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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable Christopher D. Taylor, Circuit Court Judge

Appellate Case No. 2026-000236

State of South CarolinaRespondent

v.

Carolina Dawn PenningtonAppellant

INITIAL BRIEF OF APPELLANT



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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE CIRCUIT COURT ERR IN CONCLUDING THAT THE WARRANTLESS ENTRY INTO THE CURTILAGE OF PENNINGTON'S HOME WAS REASONABLE WHEN SOLELY BASED ON AN ANONYMOUS TIP?**
- 2. DID THE CIRCUIT COURT ERR IN CONCLUDING THAT EXIGENT CIRCUMSTANCES PERMITTED THE OFFICERS WHO HAD ALREADY ENTERED INTO THE CURTILAGE OF THE HOME TO MAKE A WARRANTLESS ENTRY INTO THE BACKDOOR OF PENNINGTON'S HOME?**
- 3. DID THE CIRCUIT COURT ERR IN FAILING TO SUPPRESS PHOTOGRAPHS TAKEN OF 125 DIBBLE LANE PRIOR TO THE ISSUANCE OF A SEARCH WARRANT?**
- 4. DID THE CIRCUIT COURT ERR IN FAILING TO GRANT A MISTRIAL WHEN A NON-EXPERT INVESTIGATOR PROVIDED TESTIMONY RESERVED FOR AN EXPERT, PARTICULARLY WHERE THAT SAME INVESTIGATOR DESTROYED EVIDENCE FOR WHICH APPELLANT COULD NOT SUE TO RETAIN AN EXPERT IN DEFENSE?**
- 5. DID THE CIRCUIT COURT ERR AT SENTENCING IN CONSIDERING AN ERRONEOUS STATEMENT FROM THE SOLICITOR THAT PENNINGTON HAD SERVED TIME IN FEDERAL PRISON WHERE HER PRIOR FEDERAL SENTENCE WAS ACTUALLY HOUSE ARREST?**

STATEMENT OF THE CASE

On April 19, 2023, Appellant Caroline Pennington was indicted by a Richland County grand jury on thirty counts of ill treatment of animals (torture) in violation of S.C. Code Ann. § 47-1-40(b). (Indictments.) She pleaded not guilty as to all counts and filed a number of pretrial motions, including a Motion to Suppress Evidence seized as a result of a warrantless entry into curtilage of her home and later a warrantless entry into the backdoor of her home. The Court held an evidentiary hearing prior to trial on October 27, 2025, and denied the Motion to Suppress. Appellant reserved this objection throughout trial and renewed it in a Motion for New Trial.

At the close of the trial, Appellant was found guilty of all of the charges and the Court imposed a sentence of five years' imprisonment as to count 2023GS4002562, four years' imprisonment as to count 2023GS4002563, to be served consecutively. The Circuit Court imposed a concurrent sentence of five years' imprisonment as to each of the remaining counts.

Appellant filed a Motion for New Trial on November 10, 2025. The Court denied the Motion for New Trial on January 27, 2026.

STATEMENT OF THE FACTS

On May 22, 2022, Richland County Crime stoppers received a tip that there was an “odor of death” coming from the residence at 125 Dibble Lane. (Trial Transcript, p. 100.) Upon arriving on the scene, Deputy William Hunter of the Richland County Sheriff’s Office testified that “[w]hen I arrived on scene, we immediately noticed the residence looked like it was abandoned. We did a – walked up to the front, I observed the front, and then go—went towards the back of the property where we walked up the steps to the main deck area, found contact with the door.” (Trial Transcript at 100.) Only after approaching the back door did Deputy Hunter notice the odor “that was consistent with decomposed flesh.” (Trial Transcript, p. 100.) Deputy Hunter also testified that he heard an audible alarm. (Trial Transcript, p. 100.)

While still at the back door, having climbed the steps to the main deck area, Deputy Hunter concluded that warrantless entry was proper because of exigent circumstances. He testified, “[a]nd due to the exigent circumstances of that, we immediately checked to see if the door was unlocked and it was. The door opened up and we were hit with a strong odor.” (Trial Transcript, p. 101.) Upon prompting from the solicitor, Deputy Hunter further testified that “[t]he odor of decomposing flesh is an exigent circumstance for us, along with the fact that there was an active audible alarm.” (Trial Transcript, p. 101.) There is no evidence that the alarm was active before the officers opened the upstairs back door on the deck. Upon entry, Deputy Hunter testified that he activated his body worn camera and did “a protective sweep of the residence to ensure that there was nobody in medical need.” (Trial Transcript, p. 101.) He clarified his testimony on redirect examination that he went into the house “[s]imply due to the fact that there was an odor of death inside the home and there was an active alarm to conduct a sweep to make sure there’s no persons

inside of this residence, and to also make sure there's no persons inside that needed immediate medical attention.” (Trial Transcript, p. 125.)

