No. COA 16-904 EIGHTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA )

 )

 v. ) From Guilford County

 )

MICHAEL VERNON HUDDY )

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DEFENDANT-APPELLANT’S BRIEF

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DEFENDANT-APPELLANT’S BRIEF

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**ISSUE PRESENTED**

I. DID THE TRIAL COURT ERR BY DENYING MR. HUDDY’S MOTION TO SUPPRESS WHERE THE SEARCH OF MR. HUDDY’S HOME WAS NOT SUPPORTED BY A WARRANT, THERE WAS NO IMPLIED LICENSE TO GO UP A 150-YARD DRIVEWAY AND THROUGH A FENCE TO KNOCK ON MR. HUDDY’S BACK DOOR, AND THE COMMUNITY CARETAKING EXCEPTION DID NOT APPLY?

**STATEMENT OF THE CASE**

Michael Vernon Huddy was indicted on 14 September 2015 for possession of marijuana with intent to sell or deliver, possession of marijuana, and possession of marijuana paraphernalia. (R p 9) Mr. Huddy filed a motion on 16 February 2016 to suppress the fruits of the search of his home. (R pp 11-14) Mr. Huddy’s motion was heard at the 28 March 2016 Criminal Session of the Superior Court in Guilford County before the Honorable Richard S. Gottlieb, Judge Presiding. (R p 17) The trial court denied the motion in a written order filed on 4 April 2016. (R pp 17-19)

After Judge Gottlieb denied Mr. Huddy’s motion to suppress, Mr. Huddy and the state entered a plea agreement before the Honorable L. Todd Burke at the 16 May 2016 Criminal Session of the Superior Court in Guilford County. (R pp 20-23) Pursuant to this agreement, Mr. Huddy entered an *Alford* plea to possession of marijuana with the intent to sell or deliver; the state dismissed the charge of possession of marijuana paraphernalia; and Mr. Huddy reserved the right to appeal Judge Burke’s judgment based on Judge Gottlieb’s denial of his motion to suppress. (R pp 20-23)

Judge Burke sentenced Mr. Huddy to a prison term of between 4 and 14 months, suspended for 12 months of supervised probation. (R p 26) Mr. Huddy entered oral notice of appeal from Judge Burke’s judgment in open court on 16 May 2016. (R pp 32-33)

**GROUNDS FOR APPELLATE REVIEW**

Mr. Huddy appeals from a final judgment of the Superior Court in Guilford County pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-979(b).

**STATEMENT OF THE FACTS**

In the morning of 16 July 2015, Michael Vernon Huddy was inside his home at 5019 Hicone Road in Greensboro, North Carolina, a house at the end of a 150-yard driveway, surrounded by trees with a fenced-in back yard. (T pp 8-11, 18)[[1]](#footnote-1) Outside the home that same Thursday morning, Deputy Tracy Smith of the Guilford County Sheriff’s Office was on patrol to serve warrants and look for suspicious activity. (T pp 8-9) “[V]igilant” in his duty to search for potential criminal activity in what he considered a high-burglary neighborhood, Smith “routinely check[ed] [the] back of residences” in the area for evidence of break-ins. (T pp 9-10) At approximately 11 a.m. on this “nice, clear day,” Smith became suspicious of Mr. Huddy’s home when he saw a vehicle with its doors open at the back of Mr. Huddy’s driveway, near the gated chain-link fence. (T pp 9-10, 22) Smith decided to investigate. (T p 11)

 Smith drove his car up Mr. Huddy’s driveway toward the back of Mr. Huddy’s house and ran the tag on the van in the driveway. (T p 11) When Smith found that the vehicle was registered to an address in the neighboring suburb of Jamestown, he decided to walk around the house itself to look for evidence of a break-in. (T pp 11, 18) Smith checked every window and door on the front of the house as he made his way to Mr. Huddy’s front porch. (T p 42) Smith chose not to knock at the front door because it had cobwebs and appeared to him too “nice and clean, unused” to be the main entrance. (T pp 12, 28) Smith also decided not to call out for an occupant to determine if a break-in was currently in progress. (T p 28) Instead, when his initial investigation uncovered no broken windows, kicked-in doors, or other evidence of a break-in, Smith checked the far side of the house, continuing “completely around [to] the back side of the house.” (T pp 28-29, 42) Smith testified that it was the department’s normal procedure to walk around the entire residence to look for evidence of break-ins. (T p 42)

