



The Supreme Court of South Carolina

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December 2, 2014

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Jomar Antavis Robinson
Lower Court Case No. 2008GS4603144, 2008GS4603141,
2008GS4603143, 2008GS4603145, 2008GS4603142
Appellate Case No. 2012-212042

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

Cc: David-Alexander, Esquire
Salley W. Elliott, Esquire
Kevin Scott Brackett, Esquire

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Jomar Antavis Robinson, Petitioner.

Appellate Case No. 2012-212042

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From York County
Lee S. Alford, Circuit Court Judge

Opinion No. 27463
Heard June 19, 2014 – Filed November 12, 2014

AFFIRMED AS MODIFIED

Appellate Defender David Alexander, of Columbia, for
Petitioner.

Attorney General Alan McCrory Wilson, Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, and Solicitor Kevin Scott Brackett, of
York, for Respondent.

CHIEF JUSTICE TOAL: Jomar Robinson (Petitioner) appeals the court of
appeals' decision affirming his convictions for possession of crack cocaine with

intent to distribute (PWID), PWID within one-half mile of a public park, unlawful carrying of a pistol, possession of marijuana, and resisting arrest. *See State v. Robinson*, 396 S.C. 577, 722 S.E.2d 820 (Ct. App. 2012). We affirm as modified.

FACTS/PROCEDURAL BACKGROUND

On Thursday, March 20, 2008, the York Police Department received several anonymous complaints that people were selling drugs and carrying weapons outside of the Hall Street Apartments in York, South Carolina. Starting at 10:00 p.m., Sergeant Rayford Ervin, a police officer working with the York County Drug Enforcement Unit, stood in a wooded area across the street from the apartment complex and used a pair of binoculars to conduct covert surveillance.

Over the next half hour, five cars stopped in front of Apartment 122, where five men stood on the porch of that unit. Each time a car stopped, the same man wearing a black jacket and blue jeans walked from the porch to the car, spoke briefly with the car's occupants, conducted a "hand to hand transaction," and then rejoined the other four men on the porch. As a veteran narcotics officer, Ervin found "that type of activity [] consistent with drug sales," particularly because Thursdays tend to "have more drug dealing activity going on." He therefore called for backup.

At 10:30 p.m., Lieutenant James Ligon and Officer Brian Schettler parked in front of Apartment 122 with the illuminated headlights pointed towards the porch. Ligon and Schettler identified themselves as police officers and walked onto the porch of Apartment 122. At that point, the five men standing on the porch were standing in two groups, with two men wearing black jackets and jeans—Laquaris Patton and Petitioner—on the left side of the porch, and the other three men (none of whom were wearing jackets) on the right side.¹ Because of Ervin's description of the potential drug dealer's clothing, the officers were primarily interested in Patton and Petitioner. Ligon asked both men for identification, which they readily provided.

While Ligon inspected the two drivers' licenses, both officers began to smell a strong odor of green marijuana emanating from Petitioner's side of the porch. Further, Ligon noticed the butt of a gun protruding from the pocket of Petitioner's

¹ The other three men's names were Odarius Williams, Jerome Neely, and Travis Walton. The Record is unclear which man rented Apartment 122, although it is clear that Petitioner did not rent the apartment.

jacket. As a result, Ligon informed Patton and Petitioner that the officers were going to conduct a *Terry*² frisk for drugs and weapons.

At that point, Petitioner began to back away from the officers, and, in fear for his safety, Ligon lunged for and seized the gun, immediately before Petitioner also reached for it. A struggle ensued, during which Petitioner's jacket fell to the ground. Petitioner fled the scene, abandoning his jacket. Ligon pursued Petitioner, and after another brief scuffle, subdued and arrested Petitioner. After Ligon brought Petitioner back to Apartment 122, Schettler searched Petitioner's discarded jacket and found a semiautomatic pistol, a bag containing 3.2 grams of marijuana, a bag containing 0.84 grams of loose crack cocaine rocks, and a bag containing 2.97 grams of crack cocaine rocks packaged in eleven individually wrapped bags.

Prior to his trial, Petitioner made a motion to suppress the gun and drugs, claiming that the police conducted a warrantless search and seizure of him on the curtilage of Apartment 122, and that the gun and drugs were obtained after the officers illegally entered on the property. The trial court denied the motion to suppress, finding that Petitioner did not have a reasonable expectation of privacy on the porch of Apartment 122, and that the officers, possessing a reasonable suspicion to investigate, entered the property merely to talk to the men on the porch and request their identifications.

