STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Berkeley County
Honorable Stephanie P. McDonald, Circuit Court Judge
Appellate Case No. 2013-001430

THE STATE,

Appellant,

vs.

WALTER MAURICE BASH,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Did the circuit court judge err in granting Bash's motion to suppress his narcotics based on an alleged violation of his Fourth Amendment rights when law enforcement officers approached Bash in a reasonable manner in an open grassy area visible from multiple public roadways and situated outside of the curtilage of a residence located on the same parcel of property before observing Bash's narcotics in plain view through the window of his truck?

II.

Even assuming the circuit court judge correctly concluded that the open grassy area constituted part of the residence's curtilage, did the circuit court judge err in granting Bash's motion to suppress his narcotics based on an alleged violation of his Fourth Amendment rights when the officers entered the grassy area in a constitutionally-permissible and reasonable manner pursuant to the implied license that permits entry onto private property to speak with an occupant of the property before observing Bash's narcotics in plain view through the window of his truck after exigent circumstances developed?

STATEMENT OF THE CASE

In February of 2011, Respondent Walter Maurice Bash was arrested after officers located narcotics in Bash's vehicle while conducting an investigation into an anonymous tip about drug activity taking place behind a residence in Moncks Corner, South Carolina. In October of 2012, the Berkeley County grand jury indicted Bash for one count of trafficking in cocaine in an amount greater than 400 grams and one count of trafficking in cocaine base. Prior to trial, Bash filed a motion seeking the suppression of the narcotics discovered during the investigation. On June 11, 2013, a hearing was conducted on Bash's motion in the Berkeley County court of general sessions before the Honorable Stephanie P. McDonald, circuit court judge. At the conclusion of the hearing, the circuit court judge granted Bash's suppression motion. The State then timely filed a notice of appeal.

STATEMENT OF FACTS

On November 10, 2011, the drug enforcement unit of the Berkeley County Sheriff's Office received an anonymous tip that several men were engaged in drug activity at that time behind a residence located on Nelson Ferry Road in Moncks Corner, South Carolina. (Tr. pp. 20-21; p. 47; p. 54). In response, Sergeant Lee Holbrook and several other officers with the Berkeley's County Sheriff's Office traveled to Nelson Ferry Road to follow-up on the tip and investigate whether drug activity was taking place, and they arrived at the residence identified in the tip within ten minutes. (Tr. pp. 20-21; pp. 45-46; p. 54).

After arriving at the residence, Sergeant Holbrook and the other officers noticed that Shine Bash Lane, a public road adjoining Nelson Ferry Road, ran along the side of the specified residence and ended towards the rear of the parcel of property on which the residence was located. (Tr. pp. 21-22; State's Ex. # 1 (Photo); Defendant's Ex. # 10 (Berkeley County EGS Mapping)). Based on the fact that the tip indicated the drug activity was occurring behind the residence, the officers drove down Shine Bash Lane, and, when they did so, Sergeant Holbrook observed three men standing in an open grassy area outside of the fenced-in backyard of the residence near a small utility shed, a broken-down car, and a parked black truck.[1] (Tr. p. 24; pp. 26-27; p. 31; p. 39). The officer then pulled his vehicle into the grassy area from the public road, parked approximately twenty feet behind the truck, exited his vehicle, approached the men, and asked them what was going on.[2] (Tr. pp. 27-30; p. 36; pp. 45-46; p. 55).

[1] Notably, the grassy area could be seen unobstructed from at least two public roadways and several residences other than the one identified in the anonymous tip. (State's Map Used as Demonstrative Aid).

[2] At the time he approached the men, Sergeant Holbrook and the other officers were wearing law enforcement attire. (Tr. p. 54).

Upon seeing Sergeant Holbrook approaching and only moments after the officer had exited his vehicle, one of the men standing in the grassy area threw down a bag containing a white powder substance that the officer recognized to be cocaine while another man rapidly exited the passenger's side door of the truck and fled into a nearby wooded area. (Tr. pp. 30-31; p. 36; p. 46). In response, the officers with Sergeant Holbrook pursued the fleeing man while Sergeant Holbrook stayed with the other men in the grassy area to keep an eye on the bag of cocaine that had been thrown to the ground. (Tr. pp. 31-32; pp. 56-57).

As Sergeant Holbrook waited with the men, Respondent Walter Maurice Bash exited the driver's side door of the truck parked in the grassy area and asked the officer what was going on. (Tr. p. 32; p. 35). When Bash did so, Sergeant Holbrook asked him to step to the rear of the truck with the other individuals who remained in the grassy area, discussed the anonymous tip with them, and asked another officer to come and assist him. (Tr. pp. 32-33). When the other officer arrived, Sergeant Holbrook arrested the man who had thrown the bag of cocaine onto the ground, temporarily detained Bash and the others, and looked through the driver's side window of the truck to see if anyone else was in the vehicle. (Tr. pp. 32-34; p. 48). Inside, he saw a digital scale, plastic bags, cocaine, crack cocaine, and an open beer can in plain view. (Tr. p. 34; p. 51; State's Ex. # 2 (Photo); State's Ex. # 3 (Photo); State's Ex. # 4 (Photo); State's Ex. # 5 (Photo)). Sergeant Holbrook then verified that the truck belonged to Bash and arrested him for possessing the narcotics found inside.[3] Subsequently, Bash was indicted for one count of trafficking

[3] The entire encounter between Bash and the law enforcement officers lasted approximately ten minutes. (Tr. p. 49).

in cocaine in an amount greater than 400 grams and one count of trafficking in cocaine base.[4] (Tr. pp. 35-36; pp. 48-49; Indictments).

Thereafter, prior to trial, Bash filed a motion seeking the suppression of the narcotics discovered in his truck, and a hearing was conducted on the motion. (Tr. pp. 6-7). At the outset of the hearing, defense counsel argued for the narcotics to be suppressed based on an alleged violation of Bash's Fourth Amendment rights, contending that Bash's narcotics were discovered after officers unlawfully entered the curtilage of private property without a warrant before they observed the cocaine and crack cocaine in Bash's vehicle. (Tr. pp. 9-16). In response, the circuit court judge requested that the testimony of the officers involved in Bash's case be introduced so she could evaluate the officers' credibility, and Sergeant Holbrook and Sergeant Kimberly Milks of the Berkeley County Sheriff's Office testified about their investigation into the anonymous tip and their subsequent discovery of the cocaine and crack cocaine in Bash's truck.[5] (Tr. pp. 18-64).