At the back of the house, Smith crossed through the gate of Mr. Huddy’s chain-link fence into the back yard. (T pp 29-30; State’s Ex. 3, 4) As with the front of the house, Smith saw no signs that any of the doors or windows at the back of Mr. Huddy’s home had been damaged, kicked in, or forced open. (T pp 30-31) Smith crossed a series of stepping stones to the storm door of Mr. Huddy’s adjoining mudroom. (T p 17) Outside the storm door, Smith detected an odor of marijuana for the first time. (T pp 13, 29, 31) Smith opened the storm door and entered Mr. Huddy’s walled-in mudroom, then checked the back door to the main part of Mr. Huddy’s home to see if the door was secure. (T p 13; State’s Ex. 6) This door opened to Mr. Huddy’s kitchen. (T p 32) The smell of marijuana became stronger as Smith approached the interior door. Smith knocked several times on the interior door inside the mudroom to make contact with someone inside the house. (T p 17)

Mr. Huddy eventually answered Smith’s repeated knocks. (T pp 18, 35) He refused to open the door and asked Smith to leave his home. (T p 35) Smith considered Mr. Huddy uncooperative and called for additional police units. (T p 43) Instead of leaving as Mr. Huddy had requested, Smith questioned Mr. Huddy through the closed door about the van in the driveway and about why he was in the house. (T p 18) Mr. Huddy informed Smith that the van belonged to him and provided his license showing the same Jamestown address as the van registration. (T pp 19, 26-27, 61) To show Smith that he lived in the house, Mr. Huddy slid two types of utility payments under the door. (T p 19) Smith was still not convinced because the payments indicated a P.O. box, and Mr. Huddy eventually slid a copy of his lease under the door. (T p 19)

When Mr. Huddy still refused to let Smith into his home, Smith had another officer stay to watch the house while he sought a search warrant based on the smell of marijuana. (R pp 2-6; T p 19) After getting the warrant, Smith and other officers obtained a key to the back door from the landlord and entered Mr. Huddy’s house. (T pp 37, 43) Inside the home, police found marijuana and marijuana paraphernalia then arrested Mr. Huddy. (R pp 7-9; T p 39)

On 16 February 2016, Mr. Huddy filed a motion to suppress all evidence obtained as a result of the 16 July 2015 search of Mr. Huddy’s home. (R pp 11-14) Deputy Smith was the state’s only witness at the suppression hearing. (T p 2) The state also introduced eight photographs of Mr. Huddy’s house. (R pp 15-16; T p 2; State’s Ex. 1-8) In response to Smith’s assertion that the neighborhood was a high-burglary area based on reports of 40 burglaries within the “zone” around Mr. Huddy’s house in the previous year, Mr. Huddy introduced a report prepared by the Greensboro Police Department. (T pp 24-25) The court took judicial notice of the report, which listed just three reported offenses (a larceny, a hit-and-run, and a motor vehicle theft) within 1.5 miles of Mr. Huddy’s home in the month prior to Smith’s investigation. (T p 25)

The trial court denied Mr. Huddy’s motion in a written order dated 3 April 2015. (R pp 17-19) The court found as fact that Smith had become suspicious of a break-in at Mr. Huddy’s home based on (1) the home’s location in what Smith considered a high-burglary area, and (2) the Jamestown vehicle with its doors open parked at the back of Mr. Huddy’s wooded 150-yard driveway. (R p 17) The trial court also found that Smith’s continued purpose throughout his investigation was to determine if a break-in had occurred, that the fence lacked a “No Trespassing” sign, and that the back door inside the mudroom appeared to be the primary entrance to Mr. Huddy’s home. (R pp 17-18) The trial court found that Smith did not discover any evidence of a break-in at the front of the house or near Mr. Huddy’s mudroom and that Smith “did not smell marijuana at the gate” before he crossed the fence into Mr. Huddy’s back yard. (R pp 17-18) Ultimately, the trial court concluded that (1) it was “reasonable” for Smith to investigate the house for a break-in and to knock at Mr. Huddy’s back door instead of the front; (2) Smith had an “implied license” to go through the gate and up to the back door instead of up to the front; and (3) Smith was acting within his community caretaking duties to determine whether a break-in had occurred. (R p 19) On these findings and conclusions, the trial court denied Mr. Huddy’s motion to suppress. (R p 19)