At trial, after Ligon testified on behalf of the State, but before the State had formally introduced the gun or drugs into evidence, defense counsel introduced the bag of marijuana during cross-examination of Ligon in an attempt to discredit the officer.³ Later in the trial, Petitioner objected to the State introducing the gun and the bags of crack cocaine into evidence.

Ultimately, the jury convicted Petitioner of PWID, PWID within one-half mile of a public park, unlawful carrying of a pistol, possession of marijuana, and resisting arrest. The trial court sentenced Petitioner to life without the possibility of parole. *See* S.C. Code Ann. § 17-25-45 (2014).

² *Terry v. Ohio*, 392 U.S. 1 (1968).

³ Petitioner sought to prove that Ligon lied about the strong odor of green marijuana on the night of his arrest, and questioned Ligon regarding whether he could smell the bagged marijuana from certain distances.

Petitioner appealed, arguing that the trial court erred in refusing to suppress the gun and drugs. The court of appeals affirmed the trial court's decision. *See Robinson*, 396 S.C. at 577, 722 S.E.2d at 820. Specifically, the court of appeals summarily dismissed Petitioner's contention that the trial court should have suppressed the marijuana, finding that because Petitioner introduced the marijuana during his cross-examination of Ligon, he waived his objection to the marijuana. *Id.* at 583, 722 S.E.2d at 823. Further, the court of appeals found that (1) Petitioner was not a resident or overnight guest of Apartment 122, and thus did not have a reasonable expectation of privacy on the porch of the apartment; and (2) the police had reasonable suspicion to enter the porch without a warrant and conduct a *Terry* frisk. *Id.* at 583–86, 722 S.E.2d at 823–24.⁴

This appeal followed.

ISSUE

Whether Petitioner established that his Fourth Amendment rights were violated by the officers' entry onto the porch of Apartment 122?

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only, and are therefore bound by the trial court's factual findings unless clearly erroneous. *State v. Tindall*, 388 S.C. 518, 520, 698 S.E.2d 203, 205 (2010); *State v. Wilson*, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001). Because the admission of evidence is within the sound discretion of the trial court, appellate courts should not reverse the decision of the trial court absent an abuse of discretion. *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (defining an abuse of discretion as a decision "'based on an error of law, or, when grounded in factual conclusions, [a decision] without evidentiary support'" (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000))).

⁴ Petitioner also contended that the trial court erred in qualifying one of the State's witnesses as an expert. The court of appeals affirmed the trial court's decision to qualify the witness as an expert, *see Robinson*, 396 S.C. at 586–88, 722 S.E.2d at 825–26, and Petitioner does not challenge that ruling here.

ANALYSIS

The Fourth Amendment to the United States Constitution protects the people's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; *cf.* S.C. Const. art. I, § 10. At its core, the Fourth Amendment "stands [for] the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961). Accordingly, warrantless searches and seizures inside a man's home are presumptively unreasonable absent a recognized exception to the warrant requirement. *United States v. Karo*, 468 U.S. 705, 714–15 (1984); *Wright*, 391 S.C. at 442, 706 S.E.2d at 327.⁵ Likewise, the Fourth Amendment extends the same protection to a home's curtilage, including a porch. *Florida v. Jardines*, 133 S. Ct. 1409, 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).

However, "the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz v. United States*, 389 U.S. 347, 352 (1967). For this reason, mere visual observations from public thoroughfares do not constitute a search, *United States v. Jones*, 132 S. Ct. 945, 953 (2012), and police officers need not "shield their eyes" when passing by a home, *California v. Ciraolo*, 476 U.S. 207, 213 (1986). Rather, the Fourth Amendment is not triggered unless a person has an actual and reasonable expectation of privacy, *Katz*, 389 U.S. at 361 (Harlan, J., concurring), or unless the government commits a common-law trespass for the purpose of obtaining information, *Jones*, 132 S. Ct. at 949.

