RECEIVED
Mar 14 2022
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2021-000549

THE STATE,

Respondent,

vs.

DARELL ONEIL BOSTON,

Petitioner.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

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

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

O.T. Wallace Building
101 Meeting Street, Suite 400
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

United States Supreme Court Cases:

Other Federal Cases:

Constitutional Provisions:

Other Authorities:

STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err by affirming the trial judge's decision to deny Boston's motion to suppress evidence when law enforcement conducted a 'knock and talk' without reasonable suspicion that criminal activity was occurring at an individual other than Boston's residence in violation of Boston'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)?

COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals correctly affirm the trial judge's ruling denying Boston's motion to suppress the crack cocaine and other incriminating evidence found inside someone other than Boston's residence when, under the totality of the circumstances, the officers who approached the residence and knocked on the door possessed reasonable suspicion of criminal activity at the time they did so? Furthermore, even assuming the officers lacked reasonable suspicion of criminal activity when they approached the residence and knocked on the door, did the Court of Appeals nonetheless correctly affirm the trial judge's decision declining to suppress any of the incriminating evidence discovered as a result of the "knock-and-talk" when the officers' actions were fully consistent with the controlling state and federal precedent in effect at the time they approached and knocked on the residence's door?

STATEMENT OF THE CASE

In March of 2015, Petitioner Darell Oneil Boston was arrested after law enforcement officers caught him and an accomplice, William Holmes, in the process of manufacturing crack cocaine inside another individual's residence. In November of 2015, the Charleston County Grand Jury indicted Boston for one count of manufacturing crack cocaine, one count of possession of crack cocaine with intent to distribute, and one count of possession of a controlled substance with intent to distribute within proximity of a school. Prior to trial, Boston filed a motion to suppress, and, on November 30, 2017, a pre-trial hearing was held on the motion in the Charleston County Court of General Sessions with the Honorable R. Markley Dennis, Jr., circuit court judge, presiding. On January 10, 2018, Judge Dennis issued a written order denying the suppression motion. Thereafter, on February 5, 2018, a jury trial was commenced solely on the charges of manufacturing crack cocaine and possession of crack cocaine with intent to distribute in the Charleston County Court of General Sessions with Judge Dennis again presiding.[1] At the conclusion of the three-day trial, the jury convicted Boston of manufacturing crack cocaine.[2] [3] Following the verdict, Judge Dennis sentenced Boston to a seventeen-year term of imprisonment.[4] Subsequently, on February 14, 2018, Boston filed a motion for a new trial.

---

[1] Boston was tried jointly with Holmes, but Holmes absconded prior to trial and was not present for it. (R. pp. 157-160).

[2] During the course of trial, the trial judge instructed the jurors they could only convict Boston of one of the indicted charges in the event they found his guilt had been established. (R. pp. 477-478).

[3] The jury also convicted Holmes of manufacturing crack cocaine and possession of cocaine. (R. pp. 480-481).

[4] Since Holmes was not present for trial, his sentence was sealed at the conclusion of the sentencing proceedings. (R. p. 504). Thereafter, once Holmes was eventually apprehended, his sentence was unsealed, and the trial judge imposed an aggregate term of imprisonment of twenty

While that motion was still pending, Boston filed both a premature notice of appeal and a motion seeking reconsideration of his sentence on February 16, 2018. Ultimately, Boston's premature appeal was dismissed, and Judge Dennis denied Boston's post-trial motions following a hearing on the matter conducted on March 15, 2018.[5] Boston then timely filed and perfected a valid appeal.

On appeal, the Court of Appeals—following briefing and oral argument—issued a published opinion unanimously affirming Boston's conviction. State v. Boston, 433 S.C. 177, 857 S.E.2d 27 (Ct. App. 2021). Thereafter, Boston petitioned the Court of Appeals for rehearing, and the petition was denied. Boston then filed a petition for a writ of certiorari in the Supreme Court, and that petition was granted on January 13, 2022.

---

years for his convictions. Records for William Holmes, Charleston County Public Index, https://jcmsweb.charlestoncounty.org/PublicIndex.

[5] Currently, the records associated with Boston's premature appeal are available on the South Carolina Appellate Court Public Index. Appellate Records for State v. Darell Oneil Boston, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=66782.

STATEMENT OF FACTS

Around approximately 5:00 p.m. on March 6, 2015, several officers from the North Charleston Police Department, including Officer Joseph Sherwood and Sergeant Fred Hoose, took up a position in an area located in North Charleston, South Carolina, that was known to be a "hot spot" for narcotics activity. (R. pp. 10-12; pp. 14-15; p. 47; pp. 51-52; p. 77; pp. 200-201; p. 242; p. 342; pp. 345-346). While they were there, the officers observed Boston and Holmes, whom they recognized as being connected to drug activity, arrive to the area in a taxicab, exit it together, and quickly enter a nearby single-occupancy apartment rented by Denise Holman, whom they knew to be a drug user with some cognitive issues.[6] (R. pp. 14-16; p. 48; p. 52; pp. 200-204; p. 242; p. 293; pp. 352-353). Suspicious, the officers temporarily remained where they were and discussed what they had observed.[7] (R. p. 15; p. 201). However, after waiting approximately fifteen minutes, they decided to approach Holman's apartment to both make sure she was okay and find out if any criminal activity was afoot. (R. pp. 16-17; pp. 68-69; pp. 77-78; p. 242; p. 291).

