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SC Court of Appeals

STATE OF SOUTH CAROLINA
COURT OF APPEALS

Appeal from Lexington County
The Honorable G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JASON DONN LEE,

APPELLANT.

Appellate Case No. 2019-001977

**AMENDED
BRIEF OF RESPONDENT**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ISSUES PRESENTED.....	v
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS	2
STANDARD OF REVIEW	25
ARGUMENT	
I. The trial judge did not abuse his discretion by denying Lee’s motion to suppress his Verizon Wireless cell phone records and his Fitbit records because (1) no search warrant was necessary to obtain the Fitbit records, (2) the issuing magistrate had jurisdiction to issue the warrants for all of the records under S.C. Code Ann. § 17-13-140 (2022), and (3) the State obtained a separate search warrant issued by a circuit court judge pursuant to the Stored Communications Act for information on his cell phones	26
A. Events at trial	26
B. The trial judge did not abuse his discretion.....	29
1. Lee’s Fitbit Records did not require a search warrant.....	29
2. The search warrants for Lee’s cell phone and Fitbit records were valid.....	33
CONCLUSION	41

TABLE OF AUTHORITIES

Cases

<i>Anders v. California</i> , 386 U.S. 738 (1967).....	1
<i>Bankers Trust of South Carolina v. Bruce</i> , 275 S.C. 35, 267 S.E.2d 424 (1980)	35
<i>Barnhart v. Thomas</i> , 540 U.S. 20 (2003).....	36
<i>Biales v. Young</i> , 315 S.C. 166, 432 S.E.2d 482 (1993)	33
<i>Carpenter v. United States</i> , 138 S.Ct. 2206 (2018).....	27, 30, 33
<i>CFRE, LLC v. Greenville Cnty. Assessor</i> , 395 S.C. 67, 716 S.E.2d 877 (2011)	36
<i>Commissioners of Pub. Works of the City of Laurens v. City of Fountain Inn</i> , 428 S.C. 209, 833 S.E.2d 834 (2019)	36
<i>Davis v. United States</i> , 564 U.S. 229 (2011).....	40
<i>Donaldson v. United States</i> , 400 U.S. 517 (1971).....	32
<i>Dove v. Gold Kist, Inc.</i> , 314 S.C. 235, 442 S.E.2d 598 (1994)	37
<i>Elkins v. United States</i> , 364 U.S. 206 (1960).....	40
<i>Fields v. Melrose Ltd. Partnership</i> , 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993).....	26
<i>Hoffa v. United States</i> , 385 U.S. 293 (1966).....	32
<i>Hudson v. Michigan</i> , 547 U.S. 586 (2006).....	40
<i>In re Search of Yahoo, Inc.</i> , Docket No. 07–3194–MB, 2007 WL 1539971 (D.Ariz. May 21, 2007).....	38
<i>Katz v. United States</i> , 389 U.S. 347 (1967).....	30
<i>Lozoya v. State</i> , Docket No. 07–12–00142–CR, 2013 WL 708489, 2013 Tex.App. LEXIS 1973, *4 (February 27, 2013)	38
<i>Messerschmidt v. Millender</i> , 132 S.Ct. 1235 (2012).....	40
<i>Oliver v. United States</i> , 466 U.S. (1984).....	30
<i>Reporters Committee for Freedom of Press v. AT& T</i> , 593 F.2d 1030 (D.C. Cir. 1978).....	32
<i>Riley v. California</i> , 573 U.S. 373 (2014).....	33

<i>Robinson v. State</i> , 407 S.C. 169, 754 S.E.2d 862 (2014)	26
<i>Santee River Cypress Lumber Co. v. Query</i> , 168 S.C. 112, 167 S.E. 22 (1932)	35
<i>SEC v. Jerry T. O'Brien, Inc.</i> , 467 U.S. 735 (1984).....	33
<i>Smith v. Maryland</i> , 442 U.S. 735 (1979).....	30
<i>South Carolina Tax Comm'n v. Gaston Copper Recycling Corp.</i> , 316 S.C. 163, 447 S.E.2d 843 (1994)	33
<i>State ex rel. Riley v. Martin</i> , 274 S.C. 106, 262 S.E.2d 404 (1980)	37
<i>State v. Cardwell</i> , 425 S.C. 595, 824 S.E.2d 451 (2019)	26
<i>State v. Dunbar</i> , 356 S.C. 138, 587 S.E.2d 691 (2003)	26
<i>State v. Heyward</i> , 432 S.C. 296, 852 S.E.2d 452 (Ct. App. 2020).....	36
<i>State v. Hoffman</i> , 312 S.C. 386, 440 S.E.2d 869 (1994)	37
<i>State v. King</i> , 412 S.C. 403, 772 S.E.2d 189 (Ct.App. 2015).....	32
<i>State v. Liverman</i> , 398 S.C. 130, 727 S.E.2d 422 (2012)	25
<i>State v. Moore</i> , 415 S.C. 245, 781 S.E.2d 897 (2016)	26
<i>State v. Moore</i> , 429 S.C. 465, 839 S.E.2d 882 (2020)	26
<i>State v. Sherard</i> , 303 S.C. 172, 399 S.E.2d 595 (1991)	41
<i>State v. Sweat</i> , 386 S.C. 339, 688 S.E.2d 569 (2010)	35
<i>State v. Torrence</i> , 305 S.C. 45, 406 S.E.2d 315 (1991)	36
<i>State v. Warner</i> , 436 S.C. 395, 872 S.E.2d 638 (2022)	passim
<i>Stone v. Powell</i> , 428 U.S. 465 (1976).....	40
<i>United States v. Bansal</i> , 663 F.3d 634 (3rd Cir. 2011)	38
<i>United States v. Berkos</i> , 543 F.3d 392 (7th Cir. 2008)	38
<i>United States v. Bundy</i> , 195 F. Supp 3d 1170 (D.Or. 2016)	39
<i>United States v. Bynum</i> , 604 F.3d 161 (4th Cir. 2010)	32

<i>United States v. Calandra</i> , 414 U.S. 338 (1974).....	39
<i>United States v. Forrester</i> , 512 F.3d 500 (9th Cir. 2008)	32
<i>United States v. Kernell</i> , No. 3:08-CR-142, 2010 WL 1408437 (E.D. Tenn. April 2, 2010).....	39
<i>United States v. Leon</i> , 468 U.S. 897 (1984).....	40
<i>United States v. Miller</i> , 425 U.S. 435 (1976).....	28, 30, 31, 32
<i>United States v. Scully</i> , 108 F. Supp. 3d 59 (E.D.N.Y. 2015)	39
<i>United States v. White</i> , 401 U.S. 745 (1971).....	32
<i>Weeks v. United States</i> , 232 U.S. 383 (1914).....	39
<i>Wells Fargo Bank, N.A. v. Fallon Properties</i> , <i>S.C., LLC</i> , 422 S.C. 211 (2018)	35

Statutes

18 U.S.C. § 2711.....	38
18 U.S.C. §§ 2701-2712	28
18 U.S.C. 2703.....	38, 39
S.C. Code Ann. §17-13-40.....	27, 28
S.C. Code Ann. § 17-13-140 (2022), and (3).....	26, 34, 35, 36, 37, 38
S.C. Const. art. I, § 10.....	29
18 U.S.C. § 2703(a)	38, 39
18 U.S.C. § 2703(b)	28, 37, 38

Rules

Rule 210(h), SCACR	36
Rule 220(c), SCACR	39

Other Authorities

82 C.J.S. <i>Statutes</i> § 443 (2009).....	3
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APPELLANT’S STATEMENT OF ISSUE ON APPEAL

Did the trial court err by refusing to suppress Lee’s electronic records which the police obtained from multiple providers with a search warrant that was invalid for lack of jurisdiction?

RESPONDENT’S COUNTERSTATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion by denying Appellant’s motion to suppress his Verizon Wireless cell phone records and his Fitbit records because (1) no search warrant was necessary to obtain the Fitbit records, (2) the issuing magistrate had jurisdiction to issue the warrants for all of the records under S.C. Code Ann. § 17-13-140 (2022), (2) the issuing magistrate had jurisdiction to issue the warrants under S.C. Code Ann. § 17-13-140 (2022), and (3) the State obtained a separate search warrant issued by a circuit court judge pursuant to the Stored Communications Act for information on Appellant’s cell phones.

STATEMENT OF THE CASE

The Lexington County Grand Jury indicted Appellant, Jason Donn Lee, in July 2019 for murder (2019-CP-32-02541) and burglary in the first degree (2019-CP-32-02533), in connection with the May 14, 2017 murder of his estranged wife, Lindsey Lee. **R. 1031-34**. James R. Snell, Jr., and Vicki D. Koutsogiannis represented him on these charges. Eleventh Circuit Solicitor S. R. Hubbard III and Deputy Solicitor D. Shawn Graham prosecuted the case. **R. 1**.

Lee received a jury trial before the Honorable Thomas W. Cooper on November 18-22, 2019. The jury convicted Lee of both charges and twice affirmed the verdict when polled. **R. 953, line 13 – 956, line 15**. Although the jury heard overwhelming circumstantial evidence of Lee’s guilt, he was unrepentant following the verdict and exclaimed that he was “innocent.” **R. 966, line 25 – 967, line 6**. Judge Cooper sentenced Lee to concurrent life sentences. **R. 968, lines 13-18; 1035-36**.

Lee timely served and filed a notice of appeal. Assistant Appellate Defender David Alexander represents him on appeal. On October 9, 2020, counsel submitted an *Anders*¹ Brief of Appellant and petitioned to be relieved as counsel. However, in light of the South Carolina Supreme Court’s opinion in *State v. Warner*, 436 S.C. 395, 872 S.E.2d 638 (2022), *reh’g denied* (June 7, 2022), this Court filed an April 15, 2022 Order rejecting that submission and directing the parties to address the following issue:

Did the trial court err by refusing to suppress Lee’s electronic records which the police obtained from multiple providers with a search warrant that was invalid for lack of jurisdiction?

Lee has filed a Brief of Appellant. This is Respondent’s brief.

