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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.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Darell Oneil Boston, Appellant.

Appellate Case No. 2018-000504

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

Opinion No. 5808
Heard November 10, 2020 – Filed March 10, 2021

AFFIRMED

David Nelson Lyon, of Duff Freeman Lyon, LLC, and
Chief Appellate Defender Robert Michael Dudek, both of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

KONDUROS, J.: Darell Oneil Boston was convicted of manufacturing crack cocaine and sentenced to seventeen years' imprisonment. He appeals the circuit court's denial of his motion to suppress evidence found during a "knock and talk." We affirm.

FACTS/PROCEDURAL HISTORY

On March 6, 2015, Sergeant Joseph Sherwood of the North Charleston Police Department, after responding to a dispatch call, proceeded to patrol a nearby apartment community.¹ The police department had directed Sergeant Sherwood to increase patrols of the apartment community as it had been the site of narcotics activity and because vulnerable adults resided in the apartment community. A week earlier, the landlord contacted the department to report a nonresident had threatened him.

At approximately 5:30 p.m. on that evening, Sergeant Sherwood, along with two other officers—Sergeant Hoose and Officer Etninan—observed two men, later identified as Boston and William Holmes, get out of a taxi and enter the apartment of a resident, Denise Holman. Sergeant Sherwood knew Holman had some undetermined mental challenges and used narcotics. Sergeant Sherwood stated the area had "always been a hot spot for narcotics activity" and "single occupants that live in there . . . [are] not mentally handicapped . . . but they need to be assisted and [can be] easily taken advantage of." Sergeant Sherwood also had some knowledge of Boston and Holmes, recognizing them from another residence where drug activity took place. Sergeant Sherwood had previously had "several run-ins with them."

The entry of the two men into Holman's apartment raised concerns for Sergeant Sherwood about her safety and the nature of the activity that might be going on inside the apartment. Sergeant Sherwood and the other officers "decided we were going to go knock on the door to check on [Holman] and see if everything is okay." He elaborated:

When [w]e have the complaints that we were having and the elements that we had at this residence[,] we will knock on the door to make sure that one, she is okay[,] and two, see if there is any possib[ilit]y [of] any crime or if she had any information for us. And maybe they were just friends and I would have been fine with that and said[,] okay Ms. Denise[,] see you later[,] and just been on my way[,] but there was a little more to [it] than that.

¹ Sergeant Sherwood was a patrol officer at the time of the incident in 2015 but a sergeant at the time of the pretrial hearing in 2017.

After Boston and Holmes had been inside Holman's apartment for approximately fifteen minutes, Sergeant Sherwood knocked on Holman's door. Holman responded to the knock by answering the door and fully opening the door. Holman allowed him to enter and she stepped aside. When Sergeant Sherwood entered the small apartment, he saw two men in the kitchen area of the apartment "huddled around" a running microwave oven and saw two plastic bags that had a white residue on them. When the men noticed him, the men opened the microwave, hid their hands, and ran into the bathroom. Sergeant Sherwood also saw a scale on the kitchen counter.

Concerned the men may have been armed, Sergeant Sherwood performed a protective sweep and ordered Boston and Holmes out of the bathroom. Holmes agreed to Sergeant Hoose's request to conduct a search of his person, which revealed a scale and a baggie of white powder. Sergeant Sherwood found a Pyrex brand measuring cup in the bathroom, with a steaming substance in the cup that appeared to be crack cocaine. Sergeant Sherwood then left the scene to obtain a search warrant, returned and searched the residence, taking multiple items into evidence, and arrested Boston and Holmes.

Sergeant Sherwood did not arrest Holman because she was not a participant to the manufacturing he observed. It was his understanding that often those who manufacture narcotics pay another person for the use of his or her home to manufacture crack in exchange for money or crack. Holman allowed the men to use her apartment because she hoped they would give her some of the manufactured crack.

At the pretrial hearing on November 30, 2017, Boston moved to suppress the evidence the officers seized, including baggies containing white powder, scales, and Pyrex measuring cups, on the grounds that the search violated his right to be free from an unreasonable search and seizure under both the United States and the South Carolina Constitutions and was an unreasonable invasion of his privacy under the South Carolina Constitution. The circuit court denied Boston's motion to suppress the evidence, finding Sergeant Sherwood had reasonable suspicion to engage in the knock and talk.

The matter proceeded to trial,² and on February 7, 2018, a jury found Boston guilty of manufacturing crack cocaine. The circuit court sentenced him to seventeen years of imprisonment. Boston moved for a new trial, which the court denied. This appeal follows.

