's Office Deputy Andrew Hall at a gas station on Highway 66 in Joanna, South Carolina. The unnamed black male stated Sylvester Ferguson was "cooking dope" at the apartments on Highway 66. Later the same day, Deputy Hall contacted Laurens County Sheriff's Office Investigator Charles Nations who decided to go the location, along with Investigator Stephen Sweat, to investigate the complaint.

The officers arrived at the apartments located at 629 Highway 66, Joanna, South Carolina at 11:13 a.m. and approached apartment #4 on the second floor of the building. When Investigator Nations reached the front door to the apartment, a black male opened the door and greeted the officers. Investigator Nations asked the black male, Henry Lee Davis, if Sylvester Ferguson was there, Mr. Davis told Nations he was there, and Nations asked Davis to get Ferguson.

As Davis turned and walked towards the kitchen to get Ferguson, he left the front door open and the officers stepped inside the apartment. All evidence related to this case was located as a result of the knock and talk.

ARGUMENT

The Fourth Amendment to the United States Constitution protects a person's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. The South Carolina Constitution also provides a safeguard against unlawful searches and seizures. *See State v. Forrester*, 343 S.C. 637, 541 S.E.2d 837 (2001) (citing S.C. Const. Art. I, § 10). The relationship between the constitutions is significant because 'state courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution.'" *Forrester*, 343 S.C. at 643, 541 S.E.2d at 840 (quoting *State v. Easler*, 327 S.C. 121, 131 n. 13, 489 S.E.2d 617, 625 n. 13 (1997)). "Therefore, state courts can develop state law to provide their citizens with a second layer of constitutional rights." *Id.* Accordingly, this Court may interpret the state protection against unreasonable searches and seizures in such a way as to provide *greater protection* to its people than the federal Constitution. *See id.*

The South Carolina Constitution provides citizens an express right to privacy. S.C. Const. art. I, § 10. The South Carolina Supreme Court has discussed this heightened right to privacy in *Forrester*, *State v. Weaver*, 374 S.C. 313, 649 S.E.2d 479 (2007) and most recently in *State v. Counts*, 413 S.C. 153, 776 S.E.2d 59 (2015). In *Counts*, the Court analyzed in *Forrester* and *Weaver* and emphasized that "our state constitution's provisions protecting unreasonable invasions of privacy *necessarily requires* some analysis of the privacy interests involved when a warrantless seizure is made on private property." *Weaver*, 374 S.C. at 326, 649 S.E.2d at 485 (Pleicones, J., concurring)(emphasis added).

The exclusionary rule also prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine. *See Wong Sun v. United States*, 371 U.S. 471, 484 (1963); *see also State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999) (finding if the police exploit an unlawful search to seize evidence that would

not have otherwise come to light, that evidence is the “fruit of the poisonous tree,” and is not admissible); *Forrester*, 343 S.C. at 643, 541 S.E.2d at 840. The Fourteenth Amendment incorporates the rule of excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

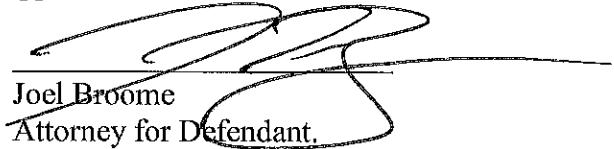
“Law enforcement must have *reasonable suspicion* of illegal activity *before approaching* the targeted residence and conducting the “knock and talk” investigative technique.” *Counts*, 413 S.C. at 174, 649 S.E. 2d at 498 (emphasis added). A knock and talk “occurs when a law enforcement officer...approaches a residence by a route available to the general public, knocks on the front door of the residence, and speaks with an occupant of the residence who responds to the knocking.” 68 Am. Jur. 2d *Searches and Seizures* § 21 (2010). The Court in *Counts* explained “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 law enforcement targets a neighborhood and indiscriminately knocks on doors with the hope of discovering contraband without a search warrant. Although the State maintains these encounters are entirely consensual, we cannot ignore the nature of the “knock and talk” procedure. In contrast to a routine sales call, the “knock and talk” technique is inherently coercive as it is conducted by law enforcement and not a private citizen.” *Counts*, 413 S.C. at 172.

Reasonable suspicion necessary for a knock and talk cannot arise from a mere tip. The Supreme Court has held that reasonable suspicion based solely on a call made from an unknown location by an unknown caller lacks sufficient indicia of reliability to make an investigatory stop. *Florida v. J.L.*, 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000). (Kennedy, J., and Rehnquist, C.J., concurring).² In *J.L.*, the police received an anonymous tip that a young black male, standing at a particular bus stop, wearing a plaid shirt, was carrying a gun. Officers went to

the bus stop and observed three black males, one of whom was wearing a plaid shirt. They frisked all three males, based only on the anonymous tip, and found a gun in J.L.'s pocket. The Court found that the tip provided no predictive information and therefore left the police no way to test the knowledge or credibility of the anonymous caller. An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. "[R]easonable suspicion ... requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person."

A law enforcement officer must have a warrant to enter a home for the purpose of conducting a search, *See State v. Counts*, 413 S.C. 153, 163, 776 S.E.2d 59, 65 (2015) (stating "the Fourth Amendment requires the police to have a warrant in order to conduct a search"), unless an exception applies, *see State v. Brown*, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012) (listing exceptions to the warrant requirement). *See generally State v. Robinson*, 410 S.C. 519, 526, 765 S.E.2d 564, 568 (2014) (stating "warrantless searches and seizures inside a man's home are presumptively unreasonable absent a recognized exception to the warrant requirement").

In the present case, the officers received a tip from a person that can only be described as a black male. Similar to *J. L.*, *supra*, here was no information that the tip was reliable prior to the search. Therefore the officers did not have reasonable suspicion to knock and talk. Therefore the evidence obtained during the resulting searches should be suppressed.



Joel Broome
Attorney for Defendant.

R. 271

WITNESSES

Charles Nations
Laurens County Sheriff

WARRANT NUMBER

2017A3010100034

True Bill



Foreman of the Grand Jury

Date: 5/19/2017

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2017

Indictment # 17GS30-0948

THE STATE

vs.

Sylvester Ferguson III

INDICTMENT FOR

Possession of Methamphetamine

§44-53-0375

CDR: 3017

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF LAURENS

Possession of Methamphetamine
§44-53-0375

At a Court of General Sessions, convened on the 19 day of May, 2017, the Grand Jurors of Laurens County present upon their oath:

That Sylvester Ferguson III did, on or about January 17, 2017, in Laurens County, willfully, unlawfully, and knowingly possess, or attempt to possess a quantity of methamphetamine, in violation of the provisions of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

R. 273

WITNESSES

Charles Nations
Laurens County Sheriff

WARRANT NUMBER

2017A3010100035

True Bill

Richard Patten

Foreman of the Grand Jury

Date: 5/19/2017

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2017

Indictment # 17GS30- 0949

THE STATE

vs.

Sylvester Ferguson III

INDICTMENT FOR

Possession of Crack Cocaine
§44-53-0375

CDR: 3017

APP'X 276

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

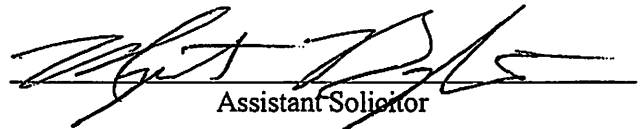
COUNTY OF LAURENS

Possession of Crack Cocaine
§44-53-0375

At a Court of General Sessions, convened on the 19th day of May, 2017, the Grand Jurors of Laurens County present upon their oath:

That Sylvester Ferguson III did, on or about January 17, 2017, in Laurens County, willfully, unlawfully, and knowingly possess, or attempt to possess a quantity of cocaine base (crack cocaine), in violation of the provisions of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

R.275

WITNESSES

Charles Nations
Laurens County Sheriff

WARRANT NUMBER

2017A3010100036

True Bill



Foreman of the Grand Jury

Date: 5/19/2017

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2017

Indictment # 17GS30- 0950

THE STATE

vs.

Sylvester Ferguson III

INDICTMENT FOR

Manufacturing Methamphetamine
§44-53-0375(B)

CDR: 3777

APP'X 278

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF LAURENS

Manufacturing Methamphetamine
§44-53-0375(B)

At a Court of General Sessions, convened on the 19th day of May, 2017, the Grand Jurors of Laurens County present upon their oath:

That Sylvester Ferguson III did, on or about January 17, 2017, in Laurens County, willfully, unlawfully and knowingly manufacture or otherwise aid, abet, attempt or conspire to manufacture Methamphetamine, in violation of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Indictment No. 2017-GS-30-0948; 0949; 0950

State of South Carolina, ...Appellant,

v.

Sylvester Ferguson, III, ...Respondent.

NOTICE OF APPEAL

The State of South Carolina appeals the ruling of the Honorable Frank R. Addy, Jr., with respect to suppression of evidence alleged to have been associated with Defendant, pronounced orally on November 27, 2018. This notice of appeal is filed pursuant to S.C. Code Ann. § 14-3-330(2)(a) because the trial judge's order affects a substantial right and prevents a judgment from which an appeal might be taken.

November 29, 2018

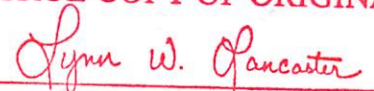


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Lynn W. Lancaster
Laurens County CCCP & GS

APP'X 280

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies this Record on Appeal contains all material proposed to be included by the parties and not any other material and this Record on Appeal complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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May 20, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2018-002133

THE STATE,

Appellant,

vs.