¹ *Anders v. California*, 386 U.S. 738 (1967).

STATEMENT OF FACTS

Viewed in the light most favorable to the prosecution, the direct and circumstantial evidence presented at trial was that Lee murdered his estranged and soon to be ex-wife, Lindsey Lee. Christina West, Lindsey's supervisor in the IT section of the Lexington County Sheriff's Department, testified that Lindsey started working there in 2011. Ms. West and Lindsey were close friends, both at work and socially. Lindsey was always a cheerful person but struggled with her weight. Ms. West estimated that at her peak, she weighed roughly 240 pounds. **R. 157-61; 167.**

Ms. West and her boyfriend, Lexington County Deputy Shannon Lovell, regularly went on double dates with Lindsey and Lee. Lee was often very critical toward Lindsey and would berate her in front of others, particularly about her weight. She "would just kind of take" these insults. Lindsey began working out at the Muv gym and at the British Bulldog gym in Lexington. **R. 157-61; 167.**

Lindsey became "very regimented" and dedicated to her weight loss, and Ms. West estimated that she lost approximately 120 pounds between 2016 and 2017.² Her daily routine was to work out in the morning, run, and then come into the Sheriff's Office, where she would shower and change into her work uniform before 8:00 a.m. Although Lindsey and Ms. West smoked cigarettes before Lindsey began her transformation, she would not afterwards. Also, she became very strict about her diet, and she did not use drugs of any kind. Despite the changes Lindsey made, Lee continued to berate her about her weight and publicly insult her. He also told her that he may leave her if she didn't lose weight. Around this time, the Lees separated. **R. 161-65; 168-69.**

Although Ms. West had no knowledge of any affairs before the separation, she knew that

² Lee, however, only went to the gym occasionally. **R. 164.**

both Lindsey and Lee began seeing other people after the separation and that Lindsey seemed excited about moving forward with her life. She was also very excited about a planned trip to Scotland in March with Graham Hockley, her trainer at the British Bulldog. Although Ms. West regularly heard the music Lindsey played during her post-workout shower, she did not hear that music on the morning of March 14th, and she did not see Lindsey in the Office. When Lindsey still was not there at 8:00 a.m., Ms. West texted and called her, but did not get a response. Ms. West then reached out to Deputy Shannon Lovell, her boyfriend, and asked him to drive by Lindsey's house to see if she was there. Deputy Lovell soon called her back. He said that the back door to Lindsey's home had been breached and that he would call her back. When she learned that the door had been compromised, she feared that Lee had something to do with it. So, she texted Lee in order to protect Deputy Lovell's safety just in case Lee was in the house. **R. 165-72.**

Deputy Lovell testified that he met Lee through Ms. West, his girlfriend, and Lindsey. He had also observed Lee yelling at Lindsey and demeaning her in public. She responded to these insults by becoming silent. Lee also made rude comments about her in private conversations with Deputy Lovell. After Lindsey began consistently working out, there was a dramatic and noticeable change in her appearance. Although Lee had been the first to go to the gym and take judo lessons, he would not work out as often, and he complained that Lindsey was spending too much time at the gym. **R. 176-82.**

At some point, Deputy Lovell received a phone call from Lee in which Lee told him that Lindsey had asked for a divorce. According to Deputy Lovell, she was ready to move on with her life, but Lee was upset that she wanted a divorce and "he always talked about ... trying to get her back." Eventually, Lee moved to Virginia because "he just couldn't live in the same town as Lindsey." He lived there with his sister, until he had an argument with his brother-in-law. He then

moved to the Greenville area, which was “near his son,” whom he had with his first wife. One day after the separation, Lee drove Deputy Lovell by Lindsey’s mother’s apartment, where Lindsey was staying at the time of the separation, to see if her car was there because she had told him that was where she was staying. He got angry when her car was not there and apologized for getting Deputy Lovell involved in the matter. He also drove by Hockley’s home to check for her car. Once he realized that her car was not at either location, Lee dropped Deputy Lovell off at his home. **R. 182-86.**

Deputy Lovell had not heard from Lee for roughly a week before Monday, March 13, 2017. However, Lee sent text messages to him on the 13th claiming that he was going to be working overtime at the Michelin plant that night. On March 14th, Deputy Lovell received the call from Ms. West asking him to check on Lindsey because she had not come into work that day. He went to Lindsey’s residence. Because he did not get an answer when he knocked on the front door, he went to the back door. He noticed that there was a splinter on the frame of the back door “where the door was opened just a touch.” There were no footprints on the dirty ground, and it did not appear that the door had been “kicked in” or that it had been otherwise forced open.³ Deputy Lovell immediately called for backup and then made the call to Ms. West informing her that the door had

³ Fran Smith testified that she is a realtor and that she showed Lindsey’s house to a prospective buyer on Monday morning, March 13th. Her routine is to pull all of the blinds and lock all of the doors when she leaves a house unless the owner leaves contrary instructions. None were left on the 13th. So, a reasonable inference is that she would have locked the deadbolt on Lindsey’s home. **R. 275-78.**

Kendall Haskett, an employee of AAA Locksmiths and Alarm Company, testified that he has been a locksmith his entire life. He was shown the photographs taken of the door frame and strike plate from Lindsey’s back door lock. (State’s Exs. 4-7). He opined that the deadbolt had to have been open when the damage to the door occurred. Otherwise, the strike plate for the deadbolt would have also been broken out of the frame. He further testified that it would not have taken “a huge amount of force” to break the lower lock. The company also employed Lee as a locksmith. **R. 296-99; 302-04.**

been breached. *R. 184; 186-88; 192-93.*

As soon as a Deputy Jeffcoat arrived, both officers entered the house. Inside, they could hear water running. They then went into the bathroom, where they found Lindsey in the bathtub. “She was laid in the bathtub almost coffin-style,” and water was running over her. The officers observed a large knife wound to her throat; she did not have a top on, or pants, but she did have on spandex underwear. The knife wound spanned almost her whole neck and was gaping open nearly two to three inches. The officers called EMS and began searching the rest of the house. They observed what appeared to be signs of a struggle in the kitchen, and Lindsey’s cell phone and groceries were strewn across the kitchen floor. *R. 188-91.* On March 15th, Deputy Lovell received a text message from Lee about the Lee’s cat, and he checked on it. *R. 193.*

Agent Melinda Worley, a member of SLED’s crime scene unit, testified that she was among the officers who responded to Lindsey’s West Columbia home. “It appeared that there was forced entry at the back door, the wood [on the door frame] was splintered and the strike plate was on the floor.” There was a deadbolt lock on that door. However, there was no damage around the area of the door frame. *R. 205-206; 207-11.*

Inside the house, Agent Worley found Lindsey’s gym bag and groceries spread across the kitchen and foyer area along with a Walmart receipt dated March 13th, at 8:17 p.m. She also found Lindsey’s cell phone. Critical to the case against Lee, Agent Worley also found a piece of a blue latex glove in the foyer area, and two more pieces from a blue latex glove on the living room floor. The washer contained several items of clothing that were still wet. One of those items, a zip-up sweatshirt, contained Lindsey’s wallet. Her driver’s license, credit cards, and membership cards were all in the wallet. *R. 211-16; 240.*

Further, Agent Worley gave this description of the immediate crime scene: Lindsey was in

the bathtub with her legs straight out in front of her, her arms were down at her sides, her head was tilted back into the corner of the bathtub, her neck was gashed open, and her left wrist was cut. Also, Lindsey's fingernails were cut unusually short and that the fingernails on her right hand were cut all the way back to the nailbed. A black Fitbit watch band that had been separated from the Fitbit was on the counter of the vanity. **R. 222-25.**

Agent Worley found a \$100.00 bill in the drawer of her nightstand in the bedroom, and there was no indication that jewelry was stolen. **R. 222; 225-26.** Further, Agent Worley processed Lindsey's Mustang. In the glove compartment, she found a Ziplock baggie containing a green leafy material later determined to be 6.58 grams of marijuana. **R. 218-21; 267.** On March 27th, Agent Worley further processed the residence. Aside from the blood in the bathroom, there was visible blood on the foyer and in the living room, near where she had located the pieces of blue latex. Underneath the kitchen counter were disconnected cables that would otherwise have been connected to the home security system, but there was not a DVR or any other recording device. **R. 227-37.**

Tiffany Edwards was formerly employed in SLED's latent print unit. In that capacity, she processed the Ziplock bag found in the glove compartment of the victim's car for fingerprints. Her testing revealed two possible areas where there may be a print. She was able to identify one print in the middle of the baggie as belonging to Lindsey. Before she processed the baggie for prints, she also swabbed it for possible touch DNA and sent the swabs to the DNA lab. **R. 251-61.**

Kendall Haskett, of the AAA Locksmiths and Alarm Company where Lee worked, testified that most of the company's work is "commercial and electronic security." Lee worked there for about a year or so. Six people worked there at the time, but by March 13, 2017, one (Haskett's father and the company's owner) was out of town. Haskett did not notice anything unusual about

Lee's appearance when Lee came into work on the morning of Monday, March 13th. However, the following morning, Tuesday, March 14th, he came into work with very visible scratches on the front of his face. The scratches were so unusual that Haskett asked Lee about them. He claimed that his cat scratched him.⁴ He did not mention that his personal car, a Kia, was missing. **R. 279-83; 289; 310.**

Haskett never met Lindsey. However, Lee talked about her "[f]airly often." Over "the last couple of months" of his employment, Lee also told Haskett about his financial difficulties; specifically, that "he was having issues with behind on his car payment, behind on some rent, behind on maybe a credit card" As a result, he asked for more overtime work. Lee was issued a work phone as well as a company van. On the afternoon of March 14th, Lee called and said that SLED had contacted him and wanted to meet with him. He wanted to know if they could do this at the shop and Haskett said he could. When Haskett asked what was happening, Lee initially did not tell him. Then, he "just kind of jokingly said he may be leaving in handcuffs." Lee subsequently returned to the shop and two SLED agents met with him for several hours that afternoon. **R. 284-88.**⁵

The agents informed Lee during their conversation that Lindsey was dead. **R. 295.** Towards the end of the officers' visit, Lee consented to them using a device to download information from his phone. They retrieved the device from the nearby SLED office but were unable to successfully download information from the phone. After that effort failed, the officers took the phone to the SLED office and Lee accompanied them there. **R. 288-89.**

⁴ Evan McLeod, who was dating Lee in March of 2017, testified that Lee's cat had been declawed. **R. 603, lines 11-13.**

⁵ Haskett testified that the officers first met with him outside but that they later met in the office's basement. **R. 287.**

Haskett explained that all of the company's vans have distinct logos on them and all are equipped with GPS. Law enforcement asked him to pull the GPS information from Lee's work van. The GPS data showed that at 5:57 p.m. on March 13, 2017, Lee's work vehicle was stopped at 3500 Grandview Drive in Simpsonville, Lee's residence at the time. This meant the van was "in the complete[ly] off position ... [and] [the] keys are out of the ignition." The ignition was not turned on again until 6:06 a.m. The vehicle was driven at that time to the Walmart in Simpsonville. It parked in the lot there at 6:10:08. At 6:14:08, the ignition was turned on, and the van left the parking lot at 6:30:23 a.m. **R. 269-93**. While Lee had planned to work on the 15th, Haskett received a call from SLED informing him of Lee's arrest. **R. 296**.

