STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

CHESNEE LABRI MATTRESS,

APPELLANT.

Appellate Case No. 2020-000183

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL

I. In violation of the state and federal constitutional protections against unreasonable invasions of privacy, did the trial judge err in failing to suppress evidence seized pursuant to a search warrant because the prosecution failed to establish probable cause to search Appellant's residence where the affidavit in support of the warrant failed to disclose the identities of key witnesses, failed to provide the evidentiary support for mere conclusory statements, and used information obtained from an illegal search – pinging a cell phone without a search warrant – to establish a relationship between Appellant and the residence search?

II. Did the trial court err by allowing the state to introduce items seized from Appellant's home, including ammunition, firearm boxes, and holsters, that were irrelevant to the issues presented, and if relevant, the danger of unfair prejudice substantially outweighed the low probative value offered by the evidence?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES ON APPEAL

I. Was there a substantial basis for probable cause wherein the search warrant affidavit and supplemental oral testimony demonstrated that multiple eye-witnesses, who were familiar with Appellant by both sight and sound, identified Appellant by her full name as the perpetrator of the murder, and that police used information they already possessed from prior investigations –Appellant's address and phone number – to ping Appellant's location, discover that she was at her **** Village Court home, and establish a fair probability that contraband or evidence of the murder would be found in the residence?

II. Was the trial court correct in allowing the introduction of the ammunition, firearm boxes, magazine, and holster, wherein such evidence corresponded to Appellant's statement to police that misidentified the murder weapon as being a 9-millimeter pistol and where such evidence provided absolutely no basis for unfair prejudice against Appellant?

STATEMENT OF THE CASE

Appellant was charged with murder and possession of a weapon during the commission of a violent crime. (2018-GS-32-920 & 921). (R. p. 504-509). A four day jury trial was held before the Honorable Walton J. McLeod, IV, on January 13, 2020, through January 16, 2020. Appellant was represented at trial by defense counsel Ola Johnson. The State was represented by Assistant Solicitors Rhonda Patterson and Bradley Pogue. (R. p. 1). At the conclusion of the trial the jury found Appellant guilty on both charges. (R. p. 436, lines 13-16). Judge McLeod sentenced Appellant to 35 years imprisonment for murder and a concurrent five years for possession of a weapon during the commission of a violent crime, with credit for time served. (R. p. 437, lines 12-16).

This appeal now follows.

STATEMENT OF FACTS

The Crime

At approximately 12:40am on October 11, 2017, Appellant, Chesnee Mattress, and four of her friends drove to the home of Jasmine Riley as a result of arguments she recently had with Jasmine. (R. p. 62, line 1 through p. 65, line 23; p. 195, lines 7-21). A confrontation took place in the driveway entry of Jasmine's residence, *** State Pond Road. Jasmine's family members came out to investigate the commotion. As the argument between the Riley family and Appellant and her friends continued, Jasmine's mother, Annette Riley, attempted to intervene in the confrontation. As Annette was disengaging from the confrontation Appellant started shooting and struck Annette in the face. Five separate eye-witnesses testified to the confrontation with certainty that Appellant was the shooter. (R. p. 65; 69; 71; 72; 94; 98-99; 115; 119; 131; 134-140). Annette died at the scene as a result of severe blood loss from her wound. (R. p. 325, lines 10-17).

Appellant was questioned a few hours after the incident and confessed that she was in fact the shooter at the scene.[1] Appellant offered multiple stories as to how the altercation unfolded. She first suggested that other individuals had guns of their own and that she was not sure who shot first. (R. p. 195, line 7 through p. 197, line 8). She next stated that Annette was throwing dirt and reaching for a gun. (R. p. 197, line 23 through p. 198, line 5). Lastly, she stated that she did not actually see anyone fire or even present a gun and that she was the only shooter at the scene. (R. p. 198, lines 6-10). Part of Appellant's responses to police indicated that she used a 9-millimeter pistol during the shooting, but that she did not know where the gun was at the time of questioning mere hours after the shooting. (R. p. 7, 12-19) Appellant also voluntarily provided a written statement to police, wherein she states: "I went to a friend house for my birthday. We went down the street and everybody was about to fight. They said they was fixin' to shoot, so we started running to the car. I let a shot off, and we left." This statement was followed up by Officer Hart who asked specific questions of Appellant and confirmed her sole participation in the shooting. (R. p. 226, line 1 through p. 229, line 24). Appellant's response to his questions also confirmed, in contradiction to her written statement, that she fired more than a single shot. (R. p. 228, lines 16-18).