**STANDARD OF REVIEW**

When a motion to suppress is denied by the trial court, this Court applies a two-part standard of review on appeal: First, the trial court’s written findings of fact are binding on appeal if they are supported by competent evidence; second, this Court reviews *de novo* whether the valid findings of fact support the trial court’s conclusions of law, including the ultimate decision to allow or deny the motion to suppress. *E.g.*, *State v. Salinas*, 366 N.C. 119, 123, 729 S.E.2d 63, 66 (2012). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 337, 678 S.E.2d 351, 354 (2009) (citations and internal quotation marks omitted).

**ARGUMENT**

**I. THE TRIAL COURT ERRED BY DENYING MR. HUDDY’S MOTION TO SUPPRESS WHERE THE SEARCH OF MR. HUDDY’S HOME WAS NOT SUPPORTED BY A WARRANT, THERE WAS NO IMPLIED LICENSE TO GO UP A 150-YARD DRIVEWAY AND THROUGH A FENCE TO KNOCK ON MR. HUDDY’S BACK DOOR, AND THE COMMUNITY CARETAKING EXCEPTION DID NOT APPLY.**

The trial court denied Mr. Huddy’s motion to suppress the evidence obtained as a result of Smith’s warrantless search of Mr. Huddy’s home based on its conclusions (1) that Smith had an “implied license” to travel up Mr. Huddy’s 150-yard driveway, cross through a fence into his back yard, enter Mr. Huddy’s mudroom, and knock at the door inside the mudroom; and (2) that Smith was acting within his community caretaking duties to determine whether a break-in had occurred. Both of these conclusions were incorrect. First, no implied license existed because social norms would not invite a private individual to do what Smith did. Second, the trial court’s findings of fact did not establish either (1) an objectively reasonable basis for a community caretaking function, or (2) that Smith’s need to conduct an immediate warrantless search outweighed Mr. Huddy’s fundamental interests in remaining free in his own home from governmental intrusions. Accordingly, the trial court erred by denying Mr. Huddy’s motion to suppress. This court should therefore reverse the trial court’s order, vacate the conviction, and remand the matter to the Superior Court in Guilford County for further proceedings.

1. **Deputy Smith’s search of the curtilage surrounding Mr. Huddy’s home was presumptively unreasonable because Smith did not have a warrant.**

Deputy Smith intruded without a warrant onto Mr. Huddy’s property, through the curtilage surrounding his house, into an exterior door to his home, and up to the door inside Mr. Huddy’s enclosed mudroom. As established by the trial court’s findings of fact, Smith suspected an in-progress burglary at around 11 a.m. on a Thursday morning and stopped his patrol car at Mr. Huddy’s house. (R p 17) Smith then drove 150 yards up the driveway, got out of his car, walked up to Mr. Huddy’s home, and checked the front of the house for broken windows and kicked-in doors. (R p 17; T pp 11-12) Smith chose not to knock on the front door or call for someone at the house, and he found no evidence of any break-in. (R pp 17-18; T pp 12, 28-30) But instead of getting in his car and leaving when nothing confirmed his hunch, Smith continued searching. He checked “every window and door . . . on the dwelling” as he “went completely around [to] the back side of the house.” (T p 28) At the back of the house, he walked through the gated chain-link fence that separated Mr. Huddy’s back yard from his side yard. (T pp 30, 39; State’s Ex. 3-6) After crossing through the gate and walking several yards into Mr. Huddy’s back yard, Smith arrived at the external door to Mr. Huddy’s mudroom. (T pp 11-12; State’s Ex. 3-4) Only then did he smell marijuana. (R p 18)

