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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5808 (S.C. Ct. App. Filed: March 10, 2021)

2015-GS-1006087

THE STATE,

RESPONDENT,

V.

DARELL ONEIL BOSTON,

PETITIONER.

**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 made and finally ruled on by the Court of Appeals on April 23, 2021.

QUESTION PRESENTED

Whether the Court of Appeals erred in affirming the decision of the trial court to deny Petitioner Boston's motion to suppress evidence where law enforcement conducted a "knock and talk" without reasonable suspicion that criminal activity was occurring at the Holman's residence in violation of Petitioner's right to privacy under Article I, Section 10 of the South Carolina Constitution and *State v. Counts*, 413 S.C. 153, 776 S.E.2d 59 (2015).

<u>**STATEMENT OF THE CASE**</u>

Petitioner Boston was indicted for manufacturing crack cocaine, possession with the intent to distribute crack cocaine, and possession with the intent to distribute a controlled substance within proximity of a school. (R. p. 509-514).

Prior to the trial, Petitioner and his co-defendant, William Holmes, moved to suppress evidence seized in violation of their Fourth Amendment rights under the United States Constitution and their right to privacy under Article I, Section 10 of the South Carolina Constitution after the police conducted a knock and talk without reasonable suspicion. (R. pp. 523-579). The court held a hearing on the motion on November 30, 2017. (R. p. 1-152). Petitioner was represented by Taylor Seman and Teresa Norris. (R. p. 2). Co-Defendant Holmes was represented by Benjamin Lewis and Nicholas Smit. (R. p. 1). Nina Savas and Truc Tran represented the State.

At the hearing, Officer Joseph Sherwood from the North Charleston Police Department ("NCPD") testified that on March 6, 2015, at around 5:25 p.m., he was dispatched to a service call in the Chicora Cherokee neighborhood. (R. p. 10, ln. 6-7; p. 11, ln. 17-22; p. 14, ln. 14-16). He did not remember the specific reason he had been dispatched to the area, but he admitted the reason was completely unrelated to Petitioner Boston or the apartment of Denise Holman, where Officer Sherwood eventually conducted the knock and talk. (R. p. 14, ln. 14-16; p. 51, ln. 20-p. 52, ln. 2).

Officer Sherwood testified the neighborhood had long been a "hot spot for narcotics activity." (R. p.13, ln. 4-9). He stated there had recently been "several complaints about the drug activity [and] illegal trespassing *in the area*." (R. p.13, ln. 4-9) (emphasis added). He later clarified and admitted that the complaints were not about Holman or her apartment. (R. p. 50, ln. 24-51, ln. 14).

Officer Sherwood explained that some of the apartments in that area were single-occupancy housing for people with mental impairments who needed assistance and who could "easily [be] taken advantage of." (R. p.13, ln. 12-17).

Officer Sherwood, along with two other NCPD officers, stayed in the area after their service call, "just keeping a presence." (R. p. 14, ln. 2-20). While doing so, they saw two men exit a taxi cab and walk into the apartment where Officer Sherwood knew Denise Holman lived. (R. p.14, ln. 21-p. 15, ln. 3). Officer Sherwood testified that he recognized the two men, Petitioner Boston and his co-defendant Holmes, from several previous "run-ins with them." (R. p.15, ln. 12-17). The only specific detail Sherwood offered regarding his prior "run-ins," was recalling that he had seen Boston and Holmes at a house on Osceola Street where the NCPD had, at some point in the past, executed "several search warrants." (R. p.16, ln. 1-8). Sherwood admitted he did not know whether Boston and Holmes lived at that house, only that he had seen them there. (R. p.16, ln. 3-4).

Officer Sherwood also testified he knew Denise Holman and "mental status." (R. p. 15, ln. 1-11). He indicated that he had stopped her once and had a "couple of little run-ins with her" on narcotics-related issues, but "nothing too serious." (R. p. 15, ln. 9-11). Officer Sherwood referred to Holman as "mentally handicapped," though he admitted he was using that term "loosely." (R. p. 48, ln 19-25). He speculated that due to her mental condition, she may not have fully understood what was occurring on that day. (R. p. 50, ln. 7-11). He also admitted there was no prior drug complaint or any other complaint of illegal activity at Holman's apartment specifically. (R. p. 51, ln. 2-14).