Law enforcement's search of Appellant's residence led to the confiscation of a .40 caliber pistol and .40 caliber Smith and Wesson ammunition. (R. p. 174, lines 15-24; p. 177, line 1 through p. 179, line 12; p. 186, lines 22-23; p. 199, lines 1-5). Officer Creech took a photograph of the .40 caliber pistol while still at Appellant's residence. He showed this photograph to Appellant and she confirmed that it was the gun she had used in the shooting. (R. p. 199, lines 9-16). The search also

[1] Appellant was seated in the front passenger seat of Officer Hart's patrol car during the time she was questioned. (R. p. 5, line 3-14).

led to the police finding a 9-millimeter gun case, 9-millimeter ammunition, a pistol magazine, and a non-specific holster. (R. p. 209, lines 7-10; p. 173, line 1 through p. 175, line 22). The investigation at the scene of the crime led to the recovery of seven spent shell casings, two copper jackets (from the fired bullets), and one projectile from the body of the deceased. (R. p. 292, line 21 through p. 293, line 2). Ballistics expert Suzanne Cromer concluded that the seven cartridge cases were fired by the confiscated .40 caliber pistol. (R. p. 348, line 8 through 359, line 6).

ISSUES AS THEY WERE PRESENTED AT TRIAL

While the investigation at the scene of the crime was ongoing in the early morning hours of October 11, 2017, Sergeant Barr prepared the affidavit and search warrant for Appellant's residence, for consideration by Magistrate Judge Whittle, and provided supplemental oral testimony in support of the warrant. (R. p. 29, line 20 through p. 31, line 8). In pertinent part, the search warrant affidavit states:

> On October 11, 2017 at 00:41 AM the Lexington County Sheriff's Department received a 911 call in reference to a shooting at the location of *** State Pond Rd. in Gaston area Lexington County, SC. The caller advised that a female known as Annette Riley had been shot in the face by Chesnee Mattress. Upon arrival, deputies were advised by multiple witnesses on scene that Chesnee Mattress came to the residence with other individuals after being challenged to a fight by Jasmine Riley. The dispute between Chesnee Mattress and Jasmine Riley has been an ongoing dispute between the two females. During the altercation, Annette Riley, mother of Jasmine Riley intervened to break up the altercation and was subsequently shot in the face by Chesnee Mattress when Annette Riley was disengaging from the altercation. Through further investigation of the shooting incident which took place at *** State Pond Rd. in the Gaston area of Lexington County SC, Detectives located information on a known address for suspect Chesnee Mattress who was positively identified by witnesses as the shooter of Annette Riley. Deputies pinged Chesnee Mattress cell number ***-***-5514 which was located at **** Village Court in the West Columbia area of Lexington County, SC shortly after the shooting. Detectives are seeking this search warrant further investigate this homicide and gather and collect any and all related evidence to further assist law

enforcement with this investigation.

(R. p. 497-499)(errors in original).

In addition to the affidavit supporting the search warrant, Sergeant Barr testified that it is her common practice to provide supplemental oral testimony to the reviewing magistrate because investigations such as this are often developing even after the search warrant is prepared. (R. p. 31, lines 3-10). She testified that the *** State Pond Road residence where the shooting took place belonged to Melissa Riley, the sister of the victim whom Appellant shot. (R. p. 30, lines 23-25). She conveyed to the Magistrate that the multiple identifying witnesses were familiar with Appellant and knew her by both sight and sound. (R. p. 31, lines 13-20; p. 34, lines 17-23). Sergeant Barr testified that law enforcement knew the identity of the victim and knew where the murder took place; as such, the identity of the 911 caller was not significant to the facts and circumstances of the investigation. (R. p. 34, lines 6-15). She testified that at the time she was providing supplemental oral testimony to Magistrate Judge Whittle she did not know the individual names of all the witnesses from the scene who had identified Appellant *by name* as the shooter. (R. p. 35, lines 2-7). She did know, however, that they were friends and family of the victim. (R. p. 40, lines 11-15).