SYLVESTER FERGUSON, III,

Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge reversibly err by 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

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 a notice of appeal.¹

¹ Because the trial judge's suppression of the drugs substantially impairs the State's ability to prosecute Ferguson for the indicted drug-related offenses, the State can properly appeal the trial judge's suppression ruling. See State v. McKnight, 287 S.C. 167, 168, 337 S.E.2d 208, 209 (1985) ("A pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable[.]").

STATEMENT OF FACTS

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. (R. pp. 7-8; p. 11). When he did so, a man with whom Deputy Hall was not previously familiar approached the store on foot and began waving at the officer to get his attention. (R. pp. 8-10). 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 to find out what he wanted. (R. p. 9; p. 18). 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. (R. p. 9; p. 11; p. 17; p. 19; p. 24; p. 86). 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. (R. p. 11; p. 24; p. 80; p. 86; pp. 182-183).

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. (R. pp. 10-11; p. 26; p. 105). 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. (R. pp. 150-152; p. 157; p. 159; pp. 176-178; pp. 180-181; p. 188; p. 195).

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 sheriff’s office’s narcotics unit and who was also familiar with Ferguson based on Ferguson’s past involvement with drugs. (R. pp. 10-11; pp. 19-20; pp. 25-28; pp. 79-81; pp. 85-88; p. 102; p. 105; p. 152; p. 172; pp. 179-181; p. 190).

A few minutes later and just twenty to thirty minutes after the citizen provided the tip about Ferguson to Deputy Hall, the three officers, who were wearing badges and other law enforcement attire, 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. (R. p. 11; p. 27; pp. 68-69; pp. 87-88; pp. 155-156; p. 263). 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.² (R. p. 28; p. 49; p. 62; pp. 155-156; pp. 183-184; p. 191; p. 196; p. 198; pp. 202-206; p. 209). At that point, Investigator Nations identified himself, greeted Davis, and asked him if Ferguson was inside the apartment. (R. p. 29; p. 66; p. 88; p. 156; pp. 183-184). In response to the question, Davis confirmed Ferguson was inside, started to head back into the apartment to retrieve Ferguson, and gestured for Investigator Nations to follow him

² 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. (R. p. 28; pp. 183-184). 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. (R. pp. 203-204).

while leaving the door open.³ (R. pp. 29-30; p. 66; p. 70; p. 88). 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. (R. pp. 29-31; pp. 88-89; pp. 183-184).

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. (R. pp. 31-32; p. 88; p. 233). 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. (R. pp. 32-33; pp. 72-73; pp. 88-89; pp. 184-185). Following that, Ferguson—after some initial hesitation—also provided consent to the investigators for a walkthrough search. (R. pp. 32-33; pp. 88-89; pp. 184-185).

Once consent had been obtained, Investigator Nations and Investigator Sweat split up and conducted a quick sweep of the apartment.⁴ (R. pp. 33-34; p. 89). 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 a package of crack cocaine in plain view. (R. p. 33). Meanwhile, Investigator Sweat located a pipe with marijuana residue on it in plain view on a table in the apartment's living room. (R. p. 34; p. 89). Based on their observations, the officers contacted Sergeant Matt Veal, who was the supervisor of the Laurens

³ Later on during the trial proceedings, Davis confirmed he provided consent to the officers to enter his apartment after making contact with them. (R. p. 204).

⁴ 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. (R. pp. 171-172). However, he had been unable to detect that odor through an open window prior to making entry into the apartment. (R. p. 170).

County Sheriff's Office's narcotics unit, and asked him to obtain a search warrant for the apartment. (R. p. 34; p. 90; p. 105).

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. (R. p. 35; p. 90). 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. (R. pp. 35-36; pp. 91-94). At that point, Investigator Sweat removed the vial and discovered both methamphetamine and crack cocaine inside. (R. p. 91; p. 100).

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 unknown substances found in the apartment, and those substances tested positive for methamphetamine. (R. p. 96). Both Ferguson and Davis were then placed under arrest.⁵ (R. p. 25; p. 41; p. 209).

⁵ Davis's charges were later unconditionally dismissed. (R. pp. 209-210).

Subsequently, Ferguson was indicted for a litany of drug-related charges, and his case proceeded forward to trial. (R. p. 1; p. 4; pp. 271-276). At the outset of trial, defense counsel moved to suppress the drugs and other incriminating evidence found during the search of the apartment pursuant to both the state and federal constitutions, and the trial judge conducted an in limine hearing on the matter. (R. p. 6). 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. (R. pp. 7-81; pp. 85-103; pp. 105-108; pp. 150-195). 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. (R. pp. 10-11; pp. 19-20; pp. 26-27; p. 87; p. 102; pp. 150-152; pp. 159-160; pp. 179-181; p. 188; p. 190). 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.⁶ (R. pp. 196-210).

⁶ During his testimony, Davis also stated he lived alone in the apartment and asserted Ferguson was merely visiting on the morning of the incident. (R. pp. 199-202; p. 205; p. 209). 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. (R. p. 32; pp. 151-152). Based on Investigator Nations's testimony in that regard, the trial judge

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 constitutional rights. (R. p. 110). 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.⁷ (R. pp. 110-112; p. 134; pp. 137-139; pp. 221-222). 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. (R. p. 218; pp. 221-222; p. 228).

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. (R. p. 121; pp. 235-236). 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

determined Ferguson had a possessory interest in the apartment and could properly raise a constitutional challenge to the propriety of the officers' actions. (R. p. 215).

⁷ Directly before making his arguments to the trial judge, defense counsel presented the trial judge and solicitor with a written motion to suppress that had not previously been submitted. (R. p. 109; pp. 267-270).

the credibility of an individual who was directly providing information to him.⁸ (R. p. 123; pp. 125-126; pp. 143-144; p. 233; pp. 247-249).

Upon considering the matter, the trial judge granted defense counsel's motion to suppress. (R. p. 245; pp. 254-256). In doing so, the trial judge correctly found the officers' 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. (R. p. 130). 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. (R. p. 232; p. 243; p. 245). In reaching that determination, the trial judge concluded the tip the officers relied upon was "anonymous" and lacked corroboration.⁹ (R. pp. 126-127; pp. 145-146; pp. 244-245; pp. 252-253). 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. (R. pp. 230-231; pp. 233-234; p. 244; p. 252). However, the trial judge conceded the issue was "a very close call" and invited the solicitor to appeal the ruling. (R. p. 242; p. 245; p. 253). The solicitor then did just that. (R. pp. 245-246; p. 277).

⁸ 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. (R. p. 249; p. 251).

⁹ 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. (R. p. 245).

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

Did the trial judge reversibly err by 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?

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, which he found was required under the circumstances. Contrary to the trial judge's ruling, the evidence and testimony presented during the suppression hearing established the officers did not trigger a need for reasonable suspicion in Ferguson's case because they did not actually conduct a "knock-and-talk" and, instead, engaged in a consensual encounter with one of the apartment's occupants prior to entering the apartment's curtilage. Moreover, even if the officers needed to have reasonable suspicion before approaching the apartment, the evidence and testimony presented during the suppression hearing established the officers possessed reasonable suspicion of criminal activity based on the information they received from a non-anonymous concerned citizen during a face-to-face encounter coupled with their knowledge of Ferguson's past criminal history and the high-crime nature of the area where Ferguson was reported to have actively been engaged in the act of manufacturing methamphetamine. Under such circumstances, the officers' actions were entirely reasonable and did not constitute an unreasonable invasion of Ferguson's right to privacy, and the trial judge's conclusions to the contrary were clearly erroneous as a

matter of law. The trial judge’s suppression ruling should be reversed, and Ferguson’s case should be remanded for trial.

The Fourth Amendment of the United States Constitution protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. In addition to those protections, the South Carolina Constitution provides its own protections to the state’s citizens against unreasonable searches and seizures. State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); 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[.]”). Furthermore, primarily in order to guard against invasive technological advancements, the South Carolina Constitution also expressly protects our citizens from “unreasonable invasions of privacy.” S.C. Const. art. I, § 10; see Forrester, 343 S.C. at 647, 541 S.E.2d at 842 (“[T]he drafters of our state constitution’s right to privacy provision were principally concerned with the emergence of new electronic technologies that increased the government’s ability to conduct searches.”).

Through the additional provision regarding invasions of privacy, “the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution.” State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007). Thus, “the South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” Id. However, the South Carolina Constitution by its express language only forbids searches, seizures, and invasions of privacy that are *unreasonable*. S.C. Const. art. I, § 10; see State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) (“It is only unreasonable searches and seizures that are prohibited.”);

see also Maryland v. Buie, 494 U.S. 325, 331 (1990) (“It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]”). Accordingly, just like the search and seizure protections offered by the federal constitution, the touchstone of our state constitution’s search and seizure protections is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) (“The touchstone of the Fourth Amendment is reasonableness.”); see also Heien v. North Carolina, 574 U.S. 54, 60-61 (2014) (“To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’ ” (citation omitted)).

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 the citizens of 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 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, our Supreme Court in State v. Counts, 413 S.C. 153, 167, 776 S.E.2d 59, 67 (2015), recently 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. After analyzing the issue, a majority of the Supreme 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. Id. 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 suspicion before conducting a “knock-and-talk” when investigating a potential crime. Id.

In a general sense, reasonable suspicion has been described as consisting of “ ‘a particularized and objective basis’ that would lead one to suspect another of criminal activity.” State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). Significantly, the reasonable suspicion standard “is not a

high bar.” United States v. Coker, 648 F. App’x 541, 544 (6th Cir. 2016) (citing Navarette v. California, 572 U.S. 393 (2014)). To the contrary, it “is a less demanding standard than probable cause” and simply requires a showing of “a *minimal* level of objective justification” in order to be established. Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (emphasis added); see Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing even the probable cause standard “is not a high bar”). The concept of reasonable suspicion “is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.” State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (citation and internal quotations omitted), aff’d, 405 S.C. 101, 747 S.E.2d 453 (2013). Stated simply, it is more than “a general hunch” but less than what is necessary to establish probable cause. State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); see State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) (“Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch.”).

