STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Laurens County

Honorable Donald B. Hocker, Circuit Court Judge

Opinion No. 5496 (S.C. Ct. App. Filed 7/12/2017)

12-GS-30-208-212.

THE STATE,

RESPONDENT,

V.

JOHN WILLIAM DOBBINS,

PETITIONER

APPELLATE CASE NO 2013-002134

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was filed on July 27, 2017, but denied by the Court of Appeals on September 21, 2017. App. 15.

QUESTION PRESENTED

Did the Court of Appeals err in affirming the denial of Petitioner's motion to suppress evidence when, based on the totality of the circumstances, law enforcement used plain smell and exigent circumstances to avoid the warrant requirement in violation of Petitioner's federal and state constitutional rights against unreasonable searches and seizures and unreasonable invasions of privacy?

STATEMENT OF THE CASE

In February 2012, the Laurens County Grand Jury indicted Petitioner John William Dobbins for manufacturing methamphetamine, possession with the intent to distribute methamphetamine, unlawful disposal of methamphetamine waste, possession of a schedule-two controlled substance, and possession of a schedule-four controlled substance. R. 329 – 338.

On September 9, 2013, Petitioner proceeded to trial before the Honorable Donald B. Hocker and a jury. R. 1. Rauch Wise represented Petitioner, and Assistant Solicitors Ruston Neely and Dale Scott represented the State. The jury found Petitioner guilty as indicted. R. 310, ll. 3 – 18. The trial court sentenced Petitioner to one year imprisonment on each of the possession of a controlled substance charges, five years on the disposal of methamphetamine waste, twenty-five years on the manufacturing methamphetamine, and twenty-five years on the possession with intent to distribute methamphetamine. R. 326, l. 15 – R. 327, l. 4.

On July 12, 2017, the South Carolina Court of Appeals affirmed the denial of Petitioner's motion to suppress evidence. State v. Dobbins, Op. No. 5496 (S.C. Ct. App. filed July 12, 2017). App. 1 – 8. Petitioner filed a petition for rehearing on July 27, 2017. App. 9 – 13. The Court of Appeals issued an Order denying the petition for rehearing on September 21, 2017.

This petition for writ of certiorari to the South Carolina Court of Appeals follows.

STATEMENT OF FACTS

Motion to Suppress

Pre-trial, defense counsel moved to suppress "all evidence seized from" Petitioner's residence on the ground that it was all obtained without a search warrant. R. 23, ll. 15 – 22. Defense counsel posited that under Steagald v. United States, 451 U.S. 204 (1981), law enforcement was required to get a search warrant in order to search Petitioner's home for Shayla Gaines, a woman who did not live there. R. 23, l. 20 – R. 25, l. 22. According to defense counsel, Gaines was wanted on an assault and battery charge, a magistrate's court offense. Id. Law enforcement had heard that Gaines may have been at Petitioner's home, but she was not found there. Id.

Arguing against the motion, the prosecution suggested that plain smell and exigent circumstances allowed law enforcement to bypass the warrant requirement. R. 27, l. 17 – R. 28, l. 20.

Suppression Hearing

Officers Devin Hodges testified at the suppression hearing regarding the circumstances leading up to Petitioner's arrest.

Officer Hodges

During the suppression hearing, Officer Devin Hodges testified that he arrived at Petitioner's home around 3:20 a.m. R. 31, ll. 18 – 24. Prior to that, he learned of an assault involving Shayla Gaines which allegedly occurred two or three miles from Petitioner's home. R. 31, l. 25 – R. 33, l. 25. Within an hour of receiving the assault and battery complaint, a group four of deputies arrived at Petitioner's home. Id.; R. 38, ll. 1 – 12.

After arriving on the scene, Nick Moye went to the rear of Petitioner's home, a camper, to "make sure everything was secured back there." R. 34, ll. 1 – 6. According to Hodges, Moye "could immediately smell an order that we associated with methamphetamine labs." Id. Hodges testified that once he smelled that odor, he had two concerns—finding Gaines and investigating the odor. R. 35, ll. 1 – 5.