Following the presentation of the officers' testimony, the circuit court judge indicated that she had reviewed both state and federal case law regarding anonymous tips and curtilage, including the United States Supreme Court's decision in Florida v. Jardines, ___ U.S. ___, 133 S. Ct. 1409 (2013), and concluded that "this one's not even close." (Tr. p. 65). In reaching that conclusion, the circuit court judge found that an anonymous tip was not sufficient to permit an officer to enter the backyard area of a

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[4] Following Bash's arrest, officers obtained a search warrant for the residence based on the discovery of the cocaine and crack cocaine in the truck and in the bag thrown onto the ground, and the search warrant was executed at 6:50 p.m. later that day. (Tr. p. 41; Defendant's Ex. # 11 (Search Warrant)). Inside the residence, officers located quantities of cash, another digital scale, marijuana, and a white powder substance. (Tr. p. 61; Defendant's Ex. # 11).

[5] During Sergeant Holbrook's testimony, the officer confirmed that his intentions in traveling to the residence identified in the tip were to approach the individuals who were there and speak with them about the anonymous tip he had received. (Tr. pp. 29-30). He further noted that no one ever directed him to leave at any point after he ventured into the grassy area located behind the residence. (Tr. p. 36).

residence "when your sole purpose for going there is to search it." (Tr. p. 65). The circuit court judge further noted that she found the dissent from the South Carolina Supreme Court's opinion in State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013), to be significant and noted that she believed the officers' actions in Bash's case were much more intrusive than the officers' actions in Taylor. (Tr. pp. 66-67). The circuit court judge then indicated that she intended to suppress the narcotics but invited the solicitor to attempt to convince her not to do so. (Tr. pp. 67-68).

Thereafter, the solicitor argued that the officers' actions were entirely proper because the grassy area where the officers approached Bash and his associates was not part of the curtilage of the residence and, instead, was an open field. (Tr. p. 68). Furthermore, even assuming the grassy area had been part of the curtilage of the home, the solicitor asserted that the officers' actions were still proper because they were permitted to approach the individuals standing in the grassy area to make contact with them in a reasonable manner just as they were permitted to approach the door of the residence to conduct a "knock and talk." (Tr. p. 68).

After listening to the solicitor's contentions, the circuit court judge inquired if the officers were going onto the property to speak with someone or were going there to hunt for drugs. (Tr. p. 68). The solicitor responded that the testimony of the officers established that the officers entered onto the property for investigative purposes and to speak with the individuals located there about the anonymous tip. (Tr. pp. 68-69). Furthermore, the solicitor noted that law enforcement officers in general are permitted to go anywhere a private citizen might go to engage in a consensual encounter and compared Bash's case to the facts and circumstances from the South Carolina Supreme Court's decision in State v. Wright, 391 S.C. 436, 706 S.E.2d 324 (2011). (Tr. pp. 71-

72). However, after acknowledging the decision in Wright, the circuit court judge found that no exigent circumstances existed in Bash's case and that the officers in Bash's case could not approach Bash and the others in the backyard area of the residence, which she found to be part of the residence's curtilage, due to the fact that the officers had not observed anything suspicious from the street before approaching the men. (Tr. pp. 72-73). In rejecting the solicitor's contentions, the circuit court judge further explained:

> I think you've made an excellent argument, but the tip was not enough to roll up in the backyard solely to search for drugs. And there's no reasonable interpretation of the officers' testimony other than that's why they were there. They were not there to politely ask the homeowner, Hey are you selling drugs out of your house? They were there to see if they could find any. And they should have gotten a warrant, although you can't get a warrant based on an anonymous tip, generally. You've got to have more.

(Tr. p. 73).

Thereafter, the solicitor again argued that the officers were not precluded from entering private property to the same extent as a private citizen would have been able to enter the property in attempting to speak with the individuals located there. (Tr. pp. 75-77). Furthermore, the solicitor again contended that the area where the officers located Bash and his confederates was not within the residence's curtilage and noted that it was outside of the residence's fence, it could be seen openly and unobstructed from two different public roads and other surrounding residences, and no attempt had been made to shield the area from observation by others. (Tr. pp. 75-77). However, the circuit court judge once again rejected the solicitor's arguments, indicated that she agreed with the dissenting justices in the Taylor case, and reaffirmed her decision to grant Bash's suppression motion. (Tr. p. 77). The State then timely appealed the circuit court judge's ruling.

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 Fourth Amendment search and seizure cases, the appellate court reviews the circuit court judge's determinations under a clear error standard and will affirm the circuit court judge's determinations if they are supported by any evidence. State v. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013); 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 circuit court judge's decision in a search and seizure case is supported by the evidence. State v. Cheeks, 400 S.C. 329, 334, 733 S.E.2d 611, 614 (Ct. App. 2012); see 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

I.

Did the circuit court judge err in granting Bash's motion to suppress his narcotics based on an alleged violation of his Fourth Amendment rights when law enforcement officers approached Bash in a reasonable manner in an open grassy area visible from multiple public roadways and situated outside of the curtilage of a residence located on the same parcel of property before observing Bash's narcotics in plain view through the window of his truck?

Following a suppression hearing, the circuit court judge ruled that the narcotics discovered in Bash's truck should be excluded from trial after finding that Bash's Fourth Amendment rights were violated when the law enforcement officers in Bash's case allegedly impermissibly entered the curtilage of a residence to conduct a search. Contrary to the circuit court judge's ruling, the evidence and testimony presented during the suppression hearing established that the grassy area where the officers approached Bash, which was an open area visible from multiple public roadways and located outside of a fence surrounding a residence located on the same parcel of property, was not so intimately connected to the residence to be considered a part of the residence's curtilage and, thus, be entitled to the same constitutional protections as the home itself. As the grassy area was not part of the residence's curtilage, the officers' entry into the grassy area did not violate Bash's constitutional rights. Therefore, the officers' subsequent discovery of Bash's narcotics in plain view inside of his truck was not the product of a violation of his Fourth Amendment rights. Accordingly, the circuit court judge erred in granting Bash's suppression motion based on her conclusion that the officers unconstitutionally entered the curtilage of a residence, and her ruling was clearly erroneous and unsupported by the evidence. The circuit court judge's ruling should be reversed, and Bash's case should be remanded for trial.

