

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Abbeville County

Honorable J. Mark Hayes, Circuit Court Judge

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GREER ASHLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001222

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PETITION FOR WRIT OF CERTIORARI

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**INDEX**

INDEX ..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

Trial counsel erred in failing to conduct proper investigations into the status of the property where petitioner was detained because the property in question was private property, which police officers illegally entered without warrants or consent and without notice of posted “no trespassing” signs, because the inclusion of this Fourth Amendment violation in the motion to suppress would likely have led to the dismissal of the drug charge filed against petitioner.....3

CONCLUSION.....16

### **ISSUE PRESENTED**

Trial counsel erred in failing to conduct proper investigations into the status of the property where petitioner was detained because the property in question was private property, which police officers illegally entered without warrants or consent and without notice of posted “no trespassing” signs, because the inclusion of this Fourth Amendment violation in the motion to suppress would likely have led to the dismissal of the drug charge filed against petitioner.

## STATEMENT

Petitioner Greer Ashley pled guilty to trafficking in methamphetamine (28-100 grams)<sup>1</sup>, second offense, during the October 2017 term of the Abbeville County General Sessions Court before Judge Frank Addy, Jr., and was sentenced to imprisonment for a period of fifteen years. App. 1-20. Bruce Byrholdt, Esquire, represented petitioner at the guilty plea proceeding, and Assistant Solicitor Micah Black appeared on behalf of the state. Petitioner did not appeal his guilty plea or sentence.

On June 4, 2020, petitioner filed a PCR application with the Abbeville County Office of the Clerk of Court. App. 22-31. The respondent filed a return dated January 21, 2021. App. 32-39.

PCR hearings in the case were held on January 28, 2021, January 29, 2021, and March 15, 2021 before Judge J. Mark Hayes, II. Attorney Carson Henderson represented petitioner during all three hearings, and Assistant Attorney General Michael Neubauer appeared on behalf of the state for the hearings. App. 41-188; App. 269-354; App. 404-429.

On August 18, 2021, Judge Hayes issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case, and an Order dated August 19, 2022, denying a motion to reconsider filed in the case. App. 359-388; App. 431-439.

Petitioner appealed Judge Hayes' Orders. This petition follows.

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<sup>1</sup> Petitioner was indicted originally for trafficking in methamphetamine (400 grams or more).

## ARGUMENT

Trial counsel erred in failing to conduct proper investigations into the status of the property where petitioner was detained because the property in question was private property, which police officers illegally entered without warrants or consent and without notice of posted “no trespassing” signs, because the inclusion of this Fourth Amendment violation in the motion to suppress would likely have led to the dismissal of the drug charge filed against petitioner.

On November 21, 2016, police officers arrived at Keowee Road in Abbeville County with arrest warrants for Donnie Brock and Barbara Young, both of whom lived on petitioner’s property on Keowee Road. **At that time, the officers were not looking for petitioner and had no search warrant or arrest warrant for petitioner or his Uncle Larry Ashley.** After arriving at Keowee Road, the officers drove past two “no trespassing” signs located on both properties located on Keowee Road owned by petitioner and his Uncle Larry Ashley. Petitioner’s property was situated adjacent to Larry Ashley’s property. In the process of looking for Brock and Young, the officers saw petitioner on his Uncle Larry Ashley’s property. Petitioner began running when the officers approached. The officers detained petitioner on his Uncle Larry Ashley’s property, and a search of him yielded the presence of methamphetamine. App. 10, 1.6 – p. 12, l. 8.

A summary of the PCR witnesses’ testimony follows:

Petitioner and his Uncle Larry Ashley lived beside each other on adjacent properties located on Keowee Road in Honea Path, SC. Petitioner’s Uncle Larry Ashley owned 56 acres of land at 5635 Keowee Road. Petitioner owned 3 acres of land at 5677 Keowee Road right beside his Uncle Larry Ashley’s land. App. 54, l. 24 – p. 55, l. 17; App. 113, lines 5-16; App. 166, lines 2-6.