Officers knocked on the door, and Dobbins answered. R. 35, l. 6 – R. 37, l. 20. After officers indicated they were looking for Gaines, Dobbins shut the door. Id. That ostensibly led Hodges to believe Gaines was inside, even though she was not found at Petitioner's home. Id. Hodges also believe she was trying to escape Petitioner's home. Id. He also testified that he was now also concerned about officer safety. Id.

Hodges and other officers then entered Petitioner's home without a warrant. Id. Officers searched the home for Gaines and in the process claimed to have seen "byproduct of a methamphetamine lab on the counter, meth, as well as in the bathroom." Id.

Officers never subsequently obtained a search warrant for Petitioner's home. Id. When asked how he justified a search of the home, Hodges responded: "Well, after we had entered the residence and looked for Ms. Gaines due to everything being in plain view and we just kind of - - we just went ahead with it." Id. Petitioner was handcuffed immediately after Hodges and other officers entered the home, and he was arrested later that night. Id.; R. 52, ll. 9 – 12.

Even before the warrantless search, Hodges was "very familiar" with Petitioner. R. 39, l. 21 – R. 40, l. 24. On cross-examination, Hodges admitted that he did not know why Petitioner shut the door. R. 41, ll. 18 – 22. Hodges also admitted that he could have attempted to obtain a warrant from a magistrate in Laurens County. R. 42, ll. 1 – 19. Out of the four officers present at the time of the initial knock, one could have requested a warrant while the other three

remained. R. 43, ll. 1 – 16. If Gaines had come out of the home with only three officers present, she would have been apprehended. R. 44, ll. 6 – 18.

Following Hodges' testimony, defense counsel argued that Petitioner could not have consented to a search following an illegal entry. R. 54, l. 23 – R. 55, l. 14. He also argued that under State v. Abdullah[1], exigent circumstances exist "only where from an objective standing a compelling need for official action and no time to secure a warrant exists." R. 55, l. 25 – R. 56, l. 10.

Suppression Ruling

The trial court found exigent circumstances existed which justified the initial entry into the home. R. 65, l. 17 – R. 67, l. 1. The trial court stated:

> [I] looked at the Abdullah case and tried to - - even though that certainly some of the facts are different from the Abdullah case and this current case there were some similarities and we kind of looked at both and compared, and that was helpful in the court determining that the officer was justified in making the initial entry.
>
> The Schmerber case was also important in this court' decision. And [I] also want to mention - - and this idea that I'm just in a second going to mention to you is - - standing alone I don't think this would necessarily do it. But there's a case California v. Carney that equated in some situations a mobile home to that of an automobile, the - - certainly the standard is often lessened because of the fact that the automobile is capable of being moved, and this California v. Carney equated that with a mobile home. [Well] we're dealing with a camper, and so that has the potential of being moved. So the way I looked at it, again, this standing alone I don't think it would do it, but coupled with everything else it would appear to me that if they went to get a warrant and it was decided by the Defendant or anyone else in the camper that they wanted to move the camper I don't think the police would have the authority, necessarily, to prevent that. So that was just kind of [an] additional feature. Again, I [emphasize] standing alone, no, I don't think that would to it. But I think as an additional feature on this argument of exigent circumstances. So taking everything in consideration, the fact that methamphetamine was smelled at the time they reached the camper, the uncooperativeness of the Defendant, which was also found in the Abdullah case, I believe that the search was proper and I'll deny the suppression motion.

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[1] 357 S.C. 344, 592 S.E.2d 344 (Ct. App. 2004).

R. 65, l. 17 – R. 67, l. 1.

Notably, the State's Supplemental Record on Appeal contains a picture which appears to show a porch built onto Petitioner's home. Hodges did not indicate that he was concerned about the mobility of Petitioner's home. The trial court highlighted this fact following the jury's guilty verdict, after defense counsel moved for a new trial:

> Counsel: Your Honor, I would first ask for a new trial on the grounds that the evidence in this matter should have been suppressed and on the issue that there was an unlawful search of [Petitioner's] residence and that there were no exigent circumstances to justify the search. A lot of - - there was some testimony at the pretrial hearing it's obvious, I think, from the rest of the trial, that this was a camper with a front porch affixed to it and the ability of it to quickly leave was virtually nonexistent. And therefore, there were no exigent circumstances to justify the search.
>
> The Court: Of course, I would just point out that when the pretrial motion was made concerning suppression there was no evidence as to the condition of the camper. Only that it was a camper.