Moreover, "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." *Rakas v. Illinois*, 439 U.S. 128, 133–34 (1978) (quoting *Alderman v. United States*, 394 U.S. 165, 174 (1969)); *accord State v. Hiott*, 276 S.C. 72, 78, 276 S.E.2d 163, 166 (1981). Thus, while the Fourth Amendment protects people, and not places, "the extent to which

⁵ Even searches conducted under facts unquestionably showing probable cause are unconstitutional absent a warrant, "for the Constitution requires 'that the deliberate, impartial judgment of a judicial officer be interposed between the citizen and the police.'" *Katz v. United States*, 389 U.S. 347, 357 (1967) (alteration in original) (quoting *Wong Sun v. United States*, 371 U.S. 471, 481–82 (1963)).

the Fourth Amendment protects people may depend upon where those people are." *Minnesota v. Carter*, 525 U.S. 83, 88 (1998). "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." *Rakas*, 439 U.S. at 134; *Alderman*, 394 U.S. at 171-72.

This is not to say that a person cannot have a "legally sufficient interest" in a place other than his own home. *Rakas*, 439 U.S. at 142-43. Rather, to claim the protection of the Fourth Amendment, a defendant must demonstrate that he had an actual and reasonable expectation of privacy in the place searched. *Carter*, 525 U.S. at 88 (quoting *Rakas*, 439 U.S. at 143-44 & n.12); *State v. McKnight*, 291 S.C. 110, 115, 352 S.E.2d 471, 473 (1987); *see also Rakas*, 439 U.S. at 136-39 (rejecting the "target theory," in which anyone who was the target of an illegal search has an automatic right to challenge the search, regardless of where the search occurred).

"The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure" by demonstrating he had an expectation of privacy in the area illegally searched. *Rakas*, 439 U.S. at 130 n.1; *accord Rawlings v. Kentucky*, 448 U.S. 98, 104-05 (1980); *State v. Crane*, 296 S.C. 336, 340-41, 372 S.E.2d 587, 589 (1988); *see also In re Bazen*, 275 S.C. 436, 437-38, 272 S.E.2d 178, 178 (1980) ("If the officer was not to approach [an open garage where a disturbance was occurring] . . . , appellant had ample opportunity to in some manner demonstrate an expectation of privacy in the garage. Instead, he did nothing." (citing *State v. Easterling*, 257 S.C. 239, 185 S.E.2d 366 (1971))). In determining whether the criminal defendant met his burden, courts may consider factors such as:

- a. whether the defendant owned the home or had property rights to it;⁶
- b. whether he was an overnight guest at the home;⁷

⁶ *United States v. Salvucci*, 448 U.S. 83, 91 (1980).

⁷ *Carter*, 525 U.S. at 90; *Minnesota v. Olson*, 495 U.S. 91, 93, 96-97 & n.6 (1990); *State v. Missouri*, 361 S.C. 107, 110, 115, 603 S.E.2d 594, 595, 597 (2004); *State v. Flowers*, 360 S.C. 1, 6, 598 S.E.2d 725, 728 (Ct. App. 2004).

- c. whether he kept a change of clothes at the home;⁸
- d. whether he had a key to the home;⁹
- e. whether he had dominion and control over the home and could exclude others from the home;¹⁰
- f. how long he had known the owner of the home;¹¹
- g. how long he had been at the home;¹²
- h. whether he attempted to keep his activities in the home private;¹³
- i. whether he engaged in typical domestic activities at the home, or whether he treated it as a commercial establishment;¹⁴
- j. whether he alleged a proprietary or possessory interest in the premises and property seized (even if only at a motion to suppress,

⁸ *Olson*, 495 U.S. at 97 n.6; *Missouri*, 361 S.C. at 110, 115, 603 S.E.2d at 595, 597; *Flowers*, 360 S.C. at 6, 598 S.E.2d at 728.

⁹ *Rakas*, 439 U.S. at 149 (discussing *Jones v. United States*, 362 U.S. 257 (1960), overruled on other grounds by *Salvucci*, 448 U.S. at 85); *Missouri*, 361 S.C. at 110, 115, 603 S.E.2d at 595, 597.

¹⁰ *Rawlings*, 448 U.S. at 105; *Rakas*, 439 U.S. at 149 (discussing *Jones*, 362 U.S. at 257); *Flowers*, 360 S.C. at 6, 598 S.E.2d at 728.

¹¹ *Carter*, 525 U.S. at 91; *Rawlings*, 448 U.S. at 105; *Missouri*, 361 S.C. at 110, 115, 603 S.E.2d at 595, 597.

