STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM HOLMES,

PETITIONER.

APPELLATE CASE NO. 2021-001018

BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

United States Supreme Court Cases:

Other Federal Cases:

STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err by affirming the trial court's decision to deny petitioner's motion to suppress evidence where law enforcement conducted a knock-and-talk without reasonable suspicion of criminal activity at the targeted home in violation of Petitioner's state constitutional right to be free from unreasonable invasions of privacy?

STATEMENT OF THE CASE

Petitioner William Holmes was arrested by officers from the North Charleston Police Department on March 6, 2015. The Charleston County Grand jury indicted Holmes for one count of manufacturing crack cocaine and one count of possession of cocaine. (R. pp. 567-570).

Prior to trial, Holmes and his co-defendant, Darell Boston, each filed motions to suppress evidence. (R. p. 573). Following a pretrial suppression hearing, the trial court issued a written order denying the suppression motions. (R. p. 1-3).

After a three-day trial, the jury convicted Holmes of manufacturing crack cocaine and possession of cocaine. The trial court sentenced Holmes to twenty years of imprisonment. [1] (R. p. 571-572).

On June 30, 2021, the South Carolina Court of Appeals affirmed Holmes' convictions in an unpublished opinion. State v. Holmes, Op. No. 2021-UP-249 (S.C. Ct. App. 2021 filed June 30, 2021). Holmes filed a petition for rehearing on July 13, 2021. The Court of Appeals issued an Order denying the petition for rehearing on August 19, 2021. Thereafter, Holmes filed a Petition for Writ of Certiorari to the Court of Appeals, which was granted by the Supreme Court on April 6, 2022.

[1] Petitioner was sentenced to eight years for possession of cocaine, third offense, and twenty years for manufacturing crack cocaine, to be served concurrently.

STATEMENT OF FACTS

Incident

On March 6, 2015, at approximately 5:25 p.m., Officer Joseph Sherwood and two other law enforcement officers with the North Charleston Police Department were standing together in an apartment complex parking lot following an unrelated traffic stop when a taxi pulled into the parking lot. (R. p. 18, lines 14–p. 19, line 6; R. p. 55, line 25–p.56, line 3). Officer Sherwood and a superior officer watched as Petitioner William Holmes and Darell Boston exited the taxi, walked to Denise Holman's apartment, and were invited inside. (R. p. 210, lines 22-24; R. p. 362, line 24–p. 363, line 1). Neither officer saw the men carrying any weapons or contraband, and Officer Sherwood's superior officer later testified that there was nothing suspicious about how the two men got out of the cab and went into the apartment. (R. p. 252, lines 20-23; R. p. 362, line 24–p. 363, line 21; R. p. 375, lines 4-9). The officers watched the men enter the apartment and then resumed their conversation. (R. p. 19, lines 18-24).

The officers continued to talk for about fifteen minutes. (R. p. 73, lines 2-5). During that time, Officer Sherwood did not see or hear anything from the apartment that suggested someone was committing a crime. (R. p. 55, lines 15-19; R. p. 73, lines 2-14). Nonetheless, the officers decided to perform a knock-and-talk at the apartment after Officer Sherwood told his superior officer that he recognized Holmes and Boston from prior run-ins at another house known for drug activity. (R. p. 253, lines 2-13).

After Officer Sherwood knocked, the sole resident of the apartment–Denise Holman–opened the front door. (R. p. 20, lines 17-18). Officer Sherwood identified himself as a law enforcement officer and asked to enter the apartment to talk to her. (R. p. 20, lines 17-20; R. p. 22, lines 5-7). Holman then stepped back, and Officer Sherwood walked into the apartment. (R.

p. 20, lines 17-22). Officer Sherwood never told Holman that that she could refuse to let him enter her apartment. (R. p. 56, line 20–p. 57, line 1).