Deputy Hunter confirmed that the Crime Stoppers tip was anonymous. (Trial Transcript, p. 104.) He made it clear, however, that he never actually saw the Crime Stoppers tip. On cross-examination, Deputy Hunter testified that the odor of death was first present when he got to the back door. (Trial Transcript, p. 110.) As for whether he or Sergeant Larry Crutchlow knocked and announced their presence before entry, Deputy Hunter could only speculate because that would be proper procedure. He could not testify that it was done because he could not recall and because he failed to turn on his body worn camera before Sergeant Crutchlow opened the back door. (Trial Transcript, p. 116.)

Sergeant Larry Crutchlow also testified at the suppression hearing that while he was off-duty heading home, he heard the call and responded as he was that area's supervisor. (Trial Transcript, pp. 127-128.) When Sergeant Crutchlow arrived, “Deputy Hunter was already positioned at the back of the house.” (Trial Transcript, p. 128.) Because Sergeant Crutchlow was off-duty at the time, his vest and body worn camera remained in his vehicle. (Trial Transcript, p. 133-134.) When he arrived, he climbed a set of stairs for the back deck and met Deputy Hunter at the back door. (Trial Transcript, p. 134.) After arriving at the back door, Sergeant Crutchlow “noticed there was an alarm going off and a smell of – it smelled like something dead emitting from the home.” (Trial Transcript, p. 128.) There is no testimony about what the “something dead” actually smelled like. There was no attempt to differentiate between a dead rodent or a human being. Deputy Hunter further testified that the back door was closed. (Trial Transcript, p. 128.) Contrary to the testimony of Deputy Hunter, Sergeant Crutchlow testified that both he and Deputy Hunter knocked on the door and announced their presence. (Trial Transcript, p. 129.) Sergeant

Crutchlow further testified that “we” checked the door to see if it was unlocked and “we” opened the door. (Trial Transcript, p. 129.) Deputy Crutchlow explained that “[w]e opened the door based on – we were concerned there might be someone inside that was needing medical attention. We had that, we had a Crime Stoppers tip, which would have been a welfare check, and there was an active alarm going off.”¹ (Trial Transcript, p. 130.) He further explained on cross-examination that “[g]iven the totality of the circumstances, we felt as though there could have been a medical – a person needing medical care – immediate medical care inside the home.” (Trial Transcript, p. 138.) In his report, Sergeant Crutchlow described the smell as “the smell of death.” (Trial Transcript, p. 141.) Sergeant Crutchlow conceded that he could not merely conduct a warrantless search for a human body as exigent circumstances. (Trial Transcript, p. 142.) Sergeant Crutchlow admitted that “because that in and of itself would not justify the exigency requirement.” (Trial Transcript, p. 142.)

After finding no one on a protective sweep, Deputy Crutchlow testified that he called Investigator Joe Clarke and then worked the outside of the home, holding the scene for a search warrant. Even after the initial protective sweep, Deputy Hunter re-entered the home to take photographs while waiting for the investigator to secure a search warrant. (Trial Transcript, p. 120.) There is no evidence that Sergeant Crutchlow, who was holding the scene, prevented Deputy Hunter’s warrantless entry after the protective sweep and before the search warrant was signed by a Magistrate.

In ruling on the Motion to Suppress, the Circuit Court acknowledged that it had not heard any testimony as to the reason why the officers were at the back door. (Trial Transcript, pp. 221-

¹ Again, there is no evidence that the alarm was ringing until the officers opened the upstairs patio’s back door.

222.) Yet, the Circuit Court never addressed the curtilage argument of counsel and merely stated that he was looking at “reasonableness of the actions of the officers” and denied the Motion to Suppress. (Trial Transcript, p. 222.)

Prior to law enforcement securing a search warrant, Deputy Hunter reentered the premises and took photographs of crates and deceased animals. (Trial Transcript, p. 118-119.) Yet, the Court denied Petitioner’s motion to suppress said photographs without explanation. While the search warrant was not secured until just before 7 p.m. on May 22, 2022 (Search Warrant), Deputy Hunter took 36 photographs, with the first photograph taken at 4:20 p.m. and the last photograph taken at 5:14 p.m. (Trial Transcript, pp. 118-119; Defense Exhibit 2A admitted for pretrial.) Deputy Hunter was not the only member of law enforcement entering without a warrant or exigent circumstances, as animal control officers also entered the home. Further, Animal Control Officers Leroy Cain and Jamal Clavon entered the home between 4:22 p.m. and 5:10 p.m. to take photographs. (Trial Transcript, pp. 424-427.) Yet, the trial court never independently addressed whether these photographs should be suppressed, only noting that it “will respectfully deny the defendant’s motion to suppress.” (Trial Transcript, p. 223.) Many of these photographs were admitted as evidence at trial. (State’s Exhibit 29.)