The Fourth Amendment 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. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). As a result, **only** unreasonable searches and seizures are constitutionally prohibited. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]").

For purposes of the Fourth Amendment, a search occurs when "an expectation of privacy that society is prepared to consider reasonable is infringed." United States v. Jacobsen, 466 U.S. 109, 113 (1984). Likewise, a seizure occurs when there is some meaningful interference with an individual's possessory interest in property or with the individual's freedom of movement. Id.; see Terry v. Ohio, 392 U.S. 1, 16, n. 16 (1968) ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.").

In cases involving Fourth Amendment issues, the critical inquiry is "whether the challenged search or seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it." Rakas v. Illinois, 439 U.S. 128, 140 (1978). "That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect." Id.

Through its express language, the Fourth Amendment specifically delineates persons, houses, papers, and effects as constitutionally-protected areas. Florida v. Jardines, __ U.S. __, 133 S. Ct. 1409, 1414 (2013). Thus, the Fourth Amendment unquestionably protects an individual's home from unreasonable governmental intrusion,

and those protections extend to the home's curtilage. Id. at 1414-1415. "At common law, the curtilage is the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life[.]' " Oliver v. United States, 466 U.S. 170, 180 (1980) (citation omitted). In determining whether a particular area is part of the curtilage of a home, the following four factors are highly relevant: (1) the proximity of the area claimed to be curtilage to the home; (2) whether the area is included within an enclosure surrounding 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. United States v. Dunn, 480 U.S. 294, 301 (1987). However, "th[o]se factors are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration – whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." Id.

Significantly though, outside of a home and the home's curtilage, the Fourth Amendment does **not** prohibit law enforcement officers from conducting investigations on private property. Jardines, 133 S. Ct. at 1414. Even if a particular area intruded upon is located on private property, governmental intrusion upon that area does not constitute an unreasonable search and is not constitutionally prohibited if the area is an open field. Id.; see Hester v. United States, 265 U.S. 57, 59 (1924) ("[T]he special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers and effects,' is not extended to the open fields. The distinction between the latter and the house is as old as the common law."). The term "open field" can include "any unoccupied or undeveloped area outside of the curtilage[,]" and an area can be considered an open field even if it is not open and not a field. Oliver, 466 U.S. at 177. Critically,

"open fields do not provide the setting for those intimate activities that the [Fourth] Amendment is intended to shelter from government interference or surveillance." Id. at 179. Accordingly, "an individual has no legitimate expectation that open fields will remain free from warrantless intrusion by government officers." Id. at 181.

In the case sub judice, the circuit court judge concluded that the grassy area where the officers approached Bash and the other men was part of the curtilage of the residence and based her decision to grant Bash's suppression motion on that conclusion. However, contrary to the circuit court judge's determination, the evidence and testimony presented during the suppression hearing established that the grassy area was **not** so intimately connected to the residence to be considered a part of the residence's curtilage and, instead, was an open field. Because the grassy area was not part of the residence's curtilage, the officers did not impermissibly intrude upon a constitutionally-protected area when they approached Bash in the grassy area and, thus, did not violate Bash's constitutional rights prior to discovering Bash's narcotics.

Turning to the relevant factors identified by the United States Supreme Court in Dunn, one of the key factors to be considered in determining if the grassy area was part of the residence's curtilage was the proximity of the grassy area to the residence. Although no precise testimony was presented during the suppression hearing in regard to the grassy area's exact distance from the home, the grassy area was not immediately adjacent to the residence and, instead, was far enough removed from the home that it was separated from the home by a fence and the home's fenced-in backyard. (Defendant's Ex. # 1 (Photo); Defendant's Ex. # 2 (Photo); Defendant's Ex. # 4 (Photo); Defendant's Ex. # 5 (Photo)). Significantly, that distance and clear separation from the residence

demonstrated that the grassy area was not an area intimately associated with the sanctities of the residence itself and was, thus, not part of the residence's curtilage.

Another key factor to be considered in the analysis was whether the grassy area was included in an enclosure surrounding the home. Critically and tellingly, it was not. Instead, the grassy area was entirely outside of a chain-link fence erected around all sides of the residence. Although the presence of a fence is not always alone dispositive, the fencing surrounding the front yard, side yards, and backyard of the residence served as a clear demarcation of the areas considered by the homeowner to be part and parcel of the residence. See Dunn, 480 U.S. at 301, n. 4 ("Fencing configurations are important factors in defining the curtilage, but, as we emphasize above, the primary focus is whether the area in question harbors those intimate activities associated with domestic life and the privacies of the home." (citation omitted)); see also Oliver, 466 U.S. at 182, n. 12 ("[F]or most homes, the boundaries of the curtilage will be clearly marked; and the conception defining the curtilage – as the area around the home to which the activity of home life extends – is a familiar one easily understood from our daily experience."). The fact that the grassy area was undeniably separated from the residence by fencing strongly demonstrated that the grassy area was not intimately connected to the residence such that it could be considered a part of it and, instead, showed that the grassy area was a separate and distinct part of the parcel of property not associated with the private activities of the home. See United States v. Reilly, 76 F.3d 1271, 1278 (2nd Cir. 1996) ("Typically, the enclosure factor weighs against those who claim infringement of the curtilage when their land is divided into separate parts by internal fencing. In such situations, courts may well view the internal fencing as a boundary that sets the curtilage apart from the open fields."); cf. Dunn, 480 U.S. at 302 ("[I]t is plain that the fence surrounding the residence

serves to demark a specific area of land immediately adjacent to the home that is readily identifiable as part and parcel of the house. Conversely, the barn – the front portion itself enclosed by a fence – and the area immediately surrounding it, stands out as a distinct portion of respondent's ranch, quite separate from the residence."). Therefore, the grassy area's location outside of the enclosure surrounding the residence established that the grassy area was not part of the residence's curtilage.