At the “very core” of the Fourth Amendment “stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” *Florida v. Jardines*, \_\_\_ U.S. \_\_\_, \_\_\_, 133 S. Ct. 1409, 1414, 185 L. Ed. 2d 495, 501 (2013) (internal quotation marks and citation omitted). In longstanding recognition of the role of the home as the “first among equals” under the Fourth Amendment, *id.* at \_\_\_, 133 S. Ct. at 1414, 185 L. Ed. 2d at 501, the United States Supreme Court has reliably held that any search or seizure inside a home is presumptively unreasonable unless justified by a warrant, properly issued and supported by probable cause, *e.g.*, *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 1380, 63 L. Ed. 2d 639, 650-51 (1980). This protection extends not just to the home itself, but to the outer boundaries of the curtilage as well—the entire area immediately surrounding and associated with the home. *Jardines*, \_\_\_ U.S. at \_\_\_, 133 S. Ct. at 1414-15, 185 L. Ed. 2d at 501 (“We therefore regard the area immediately surrounding and associated with the home—what our cases call the curtilage—as part of the home itself for Fourth Amendment purposes. . . . This area around the home is intimately linked to the home, both physically and psychologically, and is where privacy expectations are most heightened.” (citations and internal quotation marks omitted)). “In North Carolina, [the] curtilage of the home will ordinarily be construed to include at least the yard around the dwelling house as well as the area occupied by barns, cribs, and other outbuildings.” *State v. Reed*, 182 N.C. App. 109, 113, 641 S.E.2d 320, 323 (2007) (citations and internal quotation marks omitted); *accord State v. Frizzelle*, 243 N.C. 49, 51, 89 S.E.2d 725, 726 (1955).

 Smith intruded on the curtilage of Mr. Huddy’s property. The moment he crossed through Mr. Huddy’s back fence and walked into Mr. Huddy’s yard without a warrant —a point at which the trial court found Smith “could not smell marijuana” (R p 18)—Smith’s search became “presumptively unreasonable.” *Payton*, 445 U.S. at 586, 11 S. Ct. at 1380, 63 L. Ed. 2d at 651. Accordingly, the trial court was required to suppress all evidence obtained after this point as the fruit of the poisonous tree. *E.g.*, *State v. Graves*, 135 N.C. App. 216, 221, 519 S.E.2d 770, 773 (1999).

1. **The trial court’s findings of fact did not establish an “implied license” for Deputy Smith to travel down Mr. Huddy’s 150-yard driveway, search the front of his house for evidence of a break-in, go through a fence into the back yard, walk through Mr. Huddy’s back yard, go into Mr. Huddy’s mudroom, and knock on the interior back door instead of the front door.**

The scope of an implied license to approach the door of a house for a knock-and-talk is governed by social practice: Custom is the measure of constitutionality. This implied license typically “permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.” *Jardines*, \_\_\_ U.S. at \_\_\_, 133 S. Ct. at 1415, 185 L. Ed. 2d at 502. It is precisely because any private citizen could approach the front of the house to knock that police can do the same. *Id.* at \_\_\_, 133 S. Ct. at 1416, 185 L. Ed. 2d at 502.

Here, the trial court’s findings of fact established that Smith violated both social norms and the Fourth Amendment by intruding through a fence into Mr. Huddy’s back yard. As an initial matter, the evidence presented at the hearing did not support the trial court’s finding that the back door was the “primary” entrance to the home. (R p 18) Smith testified that the front door “had cobwebs hanging from the door” and that it “appeared [to be] just nice and clean,” implying that it was somehow both too clean and too dirty to be the primary entrance. (T p 12) However, Deputy Smith also took several photographs of the house,[[2]](#footnote-2) including the front of the house, which were admitted into evidence to illustrate his testimony. (R pp 15-16;T pp 15-16) Smith testified twice that they provided an accurate depiction of Mr. Huddy’s home. (T pp 15-16, 34-35) From these photos, the front of Mr. Huddy’s house appeared much like the front of any other house, the customary entrance to the home at which visitors might approach. (State’s Ex. 5) There was no obvious reason why a salesman, “Girl Scout[,] or trick-or-treater[]” would decline to knock at the front door and go instead through a chain-link fence into the back yard. *Jardines*, \_\_\_ U.S. at \_\_\_, 133 S. Ct. at 1416, 185 L. Ed. 2d at 502 (footnote call number omitted).