STANDARD OF REVIEW

"On appeal from a motion to suppress on Fourth Amendment grounds, this [c]ourt applies a deferential standard of review and will reverse only if there is clear error." *Robinson v. State*, 407 S.C. 169, 180-81, 754 S.E.2d 862, 868 (2014), *cert. denied*, — U.S. —, 134 S. Ct. 2888, 189 L.Ed.2d 845 (2014); *see State v. Tindall*, 388 S.C. 518, 520, 698 S.E.2d 203, 205 (2010) (recognizing that in criminal cases an appellate court sits to review errors of law only and [is], therefore, bound by the trial court's findings unless clearly erroneous).

State v. Counts, 413 S.C. 153, 160, 776 S.E.2d 59, 63 (2015).

LAW/ANALYSIS

Boston contends the circuit court erred by denying his motion to suppress the evidence in violation of his right to privacy under Article 1, section 10, of the South Carolina Constitution and *State v. Counts*, 413 S.C. 153, 776 S.E.2d 59 (2015), because law enforcement did not have reasonable suspicion to engage in the knock and talk.³ We disagree.

² Boston objected to the introduction of the evidence obtained by officers pursuant to the knock and talk at trial.

³ The State argues even if this court holds the knock and talk was unreasonable under *Counts*, the circuit court did not err because the officers acted consistently with the law in effect at the time of the incident. We recognize the incident that is the subject of this appeal occurred in 2015, four months prior to the supreme court's decision in *Counts*. However, *Counts* was the prevailing precedent at the time of Boston's pretrial suppression hearing in 2017. At the pretrial hearing, the State did not raise the argument to the circuit court that the officers were acting in accordance with the law prior to the *Counts* decision. Rather, at the pretrial hearing, the State asserted the applicability of the *Counts* decision to the circuit court. While we may rely on additional grounds a respondent raises on appeal, we

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.

Our supreme court has also established that South Carolina may provide more protection than that afforded by the United States Constitution: "[S]tate courts can develop state law to provide their citizens with a second layer of constitutional rights," and "this [c]ourt 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).

In 2015, our supreme court extended constitutional protection in *State v. Counts*: law enforcement must have reasonable suspicion of illegal activity to perform a knock and talk. 413 S.C. at 174, 776 S.E.2d at 71. Without such a requirement, the supreme court found a knock and talk would violate a person's right to privacy set forth in the South Carolina Constitution. *Id.* at 174, 776 S.E.2d at 70-71. In establishing this threshold requirement, our supreme court reaffirmed that the South Carolina Constitution's privacy protection against unreasonable searches and seizures "favors an interpretation offering a higher level of privacy protection than the Fourth Amendment." *Id.* at 168, 776 S.E.2d at 68 (quoting *Forrester*, 343 S.C. at 645, 541 S.E.2d at 841).

In *Counts*, law enforcement officers responded to two anonymous tips that Counts was selling narcotics and using fake identification cards. *Id.* at 173, 776 S.E.2d at

decline to do so here. *See I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000) ("[T]he respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it").

70. The officers independently confirmed Counts had a criminal record and had used more than one identity. *Id.* Based upon the anonymous tips and the information confirmed by the officers, our supreme court found the officers had reasonable suspicion of illegal activity to engage in a knock and talk. *Id.*

Notably, law 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. In light of this evidence, the officers were not randomly knocking on Counts' door but had reasonable suspicion to support their decision to approach Counts' residence and conduct the "knock and talk."

Id.

This court recently addressed the legality of a knock and talk in *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). In *Kotowski*, the sheriff's office of Dorchester County received an anonymous tip alerting the department to drug use at a particular residence. *Id.* at 125, 828 S.E.2d at 608. An officer drove by the residence a number of times, noting a vehicle parked at the residence was owned by the son of a person previously convicted for crimes involving methamphetamine. *Id.* Officers went to the home to engage in a "knock and talk." *Id.* at 125-26, 828 S.E.2d at 628. Kotowski responded to the knock and stepped outside to speak to the officer, closing the door behind him. *Id.* at 126, 828 S.E.2d at 628. The officer testified Kotowski smelled strongly of ammonia. *Id.* Kotowski indicated his girlfriend was also in the home. *Id.* Kotowski went inside to get her and attempted to close the door, but the officer placed his foot in the way. *Id.* When the girlfriend appeared, the officer asked if she would consent to a search of her home, but she declined. *Id.* "Believing something to be amiss," the officer ordered his fellow officers to perform a protective sweep of the house, which revealed evidence of drugs and resulted in the issuance of a warrant and Kotowski's arrest. *Id.* at 126-27, 828 S.E.2d at 609.

