IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Respondent,

v.

Supreme Court No.: 22-0211
Case No. 21-F-402
Circuit Court of Raleigh County

CHARLES ERIC WARD,

Petitioner.

PETITIONER'S BRIEF

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ASSIGNMENT OF ERROR

The circuit court erred in denying the Petitioner's motion to suppress evidence of a firearm seized by police for the reason that the search and seizure of the weapon was in violation of the Petitioner's rights under the 4th Amendment to the U.S. Constitution and Article III, Section 6 of the West Virginia Constitution.

STATEMENT OF THE CASE

Petitioner Charles Eric Ward was indicted by a Raleigh County grand jury of one count of prohibited possession of a firearm in violation of W.Va. Code § 61-7-7(a)(1). A.R. 26. Mr. Ward had previously been convicted of a felony. A.R. 173. The Petitioner filed a motion to suppress the firearm seized in this case asserting that the warrantless seizure of the firearm was in violation of his rights under the 4th Amendment of the United States Constitution and Article III, Section 6 of the West Virginia Constitution. A.R. 30. The State filed no written response to the motion. The motion to suppress came on for hearing on December 1, 2021. A.R. 54.

The evidence at the suppression hearing is summarized as follows. The Petitioner Mr. Ward testified on his own behalf. A.R. 62. Petitioner stated that on March 22, 2021 two Raleigh County deputy sheriffs came by his mother's home, the basement of which served as his T-shirt manufacturing shop. A.R. 62-63. The deputies asked the Petitioner for an ID. A.R. 63. The Petitioner told the deputies that his ID was downstairs in his mother's house in his T-shirt shop. A.R. 63. The Petitioner and the deputies walked around to the side of the house. Petitioner entered the basement to get his ID and the deputies followed him through the doorway into the building. A.R. 63. The deputies did not ask if they could enter the building and the Petitioner did not consent to them entering the building. A.R. 63-64, 77, 82-83. The Petitioner testified that from the outside doorway it was impossible to see the gun the deputies seized. A.R. 66-67, 69-71. The Petitioner testified to details concerning how the basement of his mother's house was

where he made T-shirts, "tie-dyed T-shirts, coffee mugs, stuff like that," and that it had a separate locked entrance and was for his sole use. A.R. 71-75.

The State called Detective Roger Queen of the Raleigh County Sheriff's Department as a witness. A.R. 75. Det. Queen testified consistent with the testimony of the Petitioner. Queen stated that on March 22, 2021 he responded to a "quarreling neighbors' call" at the address in question. A.R. 76. Det. Queen testified that after another deputy spoke to the neighbor he asked the Petitioner if he had his ID. A.R. 76-77. Petitioner stated, "Yes, I have it in my T-shirt shop." A.R. 77. Det. Queen further testified that at that point he and the other deputy "went around back with him, he went through the first door, I followed him into that, the second door as you see right there in that picture. For officer safety, he was retrieving an ID and I was standing there in the doorway watching him as he retrieved his ID." A.R. 77. Queen was asked, "Now he [the Petitioner] says you didn't ask if you could come in. Did you ask him?" Queen answered, "At that point when I was standing in the that doorway, I had not. I was doing it for officer safety and I didn't feel that I was entering his residence at that time. We were there for a disturbance. And then as he was getting his ID, I noticed a weapon over in the corner, and I asked at that point, 'Do you mind if I come in?' As he was fiddling with his ID, he said 'Yes,' [meaning it was okay to enter] and I went in and retrieved the weapon." A.R. 77-78. Det. Queen said that the Petitioner consented to him entering the inner room *once he saw* the firearm. A.R. 78. Queen then retrieved the weapon and the Petitioner admitted that he was a felon. A.R. 78-79.

Det. Queen justified his entry inside the building without the consent of the Petitioner with the following testimony:

Q. So that we're clear, when he was getting his ID, where were you?

A. I was *inside the door* on the left.

Q. And you had followed him *into the entrance* to the basement but not into the shop yet?

A. I was *in far enough* that I could see where he was at and I could see the inside of the shop there for officer safety.

Q. You said that a couple times. Explain to us what you mean by that.

A. We were there on a neighbor dispute. We don't know the level of his anger, whether it's against us for showing up or if it's still against the neighbor or what. I mean he was agitated at that point because of what was going on with the neighbor and, when he entered that facility, we don't know at that point if they're going to take that anger out on us or if they're going to try to retaliate against the neighbor by grabbing a firearm, a weapon, or whatever. So it's best to keep your eye on the person that you're talking to, see his hands and make sure that that keeps you safe and everybody else around you safe.