Petitioner was detained and searched by officers on his Uncle Larry Ashley’s private land without warrant(s) or consent. App. 165, l. 24 – p. 166, l. 6; App. 169, lines 23-25; App. 141, l. 4 – p. 143, l. 23; App. 91, l. 23 – p. 92, l. 2; App. 117, l. 21 – p. 118, l. 4.

Three patrol vehicles containing police officers arrived at petitioner's Uncle Larry Ashley's private property to arrest Young and Brock, who were allegedly living on petitioner's land. The officers had arrest warrants for Brock and Young only, but no search warrant for Uncle Larry Ashley and no search warrant or arrest warrant for petitioner. Police officers did not stop to obtain consent from Uncle Larry Ashley before entering onto his (Uncle Larry Ashley's) private property. Young was pregnant and allegedly using meth while pregnant. Young and Brock were both arrested on November 21, 2016. Tr. 114, lines 8-20; App. 132, l. 9 – p. 133, l. 19; App. 92, lines 8-9; App. 98, lines 22-25; App. 126, lines 6-23; app. 77, l. 6 – p. 78, l. 25; App. 81, lines 22-25; App. 103, lines 3-24; App. 106, l. 21 – p. 107, l. 2; App. 140, lines 20-23; App. 79, lines 15-20; App.132, lines 4-7; App. 137, l. 22 – p. 138, l. 11; App. 112, lines 8-21; App. 115, lines 1-14; App. 111, l. 25 – p. 112, l. 21; App. 86, l. 22 – p. 87, l.14; App. 94, lines 15-23; App. 95, lines 9-11.

On November 21, 2016, Officer Gladden was in the lead patrol car that entered onto Keowee Road. Officer McCurry was in the second patrol car that entered onto Keowee Road, and Officers Lunz and Hines were in the third patrol car headed to Keowee Road. App. 87, l. 15 – p. 88, l. 8; App. 91, lines 15-25; App. 111, lines 2-23; App. 121, lines 15-22; App. 129, lines 7-10.

Uncle Larry Ashley testified that police officers did not have his consent to drive onto his private property where petitioner was found and detained on that date, and that there was a “no trespassing” sign placed on a tree at the front of his property, and another “no trespassing” sign placed on a fence/gate that led to petitioner's property at that time. App. 54, l. 22 – p. 68; l. 25.

The police officers testified that they were attempting to make contact with petitioner **only** in order to gain information on how to locate Brock and Young. App. 112, l. 22 – p. 113, l.8.

Apparently, the police officers were unable to drive down petitioner's driveway so they drove down through his Uncle Larry Ashley's driveway without his (Uncle Larry Ashley's) consent to do so. App. 130, lines 4-22; App. 159, l. 20 – p. 160, l. 4.

Police Officers Gladden, Elder, Hines, and Lunz stated that they did not see any trespassing signs as they entered onto the properties on the date in question. App. 98, lines 15-21; App. 164, l.22- p. 165, l.4; App. 115, l.5 – p. 116, l. 7; App. 121, lines 6-14;

App. 125, l. 11 – p. 126, l. 16; App 129, lines 19-25; App. 137, lines 15-21.

In the process of searching for Brock and Young, the police saw petitioner running on his Uncle Larry Ashley's property and they detained him. App. 142, l.9 – p.143, l.23; App. 91, l.23 – p. 92, l.2; App. 117, l. 21 – p. 118, l.4.

Donnie Brock, who was also arrested on Uncle Larry Ashley's property on that day, stated that there was a "no trespassing" sign on Uncle Larry Ashley's tree on his property and a "no trespassing" sign on the gate leading to petitioner's property on the date in question. App. 272, l. 17 – p. 276, l. 13.

There was one path to enter petitioner's Uncle Larry Ashley's driveway and another path there used to avoid ruts in the driveways, and another path leading to a driveway to petitioner's home. The driveway to petitioner's residence was referred to as the "hole." Apparently, there were several driveways that led to petitioner's property and one driveway (paved) that led to his Uncle Larry Ashley's property. App. 165, lines 14-23; App. 129, l. 11 – p. 131, l. 16; App. 89, l. 22 – p. 92, l. 8.