Upon approaching the residence, Officer Sherwood knocked on the door and identified himself as a law enforcement officer. (R. p. 16; p. 18; p. 52; pp. 124-125; pp. 204-205; p. 328; p. 346). In response, Holman opened the door in an "inviting way," and Officer Sherwood asked

---

[6] At that time, Boston had an extensive criminal record, which included convictions for trafficking crack cocaine, trafficking cocaine, possession of cocaine with intent to distribute, possession of cocaine, and possession of marijuana. (R. p. 492). Likewise, Holmes also had an extensive criminal record, which included convictions for trafficking crack cocaine, possession of cocaine with intent to distribute, possession of crack cocaine, possession of cocaine, and possession of marijuana. (R. pp. 501-502).

[7] As to why what he observed raised his suspicious, Officer Sherwood explained he knew it was common for drug manufacturers to use the apartments in the area where Holman lived to manufacture drugs in exchange for some form of compensation. (R. p. 36). Furthermore, Officer Sherwood indicated he had received drug-related complaints in connection to Holman's apartment complex. (R. pp. 59-60; p. 240; pp. 291-292).

her if she minded if they came inside and spoke with her. (R. pp. 16-18; p. 52; pp. 93-94; p. 100; p. 113; p. 124; pp. 204-205; p. 328; p. 346). At that point, Holman, who appeared to be relieved, granted consent to the officers, and Officer Sherwood stepped inside the small apartment. (R. p. 16; p. 18; pp. 22-23; p. 53; p. 78; pp. 93-94; p. 98; p. 113; pp. 205-207; p. 231; p. 328; p. 346).

When he did so, Officer Sherwood saw Boston and Holmes huddled together in the apartment's kitchen near a microwave with two plastic bags containing white residue nearby. (R. pp. 23-24; pp. 56-57; p. 207; pp. 210-211; p. 243; pp. 255-259). Almost immediately after that, Boston and Holmes realized the officer had entered the apartment, and the two quickly opened the microwave, made rapid hand movements, slammed the microwave shut, and then fled into the adjacent bathroom. (R. pp. 25-26; pp. 210-211; p. 263; pp. 282-284). In response, Officer Sherwood directed Boston and Holmes to come out of the bathroom, and they complied. (R. p. 28; p. 211; pp. 346-347). The men, who were visibly nervous, were then detained, and Sergeant Hoose proceeded to conduct a consent-based search of Holmes. (R. p. 29; p. 41; p. 65; p. 119; p. 124; p. 211; p. 248; p. 349; p. 367). During the search, Sergeant Hoose located a bag of cocaine and a digital scale in Holmes's pockets.[8] (R. p. 29; p. 212; pp. 221-223; p. 349). Meanwhile, Officer Sherwood conducted a brief protective sweep of the apartment. (R. p. 29; p. 57; p. 211; p. 367). During the sweep, he found a steaming Pyrex-brand cup in the bathroom with a substance that appeared to be crack cocaine inside. (R. p. 29; pp. 58-59; pp. 70-71; p. 211; p. 218; p. 286; p. 350). Additionally, Officer Sherwood found a digital scale in the kitchen and noticed the microwave still had nearly two minutes left on its timer.[9] [10] (R. p. 26; p. 213).

[8] Ultimately, an additional bag of cocaine was discovered in Holmes's possession when he was searched at the jail. (R. pp. 222-223; pp. 393-394).

[9] Later on, the microwave was tested for the presence of cocaine, and the testing suggested cocaine or cocaine residue was present inside it. (R. pp. 31-32; pp. 226-228).

Officer Sherwood then obtained a search warrant to conduct a more complete search of the apartment, the drugs and other incriminating evidence were secured, and Boston and Holmes were arrested. (R. p. 31; p. 33; pp. 212-213; pp. 223-224; pp. 279-280; p. 350; p. 358; p. 382).

As the investigation into the incident continued, the crack cocaine recovered from Holman's residence was submitted for testing along with the cocaine recovered from Holmes's pockets. (R. p. 406). Upon completing the analysis, an expert forensic analyst confirmed the substances were, in fact, 5.83 grams of crack cocaine and 0.57 grams of cocaine. (R. pp. 404-406; p. 412; p. 416; p. 420). At that point, Boston was indicted for manufacturing crack cocaine, possession of crack cocaine with intent to distribute, and possession of a controlled substance with intent to distribute within proximity of a school. (R. pp. 509-514).