R. 314, ll. 11 – 25.

ARGUMENT

The Court of Appeals erred in affirming the denial of Petitioner's motion to suppress evidence when, based on the totality of the circumstances, law enforcement used plain smell and exigent circumstances to avoid the warrant requirement in violation of Petitioner's federal and state constitutional rights against unreasonable searches and seizures and unreasonable invasions of privacy.

Based on Hodges' admission that he was concerned with the methamphetamine smell but would not send an officer to obtain a warrant while three others observed Petitioner's home at 3:20 a.m., it appears law enforcement in Petitioner's case violated the Fourth Amendment. Based on the testimony presented during the suppression hearing, Hodges was "in essence conducting a general search in hopes that something would turn up – the very kind of search the Fourth Amendment was designed to regulate." United States v. Johnson, 170 F.3d 708, 714 (7th Cir. 1999). Thus, the Court of Appeals erred in affirming the trial court's refusal to grant Petitioner's motion to suppress.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. Const. amend. IV. The South Carolina Constitution also provides a safeguard against unlawful searches and seizures. See State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) (citing S.C. Const. art. I. § 10). The relationship between the two constitutions is significant because "[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution." Id. at 643, 541 S.E.2d at 840 (quoting State v. Easler, 327 S.C. 121, 131, n. 13, 489 S.E.2d 617, 625, n. 13 (1997)). Accordingly, this Court may interpret the state

protection against unreasonable searches and seizures in such a way as to provide greater protection to its people than the federal Constitution. See Id.

In addition to language that mirrors the Fourth Amendment, Article 1, section 10, of the South Carolina Constitution contains an express protection of the right to privacy: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and *unreasonable invasions of privacy* shall not be violated[.]" Forrester, 343 S.C. at 649, 541 S.E.2d at 843 (emphasis added); *See* S.C. Const. art. 1 § 10. "By articulating a specific prohibition against 'unreasonable invasions of privacy,' the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution." State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007) (citing Forrester, 343 S.C. at 644-45, 541 S.E.2d at 841). Therefore, "*the South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.*" *Id.* (emphasis added).

The United States Supreme Court has held that the "zone of privacy is nowhere more clearly defined than when bounded by unambiguous physical dimensions of individual's home," and "[a]t very core of [the] Fourth Amendment stands [the] right of a man to retreat into his own home and there be free from unreasonable government intrusion." Payton v. New York, 445 U.S. 573, 590 (1980) (internal citations omitted). Unequivocally, the home occupies a special place in Fourth Amendment jurisprudence and warrantless searches of homes are presumptively unreasonable. See Welsh v. Wisconsin, 466 U.S. 740, 748-49, 104 S.Ct. 2091 (1984).

Furthermore, the United States Supreme Court has held that "searches [and seizures] conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment-subject only to a few specifically established and

well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967) (footnote omitted); See State v. Weaver, 361 S.C. 73, 80–81, 602 S.E.2d 786, 790 (Ct. App. 2004). "The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption . . . that the exigencies of the situation make the course imperative." Coolidge v. New Hampshire, 403 U.S. 443, 91 (1971) (internal quotations omitted). Specifically, the burden is on the State to justify a warrantless search or seizure based upon one of these recognized exceptions. See Id.

Yet, despite these exceptions, the United States Supreme Court has emphasized its concern with warrantless searches and seizures:

> "The point of the Fourth Amendment, which often is *not grasped by zealous officers*, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate *instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime*

Johnson v. United States, 333 U.S. 10, 14-15 (1948) (emphasis added). The United States Supreme Court has also addressed the warrant requirement's effect on law enforcement: "*In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause* [or the existence of a recognized exception]." Carroll v. United States, 267 U.S. 132, 156 (1925) (emphasis added).

The exclusionary rule also prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine. See Wong Sun v. United States, 371 U.S. 471, 484 (1963); see also State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999) (finding that if the police exploit an unlawful search to seize evidence that would not have otherwise come to light, that evidence is the "fruit of the poisonous tree," and is not admissible); Forrester, 343 S.C. at 643, 541 S.E.2d at 840. The Fourteenth Amendment

incorporates the rule of excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. See Mapp v. Ohio, 367 U.S. 643, 655 (1961).