When determining the existence of reasonable suspicion, the totality of the circumstances must be considered. State v. Pichardo, 367 S.C. 84, 104, 623 S.E.2d 840, 851 (Ct. App. 2005). In reviewing the totality of the circumstances, the individual factors present must not be considered piecemeal or in isolation. See United States v. Arvizu, 534 U.S. 266, 273 (2002) (instructing courts are precluded from conducting a “divide-and-conquer analysis” when considering the totality of the circumstances). Instead, all of the circumstances, including the officer’s own experience and specialized training, must be considered as a whole to determine whether the officer’s actions were reasonable in light of all the information available to him at the time. See id. (“[W]e have said repeatedly that [reviewing courts] must look at the ‘totality of

the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing. The process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’ ” (citations omitted)). Thus, the presence of several factors that are seemingly innocent can establish reasonable suspicion when viewed together in totality. United States v. Sokolow, 490 U.S. 1, 9 (1989); see Wardlow, 528 U.S. at 125-126 (recognizing factors that are “susceptible of an innocent explanation” can establish reasonable suspicion and probable cause).

In the case sub judice, the officers received a face-to-face tip from a concerned citizen relaying specific information about Ferguson’s precise location and indicating Ferguson was presently engaged in an inherently dangerous criminal activity inside a multi-unit apartment building. See 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”). Significantly, the information provided by the concerned citizen was 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 criminal history. 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 certainly 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 District of Columbia v. Wesby, ___ U.S. ___, 138 S. Ct. 577, 586 (2018) (recognizing even the probable cause standard is not a high bar to meet). In fact, from the prospective 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 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.”).

In finding the officers’ actions to be constitutionally improper, the trial judge found the officers triggered a constitutional need for reasonable suspicion by approaching the apartment even though they did not actually make it to the apartment’s door and knock prior to encountering one of its occupants. Furthermore, primarily due to the fact he did not believe the face-to-face tip received by the concerned citizen was sufficient to establish reasonable suspicion absent corroboration, the trial judge found the officers’ actions in approaching the apartment under the circumstances were not constitutionally reasonable and, as a result, suppressed the

incriminating evidence they discovered after entering the apartment.¹⁰ Significantly though, when the totality of the circumstances and information available to the officers are considered in the proper light, the officers' actions in approaching the apartment to follow up on a face-to-face tip provided by a non-anonymous concerned citizen were entirely reasonable from a constitutional standpoint, and the trial judge's conclusions to the contrary were clearly erroneous.

Demonstrating the erroneous nature of the trial judge's suppression ruling, the trial judge's conclusion a need for reasonable suspicion was triggered in Ferguson's case was clearly erroneous because the officers neither actually conducted a "knock-and-talk" nor entered a constitutionally-protected area prior to making contact with Davis and corroborating Ferguson was inside the apartment just as described in the citizen's tip. Critically, at the time the officers encountered Davis, they were on the shared exterior stairwell of a multi-unit apartment building and, therefore, were *not* in the curtilage of Davis's apartment such that they could properly be found to have treaded upon any legitimate privacy expectations that could have been held by the apartment's occupants. 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

¹⁰ In explaining his ruling, the trial judge emphasized it hinged on "the fact that no one knew who the initial tipster was who made this report" and "none of that information from that initial anonymous tipster was corroborated." (R. p. 252).

the privacies of life” (citation and internal quotations omitted)). Moreover, the officers did not actually make it to the apartment’s door *or actually knock on it* before encountering Davis and obtaining important corroborative information from him during an unquestionably consensual encounter. 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)). Under such circumstances, the officers had not yet undertaken any actions requiring a constitutional need for reasonable suspicion before they were able to corroborate through Davis critical information contained in the tip they had received in the face-to-face encounter with the concerned citizen. 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 Counts, 413 S.C. at 174, 776 S.E.2d at 71 (“[W]e hold that law enforcement must have reasonable suspicion of illegal activity before approaching the targeted residence *and conducting the ‘knock and talk’ investigative technique.*” (emphasis added)); 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 and internal quotations omitted)). As a result, the trial judge’s erroneous suppression ruling based on his belief a “knock-and-talk” had occurred in Ferguson’s case was predicated on a clear legal error.

However, even if the officers had somehow needed reasonable suspicion before interacting with Davis from the apartment building’s common stairwell, the trial judge’s suppression ruling was nonetheless still clearly erroneous because the officers actually possessed

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 officer 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 *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 very, very 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)). Accordingly, the trial judge’s conclusion the face-to-face tip—which he incorrectly characterized as anonymous—was not sufficiently reliable to establish reasonable suspicion was clearly erroneous and predicated on a mistaken belief regarding what was necessary and required in order for officers to reasonably rely upon information received directly from concerned citizens. 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); see also United States v. Valentine, 232 F.3d 350, 354 (3rd Cir. 2000) (recognizing older, more rigid standards regarding informants have been replaced with “a flexible standard that assesses the relative value and reliability of an informant’s tip in light of the totality of the circumstances”).

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 a known area having 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 involved in *the exact type of activity* described in the tip in the past based on their knowledge of his prior criminal background. 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*. Although a person with a criminal record could not be pulled over or detained based on the record itself, such a record is one factor that may justify further detention and that may cast a suspicious light on other seemingly

innocent behavior.” (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 the trial judge’s ruling to the contrary erroneously elevated the level of information needed to establish the existence of reasonable suspicion beyond what is actually required. See 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); cf. Counts, 413 S.C. at 173, 776 S.E.2d at 70 (considering the officers’ knowledge of Count’s prior drug convictions in finding the officers possessed reasonable suspicion for a “knock-and-talk”).

Because the officers did *not* actually conduct a “knock-and-talk” and because they possessed reasonable suspicion of criminal activity even before they approached the apartment building to follow up on the tip, the trial judge 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); cf. Counts, 413 S.C. at 173, 776 S.E.2d at 70 (“[L]aw enforcement received two separate

anonymous tips from citizens who alleged that Counts was selling drugs. These tips also identified vehicles driven by Counts, his phone number, and his use of multiple identities. Through their investigation, the officers confirmed that Counts had two false identification cards on record and had prior drug convictions. In light of this evidence, 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.' ” (emphasis added)). Contrary to the trial judge's findings, the officers in Ferguson's case engaged in nothing other than good police work by reasonably acting on information supplied to them by a non-anonymous concerned citizen during a face-to-face encounter that was inherently reliable based upon the manner in which it was supplied coupled with the fact it was fully consistent with the officers' knowledge of Ferguson and the area in which he was reported to be manufacturing methamphetamine. See 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-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. Terry, 392 U.S. at 23 (instructing “[i]t would have been poor police work indeed” for an officer not to do anything further to investigate after developing a reasonable basis to believe criminal activity was afoot). Under such circumstances, 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 ruling of the circuit court judge should be reversed and the case should be remanded for trial.

Respectfully submitted,

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May 20, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2018-002133

THE STATE,

Appellant,

vs.

SYLVESTER FERGUSON, III,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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May 20, 2020

APP'X 312

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

APPELLANT,

V.

SYLVESTER FERGUSON, III,

RESPONDENT.

APPELLATE CASE NO. 2018-002133

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RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE ON APPEAL

Whether any evidence in the record supports the trial judge's suppression of evidence because the police lacked reasonable suspicion to approach the residence under the South Carolina Constitution?

STATEMENT OF THE CASE

A Laurens County grand jury indicted appellant for possession of methamphetamine, possession of crack cocaine, and manufacturing methamphetamine and on November 26, 2018, the case was called before the Honorable Frank R. Addy, Jr. R. 1. C. Dale Scott and Margaret G. Boykin represented the State. R. 1. Joel T. Broome and Tristan M. Shaffer represented respondent. R. 1. Judge Addy granted respondent's suppression motion and the State filed this appeal.

STANDARD OF REVIEW

“On appeal from a motion to suppress on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse only if there is clear error.” Robinson v. State, 407 S.C. 169, 180–81, 754 S.E.2d 862, 868 (2014). The same deferential standard of review applies to cases decided under the South Carolina Constitution. State v. Counts, 413 S.C. 153, 161, 776 S.E.2d 59, 63 (2015).

ARGUMENT

Ample evidence in the record supports the trial judge's suppression of evidence because the police lacked reasonable suspicion to approach the residence under the South Carolina Constitution.

All the police had before they approached the residence in this case was an uncorroborated anonymous tip. R. 78, l. 25 – 79, l. 12. Officer Andrew Hall was at a convenience station in Joanna, South Carolina when a black male waved him down. R. 8, l. 22 – 9, l. 5. The man told Officer Hall that appellant was at an apartment “cooking dope.” R. 17, l. 6 – 25. R. 9, l. 2 – 5. The officer did not know the black male who approached him at the convenience store. R. 9, l. 16 – 10, l. 2. The officer did not get the man’s name, address, or any further information from the tipster. R. 21, l. 16 – 24, l. 8. Instead of getting any other scrap or tidbit of information from the man, Officer Hall instead called Officer Charles Nations and “asked him if he was busy; if he’d like to come and try to a knock-and-talk with me at the apartment.” R. 10, l. 3 – 11.

The officers traveled to the apartment and conducted no further research or surveillance, but “decided, based upon this civilian complaint, to do a knock-and-talk at the residence.” R. 26, l. 6 – 17. Officer Nations at first said he knocked on the door. R. 28, l. 7 – 9. Upon prompting from the solicitor, he said he saw the window open, heard the lock turn, and then said “the knock side of it did not occur.” R. 28, l. 15 – 23.

