

No. 17-378

IN THE
Supreme Court of the United States

THE STATE OF SOUTH CAROLINA,

Petitioner,

v.

ALPHONSO CHAVES THOMPSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

Respondent Alphonso Chaves Thompson respectfully requests that this Court deny the petition.

JURISDICTION

This Court may have jurisdiction pursuant to 28 U.S.C. § 1257(a).

STATEMENT

A. Factual Background

In May of 2010, Respondent was arrested after drugs and guns were found during a search of his parents' home located at 120 River Street ("River Street") in Spartanburg County, South Carolina. (R. 35). At the time of his arrest, and for several years prior, Respondent lived in Greenville County, South Carolina. (R. 35).

The River Street search occurred after a South Carolina Circuit Court Judge issued a warrant to Investigator Chris Raymond, a Drug Enforcement Administration task force officer who worked for the Spartanburg County Narcotics Division. Investigator Raymond's affidavit in support of the River Street search is set forth in full in the opinions below. (App. 4–10).¹

1. At the state court suppression hearing, Respondent's trial counsel explained that two federal magistrates rejected the task force officers' attempt to search River Street before the state court judge authorized it. (R. 14).

B. Procedural History

In October of 2010, based on the evidence found at River Street, a federal grand jury indicted Respondent for conspiracy. (R. 9). Greenville County, where Respondent resided, commenced asset forfeiture proceedings and seized currency found at Respondent's house. (R. 9).

Three months later, after voluminous discovery and several motions, Respondent moved for dismissal of the federal conspiracy charge. (R. 9; 10–13).² Ultimately, the U.S. Attorney for the District of South Carolina dismissed the charge. According to Respondent's trial counsel, Assistant United States Attorney Mormon stated that he (Mormon) had misgivings about the probable cause for River Street from the beginning, which the discovery process did not alleviate. (R. 9).³ Greenville County withdrew forfeiture proceedings and returned Respondent's money, indicating they could not carry their burden of proof. (R. 11).

Following the federal dismissal, Respondent was indicted in state court, based on the same evidence, for trafficking in cocaine over 400 grams, possession of marijuana with intent to distribute, and possession of a weapon during the commission of a violent crime. (R. 11; 356–59).

2. This section derives from trial counsel's background recitation of the case to the state trial court during the pre-trial suppression hearing.

3. AUSA Mormon did not testify at the suppression hearing.

During an extensive pre-trial hearing, Respondent sought suppression of the evidence found at River Street pursuant to the South Carolina Constitution, South Carolina's search warrant statute, and the Fourth Amendment. *State v. Thompson*, 419 S.C. 250, 252, 797 S.E.2d 716, 717 (S.C. 2017) ("Prior to trial, Thompson moved to suppress the evidence seized from 120 River Street. Thompson challenged the search warrant under the Fourth Amendment to the United States Constitution, Article 1, § 10 of the South Carolina Constitution, and S.C. Code § 17-13-140."); (R. 7). Respondent's motion was denied. (R. 60).

Following a trial, where Respondent again denied knowledge of the drugs and weapons, the jury found him guilty on all three counts. (R. 259; 327–328). The trial court sentenced Respondent to concurrent terms of twenty-five, five, and five years' imprisonment, respectively. (R. 330).

Respondent first appealed his conviction to the South Carolina Court of Appeals where he argued, as he had at trial, for suppression of all evidence found at River Street, pursuant to the State Constitution and statutory code, as well as the Federal Constitution. (R. 392; 400; App. 26–27).

A panel majority disagreed, affirmed the trial court, and denied Respondent's petition for rehearing. *State v. Thompson*, 413 S.C. 590, 776 S.E.2d 413 (S.C. Ct. App. 2015); (App. 17–50). Chief Judge Few dissented and would have reversed. *Id.* at 614-15, 776 S.E.2d at 425-26. The South Carolina Supreme Court subsequently granted Respondent's petition for a writ of certiorari.

On certiorari, Respondent renewed his arguments for suppression of all evidence found at River Street. By a vote of 5-0, South Carolina's Supreme Court agreed and reversed. *See Thompson*, 419 S.C. at 259, 797 S.E.2d at 720. The South Carolina Supreme Court subsequently denied Petitioner's rehearing petition and Respondent was released. (App. 51–52).

REASONS FOR DENYING THE PETITION

Petitioner submits this fact-bound, mine-run drug case warrants review because it “fails to follow this Court’s precedent on an issue of federal constitutional law.” (Pet. 6 (citing *United States v. Leon*, 468 U.S. 897 (1984))). Although the South Carolina Supreme Court did not cite or address *Leon*, review is unnecessary for at least six, independent reasons.