Constitutionality of "Knock and Talks"

"Though the 'knock and talk' procedure is not automatically violative of the Fourth Amendment, it can become so." Keenom v. State, 349 Ark. 381, 80 S.W.3d 743, 747 (2002); See Johnson, 170 F.3d at 720 ("We do not hold today that the "knock and talk" technique is automatically unconstitutional. Nevertheless, . . . the police themselves must recognize the inherent limits in this more informal way of proceeding."). A constitutional "knock and talk" occurs when an officer conducts a "knock and talk" in a place where he/she is lawfully present and the encounter is consensual.[2] For example, when an occupant has not refused to open the door to the home or the officer has not coerced or intimidated the occupant to open the door, a "knock and talk" is constitutional (e.g.: (1) where an officer seeks to ascertain information about a crime from a witness or a non-suspect who has knowledge about a crime; (2) where an officer responds in a protective capacity to an emergency call; or (3) where an officer has reasonable suspicion or probable cause to justify a search or seizure).

An unconstitutional "knock and talk" occurs when an officer conducts a "knock and talk" in a place where the officer is not lawfully present and/or the encounter is not consensual. See Johnson, 170 F.3d at 710 (explaining that "[a]lthough the [United States] Supreme Court has found exceptions to the warrant requirement in a number of compelling situations, it has never deviated from the rule that generalized suspicion alone is not enough to justify a warrantless

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[2] See Kentucky v. King, 131 S.Ct. 1849 (2011) (noting that officers may seek consent-based encounters if they are lawfully present in the place where the consensual encounter occurs); see also Rogers v. Pendleton, 249 F.3d 279, 289-90 (4th Cir. 2001) (noting that "police officers do not need a warrant to do what any private citizen may legitimately do– approach a home to speak to the inhabitants").

search of a home"). For example, a "knock and talk" is unconstitutional when: (1) the occupant has refused to open the door to the home or consent to a search of the home, but the officer entered or searched anyway; and/or (2) an officer in an *on-going* investigation that is *focused* on a suspect lacks reasonable suspicion or probable cause and deliberately conducts a "knock and talk" to circumvent the warrant requirement.

***Terry* Standard Applied to "Knock and Talks"**

The Seventh Circuit Court of Appeals provided the proper analysis for when law enforcements lacks reasonable suspicion and uses the "knock and talk" technique to avoid the warrant requirement. Johnson, 170 F.3d 708. In Johnson, the police "received a citizen report [from a community organization] that drug activity was probably taking place in an apartment building." Id. at 711. Based on this report, several officers "decided to respond to the complaint using their 'knock and talk' technique." Id. The Seventh Circuit noted that the officers had "*nothing but generalized suspicion*" before approaching the residence. Id. at 714 (emphasis added).

Furthermore, just as one of the officers was "prepared to knock," Johnson opened the door and the officer "identified himself as a police officer." Id. at 711. Another officer "asserted that at the moment [the door opened] he saw a woman inside the apartment, seated at a table, throw . . . a crack pipe to the floor." Id. at 712. As the officers attempted force Johnson back into the apartment, a struggle ensued, and the officers forced Johnson to the ground. Id. During the struggle, one of the officers "felt a gun in Johnson's pocket." Id. Johnson was then handcuffed and frisked. Id. The officer found a loaded gun and cocaine on Johnson's person. Id. "Johnson subsequently filed a motion to suppress the evidence that was seized from him during the police investigation . . . ." Id.

The Seventh Circuit ultimately decided to apply the standard set forth in Terry v. Ohio, 392 U.S. 1 (1968):

> Applying the *Terry* standard, we have consistently held that reasonable suspicion is to be determined in light of the totality of the circumstances . . . Specifically, ***the inquiry on appeal must focus on the events which occurred leading up to the stop or search***, and then the trial judge's decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion.