A man named Henry Davis opened the door. R. 29, l. 1 – 7. The police asked if appellant was in the residence and Davis said he was. R. 29, l. 3 – 12. Davis made a motion indicating the police could enter the apartment, which they did. R. 29, l. 13 – 30, l. 14. Once inside the apartment, the police testified they found drugs “in plain view.” R. 30, l. 15 – 34, l.

18.

Following a lengthy hearing, Judge Addy suppressed the drugs based on the South Carolina Constitution's right to privacy. R. 241, l. 21 – 245, l. 18. Relying on State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015), the court found the police lacked reasonable suspicion to conduct the knock-and-talk. R. 241, l. 21 – 245, l. 18. The court found the police did no independent confirmation of the anonymous tip, stating, “They could’ve done something.” R. 245, l. 4 – 8. But without any further work at all, Judge Addy found that the anonymous tip—under the circumstances of this case—did not satisfy Counts’ reasonable suspicion requirement. R. 241, l. 21 – 245, l. 18.

The trial court’s ruling was correct and based on the evidence presented during the hearing, therefore, this Court must affirm under the standard of review. A judge’s ruling at a suppression hearing is reviewed under a deferential standard of review and only reverses when the decision is clearly erroneous. State v. Kotowski, 427 S.C. 119, 127, 828 S.E.2d 605, 609 (Ct. App. 2019), reh'g denied (June 21, 2019), cert. granted (Sept. 25, 2019). Judge Addy’s ruling was based on the largely undisputed facts that the police did nothing but receive an anonymous tip and decided to conduct a knock-and-talk with no further investigation or any attempt whatsoever to corroborate the anonymous tip.

South Carolina’s Constitution provides: “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.” S.C. Const. Art. I, Section 10. “The South Carolina Constitution, with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” State v. Forrester, 343 S.C. 637, 645, 541 S.E.2d 837,

841 (2001). “[T]he federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling.” Id. at 647, 541 S.E.2d at 842. According to the Supreme Court, “[t]he focus in the state constitution is on whether the invasion of privacy is reasonable, regardless of the person’s expectation of privacy” in the place searched. State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007). “By articulating a specific prohibition against ‘unreasonable invasions of privacy,’ the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution.” Id. (citing Forrester, 343 S.C. at 644-45, 541 S.E.2d at 841).

In Counts, the Court held expanded our citizens’ right to privacy by holding “that law enforcement must have reasonable suspicion of illegal activity at a targeted residence **prior to approaching the residence** and knocking on the door.” Counts at 172, 776 S.E.2d at 70 (emphasis added). The Court reasoned, “we find this rule safeguards the express constitutional right against unreasonable invasions of privacy and does not hamper law enforcement in their investigative efforts.” Id. The State contends in its brief that a knock-and-talk never happened because Davis opened the door before the police knocked, but this attempt to circumvent Counts fails because of the above-emphasized language. The police must have reasonable suspicion before they approach a residence and here they did not. Accepting the State’s loophole would invite police mischief and fails to respect the basis of Counts, which is the inherently coercive nature of the police targeting and approaching a residence.

The knock-and-talk in Counts was only upheld after the police corroborated two anonymous tips. Id. at 173-74, 776 S.E.2d at 70-71. The tips identified Counts’ vehicles. Id. The tips gave Counts’ phone number. Id. The tips gave Counts’ multiple identities. Id. The officers investigated and determined that Counts had two false identification cards. Id. The

police also learned Counts had two prior drug convictions. Id. The police here did none of the things that gave them reasonable suspicion in Counts.

The recent interpretation of Counts in Kotowski further shows the lack of any effort to satisfy the reasonable suspicion standard in this case. Kotowski at 129, 828 S.E.2d at 610. In Kotowski, the police did not just rely on an anonymous tip before conducting a knock-and-talk. Id. The police conducted surveillance. Id. The surveillance revealed a car belonging to the son of a convicted meth cook. Id. The police also examined the sudafed database which revealed a substantial amount of purchases. Id. Here, the police did not even take these minimally sufficient steps that were performed in Kotowski.

Finally, the State claims that because the anonymous tip here was face-to-face, it satisfies reasonable suspicion. Face-to-face tips do not, however, as a matter of law, satisfy reasonable suspicion. The State's argument on this point forgets the standard of review and that Judge Addy found that this brief encounter at a gas station—with no follow-up whatsoever by the police—did not satisfy reasonable suspicion. The State's position would eliminate discretion for trial judges in these cases. Because ample evidence exists to support the lower court's ruling, this Court should affirm.

CONCLUSION

The ruling of the lower court should be affirmed.

This 22nd day of May, 2020.

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

May 22, 2020.

s/David Alexander
Appellate Defender

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ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Appellant,

v.

Sylvester Ferguson, III, Respondent.

Appellate Case No. 2018-002133

Appeal From Laurens County
Frank R. Addy, Jr., Circuit Court Judge

Opinion No. 5915
Heard February 10, 2022 – Filed June 1, 2022

AFFIRMED

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General Mark Reynolds Farthing, both of Columbia; and Solicitor David Matthew Stumbo, of Greenwood, all for Appellant.

Appellate Defender David Alexander, of Columbia, for Respondent.

WILLIAMS, C.J.: In this criminal appeal, pursuant to Article I, Section 10 of the South Carolina Constitution, the trial court suppressed evidence of methamphetamine production that officers found inside an apartment occupied by Sylvester Ferguson. The State argues the trial court erred in (1) finding officers needed a reasonable suspicion of criminal activity before approaching the

apartment to conduct a "knock and talk" and (2) ruling the officers did not have a reasonable suspicion to approach the apartment. We affirm.

FACTS/PROCEDURAL HISTORY

On January 17, 2017, Laurens County Sheriff's Deputy Andrew Hall was conducting routine patrol in Joanna, South Carolina. While parked at a gas station, an unknown male approached Deputy Hall and told him that Ferguson was in the upper-left unit of an apartment building on Whitmire Highway "cooking dope." Deputy Hall was unfamiliar with the tipster, and he failed to collect his name or any means to contact him. He also failed to ask any questions to verify the tipster's statement. Although he had never personally arrested Ferguson, Deputy Hall was familiar with Ferguson from prior encounters at the Laurens County Detention Center. Deputy Hall immediately called Investigator Charles Nations,¹ a member of the Laurens County Sheriff's Office narcotics unit, to relay the tip and to ask if Investigator Nations wanted to accompany him in conducting a knock and talk at the apartment. Deputy Hall explained that the town of Joanna is a high traffic drug area and that he wanted a narcotics investigator to assist in the investigation. Roughly twenty minutes after receiving the tip, Deputy Hall and Investigator Nations arrived at the apartment to conduct a knock and talk.

Investigator Nations testified that he and Deputy Hall had to "guesstimate" which apartment building the tipster referred to in his statement, but narrowed their search quickly as there was only one apartment building on Whitmire highway. As officers approached the upper-left unit, they noticed the front window was open and they heard the sound of the front door deadbolt cycling. Before the officers could knock, Henry Davis, Ferguson's cousin, opened the door to leave for work.² Investigator Nations stated that despite the window being open and Davis opening

¹ Investigator Nations also had prior encounters with Ferguson. He had observed officers arrest Ferguson one night during a "ride-along" after receiving information that Ferguson was manufacturing methamphetamine in Joanna. However, he admitted that he was unaware of Ferguson's entire criminal history or prior convictions before the date of the arrest in this case.

² Davis leased the apartment. It is unclear if Ferguson lived there, but Investigator Nations testified that he believed Davis rented Ferguson a room in the apartment for money. Officers also found vocational rehabilitation papers and a job application with Ferguson's name on it, and Ferguson's clothing. Investigator Nations claimed Davis told him Ferguson lived there while the two men were arrested.

the door, he did not smell ammonia or other pungent fumes associated with methamphetamine production. Davis spoke with the officers outside of the residence and confirmed that Ferguson was inside. As Davis went to retrieve Ferguson, Investigator Nations took a step into the apartment to maintain contact with Davis and Ferguson appeared out of a rear bedroom. The officers explained to Davis and Ferguson that they received a tip about drug manufacturing, but both men denied any knowledge of illegal activity in the apartment. Investigator Nations then asked if he could walk through the house. Ferguson hesitated and then acquiesced once Davis consented.

During the walkthrough, Investigator Nations found a bottle of lighter fluid and a clear wrapper that contained a yellow, paste-like substance in the bathroom. Another officer found a marijuana pipe with residue in it on a coffee table in the living room. Based on these discoveries, Investigator Nations applied for a search warrant, and it was issued roughly thirty minutes later. While waiting for the search warrant, officers noticed Ferguson fidgeting in his pockets and requested he stop. Ferguson continued and officers conducted a *Terry*³ frisk. Officers found a vial containing powder on Ferguson's person that they presumed was crack cocaine or methamphetamine. Upon executing the search warrant, officers found three different bottles used to create hydrogen chloride, a bottle of sulfuric acid, and other paraphernalia used to produce methamphetamine, most of which was found in a trash pile on the back porch. Officers arrested both Davis and Ferguson based on their findings.

At a pretrial suppression hearing, Ferguson argued all evidence produced from the initial walkthrough and pursuant to the search warrant was inadmissible at trial because the officers violated his right to privacy under the South Carolina Constitution. Specifically, Ferguson argued that under *State v. Counts*,⁴ Deputy Hall and Investigator Nations needed a reasonable suspicion that he was manufacturing methamphetamine to approach the apartment and conduct a knock and talk. Further, he argued the tip was equivalent to an anonymous tip due to the lack of information it provided about the tipster.