First, this Court does not generally intervene when a state court “fails” to cite and analyze this Court’s case law. *See* Sup. Ct. R. 10(a). By failing to invoke any of Rule 10’s reasons—or even mention the rule at all—Petitioner does not pretend otherwise.

Notably, even when a state court has “wrongly decided” an “important question of federal law” (an argument not raised here) this Court “often decline[s] to grant certiorari, instead reserving such grants for instances where the benefits of hearing a case outweigh the costs of so doing.” *Kansas v. Carr*, 136 S. Ct. 633, 647 (2016) (Sotomayor, J., dissenting).

Second, Petitioner’s “failure to follow” argument essentially amounts to a request for error correction, which

falls well outside this Court’s normal certiorari practice.⁴ Put plainly, this Court is not in the practice of deciding whether a lower court’s disposition in a given case was correct. *See, e.g., Tolan v. Cotton*, 134 S. Ct. 1861, 1868 (2014) (Alito, J., concurring) (“Error correction is outside the mainstream of th[is] Court’s functions and not among the compelling reasons that govern the grant of certiorari.” (internal quotation marks omitted)); *Cash v. Maxwell*, 132 S. Ct. 611, 613 (2012) (Sotomayor, J., statement respecting denial of certiorari) (“Mere disagreement with the [lower court’s] highly factbound conclusion is, in my opinion, an insufficient basis for granting certiorari.”).

Third, ordinary “error correction” is even less warranted on review from a state court of last resort. *See Florida v. Rodriguez*, 469 U.S. 1, 7 (1984) (Stevens, J., concurring) (“As the Court of last resort in the federal system, we have supervisory authority and therefore must occasionally perform a pure error-correcting function in federal litigation. We do not have comparable supervisory responsibility to correct mistakes that are bound to occur in the thousands of state tribunals throughout the land.”).

The need for state court supervisory error correction is at its lowest ebb where, as here, Petitioner does not—and cannot—point to any division among the state courts. *Compare Pennsylvania v. Dunlap*, 129 S. Ct. 448, 449 (2008) (Roberts, C.J., dissenting from denial of certiorari) (“Aside from its importance for law enforcement, this question has divided state courts, a traditional ground warranting review on certiorari.”).

4. Respondent does not concede any error.

Fourth, although the South Carolina Supreme Court did not expressly address *Leon*, or expressly engage in a good faith exception analysis, nothing required it to do so. Indeed, *Leon* is expressly limited to the Federal Fourth Amendment. *Leon*, 468 U.S. at 927 (Blackmun, J., concurring) (“The Court holds today that evidence obtained in violation of the Fourth Amendment . . . need not be excluded, as a matter of *federal* law.” (emphasis added)).

In the intervening thirty-three years, and despite many opportunities, this Court has never ordered state courts to analyze or cite *Leon*, or to craft a state-law version of the good faith exception. To the contrary, states can and have declined to adopt *Leon* as a matter of state law. *See, e.g., Brigham City, Utah v. Stuart*, 547 U.S. 398, 408 (2006) (Stevens, J., concurring) (“The Utah Supreme Court, however, has made clear that the Utah Constitution provides greater protection to the privacy of the home than does the Fourth Amendment.”); David J. Twombly, *The Good-Faith Exception and Unsettled Law: A Study of Gps Tracking Cases After United States v. Jones*, 74 Ohio St. L.J. 807, 814 n.47 (2013) (“Connecticut is one of a number of states that have explicitly rejected *Leon*.”).

Fifth, although Petitioner correctly notes that a state cannot impose greater restrictions as a matter of *federal* constitutional law, both of the cases it relies upon are inapposite. (Pet. 9 (citing *Oregon v. Hass*, 410 U.S. 714 (1975) and *Arkansas v. Sullivan*, 532 U.S. 769 (2001)).

Indeed, in both *Hass* and *Sullivan*, the respective state courts *expressly held* they were *not* bound by this Court’s case law and, therefore, were free to impose *greater* restrictions as a matter of *federal* constitutional law. *See Hass*, 410 U.S. at 719, n.4 (explaining the Oregon Supreme Court’s statement that it could “interpret the Fourth Amendment

more restrictively than interpreted by the United States Supreme Court” was “not the law and must be an inadvertent error”); *Sullivan*, 532 U.S. at 772 (“The Arkansas Supreme Court’s alternative holding, that it may interpret the United States Constitution to provide greater protection than this Court’s own federal constitutional precedents provide, is foreclosed by [*Hass*].”).

The state court opinion here is not remotely similar. The South Carolina Supreme Court neither stated nor implied it was “interpreting the Fourth Amendment more restrictively than the United States Supreme Court.”