Before his case was brought to trial, Boston sought the suppression of all the evidence discovered as a result of the "knock-and-talk," and the trial judge conducted a pre-trial hearing on the matter. (R. p. 6; pp. 523-524). During the course of the hearing, Officer Sherwood recounted the events of March 6, 2015, and identified Boston as one of the men he caught manufacturing crack cocaine inside Holman's apartment on that date.[11] (R. pp. 10-83). In addition to that testimony, Holman, who admitted she had previously been a crack cocaine user, offered her account of the incident, indicated Boston and his accomplice were using her residence at that time to manufacture crack cocaine, and affirmed she voluntarily provided consent to the officers to enter her apartment after they knocked on her door. (R. pp. 88-102). Meanwhile, Boston, who admitted he had been a cocaine and crack cocaine dealer, offered a

---

[10] Notably, no food items were discovered in Holman's kitchen other than some baking soda, which was an ingredient used in the manufacture of crack cocaine. (R. p. 78; p. 93; p. 213; p. 229; p. 304; pp. 333-334).

[11] By the time of the suppression hearing, Officer Sherwood had been promoted to the rank of sergeant. (R. p. 10).

sharply different account of what occurred, claimed he was simply at Holman's apartment on the date of the incident as an invited guest, and alleged he was there solely to use her electronics to upload music to his phone. (R. pp. 104-115). Similarly, Holmes denied going to Holman's apartment to manufacture crack cocaine while insisting he instead went there with Boston to "get high" and upload some music. (R. pp. 117-126). However, Holmes did candidly admit he had cocaine and marijuana in his pockets at that time. (R. pp. 118-119; p. 122).

Following the presentation of that testimony, Boston argued the "knock-and-talk" and ensuing search were unconstitutional pursuant to both the state and federal constitutions. (R. pp. 137-138). In support of that argument, Boston cited to the South Carolina Supreme Court's decision in State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015), for the proposition a "knock-and-talk" requires reasonable suspicion while maintaining the officers did not, in fact, possess reasonable suspicion when they approached the door of Holman's residence.[12] (R. pp. 131-132; pp. 150-151; pp. 534-535). Furthermore, Boston alleged Holman's consent was not valid or sufficient, the drugs observed inside Holman's residence were not actually in plain view, and the protective sweep conducted by Officer Sherwood was invalid. (R. pp. 132-134; pp. 537-541). In rebuttal, the solicitor contended Boston did not have a reasonable expectation of privacy in Holman's residence and the "knock-and-talk" was supported by reasonable suspicion under the totality of the circumstances. (R. pp. 141-142; pp. 145-147; pp. 589-593). Furthermore, the solicitor maintained the officers obtained valid consent from Holman, Officer Sherwood observed the bags of cocaine in plain view upon entering the apartment, a proper protective sweep was conducted based on the exigent circumstances that arose, and the ensuing full search

[12] While the "knock-and-talk" at Holman's residence occurred on March 6, 2015, the decision in Counts was not issued until over four months later on July 8, 2015. State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015).

of the residence was conducted with a valid search warrant supported by probable cause. (R. pp. 594-604).

At the conclusion of the pre-trial hearing, the trial judge took the matter under advisement. (R. p. 151). Thereafter, upon considering the arguments of counsel, the trial judge denied Boston's suppression motion. (R. p. 610). In denying the motion, the trial judge specifically found Boston had standing to raise the constitutional challenge pursuant to the South Carolina Constitution. (R. p. 610). However, based on the totality of the circumstances, the trial judge determined the officers possessed reasonable suspicion of criminal activity at the time of the "knock-and-talk." (R. p. 166; p. 610). Furthermore, the trial judge concluded the officers obtained valid consent to enter after knocking on Holman's door and acted in an entirely reasonable manner once they entered Holman's apartment. (R. p. 610).

Subsequently, Boston proceeded forward to trial on the charges of manufacturing crack cocaine and possession of crack cocaine with intent to distribute. (R. p. 159). During the course of trial, the officers involved in the "knock-and-talk" and ensuing investigation testified about the events that transpired, and Boston was identified as one of the individuals discovered in the act of manufacturing crack cocaine inside Holman's apartment on the date of the incident. (R. pp. 197-294; pp. 302-307; pp. 342-369; pp. 376-390; pp. 392-395). Furthermore, Holman offered her account of the events occurring at the time of the "knock-and-talk," and the crack cocaine and other incriminating items discovered as a result of the "knock-and-talk" were admitted into evidence over Boston's objection. (R. pp. 322-330; pp. 333-341; pp. 411-412; pp. 415-416).

At the conclusion of trial, the jury convicted Boston of manufacturing crack cocaine. (R. pp. 480-481). Following the verdict, the trial judge sentenced Boston to a seventeen-year term of

imprisonment. (R. p. 500). Thereafter, Boston moved for a new trial on multiple grounds, including on the basis the trial judge allegedly erred by denying his motion to suppress the crack cocaine and other evidence found as a result of the "knock-and-talk." (R. p. 611; pp. 613-618). However, once again, the trial judge denied Boston's motion, and Boston subsequently appealed. (R. pp. 506-507; App. Br. pp. 1-14).