Dennis Campbell, Lee's coworker at AAA Locksmiths, testified that he did not notice anything unusual about Lee's appearance on Monday, March 13th. Nor was Lee limping or complaining about pain. However, on the 14th, Campbell overheard Haskett ask Lee about what had happened to his face. Lee claimed that "the cat scratched him when his alarm went off." Lee also did not say that his Kia had been stolen or repossessed **R. 312-13**.

During the time that the men had worked together, Lee had told Campbell that his soon-to-be ex-wife had an affair, that she had lost a lot of weight with a personal trainer and then got romantically involved with this man. Likewise, Lee told Campbell that he needed all of the overtime he could get because "he was having some issue with money." On another occasion in March, Lee told Campbell that he was going to meet Lindsey to get their taxes done together. "[H]e made a comment when he came back that she was looking fine and wondered if she was wanting to get back together with him." According to Campbell, "he seemed anxious to pursue that. Yet, in the same conversation, he said that he owed Lindsey nearly \$7,800.00 by April or she was going to have him arrested, and that she was going to receive all of the money from the sale

of their home. **R. 313-15.**

Lt. Jeffrey Kindley testified that he is assigned to SLED's Piedmont Region, which covers Greenville County. On March 14, 2017, he received a telephone call from Capt. Bishop of the Midlands office, who told him that a homicide occurred in the Midlands Region and that Jason Lee, the estranged spouse of the victim, lived and worked as a locksmith in Greenville County. Capt. Bishop said that another agent had already briefly spoken to Lee, and he wanted Lt. Kindley to talk to Lee. So, Lt. Kindley and Lt. Donahue drove to AAA Locksmiths and Lee met them outside of the business. The officers did not know any of the particular details of Lindsey's death at the time. **R. 321-23.**

Initially, the officers spoke to Lee on a bench outside of the business. When Lt. Kindley told him that his wife was dead, Lee immediately said, "[']But I still love her,[']" and he began to cry." Lee asked how it happened and Lt. Kindley replied that he did not know. Lee quickly regained his composure, and the men went into the shop's basement, where they continued their conversation. Lt. Kindley told Lee that they were trying to identify potential suspects. **R. 324-26.**

Instead of identifying suspects,

[Lee] just started talking about that he and Lindsey had been separated for a while and that their divorce was about to be finalized in about a month. He told me about a lady that he was currently dating and said her name was Evan McLeod and he met her on Match.com and he told us that Lindsey's maiden name was Pilkington and she worked at a bank. He told us they got married in September of 2010 and where they -- where they lived here and that they had problems and broke up in April of 2016. [Also,] he told me that when they split up he initially stayed in the home himself for a while and that Lindsey had left.

R. 327, line 6 – 328, line 6.

Even though the officers had not asked about what he had done on March 13th and they were unaware of when Lindsey was killed, he volunteered that:

He told us that he worked at the Michelin plant, which is in Spartanburg County.

He worked there all day and he got home about 6:30 PM that night; that he took some Oxycodone and soaked his foot ... in cold water; that he suspected he had plantar fasciitis and that was having excruciating pain in his right foot from walking and driving all day. He told us that he had a doctor's appointment on the following Thursday with a Dr. Rowe in Lexington and he also had a dentist appointment.

R. 328, lines 17-25.⁶ See also **R. 343-44; 347.**

Lee also claimed that he noticed that his blue Kia Rio was missing when he got up that morning and explained that he had removed the license plate about a week earlier, so that it would not be repossessed by the finance company.⁷ Yet, when asked, he admitted that he had not contacted the finance company and did not seem interested in the loss. He even declined Lt. Kindley's offer to contact the Sheriff's Office and "put out a hot sheet on it." **R. 329-31.**

Lee thereafter began discussing the marital problems he and Lindsey had and he mentioned Graham Hockley. While he did not suggest that Hockley was a potential suspect, he used "colorful language" when discussing Hockley.⁸ He said that he and Lindsey had met Hockley when they began exercising together at Gold's Gym. They later started going to the British Bulldog Gym, which Hockley owned. Again, the officers had not asked about Hockley before Lee volunteered his name. Lee stated that it seemed that she became closer to Hockley over time. Lee stated that Lindsey asked him to join her in a charitable event called Walk a Mile in Her Shoes, but that he told her he "wasn't wearing the F-bomb women's shoes like an idiot in public", and that Lindsey decided to go to the event anyway. **R. 331-33.**

⁶ Lt. Kindley had noticed that Lee had a limp earlier. **R. 329.**

⁷ Lee stated that a finance company told him that he owed \$1200.00 on the vehicle and that the company would come to repossess the car. **R. 329-30.**

⁸ Lee described Hockley as "one of those arrogant A-holes who will always pull his shirt off." Lee stated that Hockley was not good looking, but he was a bodybuilder, and Lee obviously disliked Hockley. He got loud, angry, and he used both a British accent and a mocking tone when describing Hockley to the officers. Hockley had a British accent. **R. 332-33.**

Lee subsequently saw pictures on Facebook of Lindsey and Hockley holding hands at the event, which other people had posted. In an effort to reconcile, he had spoken to Lindsey's mother, her sister, his brother-in-law, and a mutual friend, but this did not work supposedly "because he didn't look like Mr. Hockley." *R. 333-34*. Lee's biggest complaint when discussing Hockley was that he felt that Hockley had betrayed him. He had met Hockley first, befriended him first, brought Lindsey there to train with Hockley, and had helped Hockley purchase a mat to put in his gym. Lee stated that he felt like he was closer to Hockley and that they went to UFC fights together, but after he and Lindsey separated, Hockley told Lee that he valued Lindsey's friendship more than Lee's, for purely business reasons. *R. 335-37*.

In discussing his marital problems, Lee stated that he had taken a week off from work and spent \$3,500.00 to renovate the bathroom in the manner Lindsey wanted but this did not get her back. He expressed concern that Lindsey's family might accuse him of having something to do with her death but, when asked, denied that he had any "anger issues with his wife." He also originally claimed that he had not seen Lindsey in about a month. However, he admitted that they had an argument when they met with their tax preparer earlier in March because he felt that she should pay the tax preparer's bill because she was getting a \$4,000.00 refund. She refused because he already owed her \$1,300.00. *R. 338-40*.

Because Lindsey's family had contacted him that day, the officers asked for his consent for them to download information from his phone and he consented. This was his work iPhone and the officers were unaware that he had a personal phone. When an agent arrived with a portable device capable of downloading the information, the device did not have enough battery power to work properly, and Lee's office wanted to close. So, the officers asked if they could take the phone

to their office and try to download information there. He refused, claiming that he was going on a date that night and needed it to contact his child. *R. 341-43; 366.*

The officers asked Lee about some very visible scratches on his face, which they photographed. Lee claimed that he had gotten the scratches by dry shaving and that he had gone to the Walmart early on the 14th to get groceries and shaving cream. He did not say that the scratches were caused by his cat, as he had claimed to his co-workers. The officers also observed an injury to Lee's right palm, which he asserted happened when he accidentally stabbed a screwdriver into his hand. *R. 344-47.* Lee was not arrested on the 14th. *R. 349.*

Lt. Kindley visited the Simpsonville Walmart on Wednesday, March 15th to see if there was film footage corroborating Lee's story. This Walmart is adjacent to I-385, and he later learned that Lee lived on Grandview Dr., a frontage road adjacent to the Walmart. The store's video footage showed Lee walking into the store, making a purchase, and then leaving shortly afterwards. Lt. Kindley also found Lee's "missing" Kia Rio vehicle in the Walmart parking lot. He immediately notified the Midlands Region, and he called for local agents to obtain a warrant and search the car. There was no apparent evidence that anyone had broken into the car. *R. 349-54; 358.*

While Lt. Kindley was in the parking lot near Lee's Kia, Lee drove by in the work van. Six or eight other unmarked SLED vehicles were in the area of the Kia. Lee drove past the officers but soon returned on foot. Now, he was angry. He told officers that he wanted his car, that he was on the phone with an attorney, and that the officers could not search his car. Lt. Kindley explained that Lee had thought the car had been stolen, and that the officers wanted to process it without having to make a forced entry. Yet, Lee refused and he angrily paced around. Lt. Kindley noticed that he no longer had a limp. Other agents obtained a search warrant and went to Lee's apartment

where they waited on a wrecker to tow his company van. Lee was arrested on the 17th. **R. 354-59.**

Lee's first wife, Lindsey Julian, testified that she lived in Fountain Inn in March 2017, which is roughly a six minute drive from Lee's Simpsonville apartment. Around 8:00 p.m. on March 14th, Lee told her that the victim was dead, and that he did not know any details since SLED had not told him anything about her death. Although they spoke again later that night, he did not say anything about his Kia being repossessed. **R. 373-74; 378-79.**