Q. Did you enter his mother's basement with the intention of conducting a search?

A. No, sir.

Q. It was strictly to make sure there wasn't some kind of weapon pulled and used against you and Deputy Howard?

A. Yes, sir.

A.R. 79-80. [Emphasis added]

During cross-examination Det. Queen testified as follows with regard to the Petitioner obeying the instruction of the officer to get his ID.

Q. And he was complying with you?

A. Yes.

Q. He went to get it voluntarily?

A. Yes, he was compliant.

Q. And, theoretically, he didn't even have to go do that, did he; he could have said no?

A. Under an investigation, he needs to be able to identify himself.

Q. And he willing did that, he was cooperating with you?

A. Yes, sir.

Q. So you had *nothing specific* to worry about for your officer safety, it was just a general thing?

A. We always worry about officer safety when we're in a – go out on a situation.

Q. Of course. But *nothing particular* to this incident gave rise to you fearing for your safety.

A. No.

A.R. 84-85. [Emphasis added] Det. Queen testified as to where he was when he first saw the firearm as follows:

Q. But when you – but you did notice the gun when you were *inside the room*?

A. Yes, sir.

A.R. 82. [Emphasis added]

The court then inquired of Det. Queen in order to clarify:

Q. So am I to understand then that you stepped *inside the door* and you were *inside the room* –

A. Yes.

Q. – when you observed the weapon?

A. Yes, I was *inside the room.*

Q. Okay. And there came a point when you asked – when you testified that you asked the defendant for consent. Consent to do what?

A. Well, I asked for consent at that point to go in, because I wanted to verify that that was a weapon I saw.

Q. Okay. So at the point when you asked for consent, had you already stepped through the door into the room or were you still outside the room?

A. I was in the corner. I was just *inside the doorway* on the left.

Q. All right. And when you had gotten to the doorway – standing near the doorway inside the room, is that the location?

A. Yes.

A.R. 85-86. [Emphasis added]

Finally in redirect examination the record was made absolutely clear that the officer was inside the house.

Q. There are two rooms we deal with here, Detective. This purplish door is the door that goes to the outside of the house; correct? And you were clearly *inside that door*; correct?

A. I was *past that door* and I was –

Q. Were you also *inside this door* that has the hasp on it?

A. I was just on the left *inside that door*, yes.

Q. *Inside the room?*
A. *Yes.*

A.R. 88. [Emphasis added]

At the conclusion of the evidence in the suppression hearing the parties argued the suppression issue. The parties agreed that the Petitioner had a reasonable expectation of privacy in the premises in question. A.R. 89-91. Defense counsel asserted that since the record was clear that the officer entered the premises without a search warrant or consent that the seizure of the firearm could only be justified under the "plain view doctrine." A.R. 89. See *State v. Julius*, Syl. Pt. 3, 185 W.Va. 422, 408 S.E.2d 1 (1991). Defense counsel argued that the first factor under the "plain view doctrine" was that the officer did not violate the 4th Amendment in arriving at the place from which the incriminating evidence, in this case a gun, could be viewed. A.R. 89. The Petitioner maintained that the State could not meet this factor since the officer entered the premises to the point where he saw the gun without either a warrant or consent. A.R. 89. In response to this the State argued that the officer was lawfully on the premises under the "officer safety" exception. A.R. 90. The Petitioner replied that the claim of an exigent circumstance for the reason of officer safety failed because the officer in his testimony stated that there was "nothing specific" that caused the concern. A.R. 91. Moreover, the Petitioner did nothing wrong and was obeying the deputies' orders when he went in the house. A.R. 92. The circuit court took the motion to suppress under advisement. A.R. 32, 98.

On December 2, 2021 the court entered an "Order Refusing motion to suppress evidence of firearm." A.R. 35. It was undisputed that there was no search warrant. A.R. 30. The court expressly found that the officers followed the Petitioner "into the building." A.R. 36. The court did not find that the Petitioner consented to the police entry into the building. A.R. 35-37. In ruling the court relied upon the plain view doctrine articulated in *State v. Julius, supra.* The first

factor under the plain view doctrine is that the officer did not violate the 4th Amendment in arriving at the place from which the incriminating evidence could be viewed. *Julius,* at Syl. Pt. 3. Based upon the claim of "officer safety" the court reached the ultimate conclusion that the officer was justified in being inside the building at the point where he saw the gun because of the danger posed by the Petitioner. A.R. 36-37. Accordingly, the circuit court denied the motion to suppress. A.R. 37.