On appeal, the Court of Appeals affirmed. State v. Boston, 433 S.C. 177, 179, 857 S.E.2d 27, 28 (Ct. App. 2021). In doing so, the Court of Appeals noted:

> 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 pursuing 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.

Id. at 185, 857 S.E.2d at 31. Based on the totality of those circumstances, the Court of Appeals concluded the trial judge did not err by finding reasonable suspicion of illegal activity existed such that law enforcement, who were *not* engaged in random "knock-and-talks" at that time, could properly approach Holman's door for the purpose of conducting a "knock-and-talk." Id. at 185-186, 857 S.E.2d at 31-32. Accordingly, the Court of Appeals affirmed the trial judge's ruling denying Boston's suppression motion. Id. at 186, 857 S.E.2d at 32.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In search and seizure cases, an appellate court in South Carolina is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) ("[A]ppellate courts must affirm if there is any evidence to support the trial court's ruling."); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling." (citation and internal quotations omitted)). Critically, the appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 ("In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge's ultimate determination de novo but, rather, would apply a deferential standard of review.").

ARGUMENT

The Court of Appeals correctly affirmed the trial judge's ruling denying Boston's motion to suppress the crack cocaine and other incriminating evidence found inside someone other than Boston's residence because, under the totality of the circumstances, the officers who approached the residence and knocked on the door possessed reasonable suspicion of criminal activity at the time they did so. Moreover, even assuming the officers lacked reasonable suspicion of criminal activity when they approached the residence and knocked on the door, the Court of Appeals nonetheless correctly affirmed the trial judge's decision declining to suppress any of the incriminating evidence discovered as a result of the "knock-and-talk" because the officers' actions were fully consistent with the controlling state and federal precedent in effect at the time they approached and knocked on the residence's door.

Boston contends the Court of Appeals erred by affirming the trial judge's ruling declining to suppress the evidence discovered as a result of a "knock-and-talk" conducted at the residence of someone other than himself. In support of that contention, Boston maintains the "knock-and-talk" conducted by the officers constituted an unreasonable invasion of privacy in violation of his rights under the South Carolina Constitution because the officers allegedly lacked reasonable suspicion of criminal activity when they approached the residence and knocked on its door. To the contrary, the information known to the officers at the time they decided to approach Holman's residence for purposes of knocking on the door satisfied the low bar of the reasonable suspicion standard and provided the minimal level of objective justification necessary for their actions to be constitutionally reasonable.[13] However, even assuming for argument's sake the

[13] Importantly, the residence where the "knock-and-talk" was performed unquestionably was *not* Boston's residence and, instead, was a residence he and his confederate were simply using on a brief and temporary basis to manufacture crack cocaine as part of a quid pro quo arrangement with the actual resident. (R. p. 15; pp. 30-31; p. 36; pp. 68-69; pp. 91-92; p. 135; p. 214; p. 245; pp. 279-280; p. 304; pp. 326-367; p. 333; pp. 339-340; pp. 608-610). Under those circumstances, Boston had *no* expectation of privacy—legitimate or otherwise—in the residence and, therefore, could not possibly meet his burden of establishing he had a reasonable expectation of privacy that was unlawfully violated by the "knock-and-talk" he sought to challenge. See State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987) (instructing a defendant seeking to challenge the propriety of a search or seizure must establish his own personal constitutional rights were violated by that search or seizure in order to be entitled to the

officers' actions somehow violated Boston's own constitutional rights due to the absence of reasonable suspicion, application of the exclusionary rule was nonetheless not appropriate in Boston's case because the officers fully complied with the controlling state and federal precedent in effect at the time they conducted the "knock-and-talk" at Holman's residence. Under such circumstances, suppression of the evidence would not have served the goals of the exclusionary rule in any way since the officers were simply acting in a manner that had been judicially condoned at the time of the "knock-and-talk" and that was fully consistent with our nation's deep-rooted customs and practices. Accordingly, the trial judge committed no error by declining to suppress the evidence discovered as the result of the "knock-and-talk," and the Court of Appeals correctly affirmed the trial judge's ruling on appeal. Boston's convictions and the decision of the Court of Appeals should both be affirmed.

Much like the Fourth Amendment of the United States Constitution, the South Carolina Constitution provides protections to the state's citizens against unreasonable searches and seizures. State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); see U.S. Const.