In fact, even Deputy Smith did not act as if he believed the back entrance was the primary door. Smith testified, and the trial court found as fact, that he started his search for evidence of a break-in at the front of Mr. Huddy’s house. (R p 17; T p 11) Smith only went around to the back of the house after his search of the front failed to uncover any evidence to corroborate his hunch that a burglary was in-progress at 11 a.m. on a Thursday morning. (R pp 17-18)[[3]](#footnote-3) This conduct belies any assertion that Smith thought the back door was the primary entrance to Mr. Huddy’s home.

Second, even if Mr. Huddy most often used the back door to enter the house, Mr. Huddy’s practice regarding his own home would not establish an open invitation to the general public. The interior back door was inside a walled-in mudroom, and Mr. Huddy’s home was fenced, “surrounded by woods,” and located “at the end of a driveway that [was] approximately 150 yards.” (R p 17) To get to the back door, a private individual would thus have to start at the street, walk a distance covering one-and-a-half football fields, cross through Mr. Huddy’s chain-link fence, open the storm door to the mudroom, and walk across that mudroom to the door leading into Mr. Huddy’s kitchen. No private citizen, much less an officer actively searching for evidence of crime, would feel that there was “a customary invitation to do *that*.” *Jardines*, \_\_\_ U.S. at \_\_\_, 133 S. Ct. at 1416, 185 L. Ed. 2d at 503 (emphasis in original). To the contrary, the seclusion of the house away from the road behind trees and a chain-link fence would have conveyed to any reasonable individual—as it should have conveyed to Deputy Smith—that any uninvited intrusion at the back door was unwelcome.

Third, even if there had been an implied license for the public to knock at Mr. Huddy’s back door instead of the front, Deputy Smith had no implied license to go to the back door to search for evidence of crime. “The scope of a license—express or implied—is limited not only to a particular area but also to a specific purpose [and] the background social norms that invite a visitor to the front door do not invite him there to conduct a search.” *Id.* at \_\_\_, 133 S. Ct. at 1416, 185 L. Ed. 2d at 503. Here, the trial court specifically found as fact that Smith’s “continued purpose” was to investigate for crime, and specifically “to determine if a break-in had occurred.” (R p 18) If a member of the general public is customarily not invited to go to the front door of a home to search for evidence of law-breaking, then a Sheriff’s deputy is not invited to the back door to do so.

1. **The “community caretaking” exception to the warrant requirement did not apply.**

The community caretaking doctrine provides a limited exception to the warrant requirement of the Fourth Amendment. *State v. Smathers*, 232 N.C. App. 120, 129, 753 S.E.2d 380, 386 (2014). In North Carolina, this doctrine extends to impounding abandoned vehicles, *id.* at 124, 753 S.E.2d at 383, and to situations in which “danger to life and limb may not be imminent but could be prevented by swift action . . . .” *Id.* at 129, 753 S.E.2d at 386 (footnote call number omitted). To show that the community caretaking exception applies, the state must satisfy a three-prong test by proving (1) that a search or seizure occurred within the meaning of the Fourth Amendment, (2) that there was an objectively reasonable basis for a community caretaking function, and (3) that, after considering all relevant circumstances, the public interest in conducting the search outweighed the individual privacy interests at stake. *Id*. at 128-29, 753 S.E.2d at 386. Critically, this doctrine must “be applied narrowly and carefully to mitigate the risk of abuse.” *Id.* at 129, 753 S.E.2d at 386 (citations omitted).

Here, regarding the first prong of this test, Deputy Smith conducted an extensive search of Mr. Huddy’s home by examining the front of the house for evidence of a break-in, then going through a fence into the back yard to check the remaining doors and windows. (R pp 17-18; T pp 28-29) Moreover, by arguing at the suppression hearing that the community caretaking doctrine justified the warrantless search of Mr. Huddy’s house, the state effectively conceded that a search did in fact occur. (R p 19; T pp 56-57) Mr. Huddy agrees that Deputy Smith searched Mr. Huddy’s home within the meaning of the Fourth Amendment.