In opposition, the State argued Ferguson did not have standing to assert a privacy interest in the apartment and that no knock and talk occurred because Davis opened the door before the officers could make it to the door. Further, the State contended the "fresh" tip from a face-to-face encounter was sufficient to establish reasonable

³ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁴ 413 S.C. 153, 776 S.E.2d 59 (2015).

suspicion when coupled with the officers' prior knowledge of Ferguson's connection to drug production and the apartment being in a high traffic drug area.⁵

The trial court ruled that *Counts* required the court to suppress the evidence. It determined the engagement by officers of the occupants of a residence triggers the need for reasonable suspicion, which the officers did not have in this case. In so holding, the trial court reasoned (1) the tipster was unknown and provided officers with no indicia of reliability or credibility, and Deputy Hall did not know at what point the tipster observed, if at all, Ferguson manufacturing methamphetamine; (2) the evidence collected at the apartment did not establish an active methamphetamine lab, which was the substance of the tip; and (3) the officers failed to take any measure to independently corroborate the tip. At the conclusion of the hearing, the State dismissed the case. This appeal followed.

ISSUE ON APPEAL

Did the trial court err in suppressing all evidence seized from the apartment under Article 1, Section 10 of the South Carolina Constitution?

STANDARD OF REVIEW

The admission of evidence is within the sound discretion of the trial court and will not be overturned absent an abuse of discretion. *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011). The trial court abuses its discretion when the ruling is based on an error of law or when the ruling is grounded in factual conclusions that lack evidentiary support. *Id.* "[A]ppellate court[s] will reverse only when there is clear error." *Id.* (quoting *State v. Missouri*, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004) (citation omitted)).

LAW/ANALYSIS

The State asserts the trial court erred in suppressing the evidence under Article 1, Section 10's prohibition against unreasonable invasions of privacy. We disagree.

⁵ Moreover, the State argued the officers' actions were supported by exigent circumstance. The trial court ruled no exigent circumstances existed because the officers could not smell the production of methamphetamine while approaching the door and none of their actions indicated they thought an emergency existed, including the officers' request for consent to enter the home.

The South Carolina Constitution grants citizens an express right to privacy. S.C. Const. art. I, § 10.⁶ "But, other than the use of the word 'unreasonable' to modify this right, there are no parameters concerning the right or a definition of what constitutes 'unreasonable invasions of privacy.'" *Counts*, 413 S.C. at 167, 776 S.E.2d at 67. "As a result . . . 'the drafters were depending upon the state judiciary to construct a precise meaning of this phrase.'" *Id.* (quoting Jaclyn L. McAndrew, *Who Has More Privacy?: State v. Brown and Its Effect on South Carolina Criminal Defendants*, 62 S.C. L. Rev. 671, 694 (2011)).

"[T]he privacy interests in one's home are the most sacrosanct, [and] there must be some threshold evidentiary basis for law enforcement to *approach* a private residence." *Id.* at 172, 776 S.E.2d at 69 (emphasis added). "[Officers] *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). "In establishing this threshold requirement, our supreme court reaffirmed that the South Carolina Constitution's privacy protection against unreasonable searches and seizures 'favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.'" *State v. Boston*, 433 S.C. 177, 183, 857 S.E.2d 27, 30 (Ct. App. 2021) (quoting *Counts*, 413 S.C. at 168, 776 S.E.2d at 68), *cert. granted*, S.C. Sup. Ct. Order Dated Jan. 13, 2022.

"Reasonable suspicion consists of 'a particularized and objective basis' that would lead one to suspect another of criminal activity." *State v. Kotowski*, 427 S.C. 119, 128, 828 S.E.2d 605, 610 (Ct. App. 2019) (quoting *State v. Lesley*, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997)), *aff'd in part, vacated in part on other grounds*, 430 S.C. 318, 844 S.E.2d 650 (2020). It is more than a hunch but amounts to less than what is required for probable cause. *Boston*, 433 S.C. at 185, 857 S.E.2d at 31. In evaluating the existence of reasonable suspicion, courts may consider an officer's experience and intuition. *Id.* "Nevertheless, 'a wealth of experience will [not] overcome a complete absence of articulable facts.'" *Id.* (quoting *Kotowski*, 427 S.C. at 129, 828 S.E.2d at 610). "Furthermore, an officer's

⁶ In pertinent part, it provides:

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

(emphasis added).

impression that an individual is engaged in criminal activity, without confirmation, does not amount to reasonable suspicion." *Id.* (quoting *Kotowski*, 427 S.C. at 129, 828 S.E.2d at 610).

Counts and *Boston* are both instructive. In *Counts*, an officer received an anonymous tip alleging the defendant was selling marijuana and crack cocaine out of his mother's house and a separate apartment. 413 S.C. at 157, 776 S.E.2d at 61–62. The tipster provided the defendant's name and aliases; the location of the alleged drug deals; the defendant's girlfriend's name; the make, model, and license plate number of his car; his phone number; and the make and model of the defendant's girlfriend's car. *Id.* at 157, 776 S.E.2d at 62. Based on this information, officers conducted surveillance on the defendant's mother's home and attempted two, unsuccessful, controlled drug buys from the the apartment. *Id.*

Roughly ten months later, another officer received an anonymous tip about the defendant. *Id.* The tipster claimed the defendant was selling drugs out of his apartment and provided the defendant's name, phone number, his girlfriend's name and phone number, and identified his vehicle. *Id.* The tipster also disclosed that the defendant used multiple identities because the defendant knew someone at the Department of Motor Vehicles through whom he procured two false forms of identification. *Id.*

Officers then corroborated the tip by reviewing the defendant's criminal record which showed two prior convictions for distribution of drugs and several other drug charges. *Id.* at 158, 776 S.E.2d at 62. The officers also confirmed that the defendant had two different identification cards on record. *Id.* Based on this information, the officers conducted surveillance on the defendant's apartment, and, upon identifying the defendant driving to and entering the apartment, the officers decided to do a knock and talk. *Id.* When the defendant opened his door after the officers knocked, the officers encountered the smell of marijuana and saw a rolled blunt on a coffee table. *Id.*

On appeal to our supreme court, the defendant argued that under South Carolina's express right to privacy, officers needed reasonable suspicion in light of the totality of the circumstances to initiate the knock and talk. *Id.* at 161, 776 S.E.2d at 64. The supreme court agreed with the defendant, stating, "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. The court found, however, that the officers had reasonable suspicion to approach the defendant's residence and knock on the door because (1) the officers received two

separate anonymous tips that alleged the defendant was selling drugs; (2) the tips identified vehicles driven by the defendant, his phone number, and his use of multiple identities; and, (3) through investigation, officers corroborated that the defendant had two false identification cards and prior drug distribution convictions on record. *Id.* at 173, 776 S.E.2d at 70. In conclusion, the supreme court noted,

For our state constitutional right to privacy to have any significance, we believe there must be some minimum evidentiary standard met before law enforcement conduct a warrantless search of a South Carolina citizen's home. Therefore, we hold that law enforcement must have reasonable suspicion of illegal activity before approaching the targeted residence and conducting the "knock and talk" investigative technique.

Id. at 174, 776 S.E.2d at 70–71.

In *Boston*, this court determined that officers held a reasonable suspicion to approach and knock on the door of an apartment where the defendant was visiting. 433 S.C. at 186, 857 S.E.2d at 32. After responding to a call, an officer proceeded to patrol a nearby apartment community known for high volumes of narcotic activity and because "vulnerable" adults lived there. *Id.* at 179, 857 S.E. at 28. While surveilling the apartments, the officer observed two men that he knew were associated with drug activity enter an apartment. *Id.* at 180, 857 S.E.2d at 28. The officer knew the apartment to be the residence of an individual with mental disabilities that used narcotics. *Id.* Based on concerns for the resident's safety and the nature of the activities that might take place inside the apartment, the officer decided to conduct a knock and talk. *Id.* at 180, 857 S.E.2d at 28–29.

In response to a knock, the resident opened her door and allowed the officers to enter the apartment. *Id.* at 180, 857 S.E.2d at 29. Once inside, officers saw two men in the kitchen huddled around a microwave, two plastic bags with white residue on them, and a scale. *Id.* When the men noticed the officers, they opened the microwave, hid their hands, and ran to the bathroom. *Id.* Concerned for their safety, the officers conducted a protective sweep of the apartment and ordered the men out of the bathroom. *Id.* at 180–181, 857 S.E.2d at 29. The officers found a glass measuring cup filled with a steaming substance suspected to be crack cocaine. *Id.*

This court reasoned the officers had a reasonable suspicion to conduct the knock and talk because of the investigating officer's knowledge of (1) the two men in the apartment, (2) criminal drug investigation, and (3) the apartment community he surveilled. *Id.* at 185, 857 S.E.2d at 31. The officer testified to his objective knowledge of the apartment community and the three people inside the apartment, stating he knew all three and that he had previous encounters with the two men that entered the apartment. *Id.* The officer also had eleven years of criminal drug investigation experience and knew the apartment community was a hot spot for drug activity. *Id.*

Initially, we note that *Counts* is explicit in its ruling: our constitution's express right to privacy found in Article 1, Section 10, to have any substance, requires officers to form a reasonable suspicion *before approaching* a residence to conduct a knock and talk or a warrantless search of a home. *Counts*, 413 S.C. at 174, 776 S.E.2d at 70–71. Therefore, we find the state constitution required the officers in this case to develop reasonable suspicion that Ferguson was manufacturing methamphetamine before approaching the apartment to knock on the door.