¹² *Carter*, 525 U.S. at 90; *Missouri*, 361 S.C. at 110, 115, 603 S.E.2d at 595, 597.

¹³ *Olson*, 495 U.S. at 99; *Rawlings*, 448 U.S. at 105; *Rakas*, 439 U.S. at 149 (discussing *Katz*, 389 U.S. at 352); *Missouri*, 361 S.C. at 110, 115, 603 S.E.2d at 595, 597; *Bazen*, 275 S.C. at 437–38, 272 S.E.2d at 178.

¹⁴ *Carter*, 525 U.S. at 90–91; *Missouri*, 361 S.C. at 110, 115, 603 S.E.2d at 595, 597.

where that admission cannot be used against him to determine his guilt)¹⁵; and

k. whether he paid rent at the home.¹⁶

As an initial matter, the parties dispute who had the burden of proving the alleged illegality of the police officers' actions here. Each party has the burden to prove separate things during the motion to suppress. The State bears the burden to demonstrate that it was entitled to conduct the search or seizure under an exception to the Fourth Amendment's warrant requirement. *State v. Gamble*, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013). The State also bears the burden to show that the warrantless entry was limited in scope and duration in accordance with the exigent circumstances which required its presence. *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion).

However, the criminal defendant retains the burden to establish that he is asserting his own Fourth Amendment rights, rather than vicariously asserting the rights of others; therefore, the defendant bears the burden to demonstrate that he had an actual and reasonable expectation of privacy in the place illegally searched. *Rakas*, 439 U.S. at 130 n.1. Here, assuming *arguendo* that the police officers committed a Fourth Amendment violation when they entered the porch of Apartment 122 without a warrant, the burden rests with Petitioner to establish that he had a reasonable expectation of privacy in the porch of Apartment 122.

Petitioner failed to carry his burden, as he produced no testimony whatsoever that would implicate any of the factors set forth, *supra*, demonstrating that he had an expectation of privacy in the porch of Apartment 122. At no point did Petitioner claim to be the renter, an overnight guest, or have any other connection to Apartment 122. Thus, we find that Petitioner was "merely present with the consent of the householder," and as such, did not have a reasonable

¹⁵ *Rawlings*, 448 U.S. at 105; *Rakas*, 439 U.S. at 148; *Crane*, 296 S.C. at 340–41, 372 S.E.2d at 589; *Neeley*, 271 S.C. at 43, 244 S.E.2d at 528 (quoting *Brown v. United States*, 411 U.S. 223, 229 (1973)); *but see Salvucci*, 448 U.S. at 92 ("We simply decline to use possession of a seized good as a substitute for a factual finding that the owner of the good had a legitimate expectation of privacy in the area searched.").

¹⁶ *Missouri*, 361 S.C. at 110, 115, 603 S.E.2d at 595, 597; *Flowers*, 360 S.C. at 6, 598 S.E.2d at 728.

expectation of privacy on the porch of Apartment 122. *See Carter*, 525 U.S. at 90; *accord Robinson*, 396 S.C. at 584, 722 S.E.2d at 823–24 ("Furthermore, there is no evidence [Petitioner] was an overnight guest or otherwise had a connection to the premises or apartment lessee to give him a reasonable expectation of privacy. [Petitioner] failed to establish that he had an expectation of not being discovered on the porch, nor did he ask the police to leave.").

Petitioner contends that our consideration of his expectation of privacy in the porch of Apartment 122 is both unnecessary and inappropriate. Citing *United States v. Jones*¹⁷ and *Florida v. Jardines*,¹⁸ Petitioner argues that any time the police commit an unauthorized trespass onto private property, the trespass is per se a violation of the Fourth Amendment, which anyone can assert; therefore, there is no need to engage in an expectation of privacy analysis. We disagree.

In both *Jones* and *Jardines*, the Supreme Court found that the police officers who conducted warrantless searches of the defendants' property committed Fourth Amendment violations, solely because of the officers' unauthorized entry onto and use of the defendants' property. In so finding, the Supreme Court focused primarily on a common law trespass test, involving licenses to enter and use private property. *See, e.g., Jardines*, 133 S. Ct. at 1415–17.