However, neither the second nor the third prong of the *Smathers* test was satisfied. First, the state failed to prove that there was an objectively reasonable basis for a community caretaking function. In the order denying the motion to suppress, the trial court described only four facts underlying Smith’s mistaken belief that a burglary was in progress: Mr. Huddy’s home might be susceptible to burglary because it was surrounded by woods; a van was parked toward the back of the 150-yard driveway with its doors open; the van was not registered to the residence; and in Smith’s experience, the house was in a high-burglary area. (R pp 17-18) However, nothing about the first three facts suggested that a burglary was then in-progress, and the fourth finding of fact was not just unsupported but affirmatively disproven by evidence of which the trial court took judicial notice.

The trial court found as fact that Smith was on patrol around 11 a.m. on a Thursday in July of 2015, and he became suspicious when he saw a vehicle “with open doors sitting at the end” of Mr. Huddy’s wooded driveway. (R p 17) But there is nothing suspicious about trees, or anything unusual about leaving a car’s doors open for a few minutes,[[4]](#footnote-4) especially during the middle of the day. For example, the driver might be loading or unloading items, or airing out the car after spilling something, or letting the hot July air out of the car before she got in to drive. There is also nothing unusual about the car not being registered to the house. The car could be borrowed or rented, or a friend could be stopping by to feed the pets while the owner is away, or, as here, the car’s owner might simply be a tenant at the house rather than the homeowner. These facts gave Smith no basis to believe that a burglary was then in-progress, much less an “objectively reasonable” one—especially after his search of the front of the house disclosed no broken windows, damaged doorways, or other evidence of a recent break-in. *Cf.* *State v. Jordan*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 776 S.E.2d 515, 520-22 (2015) (holding that the trial court erred by denying the defendant’s motion to suppress because a broken window, a window screen leaning against the building, glass on the ground below the window, an unlocked front door, and no response from inside did not establish “an objectively reasonable belief that a breaking and entering was in progress or had been recently committed”).

Finally, judicially-noticed evidence affirmatively disproved Smith’s assertion that Mr. Huddy’s home was in a high-burglary area. While Smith testified that approximately 40 burglaries were reported in the “zone” surrounding Mr. Huddy’s house in the previous year (approximately one every nine days), the state presented no evidence regarding how large that “zone” was, what it included, or how heavily populated it was. (T p 24) In contrast to Smith’s vague claims regarding the undefined “zone,” the trial court took judicial notice of a report from the Greensboro police department showing *zero* burglaries had occurred within a 1.5 mile radius of the house within the prior month. (T p 24-26) In fact, in the month preceding the search of Mr. Huddy’s home, just three crimes (a larceny, a hit-and-run, and a motor vehicle theft) were reported in an area which included over 7 square miles immediately surrounding Mr. Huddy’s house. (T p 25; Def. Ex. 1) So few crimes in such a large area made Mr. Huddy’s neighborhood anything but a “high burglary” area, contrary to Smith’s testimony. (R p 17)[[5]](#footnote-5)

In short, the four facts identified by the trial court, taken together, and considered alongside the trial court’s other findings of fact, show no basis for Smith’s hunch that someone was actively breaking into Mr. Huddy’s home at 11 a.m. on a weekday morning. Accordingly, there was no “objectively reasonable” basis for a community caretaking function when Smith went through Mr. Huddy’s fence and up to his back door without a warrant.

Similarly, the state did not satisfy the third prong of the *Smathers* test because it failed to show that Smith’s interests in searching the house outweighed Mr. Huddy’s privacy interests in maintaining the sanctity of his home. Considerations relevant to this balancing inquiry include, but are not limited to, “(1) the degree of the public interest and the exigency of the situation; (2) the attendant circumstances surrounding the seizure, including time, location, the degree of overt authority and force displayed; (3) whether an automobile is involved; and (4) the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished.” *Smathers*, 232 N.C. App. at 129, 753 S.E.2d at 386 (citation omitted).