On January 6, 2022 the Petitioner entered a plea of guilty to the single count in the indictment. A.R. 104. The Petitioner's guilty plea was pursuant to Rule of Criminal Procedure 11(a)(2) and thus preserved his right to appeal the circuit court's denial of the motion to suppress. A.R. 126-28. The court accepted the Petitioner's plea under Rule 11(a)(2) by order of January 9, 2022. A.R. 39.

On February 17, 2022 the Petitioner was sentenced to 12 months probation and a $500 fine. A.R. 164-65. A sentencing order was entered that same day. A.R. 44. It is from this final order that the Petitioner brings this appeal.

SUMMARY OF ARGUMENT

During a routine investigation the police ordered the Petitioner to retrieve his ID from inside private premises. When Petitioner entered the building police followed him inside without either a search warrant or his consent. Inside the building police saw a firearm. Unknown to police when they first saw the gun, the Petitioner was a felon, and it was unlawful for him to possess the weapon. Petitioner filed a motion to suppress evidence of the firearm.

The evidence at the suppression hearing was that the officer followed the Petitioner into the building because of concern for officer safety since the Petitioner appeared to be "agitated."

The evidence provided no further justification for the police entry other than "agitation" and a general concern for officer safety. The evidence gave no specific, particularized and articulatable basis for the entry for reason of officer safety as required by State and federal case law. *Terry v. Ohio,* 392 U.S. 1, 21-22, 27 (1968); *Maryland v. Buie*, 494 U.S. 325, 327, 330-37 (1990) and *State v. Lacy*, Syl. Pt. 6, 196 W.Va. 104, 468 S.E.2d 719 (1996). In fact, the officer testified there was no particular reason. A.R. 84-85. Furthermore, the police themselves ordered Petitioner to enter the building thereby creating any perceived need for the officers to enter. The circuit court erred in reaching the ultimate legal conclusion that the police entry into the premises was reasonable under the 4th Amendment since "agitation" alone on the part of the Petitioner did not reasonably justify the police entry into the building in the absence of specific, particularized and articulable reasons, and also since the police ordered the Petitioner to go inside to get his ID, thus causing the very circumstance that the State claimed justified the entry. Accordingly, all evidence of the firearm should have been suppressed.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Petitioner requests Rule 19 argument in as much as Petitioner's counsel believes oral argument will be helpful to this Court and this case involves the application of settled law. This case is appropriate for memorandum decision.

ARGUMENT

The circuit court erred in denying the Petitioner's motion to suppress evidence of a firearm seized by police for the reason that the search and seizure of the weapon was in violation of the Petitioner's rights under the 4th Amendment to the U.S. Constitution and Article III, Section 6 of the West Virginia Constitution.

STANDARD OF REVIEW: "[T]he ultimate determination as to whether a search or seizure was reasonable under the Fourth Amendment to the United States Constitution and Section 6 of Article III of the West Virginia Constitution is a question of law that is reviewed *de novo." State v. Lacy, Syl. Pt. 2,* 196 W.Va. 104, 468 S.E.2d 719 (1996). "Factual determinations upon which these legal conclusions are based are reviewed under the clearly erroneous standard." *State v. Stuart*, Syl. Pt. 3, 192 W.Va. 428, 452 S.E.2d 886 (1994). See also *State v. Rexrode*, 243 W.Va. 302, 311-12, 844 S.E.2d 73, 82-83 (2020) and *State v. Mullens*, 221 W.Va. 70, 73, 650 S.E.2d 169, 172 (2007).

A. The Issue

The Petitioner argued below that because there was no search warrant and no consent to enter the premises that the seizure of the firearm could only be justified if it met the standard under the plain view doctrine. A.R. 60, 89. The Petitioner maintained that since the officer did not lawfully arrive at the position where he first saw the weapon that the plain view doctrine would not apply on the facts of this case. A.R. 60-61, 92-95. The State argued that while there was no warrant and no consent to enter, the gun was in plain view and therefore its seizure did not represent a 4th Amendment violation under the plain view doctrine. A.R. 90. The court agreed with the State and ruled that while there was no search warrant and no consent to enter the building, the officer had lawfully entered the building under the "officer safety" exception to the 4th Amendment and was therefore lawfully at the place where he first saw the firearm. A.R. 36-37. The parties below and the circuit court agreed that the plain view doctrine was controlling in this case. The only issue in this appeal is whether the requirements of that doctrine were met on the record presented.