Importantly, in both cases, the Supreme Court noted that the defendants were the owners of the property searched, or otherwise definitively had the right to assert any alleged Fourth Amendment violations.¹⁹ Thus, because the Government's trespasses violated the *Jones* and *Jardines* defendants' *own* Fourth Amendment rights, the Supreme Court was not required to address the interplay between the trespass test and the defendants' reasonable expectations of privacy. *See, e.g., Jones*, 132 S. Ct. at 950; *cf. Rakas*, 439 U.S. at 133–34 ("Fourth

¹⁷ 132 S. Ct. 945 (2012).

¹⁸ 133 S. Ct. 1409 (2013).

¹⁹ *See Jardines*, 133 S. Ct. at 1413 (stating that the criminal defendant was the homeowner); *Jones*, 132 S. Ct. at 949 n.2 (stating that the criminal defendant's wife owned the vehicle searched, that the criminal defendant was the exclusive driver of the vehicle, that the Government did not challenge the court of appeals' holding that "the vehicle registration did not affect his ability to make a Fourth Amendment objection," and that the Supreme Court therefore refused to consider whether the defendant had a reasonable expectation of privacy in the vehicle).

Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.'" (quoting *Alderman*, 394 U.S. at 174)).

As an example of this interplay, if the police commit a warrantless trespass on a homeowner's land, and search and seize the homeowner or his property, the homeowner clearly could assert a Fourth Amendment violation because he would be asserting *his own* right to be free of governmental searches and seizures on his own property. The homeowner would satisfy both *Jones* and *Katz*, because not only could he demonstrate an unauthorized trespass, but also that he had a reasonable expectation of privacy in his home.

In contrast, here we are presented the situation in which a casual guest wishes to assert an alleged trespass on *another's* property. Petitioner maintains that the officers' entry onto the curtilage of Apartment 122 satisfies *Jones's* trespass test, and that consideration of Petitioner's reasonable expectation of privacy under *Katz* is thus irrelevant. We cannot accept such a proposition, as it ignores the factual dissimilarities between his own case and the defendants in *Jones* and *Jardines*—particularly, the lack of any substantial connection to the property allegedly trespassed upon.

Today we hold that, even if the ultimate Fourth Amendment violation a criminal defendant seeks to vindicate is a trespass under *Jones*, the defendant must demonstrate that he had an actual and reasonable expectation of privacy in the area upon which the police illegally trespassed. See *Rakas*, 439 U.S. at 130 n.1 ("The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure."). In doing so, we merely reaffirm the long-standing notion that a defendant must establish that his own Fourth Amendment rights were violated by the illegal entry, rather than vicariously asserting the Fourth Amendment rights of the property owner. In other words, establishing that an illegal trespass occurred is not enough to satisfy the Fourth Amendment. Cf. *Jones*, 132 S. Ct. at 960 (quoting *Karo*, 468 U.S. at 713 ("[A]n actual trespass is neither necessary nor sufficient to establish a constitutional violation.")); *Rakas*, 439 U.S. at 136–39 (finding "targets" of illegal searches do not have an automatic right to challenge the search, regardless of where the search occurred).

Accordingly, because Petitioner made no showing that he had a reasonable expectation of privacy in the porch of Apartment 122, he failed to establish that his

Fourth Amendment rights were violated. We find the court of appeals did not err in affirming the trial court's refusal to suppress the illegal drugs and gun.²⁰

CONCLUSION

For the foregoing reasons, the court of appeals' opinion is

AFFIRMED AS MODIFIED.

**HEARN, J. concurs. PLEICONES, BEATTY and KITTREDGE, JJ.,
concurring in result only.**

²⁰ Because Petitioner did not establish that he had a reasonable expectation of privacy in the place searched, we decline to address whether the officers' conduct was in fact illegal, as well as whether Petitioner waived his right to object to the admission of the marijuana. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding appellate courts need not address remaining issues when determination of prior issue is dispositive).

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jomar Antavis Robinson, Appellant.

Appeal From York County
Lee S. Alford, Circuit Court Judge

Opinion No. 4942
Heard October 3, 2011 – Filed February 15, 2012

AFFIRMED

Appellate Defender Elizabeth Franklin-Best, of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Senior Attorney General Harold M. Coombs, and Solicitor Kevin Brackett, all of Columbia, for Respondent.