This court found the officers did have reasonable suspicion to utilize the knock and talk investigative technique:

The trial court did not err in denying Kotowski's motion to suppress the evidence seized by law enforcement officers after conducting the knock and talk. Law enforcement relied on three pieces of information in arguing they had reasonable suspicion: (1) the anonymous tip Sergeant Thompson received on June 13, 2014; (2) the spotty surveillance Sergeant Thompson conducted of the house, which is where he recognized the vehicle belonging to the son of a convicted methamphetamine cook; and (3) the [National Precursor Log Exchange] records, showing what Sergeant Thompson referred to as "a substantial amount of purchases."

Id. at 129, 828 S.E.2d at 610.

Furthermore, *Kotowski* lays out the basis for what constitutes reasonable suspicion:

Reasonable suspicion consists of "'a particularized and objective basis' that would lead one to suspect another of criminal activity." *State v. Lesley*, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 66 L.Ed.2d 621 (1981)). "Reasonable suspicion is more than a general hunch but less than what is required for probable cause." *State v. Willard*, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007). "An additional factor to consider when determining whether reasonable suspicion exists is the officer's experience and intuition." *State v. Taylor*, 388 S.C. 101, 116, 694 S.E.2d 60, 68 (Ct. App. 2010), *rev'd on other grounds*, 401 S.C. 104, 736 S.E.2d 663 (2013). "Nevertheless, 'a wealth of experience will [not] overcome a complete absence of articulable facts.'" *Id.* (quoting *United States v. McCoy*, 513 F.3d 405, 415 (4th Cir. 2008)). "Furthermore, an officer's impression that an individual is engaged in

criminal activity, without confirmation, does not amount to reasonable suspicion."

Id. at 128-29, 828 S.E.2d at 610.

In the present case, the circuit court did not err in denying Boston's motion to suppress. Sergeant Sherwood testified to objective knowledge of the apartment community and the three people inside the apartment. Sergeant Sherwood had years of experience investigating criminal drug activity, with extensive training and certification, including eleven years with the department, and was very familiar with the apartment community he surveilled. He knew Boston and Holmes did not live there and recognized them from a previous incident at another location. Sergeant Sherwood's department had specifically directed him to patrol the area of the apartments based upon information the area had been "a hot spot of narcotics activity." He also testified he had knowledge of the practice of those engaged in illegal activity using the apartments of others to manufacture drugs. During his patrol, he observed Boston and Holmes enter the home of a person he knew lived alone, had some undefined limitations, and had used narcotics in the past.

The circuit court relied on specific evidence to find the knock and talk was based on reasonable suspicion of illegal activity. Nothing in the Record indicates law enforcement engaged in the knock and talk "randomly." *See Counts*, 413 S.C. at 173, 776 S.E.2d at 70 ("T]he officers were not randomly knocking on Counts' door but had reasonable suspicion to support their decision to approach Counts' residence and conduct the 'knock and talk.'"). *Id.* at 173, 776 S.E.2d at 70. Likewise, Sergeant Sherwood and his fellow officers did not randomly knock on Holman's door. While patrolling an area known as an area of criminal drug activity, Sergeant Sherwood observed the specific occurrence of Boston and Holmes going into the home of Holman, forming a basis for reasonable suspicion.⁴

⁴ While neither the circuit court nor the parties asserted Sergeant Sherwood knocked on Holman's door to perform a "welfare check" expressly, Sergeant Sherwood testified he was concerned about Holman. While Sergeant Sherwood testified the impetus for the knock and talk was investigative, we are also aware Sergeant Sherwood had concern for Holman as a person who may have been vulnerable to being taken advantage of by others. *See Counts*, 413 S.C. at 176 n.7, 776 S.E.2d at 72 n. 7 ("A 'welfare check' is not a criminal investigative technique. As its name implies, a 'welfare check' is conducted by law enforcement based upon

Therefore, the circuit court did not err in denying Boston's motion to suppress the evidence.

CONCLUSION

The circuit court did not err in denying Boston's motion to suppress because law enforcement had reasonable suspicion of illegal activity to approach Holman's door and conduct the "knock and talk." Accordingly, the decision of the circuit court is

AFFIRMED.