Here, the state’s interests were minimal. No one was plausibly in physical danger, unlike the cases in which this Court has held that the community caretaking exception applied. *See State v. Sawyers*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 786 S.E.2d 753, 758 (2016) (holding that there was an objectively reasonable basis for a community caretaking function where the officer witnessed the defendant and a homeless man dragging a near-unconscious woman into the defendant’s vehicle); *Smathers*, 232 N.C. App. at 130, 753 S.E.2d at 387 (holding that there was an objectively reasonable basis for a community caretaking function where the officer witnessed the defendant strike a large animal with her car, causing sparks to fly when her car hit the road). Deputy Smith had, at best, an unsupported hunch that a burglary was then in-progress at Mr. Huddy’s home in broad daylight. Likewise, Smith had no basis whatsoever to believe that “danger to life and limb [was] imminent, but could be prevented by swift action . . . .” *Smathers*, 232 N.C. App. at 129, 753 S.E.2d at 386 (footnote call number omitted).

Moreover, Smith also had ready options besides intruding into Mr. Huddy’s backyard after finding no evidence at the front of a break-in. For example, if he thought a suspect might load the van with stolen goods and leave, Smith could have parked his patrol car in the driveway to block that avenue of escape and waited for someone to exit the house. Or, as any private citizen might have done, he could have chosen to “approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.” *Jardines*, \_\_\_ U.S. \_\_\_, 133 S. Ct. at 1415, 185 L. Ed. 2d at 502. There was, in short, no pressing need for Deputy Smith to go through Mr. Huddy’s back fence or intrude into his back yard.

In contrast, Mr. Huddy’s privacy interests were of the highest order. Deputy Smith did not stop Mr. Huddy out in public or in his car, where “one has a lesser expectation of privacy . . . .” *Smathers*, 232 N.C. App. at 131, 753 S.E.2d at 387 (citations and brackets omitted). Rather, Smith intruded without a warrant into the curtilage of Mr. Huddy’s home, which stands as “first among equals” under the Fourth Amendment. *Jardines*, \_\_\_ U.S. at \_\_\_, 133 S. Ct. at 1414, 185 L. Ed. 2d at 501. At the “very core” of that Amendment stands the interest violated here: “the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” *Id.* at \_\_\_, 133 S. Ct. at 1414, 185 L. Ed. 2d at 501 (citation omitted). In light of that profound interest, it is unsurprising that this Court has never held in any case before it that the community caretaking doctrine justified a warrantless, exigency-free search of an individual’s home. *See, e.g.*, *Sawyers*, \_\_\_ N.C. App. at \_\_\_, 786 S.E.2d at 758 (applying the community caretaking doctrine to a traffic stop); *Smathers*, 232 N.C. App. at 130, 753 S.E.2d at 387 (same). Instead, both *Sawyers* and *Smathers* emphasized that neither defendant in those cases was “enjoying the privacy of his [or her] own home . . . .” *Sawyers,* \_\_\_ N.C. App. at \_\_\_, 786 S.E.2d at 759; *Smathers*, 232 N.C. App. at 131, 753 S.E.2d at 387. Accordingly, the state failed to show how the state’s interest in searching Mr. Huddy’s curtilage for evidence of crime could outweigh Mr. Huddy’s interest in remaining free, in his own home, from unwarranted government intrusion.

In sum, while Smith conducted a search of Mr. Huddy’s home within the meaning of the Fourth Amendment, the state failed to prove that Smith acted to fulfill a community caretaking function, or that Smith’s need to invade Mr. Huddy’s private property without a warrant outweighed the vital privacy protections at the heart of the Fourth Amendment. In light of this Court’s admonition that the community caretaking “exception should be applied narrowly and carefully to mitigate the risk of abuse,” *Smathers*, 232 N.C. App. at 129, 753 S.E.2d at 386, this Court should not expand this limited exception to excuse Deputy Smith’s warrantless intrusion into Mr. Huddy’s home.

1. **Suppression is required because probable cause was obtained as a direct result of the unconstitutional intrusion into Mr. Huddy’s back yard.**

Under the “fruit of the poisonous tree” doctrine, a trial court is required to suppress all evidence obtained as a result of an unconstitutional search or seizure, whether physical, testimonial, or otherwise. *E.g.*, *Graves*, 135 N.C. App. at 221, 519 S.E.2d at 773. Moreover, this rule extends not just to evidence obtained as direct result of unlawful police conduct, but to all “fruit” of that conduct. *Id.*, 519 S.E.2d at 773.