WILLIAMS, J.: Jomar Antavis Robinson (Robinson) was convicted of possession of crack cocaine with intent to distribute, possession of crack cocaine with intent to distribute within one-half mile of a public park, unlawful carrying of a pistol, possession of marijuana, and resisting arrest. The circuit court sentenced Robinson to life imprisonment. Robinson appeals, arguing the circuit court erred in (1) denying Robinson's motion to suppress drugs found as a result of an illegal search and seizure; and (2) allowing the State to qualify the Commander of the Drug Enforcement Unit as an expert witness. We affirm.

FACTS/PROCEDURAL HISTORY

On March 20, 2010, Sergeant Rayford Louis Ervin, Jr. (Ervin) with the York County Drug Enforcement Unit (the Drug Enforcement Unit) conducted surveillance of the Hall Street Apartments in response to numerous anonymous complaints of criminal activity in the area. Ervin stated he observed conduct consistent with drug transactions and called for back-up. Lieutenant James M. Ligon (Ligon) and Officer Brian Schettler (Schettler) with the Drug

Enforcement Unit responded. Upon their arrival, Ervin informed the officers he observed an individual, wearing a black leather jacket, meeting vehicles that pulled into the parking lot, going up to the vehicles' windows for a short time, and then returning to the porch of an apartment.

Ligon and Schettler approached the porch and smelled a strong odor of marijuana. Of the five individuals on the porch, two men were wearing black jackets matching Ervin's description. Ligon and Schettler asked the men for their identification. Ligon noticed one of the individuals, later identified as Robinson, had a pistol hanging out of the right pocket of his jacket. Ligon told the two individuals he could smell marijuana and see Robinson's pistol, and he was going to conduct a Terry^[1] search. As Robinson began to retreat, both Ligon and Robinson reached for Robinson's pistol, and a fight between Ligon and Robinson ensued. During the struggle, Robinson's jacket fell to the ground and Robinson fled the scene. Ligon pursued him, and after an altercation, Ligon placed Robinson in handcuffs. Once Robinson was in custody, Schettler searched the inside of Robinson's jacket and found the pistol, a bag containing marijuana, and a bag containing crack cocaine.

A York County grand jury indicted Robinson for possession of crack cocaine with intent to distribute, possession of crack cocaine with intent to distribute within one-half mile of a public park, unlawful carrying of a pistol, possession of marijuana, and resisting arrest.

Robinson moved in limine to suppress the pistol, marijuana, and crack cocaine found in Robinson's pocket, arguing the contents of his jacket were the result of an illegal search. The circuit court denied this motion finding the search did not violate Robinson's Fourth Amendment rights; Robinson did not have an expectation of privacy on the porch; and the officers had reasonable suspicion to investigate. When the State introduced the pistol and crack cocaine into evidence during trial, Robinson timely objected. However, despite his motion in limine to suppress the marijuana, Robinson offered the bag of marijuana into evidence during the cross-examination of one of the State's witnesses as a trial strategy.^[2]

The State called Commander Marvin Brown (Commander Brown) of the Drug Enforcement Unit as a witness. The State offered Commander Brown as an expert in "how crack cocaine is packaged, sold, the going price, the typical intoxicating dose, and the different habits between the typical addict, the user, and the typical drug dealer." Robinson objected, arguing Commander Brown was not qualified as an expert witness under Rule 702 of the South Carolina Rules of Evidence. After voir dire of Commander Brown, the circuit court concluded he was qualified to testify as an expert.

Following the State's case-in-chief, Robinson moved for a directed verdict. In addition, Robinson renewed his motion to suppress the evidence obtained from the search, but he specifically conceded the marijuana was admissible based on his introduction of the marijuana during trial. The court denied Robinson's motions. Robinson was convicted of all charges and was subsequently sentenced to life imprisonment pursuant to section 17-25-45 of the South Carolina Code (Supp. 2010).^[3] This appeal followed.