Upon entering the 400-square-foot, three-room apartment, Officer Sherwood observed Holmes and Boston standing in the kitchen near a running microwave and two plastic baggies containing white residue on the kitchen counter. (R. p. 27, lines 4-25). After Officer Sherwood stepped inside, Holmes and Boston opened the microwave and ran to the bathroom. (R. p. 29, line 23 –p. 30, line 5). Assuming the men were armed, Officer Sherwood approached the bathroom and demanded that they come out. (R. p. 30, lines 12-19; R. p. 32, lines 21-24). Both men immediately complied by walking into the main living room. (R. p. 32, lines 21-24). The officers sat the men down on the couch and searched them. (R. p. 33, lines 1-4). While searching Holmes, Officer Sherwood's superior officer found cocaine and a scale on his person. (R. p. 33, lines 1-4). While performing a protective sweep, Officer Sherwood discovered a Pyrex cup containing crack cocaine in the bathroom. (R. p. 33, lines 5-12).

After searching the apartment and both men, the officers placed Holmes and Boston in handcuffs, and Officer Sherwood left to get a search warrant. (R. p. 35, lines 11-15). Officer Sherwood returned with a signed search warrant approximately an hour and a half later. (R. p. 51, line 15–p. 52, line 10). He then executed the search warrant and re-discovered the Pyrex cup in the bathroom. (R. p. 52, lines 11-13). Holmes and Boston were subsequently arrested. However, the officers did not arrest Holman. (R. p. 52, lines 21-24).

Motion to Suppress

Both Holmes and Boston made pretrial motions to suppress any evidence stemming from this knock-and-talk. In his memorandum in support of his motion to suppress evidence, Holmes argued that Officer Sherwood's use of the knock-and-talk technique violated his state and federal

constitutional rights because "the officers involved lacked reasonable suspicion to approach the residence and lacked probable cause to search the residence and seize any items" (R. p. 574).

Suppression Hearing

Officer Sherwood, Denise Holman, William Holmes, and Darell Boston testified at the pre-trial suppression hearing. (R. p. 7).

Officer Sherwood Testimony

During the pre-trial suppression hearing, Officer Sherwood testified that, before he performed this knock-and-talk, there were no prior complaints regarding drugs, weapons, wanted persons, or armed and dangerous persons at Holman's apartment. (R. p. 55, lines 2-14). In fact, he was not aware of any complaints involving the apartment. (R. p. 54, line 24–p. 55, line 1). Furthermore, when asked whether he had any information that Holmes or Boston were committing a burglary or armed robbery, Officer Sherwood said "not at all." (R. p. 55, lines 17-19).

Although Officer Sherwood was not aware of any complaints concerning the apartment, he testified that the area where the apartment was located has "always been a hot spot for narcotics activity" and the Police Department had several complaints about drug activity in the area. (R. p. 17, lines 5-9). He made similar contentions in his search warrant affidavit and incident report in this case. In his search warrant affidavit, he stated that he "went to [Holman's apartment] in reference to a complaint about drug deals using the apartments for drug sales." (R. p. 618). In his incident report for this case, he stated that he went to the apartment "in reference to drug complaints under case number 2015008889." (R. pp. 602-603). However, Officer Sherwood later admitted that case number 2015008889 actually involved a trespassing complaint

near another apartment, not a drug complaint.[2] He did not cite any other case numbers in his incident report to support his statement that he approached the apartment because of drug complaints. (R. p. 63, lines 20-22). Moreover, at the suppression hearing, he testified that he was in the area for a "completely unrelated" traffic stop or call for service, and he decided to perform a knock-and-talk only after he remembered who Holmes and Boston were. (R. p. 56, lines 5-15).

Denise Holman Testimony

Denise Holman, the sole resident of Apartment 2, testified that she suffered a brain aneurysm and stroke between the incident and her suppression hearing testimony, which resulted in slight memory issues. (R. p. 100, lines 5-22). Despite her memory issues, she was able to testify to the following: (1) she knew Holmes and Boston (R. p. 100, line 23–p. 101, line 19); (2) Holmes and Boston visited her apartment with her permission (R. p. 101, line 21–p. 102, line 6); and (3) She let the officers in after they knocked on her apartment door, but they did not tell her that she could say no (R. 102, lines 7-20).

William Holmes Testimony

Appellant William Holmes testified that he (1) had known Holman since he was a little boy (R. p. 121, line 24–p. 122, line 1); (2) considered her his friend (R. p. 122, lines 2-4); (3) went to her apartment on the day of the incident to get high and get some music with Boston (R. p. 122, lines 12-14); and (4) felt safe and comfortable in Ms. Holman's apartment (R. p. 123, line 13–p. 120, line 4).