Petitioner and trial counsel testified at the PCR hearing held in the case. Note that petitioner's Uncle Larry Ashley, Donnie Brock, and all officers involved in petitioner's detention testified at the PCR hearing as well.

Petitioner's PCR hearing testimony gave clarity with respect to the details of the land layout on Keowee Road. Petitioner testified that he informed trial counsel of the existence of a "no trespassing" sign attached to his closed gate on his (petitioner's) property, and that he told trial counsel of the existence of a "no trespassing" sign affixed to the nearby tree located on his Uncle Larry Ashley's property. Petitioner stated that the police officers came around on his Uncle Larry Ashley's property on a dirt road despite the "no trespassing" signs. Petitioner explained that he owned 3 acres of property on Keowee Road, and that his Uncle Larry Ashley owned 56 acres of adjacent land on Keowee Road. Petitioner stated that he was arrested on his Uncle Larry Ashley's property at a point that extended farther down into the woods. Petitioner stated that he

wanted the trial judge to hear the motion to suppress, but that trial counsel told him that the judge would not have granted the motion to suppress. Petitioner concluded that had counsel conducted proper investigations by traveling to view the property in question and walking onto the property, then counsel would have been able to make a stronger argument (Fourth Amendment violation) in support of the motion to suppress because this was a warrantless detention and search that occurred on private property without consent where visible “no trespassing” signs were posted. App. 319, l. 22 – p. 335, l. 5.

Trial counsel testified during the PCR hearing and explained that he filed a motion to suppress thirteen days before the trial date, and that the solicitor responded with a reduced charge and a plea offer of fifteen years in the case, which included the warning that the plea offer would be rescinded if the defense moved forward on the suppression motion. The suppression motion was never heard because petitioner accepted the plea offer and pled guilty. Counsel admitted that he had no idea of how deep into the woods petitioner was located when he was detained by police, and admitted further that he neither visited the property at Keowee Road nor hired an investigator to do so. Note that on the plea agreement, petitioner placed his initials on the blank space/line that reflected his desire to reject the plea offer and proceed with a trial on the drug charge. Trial counsel admitted further that he had no recollection of the existence of “no trespassing” signs on Keowee Road that indicated the private property status of the land, and that he failed to investigate into the land details and trespassing issue in the case. Counsel stated that his position was that no defense applied in the case because petitioner was caught running away from the police while carrying drugs. Counsel conceded that had he known of the “no trespassing” issue, then arguably a stronger motion to suppress could have made on petitioner’s behalf. App. 282, l. 7 – p. 306, l. 14.

The PCR judge ruled that petitioner failed to establish that trial counsel's performance was deficient and that prejudice existed with respect to counsel's admitted failure to conduct independent property investigations because there was very little likelihood that a motion to suppress would have been granted in the case. App. 359-388.

Petitioner argued that the police conducted an illegal warrantless search and seizure of him in violation of the Fourth Amendment in the case because the events occurred on private property where "no trespassing" signs were in plain view on the property.

### **Trespassing at Common Law**

The Fourth Amendment protects the right of people to be secure in their persons, houses, papers and effects against unreasonable (warrantless) searches and seizures. Common law gave landowners the right to exclude trespasses. In United States v. Jones, 565 U.S. 400, 132 S.Ct. 945 (2012), the Supreme Court held that there are recognized protections for property, and that the "text of the Fourth Amendment reflects its close connection to property," because "our Fourth Amendment jurisprudence was tied to common law trespass." The Jones Court highlighted traditional concerns over the impact of trespassory intrusions and property encroachments tied to the earlier common law of trespass in light of the Fourth Amendment protections, and held that although Katz's expectation of privacy issue emerged in time; nonetheless, "at bottom" was the protection against a trespassory violation per the following:

"No man can set his foot upon his neighbor's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbor's ground he must justify it by law."