Sergeant Barr testified that she further informed the magistrate that there were several deputies on scene who worked the area regularly and were already familiar with Chesnee Mattress, the identified shooter. (R. p. 32, lines 4-7). She explained that law enforcement has its database and incident reports on file, and that investigators are often familiar with certain people in the area through their case files in both a positive and negative way. In this particular situation, deputies were already "very familiar with Ms. Mattress, so they were able to provide a cell phone number for her as a last-known cell phone number." They also had her address on file before using the cell

phone to ping Appellant's location. (R. p. 35, line 21 through p. 36, line 9). She conveyed to the magistrate that law enforcement officers knew Appellant's residence to be the **** Village Court address, and that by use of the cell phone number obtained by Deputy Woloc, they confirmed that Appellant was indeed at that address mere hours after the shooting took place. (R. p. 31, line 22 through p. 32, line 3; p. 43, line 25 through p. 44, line 14).

Sergeant Barr testified that the description of the **** Village Court property was provided to her by Detective Hart. (R. p. 33, lines 8-14). The record shows that officers were sent to **** Village Court before the warrant was obtained. However, after knocking on the door and receiving no answer the officers stepped away from the property, secured the location, and waited until the warrant was obtained before conducting any search of the property. Once the warrant was obtained officers proceeded to execute the search warrant and simultaneously question Appellant. (R. p. 153, line 11 through p. 155, line 14; p. 215, line 18 through p. 218, line 5).

Appellant confessed to having shot victim. She claimed to have used a 9-millimeter pistol. She could not remember where the gun was, but she did inform police of where she kept her ammunition. In the same area police also located a firearm case, a holster, 9-millimeter ammunition. .40 caliber ammunition, and a pistol magazine. Soon after, a .40 caliber pistol was located and photographed. Appellant confirmed that the .40 caliber pistol was the firearm she used during the shooting. (R. p. 2, line 5 through p. 6, line 25; p. 7, line 23 through p. 9, line 17; p. 10, lines 10-13; p. 11, line 19 through p. 13, line 14).

Appellant also briefly argued during pretrial motions that it would be unfairly prejudicial to introduce the gun case, the 9-millimeter ammunition, the magazine, and the holster, as they lack relevance to the crime and would suggest Appellant was guilty of other crimes. Judge McLeod, asked counsel whether it was illegal for Appellant to own another handgun. Counsel conceded that

it was not illegal and noted that his objection to these materials was that it was prejudicial "in general," but provided no explanation as to how these items could be generally prejudicial. (R. p. 14, line 19 through p. 16, line 5). No further argument was offered on this issue.

After hearing testimony on the matter and the arguments of counsel, Judge McLeod noted that the magistrate is entitled to deference and hearsay can be used in the support of a warrant. Judge McLeod found no basis to dispute the magistrate's finding of probable cause for the warrant and found no basis in which to grant Appellant's motion to suppress. (R. p. 49, line 13 through p. 50, line 7).

STANDARD OF REVIEW

"An appellate court reviewing the decision to issue a search warrant should decide whether the magistrate had a substantial basis for concluding probable cause existed." *State v. Wright*, 416 S.C. 353, 365, 785 S.E.2d 479, 485 (Ct. App. 2016) (quoting *State v. Dupree*, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). "This review, like the determination by the magistrate, is governed by the 'totality of the circumstances' test." *Id.* "The appellate court should give great deference to a magistrate's determination of probable cause." *Id.* "In determining the validity of the warrant, a reviewing court may consider only information brought to the magistrate's attention." *State v. Wright*, 416 S.C. 353, 365, 785 S.E.2d 479, 485 (Ct. App. 2016) (quoting *State v. Martin*, 347 S.C. 522, 527, 556 S.E.2d 706, 709 (Ct.App.2001)).