Officer Sherwood testified he knew Boston and Holmes did not live with Holman. (R. p. 15, ln. 5-6). He explained that he "found it odd just because of where he knew them from" that the

two men would go inside Holman's apartment. (R. p. 15, ln. 1-11).[1] Officer Sherwood testified that for the next 15 minutes or so, he and another officer continued having a conversation during which Sherwood told his colleague about Holman and that it was "kind of weird to see those two gentlemen go inside the apartment." (R. p. 15, ln. 18-24). Officer Sherwood admitted that during those 15 minutes, he saw nothing to suggest that someone in that house was committing a crime. (R. p. 68, ln. 22-p. 69, ln 16). Officer Sherwood was thoroughly questioned on this point by Mr. Holmes's defense counsel:

> Q. I want to talk to you about your initial approach to the residence. What you testified to was that you sat by your car for about 15 minutes thinking about it, right?
>
> A. Well, we were talking so.
>
> Q. So the gentlemen, these two guys that you have identified had already gone into the house and had been inside for 15 minutes or so.
>
> A. Approximately.
>
> Q. Did you hear any screams?
>
> A. No, sir.
>
> Q. Did you see them carrying any firearms or any contraband as they approached the residence?
>
> A. Not that I observed, no.
>
> Q. Okay. So at the time you approached to conduct the knock and talk you saw nothing that suggested someone was committing a crime.
>
> A. No, sir.

---

[1] In fact, Holman stated that Boston and Holmes had permission to be at her house. (R. p. 97, ln. 24-p. 98, ln. 6). Boston testified that he had known Holman for about 15 years and that he had visited her on prior occasions at this address and prior addresses. (R. p. 104, ln. 14-p. 105, ln. 5). His reason for going to Holman's apartment on the day of the incident was to upload music onto his phone. (R. p. 106, ln. 3-7). He denied he came to Holman's apartment to manufacture crack cocaine. (R. p. 106, ln. 11-13).

Q. Nothing?

A. No, sir.

(R. pp. 68, ln. 22-p.69, ln. 16).

Despite having seen nothing to indicate criminal activity occurring at Holman's apartment, Officer Sherwood decided to conduct a knock and talk at the residence. (R. p. 15, ln. 23-24; p. 17, ln. 5-6). According to Sherwood, the purpose of conducting the knock and talk was to "make sure that, one, [Holman] is ok and two, see if there is any possibly any crime or if she had any information for us." (R. p. 17, ln. 7-12).

Officer Sherwood testified that he knocked on the door, Holman opened the door, and he stepped inside. (R. p. 16, ln. 18-20). Officer Sherwood testified that Holman opened the door in an inviting way, "almost made a motion of come on in kind of thing" and "moved out of the doorway itself as if to let somebody in." (R. p. 17, ln. 22-p. 18, ln. 1). Despite being aware that Holman had some mental impairments, Officer Sherwood testified he believed her actions constituted valid consent to enter the residence. (R. p. 18, ln. 22-23).

Once in the house, Officer Sherwood testified he saw Petitioner Boston and his co-defendant "huddled around the microwave," which was on, and plastic baggies on the kitchen counter next to the microwave with white residue on them, which Sherwood immediately believed to be cocaine residue. (R. p. 23, ln. 4-14; p. 56, ln. 21-p. 57, ln. 3). Officer Sherwood stated the two men then ran to the bathroom, but they came right out after he told them to do so. (R. p. 28, ln. 18-24).[2] Officer Sherwood then performed a protective sweep of the kitchen and bathroom and ultimately obtained a search warrant. (R. p. 29, ln. 5-8). Sherwood testified he found items in the

[2] At the suppression hearing, Boston denied this version of events. He testified that he was sitting on the couch when the police came in. (R. p. 113, ln. 2-25). No drugs or paraphernalia were found on Mr. Boston's person. (R. p. 359, ln. 2-20).

residence consistent with manufacturing crack cocaine, including a Pyrex cup and baggies with white powder. (R. p. 30, ln. 14-31, ln. 4). Boston and Holmes were arrested; Holman was not. (R. p. 48, ln. 19-22).

