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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

THE STATE,

Petitioner,

vs.

SYLVESTER FERGUSON, III,

Respondent.

REPLY TO RETURN TO
PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUE ON CERTIORARI

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

RESPONDENT'S COUNTER-STATEMENT OF ISSUE ON CERTIORARI

"Whether any evidence supports the trial judge's finding that an anonymous tip without any further investigation did not give the police reasonable suspicion to approach a residence under the South Carolina Constitution?"

ARGUMENT IN REPLY

Contrary to Ferguson's contention in his return, the State's petition for a writ of certiorari should be granted to allow for the search and seizure issue involved to be reviewed pursuant to the proper standard of review, which was recently changed in a significant way by this Court to one very different from the deferential one applied by the Court of Appeals when deciding Ferguson's case.

During the pendency of the State's appeal in Respondent Sylvester Ferguson, III's case, this Court issued a decision in State v. Frasier, Op. No. 28117 (S.C. Sup. Ct. filed Sept. 28, 2022) (Howard Adv. Sh. No. 35 at 12), addressing the standard of review applicable in our state for appellate review of a Fourth Amendment search and seizure issue. Ultimately, upon considering the matter, this Court concluded the standard of review to be applied going forward in South Carolina now requires an appellate court to "review the trial court's factual findings for any evidentiary support" before treating "the ultimate legal question" of whether reasonable suspicion or probable cause existed as "a question of law subject to de novo review." Id. (Howard Adv. Sh. No. 35 at 17).

In the matter sub judice, the dispositive issue concerns the search and seizure protections afforded by the Article I, Section 10 of the South Carolina Constitution as opposed to the Fourth Amendment of the United States Constitution. Nevertheless, this Court historically has seemed to apply an identical standard of review to a search and seizure issue regardless of whether that issue concerned the state or federal constitution. See, e.g., State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007) (identifying the applicable standard of review for a search and seizure issue before analyzing the issue raised pursuant to both the state and federal constitution as requiring affirmance if any evidence supported the trial judge's ruling).

Meanwhile, in Ferguson's case, the Court of Appeals identified the following standard of review as the one it was adhering to for purposes of its analysis:

> The admission of evidence is within the sound discretion of the trial court and will not be overturned absent an abuse of discretion. 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. Appellate courts will reverse only when there is clear error.

State v. Ferguson, 436 S.C. 596, 602, 874 S.E.2d 234, 237 (Ct. App. 2022) (citations, internal quotations, and brackets omitted). Thus, the Court of Appeals applied a standard of review that was essentially consistent with the traditional search and seizure standard of review that has been applicable in South Carolina *prior to* this Court's decision in Frasier. Cf. Frasier (Howard Adv. Sh. No. 35 at 15-16) ("Historically, we have repeatedly noted that appellate courts review an appeal from a motion to suppress based on a violation of the Fourth Amendment under the deferential any evidence standard. Pursuant to this standard, appellate courts will not reverse a trial court's finding of fact simply because it would have decided the case differently." (citations and internal quotations omitted)); 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)).

Now, through his return to the State's petition for a writ of certiorari, Respondent Sylvester Ferguson, III, acknowledges the Frasier decision's significant alteration to our state's standard of review for search and seizure issues, and he further asserts there is no logical reason for that newly-enunciated standard not to be applied in his case. (Return to Cert. p. 4). However, after making that acknowledgement, Ferguson asserts the suppression ruling should nevertheless be affirmed and the State's petition for a writ of certiorari be denied because the case "is, at essence, a standard of review case." (Return to Cert. p. 5). He then appears to suggest the matter largely hinges on the trial judge's factual findings, which he maintains were

supported by the evidence, even though the critical facts in his case were essentially not in dispute.[1] (Return to Cert. p. 5; pp. 8-9; p. 11).

Importantly, since the facts were not in dispute in Ferguson's case, the matter hinged purely on the question of whether reasonable suspicion existed from those facts, which—as this Court has now expressed in Frasier—is a question of law subject to de novo review in South Carolina. Frasier (Howard Adv. Sh. No. 35 at 17). But such review did not occur in Ferguson's case because the Court of Appeals articulated a deferential standard of review that would not have allowed for the trial judge's suppression ruling to be reversed unless it had no evidentiary support or was clearly erroneous. Ferguson, 436 S.C. at 602, 874 S.E.2d at 237. Accordingly, contrary to Ferguson's position in his return, the Frasier decision—unless it is itself altered—has strengthened the need for a grant of certiorari in this matter to ensure the issue on appeal is reviewed pursuant to the proper standard of review. The State's petition for a writ of certiorari should be granted, and, for all the reasons advanced in that petition, Ferguson's case should ultimately be remanded for trial after both the Court of Appeals's decision and the trial judge's suppression ruling are reversed.

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[1] In addition to that, Ferguson seeks to cast his case as one in which the only factor relied upon by the officers as support for the existence of reasonable suspicion was the methamphetamine-related tip alone, and, in doing so, he never acknowledges the *other* factors that were relied upon, such as the officers' pre-existing knowledge of Ferguson's past connection to methamphetamine activity. (Return to Cert. pp. 1-12). Since a reasonable suspicion analysis necessarily involves a holistic examination of the totality of the circumstances, Ferguson's omission in that regard is a significant—and somewhat telling—one. See United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[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)); State v. Wallace, 392 S.C. 47, 52, 707 S.E.2d 451, 453 (Ct. App. 2011) ("In applying the concept of reasonable suspicion to the various facts of a case, '[i]t is the entire mosaic that counts, not single tiles.' " (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)).

CONCLUSION

For all the foregoing reasons coupled with the reasons previously articulated in the petition for a writ of certiorari, it is respectfully submitted the petition for a writ of certiorari should be granted.

Respectfully submitted,

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