One of the other important factors to be considered was the steps taken by the resident to protect the grassy area from observation by people passing by. Critically, the evidence and testimony presented during the suppression hearing established that **no** steps had been taken by the homeowner to shield that area from outside observation in any way. Specifically, the grassy area itself was situated directly next to a public roadway that ran adjacent to the parcel of property on which the residence was located, and no barrier had been erected or effort made to shield or protect the grassy area from observation by those standing outside of the property, those residing in neighboring homes, or those traveling along at two least nearby public roadways. See California v. Ciraolo, 476 U.S. 207, 213 (1986) ("The Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares."); see, e.g., Vidos v. State, 367 Ark. 296, 311, 239 S.W.3d 467, 479 (Ark. 2006) ("[T]he land was on an open road in which there is no legitimate expectation of privacy."). As nothing protected the grassy area from outside observation, a person standing in the grassy area could not have reasonably harbored any meaningful expectation that their actions in the grassy area were private or unobservable to others. See Oliver, 466 U.S. at 178 ("[A]n individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the

area immediately surrounding the home."); see also Ciraolo, 476 U.S. at 212-213 ("The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened."). Accordingly, the fact that the homeowner of the residence specifically chose to erect fencing around the front yard, side yard, and backyard of the residence while making no effort to protect the grassy area outside of the fencing in any way confirmed that the grassy area was not part of the curtilage of the home.

Finally, the last factor to be considered was the nature of the uses to which the grassy area was put. The grassy area itself contained a small utility shed and a broken-down vehicle and was being used at the time of the officers' arrival by several individuals who were congregating around Bash's truck. While use of the area to congregate or socialize with others could be considered an activity associated with the private and domestic activities of a home, an open field could likewise be used as an area for people to congregate and socialize. Cf. Patler v. Slayton, 503 F.2d 472, 477-478 (4th Cir. 1974) (finding a pasture that was used as a play area, picnic area, and shooting range and was located outside of a fence surrounding a home constituted an open field and was not entitled to the same Fourth Amendment protections as the home and its curtilage). As a result, the use for which the grassy area was being put at the time of the officers' arrival did not establish that the grassy area was part of the curtilage of the home, particularly when the other factors taken together strongly showed that the grassy area was not "so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." Dunn, 480 U.S. at 301; see, e.g., United States v.

Cousins, 455 F.3d 1116, 1123 (10th Cir. 2006) ("As Dunn makes clear, the area in question must be used for the 'intimate activities of the home.' " (citation omitted)).

In finding that the grassy area was part of the curtilage of the residence, the circuit court judge did not appear to have considered any of the factors identified by the United States Supreme Court as relevant to a determination of whether an area can be considered an open field or part of a residence's curtilage and, instead, simply noted that "[c]urtilage includes outbuildings, the yard around a dwelling, a garden of the dwelling, or the parking lot of a business." (Tr. p. 73). However, based on the evidence and testimony presented during the suppression hearing, including the critical evidence establishing that the grassy area was an unshielded area next to a public roadway and outside of the fencing surrounding the residence and its yard, the grassy area was **not** an outbuilding, a yard around a dwelling, a garden of a dwelling, or a business' parking lot. Instead, it was an open field outside of the residence's curtilage. Because the grassy area where the officers approached Bash and the others was an open field, it was not entitled to the same constitutional protections as the residence, and the officers were not constitutionally prohibited from entering it. See, e.g., Jardines, 133 S. Ct. at 1414 ("[A]n officer may (subject to Katz[v. United States, 389 U.S. 347 (1967)]) gather information in what we have called 'open fields' – even if those fields are privately owned – because such fields are not enumerated in the [Fourth] Amendment's text."). As a result, the officers' entry into the grassy area to speak with Bash and the others was not unreasonable under the circumstances, and their subsequent discovery of Bash's narcotics, which were plainly visible through the window of Bash's truck, did not violate Bash's constitutional rights. See Jimeno, 500 U.S. at 250 ("The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable."); see

also State v. Weaver, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007) ("If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more."); State v. Beckham, 334 S.C. 302, 317, 513 S.E.2d 606, 613 (1999) ("Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence."). Both the circuit court judge's conclusion that the grassy area was part of the residence's curtilage and her decision to suppress Bash's narcotics on that basis were clearly erroneous and unsupported by any of the evidence presented during the suppression hearing. See Provet, 405 S.C. at 107, 747 S.E.2d at 456 ("South Carolina appellate courts review Fourth Amendment determinations under a clear error standard."). Accordingly, the circuit court judge's ruling granting Bash's suppression motion should be reversed, and Bash's case should be remanded for trial.

II.

Even assuming the circuit court judge correctly concluded that the open grassy area constituted part of the residence's curtilage, did the circuit court judge err in granting Bash's motion to suppress his narcotics based on an alleged violation of his Fourth Amendment rights when the officers entered the grassy area in a constitutionally-permissible and reasonable manner pursuant to the implied license that permits entry onto private property to speak with an occupant of the property before observing Bash's narcotics in plain view through the window of his truck after exigent circumstances developed?

In granting Bash's motion to suppress the narcotics discovered in Bash's truck, the circuit court judge ruled that the law enforcement officers in Bash's case violated Bash's Fourth Amendment rights after concluding that the officers were not permitted to enter the backyard of the residence to conduct a search. Notwithstanding the fact that the evidence and testimony presented during the suppression hearing established that the officers approached Bash and the others in an open grassy area located **outside** of a fence enclosing the residence and its backyard, the circuit court judge's ruling was clearly erroneous and unsupported by the evidence even assuming the open grassy area could somehow be considered a part of the residence's curtilage. That is true because the officers were permitted to enter the curtilage of the property identified in the anonymous tip pursuant to the implied license that allows individuals in the United States, including law enforcement officers, to enter the private property of others when attempting to speak with an occupant of the property. Critically, when the officers in Bash's case observed the men congregating in the open grassy area, they approached the men in an attempt to speak with an occupant of the residence about the anonymous tip using the same route that Bash had used to drive his truck onto the property in the same manner that any private citizen could have approached the men. Under those circumstances, the officers' entry into the open grassy area was objectively reasonable, did not constitute a search,

and did not violate Bash's Fourth Amendment rights. Thereafter, the officers were constitutionally permitted to act without a warrant **after** they entered the grassy area because, once they did so, they observed a crime being committed when one of the men threw a bag of cocaine to the ground and saw another of the men flee from Bash's truck and attempt to escape. Based on those observations, the officers had a probable cause basis to arrest the man who had been in possession of the cocaine, could lawfully seize the cocaine and conduct a search incident to the man's arrest, and could conduct a brief protective sweep of the area based on the exigent circumstances that had developed. When they undertook those constitutionally-permitted actions, they discovered Bash's narcotics in plain view inside of his truck. Accordingly, the officers did not violate Bash's Fourth Amendment rights by entering the open grassy area or in discovering Bash's narcotics, and the circuit court judge's ruling to the contrary was clearly erroneous and unsupported by the evidence. The circuit court judge's ruling should be reversed, and Bash's case should be remanded for trial.