B. The Law

The leading West Virginia case describing the plain view doctrine is *State v. Julius,* 185 W.Va. 422, 408 S.E.2d 1 (1991). *Julius* is cited below by the parties and is the case relied upon by the court in rendering its ruling. A.R. 35, 60, 90. *Julius* sets forth the doctrine as follows:

> The essential predicates of the plain view warrantless seizure are (1) that the officer did not violate the Fourth Amendment in arriving at the place from which the incriminating evidence could be viewed; (2) that the item was in plain view and its incriminating character was also immediately apparent; (3) that not only was the officer lawfully located in a place from which the object could be plainly seen, but the officer also had a lawful right of access to the object itself.

Julius, Syl. Pt. 3. The plain view doctrine and these three requirements are also recognized under federal law. *Horton v. California,* 496 U.S. 128, 136-37 (1990). *Julius* and *Horton* are controlling law in this case. The only question is whether the police officer in this case was legally justified in entering the premises to the place where he saw the gun because of concerns for officer safety.

The history of the police safety warrantless search exception can be traced back to *Terry v. Ohio,* 392 U.S. 1 (1968). While *Terry* was a "pat down" or "frisk" case, it established the analytical framework for evaluating warrantless police intrusions that raise 4th Amendment issues. *Terry* discusses this topic as follows:

> And in justifying the particular intrusion the police officer must be able to point to *specific and articulable facts* which, taken together with rational inferences from those facts, reasonably warrant that intrusion. * * * And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action was appropriate? [citations omitted] Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than *inarticulate hunches*, a result this Court has consistently refused to sanction. [citations omitted] And a simple "good faith on the part of the

> arresting officer is not enough." * * * If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be "secure in their persons, houses, papers and effects," only in the discretion of the police." [citation omitted]

Terry, 392 U.S. at 21-22. {Emphasis added] The *Terry* decision was made in the context of concerns for officer safety. *Id.* at 23, 27-30. With regard to the specific issue of officer safety the Supreme Court held:

> Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. [citations omitted] And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his *inchoate and unparticularized suspicion* or "hunch," but to the *specific* reasonable inferences which he is entitled to draw from the facts in light of his experience.

Terry, 392 U.S. at 27. [Emphasis added]

In 1990 the U.S. Supreme Court decided *Maryland v. Buie*, 494 U.S. 325 (1990). The *Buie* case extends the requirement that a 4th Amendment intrusion for officer safety must be based on specific and articulable facts to protective sweeps of premises. *Buie*, 494 U.S. at 327, 330-37. *Buie* even involved a claim that the incriminating evidence came into "plain view" during the officer safety sweep. *Id.* at 327. The *Buie* Court relied heavily upon the *Terry* decision in requiring that protective sweeps of premises must be supported by specific and articulable facts. *Id.* at 330-34.

In evaluating whether a protective sweep or entry is reasonable under the 4th Amendment the "good faith" or state of mind of the officer is irrelevant. The circumstances viewed objectively must justify the intrusive action. *Terry*, 392 U.S. at 21-22; *Brigham City, Utah v. Stuart*, 547 U.S. 398, 404-05 (2006).

The law of West Virginia is consistent with federal law. Searches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable under the 4th Amendment and Article III, Section 6 of the West Virginia Constitution, and are only subject to a few specifically established and well-delineated exceptions. *State v Kendall*, Syl. Pt. 4, 219 W.Va. 686, 692, 639 S.E.2d 778, 784 (2006). The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption that the exigencies of the situation made that course imperative. *Id.*