Further, we find the officers did not form the requisite reasonable suspicion to approach the apartment building in an attempt to conduct a knock and talk. *See Counts*, 413 S.C. at 172, 776 S.E.2d at 70 ("[L]aw enforcement must have reasonable suspicion of illegal activity at a targeted residence *prior to approaching* the residence and knocking on the door." (emphasis added)). Unlike the two anonymous tips in *Counts*, the tip Deputy Hall received lacked any indicia of accuracy or credibility. Deputy Hall did not receive or solicit any information from the tipster that would further indicate Ferguson was manufacturing methamphetamine. For example, he did not ask if Ferguson lived at the apartment or if he drove a specific car that officers could identify and observe at the apartment; he did not ask about potential sales Ferguson might make in the future; he did not ask for Ferguson's phone number or a description of what Ferguson was wearing; he did not ask if he could smell any scents associated with methamphetamine production; and, most importantly, he did not ask how he knew Ferguson or that Ferguson was "cooking dope" at the apartment. *Cf id.* at 173, 776 S.E.2d at 70 (finding officers had reasonable suspicion to approach a residence and conduct a knock and talk when the officers received two separate anonymous tips that the defendant was selling drugs and identified vehicles he drove, his phone number, and his use of multiple identities and identification cards).

Moreover, unlike the officers in *Counts*, Deputy Hall and Investigator Nations failed to conduct any form of independent investigation to buttress the tip—they

did not conduct surveillance, research Ferguson's criminal record, or check the National Precursor Log Exchange.⁷ See *Kotowski*, 427 S.C. at 129, 828 S.E.2d at 610 ("[A]n officer's impression that an individual is engaged in criminal activity, *without confirmation*, does not amount to reasonable suspicion." (emphasis added)); *id.* ("[An officer's] wealth of experience will [not] overcome a complete absence of articulable facts." (quoting *State v. Taylor*, 388 S.C. 101, 116, 694 S.E.2d 60, 68 (Ct. App. 2010), *rev's on other grounds*, 401 S.C. 104, 736 S.E.2d 663 (2013))).

Although we disagree with Ferguson that the tip was purely anonymous, the face-to-face encounter alone, or even coupled with the content and nature of the tip itself, is insufficient to create a reasonable suspicion that Ferguson was manufacturing methamphetamine at the apartment. See *United States v. Perkins*, 363 F.3d 317, 323 (4th Cir. 2004) ("The basic rules governing informant's tips are well-established. In cases where an informant's tip supplies part of the basis for reasonable suspicion, [appellate courts] must ensure that the tip possesses sufficient indicia of reliability."). As noted above, Deputy Hall did not ask the informant any follow-up questions to gain additional information regarding Ferguson, the apartment, or how he knew about the alleged methamphetamine production. The informant's tip only provided Ferguson's name, a general location, and the allegation that Ferguson was "cooking dope." While courts generally find face-to-face tips sufficiently reliable due to an officer's ability to judge the tipster's credibility and demeanor, additional facts that allow an officer to evaluate the veracity of the tip are usually present. See *Adams v. Williams*, 407 U.S. 143, 146-47 (1972) (finding an officer had reasonable suspicion to perform a traffic stop based on a face-to-face tip he received from an informant he knew personally, that had provided accurate information in the past, and the information in the tip was immediately verifiable at the crime scene); *United States v. Christmas*, 222 F.3d 141, 143-45 (4th Cir. 2000) (finding an officer had reasonable suspicion to conduct a *Terry* stop based on a face-to-face tip received by an individual who did not provide her name but provided her home address and stated she lived two houses down from the illegal activity; she also provided the tip to the uniformed officer in close proximity to the illegal activity, increasing the probability that someone associated with the illegal activity could see her assist the officer); *State v. Driggers*, 322 S.C. 506, 511-14, 473 S.E.2d 57, 59-61 (Ct. App. 1996) (holding

⁷ The National Precursor Log Exchange is a real-time electronic logging and compliance system that tracks sales of over-the-counter cold and allergy medications containing pseudoephedrine, a necessary element of methamphetamine.

a face-to-face tip was reliable as the basis for probable cause to support a search warrant where the tipster provided her name to officers, signed a statement, lived in the residence with the defendant, observed the defendant prepare for the crime and talk about the crime afterwards, and provided specific details about evidence from the crime); *cf. Perkins*, 363 F.3d at 320, 323–24 (finding an anonymous tip reliable where the tipster disclosed her general location and her basis of knowledge, stated she was currently watching a crime be committed, the officer assumed the identity of the informant based on her close proximity to the crime and the nature of the description she provided, and the officer's subjective knowledge of the area and the informant's track record). Here, apart from the informant's limited information, Deputy Hall and Investigator Nations had no reason to suspect Ferguson of being inside the apartment, much less manufacturing methamphetamine.

Unlike the officer in *Boston*, Deputy Hall and Investigator Nations did not personally observe any specific circumstances that would lead an officer to believe Ferguson was manufacturing methamphetamine in the apartment. Although the officers were aware that Ferguson was connected to methamphetamine activity, they did not observe Ferguson enter the apartment or know that he was inside. While both Deputy Hall and Investigator Nations testified they were aware that Joanna was a drug hot spot, Joanna is an entire town and both officers testified they had never encountered Ferguson at the specific apartment building or made any drug-related arrests at the apartment building.

Because the informant's tip lacked any indicia of reliability and neither Deputy Hall nor Investigator Nations conducted independent investigations to corroborate the tip, we find the officers lacked the requisite reasonable suspicion to approach the apartment to conduct a knock and talk. *See Counts*, 413 S.C. at 172, 776 S.E.2d at 70 ("[L]aw enforcement *must* have reasonable suspicion of illegal activity at a targeted residence *prior to approaching the residence* and knocking on the door." (emphasis added)). Therefore, the trial court did not err in suppressing the evidence.

CONCLUSION

Accordingly, the trial court's ruling is

AFFIRMED.

KONDUROS and VINSON, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2018-002133

THE STATE,

Appellant,

vs.

SYLVESTER FERGUSON, III,

Respondent.

PETITION FOR REHEARING

On June 1, 2022, this Court issued a published opinion in which it affirmed the circuit court judge's order granting Ferguson's motion to suppress his illegal drugs and other incriminating items. State v. Ferguson, Op. No. 5915 (S.C. Ct. App. filed June 1, 2022). In affirming the circuit court judge's ruling, this Court concluded: (1) the need for reasonable suspicion was triggered by the officers' actions in approaching the apartment building in Ferguson's case; and (2) the facts and circumstances known to the officers at the time they approached the apartment building were not sufficient to constitute reasonable suspicion. Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the State respectfully petitions for rehearing because it believes this Court misapprehended and overlooked several critical facts and aspects of the law in affirming the circuit court judge's decision to suppress the incriminating evidence in Ferguson's case.

As this Court correctly recognized, our Supreme Court in State v. Counts, 413 S.C. 153, 167, 776 S.E.2d 59, 67 (2015), 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. After analyzing the issue, a majority of the Supreme 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. Id. 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.; see Florida v. Jardines, 569 U.S. 1, 8 (2013) ("[T]he knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds. This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. . . . Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is no more than any private citizen might do." (citations and internal quotations omitted)); Kentucky v. King, 563 U.S. 452, 469 (2011) ("[W]hen law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do.").

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)); see also Robinson v. State, 407 S.C. 169, 184, 754 S.E.2d 862, 870 (2014) (“[T]he facts and inferences relied on by the officer must be *articulable*, not necessarily articulated.”). Significantly, the reasonable suspicion standard “is not a high bar.” United States v. Coker, 648 F. App’x 541, 544 (6th Cir. 2016) (citing Navarette v. California, 572 U.S. 393 (2014)); see Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing even the probable cause standard “is not a high bar”); United States v. Ramos, 826 F. App’x 131, 133 (3d Cir. 2020) (“Reasonable suspicion is a *very* low bar.” (emphasis added)). 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); Wardlow, 528 U.S. at 125-126 (recognizing factors that are “susceptible of an innocent explanation” can establish reasonable suspicion and probable cause); see also United States v. Arvizu, 534 U.S. 266, 273 (2002) (instructing courts are precluded from conducting a “divide-and-conquer analysis” when considering the totality of the circumstances); United States v. Whitfield, 634 F.3d 741, 744 (3d Cir. 2010) (“It is not necessary that the suspect actually have done or is doing anything illegal; reasonable suspicion may be based on acts capable of innocent explanation.” (citation and internal quotations omitted)); 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 Ferguson’s case, 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 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) (“The information provided by the citizen was in person, and was neither vague as to the time of the criminal activity nor imprecise as to the kind of crime being committed. . . . There is nothing in the record of the present case which should have caused Officer Andrews to doubt the reliability or good faith of the informant tendering the information. We hold that in the present case, the 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 District of Columbia v. Wesby, ___ U.S. ___, 138 S. Ct. 577, 586 (2018) (recognizing even 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 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 non-anonymous tipster's troubling report could not reasonably be described as indiscriminate, which was our Supreme Court's primary concern when rendering its decision in

Counts.¹ See State v. Counts, 413 S.C. 153, 172, 776 S.E.2d 59, 69 (2015) (“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 law enforcement targets a neighborhood and *indiscriminately* knocks on doors with the hope of discovering contraband without a search warrant.” (emphasis added)).

In disagreeing with such a conclusion and affirming the circuit court judge’s ruling suppressing the incriminating evidence uncovered in Ferguson’s case, this Court initially found—while focusing in insolation on a portion of our Supreme Court’s holding in the Counts decision—the need for reasonable suspicion was triggered prior to their first contact with Davis 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

¹ Notably, both the circuit court judge and defense counsel agreed the officers’ actions in Ferguson’s case were *not* indiscriminate. (R. pp. 130-131).