Petitioner also moved in limine to prevent law enforcement, and particularly Investigator Clarke, from testifying regarding any suffering or death of the animals found, as he was not an expert. In fact, Counsel for Petitioner argued, “[i]t—it’s that simple law. We just object to him testifying that [they] were dehydrated or starved that—that’s a scientific conclusion.” (Trial Transcript, p. 269.) During the pretrial conference, counsel for the prosecution agreed that Investigator Clarke could not testify that they were starved or dehydrated. (Trial Transcript, p. 272.) As a result, it did not require a trial court ruling. Yet, at trial, Investigator Clarke violated

this agreement and testified, “No. These animals appeared to have died in their crates most probably from dehydration or starvation.” (Trial Transcript, p. 549.) Petitioner promptly requested a mistrial. (Trial Transcript, p. 568.) Instead of granting a mistrial, the trial court elected to instruct the jury to disregard any testimony from Investigator Clarke as to the cause of death. (Trial Transcript, pp. 567, 568.)

Investigator Clarke also admitted to failing to get necropsies of the deceased animals and instead decided to dispose of the animal remains without giving Petitioner an opportunity for independent necropsies by an expert to determine whether the animals suffered or their cause of death. (Trial Transcript, p. 539.) Investigator Clarke testified that he could have gotten necropsies, but he did not because of the cost and that he, a non-expert, did not see any evidentiary value in such expert evidence. (Trial Transcript, pp. 503-504.) Instead, Investigator Clarke decided that the animals would be bagged and given to Animal Control for disposal and incineration. (Trial Transcript, p. 504.) Yet, the State’s own expert witness, Jennifer Bonovich, testified that necropsies can help determine the cause of death. (Trial Transcript, p. 610-611.) Although Investigator Clarke knew that the residence belonged to Petitioner, he did not give her the option to have necropsies on the corpses.

Following a trial, the court heard argument from the Solicitor, who stated that Petitioner was sentenced in a previous federal case to a year and one day, plus probation. (Trial Transcript, p. 909.) This argument implied that Petitioner had served time in prison, notwithstanding that Petitioner’s counsel corrected the prosecution that was served as a term of house arrest. (Trial Transcript, p. 909.) In sentencing Petitioner, the trial court noted the prior federal conviction where “[s]he received a year and a day.” (Trial Transcript, p. 915.) In considering the incorrect sentence from the federal court, the trial court then pronounced sentence to include three years

imprisonment as to Indictment 2563, and five years consecutively as to Indictment 2564. For the remaining 28 indictments, Petitioner received concurrent five-year sentences of imprisonment. (Trial Transcript, p. 916.)

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). Accordingly, “[appellate courts are] bound by the [circuit] court's factual findings unless they are clearly erroneous.” *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). On appeal from a suppression hearing, this court is bound by the circuit court's factual findings if any evidence supports the findings. *State v. Brockman*, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). In an appeal from a motion to suppress evidence based on Fourth Amendment grounds, an appellate court may conduct its own review of the record to determine whether the evidence supports the circuit court's decision. *See State v. Khingratsaiphon*, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002) (stating “*Brockman* does not hold the appellate court may not conduct its own review of the record to determine whether the trial judge's decision is supported by the evidence”).

In making the determination of whether to grant or deny a mistrial, South Carolina appellate courts review for an abuse of discretion. *State v. Dial*, 405 S.C. 247, 257, 746 S.E.2d 495, 500 (Ct. App. 2013); *State v. Wiley*, 387 S.C. 490, 495-96, 692 S.E.2d 560, 563 (Ct. App. 2010).

In South Carolina criminal cases, the appellate court sits to review errors of law only. *State v. Scott*, 414 S.C. 482, 486, 779 S.E.2d 529, 531 (2015); *State v. Smith*, 411 S.C. 161, 168, 767 S.E.2d 212, 216 (Ct. App. 2014). Under this standard, the appellate court is bound by the trial court's factual findings unless they are “clearly erroneous” or an abuse of discretion is shown. *Id.*

ARGUMENT

I. The Circuit Court erred in concluding that the warrantless entry into the curtilage of Pennington's home was reasonable when solely based on an anonymous tip.

As noted above, the Circuit Court never addressed the lack of reasoning of the officers going around the house and up the stairs of the back deck before reaching the back door based solely on an anonymous tip that there was an “odor of death” coming from the home. (Trial Transcript, pp. 221-222.) Yet, the Circuit Court's ruling must have presumed either that bypassing the front door and other points of entry and climbing stairs to the deck to reach the back door was reasonable based solely on the anonymous tip. In this regard, Appellant challenges that implicit ruling. While the anonymous tip could have supported a knock on the front door, such could not support an invasion of privacy like circling around to the backyard and climbing the deck stairs to reach the back door.