One of the exceptions is a protective search for police safety. *State v. Lacy*, Syl. Pt. 5, 196 W.Va. 104, 468 S.E.2d 719 (1996). In *Lacy* this Court adopted the federal *Terry* and *Buie* standard for evaluating claims of police safety intrusions into 4th Amendment protected areas. That is that "[a]n officer must show there are *specific articulable facts* indicating danger and thus this suspicion of danger to the officer or others must be reasonable. If these two elements are satisfied, an officer is entitled to take protective precautions and search in a limited fashion for weapons." *Lacy,* Syl. Pt. 6. In fact, this Court in *Lacy* relied on the *Terry* and *Buie* decisions. *Lacy*, 196 W.Va. at 113-18, 468 S.E.2d at 728-33. The *Lacy* Court wrote that the "reasonableness of the officer's beliefs and actions will be left initially to a circuit court to evaluate." *Lacy,* 196 W.Va. at 116, 468 S.E.2d at 731. "A court sitting to determine the existence of reasonable suspicion must require the agent to articulate the factors leading to that conclusion." *Lacy,* 196 W.Va. at 117, 468 S.E.2d at 732; quoting from *U.S. v. Sokolow*, 490

U.S. 1, 10 (1989). The circuit court must make an explicit finding as to the reasonableness of the police conduct by a careful balancing of the private interests versus the governmental interests. *Lacy*, 196 W.Va. at 118, 468 S.E.2d at 733.

C. The Error

The evidence at the suppression hearing was undisputed. The testimony of the Petitioner and Det. Queen was consistent. The Petitioner believes the entirety of Det. Queen's testimony to be truthful and accurate. The circuit court in its order denying the motion to suppress made various findings of fact based on the testimony at the suppression hearing. A.R. 35-37. Petitioner believes all of the court's factual finding to be accurate and the Petitioner is in complete agreement with all of them. Those findings include that the police officers followed the Petitioner "into the building." A.R 36.

It is the ultimate legal conclusions made by the circuit court that the Petitioner disputes. Those conclusions can be found on the pages 2 and 3 of the court's order and those conclusions are subject to *de novo* review. A.R. 36-37. The court below made a single error for two reasons.

First, the court erred by not requiring Det. Queen to *articulate specific* factors that lead to the conclusion that he needed to enter the building for officer safety. *Lacy*, Syl. Pt. 6, 196 W.Va. at 117, 648 S.E.2d at 732, quoting *U.S. v. Sokolow*, 490 U.S. 1, 10 (1989). The *Lacy*, *Terry* and *Buie* cases make it absolutely clear that the police safety exception requires the officer provide that court with specific reasons the intrusion into a protected area was necessary. Det. Queen merely testified that he followed the Petitioner into the building for officer safety. A.R. 77. The only justification Det. Queen gives is that that Petitioner was "agitated at that point because of what was going on with the neighbor." A.R. 79. Det. Queen said it was just "best to

keep your eye on the person that you're talking to, to see his hands and make sure that keeps you safe and everybody else around you safe." A.R. 80.

In cross-examination Det. Queen was asked if it "is customary then for you to enter somebody's house without a warrant and without consent so that you – for officer safety?" He answered, "I wouldn't say – I mean it's customary for us to keep an eye on the suspect or the defendant for officer safety." A.R. 83. At this point in time the Petitioner, of course, was not either a defendant or suspect. Queen explained that he instructed the Petitioner to get his ID out of the house and the Petitioner complied with police direction. A.R. 84. Det. Queen was asked and answered the following:

> Q. So you had nothing *specific* to worry about for officer safety, it was just a general thing?
> A. We always worry about officer safety when we're in a – go out on a situation.
> Q. Of course. But nothing *particular* to this incident gave rise to you fearing for your safety?
> A. No.

A.R. 84-85.

The record is absolutely clear that Det. Queen only testified to a general concern for officer safety that is present every time police respond to a call. Queen testified that the Petitioner was complying with officers' orders when he entered the building. Det. Queen only said that the Petitioner was "agitated." A.R. 79. Nothing else. His concern for safety officer was based on no *particular, specific, articulable factors* as required by the *Lacy, Terry* and *Buie* line of cases. In any event, he certainty did not articulate any *specific, particular factors* during his testimony, and when asked said there were none. A.R. 84-85. Det. Queen actions were clearly based on a mere "inchoate and

unparticularized suspicion or 'hunch.'" *Terry*, 392 U.S. at 27; *Buie*, 494 U.S. at 332. The Petitioner does not question the good faith of the Det. Queen. But the good faith or intent of the officer is irrelevant. *Terry,* 392 U.S. at 21-22, *Brigham City, Utah v. Stuart*, 547 U.S. at 404-05. It is an objective standard. Saying that a person is "agitated" is not enough. People that are confronted by the police are often agitated. That does not make them dangerous.

