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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County
Donald B. Hocker, Circuit Court Judge

THE STATE,

Respondent,

vs.

JOHN WILLIAM DOBBINS,

Petitioner.

Appellate Case No. 2017-002208

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

P. O. Box 516
Greenwood, SC 29649-0516
(864) 942-8800

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Law enforcement officers lawfully entered Petitioner's camper under exigent circumstances when they detected the odor of an active methamphetamine lab.

STATEMENT OF THE CASE

Petitioner John William Dobbins, Jr., was indicted for manufacturing methamphetamine, possession with intent to distribute methamphetamine, unlawful disposal of methamphetamine waste, and two counts of possession of a controlled substance. Dobbins was tried by jury on September 9-11, 2012, before the Honorable Donald B. Hocker and found guilty as charged. Judge Hocker sentenced Dobbins to an aggregate sentence of twenty-five years imprisonment.

Dobbins appealed his conviction and sentence. Dobbins' appellate counsel, Benjamin R. Tripp, Esquire, filed a brief pursuant to Anders v. California 386 U.S. 738 (1967). On August 19, 2015, the Court of Appeals denied counsel's motion to dismiss and requested the parties address the following issue: "Whether the trial court erred in denying Dobbins's motion to suppress the evidence officers seized during their warrantless search of Dobbins's home."

Following briefing, the Court of Appeals heard oral argument on April 11, 2017. Opposing counsel argued the case on behalf of Dobbins as Attorney Tripp was no longer with the Office of Appellate Defense. The Court of Appeals affirmed the conviction and sentence in a unanimous published opinion on July 12, 2017. State v. Dobbins, 420 S.C. 583, 803 S.E.2d 876 (2017). Dobbins petitioned for rehearing, which was denied by order

dated September 21, 2017.

STATEMENT OF FACTS

Deputy Devin Hodges responded to a call for an assault and battery at 3:20 a.m. on November 24, 2011. Upon arriving, Deputy Hodges interviewed the male victim who told Hodges he was assaulted by Sheila Gaynes. Gaynes told the victim when she left that she was returning to the camper where she was staying. This camper belongs to Petitioner Dobbins. Deputy Hodges testified that due to the late hour, no judge was available to issue an arrest warrant, but Deputy Hodges decided to go to the camper and try to solve the case. Deputy Hodges hoped to arrest Gaynes. Deputy Hodges testified they arrived at Dobbins' camper roughly an hour after he originally received the call about the assault. R. pp. 31-33.

Deputy Hodges testified in camera that one of the officers went behind the camper and immediately detected the smell of a methamphetamine lab emanating from the trailer. R. p. 34, lines 2-6. Deputy Hodges testified before the jury that he smelled the overwhelming odor of someone manufacturing methamphetamine when he approached the door. R. p. 88, lines 2-23. Deputy Hodges explained the smell is distinctive, describing the smell as "a strong chemical smell. It smells a lot like Coleman camp fuel mixed in with other chemicals. It burns your nose. . . . ." R. p. 34, lines 19-22. Deputy Hodges explained he "can distinguish that smell from any other smell." R. p. 34, lines 24-25. As Deputy Hodges explained to the jury, "Once you smell it you will never forget it." R. p. 88, line 12.

Deputy Hodges knocked on the door, and Dobbins opened the door. When Deputy Hodges explained they were looking for Gaynes, Dobbins started to slam the door. Deputy

Hodges and Officer Marlon Higginbotham entered the trailer. Deputy Hodges saw methamphetamine on the countertop in plain view. A woman, Sandy Wyatt, was asleep in the back of the camper. R. pp. 88-89.

An active methamphetamine lab in a soda bottle was in the bathroom; Deputy Hodges testified that it was in the midst of the methamphetamine manufacturing process. Another plastic bottle containing methamphetamine waste lay in a waste basket. Coleman camp fuel was located under the sink. Law enforcement found hydrogen peroxide, plastic gloves, a pipe for smoking methamphetamine, and small bags with white powdery substances, tubing like the tubing used for the methamphetamine bottle, lye, scales, a mirror with methamphetamine residue on it (the mirror acts as a smooth surface to separate methamphetamine), and a large amount of cash. There was also a propane canister. R. pp. 90-95.