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Williams*, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010) (quoting *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." *Id.* "To warrant reversal based on the wrongful admission of evidence, the complaining

party must prove resulting prejudice." *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011). Prejudice occurs when there is a reasonable probability the wrongly admitted evidence influenced the jury's verdict. *Id.*

ARGUMENT

I. The trial court did not err in denying the defense's motion to suppress evidence for lack of probable cause supporting the search warrant for Appellant's home.

The trial court was correct to deny Appellant's motion to suppress the evidence seized during the search of her home at **** Village Court. The affidavit standing alone provides inherently reliable eye-witness identification of Appellant as the shooter and establishes a substantial basis for the existence of probable cause to search her **** Village Court home. With the addition of supplemental oral testimony offered by Sergeant Barr to the magistrate, Sergeant Barr well exceeded the necessary standard for probable cause for the search warrant and renders Appellant's argument entirely meritless.

a. Appellant's arguments concerning the use of historical cell site location information is unpreserved for review, a misapplication of law as argued, and at the time of the crime properly acquirable without a warrant under the SCA.

Appellant directs a considerable portion of her brief toward arguing that this court should hold that individuals have a reasonable expectation of privacy in their cell phone location data under the Fourth Amendment and the South Carolina Constitution. Though not a question raised below, as a matter of thoroughness Respondent will address the argument briefly so as to dispose of the matter.

First, such an argument is not preserved for appellate review. Defense counsel's arguments presented to the trial court addressed solely the question of the sufficiency of the affidavit to establish probable cause for the search of Appellant's home. At no point did defense counsel seek

to challenge law enforcement's access of cell phone location information (CSLI) as a violation of a right to privacy. Instead, defense counsel's remarks were strictly addressed to the perceived lack of support demonstrating the *reliability* of such information, *not its propriety*. The complete absence of such an argument at trial cannot permit the preservation of the matter for appeal. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) (reciting the long held standard that "[i]n 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.").

The argument is likewise a divergent application of the law under the circumstances of this case. Historical cell site location data has generally been used to demonstrate to the jury that a defendant was *in the location of the crime at the time the crime occurred,* so as to provide circumstantial evidence of guilt against the Defendant at trial or to impeach a defendant's credibility or alibi. Generally, protections against any unlawful search and seizure revolve around the concern for improperly obtained evidence of guilt. That is not the case here, and the context and purpose of the CSLI is germane to such arguments.

Appellant's cell phone data was used exclusively to support the basis for probable cause in the search warrant sought for Appellant's home – i.e. to demonstrate to the court that since Appellant is believed to have gone home after the shooting, it stands to reason that evidence of the crime may be in the home. Respondent would argue that it is a specious position to suggest that a repeatedly identified murder suspect's home is *only* likely to contain evidence pertinent to a murder if the suspect returns, but such additional information is certainly bolstering.

In any case, even if the argument against the historical cell site location data was to be considered, and even if that argument was raised at trial so as to be preserved, Appellant has

misinterpreted her basis for prejudice and the supposed remedy is rendered moot. Unreasonable search and seizure is a protection concerning the admission of evidence at trial and is corrected by the suppression of the evidence in question *from trial. State v. Gamble*, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013) ("The Fourth Amendment prohibits unreasonable search and seizure, and requires that evidence seized in violation of the Amendment be excluded from trial."). Appellant's cell phone location information was never admitted or even offered at trial, thus the need for suppression is moot. Likewise, law enforcement already knew Appellant's home to be **** Village Court, so there is no colorable argument to suggest the cell site location information led to new information or the discovery of evidence. (R. p. 36, lines 3-9).

Lastly, the United States Supreme Court has already ruled on the expectation of privacy to cell site location information under the 4th Amendment. In *Carpenter v. United States*, 138 S.Ct. 2206, 2217 n. 3 (2018), the United States Supreme Court held that individuals have a reasonable expectation of privacy in the record of their physical movements captured by historical CSLI and that acquisition of more than seven days of CSLI constitutes a "search" under the Fourth Amendment. Under *Carpenter*, there would be nothing to rule the single ping of Appellant's phone as an impermissible search.