In Jones, the Supreme Court held that the GPS tracker placed on the defendant's vehicle without a warrant was a warrantless search that violated the Fourth Amendment. In Florida v. Jardine, 569 U.S. 1, 133 S.Ct. 1409 (2013), the Supreme Court found that the police officers'

warrantless searches on the defendant's property violated the Fourth Amendment because the searches were unauthorized entries in violation of the law of trespass and licenses to enter private property.

In the case at bar, Uncle Larry Ashley testified at the PCR hearing that on November 21, 2016, petitioner had a gate that held a sign that read "no trespassing." Uncle Larry Ashley explained that this gate entered into property (3 acres) that belonged to petitioner, which was adjacent to his property that totaled 56 acres. Also, Uncle Larry Ashley testified that on November 21, 2016, he had a "no trespassing" sign posted on a tree that was located right at the driveway at the entrance of his property that led to his house. Uncle Larry Ashley stated that police had no consent to enter his private property at Keowee Road that belonged to him. App. 56, l. 1 – p. 59, l. 2; App. 60, l.19 – p. 68, l. 23.

Donnie Brock, who was arrested on petitioner's property, testified at the PCR hearing that on the date in question he remembered seeing petitioner's closed gate and a "no trespassing" sign hanging from the gate. Also, Brock stated that on the same date he remembered seeing a "no trespassing" sign hanging from a tree out front located on Uncle Larry Ashley's property. App. 272, l. 17 – p. 276, l. 13.

Additionally, petitioner testified that on the date in question there was a "no trespassing" sign on his gate on his property, and that there was a "no trespassing" sign on a tree at the entrance of his Uncle Larry Ashley's property. Petitioner stated that he informed trial counsel of the "no trespassing" signs on the properties. App. App. 321, l. 2 – p. 322, l. 16.

Note that all officers who were present on the property at issue before the arrest on the date in question testified at the PCR hearing and declared that they did not see the "no trespassing" signs on the properties on Keowee Road at that time. App. 98, l. 15-21; App. 164, l.

22 – p. 165, l. 14; App. 115, l. 5 – p. 116, l. 7, App. 121, lines 6-14; App. 125, l. 11 – p. 126, l. 16; App. 129, lines 19-25, App. 137, lines 15-21.

Clearly, the evidence proved that petitioner’s Uncle Larry Ashley’s property and petitioner’s property fell under the category of private properties complete with the “no trespassing” signs that confirmed the same. In the case at bar, the actions of law enforcement that led to the illegal warrantless entry onto petitioner’s Uncle Larry Ashley’s private property where a “no trespassing” sign was posted, which led to the arrest of petitioner on his Uncle Larry Ashley’s property, violated the Fourth Amendment; and trial counsel erred in not seeking out this information via investigations into these private property matters in order to include such crucial facts in the suppression motion filed in the case.

**Fourth Amendment Protection of Property Curtilage**

It is imperative to recognize that petitioner’s and his Uncle Larry Ashley’s properties were adjoining properties and that Uncle Larry Ashley’s concrete driveway on his property met petitioner’s dirt road driveway on his (petitioner’s) property. The police entered through petitioner’s Uncle Larry Ashley’s driveway since they could not enter through petitioner’s property via his gate. Based on the layout of the adjacent properties, the spot where petitioner was detained landed on the curtilage of his Uncle Larry Ashley’s property. The Fourth Amendment protects against unreasonable searches of the curtilage of one’s property without a warrant.

Officer Hines, who executed a search warrant of the properties **after later** obtaining a consent to search, which was subsequent to petitioner’s arrest, testified as follows regarding the description of the properties:

So with that amount of methamphetamine we did go to the residence of Mr. Greer Ashley Once at the residence of Mr. Greer