Defense counsel argued that the evidence collected in Holman's apartment was the result of an unconstitutional knock and talk, and that the evidence should be suppressed. Specifically, defense counsel argued that Officer Sherwood did not have reasonable articulable suspicion of illegal activity occurring at Holman's residence and therefore, the knock and talk was improper under the South Carolina Constitution Article I, Section 10 and *State v. Counts*. (R. pp. 139-140; pp. 534-536). Defense counsel noted that while Sherwood's incident report incorrectly stated that he approached Holman's apartment because of a "drug complaint," his testimony was that there was no such complaint, and his reason for being in the neighborhood was unrelated to Boston, Holmes, or Holman. (R. p. 132, ln. 12-19; p. 535). Counsel further argued that Sherwood's limited knowledge of Boston's criminal history and his recollection that Boston had, at some undetermined point in the past, been seen at another house where NCPD had conducted a drug search was not sufficient to demonstrate reasonable suspicion of illegal activity justifying a knock and talk at Holman's apartment. (R. p. 132, ln. 12-19; p. 536). Boston's counsel argued that unlike the situation in *Counts*, there was no complaint regarding Holman's apartment, no complaint regarding either defendant, and no indication that criminal activity was occurring in Holman's apartment. (R. p. 150, ln. 13-p.151, ln. 3).

In its January 10, 2018 Order, the trial court found that the knock and talk was proper and declined to suppress the evidence. (R. pp. 608-610). The trial court cited the following facts to support its finding that Officer Sherwood had reasonable suspicion: there were complaints of drug activity in Holman's apartment complex; Officer Sherwood was familiar with Defendants through

prior interactions involving drug activity; and Officer Sherwood knew Holman as the sole occupant of the apartment and as a person with a history of drug use and a vulnerable mental state. (R. pp. 608-609).

The case was called to trial on February 5, 2018 before the honorable R. Markley Dennis, Jr., Circuit Court Judge and a jury. (R. p. 153). Assistant Solicitors Nina Savas and Truc Tran represented the State. Taylor Seman and Pete Shahid represented Petitioner. (R. p. 153). Benjamin Lewis and Nicholas Smit represented Holmes.

On February 7, 2018, the jury found Boston guilty of manufacturing crack cocaine. (R. p. 481). The court imposed a sentence of 17 years. (R. p. 500).

On February 14, 2018, Petitioner filed a Motion for a New Trial with an accompanying legal memorandum, arguing, among other things, that the court should have granted Boston's motion to suppress the drug evidence because NCPD officers did not have reasonable suspicion to approach Holman's apartment and knock on the door as required by *State v. Counts* and the South Carolina Constitution. (R. pp. 611-620). Defense counsel further argued that Officer Sherwood's testimony that he saw nothing suggesting that a crime was being committed at Holman's residence during the 15 minutes prior to the knock and talk clearly demonstrated that he did not have reasonable suspicion. (R. pp. 616-618). Additionally, defense counsel argued that Officer Sherwood's knowledge of a suspect's past arrests or convictions was insufficient to constitute reasonable suspicion, citing *United States v. Foster*, 634 F.3d 243, 256 (4th Cir. 2011). (R. p. 617). The trial court denied the motion following a short hearing on March 15, 2018. (R. pp. 505-507)

On March 10, 2021, the Court of Appeals affirmed Petitioner's conviction. *State v. Boston* (S.C. Ct. App. filed March 10, 2021). App. pp. 1-9. Petitioner filed and served his Petition for

Rehearing on March 23, 2021, requesting the Court of Appeals rehear his case. App. pp. 10-18. The Court of Appeals denied the Petition by Order filed April 23, 2021. App. pp. 19-20.

This Petition for Certiorari follows.

ARGUMENT

The Court of Appeals erred in affirming the decision of the trial court to deny Petitioner Boston's motion to suppress evidence where law enforcement conducted a "knock and talk" without reasonable suspicion that criminal activity was occurring at Holman's residence in violation of Petitioner's right to privacy under Article I, Section 10 of the South Carolina Constitution and *State v. Counts*, 413 S.C. 153, 776 S.E.2d 59 (2015).