Nevertheless, at the time of Appellant's crime *Carpenter* had not been decided and there was no legal directive limiting or preventing law enforcement from using Appellant's cell phone number to investigate the case as they did. Given the exigent circumstances of a murderer still being at large mere hours following the crime, law enforcement were within their bounds to track Appellant's location via GPS "pinging" under the Stored Communications Act's emergency

provisions without first obtaining a warrant. 18 U.S.C. §2702 (c)(4).[2] Thus, the issue at the time did not exist as an undeveloped matter, but as circumstance where access to such information was expressly permitted under such circumstances.

Certainly, it has long been understood that "[i]n parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures. *State v. Forrester*, 343 S.C. 637, 643–44, 541 S.E.2d 837, 840 (2001) (citing S.C. Const. art. IS.C. Const. art. I. § 10). "The relationship between the two constitutions is significant because '[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution.'" *Id.* (quoting *State v. Easler*, 327 S.C. 121, 131 n. 13, 489 S.E.2d 617, 625 n. 13 (1997). "Therefore, state courts can develop state law to provide their citizens with a second layer of constitutional rights." *Id.* However, for the above stated reasons the present case does not present the proper factual circumstances or a sufficient record to enable this court to revisit the holding in *Carpenter* at the state constitutional level.

Given the above arguments, Appellant's arguments concerning the propriety of CSLI information is not properly before the court and otherwise entirely unobjectionable by both current case law and the laws in place at the time Appellant's extremely limited CSLI information was obtained.

b. The trial court did not err in denying the motion to suppress, as the search warrant affidavit and supplemental testimony more than adequately satisfied the substantial basis standard for probable cause.

There is no error on the part of the trial court in denying the motion to suppress. Appellant's arguments to the contrary are entirely meritless.

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[2] The reason we do not possess more record testimony concerning the SCA and police efforts to ping the location of the phone is because the issue was never raised at trial.

The existing case law governing the establishment of probable cause for search warrants leaves no basis for argument against the trial court's decision in this case. Appellate review of the issuance of a search warrant is based upon whether the magistrate had a *substantial basis* for finding probable cause, based upon the totality of the circumstances, and with affordance of great deference to the trial court's decision. *State v. Wright*, 416 S.C. 353, 365, 785 S.E.2d 479, 485 (Ct. App. 2016). Moreover, "[p]robable cause is a flexible, common-sense standard." *Texas v. Brown*, 460 U.S. 730, 741 (1983). It is a "'practical, nontechnical conception'" that deals with "'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Illinois v. Gates*, 462 U.S. 213, 231 (1983) (quoting *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949)); *See also Kaley v. United States*, 571 U.S. 320, 338 (2014) (recognizing probable cause "is not a high bar: It requires only the 'kind of 'fair probability' on which 'reasonable and prudent [people,] not legal technicians, act.'"") (quoting *Florida v. Harris,* 568 U.S. 237, 244 (2013) (quoting *Gates,* 462 U.S. at 231, 238).

As was demonstrated to the trial court, the text of the affidavit denotes that the 911 caller identified Appellant as the shooter *by name*. The text of the affidavit also denotes that multiple witnesses at the scene watched the altercation take place and likewise identified Appellant as the shooter, *by name*. While the consistent identification of Appellant as the shooter by multiple eye-witnesses is already an immensely strong argument for probable cause to search the home of the identified suspect, the nature of the crime itself also lends itself to the veracity of the witnesses' identifications. The text of the affidavit demonstrated that this murder occurred after Appellant had engaged in a protracted face-to-face confrontation with Victim and her family, *as opposed to a crime such as a drive-by shooting where the brief timeframe and limited visibility of the culprit may present a more challenging circumstance for an eye-witness to be confident in their*

identification. As such, the magistrate could easily discern from the affidavit the substantial reliability of the identifications by the eye-witnesses.

The affidavit further demonstrated that investigations by police provided them with Appellant's home address and phone number, and that police used this information to determine whether Appellant had gone home following the shooting. The cell phone ping demonstrated that she was at home, which bolstered law enforcement's belief that they would find evidence of the crime at Appellant's **** Village Court residence. Even based upon the contents of the affidavit alone, there existed a substantial basis for probable cause to search Appellant's home in connection with the murder that occurred just four hours prior.