Ashley we drove down into what they call the Hole. I don't remember which driveway that we drove down. I know one of them is very, like rutted out where vehicles has gone in and out so many times and it is really muddy. So I am not sure if we went down that driveway. And there is another one at Mr. Larry Ashley's, which is Mr. Greer Ashley's uncle. There is another driveway that is commonly used to go around the ruts. You can go around the ruts and go down but I am not sure which driveway we used but we did go down there. So once we walked down there I spoke to, spoke to Mr. Greer Ashley and then we went and I observed an older white male sitting on the steps of the residence. He was identified as Barry Morgan. Mr. Morgan and Greer Ashley lived at the residence with him, he stated that he did not live inside the trailer. And on that property there is , and this is hard to do, Your Honor I apologize, I am trying to do hand motions here but you of course can't see my hands. But there is a driveway and then there is Mr. Ashley's, Mr. Ashley's house is to the right and that is Mr. Greer Ashley's father. And then there is a driveway that goes down there but on the edge of <r. Larry Ashley's property, there is another driveway. Well, down that driveway there was another residence, there is a single wide mobile home which Mr. Morgan, at the time, lived in. There are several people that have lived in that single wide three but Mr. Morgan was residing at that residence at the time. And then there was a camper off to the side. I think there was two campers to be exact and then there is a body shop, like a shop where Mr. Larry Ashley used to work on cars and I think they still do including, I think Mr. Greer Ashley actually assisted in working on vehicles and stuff like that as well down there. I ask Mr. Morgan if Greer Ashley lived at his residence and he stated that no, he in fact lived in the camper behind the residence. But he did not come inside his house to shower and eat. App. 159, 1.18-p. 161, 1.7.

Lieutenant Graham, Sergeant Ashley and I then went to the residence of Mr. Larry Ashley who is the property owner. We explained to him what was going on and then asked if we could have his consent to search the entire property due to the property having several buildings and abandoned vehicles on it. At that time he did complete a consent to search from, Mr. Larry Ashley did. We then searched the entire property and had no more, didn't find any other contraband or any other evidence. The reason that we asked Mr. Larry Ashley for consent to search the entire property is Mr. Greer Ashley was, the driveway we were talking about earlier, that was his residence. And he controlled what was around his residence. And he controlled what was around his residence so we did search around his residence off that consent from Mr. Greer Ashley. But Mr. Larry Ashley owns a big parcel of the property.

So we asked him to search because there is also a body shop down there and there are cars scattered in the woods. And there are all kinds of things where something can be hidden in. So Mr. Ashley, that's why he was asked to sign the consent form which he did. Tr. 162, l.15-p. 163, l.9.

Clearly, it appeared as though petitioner's Uncle Larry Ashley's property contained extensive curtilage areas because there were many points along his (Uncle Larry Ashley's) property stretching beyond his private home that held significance via indications that there were business enterprises, which petitioner presumably took part in, that reached far into deep parts of this property. There was a vehicle body shop located in an area beyond petitioner's Uncle Larry Ashley's home, which he presumably owned and or controlled, probably along with petitioner, and there were automobiles placed all along the extended portions of the property. It seemed as though petitioner's Uncle Larry Ashley's property contained items that moved quite close and up to his (petitioner's) property line as well, which suggested that petitioner was involved in the business of the car body shop. Additionally, campers and trailers were clearly strewn along the extended property belonging to his Uncle Larry Ashley, which was likely a rental business that he (petitioner) was tied to along with his uncle. App. 67, l. 19 - p. 68, l. 4; App. 92, lines 7-23; App. 169, lines 10-13; App. 112, l. 25 – p. 113, l. 4; App. 166, lines 7-13. The point being that the curtilage in this case where petitioner's Uncle Larry Ashley lived extended far into the woods and contained various businesses along the way, with which petitioner was probably associated, and this land clearly qualified as the curtilage of his Uncle Larry Ashley's property where he (petitioner) was illegally detained therein in violation of the Fourth Amendment.

Warrantless trespassory violations of the curtilage of one's property violates the Fourth Amendment. In Florida v. Jardines, 133 S.Ct. 1409 (2013), the Supreme Court held that the police officers' use of drug sniffing dogs on the front porch of a home to investigate an

unverified tip that marijuana was being grown inside without a warrant was a trespassory invasion of the curtilage of the home, which clearly constituted an unlawful search within the meaning of the Fourth Amendment, particularly where the police had no implied license for the physical invasion of the curtilage (front porch) of the home.