[2] During trial, when he was questioned about why he would say a trespassing case was about drugs, Officer Sherwood stated that "trespassing and drugs, we always look at go hand in hand," because "drug dealers usually trespass." (R. p. 142, line 11–p. 143, line 6).

Darell Boston Testimony

Darell Boston testified that he (1) had known Holman for about fifteen years (R. p. 108, lines 14-15); (2) had been to her home about ten times (R. p. 109, lines 3-5); (3) typically visited Holman to use her electronics and smoke weed in peace (R. p. 109, lines 6-22); (4) had sold Holman crack in the past (R. p. 113, line 22–p. 114, line 3); (5) called Holman and told her he was coming over on the day of the incident (R. p. 109, lines 23-25); and (6) visited the apartment that day to smoke a blunt and upload music (R. p. 110, lines 3-7; R. p. 116, lines 6-8).

Suppression Argument

At the conclusion of the suppression hearing testimony, the Trial Court heard arguments from the State and defense counsel. Holmes's counsel cited State v. Counts, 776 S.E.2d 59, 776 S.C. 153 (2015), and argued that Officer Sherwood did not have the reasonable suspicion necessary to perform a knock-and-talk when he decided to approach Holman's apartment after fifteen minutes without hearing or seeing anything that would lead him to believe a crime was being committed. (R. pp. 143-144). The State argued that Holmes and Boston did not have standing. The State also argued that Officer Sherwood had reasonable suspicion because of his experience as a law enforcement officer, knowledge of Holmes and Boston's prior offenses, and knowledge of drug complaints in the general area. (R. pp. 150-152). However, the State conceded that a police officer's knowledge of a person's criminal history does not give that officer carte blanche to approach that person's door every time the officer sees the person. (R. p. 150, lines 12-18).

Suppression Ruling

After taking the matter under advisement, the Trial Court made the following findings in a written Suppression Hearing Order: (1) "Pursuant to the S.C. Constitution, Defendants do have

standing to contest the admissibility of any evidence collected by Sergeant Sherwood and the North Charleston Police Department;" and (2) "Taking into consideration the totality of the circumstances, Sergeant Sherwood . . . had reasonable suspicion to conduct a knock and talk at the home of Denise Holman. Furthermore, Denise Holman, freely and voluntarily gave officers consent to enter her apartment and the officers' actions inside the apartment were lawful and not violative of the Defendants' rights." Based on these findings, the Trial Court denied the motions to suppress evidence. (R. pp. 1-3).

The case subsequently proceeded to trial, where Holmes was convicted of manufacturing crack cocaine and possession of cocaine, third offense. (R. p. 520, line 19–p. 521, line 13).

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006). "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000). In search and seizure cases, an appellate 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). Although the appellate court may not reverse merely because it would have reached a different conclusion, it should reverse when the trial court has committed clear error. See State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004).

ARGUMENT

The Court of Appeals erred in affirming the trial court's decision to deny Petitioner's motion to suppress evidence where law enforcement conducted a knock-and-talk without reasonable suspicion of criminal activity at the targeted home in violation of Petitioner's state constitutional right to be free from unreasonable invasions of privacy.

The primary issue involved in this case concerns whether Officer Sherwood had reasonable suspicion that criminal activity was occurring at Denise Holman's apartment before he approached it to perform a knock-and-talk. Because the Court of Appeals based its decision in this case on its opinion in State v. Boston, 433 S.C. 177, 857 S.E.2d 27 (Ct. App. 2021), the argument in this Brief will address the points raised by the Court of Appeals in Boston.

In Boston, the Court of Appeals properly relied on this Court's decision in State v. Counts for the proposition that "law enforcement must have a reasonable suspicion of illegal activity to perform a knock and talk." Boston, 433 S.C. at 183, 857 S.E.2d at 30 (citing Counts, 413 S.C. 153, 174, 776 S.E.2d 59, 71 (2015)). However, the Court of Appeals improperly relied on Counts and State v. Kotowski to support its holding that Officer Sherwood had reasonable suspicion in this case. Boston, 433 S.C. at 183-85, 857 S.E.2d at 30-31. The "specific evidence" the Court of Appeals cited to support its holding differs significantly from the evidence presented in Counts and Kotowski and is insufficient on its own to establish reasonable suspicion. Thus, the Court of Appeals erred in affirming the trial court's finding that Officer Sherwood had reasonable suspicion.