On March 15th, Ms. Julian drove past Lee's apartment and saw the work van parked there. Confused, she texted him and he called her back. Lee said that he had found his vehicle, which he thought had ben repossessed, and that he was walking to the Walmart to pick it up. He now thought the car had been stolen. Ms. Julian offered to give him a ride. When she picked him up, he had the Kia's license plate and a screwdriver. In contrast to Agent Kindley, she testified that they saw law enforcement officers surrounding the Kia as soon as they reached the Walmart. Ms. Julian asked if he had done "anything wrong." Because he denied any wrongdoing, she told him he needed to speak to the officers. Lee left the screwdriver and the license plate in Ms. Julian's car when he exited it. **R. 379-83.** Ms. Julian testified that Lee had paid her \$750.00 monthly for child support for the past eight years, but that she offered to accept a reduction, since he was struggling financially. **R. 384-86.**

SLED Agent Nick Sprouse testified that he processed Lee's Kia in the Walmart parking lot on March 15, 2017. The license plate was missing, but the car's VIN number reflected that it belonged to Lee. While Agent Sprouse was photographing the Kia, Lee walked up to him and initiated a conversation. As Agent Sprouse explained his role, he asked Lee about a number of visible linear scratches on Lee's face. Lee claimed that he had cut himself shaving and did not mention being scratched by his cat. **R. 420-24.**

Agent Sprouse also processed Lee's work van, in which he located Lee's work issued iPhone (**R. 427-31**) and he was present when Lee was arrested. At that time, he observed and photographed a bruise on the outer biceps of Lee's left arm. Agent Sprouse then executed the search warrant for Lee's apartment, and he found Lee's personal phone in the bedroom. He also found a pack of blue latex gloves inside a black backpack in the hallway closet. Elsewhere, he found a box for a rechargeable Taser. **R. 433-40; 442; 444-45.**

Milon Williams, "an asset protection officer" at the Michelin plant in Spartanburg, testified that he is responsible for "protecting all Michelin's property ... and the building." On March 13, 2017, he called AAA Locksmiths because he had "several jobs I needed done" that day. Lee came and completed the jobs. Lee was at the Michelin plant for roughly two to three hours and left around 4:30 p.m. Williams did not notice any injuries on Lee, nor did he notice Lee limping. **R. 594-98; 600.**

Evan McLeod testified that she had dated Lee for roughly six weeks by March of 2017. She knew that Lee's divorce was to become final in April. She last saw him on Sunday, March 12, 2017, when she stopped by his apartment, where she had dinner and watched television before going home. On Monday, March 13th, he sent her a text asking whether she was at work. She then called Lee, who told her that "his foot ... was hurting, that he was heading home that night, [that he] was gonna take some pain medication to help him and [that he would] just go to bed early." She sent him a text at 9:00 p.m., but he did not respond. **R. 601-05.**

She found his statement unusual because he had never taken pain medication or cut off contact in that way at any other time in their relationship. Also, Lee had told her that he was behind on his car payments, but he had never said that he thought his car was going to be repossessed until they spoke on the night of March 14th, which was after he had spoken to SLED. He told her on the

15th that his car had been found. Evan testified that Lee was behind on his car payments and had not been able to pay his rent for “the past month or two.” Additionally, he owed Lindsey \$3000.00 for credit card debt, “which was due by the time their divorce was finalized in April.” He thought it was unfair that he had to pay the full amount because the money had been spent “on the home that they shared.” He also said that he thought it was unfair that Lindsey stood to collect \$50,000.00 on the house that had previously belonged to them both. After Lindsey’s murder, he felt things were beginning to settle down, that the marital home would now be his, and that he wanted to take a trip after squaring away his financial affairs. **R. 606-11.**

Pamela Vinson, a tax consultant at LuFrans Tax Service, testified that Lindsey and Lee came into her office for a tax preparation appointment on February 11, 2017. Lindsey was “bubbly,” “happy,” and “excited,” while Lee appeared unhappy. “It was just a simple return” and it only took Ms. Vinson “fifteen, [or] twenty minutes” to prepare. The Lees were owed a refund. “The Federal refund was \$2,439. The ... South Carolina state refund was \$1,393, and the Virginia income tax refund was ... \$201.” Lindsey was to receive the full tax refund and she gave Ms. Vinson a new account number for her direct deposit. **R. 616-19; 621.**

Ms. Vinson overheard Lindsey tell Lee, “you ran up my credit card and you know why I’m getting the refund.” She also overheard Lee tell Lindsey that he would not pay half of Ms. Vinson’s fee because Lindsey was receiving all of the refund. Lee called Ms. Vinson’s office on March 15, 2017, asking if the direct deposit information on the tax returns could be changed, and she explained that it could not. When she learned of Lindsey’s murder, she contacted a 1-800 telephone number and later told SLED what she knew. **R. 619-20; 622-24.**

Jason Van Nest, Lindsey’s brother-in-law, testified that he first met Lee in late 2012 or early 2013. Before Lindsey and Lee separated, Jason and Lee used to go deer and hog hunting.

Van Nest testified that Lee always had the book bag found in his apartment whenever he went hunting. Also, he and Lee would use blue latex gloves when they hunted wild hogs to protect themselves from animal-borne diseases. *R. 627-28; 630-31*. Van Nest was aware that the Lee's divorce would become final in April of 2017, and he and Lee did not associate much after Lee and Lindsey separated. Yet, they texted one another on March 6th and 7th. *R. 628-29; 632-33*

Then, on Tuesday, March 14th, Van Nest received several texts from Lee, beginning at 7:58 a.m. Van Nest thought it was odd because Lee was volunteering information that did not concern him, such as the fact Lee had a new girlfriend. Lee even texted Van Nest a picture of Lee and the new girlfriend, as well as a picture of Lee's work schedule. Van Nest testified that exchanging work schedules was something he and Lee did a couple of years ago when they were closer and wanted to go hunting together. However, Lee sharing his work schedule at that time seemed out of place. *633-40*.

Graham Hockley testified that he retired from the British Army in 2013, after twenty-four years of service. For a number of years, he was the judo⁹ specialist for the army. Following his retirement, he moved to Lexington, South Carolina, and began working as a personal trainer at Gold's Gym. Lee was one of his first clients. Hockley worked with Lee as a fitness trainer to help him with his health and fitness goal of becoming a state trooper. However, Lee did not meet the fitness requirements to become one because of a lack of effort. *R. 692-97*.

In February of 2015, Mr. Hockley opened his own gym, Bulldog Fitness, and Lee was one of his first clients. One night, Lee told Hockley that he was not happy about Lindsey's weight and that he wanted to enlist Hockley to train her. Lee brought Lindsey in to meet with Hockley, and

⁹ Judo differs from karate in that it "is defense against striking." Punching and kicking are not part of the training. *R. 694*.

she subsequently began judo training with him and exercising in the gym. Hockley also helped her develop a healthier diet, and she became dedicated to becoming fit, as she excelled in the judo program. She originally weighed over 260 pounds, but she lost a great deal of weight over the course of roughly two years and weighed 135 pounds in 2017. Although Lee was still in the judo program with her, he did not excel. This was when Hockley first saw Lee get agitated. *R. 697-704.*

As Lindsey continued to lose weight, “there was something there that just shouldn’t have been. She was going one way, he was going the other,” to the point of Lee trying to “sabotage” her dietary routine. Hockley attempted to get Lee as motivated as she was. Once, Hockley was invited to dinner at the Lee’s house, but he had to intervene after Lee started belittling Lindsey. Lee exhibited this same type of behavior in Hockley’s presence on other occasions as well. Hockley learned that the Lees had separated when Lee did not attend the Walk a Mile in Her Shoes charity function, which he attended. It was his understanding that Lee instigated the split but felt that it was a mutual decision. *R. 704-07.*

Lindsey continued to attend training regularly after the separation. On the other hand, Lee did not go as frequently and eventually stopped going altogether. Lindsey continued gaining confidence as she lost weight. “She was extremely happy with her life,” and “she was really enjoying herself.” She even started recruiting customers to Bulldog Fitness and assisting with the judo training of young girls at the gym. Her work helped Hockley financially. At some point, the client relationship evolved into a friendship. Then, Lindsey and Hockley briefly became romantically involved, but they quickly chose to simply continue their friendship. *R. 708-13; 730-33; 739.*

Hockley testified that they remained very close, that Lindsey was his best friend, and that he had planned to help her train for a possible job with the FBI. He indicated that she always wore

her Fitbit. Shortly before Lindsey's death, he received a phone call notifying him that his second grandchild had just been born. Lindsey accepted his invitation to accompany him on a trip to the U.K. to see his new grandchild, and they had agreed to split the cost of travel. Unfortunately, Lindsey was murdered days before the planned March 24th trip. He last saw her on the night of the 13th. **R. 714-20; 742.** Hockley voluntarily cooperated with SLED. He was interviewed, photographed for possible injuries, and he submitted DNA sample. **R. 721-22.** Finally, he testified that Lindsey never smoked marijuana. Also, she was not seriously involved with anyone romantically and she never mentioned any problems with another person. **R. 736-37.**

Forensic pathologist, Dr. Janice Ross, testified that she performed an autopsy on Lindsey's body. Dr. Ross found multiple petechia on the whites of the Lindsey's eyes, on the inside of her eyelids, on her face, and on her upper neck. Dr. Ross also found hemorrhage in a strap muscle in the neck and explained that these findings were caused by Lindsey being strangled. The strangulation was potentially fatal and Lindsey would have "lost consciousness in "[a]bout eight seconds." Additionally, Dr. Ross observed two linear abrasions on Lindsey's forehead, a bruise under her left jaw, as well as "some linear abrasions ... on the upper neck behind the ... left ear." **R. 672-77; 680-81.**

Dr. Ross described the most significant findings as follows:

On the front of the neck, there was a six-inch long incised wound or cut from a sharp instrument across the front of the neck, which exposed the airway, the trachea was cut through, and the left carotid artery, ... one of the main arteries going up to the brain was also transected or cut in two. There was some hemorrhage around that area remaining and there was also another very faint, probably sharp incised wound, superficial on the skin above that main wound and mostly on the left side. ... [This wound cut] [f]rom side to side.