LOCKEMY, C.J., and MCDONALD, J., concur.

concern for a person's welfare not to inquire about illegal activity at the residence"). *Id.* at 176 n.7, 776 S.E.2d at 72 n.7.

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Mar 23 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

RESPONDENT,

v.

DARELL ONEIL BOSTON,

APPELLANT.

APPELLATE CASE NO. 2018-000504

Opinion No. 5808

PETITION FOR REHEARING

On March 10, 2021, this Court affirmed, in a published opinion, the lower court’s decision in Appellant Darell Boston’s trial not to suppress evidence that was discovered as a result of law enforcement conducting a knock and talk. Pursuant to Rule 221(a), SCACR, Appellant respectfully petitions this Court for a rehearing based upon the significant points overlooked or misapprehended by this Court in arriving at its determinative conclusion that law enforcement had the requisite reasonable suspicion to conduct this knock and talk.

This Court’s opinion rightly relied upon *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. 413 S.C. 153, 172, 776 S.E.2d 59, 70 (2015). The *Counts* court reached this decision citing the express right to privacy contained in Article 1 § 10 of the South Carolina Constitution, which “favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” *Id.* at 168, 776 S.E.2d at 68 (quoting *State v. Forrester*, 343 S.C. 640, 645, 541 S.E.2d 837, 841 (2001)). The *Counts* court’s analysis distinguished the knock and talk technique from searches of people in public and automobile searches, articulating several interrelated reasons why a knock and talk at a person’s home is a more significant intrusion. Specifically, the *Counts* court stated:

Because the privacy interests in one's home are the most sacrosanct, we believe there must be some threshold evidentiary basis for law enforcement to approach a private residence. Otherwise, we foresee the potential for abuse if law enforcement targets a neighborhood and indiscriminately knocks on doors with the hope of discovering contraband without a search warrant. 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 at 69–70. The concerns expressed by the *Counts* court are present in this case. Law enforcement was keeping a presence in a targeted neighborhood; they knocked on the door of a woman they knew to have drug and mental issues and who, therefore, might be more easily convinced to open the door; and they conducted the knock and talk without observing any criminal behavior with the stated intent of looking for evidence of “any possib[ilit]y [of] any crime.”

Here, respectfully, this Court overlooked or misapprehended the fact that law enforcement did not have “reasonable suspicion that a crime was occurring at the targeted residence” before conducting the knock and talk. The testimony of Officer Sherwood, one of the officers who

conducted the knock and talk, was the basis for the lower court's decision to deny Boston's motion to suppress and the basis for this Court affirming the lower court's ruling.

This Court cited the following passage as Officer Sherwood's stated reason for conducting the knock and talk: "When [w]e have the complaints that we were having and the elements that we had at this residence[,] we will knock on the door to make sure that one, she is okay[,] and two, see if there is any possib[ilit]y [of] any crime or if she had any information for us." Opinion, p. 4. The "elements" about which Officer Sherwood testified do not amount to reasonable suspicion. Officer Sherwood testified the neighborhood had long been a "hot spot for narcotics activity." (R. p.13, ln. 4-9). He testified 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 knew Holman lived in the apartment, that she had some mental limitations, and that he had a "couple of little run-ins with her" 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." (R. p.15, ln. 12-17). He did not state the nature of these "run-ins" except for one instance he recalled when he had seen them at a house where the North Charleston City Police Department had conducted several drug searches. (R. p.16, ln. 1-8). Officer Sherwood admitted he did not know whether Boston or Holmes lived at that house, 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 part of the searches at this house. He also did not say whether

these searches found any drugs. He did not say whether these searches led to any arrests or even any further investigations.

In short, Officer Sherwood knew the reputation of the neighborhood; he was somewhat familiar with Holman and her history; and he vaguely remembered that Boston had, at some unidentified point in the past, been in the 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. *See United States v. Perrin*, 45 F.3d 869, 873 (4th Cir. 1995) (“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 also United States v. Foster*, 634 F.3d 243, 246 (4th Cir. 2011) (prior knowledge of a person’s criminal record must be paired with more concrete factors to demonstrate that there was a reasonable suspicion of current criminal activity). Here, there was no testimony about Boston’s criminal record; only Officer Sherwood’s vague recollection that Boston had been in proximity to suspected drug activities at some point in the past. Presumably, such vague information should be accorded even less weight than knowledge of a person’s actual criminal record.

Importantly, Sherwood observed no behavior by Boston, Holmes, or Holman that was consistent with or indicative of criminal activity. Officer Sherwood was questioned at the suppression hearing by defense counsel on this point:

- 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.