A. Propriety of the Officers' Entry Into the Grassy Area

The Fourth Amendment is designed "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976). However, it is **not** designed "to eliminate all contact between the police and the citizenry[.]" United States v. Mendenhall, 446 U.S. 544, 553-554 (1980). As a result, a law enforcement officer generally may approach a citizen in an effort to speak with or question that person without implicating the Fourth Amendment so long as a reasonable person under the same circumstances would feel free to disregard the officer and leave if he or she chose to do so. Florida v. Bostick, 501 U.S. 429, 434 (1991). Critically, "a seizure does not occur

simply because a police officer approaches an individual and asks a few questions." Id. at 434.

In the context of a residence, a person is not generally permitted to enter the private property of another. Jardines, 133 S. Ct. at 1415. However, based on the implicit license customary in the United States permitting visitors to approach another person's home, an officer is constitutionally permitted to approach a home in an attempt to speak with or question an occupant if the officer approaches the home in a reasonable manner consistent with the manner any private citizen might approach the home. Id. at 1415-1416; see Kentucky v. King, ___ U.S. ___, 131 S. Ct. 1849, 1862 (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."). Importantly, the act of approaching a home pursuant to the implicit license does **not** constitute a search for Fourth Amendment purposes. See Jardines, 133 S. Ct. at 1417, 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*." (italics in original)).

Pursuant to the implicit license, a law enforcement officer or other person is "**typically**" permitted "to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." Id. at 1415 (emphasis added). However, if reasonable under the circumstances, officers may also attempt to make contact with a resident at a location other than the front door so long as they do so in a reasonable manner. See United States v. Raines, 243 F.3d 419, 421 (8th Cir. 2001) ("[L]aw enforcement officers must sometimes move away from the front door when attempting to contact the occupants of the residence."); United States v. Garcia, 997 F.2d 1273, 1279 (9th Cir. 1993) ("This circuit and other circuits have . . . recognized that

officers must sometimes move away from the front door when they are attempting to contact the occupants of a residence."); see, e.g., Carroll v. United States, 267 U.S. 132, 147 (1925) ("The Fourth Amendment does not denounce all searches or seizures, but only such as are unreasonable.").

Notably, in Alvarez v. Montgomery County, 147 F.3d 354, 356 (4th Cir. 1998), the Fourth Circuit Court of Appeals considered whether law enforcement officers violated the Fourth Amendment by entering the backyard of a residence to make contact with the homeowners of the residence without first knocking at the front door. In that case, officers received a report of an underage drinking party in Alvarez's neighborhood, responded to the area, and noticed multiple alcoholic containers in front of Alvarez's home. Id. In response, one of the officers approached the front door of the residence to attempt to speak with the homeowners and notify them of the complaint. Id. at 357. However, before the officer knocked at the door, another of the officers noticed a sign indicating that the party was in the back, and the officers entered the backyard to attempt to make contact with the homeowners there without first knocking. Id. When they did so, the officers discovered evidence of underage drinking, and Alvarez was charged with furnishing an alcoholic beverage to a person under twenty-one years of age as a result. Id. Subsequently, Alvarez and his family filed a civil suit against the officers on the basis that the officers violated their constitutional rights by entering the backyard of their residence without a warrant, and the district court dismissed the suit. Id. Thereafter, Alvarez and his family appealed the dismissal, and the Fourth Circuit Court of Appeals affirmed on appeal, finding that the officers did not violate the Fourth Amendment rights of Alvarez and his family by entering the backyard. Id. at 358. In reaching that conclusion, the Court of Appeals noted that the touchtone of the Fourth Amendment was

a standard of reasonableness. Id. With that standard in mind, the Court of Appeals concluded that "[i]t was not unreasonable . . . for officers responding to a 911 call to enter the backyard when circumstances indicated they might find the homeowners there." Id. at 359.

In the case at bar, the circuit court judge concluded that the officers violated Bash's Fourth Amendment rights because they unconstitutionally entered the backyard of a private residence for the purpose of conducting a search without a warrant. Even assuming the circuit court judge was somehow correct in concluding that the open grassy area was the residence's backyard or part of the residence's curtilage, the circuit court judge's conclusion that the officers violated Bash's Fourth Amendment rights by entering the grassy area was clearly erroneous and unsupported by the evidence. Critically, contrary to her ruling, the officers' actions in entering the open grassy area were entirely reasonable and did not violate Bash's Fourth Amendment rights in any way.

Looking to the officers' actions in Bash's case, the officers received an anonymous tip indicating that drug activity was taking place in an area behind a residence. Without something more than just the anonymous tip, the officers could not have obtained a search warrant for the location identified in the tip or an arrest warrant for any particular individual. See Alabama v. White, 496 U.S. 325, 329 (1990) (recognizing that an anonymous tip will seldom be sufficient to establish even reasonable suspicion). However, the officers were **not** required to abandon any efforts to investigate the anonymous tip and to simply allow criminal activity to take place unimpeded merely because they had not yet developed sufficient probable cause for a warrant.[6] See, e.g.,

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[6] Notably, abandoning the investigation appears to be exactly what the circuit court judge believed the officers should have done in Bash's case as the circuit court judge concluded that the officers should have

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."). As a result, the officers decided to drive to the residence in an effort to speak with the homeowner about the tip, and their decision to do so was unquestionably reasonable and constitutionally permissible under the circumstances. See King, 131 S. Ct. at 1862 ("When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak.").