Here, the warrant to search Mr. Huddy’s home was obtained as a direct result of Smith’s unlawful intrusion into Mr. Huddy’s backyard. The trial court specifically found as fact that “Deputy Smith could not smell marijuana at the gate.” (R p 18) Rather, Smith only smelled marijuana, and thereby obtained probable cause for a search warrant, after he impermissibly crossed through Mr. Huddy’s fence, walked across his backyard, and went up to the storm door to Mr. Huddy’s mudroom. (R pp 17-18) Accordingly, all incriminating evidence against Mr. Huddy was obtained as a direct result of the unconstitutional intrusion onto Mr. Huddy’s property. Because the trial court erred by denying Mr. Huddy’s motion to suppress, this Court should reverse and remand for further proceedings.

**CONCLUSION**

For all the foregoing reasons, Mr. Huddy respectfully requests that this Court reverse the written order denying his motion to suppress, vacate his conviction, and remand the matter to the Superior Court in Guilford County for further proceedings.

Respectfully submitted this the 14th day of October, 2016.

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ATTORNEYS FOR DEFENDANT-APPELLANT

**CERTIFICATE OF COMPLIANCE WITH N.C. R. APP. P. 28**

 I hereby certify that Defendant-Appellant’s Brief is in compliance with Rule 28(j)(2)(B) of the North Carolina Rules of Appellate Procedure as it is printed in fourteen point Times New Roman and the body of the brief, including footnotes and citations, contains no more than 8,750 words as indicated by the word-processing program used to prepare the brief.

This the 14th day of October, 2016.

By Electronic Submission:

 Aaron Thomas Johnson

 Assistant Appellate Defender

North Carolina State Bar Number 46157

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that the original Defendant-Appellant’s Brief has been filed, pursuant to Rule 26 of the North Carolina Rules of Appellate Procedure, by electronic means with the Clerk of the North Carolina Court of Appeals.

I further certify that a copy of the above and foregoing Defendant-Appellant’s Brief has been duly served upon Mr. Martin T. McCracken, Assistant Attorney General, North Carolina Department of Justice, by electronic means by emailing it to mmccracken@ncdoj.com.

This the 14th day of October 2016.

By Electronic Submission:

 Aaron Thomas Johnson

 Assistant Appellate Defender

North Carolina State Bar Number 46157

1. For clarity, citations to the transcript of the suppression hearing will be formatted as “(T

p \_\_)” and citations to the separate transcript of the hearing at which Mr. Huddy pleaded

guilty will be formatted as “(Plea Hearing Transcript p \_\_\_).” [↑](#footnote-ref-1)
2. On 19 September 2016, undersigned counsel requested that the clerk of the Superior Court in Guilford County forward these photographs to this Court. [↑](#footnote-ref-2)
3. At the hearing, defense counsel asked Smith whether it was true that “there had been absolutely no evidence after you were going around the house that there was a break-in.” (T p 30) Smith answered “Not at that time. I still hadn’t—I needed to check the rest of the house.” (T p 30) This response showed that Smith’s approach was to continue searching until his hunch was confirmed or conclusively dispelled. This approach, of course, is incompatible with the Fourth Amendment. In general, suspicious conditions must precede a search, and officers are not free to explore on private property until they are satisfied that their hunches are, in fact, baseless. *See, e.g.*, *State v. Fleming*, 106 N.C. App. 165, 171, 415 S.E.2d 782, 786 (1992) (cautioning that this Court must not “invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches which the Fourth Amendment is specifically designed to protect against”). [↑](#footnote-ref-3)
4. The trial court did not make any finding of fact regarding how long it took between arriving at Mr. Huddy’s home and knocking on his back door, but Smith testified that it took him a “[c]ouple of minutes” before he ended up at the back of the house. (T p 33) [↑](#footnote-ref-4)
5. For context, an area with a radius of 1.5 miles with the Court of Appeals building at its center would include most if not all of downtown Raleigh, from Pullen Park in the west to Raleigh Boulevard in the east. If only three crimes (and zero burglaries) had been reported in this area within the past month, it could hardly be characterized as a “high burglary” area. [↑](#footnote-ref-5)