The Court of Appeals properly relied on this Court's decision in *State v. Counts* for the proposition that "law enforcement must have reasonable suspicion of illegal activity at a targeted residence" prior to conducting a knock and talk. *Id*. at 172, 776 S.E.2d at 70. The *Counts* court announced this rule regarding knock and talks particularly, citing the express right to privacy contained in Article 1 § 10 of the South Carolina Constitution.

Article 1, section 10, of the South Carolina Constitution establishes:

> 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, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

This Court has long held it "can interpret the state protection against unreasonable searches and seizures in such a way as to provide greater protection than the federal Constitution." *State v. Forrester*, 343 S.C. 637, 643-44, 541 S.E.2d 837, 840 (2001). The Court applied this principle in *Counts*, finding that the South Carolina Constitution requires that "law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence and knocking on the door." *Id.*

The question presented in in this case is straightforward: Did law enforcement have reasonable suspicion of criminal activity at Holman's residence before conducting a knock and

talk there? According to Officer Sherwood's own testimony (which was the basis for the lower court's decision not to suppress the evidence and the Court of Appeals' decision to affirm) he did not have any reasonable suspicion that criminal activity was occurring at Holman's house.

Reasonable suspicion "requires a particularized and objective basis that would lead a person to suspect another of criminal activity." *State v. Anderson*, 415 S.C. 441, 447, 783 S.E.2d 51, 54 (2016) (citing *United States v. Cortez,* 449 U.S. 411, 418 (1981)). "Reasonable suspicion is more than a general hunch but less than what is required for probable cause." *State v. Kotowski*, 427 S.C. 119, 828 S.E.2d 605 (Ct. App. 2019), *aff'd in part, vacated in part on other grounds*, 430 S.C. 318, 844 S.E.2d 650 (2020) (per curiam) (internal citations omitted). Although an officer's experience and intuition is one factor to consider in the reasonable suspicion analysis, "a wealth of experience will [not] overcome a complete absence of articulable facts." *Id*. at 129, 828 S.E.2d at 610. (internal citations omitted). "[A]n officer's impression that an individual is engaged in criminal activity, without confirmation, does not amount to reasonable suspicion." *Id*. (internal citations omitted). Accordingly, law enforcement officers "must have more than an 'inchoate and unparticularized suspicion' or 'hunch.'" *United States v. Slocumb*, 804 F.3d 677, 682 (4th Cir. 2015) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)); *see also State v. Spears*, 429 S.C. 422, 455, 839 S.E.2d 450, 467 (2020) (Beatty, C.J., dissenting) ("The Fourth Amendment requires a police officer to have more than a mere, unsupported hunch before subjecting a citizen to police intrusion.").

In finding that Officer Sherwood had reasonable suspicion of criminal activity at Holman's residence, the Court of Appeals cited Sherwood's "objective knowledge of the apartment community and the three people inside the apartment." App. p. 8. Specifically, the court noted Officer's Sherwood's familiarity with the area as "a hot spot for narcotics activity," the fact that

he recognized Boston and Holmes "from a previous incident at another location;" that Holman had "some undefined limitations," lived alone, and "used narcotics in the past;" and that he was knowledgeable about the practice of some engaged in illegal activity of using the apartments of others to manufacture drugs. App p. 8.

Sherwood's knowledge may have been objective, in that his knowledge of the neighborhood and the individuals involved was first-hand, but this knowledge was vague and not at all particularized. Sherwood testified he had a "couple of little run-ins with [Holman]" on narcotics-related issues, but "nothing too serious." (R. p. 15, ln. 9-11; p. 50, ln. 21). Sherwood did not specify what those "run-ins" entailed or the nature of the narcotics-related issues. Officer Sherwood testified he recognized Boston and his co-Defendant from previous "run-ins with them" but he did not state the nature of these "run-ins." He recalled one instance when he had seen them at a house where the NCPD had executed "several search warrants." (R. p.16, ln. 1-8). Officer Sherwood admitted he did not know whether Boston or Holmes lived at the house being searched, only that he had seen them there. (R. p.16, ln. 3-4). He did not say whether Boston was at the house when the searches were conducted or whether Boston was searched. He also did not say whether these searches found any drugs. He did not say whether these searches led to any arrests or any further investigations.