---

benefits of the exclusionary rule); cf. Minnesota v. Carter, 525 U.S. 83, 91 (1998) (holding Carter and his accomplice had no expectation of privacy in another person's apartment that they were only briefly and temporarily using for the business-like purpose of packaging cocaine); State v. Robinson, 410 S.C. 519, 530, 765 S.E2.d 564, 570 (2014) ("[W]e find that [Robinson] was 'merely present with the consent of the householder,' and as such, did not have a reasonable expectation of privacy on the porch of Apartment 122." (citations omitted)). Accordingly, Boston's lack of a reasonable expectation of privacy in Holman's residence provides an additional compelling reason for his convictions to be affirmed. Cf. State v. Weaver, 374 S.C. 313, 326, 649 S.E.2d 479, 485 (2007) (Pleicones, J., concurring) ("Analysis of the facts of this case with our privacy provision in mind reveals no state constitutional violation. Although one's expectation of privacy in his automobile increases when that automobile is parked in the backyard of his private residence, [Weaver] in this case was not the owner of the Jeep that was seized. More importantly, the vehicle was not parked at [Weaver]'s residence. Our state constitution's provision protecting unreasonable invasions of privacy necessarily requires some analysis of the privacy interests involved when a warrantless seizure is made on private property. However, [Weaver] cannot show he had a reasonable expectation of privacy in the seized Jeep." (footnote omitted)).

amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, 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, and the persons or things to be seized."); S.C. Const. art. I, § 10 ("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[.]"). Furthermore, primarily in order to guard against invasive technological advancements, the South Carolina Constitution also expressly protects our citizens from "unreasonable invasions of privacy." S.C. Const. art. I, § 10; see Forrester, 343 S.C. at 647, 541 S.E.2d at 842 ("[T]he drafters of our state constitution's right to privacy provision were principally concerned with the emergence of new electronic technologies that increased the government's ability to conduct searches.").

Through the additional provision regarding 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). Thus, "the South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment." Id. However, the South Carolina Constitution by its express language only forbids searches, seizures, and invasions of privacy that are *unreasonable*. S.C. Const. art. I, § 10; see State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) ("It is only unreasonable searches and seizures that are prohibited."); see also Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]"). Accordingly, just like the search and seizure protections offered by the federal constitution, the touchstone of our state constitution's search and seizure protections is reasonableness. See Florida v. Jimeno, 500 U.S.

248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."); see also Heien v. North Carolina, 574 U.S. 54, 60-61 (2014) ("To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.' " (citation omitted)).

Generally speaking, it is not typically reasonable from a constitutional standpoint for a person to enter the private property of another without leave. Florida v. Jardines, 569 U.S. 1, 7-8 (2013). However, through longstanding and deeply-ingrained customs and practices, the citizens of the United States—and South Carolina—have extended an implicit license to their fellow citizens, including their fellow citizens serving as law enforcement officers, that permits visitors to approach their homes in an effort to make contact with them. Id. at 8; see Kentucky v. King, 563 U.S. 452, 469 (2011) ("[W]hen law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do."). Based on that implicit license, a law enforcement officer is constitutionally permitted *under the Fourth Amendment* to enter a home's curtilage and approach a home in an attempt to speak with or question an occupant so long as the officer's entry and approach is conducted in an objectively reasonable manner consistent with the implicit license, and such entries and approaches do not constitute searches and seizures for Fourth Amendment purposes. See Jardines, 569 U.S. at 9, n. 4 ("[I]t is not a Fourth Amendment search to approach the home in order to speak with the occupant, *because all are invited to do that*."); State v. Wright, 391 S.C. 436, 444, 706 S.E.2d 324, 328 (2011) (instructing a law enforcement officer may lawfully go to a person's home and door to interview that person). Thus, as far as the federal constitution is concerned, an officer can typically "approach [a] home by the front path, knock promptly, wait briefly to be received, and

then (absent invitation to linger longer) leave" without encroaching upon the Fourth Amendment. Jardines, 569 U.S. at 8.

Importantly though, this Court in State v. Counts, 413 S.C. 153, 167, 776 S.E.2d 59, 67 (2015), relatively recently—but months *after* Officer Sherwood knocked on Holman's door—addressed the question of whether a law enforcement officer's approach of a home to knock on its door and speak with an occupant for investigative purposes constitutes a violation of the South Carolina Constitution. See Boston, 433 S.C. at 182, n. 3, 857 S.E.2d at 29, n. 3 ("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."). After analyzing the issue, a majority of this Court determined "there must be some threshold evidentiary basis for law enforcement to approach a private residence" based on "the potential for abuse" that could occur if officers were permitted to approach citizens' homes "*indiscriminately*" without any limitations. Counts, 413 S.C. at 172, 776 S.E.2d at 69 (emphasis added). As a result, the majority articulated a *new* rule of criminal procedure in South Carolina holding "law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence and knocking on the door." [14] Id. at 172-173, 776 S.E.2d at 70. Accordingly, despite the fact a "knock-and-talk" would be constitutionally proper under the Fourth Amendment due to the implicit license extended by our

[14] In Counts, this Court applied its "newly enunciated rule" to the facts of Counts's case and determined Counts's rights under the South Carolina Constitution were not violated. Counts, 413 S.C. at 173, 776 S.E.2d at 70. Because it determined no state constitutional violation had occurred, this Court did not address—and had no reason to address—the question of whether application of the exclusionary rule would have been appropriate if the officers had, in fact, violated Counts's constitutional rights. Id. at 173, 776 S.E.2d at 70. As a result, this Court's decision in Counts did *not* establish the exclusionary rule can or should be applied in cases involving suspicionless "knock-and-talks" conducted prior to the creation of the new rule requiring reasonable suspicion. See Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.' " (citation omitted)).

citizenry, officers in South Carolina must now possess reasonable suspicion before conducting an investigatory "knock-and-talk." Id.