Note that the areas surrounding one's home including grassy areas fall under the definition of curtilage and likewise the protection of the Fourth Amendment. In State v. Bash, 419 S.C. 243, 797 S.E.2d 721(2017), the Court held that the officers search of the grassy area surrounding a home constituted the curtilage of the home, and that the warrantless search of the area violated the Fourth Amendment, In Bash, the Court cited to the Supreme Court case of United States v. Dunn, 480 U.S. 294 (1987), where the following four factors were listed to define the curtilage area with respect to a home: 1.) proximity of the area claimed to be the curtilage to the home; 2.) whether the area included and within an enclosure surrounds the home; 3.) the nature of the uses to which the area is put; and 4.) the steps taken by the resident to protect the area from observation by people passing by the home. Based on Dunn and Bash, the question is whether Uncle Ashley's extended wooded area was so intimately tied to the home itself that it qualified as curtilage that was protected under the Fourth Amendment. Again, in the case at bar, petitioner's Uncle Larry Ashley's land had many uses and businesses, including vehicle body and repairs, and home rentals; and although the land stretched far, the usage of the property and petitioner's family connection to the property meant that the extended surrounding land constituted curtilage that fell under the protection of the Fourth Amendment.

### **Reasonable Expectation of Privacy Rule**

Evidence obtained as a result of an unlawful search constitutes a violation of the Fourth Amendment and is inadmissible at trial. When a defendant has a reasonable expectation of

privacy in the property being searched, the Fourth Amendment applies thereafter. Katz v. United States, 389 U.S. 165 (1967); Minnesota v. Olson, 495 U.S. 91(1990); State v. Missouri, 352 S.C. 121, 572 S.E.2d 467 (2002); State v. Flowers, 360 S.C. 1, 598 S.E.2d 725 (2004). The reasonable expectation of privacy rule has been added to the common law trespassing test. United States v. Jones, supra. Additionally, the Jones Court held that property matters would fall under a reasonable expectation of privacy rule. In Missouri, the Court held that the defendant had a reasonable expectation of privacy in the home of a friend's apartment where he was present when the place was searched by police. In Missouri, the defendant had a key to the apartment and clothes therein, and was welcomed to enter and leave at his own will. Note that in Minnesota v. Olson, 495 U.S. 91 (1990), the Supreme Court held that even an overnight guest might have a reasonable expectation of privacy in the host's home as well. In State v. Flowers, supra, the Court held that the defendant had a reasonable expectation of privacy in another's home where he would spend five nights a week there, and had clothes there, and paid rent there also.

Clearly, the cases above involve inside places; however, the overall theory of what constitutes a reasonable of expectation of privacy would include an analysis of the defendant's relationship with or to the property and/or the property owner (See State v Missouri, supra), and a common authority that would involve the defendant via a sufficient relationship to the property, such as mutual use or joint access and/or ownership of the property. See State v. Flowers, supra.

Here, petitioner's property was adjacent to his Uncle Larry Ashley's property, and apparently there was a vehicle body shop and vehicles and campers and trailers on both adjoining properties that indicated apparently that both petitioner and his Uncle Larry Ashley had authority over the property as a possible family enterprise of sorts. It was clear that

petitioner's property driveways (dirt) and his Uncle Larry Ashley's property driveways were connected as well. The connection petitioner had to his Uncle Larry Ashley's land was sufficiently obvious and included authority and usage ties to the same. Petitioner had a connected relationship, arguably free reign, to his uncle's property. Therefore, at the time of his detention by police on his Uncle Larry Ashley's land, petitioner had a reasonable expectation of privacy on that private property.