STANDARD OF REVIEW

In criminal cases, the appellate court reviews errors of law only. State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). The appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

LAW/ ANALYSIS

I. Motion to Suppress

Robinson argues the marijuana and cocaine were improperly admitted at trial because they were obtained in an unlawful manner. We disagree.

a. Marijuana

Robinson introduced the marijuana into evidence during his cross-examination of Ligon; therefore, he cannot now complain of its admission on appeal. See State v. Johnson, 298 S.C. 496, 498, 381 S.E.2d 732, 733 (1989) (holding a defendant who expressly consented to the admission of evidence at trial waived any right to raise the issue of admissibility on appeal); State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) (holding a defendant may not complain of admission of evidence when he introduced the same kind of evidence on cross-examination); State v. Beam, 336 S.C. 45, 52, 518 S.E.2d 297, 301 (Ct. App. 1999) (holding a defendant cannot complain about the admission of evidence on appeal when he opened the door to the introduction of that evidence).

b. Crack Cocaine

Robinson argues the circuit court erred in admitting the crack cocaine at trial when (1) he had a reasonable expectation of privacy on the porch; and (2) Ligon and Schettler entered without a warrant and in the absence of exigent circumstances. We disagree and address each argument in turn.

i. Expectation of Privacy

Robinson contends the search was in violation of his Fourth Amendment rights because he had an expectation of privacy on the porch. We disagree.

For Robinson to establish a Fourth Amendment violation, he must show a legitimate expectation of privacy on the porch. See State v. Missouri, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004) ("To claim protection under the Fourth Amendment of the U.S. Constitution, defendants must show that they have a legitimate expectation of privacy in the place searched."). "A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable." Id. (quoting Oliver v. U.S., 466 U.S. 170, 177 (1984)).

"A reasonable expectation of privacy exists in property being searched when the defendant has a relationship with the property or property owner." State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d

725, 728 (Ct. App. 2004). While an overnight guest may have a reasonable expectation of privacy in the host's property, "a person present only intermittently or for a purely commercial purpose does not have a reasonable expectation of privacy." Id.

Here, the circuit court found Robinson did not have the same expectation of privacy as he would have in his own home. Robinson did not live in the apartment connected to the porch or any apartment located in the Hall Street Apartment complex. Furthermore, there is no evidence he was an overnight guest or otherwise had a connection to the premises or apartment lessee to give him a reasonable expectation of privacy. Robinson failed to establish he had an expectation of not being discovered on the porch, nor did he ask the police to leave. See In the Matter of Brazen, 275 S.C. 436, 436, 272 S.E.2d 178, 178 (1980) (finding the defendant did not have a subjective expectation of privacy in an open garage when he had an opportunity to demonstrate an expectation of privacy or ask the police to leave, but instead did nothing). Therefore, Robinson failed to show he had a reasonable expectation of privacy on the porch.

ii. Reasonable Suspicion

Robinson also argues Ligon and Schettler violated his Fourth Amendment rights because they entered the porch without a warrant and in the absence of exigent circumstances. We disagree.

"A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity." State v. Taylor, 388 S.C. 101, 109, 694 S.E.2d 60, 64 (Ct. App. 2010) (quoting State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999)).

"'Reasonable suspicion' requires a 'particularized and objective basis that would lead one to suspect another of criminal activity.'" State v. Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) (quoting U.S. v. Cortez, 449 U.S. 411, 418 (1981)). In determining whether reasonable suspicion exists, the totality of the circumstances should be evaluated. State v. Corley, 383 S.C. 232, 240, 679 S.E.2d 187, 191 (Ct. App. 2009). While anonymous tips do not supply the indicia of reliability to establish reasonable suspicion, an "anonymous tip can provide the basis of an investigatory stop if the officer conducting the stop verifies the tip's reliability by observing the suspect engaged in criminal activity." Taylor, 388 S.C. at 114, 694 S.E.2d at 66. The officer's experience and intuition is an additional factor to consider in determining whether reasonable suspicion exists. Id. at 116, 694 S.E.2d at 68.

Here, the circuit court held:

[T]aking the totality of the circumstances, the officer's knowledge about the area, what had been reasonably observed, that there were anonymous tips, the police officers investigation and observing the area, . . . the drug transactions [that] were going on in the parking lot based on an officer's knowledge of what drug transactions look like in those situations, . . . they are going there simply to determine the identification of the people who are there, . . . heightened by the fact that they smelled the green marijuana, and heightened by the fact that they saw a weapon hanging out of the defendant's pocket. So all of that, taking the totality of the circumstances they would have reasonable suspicion to investigate further and to pat down the defendant . . .