In a general sense, reasonable suspicion has been described as consisting 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 (1981)). Significantly though, the reasonable suspicion standard "is not a high bar." United States v. Coker, 648 F. App'x 541, 544 (6th Cir. 2016) (citing Navarette v. California, 572 U.S. 393 (2014)). To the contrary, it "is a less demanding standard than probable cause" and simply requires a showing of "a *minimal* level of objective justification" in order to be established. Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (emphasis added); see Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing even the probable cause standard "is not a high bar"); State v. Jones, 435 S.C. 138, 145, 866 S.E.2d 558, 562 (2021) (stating probable cause is not a high bar). Accordingly, pursuant to the applicable standard, the presence of factors seemingly consistent with innocent behavior can—and frequently does—suffice to establish the existence of reasonable suspicion. United States v. Sokolow, 490 U.S. 1, 9 (1989); Wardlow, 528 U.S. at 125-126 (recognizing factors that are "susceptible of an innocent explanation" can establish reasonable suspicion and probable cause); see also United States v. Arvizu, 534 U.S. 266, 273 (2002) (instructing courts are precluded from conducting a "divide-and-conquer analysis" when considering the totality of the circumstances).

In the case sub judice, Officer Sherwood—prior to approaching and knocking on Holman's door—was aware Holmes and Boston, whom were observed entering Holman's single-occupancy residence, had previously been connected to drug activity. See, e.g., United States v. Lewis, 920 F.3d 483, 493 (7th Cir. 2019) ("Criminal histories can support reasonable

suspicion."); United States v. Green, 897 F.3d 173, 187 (3rd Cir. 2018) (recognizing an individual's criminal history—although not alone sufficient to establish reasonable suspicion—"is a valid factor" in a reasonable suspicion analysis with a value that "is enhanced when the prior offenses relate to the crime being investigated"); United States v. Calvetti, 836 F.3d 654, 667 (6th Cir. 2016) (recognizing a prior criminal history can constitute a "strong" indicator of criminal activity for purposes of a reasonable suspicion analysis). Likewise, the experienced officer was aware Holman herself was a known drug user with some cognitive issues. See, e.g., United States v. Sprinkle, 106 F.3d 613, 617 (4th Cir. 1997) ("[A]n officer can couple knowledge of prior criminal involvement with more concrete factors in reaching a reasonable suspicion of current criminal activity."). Beyond that, he was aware the area was a known "hot spot" for narcotics activity and the apartments themselves were commonly used by drug manufacturers who employed quid pro quo arrangements to obtain access to locations where they could produce their narcotics. See, e.g., Wardlow, 528 U.S. at 124 (recognizing the nature of a particular area and its connection to criminal activity is a pertinent factor in a reasonable suspicion analysis); United States v. Lender, 985 F.2d 151, 154 (4th Cir. 1993) ("While the defendant's mere presence in a high crime area is not by itself enough to raise reasonable suspicion, an area's propensity toward criminal activity is something that an officer may consider."); Milledge v. State, 422 S.C. 366, 377, 811 S.E.2d 796, 802 (2018) ("A person's presence in a known high-crime area is one relevant consideration in analyzing reasonable suspicion[.]").

In isolation, those factors may not have individually been sufficient to establish the minimal level of objective justification needed to validate the limited and reasonably-tempered investigatory action undertaken by the officers, which simply involved an approach and knock at

Holman's door. See Wardlow, 528 U.S. at 123 (instructing the reasonable suspicion standard only requires "a minimal level of objective justification"); see also District of Columbia v. Wesby, __ U.S. __, 138 S. Ct. 577, 588 (2018) (recognizing "the whole is often greater than the sum of its parts—especially when the parts are viewed in isolation" and explaining even the higher probable cause standard "does not require officers to rule out a suspect's innocent explanation for suspicious facts"). However, when viewed collectively as required, those factors—just as the trial judge and the Court of Appeals recognized—were sufficient to satisfy the low bar of the reasonable suspicion standard and provide objective justification for the "knock-and-talk" conducted at Holman's residence, which was not carried out in a harassing, random, or arbitrary manner. See Terry v. Ohio, 392 U.S. 1, 28 (1968) (holding an officer's actions, which were based on the officer observing Terry and his confederate simply walk by and look in a store window several times, in effectuating a detention and frisk search were constitutionally reasonable because they were not "the product of a volatile or inventive imagination" or "undertaken simply as an act of harassment" and, instead, were reasonably tempered); Robinson v. State, 407 S.C. 169, 184, 754 S.E.2d 862, 870 (2014) ("[T]he facts and inferences relied on by the officer must be articul*able*, not necessarily articulat*ed*."); see also Devenpeck v. Alford, 543 U.S. 146, 153 (2004) ("As we have repeatedly explained, the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." (citations and internal quotations omitted)); cf. Counts, 413 S.C. at 173, 776 S.E.2d at 70 ("[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. 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.' " (emphasis added)). Accordingly, the trial judge properly denied Boston's suppression motion, and the Court of Appeals correctly affirmed that ruling on appeal as it was supported by the evidence and testimony presented during trial.[15] See Wright, 391 S.C. at 442, 706 S.E.2d at 326 (instructing "an appellate court must affirm if there is any evidence to support the ruling" in a case involving a search and seizure issue); see also Kansas v. Glover, __ U.S. __, 140 S. Ct. 1183, 1190 (2020) (rejecting an interpretation of what is required to satisfy the reasonable suspicion standard because the rejected interpretation "would considerably narrow the daylight between the showing required for probable cause and the 'less stringent' showing required for reasonable suspicion").