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) the Supreme 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 the Supreme 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 contrary to the findings of this Court and the circuit court judge.² 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, this Court’s conclusion the informant’s tip “lacked *any* indicia of reliability” was inaccurate, and the

² Significantly, the officers’ confirmation of Ferguson’s presence in the apartment *prior to* them entering the apartment’s curtilage is particularly significant since this Court’s conclusion reasonable suspicion was lacking was justified 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.”

officers were in possession of sufficient information to meet the reasonable suspicion standard's minimal requirements such that the circuit court judge's ruling granting the suppression motion should have been—and still should be—reversed. See Navarette v. California, 572 U.S. 393, 397 (2014) (“[T]he level of suspicion the [reasonable 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, the circuit court judge's suppression ruling was nevertheless still clearly erroneous because the officers actually possessed 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 officer 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 this Court 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)).

Accordingly, the circuit court judge’s conclusion the face-to-face tip—which, as this Court appears to have recognized, was incorrectly treated by the circuit court judge as anonymous—was not sufficiently reliable to establish reasonable suspicion was clearly erroneous, and, therefore, this Court erred by affirming that erroneous conclusion 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); see also United States v. Valentine, 232 F.3d 350, 354 (3rd Cir. 2000) (recognizing older, more rigid standards regarding informants have been replaced with “a flexible standard that assesses the relative value and reliability of an informant’s tip in light of the totality of the circumstances”).

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 a known area having 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 circuit court judge’s and this Court’s conclusions to the contrary erroneously elevated the level of information needed to establish the existence of reasonable suspicion beyond what is actually required.³ See Kansas v. Glover, __

³ In finding the information known to the officers to be insufficient to satisfy the reasonable suspicion standard, this Court cited multiple times—including once with emphasis—to the following quote that originally appeared in its now-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

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)).

For all those reasons coupled with the reasons articulated in the State’s brief and during oral argument before this Court, the officers in Ferguson’s case engaged in nothing other than good police work by reasonably acting on information supplied to them by a non-anonymous concerned citizen during a face-to-face encounter that was inherently reliable based upon the

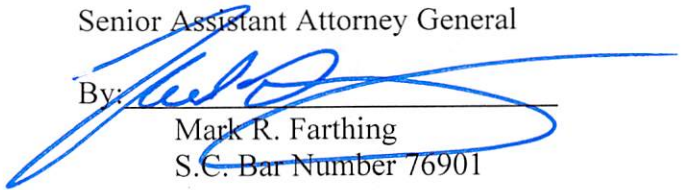
be in possession of sufficient articulable facts to reasonably believe criminal activity *may* be afoot. See Sokolow, 490 U.S. at 7 (instructing the reasonable suspicion standard merely requires an officer to possess “a reasonable suspicion supported by articulable facts that criminal activity may be 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 result, this Court should strongly reconsider its reference to, reliance upon, and emphasis of 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”).

manner in which it was supplied coupled with the fact it was fully consistent with the officers' knowledge of Ferguson and the area in which he was reported to be manufacturing methamphetamine, and the circuit court judge clearly erred by finding their actions were constitutionally unreasonable. See 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-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. Terry, 392 U.S. at 23 (instructing "[i]t would have been poor police work indeed" for an officer not to do anything further to investigate after developing a reasonable basis to believe criminal activity was afoot). Accordingly, the State respectfully requests this Court reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion reversing the circuit court judge's erroneous suppression ruling upon finding Ferguson's constitutional rights were not violated under the specific facts and circumstances of his case.

Respectfully submitted,

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By: 

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June 16, 2022

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Frank R. Addy, Circuit Court Judge

THE STATE,

APPELLANT,

V.

SYLVESTER FERGUSON III,

RESPONDENT.

APPELLATE CASE NO. 2018-002133

RETURN TO PETITION FOR REHEARING

The State’s Petition for Rehearing should be denied. The State ignores the standard of review and would have this Court rule that, as a matter of law, all face-to-face anonymous tips satisfy the reasonable suspicion requirement of the South Carolina Constitution. The State also tries to convince this Court that State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015) contains a requirement that officers’ actions must be “indiscriminate.” State’s Pet. Rehearing at 2, 5-6. Counts contains no such requirement and the State’s argument on this point is manufactured from dicta explaining the Court’s reasoning.

The State repeats throughout its petition that reasonable suspicion is a low bar. But a “low bar” does not mean “no bar” or that a trial judge is required to rubber stamp officers’ behavior every time they claim they have reasonable suspicion. The State cites numerous cases

from federal courts and other states in an attempt to convince this Court that every time a trial judge is faced with an officer who had an anonymous face-to-face encounter, the trial judge must find reasonable suspicion existed. However, in almost all of these cases, the trial court denied the defendant's motion to suppress and the standard of review worked in favor of the trial court: Illinois v. Wardlow, 528 U.S. 119 (2000) (trial court denied motion to suppress); Robinson v. State, 407 S.C. 169, 754 S.E.2d 862 (2014) (trial court denied motion to suppress); United States v. Sokolow, 490 U.S. 1 (1989) (trial court denied motion to suppress); United States v. Arvizu, 534 U.S. 266 (2002) (trial court denied motion to suppress); United States v. Whitfield, 634 F.3d 741 (3rd Cir. 2010) (trial court denied motion to suppress); United States v. Pack, 612 F.3d 341 (5th Cir. 2010) (trial court denied motion to suppress); State v. Hudgins, 672 S.E.2d 717 (N.C. Ct. App. 2009) (trial court denied motion to suppress); United States v. Calvetti, 836 F.3d 654 (6th Cir. 2016) (trial court denied motion to suppress); United States v. Lender, 985 F.2d 151 (4th Cir. 1993) (trial court denied motion to suppress); Adams v. Williams, 407 U.S. 143 (1972) (trial court denied motion to suppress); United States v. Heard, 367 F.3d 1275 (11th Cir. 2004) (trial court denied motion to suppress); United States v. Perkins, 363 F.3d 317 (4th Cir. 2004) (trial court denied motion to suppress); Giles v. Commonwealth, 529 S.E.2d 327 (Va. Ct. App. 2000) (trial court denied motion to suppress); State v. Driggers, 322 S.C. 506, 473 S.E.2d 57 (Ct. App. 1996) (trial court denied motion to suppress); Milbin v. State, 792 So.2d 1272 (Fla. Dist. Ct. App. 2001) (trial court denied motion to suppress); United States v. Lewis, 920 F.3d 483 (7th Cir. 2019) (trial court denied motion to suppress); United States v. Green, 897 F.3d 173 (3rd Cir. 2018) (trial court denied motion to suppress); United States v. Simpson, 609 F.3d 1140 (10th Cir. 2010) (trial court denied motion to suppress); United States v. Christmas, 222 F.3d 141 (4th Cir. 2000) (trial court denied motion to suppress).

Judge Addy granted Ferguson's motion to suppress. This Court recognized and applied the standard of review to the trial judge's determination that this specific anonymous encounter with a tipster did not constitute reasonable suspicion. Reversal in this case would strip trial judges of the ability to evaluate officers' actions and convert every anonymous encounter with police as a license to violate the South Carolina Constitution's right to privacy. As is, the Court's decision recognizes that many of these encounters can go either way and declines to create a blanket rule authorizing all knock-and-talks any time the police receive an anonymous face-to-face tip. The Court's approach is consistent with the law and with the standard of review. The State's petition for rehearing should be denied.

This 27th day of June, 2022.

Respectfully Submitted,

s/David Alexander

David Alexander

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ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2018-002133

THE STATE,

Appellant,

vs.

SYLVESTER FERGUSON, III,

Respondent.

**REPLY TO RETURN TO
PETITION FOR REHEARING**

Following this Court's issuance of its decision affirming the circuit court judge's order granting Ferguson's motion to suppress his illegal drugs and other incriminating items, the State filed a petition for rehearing raising several points it believes this Court misapprehended and overlooked in resolving the appeal. State v. Ferguson, Op. No. 5915 (S.C. Ct. App. filed June 1, 2022). After that, this Court asked Ferguson to file a return to the State's petition, Ferguson complied with that request, and this Court then asked the State to file a reply to Ferguson's return.

Through his return, Ferguson initially contends the State's arguments in its petition for rehearing should be rejected because: (1) they would improperly require the Court to rule as a matter of law all "face-to-face anonymous tips" are sufficient to establish reasonable suspicion; and (2) they are based on an incorrect belief the decision in State v. Counts, 413 S.C. 153, 776

S.E.2d 59 (2015), imposed a requirement officers' actions must be indiscriminate in order to be deemed constitutionally unreasonable. Significantly, there are a number of problems with Ferguson's contentions in that regard.