Through its “exclusionary rule,” the Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const. amend. IV. The South Carolina Constitution provides even greater protection against unlawful searches and seizures. *See* S.C. Const. art. I, § 10. *See State v. Ferguson*, 436 S.C. 596, 602, 874 S.E.2d 234, 237 (Ct. App. 2022) (citing the South Carolina Constitution's explicit right to privacy in affirming the suppression of evidence gained from an anonymous tip). Evidence seized in violation of the Fourth Amendment is excluded in both state and federal court. *See Mapp v. Ohio*, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961); *State v. Forrester*, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001).

“Generally, a warrantless search is per se unreasonable and thus violative of the Fourth Amendment's prohibition against unreasonable searches and seizures.” *State v. Bultron*, 318 S.C. 323, 331, 457 S.E.2d 616, 621 (Ct. App. 1995). “However, a warrantless search will withstand constitutional scrutiny where the search falls within one of a few specifically established and well

delineated exceptions to the Fourth Amendment exclusionary rule.” *Bultron*, 318 S.C. at 331-32, 457 S.E.2d at 621. In such cases, the burden is upon the State to justify a warrantless search. *State v. Bailey*, 276 S.C. 32, 35, 274 S.E.2d 913, 915 (1981). The State contends that the warrantless search in the present case fell within exception to the Fourth Amendment provided by the “exigent circumstances doctrine.”

Law enforcement officials have long been permitted to act without the permission of a magistrate when the “exigencies of the situation [have] made that course imperative.” *McDonald v. United States*, 335 U.S. 451, 456, 93 L. Ed. 153, 69 S. Ct. 191 (1948). The exigent circumstances doctrine provides an exception to the Fourth Amendment's protection against warrantless searches, but only where, from an objective standard, a “compelling need for official action and no time to secure a warrant” exist. *State v. Brown*, 289 S.C. 581, 587, 347 S.E.2d 882, 886 (1986) (quoting *Michigan v. Tyler*, 436 U.S. 499, 56 L. Ed. 2d 486, 98 S. Ct. 1942 (1978)). “[T]he Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.” *Mincey v. Arizona*, 437 U.S. 385, 392, 57 L. Ed. 2d 290, 98 S. Ct. 2408 (1978).

When officers “physically occup[y] private property for the purpose of obtaining information,” a search has occurred. *United States v. Jones*, 565 U.S. 400, 404, 132 S. Ct. 945, 949, 181 L. Ed. 2d 911, 918 (2012). The majority in *Jones* explained that when the Government obtains information from “physically intruding on a constitutionally protected area, such a search has undoubtedly occurred.” *Jones*, 565 U.S. at 406 n.3, 132 S. Ct. at 950-951 n.3, 181 L. Ed. 2d at 919 n.3; *see also* 565 U.S. at 413, 132 S. Ct. at 954, 181 L. Ed. 2d at 923 (Sotomayor, J., concurring) (“I join the Court's opinion because I agree that a search within the meaning of the Fourth Amendment occurs, at a minimum, ‘[w]here, as here, the Government obtains

information by physically intruding on a constitutionally protected area.”); *United States v. DE L'Isle*, 825 F.3d 426, 431 (8th Cir. 2016) (“It is clear that a physical intrusion or trespass by a government official constitutes a search within the meaning of the Fourth Amendment.”); *United States v. Perea-Rey*, 680 F.3d 1179, 1185 (9th Cir. 2012) (“Warrantless trespasses by the government into the home or its curtilage are Fourth Amendment searches.”).

In *State v. Bash*, 419 S.C. 263, 797 S.E.2d 721 (2017), the South Carolina Supreme Court, in citing *Florida v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013), stated that a physical intrusion depends on what is customary. Quoting *Jardines*, the South Carolina Supreme Court noted:

“A license may be implied from the habits of the country,” We have accordingly recognized that “the 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. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters. 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.”

Bash, 419 S.C. at 275 (citing *Jardines*, 569 U.S. at 8, 133 S. Ct. at 1415-16, 185 L. Ed. 2d at 502 (internal citations omitted)). Similar to federal precedent, this Court has found that “police had the investigative authority to approach the front door of the mobile home in order to investigate the anonymous tip.” *State v. Wright*, 391 S.C. 436, 445, 706 S.E.2d 324, 328 (2011).

Here, it is undisputed that the Richland County Sheriff's Office received an anonymous Crime Stoppers tip regarding the “odor of death” from 125 Dibble Lane. It is clear that it was an anonymous tip without any further corroboration from the testimony of the responding officers.

Further, it is clear from the testimony of the officers that they bypassed the front door and other entry points between the front door and the back door, and escalated a set of stairs onto the back deck of the house and attempted to knock and announce at the back door instead of the front door. Even the Circuit Court admitted that the officers provided no reason for accessing the back door. (Trial Transcript at 221-222.) Thus, the only justification for entering the curtilage of the home rather than climbing the back deck stairs and knocking on the back door was the anonymous Crime Stoppers tip.