In short, Officer Sherwood knew the reputation of the neighborhood; he was somewhat familiar with Holman and her history; and he remembered that Boston had, at some unidentified point in the past, been in physical proximity to suspected drug activity.

Generally, the reputation of the neighborhood and the criminal history of a suspect are disfavored in the reasonable suspicion analysis. Regarding the dangerousness of the neighborhood, the Fourth Circuit Court of Appeals has said: "Were we to treat the dangerousness of the

neighborhood as an independent corroborating factor, we would be, in effect, holding a suspect accountable for factors wholly outside of his control." *See United States v. Perrin,* 45 F.3d 869, 873 (4th Cir. 1995). Though our courts have acknowledged that, while never dispositive, being in a high crime area can be considered as part of the totality of the circumstances, it "does not provide police officers carte blanche to stop any person they meet on the street." *State v. Anderson*, 415 S.C. 441, 448, 783 S.E.2d 51, 55 (2016). The same principle should apply even more strongly in a knock and talk case. Unlike *Terry* stops or automobile stops, both of which occur while a person is in public, law enforcement conducting a knock and talk is seeking information on what is occurring within a person's residence. Living in a neighborhood deemed a high crime area should not result in a lower bar for establishing the requisite reasonable suspicion to conduct a knock and talk.

Regarding prior criminal activities, the Fourth Circuit has held that "[a] prior criminal record is not, standing alone, sufficient to create reasonable suspicion." *Foster*, 634 F.3d at 246-47 (citing *United States v. Sprinkle*, 106 F.3d 613, 617 (4th Cir. 1997)); *see also State v. Fowler*, 322 S.C. 263, 471 S.E.2d 706 (Ct. App. 1996) (finding that officers did not have reasonable suspicion to perform a *Terry* frisk on an individual who was acting suspiciously, had a prior drug conviction, and was known to carry weapons). Prior knowledge of a suspect's criminal record must be paired with "some more concrete factors to demonstrate that there was a reasonable suspicion of current criminal activity." *Id.* (internal quotation marks and citations omitted). Here, there was no testimony about Boston's criminal record specifically; only Officer Sherwood's recollection that Boston had been seen at one house that NCPD had searched before. Presumably, such vague information should be accorded even less weight than actual and specific knowledge of a person's official criminal record. Additionally, and as noted throughout, there were no other additional

"concrete factors" to demonstrate that there was a reasonable suspicion of criminal activity happening in Holman's residence.

Finally, Officer Sherwood's general knowledge that sometimes people let others use their residence to manufacture drugs is of little relevance because this was not coupled with testimony that Officer Sherwood knew that Boston or Holmes was suspected of manufacturing illegal drugs or that Holman had previously allowed her apartment to be used for such purposes. At best, Sherwood's testimony was merely a description of what can sometimes happen in this kind of neighborhood, but there was nothing observed or known by law enforcement that this might be occurring at Holman's residence.

In sum, Officer Sherwood's knowledge may be 'objective' because he had personal knowledge, but it was not particularized. Instead, his testimony is comprised and non-specific recollections about the people involved. These recollections were not informed by documentation or investigation into their records.

Importantly, Sherwood admitted he did not observe any behavior by Boston, Holmes, or Holman during the 15 minutes that he watched the residence that was indicative of criminal activity.

> Q. Okay. So at the time you approached to conduct the knock and talk you saw nothing that suggested someone was committing a crime.
>
> A. No, sir.
>
> Q. Nothing?
>
> A. No, sir.

(R. p. 69, ln. 11-16). In sum, although Officer Sherwood apparently had an impression or hunch that criminal activity might be occurring in the house, he witnessed nothing that hinted at, much less provided confirmation, that there was a reasonable suspicion that criminal activity was

occurring in Holman's residence. *See Kotowski*, 427 S.C. at 129, 828 S.E.2d at 610 ("[A]n officer's impression that an individual is engaged in criminal activity, **without confirmation**, does not amount to reasonable suspicion." (emphasis added) (internal citations omitted)).