First, although the State believes face-to-face tips like to one provided in Ferguson's case carry inherent reliability, the State's position is not that any and all face-to-face tips standing alone must *always* be found to establish reasonable suspicion no matter the contents, context, or circumstances involved. 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."). Instead, the State's argument was and is the totality of the circumstances involved in *Ferguson's case* satisfied the low bar established by the reasonable suspicion standard when viewed collectively as required. See United States v. Arvizu, 534 U.S. 266, 273 (2002) (instructing courts are precluded from conducting a "divide-and-conquer analysis" when considering the totality of the circumstances). More specifically, the following circumstances when taken together combined to provide the officers with the *minimal* level of objective justification necessary for it to be constitutionally reasonable for them to undertake the limited investigative step of attempting to initiate contact with Ferguson by simply knocking on his door: (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 directly evaluate the credibility of the tip firsthand and to potentially find—in the small community of Joanna¹—the informant who he was now familiar with by sight if the tip proved to be false such

¹ 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>. Meanwhile,

that the informant could be held to account; (2) the tip indicated Ferguson was at that time manufacturing methamphetamine inside a two-story apartment building located on a specific highway, which was something that would unmistakably constitute criminal activity in South Carolina; (3) the officers who responded to the tip were—just as this Court recognized—“aware that Ferguson was connected to methamphetamine activity,” which was fully consistent with and corroborative of what had been reported in the tip; and (4) the officers were further aware Joanna was a known area having 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. See United States v. Sokolow, 490 U.S. 1, 7 (1989) (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)); cf. Navarette v. California, 572 U.S. 393, 400 (2014) (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); 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”). And,

Joanna spans only a little over three square miles of area in total. Wikipedia, “Joanna, South Carolina,” https://en.wikipedia.org/w/index.php?title=Joanna,_South_Carolina&oldid=1078097771.

the fact those circumstances were collectively sufficient to satisfy the minimal requirements of the reasonable suspicion standard was not in any way diminished by the possibility the officers could have potentially undertaken some further steps to investigate more fully prior to attempting to initiate contact with Ferguson. See United States v. Dale, 991 F.2d 819, 844 (D.C. Cir. 1993) (explaining even the higher probable cause standard does *not* require an officer to exhaust all possible leads, interview every possible witness, and accumulative overwhelming corroborative evidence in order for the standard to be met); cf. United States v. Shields, 458 F.3d 269, 280 (3d Cir. 2006) (“[W]e find unavailing the suggestion that probable cause was lacking because the FBI could have determined with certainty whether he actually downloaded illegal images. Whether the FBI could have provided more information is not the benchmark[.] . . . For purposes of our analysis, it is of no import that the FBI could have discovered more corroborating evidence, such as actual downloads, so long as the valid information it supplies satisfies the ‘fair probability’ standard[.]” (citations omitted)); United States v. Gourde, 440 F.3d 1065, 1072-1073 (9th Cir. 2006) (en banc) (“Gourde seeks to sidestep the ‘fair probability’ standard and elevate probable cause to a test of near certainty. In the face of the clear teaching of Gates, Gourde argues that probable cause was lacking because the government could have determined with certainty whether he had actually downloaded illegal images. . . . Whether the FBI could or would have found such data on the owner’s computer is not clear from the record, *nor is this inquiry the one demanded by precedent*. To be sure, this additional data would have transformed a ‘fair probability’ to a ‘near certainty’ that Gourde had received or possessed illegal images. Better yet, had the FBI caught him at his computer downloading the images, the certainty would have been 100 percent. Gates, however, does not compel the government to provide more facts than necessary to show a ‘fair probability’ that Gourde had committed a

crime.”); United States v. Miller, 753 F.2d 1475, 1481 (9th Cir. 1985) (finding the probable cause standard was met under the totality of the circumstances despite the fact the officers failed to undertake “simple steps” that could have been “easily accomplished” to obtain “[i]ndependent verification”).

Second, to the extent Ferguson maintains the State’s is arguing an officer’s actions must be indiscriminate in order to be deemed constitutionally unreasonable pursuant to Counts, Ferguson is mistaken about the nature of the State’s argument. The State’s argument is not premised on a contention Counts only prohibits indiscriminate action and, thus, the officers’ actions in Ferguson’s case were constitutional due to the fact they were clearly *not* indiscriminate. Instead, the State is arguing the officers’ actions in Ferguson’s case were constitutionally reasonable because they were supported by reasonable suspicion under the specific circumstances involved. Meanwhile, the State’s references to the fact officers’ actions were not indiscriminate were merely made to illustrate those actions, which were supported by reasonable suspicion, did not constitute the type of actions for which the reasonable suspicion standard was implemented to prohibit and deter. See State v. Counts, 413 S.C. 153, 172, 776 S.E.2d 59, 69 (2015) (“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 law enforcement targets a neighborhood and indiscriminately knocks on doors with the hope of discovering contraband without a search warrant.”); see also 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).

Next, through his return, Ferguson contends the State's petition for rehearing should be denied in light of the applicable standard of review. As support for that position, Ferguson asserts this Court "recognized and applied the standard of review" in affirming the suppression ruling in his case, notes the circuit court judge granted his motion to suppress unlike the circuit court judges in many other cases in which suppression rulings have been affirmed on appeal, and cites to numerous decisions previously referenced by the State as examples of cases in which "the standard of review worked in favor of the trial court[.]" Importantly, there are a couple of problems with Ferguson's contentions in that regard.

First, this Court did *not* couch its decision as one in which it was affirming the circuit court judge's ruling based on any deference specifically owed or extended to the circuit court judge pursuant to the applicable standard of review. See, e.g., State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling." (citation and internal quotations omitted)). Instead, this Court conducted its own review of the facts and appeared to conclude the information known to the officers "did not form the requisite reasonable suspicion to approach the apartment building in an attempt to conduct a knock and talk" as a matter of law based on the officers' failure to ask more questions of the tipster or conduct further independent investigation such as by surveilling the multi-family apartment building (which the officers had been told was being used at that very time for the incredibly volatile and dangerous act of methamphetamine production) or by researching a variety of different records. See generally Hatcher v. State, 762 N.E.2d 170, 173 (Ind. Ct. App. 2002)

(characterizing the manufacturing process used to produce methamphetamine as “inherently dangerous”). Meanwhile, in doing so, this Court pointed out the inaccuracy of Ferguson’s belief the citizen tip that led to the knock-and-talk was “purely anonymous,” which, notably, was a belief shared by the circuit court judge *and upon which the circuit court judge based his decision to suppress* in Ferguson’s case. (R. pp. 126-127). In fact, the circuit court judge even seemed to strongly imply he would have found the tip in Ferguson’s case sufficient to establish reasonable suspicion *but for* the fact it was anonymous, which—just as this Court has expressly and correctly found—it was not.² (R. p. 127). Therefore, since this Court *rejected* the circuit court judge’s view of the circumstances involved as inaccurate while nonetheless finding suppression was warranted for *other* reasons, Ferguson’s apparent suggestion the outcome of his case was controlled by a standard of review requiring deference to the circuit court judge’s determinations is not consistent with the analysis that was actually conducted by this Court.

² More specifically, the circuit court judge explained: “[W]e’re dealing with an anonymous tip, which, under the law is, for lack of a better explanation, inherently unreliable. It’s anonymous. It’s not as reliable as if you’ve got somebody’s name saying, ‘Hey, I’m Frank Addy. I just came from the apartment in Joanna where [defense counsel] has been staying for the last couple of days. And he’s up there cooking some meth in some two-liter bottles. Here’s my cell phone number if you ever need me.’ Okay. *That’s reliable, actionable information that would justify the knock-and-talk.*” (R. pp. 126-127) (emphasis added). Thus, this Court’s correct conclusion the tip in Ferguson’s case was *not* actually anonymous demonstrates precisely why the circuit court judge’s decision to suppress in Ferguson’s case was clearly erroneous since even the circuit court judge—based on his own explanation—seems likely to have reached a different conclusion on the suppression motion if he had correctly recognized and understood that fact along with its significance. 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); see also 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.”).

Second, of the nineteen cases Ferguson holds out in his return as examples of cases in which “the standard of review worked in favor of the trial court[,]” all but the two South Carolina cases are cases in which a de novo standard of review in which no deference necessarily had to be extended to the trial judge’s ultimate conclusion was applied on appeal.³ See, e.g. United States v. Arvizu, 534 U.S. 266, 275 (2002) (“[T]he standard for appellate review of reasonable-suspicion determinations should be de novo, rather than for abuse of discretion.” (citation and internal quotations omitted)); United States v. Perkins, 363 F.3d 317, 320 (4th Cir. 2004) (“When considering on appeal a motion to suppress evidence, we review a district court’s factual findings for clear error and its legal determinations de novo.”); State v. Hudgins, 672 S.E.2d 717, 718 (N.C. Ct. App. 2009) (“A trial court’s conclusions of law regarding whether the officer had reasonable suspicion or probable cause to detain a defendant is reviewable de novo.” (citations, internal quotations, and brackets omitted)); Giles v. Commonwealth, 529 S.E.2d 327, 329 (Va. Ct. App. 2000) (“We review determinations of reasonable suspicion and probable cause de novo.”); cf. United States v. Harvey, 1 F.4th 578, 579-580 (8th Cir. 2021) (“We review determinations of reasonable suspicion de novo, taking care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by local law enforcement officers.” (citations, internal quotations, and ellipses omitted)); Jenkins v. State, 978 So. 2d 116, 122 (Fla. 2008) (explaining “determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal”). Therefore, to the extent Ferguson is equating “the standard of review work[ing] in favor of the trial court” in each and every one of those cases

³ Interestingly, our Supreme Court has recently and on its own initiative raised questions as to what the appropriate standard of review should be in South Carolina for purposes of reviewing a trial judge’s ultimate determination regarding the propriety of a search or seizure. Appellate Records for State v. Michael N. Frasier, Jr., South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=72846>.

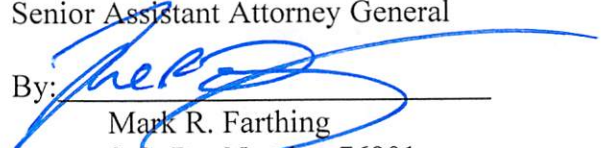
with deference being extended to the ultimate determination reached by the trial judges involved, Ferguson's suggestion in that regard is respectfully just not correct.

Accordingly, for all the foregoing reasons, the arguments contained in Ferguson's return do not support the denial of the State's petition for rehearing. Therefore, for the reasons articulated in the State's brief, during oral argument before this Court, in the State's petition for rehearing, and in the State's reply, the State respectfully reiterates its request this Court reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion reversing the circuit court judge's erroneous suppression ruling upon finding Ferguson's constitutional rights were not violated under the specific facts and circumstances of his case.

Respectfully submitted,

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July 8, 2022

The South Carolina Court of Appeals

The State, Appellant,

v.

Sylvester Ferguson, III, Respondent.

Appellate Case No. 2018-002133

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc:

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FILED
Jul 15 2022

APP'X 360

David Matthew Stumbo, Esquire
The Honorable Frank R. Addy, Jr.