Johnson, 170 F.3d at 714-15 (emphasis added).[3] The Seventh Circuit explained, "The fact that the police had only the vaguest information about [drug activity at Johnson's residence] *is critical to our analysis as a whole, because it reveals that the officers were in essence conducting a general search in the hopes that something would turn up – the very kind of search the Fourth Amendment was designed to regulate.*" *Id.* at 714-715 (emphasis added). Consequently, based on the totality of the circumstances, the Seventh Circuit affirmed the district court's decision to suppress the evidence found in Johnson's home. Id. at 720.

In his concurring opinion, Judge Evans noted, "[O]ur case today really presents a question about where the proper analysis of this search begins, and in my view it doesn't start just as the door to [Johnson's residence] was opened." Id. at 721. Judge Evans further noted:

> [T]he police had no warrant when they went to [Johnson's residence] . . . [Therefore, the officers] ***were taking a shortcut in the hope that something good (from a drug busting perspective) would turn up*** [when a] little more work would have given the police the probable cause they needed to secure a warrant, but they didn't want to take the time to do something more.

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[3] See Terry, 392 U.S. at 30 (noting that in the absence of probable cause for arrest, a police officer may stop and briefly detain a person for investigative purposes, so long as the officer has a reasonable suspicion supported by articulable facts that criminal activity "may be afoot."); see also United States v. Cortez, 449 U.S. 411, 417 (1981) (noting that an officer's reasonable suspicion should be based on "the totality of the circumstances—the whole picture.").

Id. at 721 (emphasis added). Judge Evans stated, "***If the police use a shortcut and a need to protect themselves arises, they run the risk of not being able to use, in court, evidence they stumble on***." Id. (emphasis added).

Furthermore, Judge Evans questioned the credibility of one of the officer's testimony:

> And I think a fair reading of this record compels the conclusion that *the police knew they were on thin legal ice when they decided to go to the door . . . for their "knock and talk"* That's why, I suspect, they tried to gussy up their case *(i.e., inject it with probable cause)* through Officer Reilly's claim that as soon as the door opened he saw a woman in the apartment toss a crack pipe to the floor.

Id. (emphasis added). In conclusion, Judge Evans found, "*[T]he seeds of this bad search were sown when the police decided to use the "knock and talk" technique . . .* And that process—which sounds more like a friendly visit to sell tickets to a police picnic than a perilous visit to a suspected drug hive—is fraught with danger, not to mention constitutional problems." Id. (emphasis added).

Cited Case Is Factually Distinct

In the published opinion, the Court of Appeals relied on State v. Lane to affirm the denial of Petitioner's motion to suppress. 271 S.C. 68, 245 S.E.2d 114 (1978). Notably, this case cited is factually distinct from the facts presented in this case.

In Lane, a UPS deliveryman alerted the Beaufort County Sheriff's Department when he noticed an odor coming from two packages aboard his delivery van. 271 S.C. at 70, 245 S.E.2d at 115. A deputy opened one of the packages, which contained marijuana. Id. The package was resealed, and law enforcement **obtained a warrant** to search the delivery location. Id. (emphasis added). The Court in Lane held that "[p]robable cause having existed prior to the opening of the first package, the warrant cannot be deemed a product of the illegal search of

package number one nor can the search and seizure of package number two pursuant to the warrant be deemed a product of the illegal search of package one." Id. at 72, 245 S.E.2d at 116.

A warrant was never procured to search Dobbins' home. The search involved in Petitioner's case involved his home, not packages currently in the care and control of a carrier. There was not an independent basis, other than the smell, to search Dobbins' home after he lawfully ceased contact with officers who knocked on his door in the early morning. Under Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983), an individual has a right to ignore the police and go about his business. Any "refusal to cooperate, without more, does not furnish the minimum level of objective justification needed for a detention or seizure." Florida v. Bostick, 501 U.S. 429, 437, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991).

This Court included Petitioner's behavior in its examination of the totality of the circumstances. Dobbins' behavior was reasonable, however: at 3:00 a.m., police officers knocked on his door searching for a woman who Dobbins knew was not there. They did not have an arrest warrant for her. Due to the fact that she was not there and the early morning hour, Petitioner's behavior was reasonable.

Heightened Protection under S.C. Const. art. I § 10

The Court of Appeals also failed to address the South Carolina Constitution's heightened protection against unreasonable invasions of privacy. See S.C. Const. art. I, § 10. "The South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment" and the invasion of privacy that occurred in this case (i.e., Officer Hodges conducted a "knock and talk" for the sole purpose of avoiding the warrant requirement) was unreasonable. Weaver, 374 S.C. at 322, 649 S.E.2d at 483 (citation omitted).