If the officers approached the front door, they would have complied with the requirements under *Wright*. However, by bypassing the front door, passing the garage door, and entering the curtilage of the home, including the back yard, a lower-level back door, stairs of the back deck, the back deck, and the back door, they could only do so with probable cause or exigent circumstances. The curtilage of the home is “the land immediately surrounding and associated with the home” and is “part of the home itself for Fourth Amendment purposes.” *Bash*, 419 S.C. at 268, 797 S.E.2d at 724 (quoting *Oliver v. United States*, 466 U.S. 170, 180, 104 S. Ct. 1735, 1742, 80 L. Ed. 2d 214, 225 (1984)). *Bash* further states that there are four factors courts should weigh when determining what areas of the home can be considered the curtilage. *Id.* at 270. These factors are as follows: 1) the proximity of the area to the home; 2) whether the area is inside an enclosure; 3) the use of the area; and 4) actions taken by the resident to protect the area from passers-by. *Id.* It is also well established that a front porch is part of the curtilage. *Florida v. Jardines*, 133 S. Ct. at 1414-15 (characterizing the front porch as a “classic exemplar” of the curtilage); accord *State v. Herring*, 387 S.C. 201, 209, 692 S.E.2d 490, 494 (2009). In *Bash*, the Supreme Court extended this protection further than a porch, reversing a lower court order allowing evidence obtained from a warrantless search of a grassy area not in immediate proximity to the Defendant’s home. *Bash*,

419 S.C. at 271, 797 S.E.2d at 725 (2017). A rear porch, then, is clearly part of the curtilage as it is attached to the home itself and enjoys greater protection from passers-by than a front porch.

Moreover, it is clear from the officers' testimony that they only smelled decomposing flesh when at the back door of the upstairs patio.² Thus, the only facts available to the officers to justify entering the curtilage of the home is the uncorroborated, anonymous tip. The United States Supreme Court held that reasonable suspicion based solely on a call made from an unknown location by an unknown caller lacked the sufficient indicia of reliability to make an investigatory stop under the *Terry* doctrine. *Florida v. J.L.*, 529 U.S. 266, 146 L. Ed. 2d 254, 120 S. Ct. 1375 (2000). 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. The 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. The Court stated:

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. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

J.L., 529 U.S. at 272, 120 S. Ct. at 1379. In *State v. Green*, 341 S.C. 214, 218, 532 S.E.2d 886, 897-98 (Ct. App. 2000), this Court noted that the anonymous caller provided the police with the suspect's name, description of the car he was driving, and the location from which he would be

² Appellant does not concede that those facts create exigent circumstances as argued below.

departing. This Court held that “[t]hese items are readily observable and do not supply sufficient indicia of reliability to establish reasonable suspicion to justify an investigatory stop. The officer made no personal observations and had no reason, aside from the anonymous tip, to suspect Green of illegal conduct.” *Id.* This Court has further held that while anonymous tips do not supply the indicia of reliability to establish reasonable suspicion, “[a]n anonymous tip can provide the basis for an investigatory stop if the officer conducting the stop verifies the tip's reliability by observing the suspect engaged in criminal activity.” *State v. Taylor*, 388 S.C. 101, 114, 694 S.E.2d 60, 66 (Ct. App 2010).

Applying *J.L.*, *Green*, and *Taylor* to the case at bar, neither Deputy Hunter nor Sergeant Crutchlow had reasonable suspicion to enter the curtilage and certainly did not have probable cause to enter. In South Carolina, reasonable suspicion requires a “particularized and objective basis that would lead one to suspect another of criminal activity.” *State v. Rowland*, 444 S.C. 84, 96, 905 S.E.2d 825, 831 (Ct. App. 2024). There must be an “objective, specific basis” rather than a mere “hunch” or “unparticularized suspicion” *State v. Frasier*, 437 S.C. 625, 635, 879 S.E.2d 762, 767 (2022). Any investigatory stop must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion” *State v. Butler*, 343 S.C. 198, 202, 539 S.E.2d 414, 416 (Ct. App. 2000). The burden rests entirely on the State to articulate facts sufficient to support this suspicion. *Id.* In determining whether reasonable suspicion exists, the “whole picture” or the “entire mosaic” must be considered, rather than single, isolated factors. *Rowland*, 444 S.C. at 96, 905 S.C. at 831. Like probable cause, reasonable suspicion is dependent upon both the “content of information possessed by police” and its “degree of reliability.” *State v. Hopkins*, 447 S.C. 240, 253, 924 S.E.2d 883, 890 (Ct. App. 2025), *cert. denied* (June 17, 2026).