Finally, in cases where a state court grants relief to a criminal defendant, this Court risks “issuing opinions that, while not strictly advisory, may have little effect if a lower court is able to reinstate its holding as a matter of state law” thereby “turning the Federal Constitution into a ceiling, rather than a floor, for the protection of individual liberties.” *Carr*, 136 S. Ct. at 647, 649 (Sotomayor, J., dissenting) (citing *Florida v. Powell*, 130 S. Ct. 1195, 1207 (2010) (Stevens, J., dissenting)). These precise concerns are implicated here because, in the context of searches and seizures, South Carolina affords defendants significantly greater protection than the Fourth Amendment.

Article 1, section 10 of the South Carolina Constitution is South Carolina’s Fourth Amendment analogue. Unlike the Federal Constitution, South Carolina’s Constitution contains an express “right to privacy.” *Compare* S.C. Const. art. 1, § 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 . . .” (emphasis added)) *with* *Griswold v. Connecticut*, 381 U.S. 479, 484 (1961) (locating a federal right to privacy in the

“penumbras, formed by emanations” from guarantees set forth in the Bill of Rights).

South Carolina’s Supreme Court has long since held this express right to privacy distinguishes the State Constitution and favors the defendant. *See State v. Weaver*, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (S.C. 2007)

By articulating a specific prohibition against ‘unreasonable 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. Accordingly, the South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.

State v. Forrester, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (S.C. 2001) (same); *State v. Austin*, 306 S.C. 9, 16 n.6, 409 S.E.2d 811, 815 n.6 (S.C. Ct. App. 1991) (“[B]ecause the present version of Article I, § 10 was not adopted until 1971, its framers are much easier to locate than the framers of the Fourth Amendment, and consequently, it is less difficult to determine their ‘original intent.’”).⁵

South Carolina’s Supreme Court has not expressly decided whether the good faith exception applies under the State Constitution—but all signs point to “no.” As

5. Like its Constitution, South Carolina’s search warrant statute provides a higher degree of protection than the Fourth Amendment. *See State v. McKnight*, 291 S.C. 110, 113, 352 S.E.2d 471, 472 (S.C. 1987) (“[S]tate legislatures are free to enact stricter

noted, South Carolina courts routinely invoke the express “right to privacy” in the search and seizure context and even chide litigants who fail to raise state constitutional challenges. *See Austin*, 306 S.C. at 17, 409 S.E.2d at 815 (“For reasons unknown to us, Mr. Austin does not argue for reversal of his conviction based on the State Constitution.”); *see also Carr*, 136 S. Ct. at 647 (Sotomayor, J., dissenting) (folly to grant certiorari and “expend resources on cases where the only concern is that a State has ‘overprotected’ its citizens”).

In any event, at this stage, the issue is not what the South Carolina court *would* do, but what it *could* do. *See Austin*, 306 S.C. at 19, 409 S.E.2d at 816-17 (“Because Mr. Austin has not argued for reversal based on Article 1, § 10, we cannot answer the question of whether the good faith exception exists under the State Constitution.”).

Plainly, the South Carolina Supreme Court *could* (and likely would) declare the good faith exception inapplicable under the State Constitution and insulate its judgment from further review, rendering any merits opinion in this case effectively advisory. *Cf. Powell*, 130 S. Ct. at 1210 (Stevens, J., dissenting) (“In this very case, the Florida Supreme Court may reinstate its judgment upon remand. If the Florida Supreme Court does so, as I expect it will, this Court’s opinion on the merits will qualify as the sort of advisory opinion we should studiously seek to avoid.”).⁶

requirements for the issuance of search warrants. . . . A search warrant that would survive constitutional scrutiny may still be defective under [S.C. Code § 17-13-140].” (internal citations omitted)); *State v. Covert*, 382 S.C. 205, 210, 675 S.E.2d 740, 742 (S.C. 2009).

6. The South Carolina Supreme Court at least arguably based its opinion on an adequate and independent state law ground. *Powell*,

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

December 13, 2017

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130 S. Ct. at 1202 (no jurisdiction where state court decision based on bona fide separate, adequate, and independent grounds). Although the South Carolina Supreme Court did not *expressly* state its reliance on independent state law grounds, the opinion arguably indicates it did. The Court began by noting that Respondent’s challenge arose under both the State and Federal Constitutions, as well as the state search warrant statute. *Thompson*, 419 S.C. at 252, 797 S.E.2d at 717. After reciting this Court’s language from *Zurcher*, the Court analyzed Respondent’s challenge almost entirely by citations to state court opinions. *Id.* at 256, 797 S.E.2d at 719. And, even though the Court concluded by citing *Mapp*, it did so by way of a parenthetical to a state court case. *Id.* at 258, 797 S.E.2d at 259; *Cf. Powell*, 130 S. Ct. at 1209 (Stevens, J., dissenting) (“[T]he state cases relied upon by the Florida Supreme Court did not themselves rely exclusively on federal law.”).