Q. Nothing?

A. No, sir.

(R. pp. 68, ln. 22 - 69, ln. 16). Surely, reasonable suspicion requires observation of, at least, some behavior indicating criminal activity. *See, e.g., State v. Burgess*, 394 S.C. 407, 416, 714 S.E.2d 917, 921 (Ct. App. 2011) (finding reasonable suspicion present when officers observed behavior consistent with a drug deal including that defendant's car entered a fast food parking lot that was known for drug activity, a person from a waiting Jeep entered defendant's car and extended his hand, and then exited the defendant's car 15 second later and returned to the Jeep). The only behavior Officer Sherwood observed was Boston and Holmes getting out of a taxi and going into Holman's residence.

Respectfully, Officer Sherwood's general knowledge that sometimes people manufacture illegal drugs in other people's apartments 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.

This case is readily distinguishable from *Counts* and the more recent case of *State v. Kotowski*,¹ both of which are relied upon in this Court's opinion. In both cases, law enforcement conducted investigations based on anonymous tips of criminal behavior and observed some

¹ 427 S.C. 119, 828 S.E.2d 605 (Ct. App. 2019), *reh'g denied* (June 21, 2019), *cert. granted* (Sept. 25, 2019), *aff'd in part, vacated in part*, 430 S.C. 318, 844 S.E.2d 650 (2020).

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 which revealed behavior indicating criminal activity in finding that law enforcement had reasonable suspicion to conduct a knock and talk. 427 S.C. at 129, 828 S.E.2d at 610. 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. Importantly, Officer Sherwood did not observe any behavior indicating criminal activity. The only behavior law enforcement observed was Boston and Holmes exiting a taxi and walking, invited, into Holman's residence.


Respectfully, the Court 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). "[A]ny, possibly any crime" indicates, respectfully, that Sherwood rather clearly had no reasonable suspicion that illegal activity was occurring at Holman's residence. This testimony, at best, describes the kind of "inchoate and unparticularized suspicion" or "hunch," which courts have determined is not sufficient to support a finding of reasonable suspicion. *See United States v. Slocumb*, 804 F.3d 677, 682 (2015).

This Court's opinion correctly notes that officers were not acting randomly. However, the bar for finding reasonable suspicion is not that low. While officers were not "indiscriminately" knocking on every door in the community, which was the explicit concern of the *Counts* court, Officer Sherwood's testimony that he knocked on the door for the express purpose of looking for "any possib[ilit]y [of] any crime" resonates with the concern expressed by the *Counts* court that knock and talks without reasonable suspicion could be used by law enforcement "hoping to

discover contraband without a search warrant” in targeted neighborhoods. *Id.* at 172, 776 S.E.2d at 69.²

In sum, respectfully, this Court’s opinion lowers the bar for what is legally necessary to establish reasonable suspicion in the context of knock and talks. Appellant respectfully requests this Court rehear his case pursuant to Rule 221(a), SCACR, due to the significant legal and factual points overlooked and/or misapprehended by this Court.

Respectfully submitted:



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ATTORNEYS FOR APPELLANT

This 23rd day of March 2021

² In footnote 4 of the Opinion, this Court notes correctly that neither the lower court nor the parties asserted that Officer Sherwood knocked on Holman’s door to perform a “welfare check.” 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.”

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v.

DARELL ONEIL BOSTON,

APPELLANT.

APPELLATE CASE NO. 2018-000504

Opinion No. 5808

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Rehearing in the above referenced case has been served upon Mark Reynolds Farthing, Esquire, at P.O. Box 11549 Columbia SC 29211-1549; and Darell Boston, c/o Lieber Correctional Institution CA-50, #339646, 136 Wilborn Ave., Ridgeville, SC 29472, this 23rd day of March 2021.



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ATTORNEYS FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

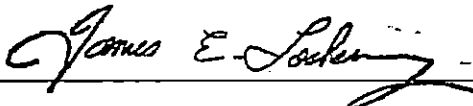
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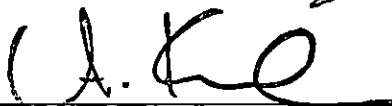
Darell Oneil Boston, Appellant.


Appellate Case No. 2018-000504

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ C.J.


_____ J.


_____ J.

Columbia, South Carolina

cc:

Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
David Nelson Lyon, Esquire
Mark Reynolds Farthing, Esquire

Scarlett Anne Wilson, Esquire
The Honorable R. Markley Dennis, Jr.