With respect to the higher standard of probable cause for a warrantless entry, law enforcement officers are authorized to make warrantless arrests at a suspect's residence or elsewhere only if physical manifestations of injury are present and the officer has “probable cause to believe” the person is committing or has freshly committed a felony or misdemeanor domestic offense. S.C. Code Ann. § 16-25-70. Conversely, an officer is explicitly prohibited from making an arrest under this provision if the officer determines “probable cause does not exist” after evaluating the relevant statutory factors and observing no physical manifestations of injury. *Id.*

There is no basis to conclude that there was either reasonable suspicion or probable cause to believe a crime had been committed in this case. This leaves whether an uncorroborated anonymous tip can provide the basis for exigent circumstances to enter the curtilage of a home. It is clear from the testimony that neither of the officers corroborated the anonymous tip at the front door to even have any inkling of any exigent circumstances. No case law in South Carolina permits the entry into a home without a warrant if the exigent circumstances are based solely on an uncorroborated, anonymous tip. Because an anonymous caller does not place their credibility at risk, an anonymous tip alone is deemed to lack the necessary indicia of reliability. For law enforcement officers to even approach a targeted private residence to conduct an investigative “knock and talk,” they must first possess a “reasonable suspicion of illegal activity.” *State v. Counts*, 413 S.C. 153, 172, 776 S.E.2d 59, 70 (2015). An uncorroborated anonymous tip is insufficient to meet even this threshold. Officers must verify the reliability of the tip through independent observation or investigation, such as corroborating specific details or witnessing illicit behavior. *State v. Ferguson*, 436 S.C. 596, 608-09, 874 S.E.2d 234, 240 (Ct. App. 2022).

Thus, an anonymous tip cannot serve as the basis to enter the curtilage of the home for a well-check or safety check without some corroboration by the officers. Here, the failure of the

officers to corroborate the tip before entering the curtilage of the home, including the back yard, the stairs of the back deck, the back deck, and the back door, violated the Fourth and Fourteenth Amendments to the United States Constitution and S.C. Const. art. I, § 10. Thus, the Circuit Court erred in failing to suppress the evidence seized as a result of the unlawful intrusion into the curtilage of Appellant's home.

II. The Circuit Court erred in concluding that exigent circumstances permitted the officers who had already entered the curtilage of the home to make a warrantless entry into the backdoor of Pennington's home.

When the officers approached the back door, they testified that they smelled decomposing flesh and heard an alarm going off in the home.³ This was well after they bypassed the front door and other points of entry, went to the back yard, ascended stairs to the back deck, and approached the patio's back door. They each testified that the smell of decomposing flesh resulted in exigent circumstances to enter the home to conduct a protective sweep to determine if there were any individuals requiring medical assistance. Yet, South Carolina has not determined that the odor of decomposing flesh is an exigent circumstance.

To justify a warrantless entry under the exigent circumstances exception, South Carolina courts require an objectively reasonable basis to act immediately. *State v. Herring*, 387 S.C. 201, 210, 697 S.E.2d 490, 494-495 (2009). Recognized exigencies include:

- a) The need to protect or preserve life, or avoid serious injury to police or others inside or outside a dwelling. *Id.*
- b) The risk of imminent flight by a suspect. *Id.*

³ Again, there is no evidence that the alarm was sounding before the officers opened the back door on the patio.

- c) The imminent destruction of evidence. *State v. Dobbins*, 420 S.C. 583, 592, 803 S.E.2d 876, 880 (Ct. App. 2017).

Under this framework, a court reviews the totality of the circumstances from the perspective of an objectively reasonable officer to determine whether there was a “fairly perceived need to act on the spot.” *Herring*, 387 S.C. at 210, 697 S.E.2d at 494.

While South Carolina law recognizes that distinctive odors can establish probable cause in other contexts—such as the smell of marijuana establishing probable cause to search a package, or the smell of alcohol contributing to probable cause for an arrest—the state's jurisprudence has not explicitly extended this principle to hold that the odor of decomposing flesh categorically constitutes an exigent circumstance. Absent hot pursuit, South Carolina law requires that law enforcement possess at least probable cause to believe that actual exigent circumstances—such as an active danger to life or a risk of flight—are present before entering a home without a warrant. *State v. Wright*, 416 S.C. 353, 368, 785 S.E.2d 479, 487 (Ct. App. 2016).

South Carolina has not addressed the issue of whether the smell of decomposing flesh alone constitutes an exigent circumstance allowing officers to bypass the warrant requirement. Whether the odor of decomposing flesh constitutes an exigent circumstance justifying a warrantless entry into a home has been addressed by other jurisdictions and typically depends on the jurisdiction and the totality of the circumstances known to law enforcement at the time of entry. Generally, a warrantless entry into a home is *per se* unreasonable unless it falls within a carefully delineated exception, such as the emergency aid. Under this doctrine, officers may enter a residence without a warrant if they have an objectively reasonable basis to believe that a person inside is injured, in imminent danger of physical harm, or in need of immediate assistance. *Commonwealth v. Tuschall*, 476 Mass. 581, 585, 71 N.E.3d 445, 449 (2017); *State v. Guy*, 679 S.W.3d 632, 676 (Tenn. Crim.