R. 678, lines 7-21.

With the carotid artery severed, Lindsey would have lost blood with every heartbeat, and

her death would have ensued within “three or four minutes.” *R. 679*. Further, Lindsey’s upper extremities were severely bruised, “there was a somewhat horizontal bruise over the left groin area,” bruising “just above the left shoulder blade” that appeared to have been caused by a hand, a small circular bruise on the right thigh, bruising to the middle of the back, and her fingernails had been recently cut to the quick. Dr. Ross opined that the manner of death was a homicide. *R. 679-88*.¹⁰

Some of the most damning evidence against Lee was the results of DNA testing by SLED. The three pieces of blue latex gloves found at the crime scene were sent to SLED for DNA analysis as were two blue latex gloves seized from the backpack in Lee’s apartment, and a number of other items. Verona Herrera, a technician in SLED’s serology department examined these items and testified that the glove pieces found at the crime scene were of the same color and thickness as the gloves found in Lee’s apartment *See R. 457-63*.

Alysha Breland, formerly a forensic DNA analyst at SLED, testified that she had DNA samples from Lee, Lindsey, and Hockley with which to compare to items submitted for analysis. The DNA profile developed from a “swab from the entire piece of blue latex” found at the scene was “a mixture of at least two individuals.” The DNA profile of the major contributor matches the DNA profile of Lindsey Lee.” Because of the “inability to calculate a statistic,” Ms. Breland did not offer any further interpretation as to the minor contributor. The DNA profile of a swab of a piece of blue latex found at the crime scene was “a mixture of at least two individuals. Lindsey

¹⁰ SLED toxicologist Lindsey Mitchell testified that Lindsey’s blood and ocular fluid tested negatively for the presence of alcohol. Further, her blood tested negatively for the presence of amphetamines, methamphetamine Buprenorphine, Carisoprodol (a muscle relaxer), cocaine metabolites, Methadone, opiates, Oxycodone, Tramadol, Zolpidem (Ambien), cannabinoids (the “constituents of marijuana”). Based on these results, Agent Mitchell opined that Lindsey had not recently used marijuana. *R. 265-72*.

Lee and Jason Lee are included as possible contributors to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately 1 in 64. Graham Hockley is excluded as a contributor to this mixture.” **R. 493-500; 513-14.**

Critically, the DNA profile of “a swab from the entire piece of blue latex ... [found in] the foyer” was a “mixture of at least three individuals. The partial DNA profile of the major contributor matches the DNA profile of Jason Lee. The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this mixture is approximately 1 in 230 octillion.”¹¹ Because she was unable to calculate a statistic, Ms. Breland did not offer any further interpretation as to interpretation as to the minor contributors. **R. 514-15.**

Paul Meeh, a scientist in SLED’s forensic DNA department, analyzed a number of items submitted in the case using STRmix software.¹² Importantly, he was able to exclude Hockley from the DNA profiles of swabs taken from fingernail clippers seized from Lee’s apartment, swabs from the interior and exterior front doorknob at Lindsey’s house, a swab from the interior back doorknob, and swabs from the bag of marijuana found in the glove box of Lindsey’s car. However, the DNA profile developed from “the swabs ... taken along the interior and exterior sealing end of the bag above the interlocking plastic portion of the bag” of marijuana found in the glove box of Lindsey’s car was a mixture of three individuals. “The DNA profile is approximately 240 trillion times more likely if Jason Lee and two unidentified unrelated individuals contributed to the mixture than if three unidentified unrelated individuals contributed to the mixture.” In Mr. Meeh’s

¹¹ 230 octillion is one in 230, 000,000,000,000,000,000,000,000.

¹² Several items tested by Ms. Breland found DNA profiles suitable for YSTR testing, which she did not do before she went on maternity leave. See. R. 505-07. YSTR testing only tests for the presence of the Y chromosome, or male lineage. **R. 505-06; 528-29.**

to the mixture,”¹⁵ whereas the results for Hockley were merely “random chance.” So, Mr. Meeh opined that Lee and Lindsey contributed to the mixture. **R. 559-65.**

Lt. Chris Johnson, a technician in SLED’s fusion unit, was qualified, without objection, as an expert in call detail record interpretation and cell phone mapping. **R. 755-56.** Lt. Johnson reviewed the Verizon Wireless phone records of three cell phones numbers: the numbers for Lee’s work and personal phones and the number for Hockley’s phone. Lt. Johnson was asked to determine the movement of Hockley’s cell phone from the night of March 13th until the early morning of the 14th. Verizon phone records showed that Hockley’s cell phone used a tower the area of Bulldog Fitness at 7:41 p.m. on the 13th. At 7:53 a.m. on the 14th, it used a tower near his residence. **R. 756-64.**

Lee’s work cell phone records showed that at 6:01 p.m. on March 13, 2017, Lee’s work phone used a tower near his apartment on Grandview Dr. in Simpsonville, South Carolina. However, after 5:30 p.m. on March 13, 2017, Lee’s work phone becomes untraceable until 6:49 a.m. on the 14th, at which time the cell used the tower near his apartment. He also received a call in this time period that was not answered and went to voicemail, even though he told people at work that he needed to work as much overtime as possible. **R. 768-71.**

The call records for Lee’s personal cell phone for March 13th showed that his personal phone was last used at 5:30:42 p.m. This call used cell towers near the Michelin plant and his apartment. He next used this phone at 12:04 p.m. on the 14th. The phone again used a tower near his apartment. He did not make any calls from it again until he placed an outgoing call from his apartment at 6:49 a.m. on March 14th. **R. 764-68.**

Jon Van Houten testified that although he is employed by the Columbia Police Department,

¹⁵ 6.9 sexdecillion is 6,900, 000,000,000,000,000,000,000,000.

he has been “on loan full-time with the United States Secret Service” since 2010. He is a task force agent and a digital forensic examiner with the Secret Service’s electronic crimes special agent program. He testified as to the extracted contents of both Lee’s Samsung Galaxy personal cell phone and his Apple iPhone work cell phone. He was “only able to do a logical extraction on both phones.” This permitted him to gather the data that a person sees when navigating through a phone or computer, but nothing else. **R. 778-82.**

Agent Van Houten testified that Lee had entered Lindsey under contacts as “Hungry Money” on his personal phone. On March 10th, he sent himself two text messages on his personal phone, which comprised “a short bill list.”¹⁶ Additionally, he had deleted the call logs for all calls made between January 14, 2017 and March 14, 2017, and he removed his entire web search history before 8:15 a.m. on March 15th. This was “an entry of a search for how to reset your password on Credit Karma.” **R. 782-87; 790-91.**

Also on March 15th, he attempted to access his Fitbit login password at 8:41 a.m. He searched for criminal defense attorneys in Greenville at 9:59 a.m. At 10:13 a.m. and, again, at 1:59 p.m., he looked up how to find his tax refund on the IRS website, and he checked his IRS tax refund results at 2:06 p.m. At 8:19 p.m., he searched Zillow.com for a listing of Lindsey’s home online, and he read articles about her murder at 9:42 p.m. and, again, at 11:42 p.m. On March 16th, he searched online for local obituaries at 5:22 p.m., and he called the customer support line of USAA, a banking and insurance company. **R. 782-90.**

SLED Agent April Sykes testified that she went to the crime scene on March 14, 2017. She later met with Lindsey’s entire family. When she interviewed Jason Van Nest, he was cooperative

¹⁶ Specifically, the text read “rent, \$780; child support, \$750; electric, \$85; gas -- or heat, \$35; cable is \$40; gym is \$45; car is \$320; insurance, \$108; cell phone, \$80, and it gives a total \$2,243 and below that it has a salary \$2,300, which shows a small excess of \$57. **R. 785.**

and did not have any visible scratches or injuries. She also interviewed Kyle Perry, a man with whom Lindsey had a brief relationship. Perry was “visibly shaken” and “upset” when he heard of the victim’s death. He also lacked any visible marks or injuries. Agent Sykes’ investigation did not uncover any other men with whom Lindsey was involved, apart from Lee. **R. 795-97.**

Agent Sykes also reviewed Lee’s finances and found that he was barely able to cover his bills with his salary. After bills, he would have just \$57.00 left over from his paycheck. He only had \$101.08 in his checking account; he had exceeded his maximum credit card limit of \$9,500.00 by \$5.52; he was in the process of being evicted by his apartment complex, which had twice filed a rule to vacate in summary court; and he was behind on his car loan payments. In fact, the bank had already begun the internal process of repossessing his car.¹⁷ Worse, he owed the victim \$1300.00, which was due to be paid by April 1, 2017. **R. 798-99; 801-05.**

Agent Sykes attempted to establish the timeline of Lindsey’s movements on the night of March 13th. At roughly 7:30 p.m., she finished her workout with Hockley. As reflected by the receipt found at the crime scene, she then went to Walmart on Old Barnwell Road. Surveillance video from that Walmart showed her there and corroborated that she bought items at 8:17 p.m.¹⁸ All communication with her ended after she left Walmart. **R. 806-12.**

Agent Sykes likewise developed a timeline of Lee’s movements on March 13th and 14th,

¹⁷ Despite efforts to locate him, the bank last had a Virginia address. Lee had called the bank on March 16th and asked what minimum he could pay to keep the car from being repossessed. He was told \$611.00. At that time, he told the bank that he had a new address but he hung up without disclosing it. **R. 804-05.**