However, even assuming all the judges who have considered the reasonable suspicion issue involved in Boston's case up to this point have somehow been wrong, their collective conclusion suppression was not warranted was nevertheless an entirely correct one. See Sec. & Exch. Comm'n v. Chenery Corp., 318 U.S. 80, 88 (1943) ("[I]n reviewing the decision of a lower court, it must be affirmed if the result is correct although the lower court relied upon a wrong ground or gave a wrong reason. The reason for this rule is obvious. It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which

[15] Notably, even if the officers did not possess reasonable suspicion at the time they approached Holman's door, their decision to do so was motivated—at least to some extent—by their legitimate desire to check on Holman's welfare, which did *not* require any reasonable suspicion on their part. See Counts, 413 S.C. at 174, n. 7, 776 S.E.2d at 71 ("[O]ur decision should not be misconstrued . . . to prevent law enforcement from conducting 'welfare checks' at residences.").

the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate." (citation and internal quotations omitted)); State v. Goodstein, 278 S.C. 125, 128, 292 S.E.2d 791, 793 (1982) ("An appellate court . . . is not, as a general rule, bound by the reasoning adopted below if the record discloses a correct result. . . . No principle in the disposition of appeals is more firmly established than that a right decision upon a wrong ground will be affirmed." (citations and internal quotations omitted)). Significantly, that is true because this Court's decision in Counts was not available to the officers to guide them in Boston's case at the time they approached Holman's door since it was not issued until *months* after they had already acted. Cf. Davis v. United States, 564 U.S. 229, 235 (2011) ("The search at issue in this case took place a full two years before this Court announced its new rule in Gant."). Under such circumstances, even if the officers' actions were not in compliance with the mandates of the new rule articulated by this Court in Counts, suppression of the evidence could not rationally be an appropriate remedy if the officers' actions were consistent with the controlling precedent in effect at the time they conducted the "knock-and-talk." Cf. Narcisco v. State, 397 S.C. 24, 32, 723 S.E.2d 369, 373 (2012) ("[E]xcluding the evidence against [Narcisco] would not deter police misconduct because the police in this instance conducted a search incident to arrest pursuant to binding appellate precedent. Moreover, exclusion of the evidence in this case would result in severe social costs, including the articulation of an inexplicable and undecipherable message to law enforcement regarding how to conduct a legal search. The protection of the Fourth Amendment can only be realized if police are acting under a set of rules which make it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement." (citations omitted)). And, in Boston's case, the officers' actions did, in fact, wholly comply with the relevant and applicable precedent

on both "knock-and-talks" and the implicit license that has been extended to everyone, including the officers, by our state's citizenry through long-standing customs and practices.

Specifically, the officers' approach of Holman's residence to conduct a "knock-and-talk" was completely consistent with this Court's decision in State v. Wright, 391 S.C. 436, 706 S.E.2d 324 (2011), which recognized a law enforcement officer may *obviously* go to a residence's door to speak with someone inside. See id. at 444, 706 S.E.2d at 328 ("A policeman may lawfully go to a person's home to interview him. . . . In doing so, he obviously can go up to the door. . . ." (citation and internal quotations omitted)). Furthermore, the officers' decision to approach the residence to conduct a "knock-and-talk" was also entirely consistent with federal precedent from the United States Supreme Court and the Fourth Circuit Court of Appeals regarding "knock-and-talks" and the implicit license that had been issued prior to their actions in the case at bar. See Jardines, 569 U.S. at 8 (instructing law enforcement officers are generally permitted to conduct warrantless "knock-and-talks" pursuant to the implicit license); King, 563 U.S. at 469-470 ("When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do."); see also United States v. Cephas, 254 F.3d 488, 493 (4th Cir. 2001) ("[A]n officer generally does not need probable cause or reasonable suspicion to justify knocking on the door and then making verbal inquiry."); Rogers v. Pendleton, 249 F.3d 279, 289-290 (4th Cir. 2001) (recognizing "police officers do not need a warrant to do what any private citizen may legitimately do—approach a home to speak to the inhabitants"); United States v. Taylor, 90 F.3d 903, 909 (4th Cir. 1996) (explaining "there is no rule of private or public conduct which makes it illegal per se, or a condemned violation of the person's right of privacy" for anyone—including a police officer—to approach a home's front door to make contact with someone inside (citation and internal quotations omitted)).

