No. 14-212

In the Supreme Court of the United States

JEREMY CARROLL,
Petitioner

v.

ANDREW CARMAN AND KAREN CARMAN,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF

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REASONS FOR GRANTING THE WRIT

A jury found that a state trooper acted reasonably when, seeking to conduct a "knock and talk," he approached the back door of a residence because it appeared to be a customary entrance used by visitors. In reversing, the Court of Appeals for the Third Circuit created a categorical rule that "a 'knock and talk' encounter *must* begin at the front door . . . [,]" Pet. App. 10a (emphasis added), failing to allow for the possibility that a residence may have more than one entrance customarily used by visitors. This *per se* rule ignores the complexity of the real world and conflicts with other Courts of Appeals, at least two state supreme courts, and the governing principles of Fourth Amendment jurisprudence.

Recognizing that a categorical "knock and talk" rule would place the Third Circuit in conflict with other circuits, respondents proffer two main arguments in opposition to certiorari: (1) that the jury did not find what it *must* have found to reach its verdict in favor of Trooper Carroll; and (2) that the Court of Appeals' opinion does not mean what it actually says. Both arguments are untenable.

1. First, in finding for Trooper Carroll, the jury must have found that the back entrance to the Carmans' residence was customarily used by visitors. The district court instructed the jury on the "knock and talk" doctrine as follows:

> This doctrine allows officers without a warrant to knock on a resident's door or otherwise approach the residence seeking to speak to the inhabitants, just as any private citizen might. Officers should restrict their movements . . . to walkways,

> driveway, porches and places where visitors could be expected to go.

COA App. 156-57 (jury charge).[1] "The law presumes that a jury will find facts and reach a verdict by rational means." *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 396 (1991). In light of these instructions, the only rational explanation for the verdict in this case was that the jury found that the back door *was* a "place[ ] where visitors could be expected to go," and that Trooper Carroll *had* acted "just as any private citizen might." COA App. 156-57.

Respondents offer no other explanation for how the jury could have reached the verdict it did; nor do they ever say just what they think the jury *did* find, if not that the back door appeared to be customarily used by visitors. Instead, the bulk of respondents' argument is an extended attempt to re-litigate issues that the jury resolved against them.[2] *See* Br. in Opp. at 5-8. But the time for doing that is long past, and respondents waived the opportunity when they had it: respondents filed no Rule 50(b) motion challenging the sufficiency of the evidence.

This has important implications for the nature of the Court of Appeals' holding. Not only did the Court of Appeals leave the jury's findings undisturbed,[3] but

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[1] The Court of Appeals appendix will be cited as "COA App." followed by the page number.

[2] For example, respondents repeatedly assert that their deck was behind a fence or gate. Br. in Opp. at 4, 6, 8, 10. The jury, however, heard evidence that the gate appearing in Plaintiffs' Exhibit 18 (*see* Pet. App. 15a) was not present on July 3, 2009. COA App. 93 (trial testimony of Trooper Carroll). The Court of Appeals makes no reference to a gate or fence in its opinion.

[3] Pet. App. 3a n. 2 (recognizing its obligation to construe the facts "in the light most favorable to Carroll").

given the lack of a Rule 50(b) motion, it could not have done otherwise. *Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 407 (2006). The Court of Appeals did not (and could not) hold that the jury's findings were wrong, but that they were irrelevant; and they were irrelevant precisely *because*, as we now discuss, the Court of Appeals rejected a "reasonableness" approach in favor of a categorical legal rule.

2. Contrary to respondents' argument, the Court of Appeals did not conduct the classic Fourth Amendment reasonableness analysis. Despite the jury's finding that the back door was an entranceway where visitors could be expected to go, the Court of Appeals held that the front door was the *only* permissible approach to the residence: "a 'knock and talk' encounter *must* begin at the front door because that is where police officers, like any other visitors, have an implied invitation to go." Pet. App. 10a (emphasis added). Although the Court of Appeals "recognize[d] that there may be some instances in which the front door is not *the* entrance used by visitors[,]" Pet. App. 9a n.6 (emphasis added), the use of the article "the" reinforces the holding that there exists one, and only one, permissible "knock and talk" approach to a residence.

This rule is thus categorical as it makes no allowance for multiple visitor entryways. Rather, so long as the front door is accessible, the Court of Appeals' holding requires its use in every circumstance: "[t]he 'knock and talk' exception requires that police officers begin their encounter at the front door"; "[b]ecause Carroll did not knock on the Carmans' front door, his intrusion cannot be justified as a 'knock and talk.' " Pet. App. 11a.

This holding abandons reasonableness in favor of a *per se* rule, conflicting with the holdings of other federal and state appellate courts that found no Fourth Amendment violation when a side or back door was approached by officers even though a "front door" was accessible. *See e.g. U.S. v. Titemore*, 437 F.3d 251 (2d Cir. 2006); *U.S. v. Thomas*, 430 F.3d 274 (6th Cir. 2006); *U.S. v. James*, 40 F.3d 850 (7th Cir. 1994), *vacated on other grounds*, 516 U.S. 1022 (1995); *U.S. v. Garcia*, 997 F.2d 1273, 1279-1280 (9th Cir. 1993); *State of New Jersey v. Domicz*, 907 A.2d 395 (N.J. 2006); *Timble v. State of Indiana*, 842 N.E.2d 798, 801-802 (In. 2006). These courts recognized that a residence may have more than one entrance customarily used by uninvited visitors and held that a police officer may approach via *any* route that an uninvited visitor might reasonably be expected to use. *Ibid.*

Respondents attempt to distinguish each of these cases from the instant case by noting the different property layouts and unique sets of circumstances. However, these distinctions support petitioner's argument, as they demonstrate the unworkability of a categorical rule in this context. Properties do not adhere to a single uniform design, but present police officers with a myriad of differing layouts to navigate. As the jury found in this case, a home may possess more than one entranceway reasonably appearing to be customarily used by visitors. The Court of Appeals' rigid holding limiting a "knock and talk" approach to only a single primary entranceway, as defined by the hindsight of a reviewing court, is unsuited for the complex real world. The Fourth Amendment requires police officers be reasonable, not clairvoyant.

The Court should review this case to resolve the conflict in Fourth Amendment jurisprudence the Court of Appeals has created.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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