¹⁸ She sent a text at 8:15 related to the sale of an entertainment center. **R. 810.** The pants and shoes she is seen wearing in the video surveillance are consistent with the shoes and pants at the murder scene and the hooded sweatshirt in the video is consistent with the one found in the washing machine in her home. **R. 812.**

by reviewing his call detail logs for his phone, his Fitbit records, surveillance video from the Simpsonville Walmart and surrounding businesses, as well as text messages between him and Evan McLeod on March 13th. He texted Evan on the 13th, asking if she was still at work. The GPS from his work van reflected that he was at his apartment. The last reading from his Fitbit on March 13th was at 6:10 p.m. He received a 9:03 p.m. text from Evan telling him goodnight, to which he did not respond, and a March 14th call to his work phone at 1:29 a.m. was unanswered and went to voicemail. On the 14th, video surveillance from a Days Inn showed his Kia pulled into an adjacent parking lot that was on the very side edge of the Simpsonville Walmart at 5:17 a.m. He got out of the car and walked through the Days Inn and Walgreens parking lots. The Walgreens video shows that he walked through the parking lot at 5:27 a.m. **R. 812-23; 828-29; 833; 835-36.**

His Fitbit was activated at 6:03 a.m.¹⁹ The GPS from his work van activated at the same time. The Days Inn video shows that he parked the van beside his Kia at 6:10 a.m., and it stayed there for roughly four minutes. When he drove the van in, he came from a different direction than when he drove the Kia there earlier, which was from the direction of I-385. He then pulled out and headed in the opposite direction from which he had come.²⁰ Finally, the Walmart video shows that he pulled the van up to the front of the store, got out, and entered the store. After buying some items, he returned to the van and drove off. **R. 823-28; 834-39.**

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” *State v. Liverman*,

¹⁹ In reviewing his Fitbit records from February 17 through March 17, 2017, Agent Sykes discovered that the average time the Fitbit was not recording “was 7.24 hours. However, on the night of the murder between 6:10 PM and 6:03 AM, almost twelve hours, it was never recording whatsoever.” **R. 829-31.**

²⁰ A still shot of the video (State’s Ex. 172) reflects that he had an unknown white object in his hand. **R. 826.**

398 S.C. 130, 137, 727 S.E.2d 422, 425 (2012).

On appeals involving a motion to suppress based on Fourth Amendment grounds, appellate courts apply a deferential standard of review and will reverse only in cases of clear error. *State v. Cardwell*, 425 S.C. 595, 599–600, 824 S.E.2d 451, 453 (2019). The “clear error” standard means appellate courts may not reverse the trial court’s findings of fact merely because they would have decided the case differently. *State v. Moore*, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) (citation omitted). Rather, in reviewing Fourth Amendment cases, appellate courts must affirm the trial court’s ruling if there is any evidence to support it. *Robinson v. State*, 407 S.C. 169, 181, 754 S.E.2d 862, 868 (2014).

State v. Moore, 429 S.C. 465, 472, 839 S.E.2d 882, 885-86 (2020).

ARGUMENT

I. The trial judge did not abuse his discretion by denying Lee’s motion to suppress his Verizon Wireless cell phone records and his Fitbit records because (1) no search warrant was necessary to obtain the Fitbit records, (2) the issuing magistrate had jurisdiction to issue the warrants for all of the records under S.C. Code Ann. § 17-13-140 (2022), and (3) the State obtained a separate search warrant issued by a circuit court judge pursuant to the Stored Communications Act for information on his cell phones.

The trial judge did not abuse his discretion by denying Lee’s motion to suppress his Verizon Wireless cell phone records and his Fitbit records²¹ because (1) no search warrant was necessary to obtain the Fitbit records, (2) the issuing magistrate had jurisdiction to issue the warrants for all of the records under S.C. Code Ann. § 17-13-140 (2022), and (3) the State obtained a separate search warrant issued by a circuit court judge pursuant to the Stored Communications Act for information on Lee’s cell phones. Further, the officers acted in good faith, and any alleged error in denying Lee’s motion to suppress was harmless beyond a reasonable doubt.

A. Events at trial.

²¹ The Court’s April 15, 2022 Order directed the parties to address the admissibility of “Lee’s electronic records.” Quite understandably, however, Lee has only argued the admissibility of the Verizon Wireless and Fitbit records in light of the third party doctrine. So, the admissibility of the remaining records is not before the Court. *See Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) (“An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court”).

Before the State presented any evidence from Lee's various electronic devices, the trial judge heard Lee's motion to suppress electronic information obtained by the State from Facebook, USAA Bank (for information from Lee's joint account with the victim), Google, G-mail, Verizon Wireless, Hulu, and Fitbit. He argued that the State had obtained "a lot of [electronic] information" through search warrants issued by a Lexington County magistrate pursuant to S.C. Code Ann. §17-13-40. However, he claimed that the warrants (*see R. 990-1016*) were invalid because the issuing magistrate did not have jurisdiction over these out-of-state companies. He also noted that these companies had various requirements for obtaining this information and argued that the warrants issued did not meet those varying requirements. He asserted "this is based on a statutory violation in addition to Article 1, Section 10 of the state constitution," which provides greater protection than the Fourth Amendment. He likewise relied on the Supreme Court's decision in *Carpenter v. . See R. 392, line 12 – 397, line 9.*

In response, the State observed that §17-13-40 "predate[d] technology and the statutes have not been changed yet ... but the intent of the legislature in creating those statutes was to be able to obtain information and obtain evidence and obtain records, so the intent of the legislature is clear on what they are authorizing. Either ... the legislature is going to have to change the statute to cover this situation or the courts are going to have to interpret it so that the current statute allows for it" *R. 398, line 17 – 399 line 3. See also R. p. 397, lines 15-23.* More specifically, the State noted that it intended to offer Verizon Wireless records from Lee's work phone, records from his personal phone, and records from the phone of State's witness Graham Hockley. All of these records were initially obtained pursuant to a warrant issued by a magistrate *R. 399, lines 6-15.*

With respect to both of Lee's phones, the State obtained "an additional search warrant" for

the records it intended to introduce under the Stored Communications Act (SCA),²² “which is 18 USC 2703.” The State introduced certified copies of those warrants (Court’s Exhibits 4 and 5), which were signed by Judge McLeod, the resident circuit court judge, and issued after a finding of probable cause. **R. 399, line 16 – 400, line 22; 978-89.**

Hockley’s records were obtained by a warrant issued by a magistrate under §17-13-40. Even if the trial judge found that this warrant was invalid, the State noted that Lee did not have standing to contest the warrant because the records were not his. Further, Hockley was present and could testify he consented to the State having his records. The State argued that the remaining records were admissible under the third party doctrine established in *United States v. Miller*, 425 U.S. 435, 443 (1976), and that *Carpenter* was concerned with the privacy rights of a person’s movement over the course of a thirty days without judicial supervision. Thus, it only carved out an exception to the third party doctrine for phones, and the Court in *Carpenter* expressly stated that the third party doctrine remained applicable in other contexts. The State also noted that both a warrant and a subpoena were issued for the Fitbit records. *See R. 400, line 24 – 407, line 1.*

In reply, Lee again argued that the State’s use of the warrant issued by the magistrate was invalid because the magistrate lacked jurisdiction over any of the companies in question. Also, the State had not sufficiently complied with the SCA. He extended his arguments to Hockley’s phone records, as well. **R. 407, line 7 – 411, line 14.**

The trial judge denied Lee’s motion to suppress. He found that the search warrants issued by Judge McLeod for Lee’s Verizon Wireless records fell under the SCA, § 2703(b). He further found that Lee did not have standing to suppress Hockley’s phone records, and that the third party

²² The SCA was enacted as Title II of the Electronic Communications Privacy Act and is found at 18 U.S.C. §§ 2701-2712.

doctrine applied to the bank records and Fitbit records. He also noted that the State had complied with Fitbit's requirement of a "a legal process or governmental request" by issuing the subpoena. As to the Google warrant, the State assured the judge that it did not intend to introduce evidence of what Lee searched for, only that he accessed the internet on specific dates. The trial judge found that this was not privacy protected" and that the third party doctrine applied. Finally, to the extent that he had not "embodied all of the points" argued by the State, he adopted them as part of his ruling. **R. 411, line 16 – 416, line 9.**

Hockley subsequently testified *in camera* that the State had his consent to obtain his cell phone records. **R. 752, lines 11-23.** Before the testimony of SLED Lt. Chris Johnson, the State observed that it had three exhibits to mark for Lt. Johnson's identification. The trial judge stated that "[t]he testimony regarding these phone records goes forward subject to objection made in a pre-trial hearing and subject to the rulings I made pre-trial." **R. 754, lines 3-12.** The State introduced evidence regarding Lee's phone records and his Fitbit information, as well as the lack of such information, through Inv. Van Houten and Lee unsuccessfully renewed his objection. *See R. 782, line 13 – 783, line 5; 814, lines 2 – 9; 829, line 18 – 831, line 13.*

B. The trial judge did not abuse his discretion.

1. Lee's Fitbit records did not require a search warrant.

Neither the Fourth Amendment nor S.C. Const. art. I, § 10 required a search warrant for Lee's Fitbit records because he did not have a reasonable expectation of privacy in the non-disclosure of the information that the company generates and keeps as a business record and which was based upon information that he voluntarily provided to the company by wearing the Fitbit device. Yet, as discussed in part 2, *infra*, the information was obtained pursuant to a valid search warrant issued by a Lexington County magistrate.

As the Deputy Solicitor correctly noted at trial, the *Carpenter* majority cautioned that

Our decision today is a narrow one. We do not express a view on matters not before us: real-time CSLI or ‘tower dumps’ (a download of information on all the devices that connected to a particular cell site during a particular interval). We do not disturb the application of *Smith* and *Miller* or call into question conventional surveillance techniques and tools, such as security cameras. Nor do we address other business records that might incidentally reveal location information.”

Carpenter, 138 S.Ct. at 2220.²³

The trial judge properly determined that the third party doctrine applied to Lee’s Fitbit records. After the United States Supreme Court’s decision in *Katz v. United States*, 389 U.S. 347, 351, 353, 361 (1967), “the touchstone of [Fourth] Amendment analysis has been whether a person has a ‘constitutionally protected reasonable expectation of privacy.’ ” *Oliver v. United States*, 466 U.S. at 170, 177 (1984) (citing *Katz*, 389 U.S. at 360 (Harlan, J., concurring)). Under the approach taken by Justice Harlan’s concurring opinion in *Katz*, a reviewing court must ask two questions: “The first is whether the individual, by his conduct, has ‘exhibited an actual (subjective) expectation of privacy,’ The second question is whether the individual’s subjective expectation of privacy is ‘one that society is prepared to recognize as ‘reasonable,’ ... —whether, in the words of the *Katz* majority, the individual’s expectation, viewed objectively, is ‘justifiable’ under the circumstances.” *Smith v. Maryland*, 442 U.S. 735, 740 (1979) (citations to *Katz* omitted).

