

THE SOUTH CAROLINA COURT OF APPEALS

TROY BURKS #160726
APPELLANTS,

v.

SOUTH CAROLINA DEPT. OF CORRECTIONS
RESPONDENT.

APPELLATE CASE NO. 2020-001293

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE,

AFFIDAVIT IN SUPPORT
OF MOTION FOR RECONSID-
ERATION

RECEIVED

NOV 24 2020

SC Court of Appeals

TROY BURKS #160726 being duly sworn, deposes and says:

1. I AM THE PETITIONER IN THE ABOVE CAPTIONED CASE, AND I MAKE THIS AFFIDAVIT IN SUPPORT OF THE ATTACHED MOTION FOR RECONSIDERATION.

2. I AM NOW APPEALING MY CONVICTION AND FINAL DECISIONS OF THE S.C. ADMINISTRATIVE LAW COURTS DECISION DISMISSING HIS REQUEST FOR REVIEW OF A DISCIPLINARY DECISION. APPELLANT ALLEGES HE WAS UNLAWFULLY ACCUSED AND CONVICTED OF POSSESSION OF AN ILLEGAL DRUG. MOREOVER, ON NOVEMBER 4, 2020 THE S.C. COURT OF APPEALS MOVED TO DISMISS THIS APPEAL BECAUSE THE NOTICE OF APPEALS WAS NOT TIMELY SERVED. ALTHOUGH I INITIALLY SERVED THE NOTICE OF APPEAL ON AUGUST 4, 2020 TO THE U.S. DISTRICT COURT BUT INFORMED BY S.C. COURT OF APPEALS ON OCTOBER 19, 2020 HE WOULD BE ALLOWED TO CORRECT ALL DEFICIENCIES OUTLINED IN COURTS LETTER OF SEPTEMBER 29, 2020 BEFORE ANY DISMISSAL BY SAID COURT.

3. APPELLANT BELIEVES THAT THE APPEAL HAS GREAT MERIT AND THAT THERE IS A REASONABLE POSSIBILITY OF ULTIMATE REVERSAL OF THE JUDGMENT OF CONVICTION APPEALED FROM THE REASON WHY SAID JUDGMENT OF CONVICTION SHOULD BE REVERSED ARE OUTLINED IN HIS NOTICE OF APPEAL.

If no, give the approximate date of disposition. _____

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____, 20__

Signature of Plaintiff _____

Printed Name of Plaintiff _____

Prison Identification # _____

Prison Address _____

City _____

State _____

Zip Code _____

B. For Attorneys

Date of signing: _____, 20__

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

4. DUE TO THE COVID 19 VIRUS AND SCDJ TOTAL AND PARTIAL LOCK-DOWN STATUS THE APPELLANT DID NOT AND/OR DOES NOT HAVE ANY ACCESS TO THE LAW LIBRARY NOR ANY LEGAL WRITING MATERIAL NOR ACCESS TO ANY LEGAL ADVISER TRAINED IN LAW, DURING THE ENTIRE MONTH OF JULY UNTIL PRESENT DAY.

5. NO PREVIOUS APPLICATION HAS BEEN MADE FOR RELIEF SOUGHT HEREIN.

WHEREFORE, I RESPECTFULLY PRAY THAT AN ORDER BE ENTERED REVOKING THE ORDER TO DISMISS THIS APPEAL TOGETHER WITH SUCH OTHER AND FURTHER RELIEF THIS COURT MAY DEEM PROPER AND JUST.

Troy Burks
TROY BURKS

SWORN TO BEFORE ME

this 18 day of November.

Jamaica Conwell
NOTARY PUBLIC

My Commission Expires

EXPIRES

September 25, 2023

Per Curiam

lowed to go on.” Tr. 7 (Apr. 8, 2013). The Carmans responded that a normal visitor would have gone to their front door, rather than into their backyard or onto their deck. Thus, they argued, the “knock and talk” exception did not apply.

At the close of Carroll’s case in chief, the parties each moved for judgment as a matter of law. The District Court denied both motions, and sent the case to a jury. As relevant here, the District Court instructed the jury that the “knock and talk” exception “allows officers without a warrant to knock on a resident’s door or otherwise approach the residence seeking to speak to the inhabitants, just as any private citizen might.” *Id.*, at 24 (Apr. 10, 2013). The District Court further explained that “officers should restrict their movements to walkways, driveways, porches and places where visitors could be expected to go.” *Ibid.* The jury then returned a verdict for Carroll.

The Carmans appealed, and the Court of Appeals for the Third Circuit reversed in relevant part. The court held that Officer Carroll violated the Fourth Amendment as a matter of law because the “knock and talk” exception “requires that police officers begin their encounter at the front door, where they have an implied invitation to go.” 749 F. 3d, at 199. The court also held that Carroll was not entitled to qualified immunity because his actions violated clearly established law. *Ibid.* The court therefore reversed the District Court and held that the Carmans were entitled to judgment as a matter of law.

~~Carroll petitioned for certiorari. We grant the petition and reverse the Third Circuit’s determination that Carroll was not entitled to qualified immunity.~~

A government official sued under §1983 is entitled to qualified immunity unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct. See *Ashcroft v. al-Kidd*, 563 U. S. ___, ___ (2011) (slip op., at 3). A right is clearly

Per Curiam

established only if its contours are sufficiently clear that "a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U. S. 635, 640 (1987). In other words, "existing precedent must have placed the statutory or constitutional question beyond debate." *al-Kidd*, 563 U. S., at ___ (slip op., at 9). This doctrine "gives government officials breathing room to make reasonable but mistaken judgments," and "protects all but the plainly incompetent or those who knowingly violate the law." *Id.*, at ___ (slip op., at 12) (quoting *Malley v. Briggs*, 475 U. S. 335, 341 (1986)).

Here the Third Circuit cited only a single case to support its decision that Carroll was not entitled to qualified immunity—*Estate of Smith v. Marasco*, 318 F.3d 497 (CA3 2003). Assuming for the sake of argument that a controlling circuit precedent could constitute clearly established federal law in these circumstances, see *Reichle v. Howards*, 566 U. S. ___ (2012) (slip op., at 7), *Marasco* does not clearly establish that Carroll violated the Carman's Fourth Amendment rights.

In *Marasco*, two police officers went to Robert Smith's house and knocked on the front door. When Smith did not respond, the officers went into the backyard, and at least one entered the garage. 318 F.3d, at 519. The court acknowledged that the officers' "entry into the curtilage after not receiving an answer at the front door might be reasonable." *Id.*, at 520. It held, however, that the District Court had not made the factual findings needed to decide that issue. *Id.*, at 521. For example, the Third Circuit noted that the record "did not discuss the layout of the property or the position of the officers on that property," and that "there [was] no indication of whether the officers followed a path or other apparently open route that would be suggestive of reasonableness." *Ibid.* The court therefore remanded the case for further proceedings.

In concluding that Officer Carroll violated clearly estab-

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