Ligon and Schettler testified to specific and articulable facts to show they had reasonable suspicion that criminal activity was afoot. Based on Ervin's observation of conduct consistent with drug transactions, Ligon and Schettler approached the porch, and Ligon asked for Robinson's identification. Ligon and Schettler both testified this was a consensual encounter, and Robinson could have terminated the encounter at any time. See State v. Foster, 269 S.C. 373, 380, 237 S.E.2d 589, 592 (1977) (holding an officer's request to see identification does not constitute a seizure within the meaning of the Fourth Amendment). The fact that the officers smelled marijuana as they approached the porch reasonably heightened their suspicion. See State v. Banda, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006) (holding the court recognizes there is an "indisputable nexus between drugs and guns" to justify a frisk for weapons when an officer has reasonable suspicion that drugs are present) (internal citation omitted). When Schettler saw the pistol hanging out of Robinson's jacket pocket, he had reasonable suspicion to frisk Robinson for weapons. We find the police had reasonable suspicion to stop Robinson, and thus did not violate his Fourth Amendment rights.

Accordingly, we affirm the circuit court's denial of Robinson's motion to suppress the crack cocaine.

II. Expert Witness Qualification

Robinson next argues the circuit court erred in qualifying Commander Brown as an expert witness. We disagree.

A person is competent as an expert when he or she has acquired knowledge, skill, or experience so that he or she is better able than the jury to form an opinion on the subject matter. Rule 702, SCRE; see also Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997) ("To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.'") (internal citation omitted). "An expert is not limited to any class of persons acting professionally." Id. at 252, 487 S.E.2d at 598 (internal citation omitted). "The party offering the expert has the burden of showing his witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony." State v. Schumpert, 312 S.C. 502, 505, 435 S.E.2d 859, 861 (1993). However, defects in the amount or quality of education or experience go to the weight of the expert's testimony and not its admissibility. State v. Myers, 301 S.C. 251, 256, 391 S.E.2d 551, 554 (1990).

Robinson questioned Commander Brown regarding writings, publications, and experience in the area of narcotics enforcement. Commander Brown indicated he wrote an article in a national magazine for the United States Attorney's Office detailing how the Drug Enforcement Unit was organized. He testified he teaches three classes: search and seizure, asset forfeiture, and basic narcotics. In addition, Commander Brown makes an annual appearance as a guest instructor at a commander's school for the United States Attorney's Office regarding drug enforcement and drug trends. Commander Brown testified he was the narcotics supervisor for over twenty years. Further, he stated he worked on the first crack cocaine case in York County and has observed crack cocaine "evolve as to how it's packaged and sold throughout the years, especially . . . in

York County." Moreover, Commander Brown stated he had been qualified more than six times as an expert in previous state court criminal cases in "how cocaine is packaged, sold, the going price, the typical intoxicating dose." Commander Brown also affirmed that he has been qualified as an expert in federal court twice on the same subject matter.

We find Commander Brown's thirty years of experience in narcotics enforcement coupled with his involvement in hundreds of crack cocaine cases sufficient to qualify him as an expert on this topic. See State v. Henry, 329 S.C. 266, 273, 495 S.E.2d 463, 466 (Ct. App. 1997) ("There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge.").

Moreover, because the qualification of Commander Brown did not require the jury to give his testimony any greater weight than that given to a lay witness, Robinson did not suffer any prejudice from Commander Brown's expert qualification. See State v. Douglas, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009) (finding a defendant was not prejudiced by the witness's expert qualification because the fact that the witness was qualified as an expert did not require the jury to accord her testimony any greater weight than that given to any other witness); State v. White, 382 S.C. 265, 271, 676 S.E.2d 684, 687 (2009) (finding the circuit court properly instructed the jury to give the expert witness's testimony "such weight and credibility as you deem appropriate as you will with any and all witnesses that will testify at this trial"); State v. Commander, 384 S.C. 66, 75, 681 S.E.2d 31, 35 (Ct. App. 2009) ("As with any witness, the jury is free to accept or reject the testimony of an expert witness.") (internal citation omitted).

The State offered Commander Brown's testimony to advise the jury as to how crack cocaine was sold and packaged, which is information not commonly known to the average juror. Further, this information would aid the jury in determining whether Robinson intended to distribute the crack cocaine or only possessed the crack cocaine for personal use. Therefore, the circuit court did not abuse its discretion in qualifying Commander Brown as an expert witness.

CONCLUSION

Accordingly, the circuit court's rulings are

AFFIRMED.

SHORT and GEATHERS, JJ., concur.