Applying *Katz*, the Court in *Miller* rejected a Fourth Amendment challenge to a third-party subpoena for bank records. The Court explained that the bank’s records “are not respondent’s

²³ Even the *Carpenter* majority wrestled with how to apply this “new phenomenon” under the Fourth Amendment, *id.* at 2216 (noting that governmental acquisition of CSLI “does not fit neatly under existing precedents” and that cell-site records “implicate the third-party principle” because “the individual continuously reveals his location to his wireless carrier”); *id.* at 2214 (“[t]his sort of digital data—personal location information maintained by a third party—does not fit neatly under existing precedents.”). *But see id.* at 2236 (Kennedy, J., dissenting) (“The Court says its decision is a narrow one ... But its interpretation of *Miller* and *Smith* will have dramatic consequences for law enforcement, courts, and society as a whole”).

‘private papers.’” Instead, they are “the business records of the banks,” in which a customer “can assert neither ownership nor possession.” *Miller*, 425 U.S. at 440. The records “pertain to transactions to which the bank was itself a party.” *Id.* at 441. In rejecting the defendant’s challenge to the subpoena, the Court held “that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.” *Id.* at 443.²⁴

In *Smith*, the telephone company had installed a pen register, at the request of the police, to record the telephone numbers dialed from the petitioner’s telephone. In rejecting the petitioner’s challenge to the warrantless use of the pen register, the Court expressly distinguished collecting telephone numbers dialed from the listening device used in *Katz* to record “the *contents* of communications.” 442 U.S. at 741 (emphasis added). The Court held that telephone users generally had no subjective expectation of privacy in dialed telephone numbers. “[W]e doubt that people in general entertain any actual expectation of privacy in the numbers they dial. All telephone users realize that they must ‘convey’ phone numbers to the telephone company, since it is through telephone company switching equipment that their calls are completed.” *Id.* at 742.²⁵ Moreover, the Court held that any subjective expectation the petitioner may have harbored “is not one that society is prepared to recognize as reasonable.” *Id.* at 743. (Internal quotation marks omitted).²⁶

²⁴ The Court found that the mandatory record-keeping requirement of the Act did not create a Fourth Amendment interest in bank records “where none existed before” because the records contained “only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business.” *Id.* at 441-42.

²⁵ The Court expressly distinguished collecting the listening device used in *Katz*. As in *Smith*, the contents of the “communications” were not disclosed.

²⁶ The Court added that “[t]his Court consistently has held that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties,” and the Court held

The Supreme Court, itself, has applied the same principle to confidential statements made in the presence of an informant, *Hoffa v. United States*, 385 U.S. 293, 302 (1966), to financial and other records in the hands of third-party businesses, *SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 743 (1984), and to electronic surveillance of conversations between a defendant and an informant, by means of radio transmitter concealed on the person of the informant. *United States v. White*, 401 U.S. 745, 752 (1971) (plurality opinion); *see also Donaldson v. United States*, 400 U.S. 517, 522-23 (1971) (holding taxpayer was not entitled to intervene in proceeding to enforce summons for his employment records, where “what is sought here by the Internal Revenue Service . . . is the production of Acme's records and not the records of the taxpayer”). *Cf. State v. King*, 412 S.C. 403, 419, 772 S.E.2d 189, 197 (Ct.App. 2015), *aff'd as modified*, 422 S.C. 47, 810 S.E.2d 18 (2017), *overruled on other grds, State v. Burdette*, 832 S.E.2d 575 (2019). Lower federal courts have applied this same principle in a variety of contexts, such as defendant’s ISP subscriber information and the IP addresses of websites, *see United States v. Bynum*, 604 F.3d 161 (4th Cir. 2010),²⁷ *Reporters Committee for Freedom of Press v. AT&T*, 593 F.2d 1030, 1043 (D.C. Cir. 1978) (subpoena for telephone records); *United States v. Forrester*, 512 F.3d 500, 510 (9th Cir. 2008) (email users have no reasonable expectation of privacy in to/from addresses of their messages or in IP addresses of websites visited).

Respondent submits that the third party doctrine of *Miller* and *Smith* applies to information generated by the user’s Fitbit, which does not track the user’s location. Lee does not address the applicability of the third party doctrine in his brief, even though this was a basis for the trial judge’s

that the user “voluntarily conveyed numerical information to the telephone company and ‘exposed’ that information to its equipment in the ordinary course of business.” *Id.* at 743-44.

²⁷ The “subscriber information” at issue in *Bynum* included the “physical address” of the defendant. *Id.*

denial of the suppression motion as to the Fitbit records. So, the trial judge’s denial of the motion to suppress the Fitbit records must be affirmed. *South Carolina Tax Comm’n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 170, 447 S.E.2d 843, 847 (1994) (an appellate court will affirm where an appellant fails to appeal the alternative ground of a trial court's ruling); *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (the failure to challenge an alternative ground for a holding constitutes abandonment of the issue and precludes consideration on appeal). Moreover, the State obtained the Fitbit records by using a valid search warrant and subpoena, as discussed in part 2.

2. The search warrants for Lee’s cell phone and Fitbit records were valid.

The United States Supreme Court held in *Riley v. California*, 573 U.S. 373, 401 (2014), that a search warrant is generally required before a search for information on an accused’s cell phone can be conducted, “even when a cell phone is seized incident to arrest.” *See also id.* at 403 (“Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant”). In *Carpenter*, a sharply divided majority of the Court held, for the first time, that a person has a legitimate expectation of privacy “in the record of his physical movements as captured through CSLI” even though the records are held by a third party, that “accessing seven days or more of CSLI constitutes a Fourth Amendment search,” and that, consequently, a request for seven or more days of CSLI requires the Government to have a warrant to obtain the information. *See Carpenter*, 138 S.Ct. at 2217 & n. 3.²⁸

The State fully complied with the warrant requirement for obtaining the information from Lee’s cell phones. First, it obtained search warrants for both the Verizon Wireless and Fitbit

²⁸ In *Carpenter*, the government obtained 127 days of historical cell site location data and used it to prove that Carpenter was present at the scenes of several bank robberies.

records from a Lexington County magistrate, and the magistrate had jurisdiction over both companies to do so, notwithstanding that these records were kept out-of-state.

In *Warner*, the South Carolina Supreme Court rejected the argument that an Anderson County magistrate lacked the authority to issue a search warrant to T-Mobile, an out-of-state entity, for records that were not physically located in this State. Although the Court “assume[d] for purposes of [its] analysis T-Mobile stores the applicable [cell site location information (CSLI)] records in New Jersey,” the Court reasoned that:

the important fact is T-Mobile clearly does business in South Carolina, in particular, in Anderson County. T-Mobile, therefore, is subject to the jurisdiction of an Anderson County magistrate. The warrant sought records reflecting information generated in South Carolina through the interaction of Warner’s cell phone and cell towers in Anderson County. While the T-Mobile office to which officers were told to send the warrant is located in New Jersey, section 17-13-140 specifically provides, “The property described in this section ... may be seized ... from the person, possession or control of any person who shall be found to have such property in his possession or under his control.” T-Mobile is in possession and control of property that section 17-13-140 permits to be seized. T-Mobile is a “person” doing business in Anderson County. Thus, T-Mobile is subject to the jurisdiction of our courts, and we find it was not beyond the power of the magistrate to issue the warrant.

Warner, 436 S.C. at ___, 872 S.E.2d at 642 (footnote omitted).

The Court quoted the following portions of § 17-13-140:

Any magistrate ... may issue a search warrant to search for and seize ... property constituting evidence of crime or tending to show that a particular person committed a criminal offense The property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control.

436 S.C. at ___, 872 S.E.2d at 641-42 (footnote omitted).

In finding that the limiting language in the statute did not apply to “[a]ny magistrate,” footnote 5 makes clear the Court applied two well-settled rules of statutory construction in reaching this conclusion. The first was the “last antecedent doctrine.” Second, the Court noted its

concern that “to read the limiting language as applying to all items in the series would contradict—and render superfluous—the language enabling the seizure of property within the ‘control of any person,’ because if all seizures are limited to property inside the jurisdiction of the individual judge, it would not have been necessary to alternately authorize the seizure of property under a person's control.” *Id.* at ___ n. 5, 872 S.E.2d at 641 n. 5.²⁹

Thus, the Lexington County magistrate in this case had jurisdiction to issue warrants to both Verizon Wireless and Fitbit, even though their records were not physically located in this State. Both companies were “persons” as that term is used in § 17-13-140. Lee maintains that *Warner* was wrongly decided. However, this Court is bound by the Supreme Court’s construction of § 17-13-140 in *Warner* because the South Carolina Constitution makes the Supreme Court “the final arbiter of South Carolina law.” *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 422 S.C. 211, 219 n. 4, 810 S.E.2d 856, 860 n. 4 (2018); *Santee River Cypress Lumber Co. v. Query*, 168 S.C. 112, ___, 167 S.E. 22, 26 (1932) (Bonham, J. dissenting).