App. 2023). In a number of jurisdictions that have addressed this issue, the odor of decomposing flesh—especially when combined with other indicators like a missing person report—establishes an exigent circumstance under the emergency aid exception. *State v. Epperson*, 571 S.W.2d 260, 264 (Mo. 1978); *State v. Samuolis*, 344 Conn. 200, 223 (2022). However, other jurisdictions have held that the odor of a decomposing body, in and of itself, does not create an emergency because there is no hope of revival. *Rauscher v. State*, 129 S.W.3d 714, 722-23 (Tex. App. 2004). Courts have concluded that the detection of a foul odor believed to be decomposing flesh, often paired with reports of missing occupants, provides an objectively reasonable basis for warrantless entry under the emergency aid exception. *Samuolis*, 344 Conn. at 223; *People v. McGee*, 140 Ill. App. 3d 677, 681, 489 N.E.2d 439, 442 (1986). The primary rationale is that the source of the odor is uncertain, and prompt action is required to ensure no one is left suffering. *Samuolis*, 344 Conn. at 223; *McGee*, 140 Ill. App. 3d at 681, 489 N.E.2d at 442. The reasonableness of the officers' belief is determined by the entirety of the circumstances known to the police at the exact time of the entry. *McGee*, 140 Ill. App. 3d at 681, 489 N.E.2d at 442. For example, in Missouri, a warrantless entry was deemed reasonable based on a combination of factors, including a wife and children being missing for several days, the husband providing false and inconsistent explanations alongside suspicious behavior, his sudden disappearance, and the detection of an odor of decomposing flesh in the home. *Epperson*, 571 S.W.2d at 264-65.

Some jurisdictions have rejected the notion that the smell of decomposition alone creates an emergency. The Colorado Supreme Court has held that the odor of a decomposing body, on its own, does not give rise to an emergency sufficient to allow a warrantless entry, reasoning that the smell of decomposition indicates a fatality has already occurred and thus there is no hope of survival or revival. *Condon v. People*, 176 Colo. 212, 218-19, 489 P.2d 1297, 1300 (Colo. 1971).

Certainly, if this Court agrees with the Colorado rule, the entry into the home was unlawful. However, even under the cases cited above from other jurisdictions, entry is unlawful, as the smell of decomposing flesh was not accompanied with a report of missing occupants or some other indication that a person may need assistance. Further, this understanding was recognized by Sergeant Crutchlow, who testified that he could not merely conduct a warrantless search for a human body as exigent circumstances. (Trial Transcript, p. 142.)

Here, the only additional fact beyond the smell of decomposing flesh was that there was an alarm going off. And there is no evidence that the alarm was sounding before the officers opened the door. No missing persons report and no other facts indicating that someone may need assistance was present. In fact, there was nothing specific to the scent of human decomposition present. To allow the warrantless entry based on the testimony here would permit a warrantless entry into any home that has the smell of a dead rodent emanating from the home. Moreover, the officers made no attempt to talk to neighbors or even determine ownership of the home. They just entered based upon the smell and the alarm. Yet, these do not provide probable cause to believe some person may be of need of assistance. Rather, at best, it shows that something was deceased in the home, permitting sufficient time for the officers to apply for a warrant. And even then, it likely is not sufficient to secure a warrant, requiring contact with the homeowner or occupant prior to entry. Thus, the officers violated Fourth and Fourteenth Amendments to the United States Constitution and S.C. Const. art. I, § 10 as there were no exigent circumstances present for warrantless entry. Accordingly, the Circuit Court erred in failing to suppress the evidence seized as a result of the unlawful intrusion into the curtilage of Appellant's home.

III. The Circuit Court erred in failing to suppress photographs of 125 Dibble Lane taken prior to the issuance of a search warrant.

Here, the trial court appeared to ignore the argument that Petitioner contended that Deputy Hunter improperly reentered the home to take photographs between 4 p.m. and 5:20 p.m. on May 22, 2022, well before the search warrant issued shortly before 7 p.m. that evening. Neither the prosecution nor Deputy Hunter offered any reason to bypass a search warrant to make this unlawful entry. The entry was not based on the need to protect or preserve life or avoid serious injury to police or others inside or outside a dwelling. *Herring*, 387 S.C. at 210, 697 S.E.2d at 494-495. The entry was not based on the risk of imminent flight by a suspect. *Id.* Finally, the entry was not based upon the imminent destruction of evidence. *Dobbins*, 420 S.C. at 592, 803 S.E.2d at 880. Thus, the 36 photographs taken by Deputy Hunter should have been suppressed by the trial court.

IV. The Circuit Court erred in failing to grant a mistrial when a non-expert investigator provided testimony reserved to an expert, particularly where that same investigator destroyed evidence for which Appellant could not use to retain an expert in defense.