Beyond the reasonableness of their decision to go to the residence to investigate the anonymous tip, the officers' actions remained entirely reasonable once they arrived at their destination due to the fact that they observed Bash and the others congregating in the open grassy area behind the residence from a public roadway. Even more so than in Alvarez, it was objectively reasonable for the officers to believe under the circumstances that they would be able to make contact with an occupant of the home in the open grassy area instead of at the residence's front door since they actually saw individuals congregating there. See Alvarez, 147 F.3d at 356 ("The Fourth Amendment does not prohibit police, attempting to speak with a homeowner, from entering the backyard **when circumstances indicate they might find him there[.]**" (emphasis added)); see also In re Bazen, 275 S.C. 436, 437-438, 272 S.E.2d 178, 178 (1980) (holding that a law enforcement officer did not violate Bazen's Fourth Amendment rights when he responded to Bazen's home in response to a noise complaint, walked to the rear of the

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obtained a warrant before they entered the grassy area but readily acknowledged that they could not have done so based on the information known to them prior to their entry into the grassy area. (Tr. p. 73).

house, saw Bazen enter an open garage, followed him into it, and subsequently arrested Bazen for possession of marijuana after smelling marijuana in the garage); see, e.g., Raines, 243 F.3d at 421 (holding that a law enforcement officer did not violate a homeowner's Fourth Amendment rights by obtaining a warrant to seize marijuana plants that the officer observed growing in plain view in the backyard of the homeowner's residence when the officer legitimately went to the residence to make contact with the homeowner and proceeded into the backyard based upon a reasonable belief that he would find the homeowner there). Thus, it was reasonable for the officers to approach the men standing in the open grassy area instead of knocking on the door of the residence, and, in fact, the officers' interactions with the men in the grassy area were less intrusive under the circumstances than if they had occurred at the doorway of the residence since the grassy area was located significantly farther away from the residence itself. See Alvarez, 147 F.3d at 358 ("[O]fficers who seek to talk to the occupant of a home do not necessarily violate the Fourth Amendment by entering the backyard of a dwelling although they have failed to knock at the front door."); cf. State v. Rivens, 198 N.C. App. 130, 134, 679 S.E.2d 145, 148 (N.C. Ct. App. 2009) ("In this case, Officers Correa and Lowe entered the yard – a lesser intrusion than entering the house or doorway – for the purpose of a general inquiry regarding a report that shots had been fired. Officer Correa approached defendant to conduct his inquiry, and defendant did not request that Officer Correa leave the premises. Notwithstanding defendant's house arrest and ankle bracelet, defendant was free to enter his home to avoid dealing with Officers Correa and Lowe. We hold the Officer's presence in the yard was lawful.").

Likewise, not only was their decision to enter the property entirely reasonable, the officers' manner of entry into the grassy area was objectively reasonable and wholly

consistent with the manner of entry that any private citizen was impliedly permitted to use in approaching the men congregating there. Specifically, the officers approached Bash and the others, who had made no efforts to conceal their presence in the grassy area, in a place that was entirely open, was adjacent to a public road, was fully visible from several roadways and residences, had no obstructions or impediments preventing entry into it, and had no signs warning trespassers not to intrude upon it. As they approached, the officers did not undertake any furtive or stealthy actions and did not make any attempts to conceal their identities as law enforcement officers from the men. Furthermore, they followed the same open path of approach that Bash used to drive his truck into the grassy area when they entered the property directly from the public road, and they parked their vehicles approximately twenty feet behind the location where Bash parked his truck. Cf. State v. Dunn, 340 Mont. 31, 36, 172 P.3d 110, 114 (Mont. 2007) ("The officers here did not 'ignore posted warnings, hop fences, open gates, or slip through bushes intended to screen the home from view.' Rather, the officers acted in a manner consistent with investigating an ongoing noise complaint and remained on an open and obstructed path to the backyard. Thus, the nature of the intrusion here was reasonable." (citation omitted)). Under those circumstances, the manner of the officers' entry into the open grassy area was not inconsistent with the manner of entry that any private citizen could have used and, thus, was not unreasonable. See King, 131 S. Ct. at 1862 ("When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do.").

In finding that the officers' entry into the grassy area was unreasonable and violative of Bash's Fourth Amendment rights, the circuit court judge concluded that the officers were not permitted to enter the grassy area to conduct a search without a warrant

and that "there's no reasonable interpretation of the officers' testimony other than that's why they were there."[7] (Tr. p. 73). However, the officers specifically testified that they entered the grassy area to speak with the people that they observed congregating in that area about the anonymous tip, and their entry was conducted in an objectively reasonable manner. See Brighton City, Utah v. Stuart, 547 U.S. 398, 404 (2006) ("An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed *objectively,* justify [the] action.' The officer's subjective motivation is irrelevant." (citations omitted, italics in original, and brackets in original)); Whren v. United States, 517 U.S. 806, 814 (1996) ("[T]he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." (italics in original)); Horton v. California, 496 U.S. 128, 138 (1990) ("[E]venhanded law enforcement is best achieved by the application of objection standards of conduct, rather than standards that depend upon the subjective state of mind of the officer."). Because the officers entered the grassy area for a legitimate purpose in an objectively reasonable manner, the officers' entry did not constitute a search and did not violate Bash's Fourth Amendment rights. See Jardines, 133 S. Ct. at 1417, 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.*" (emphasis added and italics in original)); see also Foster, 269 S.C. at 378, 237 S.E.2d at 591 ("It is only unreasonable searches and seizures that are prohibited."); cf. Alvarez, 147 F.3d at 359

[7] In reaching that conclusion, the circuit court judge relied heavily on the dissent in the Taylor case. (Tr. pp. 66-68; p. 77). Notwithstanding the fact that a dissent in an appellate court decision is **not** the controlling portion of the decision, the issue addressed in the Taylor case involved the propriety of an investigatory seizure conducted on a public street and was, therefore, very different from and unrelated to the issue involved in Bash's case. See State v. Taylor, 401 S.C. 104, 113, 736 S.E.2d 663, 667 (2013) (holding that the Court of Appeals erred in reversing Taylor's conviction after finding that the officers in Taylor's case had reasonable suspicion to conduct an investigatory stop of Taylor on a public street under the totality of the circumstances of Taylor's case); see also Mr. T. v. Ms. T., 378 S.C. 127, 136, n. 6, 662 S.E.2d 413, 418 (Ct. App. 2008) (recognizing that the dissent in an opinion is not controlling).

(holding that law enforcement officers did not violate Alvarez's Fourth Amendment rights by entering the backyard of his residence to speak with him about a report of underage drinking when it was reasonable for the officers to believe they would find the homeowner in the backyard under the circumstances). Accordingly, the circuit court judge's conclusion that the officers' entry into the open grassy area violated Bash's Fourth Amendment rights was clearly erroneous and unsupported by the evidence. See Provet, 405 S.C. at 107, 747 S.E.2d at 456 ("South Carolina appellate courts review Fourth Amendment determinations under a clear error standard."). The circuit court judge's ruling granting Bash's suppression motion should be reversed, and Bash's case should be remanded for trial.