Erosion of Fourth Amendment Protection

A commentator noted in a law review article that law enforcement's use of the knock and talk procedure to circumvent the warrant requirement "has severely limited the Fourth Amendment protection afforded to homes, despite the Supreme Court's stance that homes are heavily protected." Craig M. Bradley, "Knock and Talk" and the Fourth Amendment, 84 Ind. L.J. 1099, 1099 (2009); See Miller v. United States, 357 U.S. 301, 307 (1958) (stating that for Fourth Amendment purposes a man's home is his castle). It is undisputed that law enforcement can respond to citizen complaints as well as act in their protective capacity during an emergency because *neither* of these situations involve criminal investigations focused on a particular individual based on an uncorroborated anonymous tip or are justified by exigent circumstances not deliberately created by the police.

Accordingly, the Court of Appeals erred in affirming the trial court's refusal to grant Petitioner's motion to suppress when, based on the totality of the circumstances, law enforcement avoided the warrant requirement in violation of Petitioner's federal and state constitutional right against unreasonable searches and seizures and unreasonable invasions of privacy. *See* U.S. Const. amend. IV; *see also* S.C. Const. art. I § 10.

Plain View Misapplied

In Petitioner's case, Hodges admitted that he wanted to investigate the methamphetamine smell. However, an independent and detached magistrate did not make a finding of probable cause and issue a warrant. Similar to Horton v. California, the evidence seized in Dobbins' case was discovered while law enforcement was investigating a separate and distinct crime. 496 U.S. 128, 110 S.Ct. 2301, 110 L.E.2d 112 (1990). In Horton, officers secured a search warrant for the defendant's home in order to search for proceeds from an armed robbery. Id. at 130, 110 S. Ct.

at 2304, 110 L. Ed. 2d 112. The stolen property was not found. Id. at 131, 110 S. Ct. at 2304, 110 L. Ed. 2d 112. However, while searching the home, officers found weapons in plain view. Id. Similar to the officers in Dobbins' case, who testified that they began investigating the methamphetamine situation, law enforcement in Horton was admittedly interested in finding evidence not covered by any probable cause. Id.

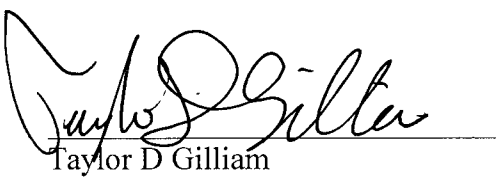
In United States v. Sharpe, an agent with the Drug Enforcement Administration searched a camper without the owner's permission based on his suspicion that it contained marijuana. 470 U.S. 675, 679, 105 S. Ct. 1568, 1571–72, 84 L. Ed. 2d 605 (1985). The Supreme Court examined "whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." Id. at 686, 105 S. Ct. at 1575, 84 L. Ed. 2d 605. "The question is not simply whether some alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it." Id. at 687, 105 S. Ct. at 1575, 84 L. Ed. 2d 605.

In Dobbins' case, one of the four officers could have attempted to procure a search warrant for Dobbins' home by driving to a magistrate's house in one of the four available police cars. Hodges testified that this might have taken an hour. R. 49, ll. 9 – 25. Absent exigent circumstances or consent, the police cannot search for an individual in the home of a third party. Steagald v. United States, 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981). Hodges testified that three officers could have stayed at Dobbins' home and apprehended Haines if she had walked out. Therefore, after Dobbins' denied a warrantless police officer entry to his home, a warrant should have been obtained. Exigent circumstances did not exist to search for Gaines.

CONCLUSION

Based on the foregoing reasons, Petitioner John William Dobbins respectfully requests that this Court grant his petition for writ of certiorari to the Court of Appeals to allow full briefing on the issue presented.

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of November, 2017.

STATE OF SOUTH CAROLINA
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THE STATE,

RESPONDENT,

V.

JOHN WILLIAM DOBBINS,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and John William Dobbins, #338485, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 13th day of November, 2017.

Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 13th day of November, 2017.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025