Officer Nick Moye testified he was not at the door when Deputy Hodges entered the house – he was out behind the trailer to cutoff a potential escape route for Haynes, but Officer Moye could smell the methamphetamine. He testified that after law enforcement swept the trailer looking for Gaynes, Dobbins was detained and then consented to have the trailer searched. R. pp. 100-102.

Officer Marlon Higginbotham testified that Deputy Hodges asked him to assist in apprehending Haynes who they were looking for at the camper. The camper was a twenty-six to twenty-eight foot long trailer with only one bathroom. Officer Higginbotham testified Dobbins first opened the door, then shut it when they told him they were looking for Gaynes.

Officers entered the trailer "for everyone's safety." Methamphetamine lay in plain view in several places. They found an active methamphetamine lab in the bathroom. They subsequently found $2,000 in cash in the trailer. R. pp. 104-108.

Sergeant Matthew Veal was qualified as an expert witness and is a Methamphetamine Technician with the Laurens County Sheriff's Office. He processed the materials in the trailer. Sergeant Veal noted that materials associated with the manufacture of methamphetamine pose serious threats. He noted lithium strips are used in the manufacturing process. The lithium strips are dangerous because they are water reactive. R. pp. 117-119. Sergeant Veal warned of the dangers associated with the kind of active methamphetamine lab known as a "one pot," testifying as follows:

> The lithium strips, the solvent from the Coleman fuel, which is also flammable. If you mix the lithium and you put water with it, it ignites – it makes a fire. And once that Coleman fuel ignited it could be a bomb, so to speak. And we don't want our officers picking that stuff up as in possible adding water to it or – or making another chemical reaction to make that stuff explode.

R. p. 120, lines 3-11.

Sergeant Veal testified he wears a Hazmat-type suit, a respirator (because the chemicals give off a smell), and gloves, while carefully dismantling the methamphetamine lab and removing materials to make sure they do not cause additional chemical reactions. R. pp. 120-121. Sergeant Veal immediately smelled the methamphetamine lab upon arriving at the scene. He described the odor as "an ungodly smell" similar to ammonia. R. pp. 121-122.

Sergeant Veal found a coffee grinder, which he explained is used to grind ephedrine

or pseudoephedrine pills. R. p. 122. He also found scales and pill bottles with controlled substances inside. Sergeant Veal described a twenty-ounce bottle with a tube sticking out, noting the pink matter inside that would be the filler from ephedrine pills. The pills are broken down with lye and ammonia nitrate. He noted a black ball inside the bottle which was the remnant of a lithium strip. Lithium strips come from lithium batteries. R. pp. 127-130.

Sergeant Veal explained how the two bottles recovered from inside the camper would be used in the manufacturing process:

> The first one is your one pot here. You put all your chemicals such as your – our pseudoephedrine, your lye, your lithium, your ammonia nitrate, your ephedrine, in this bottle. And after it conducts its chemical reaction you would take what they call the top layer off of it and you would put it in some type of other container. Then you would take your other 20 ounce bottle with your tube coming out of it. Your HCL generator. And you would take that – the end of that tube and stick it down into that liquid state and it would conduct another chemical reaction into turning it back into a powdered form.

R. p. 130, line 225 – p. 131, line 7.

State's Exhibit No 16 showed heated propane cylinders used as a torch to "dry out the dope." The methamphetamine is dried from a paste to a powder. R. p. 131, lines 9-15. Sergeant Veal also identified Piranha Lye, another ingredient for the one pot, in one of the exhibits. R. pp. 132-133. The gloves law enforcement found were for the manufacturer's hands to protect them from the chemical reactions incurred in the manufacturing process. R. p. 134. The peroxide found is commonly used to clean "the dope" to take out any yellow,

brown, or red tint and make the methamphetamine whiter for aesthetic purposes. R. p. 134. During redirect examination, Sergeant Veal explained the bottle of methamphetamine byproduct, the HCL generator, found in the waste basket was dangerous because the fumes from the HCL generator or the lithium coming in contact with water may cause a fire. R. pp. 173-174.

Howard Childs testified he rented the lot where the camper was located to Dobbins. He testified a porch was built onto the camper. He was unaware of the condition of the tires on the trailer. He testified the camper was on the lot about a year and was not moved. R. pp. 177-179.

Law enforcement recovered approximately 2.5 ounces of methamphetamine from the camper, as well as pill bottles of oxycodone and acetaminophen pills. R. pp. 196-209.