The type of evidence that would qualify as specific and particular would be strange, unusual or threatening behavior or actions or knowledge that a person has a violent history. For example, if a person were cussing, shouting, yelling, making threatening statements, acting wildly, appeared to be confused, expressed anti-police sentiments or refused to cooperate, there might be objective, specific and particularized reasons for concern about officer safety that could be articulated in testimony, and appropriate protective action by police would be called for. The facts in the present case are the opposite. The Petitioner fully cooperated with police. A.R. 84. The police had no knowledge of a violent history. He merely seemed "agitated."

If "agitation" is the standard for justifying warrantless non-consensual entry into private premises, then there is little left of the 4th Amendment right to be free from unreasonable searches and seizures. The police need only testify that a person is "agitated" to follow them into their home or other private building. The requirement of specific, particular and articulatable reasons sets a much high bar.

Second, the circuit court erred in ruling that the police action of following the Petitioner into the building was reasonable in light of all the circumstances, separate and apart from the failure to support the police action with specific particularized reasons.

That is to say, that even based on the vague and general justification of the Petitioner being "agitated" that court should have found that the police entry into the building was not reasonable. Det. Queen testified that it was a concern for officer safety that necessitated him following the Petitioner into the house. But if Queen actually believed the Petitioner was reasonably likely to grab a gun and shoot someone, the last thing he would have done is direct the Petitioner to go into the house where there could be a weapon. To the extent there was an exigent circumstance or danger of the Petitioner retrieving a weapon, it was the police themselves that created that situation by directing the Petitioner to go inside to get his ID. Police created exigencies are not legitimate exceptions to the search or arrest warrant requirement. *State v. Canby,* Syl. Pt. 1, 162 W. Va. 666, 668-69, 252 S.E.2d 164, 166-67 (1979). The Petitioner was outside, and he was cooperating with the police and was not armed. The mere fact the Petitioner was agitated did not justify the intrusion into the house. On the other hand, if the police really thought the "agitation" was so great as to make the Petitioner dangerous then it was folly to ask him to go to where there might be a gun. Furthermore, the police could have simply asked if they could accompany the Petitioner into the house to get the ID. There is no reason to think he would not have consented. The police however directed him to get the ID, did not ask for consent to enter, and then went ahead and entered the premises. The circuit court erred in reaching the ultimate legal conclusion that this action on the part of the police was reasonable under the police safety exception.

Finally, it must be remembered that that Petitioner was not a suspect in any crime or the subject of a criminal investigation. No crime had been reported to the police. They only responded to two neighbors quarrelling. No crime was committed or alleged.

At the time the police entered the house the neighbors were separated and one of them was simply getting his ID. A police claim of "agitation" did not reasonably support the police entering private premises in these circumstances.

CONCLUSION

The evidence at the suppression hearing in this case did not provide specific, particularized and articulated reasons for the entry into the private premises as required by both State and federal case law. Mere "agitation" on the part of a citizen is not enough. Anyone while in their house or other private premises might have access to a firearm and might pose a danger. The police cannot either follow an "agitated" person into their house or enter a house because they believe a person inside is agitated. If this Court upholds this basis for the circuit court not suppressing the evidence in this case it means that in order to enter anyone's home or other private premises the police need only maintain that a person inside was agitated, even if the police themselves are the ones that caused the person to enter the premises. This is the exact circumstance that the *Terry* case was describing when the U.S. Supreme Court stated that "the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers and effects,' only in the discretion of the police." *Terry*, 392 U.S. at 21-22. Every time police knock on the door of a house and an "agitated" person comes to the door, police could justify a search of the inside of the house near the door for so-called officer safety. This cannot be the law.

As indicated above the Petitioner does not dispute or appeal any of the circuit court's factual determinations, only the ultimate legal conclusion of the circuit court

which is subject to a *de novo* standard of review. For all the reasons set forth above the Petitioner moves this Court, exercising the applicable *de novo* standard of review, to reverse the Petitioner's conviction and the circuit court's order denying the Petitioner's motion to suppress and to remand this case to the circuit court for further proceedings consistent with this Court's order.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Gary A. Collias, counsel for Petitioner, Charles Eric Ward, do hereby certify that I have caused to be served upon counsel of record in this matter a true and correct copy of the accompanying *"Petitioner's Brief and Appendix Record"* and to the following:

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