B. Propriety of the Officers' Actions After Entering the Grassy Area

In general, any evidence seized as the result of an unreasonable search and seizure must be excluded from trial. Weaver, 374 S.C. at 319, 649 S.E.2d at 482. The well-settled rule is that warrantless searches and seizures are unreasonable per se. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978). However, "warrantless searches [and seizures] are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement." King, 131 S. Ct. at 1858.

South Carolina courts have recognized several exceptions to the warrant requirement, including: (1) the search incident to lawful arrest exception; (2) the hot pursuit exception; (3) the stop and frisk exception; (4) the automobile exception; (5) the plain view exception; (6) the consent exception; (7) the abandonment exception; and (8) the exigent circumstances doctrine. State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012); see State v. Brown, 289 S.C. 581, 587, 347 S.E.2d 882, 886 (1986) ("The exigent

circumstances doctrine is an exception to the Fourth Amendment's protection against searches conducted without prior approval by a judge or magistrate."). Pursuant to the various exceptions to the warrant requirement, a warrantless search or seizure will withstand constitutional scrutiny so long as the circumstances establish the existence of an exception along with the existence of probable cause. State v. Bultron, 318 S.C. 323, 331-332, 457 S.E.2d 616, 621 (Ct. App. 1995).

Looking to the particular exceptions to the warrant requirement, the exigent circumstances exception permits law enforcement officers to act without a warrant where the exigencies of the situation make the officers' course of action immediately and objectively imperative and there is no time for the officers to obtain a warrant.[8] State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004); see State v. Herring, 387 S.C. 201, 210, 692 S.E.2d 490, 494 (2009) ("A fairly perceived need to act on the spot may justify entry and search under the exigent circumstances exception to the warrant requirement."). Similarly, the plain view exception permits officers to seize evidence in plain view without a warrant so long as the officers did not violate the Fourth Amendment in arriving at the spot from which they made their observations. King, 131 S. Ct. at 1858. Likewise, the search incident to arrest exception permits officers to conduct a search incident to a lawful arrest so long as the search is conducted substantially contemporaneous with the arrest and confined to the immediate vicinity of

[8] Recognized exigencies justifying warrantless searches and seizures include: (1) an imminent risk that a suspect will flee; (2) a risk of danger to the officers or to others; and (3) an imminent risk that evidence will be destroyed or removed. See Herring, 387 S.C. at 210, 692 S.E.2d at 494-495 ("The likelihood a suspect will imminently flee is also an exigency warranting such an intrusion. Protecting the safety of police officers has also been held an exigent circumstance. A warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside a dwelling. In such circumstances, a protective sweep of the premises may be permitted." (citations omitted)); State v. Simmons, 384 S.C. 145, 174, 682 S.E.2d 19, 34 (Ct. App. 2009) (recognizing that the imminent destruction of evidence constitutes an exigency justifying immediate warrantless action).

the arrest. State v. Freiburger, 366 S.C. 125, 132, 620 S.E.2d 737, 740 (2005). Furthermore, the automobile exception permits law enforcement officers to conduct a warrantless search of an automobile if they have probable cause to believe the vehicle contains contraband. Bultron, 318 S.C. at 332, 457 S.E.2d at 621; see Weaver, 374 S.C. at 320, 649 S.E.2d at 482 ("If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more.").

Notably, in State v. Wright, 391 S.C. 436, 339-440, 706 S.E.2d 324, 325 (2011), the South Carolina Supreme Court considered whether any of the various exceptions to the warrant requirement applied to evidence seized without a warrant from a residence linked to an anonymous tip of illegal activity. In that case, law enforcement officers received an anonymous tip that dogfighting was taking place at a mobile home, drove past the residence on a public road to investigate the tip, and observed a large number of vehicles and shining spotlights at the residence. Id. at 440, 706 S.E.2d at 325. Based on their observations, the officers approached the home in multiple vehicles by driving down a private dirt road and activated their headlights when they neared the home. Id. at 440, 706 S.E.2d at 326. When they did so, the officers saw people and dogs running away and a portable dogfighting pit that people were trying to dismantle. Id. In response, the officers detained the people who attempted to flee, arrested Wright and his co-defendants, captured as many dogs as they could, and seized numerous items of evidence related to dogfighting that were found in plain view. Id. at 440-441, 706 S.E.2d at 326. Following their arrests, Wright and the others moved prior to trial to suppress the evidence due to the fact that the officers seized the evidence after making a warrantless entry onto private property, and the circuit court judge granted their suppression motions. Id. at 441, 706

S.E.2d at 326. Subsequently, the State appealed the circuit court judge's ruling, and the Supreme Court reversed. Id. at 446, 706 S.E.2d at 329. In reversing the circuit court judge's ruling, the Supreme Court first found that the officers' entry onto the private road and approach of the mobile home were constitutionally proper because: (1) the officers had investigative authority to enter the property; and (2) exigent circumstances developed when the suspects attempted to flee from the officers, which permitted the officers to conduct a protective sweep of the premises. Id. at 444-445, 706 S.E.2d at 328. Because the officers' entry onto the property was constitutionally permissible, the Supreme Court next considered the requirements of the plain view exception and found that the exception was applicable since the officers were lawfully in a place that they had a right to be and the evidence's incriminating nature was immediately apparent. Id. at 445-446, 706 S.E.2d at 328-329. For those reasons, the Supreme Court found that the officers did not violate Wright and the others' constitutional rights when they entered the private property upon which the residence was located and seized the evidence they found there in plain view. Id.

In Bash's case, the circuit court judge concluded that the officers violated Bash's Fourth Amendment rights by entering the backyard of a private residence for the purpose of conducting a warrantless search. However, as previously discussed, the officers' entry into the grassy area was constitutionally permissible and reasonable under the circumstances. As a result, the officers' entry into the grassy area did not violate Bash's Fourth Amendment rights and did not itself warrant the suppression of the evidence discovered following that entry. For that reason, the circuit court judge erred in finding that the officers' warrantless entry into the grassy area required the suppression of the evidence recovered in Bash's case. However, notwithstanding the erroneous nature of

the circuit court judge's ruling, the evidence still could only properly be admitted at trial if it was seized pursuant to one of the recognized exceptions to the warrant requirement. Critically, the evidence that the officers seized was, in fact, gathered pursuant to several recognized exceptions to the warrant requirement, and their actions **after** entering the grassy area remained entirely reasonable.