ARGUMENT

Law enforcement officers lawfully entered Petitioner's camper under exigent circumstances when they detected the odor of an active methamphetamine lab.

Dobbins seeks this Court's writ to review the Court of Appeals' opinion finding his Fourth Amendment rights were not violated when they smelled an active methamphetamine lab in his camper. In seeking this writ, Dobbins: (1) ignores that law enforcement detected the odor of the methamphetamine lab **before** knocking on the door, rendering knock and talk analysis irrelevant; (2) mistakenly claims law enforcement came to Dobbins' with the intent of circumventing a warrant – they were investigating a freshly committed crime and not seeking to find suspected criminality inside the camper; (3) fails to address the exigency he created from an active methamphetamine lab which posed a danger to himself, his sleeping guest, and the community; (4) disingenuously chastises the Court of Appeals for not addressing any state law claims when Dobbins did not raise the state constitutional argument he now makes in his petition to the trial court or to the Court of Appeals in his brief, and did not raise the state law issue in the petition for rehearing.

Dobbins contends his Fourth Amendment rights were violated by the warrantless search of his camper. However, upon approaching Dobbins' camper in an attempt to find Gaynes, a suspect in a crime, law enforcement detected the odor of an active methamphetamine lab. This created an exigent circumstance requiring immediate action due to the danger methamphetamine production creates and the inherent mobility of the camper. There was also a realistic danger Dobbins would destroy evidence after he realized law

enforcement was at his door. Accordingly, the trial court did not err in denying the motion for suppression.

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.[1] The present case does not involve a state question, as the state constitution was not raised to the Court of Appeals. The question involved is a federal question that must be interpreted purely under federal law. See Arkansas v. Sullivan, 532 U.S. 769, 772 (2001) (instructing that state courts cannot interpret the Fourth Amendment of the United States Constitution to provide greater protections than those provided by the precedent of the United States Supreme Court"). Therefore, this Court should refrain from Dobbins' invitation to alter federal law to conform to a law professor's criticism of existing federal law as expressed in the law review article Dobbins cites.

Although Deputy Hodges detected the smell of an active methamphetamine lab **before** knocking on Dobbins' camper door, Deputy Hodges did not implicate a Fourth Amendment concern by merely knocking on Dobbins' door. Kentucky v. King, 131 S. Ct. 1849, 1862 (2011) ("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."); State v. Wright, 391 S.C. 436, 444, 706 S.E.2d 324, 328 (2011) (finding a law enforcement officer may lawfully

[1] Dobbins did not raise any issue under the South Carolina Constitution to the lower courts. However, even under the state constitution, law enforcement did not indiscriminately or arbitrarily approach the house, but instead had at least a reasonable suspicion they would find Gaines at the residence, who they had probable cause to believe freshly committed a crime. They went to the camper in an attempt to complete their investigation of the offense. See

go to a person's home and door to interview that person); see also Florida v. Jardines, 133 S. Ct. 1409, 1417, n. 4 (2013) ("[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 in original)).

Law enforcement was not unreasonable to go to the camper to try and find the suspect of a recently perpetrated crime. See United States v. Christmas, 222 F.3d 141, 145 (4th Cir. 2000) (noting a "community might quickly succumb to a sense of helplessness if police were prevented from responding to the face to face pleas of neighborhood residents for assistance."). "A voluntary response to a knock at the front door of a dwelling does not generally implicate the Fourth Amendment, and thus an officer generally does not need probable cause or reasonable suspicion to justify knocking on the door and then making verbal inquiry." United States v. Cephas, 254 F.3d 488, 493 (4th Cir. 2001).

In Cephas, a police officer received an anonymous tip that Cephas was smoking marijuana with a fourteen year old in his apartment. The officer investigated and found Cephas' apartment and knocked on the apartment door. When Cephas opened the door, the officer smelled marijuana from the apartment. Cephas tried to close the door on the officer, but the officer forced his way inside and found a gathering of people and a marijuana roach in an ashtray. Id. at 490-91.

Reversing the district court's suppression of evidence, the Fourth Circuit found that "[w]hen Cephas opened his apartment door without knowing who was on the other side, he voluntarily exposed to the public any odors and such a view as one standing at the door could

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generally State v. Counts, 413 S.C. 153, 172, 776 S.E.2d 59, 70 (2015).

perceive." Id. at 494.