Furthermore, Lee’s assertion lacks merit. The majority’s application of these rules is hardly unique or improper. “The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.” *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 37, 267 S.E.2d 424, 425 (1980). “Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010). Also, this Court “must read the statute so ‘that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,’ for ‘[t]he General Assembly obviously intended [the statute]

²⁹ Although the Court in *Warner* affirmed the judgment, it remanded the case for further proceedings on the motion to suppress to determine whether the affidavit in support warrant was supported by probable cause. *Id.* at 643-44. The lack of probable cause is not an issue in this case.

to have some efficacy, or the legislature would not have enacted it into law.’ ” *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citations omitted) (alterations in original); *State v. Heyward*, 432 S.C. 296, 317, 852 S.E.2d 452, 462 (Ct. App. 2020), *reh'g denied* (Jan. 15, 2021). *See also Commissioners of Pub. Works of the City of Laurens v. City of Fountain Inn*, 428 S.C. 209, 219-20, 833 S.E.2d 834, 839 (2019) (Few, J., concurring) (applying the “last antecedent doctrine” and citing ...” 82 C.J.S. *Statutes* § 443 (2009)); *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (reversing because the Third Circuit’s statutory construction was “precisely contrary to” the last antecedent rule of statutory construction and explaining that although not an absolute, “construing a statute in accord with the rule is ‘quite sensible as a matter of grammar’ ”). Also, the Court in *Warner* correctly noted that a contrary interpretation would render superfluous “the language enabling the seizure of property within the ‘control of any person,’ ” which is contrary to the above-stated basic rules of statutory construction and the obvious intent of the General Assembly in enacting the statute.

Lee’s attack on the *Warner*’s construction of § 17-13-140 is based on the erroneous contention that the Court has given county magistrates broader jurisdiction to issue search warrants than circuit court judges. This argument is not properly before this Court because it was not raised at trial. *See* Rule 210(h), SCACR (stating an appellate court need not consider any fact which does not appear in the record); *State v. Torrence*, 305 S.C. 45, 51, 406 S.E.2d 315, 319 (1991) (abolishing *in favorem vitae* review and holding a contemporaneous objection is required to properly preserve an error for appellate review); *see also State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court

will not be considered on appeal. A party may not argue one ground at trial and an alternate ground on appeal”); *State v. Hoffman*, 312 S.C. 386, 440 S.E.2d 869 (1994)).

More importantly, his argument is premised on a fundamental misunderstanding of the circuit court’s jurisdiction. S.C Const. art. V, § 4 states that “[t]he Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.” As a result, the jurisdiction of circuit court judges is not limited by county. Instead, their jurisdiction is statewide. See *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994). (There is but one Circuit Court in South Carolina, with uniform subject matter jurisdiction ‘throughout the State’) (quoting *State ex rel. Riley v. Martin*, 274 S.C. 106, 111, 262 S.E.2d 404, 406 (1980)). So, *Warner*’s construction of § 17-13-140 does not limit or otherwise adversely impact the jurisdiction of circuit court judges to issue search warrants or grant greater power to magistrates to issue search warrants than circuit court judges.

Yet, even if the magistrate’s warrant was insufficient to acquire the Greenville County records of Verizon Wireless despite *Warner*, the State did not simply rely on the warrant issued by the magistrate. Instead, it obtained a warrant issued by a circuit court judge. As discussed, circuit court judges have “uniform subject matter jurisdiction ‘throughout the State’ ” *Dove*, 314 S.C. at 238, 442 S.E.2d at 600 (1994) (quoting *Martin*, 274 S.C. at 111, 262 S.E.2d at 406). Relying on *Warner*’s construction of § 17-13-140, the circuit court judge (a “court of record”) clearly had jurisdiction to issue warrants for any county within the State, even if a magistrate did not. *Id.*

Further, the warrant for Verizon Wireless’s records was issued pursuant to the SCA and was based on a finding of probable cause. Section 2703(b)(1)(A) states that a governmental entity may obtain certain electronic communications “without required notice to the subscriber or

customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures ... by a court of competent jurisdiction).” The circuit court is a court of competent jurisdiction within the SCA. *See* 18 U.S.C. § 2711 (defining “court of competent jurisdiction,” in part, as “a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants”). Neither § 17-13-140 nor any other state statute restricts a circuit court judge from issuing a warrant for records when those records (or other information) is physically located in another state. To the contrary, and as discussed, § 17-13-140 gives a circuit court judge authority to issue a warrant for such information, regardless of the county in which the out-of-state company does business. Accordingly, the trial judge properly denied the motion to suppress. *Id.* *See also* *Lozoya v. State*, Docket No. 07–12–00142–CR, 2013 WL 708489, *2, 2013 Tex.App. LEXIS 1973, *4 (February 27, 2013) (in absence of Texas statute restricting his ability to act, Texas judge had authority under 18 U.S.C. § 2703(b) to issue search warrant for records held by cell phone provider in Kansas); *In re Search of Yahoo, Inc.*, Docket No. 07–3194–MB, 2007 WL 1539971, at *4 (D.Ariz. May 21, 2007) (explaining that purpose of § 2703(a) is to promote prosecutorial and judicial efficiency by permitting courts where the crime allegedly occurred to preside over both the investigation and prosecution of that crime, and also to relieve burden on federal courts in jurisdictions, where major internet service providers are headquartered). *Cf., e.g., United States v. Bansal*, 663 F.3d 634, 662 (3rd Cir. 2011) (holding that Magistrate Judge in the District of Pennsylvania had authority to issue warrants for stored electronic communications located in California, in part because Rule 41(b) does not limit a magistrate’s jurisdiction pursuant to § 2703(a)); *United States v. Berkos*, 543 F.3d 392 (7th Cir. 2008) (“Rule 41(b) deals with substantive judicial authority -- not procedure -- and thus does not apply to § 2703(a)”); *United*

States v. Bundy, 195 F. Supp 3d 1170, 1173 (D.Or. 2016) (“[t]he territorial limitation in Rule 41 ... does not limit warrants issued pursuant to § 2703); *United States v. Scully*, 108 F. Supp. 3d 59 (E.D.N.Y. 2015) (Rule 41(b) does not limit a magistrate judge's territorial jurisdiction under § 2703(a)); *United States v. Kernell*, No. 3:08-CR-142, 2010 WL 1408437, at *4 (E.D. Tenn. April 2, 2010) (“This Court ... finds that Rule 41(b) is not a ‘procedural’ provision, but is a ‘substantive’ provision, and thus, it is not incorporated under 18 U.S.C. § 2703(a)”).

Of course, even if the Court disagrees with the above analysis, it is clear that the officers acted in good faith in their acquisition of the records from each business. Specifically, they acquired the Verizon records by using both a warrant issued by a magistrate and a warrant issued by a circuit court judge that complied with SCA. Also, neither the United States Supreme Court nor the appellate courts in this state have modified the third party doctrine’s applicability to Fitbit records by extending the reasoning of *Carpenter* to those records. Nevertheless, law enforcement acquired the records through use of a search warrant and, at the company’s request, a subpoena. Under these circumstances, the United States Supreme Court’s good faith exception to the exclusionary rule applies and the trial judge’s ruling must be affirmed.³⁰

The Supreme Court adopted the exclusionary rule as a judicially-created remedy to effectuate the right to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment of the United States Constitution. *See Weeks v. United States*, 232 U.S. 383, 393-394 (1914); *see also United States v. Calandra*, 414 U.S. 338, 347 (1974) (“The exclusionary rule was adopted to effectuate the Fourth Amendment right of all citizens ‘to be secure in their persons,

³⁰ While the trial judge did not rely on this as a basis for denying the motion to suppress, “[t]he appellate court may affirm any ruling, order, decision[,] or judgment upon any ground(s) appearing in the Record on Appeal.” Rule 220(c), SCACR. *See also Warner*, 436 S.C. at ____, 872 S.E.2d at 641.

houses, papers, and effects, against unreasonable searches and seizure”). Importantly, however, adoption of the exclusionary rule did *not* create a personal constitutional right to the exclusion of evidence, and the rule itself was *not* designed to redress the injury caused by an unconstitutional search or seizure. *Davis v. United States*, 564 U.S. 229, 236 (2011); *see also Stone v. Powell*, 428 U.S. 465, 486 (1976). Instead, the exclusionary rule was adopted and solely exists to deter *future* Fourth Amendment violations. *Davis*, 564 U.S. at 236-37 (citing *United States v. Leon*, 468 U.S. 897, 909, 921 n.22 (1984); *see also Elkins v. United States*, 364 U.S. 206, 217 (1960) (“The [exclusionary] rule is calculated to prevent, not to repair”).

In *Leon*, the Supreme Court rejected the contention that the exclusionary rule should be applied to evidence “obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause.” *Leon*, 468 U.S. at 900. Instead, the Court adopted a “good faith” exception to the exclusionary rule, and it cautioned that the exclusion of evidence should only “rarely” occur in cases where officers reasonably relied upon subsequently-invalidated search warrants. *Id.* at 926. The Court explained that suppression of evidence based on a subsequently-invalidated search warrant was *only* appropriate in four limited situations: (1) where the affiant misled the issuing judge by including false or misleading information in the search warrant affidavit; (2) where the issuing judge wholly abandoned his neutral and detached judicial role; (3) where the search warrant affidavit was “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable[;]” and (4) when a search warrant was so facially deficient in some technical respect the officer executing the warrant could not reasonably have presumed it to be valid. *Id.* at 923 (citations omitted). Also, the exclusionary rule is to be a “last resort” and not a “first impulse.” *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). *See also Messerschmidt v. Millender*, 132 S.Ct.

1235, 1245 (2012) (“Where the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner or, as we have sometimes put it, in ‘objective good faith’”) (quoting *Leon*, 468 U.S. at 922-23); *Davis*, 564 U.S. at 236-37 (the exclusionary rule’s “sole purpose ... is to deter future Fourth Amendment violations”). Because none of the reasons for suppressing evidence based on a subsequently-invalidated search warrant apply to the present case, Leon’s good faith exception to the exclusionary rule applies. *Cf. Warner*, 436 S.C. at ___, 872 S.E.2d at 644-45 (Hearn, J., dissenting).

Finally, Respondent submits that the Court should affirm because any error in denying the motion to suppress was harmless beyond a reasonable doubt. “Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial.” *State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991). *See also State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result”). The supposed error in the introduction of his cell phone and Fitbit records “could not reasonably have affected the result of the trial” because it was merely corroborative proof of identity and the State conclusively established identity beyond any reasonable doubt through other evidence, which Lee has not challenged on appeal, such the presence of his DNA at the crime scene and on the bag containing marijuana found in Lindsey’s car. Accordingly, the trial judge’s denial of the motion to suppress must be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and sentence of the circuit court should be affirmed.

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