I. The Court of Appeals improperly relied on Counts and Kotowski to support its holding that Officer Sherwood had reasonable suspicion.

Both Counts and Kotowski are factually distinct from the present case. Unlike Counts and Kotowski, which both involved extensive, time-intensive police investigations culminating in knock-and-talks, this case involves an officer's uncorroborated mental impressions formed over the course of 15 minutes. As the Court of Appeals noted in Kotowski, "[A]n officer's impression that an individual is engaged in criminal activity, without confirmation, does not amount to reasonable suspicion." Id., 427 S.C. 119, 128-29, 828 S.E.2d 605, 610 (Ct. App. 2019), *aff'd in part, vacated in part on other grounds*, 430 S.C. 318, 844 S.E.2d 650 (2020).

The type and amount of evidence presented in Counts and Kotowski provided a "particularized and objective basis that would lead one to suspect another of criminal activity," which is what is required to support a finding of reasonable suspicion. Kotowski, 427 S.C. at 128, 828 S.E.2d at 610 (internal quotations omitted). The evidence presented in this case does not rise to that level.

Both Counts and Kotowski involved anonymous tips, which occurred months before the knock-and-talks were performed. See Counts, 413 S.C. at 157-58, 776 S.E.2d at 61-62; Kotowski, 427 S.C. at 125-26, 828 S.E.2d at 608. There was no anonymous tip involved in this case.

The anonymous tips in Counts and Kotowski also described specific types of illegal activity taking place at specific addresses. See Counts, 413 S.C. at 157, 776 S.E.2d at 61-62 (Officers "received an anonymous tip alleging Counts was selling marijuana and crack cocaine out of his mother's house and an apartment in Allen Benedict Court in Columbia."); Kotowski, 427 S.C. at 125, 828 S.E.2d at 608 (Officers "received an anonymous tip about the possibility of a drug house at 111 Marsh Point Road."). Such specificity is lacking in this case. Although

Officer Sherwood claimed to have knowledge of illegal activity at the apartment complex generally, he had no specific knowledge of illegal activity at the apartment where the knock-and-talk took place. See Boston, 433 S.C. at 179-80, 857 S.E.2d at 28. Officer Sherwood was not even certain what criminal activity he might find prior to performing the knock-and-talk. He testified that he knocked on the door to make sure that Holman was ok and to "see if there was any [possibility of] ***any crime*** or if she had ***any information*** for us." Id., 433 S.C. at 180, 857 S.E.2d at 28-29 (emphasis added).

Furthermore, in Counts and Kotowski, officers corroborated the information in the anonymous tips through additional investigation and surveillance before performing the knock-and-talks. Counts, 413 S.C. at 158, 776 S.E.2d at 62 (Officers corroborated the information provided in the tips by reviewing the defendant's rap sheet, confirming the defendant had two identification cards on record, and conducting surveillance of Counts' residence.); Kotowski, 427 S.C. at 125, 828 S.E.2d at 608 (Officers corroborated the information provided in the tip by confirming several pseudoephedrine purchases were made by the homeowner and another person by conducting "spotty surveillance" of the residence that was the subject of the tip.). In this case, Officer Sherwood did not perform any additional investigation to corroborate his information before performing the knock-and-talk.

II. The "specific evidence" cited by the Court of Appeals does not support a finding of reasonable suspicion.

In Boston, the Court of Appeals stated that the trial court "relied on specific evidence to find the knock and talk was based on reasonable suspicion of illegal activity." See Boston, 433 S.C. at 185, 857 S.E.2d at 31. However, none of the "specific evidence" cited by the Court of Appeals, standing alone, is sufficient to establish that Officer Sherwood had reasonable suspicion of criminal activity at Holman's home before he initiated this knock-and-talk. Even when the specific evidence is considered together, as it must be, it gains little, if any, strength. See United States v. Sprinkle, 106 F.3d 613, 617 (4th Cir. 1997) ("[I]n the end we must evaluate the combined strength of these factors.").