Exigent circumstances – probable cause to believe an active methamphetamine lab was inside the camper – resulted in a proper warrantless entry into Dobbins' camper. "Warrantless entries into a residence are presumptively unreasonable." Cephas at 494. However, an exception to the warrant requirement may occur based on exigent circumstances. Id. "Warrants are generally required to search a person's home or his person unless the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." Brigham City, Utah v. Stuart, 126 S.Ct. 1943 (2006) (citations and internal quotation marks omitted).

The odor of an active methamphetamine lab creates the exigent circumstances justifying an immediate warrantless entry in the home. "Jurisdictions that have tackled the issue have held that the dangers posed by an operating methamphetamine lab are sufficient to constitute an exigent circumstance for purposes of conducting a warrantless search of a residence." Williams v. State, 995 So.2d 915, 920 (Ala. Crim. App. 2008).

Methamphetamine manufacturing and the ingredients used in the manufacture of methamphetamine creates the risk of explosion, fire, noxious gas emissions, and injurious chemical reactions that constitutes an exigency. In United States v. Layne, 324 F.3d 464, 468–69 (6th Cir.2003), the Court of Appeals noted methamphetamine production "'poses serious dangers to both human life and to the environment ... [and] these chemicals and substances are utilized in a manufacturing process that is unstable, volatile, and highly

combustible. Even small amounts of these chemicals, when mixed improperly, can cause explosions and fires.'" Id. (quoting H.R. Rep. 106–878, pt. 1 at 22 (September 21, 2000)).

The Iowa Supreme Court found "[t]he volatile nature of the dangers created by methamphetamine labs can be exigent circumstances justifying an immediate limited search of premises harboring such a lab." State v. Simmons, 714 N.W.2d 264, 273 (Iowa 2006). Likewise, the Eighth Circuit found the volatile nature of methamphetamine labs present exigent circumstances justifying an immediate limited search after officers smelled an odor associated with methamphetamine production. Kleinholz v. United States, 339 F.3d 674, 676-77 (8th Cir. 2003). The Tenth Circuit found the strong odor of methamphetamine production emanating from a residence and the agent's awareness of the inherent dangers of an active methamphetamine lab contributed to the reasonable grounds for law enforcement to immediately enter the home to protect the public. United States v. Rhiger, 315 F.3d 1283, 1289-90 (10th Cir. 2003). The Ninth Circuit opined "faced with a potential disaster in the form of an ether explosion and fire . . . exigent circumstances existed because . . . a reasonable person could have believed that immediate entry was necessary to safeguard public safety . . ." United States v. Wilson, 865 F.2d 215, 217 (9th Cir. 1989).

"The potential hazards of methamphetamine manufacture are well documented, and numerous cases have upheld limited warrantless searches by police officers who had probable cause to believe they had uncovered an ongoing methamphetamine manufacturing operation." United States v. Walsh, 299 F.3d 729, 734 (8th Cir. 2002). The Ninth Circuit found the odor that law enforcement associated with methamphetamine production

emanating from an apartment constituted an exigent circumstance allowing entry under the emergency exception to the warrant requirement, which is invoked when law enforcement's assistance is immediately needed to protect life or property. United States v. Cervantes, 219 F.3d 882 (9th Cir. 2000).

Note the United States Supreme Court in Stuart abrogated the Cervantes' test for the emergency exception because it relied on a subjective analysis of the officers' actions. Stuart noted the inquiry should be on objective basis, noting subjective motivations of police officers are irrelevant. Stuart, at 404-05 ("An action is reasonable under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstance, viewed *objectively*, justifies the action." (citations and internal quotations omitted, emphasis in the original)).

Further, Dobbins shut the door immediately when he realized law enforcement was present at the door. Any delay ran the risk of evidence being destroyed, creating a further exigency. United States v. Santana, 427 U.S. 38, 42 (1976) (noting that once the suspect saw police and fled inside the house, there was a realistic expectation that any delay could result in the destruction of evidence).