Specifically, once the officers entered the grassy area and began approaching the men, one of the men responded by throwing down a bag of cocaine while another of the men responded by fleeing from the officers. Significantly, at that moment; the officers had a probable cause basis to believe that the crime of possession of cocaine had been committed and were justified in immediately acting without a warrant to seize the bag of cocaine, which was readily apparent to be criminal in nature and was visible in plain view in an area that the officers had lawfully entered, and to arrest the individual who had been in possession of the narcotics. See Foster, 269 S.C. at 379, 237 S.E.2d at 592 ("[The officer] immediately spotted what looked to be heroin, which gave him probable cause for arrest."); see also Bultron, 318 S.C. at 332, 457 S.E.2d at 621 ("The standard for probable cause to conduct a warrantless search is the same as that for a search with a warrant. That is, a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search, that there exists a practical, nontechnical probability that a crime is being committed or has been committed and incriminating evidence is involved."). Moreover, the bag of narcotics being thrown down and the flight of one of the men constituted exigent circumstances that required an immediate response and made it objectively reasonable for the officers to act without first obtaining a warrant. See Wright, 391 S.C. at 445, 706 S.E.2d at 328 ("Exigent circumstances developed when the suspects started

fleeing."). Otherwise, the men could have had time to abscond and remove or destroy the evidence. See King, 131 S. Ct. at 1856 ("[T]he need 'to prevent the imminent destruction of evidence' has long been recognized as a sufficient justification for a warrantless search." (citations omitted)). Accordingly, the officers were justified in acting immediately without first obtaining a warrant, and their decisions to detain the man who had thrown down the bag of cocaine and chase the fleeing suspect were reasonable under the circumstances. See Abdullah, 357 S.C. at 351, 592 S.E.2d at 348 ("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.' " (brackets in original)).

Thereafter, upon arresting the man who had thrown down the bag of cocaine, the officers were constitutionally permitted to perform a quick sweep of the area immediately around where the arrest was made and, as a part of that sweep, look through the window of Bash's nearby truck. See Buie, 494 U.S. at 334 ("We also hold that as an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched."). Furthermore, due to the flight of one of the men from Bash's truck coupled with the possibility that another person could have been hiding inside of the truck and could have posed a risk to the officers' safety while they were effectuating the arrest of the individual who threw down the bag of narcotics, it was reasonable for the officers to conduct a broader protective sweep of the area for their own safety, which also permitted the officers to look through the window of Bash's truck. See id. ("Beyond that, however, we hold that there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors

an individual posing a danger to those on the arrest scene."). When Sergeant Holbrook conducted his brief sweep incident to the arrest of the man who threw down the bag of cocaine, he observed cocaine, crack cocaine, and other incriminating evidence in plain view through the window of Bash's truck. See Beckham, 334 S.C. at 317, 513 S.E.2d at 613 ("Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence."). Under those circumstances, the officer had a probable cause basis to search Bash's vehicle and arrest Bash, and it was entirely reasonable for him to do so. See Weaver, 374 S.C. at 320, 649 S.E.2d at 482 ("If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more.").

Because the officers' actions **after** entering the open grassy area were entirely proper and reasonable under the circumstances, those actions did not violate Bash's Fourth Amendment rights. See Buie, 494 U.S. at 331 ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures."). As a result, Bash's narcotics, which were observed in plain view through the window of his truck, were admissible at trial and should not have been suppressed. Accordingly, assuming the circuit court judge was somehow correct in concluding the open grassy area was part of the residence's curtilage, the circuit court judge's decision to grant Bash's suppression motion was nonetheless clearly erroneous and unsupported by the evidence. For the foregoing reasons, the circuit court judge's ruling should be reversed, and Bash's case should be remanded for trial.

CONCLUSION

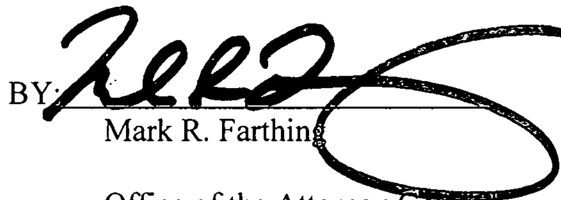
For all the foregoing reasons, it is respectfully submitted that the ruling of the circuit court judge should be reversed and the case should be remanded for trial.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit



BY: ______________________
Mark R. Farthing

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ATTORNEYS FOR APPELLANT

March 6, 2014

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable Stephanie P. McDonald, Circuit Court Judge
Appellate Case No. 2013-001430

THE STATE,

Appellant,

vs.

WALTER MAURICE BASH,

Respondent.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Rule 209, SCACR, Appellant proposes the following to be included in the Record on Appeal:

(1) Entire Hearing Transcript from June 11, 2013;

(2) Both Indictments;

(3) State's Exhibits # 1 (Photo), # 2 (Photo), # 3 (Photo), # 4 (Photo), and # 5 (Photo);

(4) Defendant's Exhibits # 1 (Photo), # 2 (Photo), # 3 (Photo), # 4 (Photo), # 5 (Photo), # 6 (Photo), # 7 (Photo), # 8 (Photo), # 9 (Photo), # 10 (Berkeley County EGS Mapping), and # 11 (Search Warrant); and

(5) State's Map Used as Demonstrative Aid.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: ______________________
Mark R. Farthing

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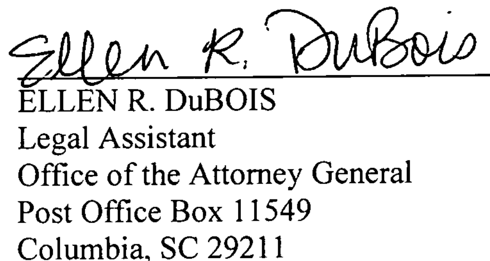
PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Appellant and Designation of Matter on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

Melissa W. Gay, Esquire
Post Office Box 2144
Mt. Pleasant, SC 29465

I further certify that all parties required by Rule to be served have been served.
This 6th day of March, 2014.



ELLEN R. DuBOIS
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

March 6, 2014

Melissa W. Gay, Esquire
Post Office Box 2144
Mt. Pleasant, SC 29465

RE: State v. Walter Maurice Bash -- Appellate Case No. 2013-001430

Dear Ms. Gay:

I am enclosing two (2) copies of the Initial Brief of Appellant and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Robert M. Dudek, Esquire
Victim Services

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ALAN WILSON
ATTORNEY GENERAL

March 6, 2014

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