The specific evidence the Court of Appeals referenced in Boston can be organized into three categories: (a) Officer Sherwood's knowledge of the three people inside the apartment; (b) Officer Sherwood's knowledge of the apartment complex and surrounding community; and (c) Officer Sherwood's training and experience.

First, the Court of Appeals discussed Officer Sherwood's knowledge of the three people inside the apartment. Boston, 433 S.C. at 185, 857 S.E.2d at 31. Specifically, he "knew Boston and Holmes did not live [at the apartment] and recognized them from a previous incident at another location." Id. Officer Sherwood also knew Denise Holman "lived alone, had some undefined limitations, and had used narcotics in the past." Id. None of this information constitutes particularized and objective evidence that would reasonably lead Officer Sherwood to suspect criminal activity was occurring in the apartment. See Kotowski, 427 S.C. at 128, 828 S.E.2d at 610. Officer Sherwood did not describe any specific knowledge about Boston's or Holmes' criminal records. He simply testified that he recognized "them from another residence where drug activity took place," and "had 'several run-ins with them.'" Boston, 433 S.C. at 180,

857 S.E.2d at 28. Nonetheless, even if Officer Sherwood had knowledge of their prior criminal records, that knowledge alone would not be sufficient to create reasonable suspicion. Sprinkle, 106 F.3d at 617; see also United States v. Foster, 634 F.3d 243, 247 (4th Cir. 2011) ("[E]ven knowledge of a person's prior criminal involvement (to say nothing of a mere arrest) is alone insufficient to give rise to the requisite reasonable suspicion.") (quoting United States v. Sandoval, 29 F.3d 537, 542 (10th Cir. 1994)).

Second, the Court of Appeals cited Officer Sherwood's knowledge of the apartment complex and surrounding community. According to the Court of Appeals, Officer Sherwood "was very familiar with the apartment community he surveilled," knew that the "area had been 'a hot spot of narcotics activity," and "had knowledge of the practice of those engaged in illegal activity using the apartments of others to manufacture drugs." Boston, 433 S.C. at 185, 857 S.E.2d at 31. Again, however, this knowledge is not sufficient to establish reasonable suspicion of criminal activity in the apartment specifically. See Illinois v. Wardlow, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000) ("An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime.").

Finally, the Court of Appeals referenced Officer Sherwood's training and experience to support its conclusion that he had reasonable suspicion. The Court of Appeals explained that Officer Sherwood "had years of experience investigating criminal drug activity, with extensive training and certification, including eleven years with the department." Boston, 433 S.C. at 185, 857 S.E.2d at 31. This is not in dispute. Officer Sherwood was certainly an experienced law enforcement officer, but he did not pair his training and experience with more concrete evidence of criminal activity at the apartment in this case. His training and experience alone should not be

sufficient to establish reasonable suspicion. See Foster, 634 F.3d, 248 ("Nevertheless, even relying upon the 'experience and specialized training' of the officer, United States v. Johnson, 599 F.3d 339, 343 (4th Cir. 2010), the totality of the circumstances were not enough to validate the stop.").

The innocuous behavior Officer Sherwood witnessed before performing this knock-and-talk–two men walking into an apartment–only takes on the appearance of suspicious behavior in the context of the drugs that were later found. The purpose of requiring law enforcement to have reasonable suspicion of criminal activity before taking some action, however, is generally to prevent "the government [from relying] upon post hoc rationalization to validate those seizures that happen to turn up contraband." Foster, 634 F.3d at 249 (citing United States v. Martinez-Fuerte, 428 U.S. 543, 565, 96 S. Ct. 3074, 3086 (1976)). The Fourth Circuit Court of Appeals has summarized the importance of enforcing the exclusionary rule in cases like the present case:

> [W]e are deeply troubled by the way in which the Government attempts to spin these largely mundane acts into a web of deception. Although these matters generally only come before this Court where a police seizure uncovers some wrongdoing, we would be remiss if we did not acknowledge that the exclusionary rule is our sole means of ensuring that police refrain from engaging in the unwarranted harassment or unlawful seizure of anyone–whether he or she is one of the most affluent or most vulnerable members of our community.

Id., 634 F.3d at 248-49.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court reverse the decision of the Court of Appeals, remand this case to the Charleston County Court of General Sessions for a new trial, and instruct the trial court to suppress all evidence seized following this knock-and-talk.

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