Adding to the exigency of the situation is the inherently mobile nature of the camper.[2] See California v. Carney, 471 U.S. 386, 393 (1985) (finding that motor home possessed some attributes of a home, nonetheless the motor home was readily mobile and therefore laid

[2] See State's Exhibit No. 1 (mobile home).

within the scope of the exception in Carroll v. United States, 267 U.S. 132 (1925) (inherent mobility of automobile constitutes an exigency for a warrantless search)).

Once inside the camper, law enforcement saw methamphetamine in plain view and a protective sweep of the camper revealed a batch of methamphetamine in the midst of production. State v. Beckham, 334 S.C. 302, 317, 513 S.E.2d 606, 613 (1999) (noting "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."). Dobbins consented to the search the trailer following the lawful seizure of the items in plain view and did not challenge the voluntariness of the consent to the Court of Appeals.

Dobbins relies heavily on United States v. Johnson, 170 F.3d 708 (7th Cir. 1999), but omits key procedural and factual background information from his petition that distinguishes the present case from Johnson. In Johnson, four officers approached an apartment based on a tip that amounted to less than reasonable suspicion of drug activity. They knocked on the door and Johnson answered, after some delay, startling both Officer Reilly and Johnson. Officer Reilley testified they thought they saw a seated woman inside throw down a crack pipe. Johnson attempted to walk past the officers, but Officer Reilly frisked Johnson although he admitted he did not have a particularized belief Johnson was armed and dangerous. This apparently was Reilly's practice whenever he did a "knock and talk." Meanwhile, three other officers entered the apartment and conducted a protective sweep. Id. at 712.

The district court ultimately suppressed the evidence prior to trial. During the suppression hearing, testimony indicated both Johnson and another officer were in between Officer Reilly and the doorway, blocking his view, and impeaching Officer Reilly's claims he saw a woman drop a crack pipe. Officer Reilly also confirmed that Johnson was not free to leave the apartment. The district court specifically found Officer Reilly's claim that he saw a woman drop a crack pipe was not credible. The district court further noted the officers lacked probable cause to detain Johnson or reason to believe he was armed and dangerous before attempting to frisk Johnson. Id. at 712-14. Law enforcement recovered a weapon from Johnson and drugs from the residence. Id.

The Seventh Circuit Court of Appeals, recognizing the constitutionality of a "knock and talk," noted nonetheless the limits on police during this process. Chiefly, the Seventh Circuit scolded the detention of individuals without reasonable suspicion they were armed or committing a crime. Id. at 720. In distinguishing the case from other cases finding warrantless searches valid, the Seventh Circuit noted the police were not confronted with "a readily movable automobile" or "facing imminent destruction of evidence, or otherwise confronted with circumstances sufficiently grave to justify a warrantless intrusion." Id. at 719 (citations omitted). All three of these justifications for a warrantless search are present in the instant case.

The instant case differs significantly from Johnson. First, in this case, unlike Johnson, the trial court denied the motion to suppress, so the Court of Appeals rightly affirmed because the trial court's findings were supported by evidence. "When reviewing a

Fourth Amendment search and seizure case, an appellate court must affirm the trial judge's ruling if there is any evidence to support the ruling." State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2007). Dobbins notes Reilly claimed to see a woman drop a crack pipe, but omits that the district court **did not find this claim credible**, obfuscating a critical fact in comparing Johnson to the present case.

Second, law enforcement faced the eminent destruction of evidence in this case, and was also confronted with the grave circumstance of an active, dangerous methamphetamine lab. Additionally, the camper, which was readily mobile, was subject to the automobile exception. So unlike Johnson, the present case included exigent circumstances.

Finally, but most importantly, law enforcement already had probable cause to enter the premises **before** knocking on the door because law enforcement already detected the smell of an active methamphetamine lab. Johnson is inapplicable, and its stern language motivated by the Seventh Circuit's consternation with officers who admittedly seized and detained subjects without reasonable suspicion: this is simply is not an apt description of the officers in this case who were merely investigating a freshly committed crime and stumbled upon a gravely dangerous situation, an active methamphetamine lab that was an exigency of Dobbins' making, not the officers. Johnson does not stand for the proposition that the Fourth Amendment requires law enforcement to have reasonable suspicion to knock on the door of a suspect, because that is not a detention. Johnson merely stands for the proposition that a person may not be seized without reasonable suspicion during a "knock and talk" encounter. Law enforcement already had probable cause to believe an active meth lab was inside the

camper even **before** knocking on the camper door due to the odors omitted from Dobbins active methamphetamine lab.