In a South Carolina criminal case, the decision to grant or deny a motion for a mistrial rests within the sound discretion of the trial court. *Dial*, 405 S.C. at 247, 746 S.E.2d at 500; *Wiley*, 387 S.C. at 495-96, 692 S.E.2d at 563. Because declaring a mistrial is considered an extreme measure, it should be granted with the greatest caution under urgent circumstances and only when absolutely necessary. *Dial*, 405 S.C. at 247, 746 S.E.2d at 500. To be entitled to a mistrial, a defendant must demonstrate both an error and resulting prejudice. *Dial*, 405 S.C. at 247, 746 S.E.2d at 500; *Wiley*, 387 S.C. at 495-96, 692 S.E.2d at 563. The trial court's ruling will not be overturned on appeal absent an abuse of discretion amounting to an error of law. *Dial*, 405 S.C. at 247, 746 S.E.2d at 500.

Here, Investigator Clarke's testimony as to whether the animals starved or were dehydrated was in violation of the Court's pretrial ruling, as he was not qualified to provide expert testimony as to the cause of death and whether the animals suffered. *Cf. State v. Commander*, 396 S.C. 254, 266, 721 S.E.2d 413, 419 (2011) ("Because autopsies assist the medical examiner at arriving at the cause and manner of death, it follows that they fall within the purview of the expert's specialized knowledge, and therefore, expert testimony concerning their contents is often deemed helpful to the trier of fact."). While the curative instruction to the jury may be the usual way to address such blatant violation of the Court's pretrial ruling, it is insufficient here, as Investigator Clarke made the decision on May 22, 2022, the day he got the search warrant, to immediately dispose of the animal remains without the benefit of necropsies or giving Petitioner the opportunity to secure her own expert to perform necropsies to assist in her defense.

To establish a due process violation arising from the State's failure to preserve or dispose of evidence, a defendant must satisfy a strict two-pronged legal standard. Specifically, the defendant must demonstrate either that the State destroyed the evidence in bad faith; or that the evidence possessed an exculpatory value that was apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other reasonably available means. *State v. Breeze*, 379 S.C. 538, 545, 665 S.E.2d 247, 252 (Ct. App. 2008). While neither test can be met here, Investigator Clarke's destruction of the evidence, coupled with Investigator Clarke's attempt to provide expert testimony, required the Court to grant a mistrial as Petitioner was prejudiced in her ability to challenge Investigator Clarke's supposition as to suffering and death with independent necropsies. This is particularly prejudicial, as the State's own expert testified that necropsies help identify the cause of death. (Trial Transcript, pp. 610-611.)

V. The Circuit Court erred at sentencing in considering an erroneous statement from the Solicitor that Pennington had served time in federal prison where her prior federal sentence was actually house arrest.

In South Carolina, when a trial court considers erroneous or improper facts at sentencing, the appropriate remedy is to set aside the sentence and remand the case to the trial court for a resentencing proceeding. *State v. Simms*, 131 S.C. 422, 425, 127 S.E. 840, 840 (1925); *State v. Johnston*, 333 S.C. 459, 464, 510 S.E.2d 423, 425 (1999). Because the factual error occurs after the jury has rendered its verdict, the defendant is not entitled to a new trial on the issue of guilt. Instead, the defendant is entitled to have the original sentence vacated and the case remanded specifically for the purpose of resentencing. *Simms*, 131 S.C. at 425, 127 S.E. at 840. A sentence will not be disturbed if the sentencing court fully discloses the allegations or criminal history to the defendant and provides an adequate opportunity to explain, correct, or deny any potential misapprehension. *State v. Franklin*, 267 S.C. 240, 245-46, 226 S.E.2d 896, 897 (1976). Nonetheless, a sentence cannot be predicated on false information. *Id.*

Here, Petitioner noted that the Solicitor provided incorrect information. Yet, the trial court still accepted the Solicitor's rendition of facts related to Petitioner's federal sentence, notwithstanding that her prior federal sentence was a matter of public record and easily accessible through PACER, the federal court record keeping system. Such a factual finding that Petitioner received a year and a day for a federal conviction was clearly erroneous, as Petitioner's sentence was explicitly probationary with six months to be served on house arrest. Moreover, the trial court explicitly used that erroneous information in fashioning Petitioner's sentence. Such was clearly erroneous and requires remand for re-sentencing.

CONCLUSION

Based on the Circuit Court's error regarding Fourth Amendment violations and failing to suppress evidence, this Court should reverse Petitioner's conviction. Alternatively, the Circuit Court's error in failing to grant a mistrial requires the conviction to be vacated and the case remanded for a new trial. Finally, the sentence should be vacated for the Circuit Court's erroneous finding regarding Petitioner's prior federal court sentence.

Respectfully submitted:



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