Factually, this case is readily distinguishable from *Counts* and *Kotowski*, the only two cases in which this Court has considered the reasonable suspicion analysis in the context of a knock and talk. In both cases, law enforcement conducted investigations based on anonymous tips of criminal behavior and observed some particularized behavior indicative of criminal activity prior to conducting the knock and talk. In *Counts*, the Supreme Court pointed to the following findings of fact which the Court found sufficient to establish that law enforcement had reasonable suspicion of illegal activity occurring at the targeted residence:

> [L]aw enforcement received two separate anonymous tips from citizens who alleged that Counts was selling drugs. These tips also identified vehicles driven by Counts, his phone number, and his use of multiple identities. Through their investigation, the officers confirmed that Counts had two false identification cards on record and had prior drug convictions.

Id. at 173, 776 S.E.2d at 70. At one point, law enforcement's investigation included an attempted drug buy at Counts' residence. *Id*. at 157, 776 S.E.2d at 62.

In *Kotowski*, the Court of Appeals cited facts which, as in *Counts*, included an anonymous tip followed by further investigation that revealed behavior indicating criminal activity. 427 S.C. at 129, 828 S.E.2d at 610. Specifically, the law enforcement officer in *Kotowski* received an anonymous tip on June 13, 2014, that a house on Marsh Point Road was a meth house. *Id*. at 125, 828 S.E.2d at 608. The officer searched the NPLEX system, which showed pseudoephedrine purchases by Michelle Vining, the owner of the Marsh Point Road house. *Id*. The officer set up an alert on NPLEX and began to conduct "spotty surveillance" consisting of drive-by viewings of the house. *Id*. During one such viewing, the officer recognized a vehicle belonging to the son of a

convicted methamphetamine cook parked at the house. *Id*. On October 29, 2014, the officer received NPLEX notifications indicating Vining had attempted to purchase pseudoephedrine three separate times. *Id*. The officer referred to the NPLEX records as showing "a substantial amount of purchases" and attempted purchases at different pharmacies. *Id*. The officer, who had extensive training in methamphetamine labs and had been "clandestine meth lab certified" since 2004, testified that these purchases and attempted purchases were consistent with the actions of illicit drug manufacturing. *Id*. at 129, 828 S.E.2d at 610.

In this case, there was no anonymous tip regarding Boston, Holmes, or Holman or Holman's apartment. There was no testimony indicating any sort of investigation took place. Instead, in the 15 minutes between Boston and Holmes going into the apartment and the knock and talk, Officer Sherwood was merely engaged in conversation with his colleague. Apparently, he did not use this time to run criminal records checks on these individuals to confirm his vague recollections. Importantly, Officer Sherwood did not observe any behavior suggesting, indicating, or confirming criminal activity occurring in Holman's residence. The only behavior law enforcement observed was Boston and Holmes exiting a taxi and walking, invited, into Holman's residence.

This case is also easily distinguishable from cases that found reasonable suspicion in other contexts. *See, e.g.*, *United States v. Lender*, 985 F.2d 151 (4th Cir. 1993) (finding reasonable suspicion for a *Terry* stop based on the defendant's evasive conduct, the time of the conduct (1:00 AM), and the appearance of a drug transaction); *State v. Corley*, 383 S.C. 232, 679 S.E.2d 187 (Ct. App. 2009) (finding reasonable suspicion for a traffic stop based on the defendant's strange behavior in public at 3:00 AM and an eventual traffic violation). Officer Sherwood's knock and talk occurred between 5:30 and 6:00 p.m. (R. p. 19-24). No testimony indicated that either Boston

or Holmes were acting suspiciously, evasively, or nervously when they exited the taxi cab at Holman's residence.