Moreover, petitioner can challenge a search and seizure on another's property by being legitimately on the premises. Compare State v. Robinson, 410 S.C. 519, 765 S.E.2d 564 (2014), where the defendant alleged that a Fourth Amendment violation occurred when he was seized without a warrant by police on the porch (curtilage) of an apartment. Although the Robinson Court held that the defendant could not show a substantial connection to the property allegedly trespassed upon per his reasonable expectation of privacy argument where he was neither a renter nor overnight guest there; nonetheless, the Robinson Court put forth the following list of factors below to be considered on the question of one's reasonable expectation of privacy within another's property:

- A.) Whether the defendant owned the home or had property rights to it;
- B.) Whether the defendant was an overnight guest;
- C.) Whether the defendant kept a change of clothes at the home;
- D.) Whether the defendant had a key to the home;
- E.) Whether the defendant had dominion and control over the home and could exclude others from the home;
- F.) How long had the defendant known the owner of the home;
- G.) How long the defendant had been at the home;
- H.) Whether the defendant attempted to keep his activities in the home private;
- I.) Whether the defendant treated it as a commercial establishment; or
- J.) Whether the defendant alleged a proprietary or possessory interest in the premises and property.

Again, petitioner and his Uncle Larry Ashley had obvious family connection to their adjacent lands, which included presumably shared authority over the vehicle shop, and vehicles and campers and trailers spread out all strewn over his Uncle Larry Ashley's land; and certainly, petitioner, as a nephew, had free roam of his uncle's property and thereby exercised dominion and control over the property as a family member who lived next door with respect to business or social ventures. Undoubtedly, petitioner had substantial connections to his Uncle Larry Ashley's land and thus a reasonable expectation of privacy to said property.

A legitimate expectation of privacy is both subjective and objective, i.e., the defendant must show that he has a subjective expectation of privacy of not being discovered, and that the expectation is one that society recognizes as reasonable. State v. Missouri, *supra* quoting Oliver v. United States, 466 U.S. 170 (1984). In Missouri, *supra*, the defendant had a reasonable expectation of privacy in another's apartment. See also State v. Brown, 423 S.C. 519, 815 S.E.2d 761 (2018). Furthermore, in determining whether the expectation of privacy is reasonable, the test of legitimacy is not whether the individual chose to conceal assertedly "private" activity, but whether the government's intrusion infringed upon the personal and societal values protected by the Fourth Amendment. See Oliver v. United States, 466 U.S. 170 (184), Clearly, petitioner held a reasonable expectation of privacy, both subjectively and objectively, on his Uncle Larry Ashley's property, and thus the police detention of him on that property violated the Fourth Amendment.

### **Open Field Doctrine**

In Oliver v. United States, 466 U.S. 170 (1984), the Supreme Court held that an open field, unlike the curtilage of a home, is not protected by the Fourth Amendment. However, as discussed above and in the dissent in Oliver, there is a reasonable expectation of privacy even in

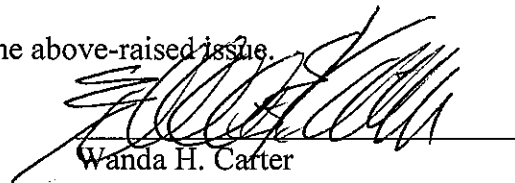
an open field where the expectation is one that society would recognize as reasonable, which would include the circumstances in the instant case. There were businesses (car shop, campers, trailers etc.) scattered all throughout the property owned by petitioner's Uncle Larry Ashley, wherein petitioner possessed presumably free reign and even a proprietary/entrepreneurial interest therein. The open field doctrine did not apply in this case.

### SUMMARY

The warrantless search and seizure of petitioner conducted by police in this case violated the Fourth Amendment to the United States Constitution. Trial counsel erred in failing to conduct adequate investigations with respect to the search and seizure issue, specifically regarding the lack of research on the private property status of the land in support of the motion to suppress. Trial counsel's deficient performance in this matter violated petitioner's right to effective legal assistance as required under the Sixth Amendment, (See Hill v. Lockhart, 474 U.S. 52 (1985)); and but for counsel's error, a reasonable probability exists that the outcome of petitioner's case would have been different.

### CONCLUSION

Based on foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above-raised issue.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 10<sup>th</sup> day of April, 2023.