Dobbins efforts to distinguish State v. Lane, 271 S.C. 68, 72, 245 S.E.2d 114, 116 (1978) is simply evasive. Dobbins correctly notes two packages shipped through UPS were searched after obtaining a search warrant. However, the Court of Appeals did not cite Lane to establish a warrant exception, but for the simple proposition that "[t]he distinctive odor of a drug alone is a sufficient basis to establish probable cause when a law enforcement official, familiar with the unique smell of that drug, recognizes its odor." Dobbins, 420 S.C. at 593, 803 S.E.2d at 880 (quoting parenthetically Lane, at 72, 245 S.E.2d at 116 ("[I]t is evident that the odor [of marijuana] emanating from the packages alone was a sufficient basis to establish probable cause as to their contents when it is considered that an officer of the law, familiar with the odor of marijuana, believed the odor being emitted was that of marijuana"). Dobbins' attempt to ignore this holding from Lane underscores Dobbins' failure to address the Court of Appeals' finding that law enforcement possessed probable cause to believe there was an active methamphetamine lab **before** even knocking on Dobbins' door. The Court of Appeals held, "[W]e find that, given his prior experience with the unique odor of methamphetamine, Deputy Hodges' detection of the odor upon his arrival at the camper was a sufficient basis for establishing probable cause. See Lane, 271 S.C. at 72, 245 S.E.2d at 116." Dobbins, at 593-94, 803 S.E.2d at 881. Dobbins' complete failure to confront this issue means the basis for probable cause, law enforcement's detection of plain odor upon

arrival at the camper, is the law of the case. State v. Sampson, 317 S.C. 423, 454 S.E.2d 721 (Ct. App. 1995) (unchallenged rulings are the law of the case).

Because law enforcement already had probable cause to believe Dobbins was operating an active meth lab in his camper **before** Dobbins opened his door, law enforcement could properly detain Dobbins while investigating the potential meth lab. Therefore, Dobbins' claim that when he opened the door, he had the right to ignore law enforcement and go about his business is incorrect. Michigan v. Summers, 452 U.S. 692, 701 n.12 (1981) (noting where circumstances support a reasonable suspicion of criminal activity, "the suspect may be detained while it is determined if in fact an offense has occurred in the area, a process which might involve checking certain premises, ...").

Dobbins claims the Court of Appeals "also failed to address the South Carolina Constitution's heightened protection against unreasonable invasions of privacy." Pet. p. 15. This is a disingenuous claim because Dobbins did not raise a state law claim to the trial court, in his brief to the Court of Appeals, or in his petition for rehearing (Dobbins cites eleven federal cases and no state cases, except Lane for the purposes of attempting to distinguish Lane). It is not the Court of Appeals fault that the Court of Appeals did not address an issue not raised to them, and it is unfair to the court to insinuate such a claim. Therefore, this Court should not consider any state constitutional claims for the first time in a petition for writ of certiorari. State v. Primus, 349 S.C. 576, 583, 564 S.E.2d 103, 107 (2002) (an issue not raised in the brief to the Court of Appeals, but instead raised for the first time in the petition for rehearing is not properly preserved for the Supreme Court's

consideration in a petition for writ of certiorari) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Kleckley v. Northwestern National Casualty Company, 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000) (quoting Rule 226(d)(2), SCACR as follows: "Only those questions raised in the Court of Appeals *and* in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." (emphasis in the opinion)). This Court should not be allow itself to be misled by Dobbins' sophistic propostion and should limit its consideration to the federal question actually raised to the Court of Appeals. The only proper question before this Court is a federal question.

In the instant case, the evidence demonstrates Deputy Hodge's objective basis for the warrantless search based on the exigency created by his detection of odors that Deputy Hodges associated with an active methamphetamine lab. Accordingly, the trial court did not err in denying Dobbins' motion to dismiss.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari should be denied. Should this Court see fit to grant the petition, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: _____
DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 21, 2017

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Laurens County
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No: 2017-002208

THE STATE,

Respondent,

v.

JOHN WILLIAM DOBBINS, JR.,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Return to Petition for Writ of Certiorari on Appellant by delivering two copies of the same to Taylor D. Gilliam, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.
This 21st day of November, 2017.

Anne Mueller

Anne A. Mueller
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727