Importantly, the Court of Appeals overlooked the significance of Officer Sherwood's candid statement that his reason for approaching Holman's door was to, "see if there is any, possibly any crime or if she had any information for us." (R. p.17, ln. 7-12). The phrase, "any, possibly any crime" indicates that Sherwood rather clearly had no reasonable suspicion that illegal activity was occurring at Holman's residence. Rather, he was looking to discover *any* crime, or the *possibility of any* crime. This testimony, at best, describes the kind of "inchoate and unparticularized suspicion" or "hunch," which courts have held is not sufficient to support a finding of reasonable suspicion. *See United States v. Slocumb,* 804 F.3d 677, 682 (2015). At worst it evidences an officer in a targeted neighborhood conducting a knock and talk "hoping to discover contraband without a search warrant", which was at the heart of this Court's concern as expressed in the *Counts* opinion. *Id*. at 172, 776 S.E.2d at 69.[3]

The Court of Appeals correctly noted that Officer Sherwood was not acting randomly when he conducted the knock and talk. App. p. 8. However, the bar for establishing reasonable suspicion is not that low. While officers were not "indiscriminately" knocking on every door in the neighborhood, Officer Sherwood's testimony that he knocked on the door for the express purpose of looking for "any possibly any crime" resonates with the concern expressed by this Court in its *Counts* opinion.

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[3] In footnote 4 of the Court of Appeals opinion, the court noted correctly that neither the lower court nor the parties asserted that Officer Sherwood knocked on Holman's door to perform a "welfare check." App. p. 8. As is clear from Officer Sherwood's testimony cited above, there was no behavior observed that indicated a welfare check was necessary, just as there was no behavior observed indicating criminal activity was afoot. Moreover, Officer Sherwood's asserted concern for Holman's welfare is, per his own testimony, inextricably linked to his interest in finding "any possib[ilit]y [of] any crime."

The *Counts* Court also noted without the requirement for reasonable suspicion, there was a real "potential for abuse if law enforcement targets a neighborhood and indiscriminately knocks on doors with the hope of discovering contraband without a search warrant." *Id*.

Additionally, the *Counts* opinion noted the coercive nature of these knock and talks: "Although the State maintains these encounters are entirely consensual, we cannot ignore the nature of the 'knock and talk' procedure. In contrast to a routine sales call, the "knock and talk" technique is inherently coercive as it is conducted by law enforcement and not a private citizen." *Id*. at 172, 776 S.E.2d 59, 69–70. Holman, who according to Officer Sherwood had some diminished mental capacity and with whom he had prior "run-ins," must have been especially vulnerable to this type of coercion.

In sum, all of this Court's concerns in *Counts* are present in this case. Law enforcement targeted a high-crime neighborhood; knocked on the door of a woman they knew to have drug and mental health problems and who, therefore, might be more easily convinced to open the door and allow law enforcement to enter; and conducted a knock and talk without observing any criminal behavior with the stated intent of looking for evidence of "any, possibly any crime."

In this case, law enforcement did not have reasonable suspicion to conduct a knock and talk. Specifically, Officer Sherwood had not observed anything that suggested that a crime was taking place at Holman's apartment in the late afternoon of March 6, 2015. The Court of Appeals erred in upholding the trial court's decision to deny Petitioner's motion to suppress evidence found in Holman's residence.

Rule 242(b), SCACR provides a non-exclusive list of reasons why this Court should, in its sound judicial discretion, consider issuing a writ of certiorari. This list includes the following reasons: "(1) Where there are novel questions of law . . . (3) Where the decision of the Court of

Appeals is in conflict with a prior decision of the Supreme Court; and] (4) Where substantial constitutional issues are directly involved." Rule 242(b), SCACR. This case presents these considerations. First, at this time, this Court has addressed what constitutes reasonable suspicion in the knock and talk context in only two opinions—*Counts* and *Kotowski*. Importantly, both of those cases involved anonymous tips that criminal behavior was occurring at the targeted residence, coupled with a more than *de minimis* police investigation. There was no anonymous tip or investigation in this case prior to the knock and talk. Additionally, as this Court made very clear in the *Counts* opinion, the knock and talk procedure implicates the very important right to privacy under the South Carolina Constitution. Finally, the Court of Appeals decision lowers the bar for what is legally necessary to establish reasonable suspicion in the context of knock and talks.

CONCLUSION

By reason of the foregoing arguments, this Court should grant certiorari, reverse the decision of the Court of Appeals, and remand this case to the Charleston County Court of General Sessions for a new trial.

[*SIGNATURE BLOCK FOLLOWS ON NEXT PAGE*]

Respectfully submitted:

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This 21st day of May 2021.