Based on the then-controlling decisions issued by this Court, the United States Supreme Court, and the Fourth Circuit Court of Appeal, it was objectively reasonable for the officers in Boston's case to believe they had the investigative authority to approach Holman's residence pursuant to the implicit license for the purpose of conducting a "knock-and-talk" *regardless* of whether they possessed reasonable suspicion of criminal activity.[16] Cf. Wright, 391 S.C. at 445, 706 S.E.2d at 328 ("[T]hese observations would give a reasonable police officer in the deputies' position cause to go forward. However, even absent these observations, the police had the investigative authority to approach the front door of the mobile home in order to investigate the anonymous tip."). As a result, suppression of the incriminating evidence—including the crack cocaine Boston was in the process of manufacturing in *someone else's residence*—would in no way serve the deterrent goals of the exclusionary rule since the officers were merely acting in a manner that had been expressly condoned and recognized as proper by both state and federal courts, including this Court. See Davis, 564 U.S. at 249 ("It is one thing for the criminal 'to go free because the constable has blundered.' It is quite another to set the criminal free because the constable has scrupulously adhered to the governing law. Excluding evidence in such cases deters no police misconduct and imposes substantial social costs." (citation omitted)); see also Herring v. United States, 555 U.S. 135, 144 (2009) ("To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently

[16] In arguing to the contrary, Boston contends there was no binding precedent authorizing a suspicionless "knock-and-talk" under the South Carolina Constitution at the time Officer Sherwood approached Holman's door. (Pet. Br. p. 22). By so contending, Boston fails to recognize the authority for "knock-and-talks" that has been recognized in cases like Jardines is derived not from a judicially-created rule but, instead, from centuries-old customs and practices of our nation's citizens that are so deep-rooted they are well known and easily understood by mere children. See Jardines, 569 U.S. at 8 ("Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters."); see also McKee v. Gratz, 260 U.S. 127, 136 (1922) ("A license may be implied from the habits of the country.").

culpable that such deterrence is worth the price paid by the justice system."); United States v. Payner, 447 U.S. 727, 734 (1980) ("The Court has acknowledged that the suppression of probative but tainted evidence exacts a costly toll upon the ability of courts to ascertain the truth in a criminal case. Our cases have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of governmental rectitude would impede unacceptably the truth-finding functions of judge and jury. After all, it is the defendant, and not the constable, who stands trial." (citations and footnote omitted)). Therefore, even assuming the officers' actions violated Boston's state constitutional rights in light of this Court's decision in Counts, their actions nonetheless did not justify or warrant the exclusion of the incriminating evidence during trial. See Davis, 564 U.S. at 241 ("[T]he harsh sanction of exclusion 'should not be applied to deter objectively reasonable law enforcement activity.' Evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule." (citation omitted)); cf. State v. Brown, 401 S.C. 82, 96, 736 S.E.2d 263, 270 (2012) ("[W]e hold the Court of Appeals properly applied Gant and found the warrantless police search conducted incident to Brown's arrest for an open container violation was illegal. We further hold, however, pursuant to the Supreme Court's subsequent pronouncement in Davis, that the exclusionary rule is not applicable to this case because the officer relied upon existing appellate precedent at the time he conducted his search."). Accordingly, the trial judge correctly declined to impose the harsh sanction of exclusion in a case in which it simply could not and cannot be justified, and the Court of Appeals correctly affirmed that decision on appeal. See State v. Butler, 353 S.C. 383, 393, 577 S.E.2d 498, 503 (Ct. App. 2003) ("[T]his court will affirm if there is any evidence to support the decision, regardless of the basis of the trial court's ruling."); see also Davis, 564 U.S. at 237 ("Exclusion exacts a heavy toll on both the judicial system and

society at large. It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment. Our cases hold that society must swallow this bitter pill when necessary, but only as a 'last resort.' " (citations omitted)). Boston's convictions and the decision of the Court of Appeals should both be affirmed.

CONCLUSION

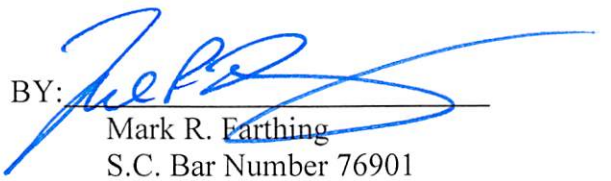
For all the foregoing reasons, it is respectfully submitted the decision of the Court of Appeals and the judgment and conviction of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: 
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR RESPONDENT

March 14, 2022