The added information provided via supplemental oral testimony demonstrated that the various witnesses at the scene were friends and family of the victim and that they were familiar with Appellant by both sight and sound, so as to give additional veracity to each witness's identification of Appellant, *by name*. Sergeant Barr's oral testimony also demonstrated that the various officers that patrol the area were already familiar with Appellant and possessed Appellant's home address and phone number in their existing files, this more than satisfied the substantial basis for probable cause in this case.

Appellant's arguments at trial and on appeal suggest a number of misapplications of the law concerning probable cause. First, Appellant is mistaken to argue that the questions of credibility placed upon confidential informants carry over to the veracity of eye-witnesses at the scene of a murder. "Evidence of past reliability is not usually required when information is provided by an eyewitness because, unlike the paid informer, the eyewitness does not ordinarily have the opportunity to establish a record of previous reliability." *State v. Driggers*, 322 S.C. 506, 510, 473 S.E.2d 57, 59 (Ct. App. 1996). To the same end, the Court in *Driggers* noted that "non-

confidential informants should be given a higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false." *Id.* The same principle holds true for an eye-witness. E.g., *United States v. Perkins*, 363 F.3d 317, 323 (4th Cir. 2004) ("Where the informant is known or where the informant relays information to an officer face-to-face, an officer can judge the credibility of the tipster firsthand and thus confirm whether the tip is sufficiently reliable to support reasonable suspicion."); *United States v. Heard*, 367 F.3d 1275, 1280 (11th Cir. 2004) (holding a tip offered by an informant through a face-to-face encounter may provide a law enforcement officer with reasonable suspicion); *Milbin v. State*, 792 So. 2d 1272, 1274 (Fla. Dist. Ct.App. 2001) ("A witness who provides information to a police officer through 'face to face' communication is deemed to be sufficiently reliable."); *State v. Hutz*, 144 So. 3d 618, 621 (Fla.Dist. Ct.App. 2014); *People v. Williams*, 126 N.Y.S.3d 565 (N.Y.A.D. 2020) ("Inasmuch as the individual who identified defendant as having assaulted the victim and warned that he was armed 'was not a confidential informant but a known member of the community,' defendant's effort to invoke the Aguilar–Spinelli test to assess her reliability is misplaced.") (citation omitted); *State v. Fudge*, 42 S.W.3d 226, 232 (Tex.App. 2001) (finding a law enforcement officer possessed sufficient reasonable suspicion to justify an investigatory detention based on the fact he received unsolicited information about criminal activity in a face-to-face manner from an individual who was neither connected to police nor a paid informant, which made the information provided "inherently reliable"); *Wilkerson v. State*, 726 S.W. 542, 545 (Tex. Crim. App. 1996) ("When the affidavit contains information given by a named informant, this Court has held that the affidavit is sufficient if the information given is sufficiently detailed so as to suggest direct knowledge on his or her part."); *State v. Thomas*, 673 N.W.2d 897, 908–09 (Neb. 2004) ("[B]y identifying himself or herself by

name, the informant is put in the position to be held accountable for providing a false report, which makes the informant more reliable.") (citation omitted); *Giles v. Commonwealth*, 529 S.E.2d 327, 329-330 (Va. Ct.App. 2000) ("Although Officer Devoti did not obtain the women's names or addresses, their reports were not an anonymous tip. He stood face to face with them and listened to their accounts. He was able to assess their credibility and the reliability of their information."). Cf. *Navarette v. California*, 572 U.S. 393, 400 (2014) (finding an anonymous 911 call reporting erratic driving was sufficient to establish reasonable suspicion for a stop based, in part, on the fact the call provided "some safeguards against making false reports with immunity" since the caller potentially could have been traced and identified under the circumstances). From a practical consideration, unless the magistrate or officer is personally familiar with the eye-witness, simply providing the name of the eye-witness to the magistrate does nothing to add to the veracity of the witness's statement. Appellant's argument to the contrary is baseless.

The standard for probable cause does not require separate authenticated proof of each individual detail set forth in an affidavit as would be required at trial for the admission of evidence, nor does it require each officer involved in the investigation be present to attest to their respective independent knowledge of facts. "[M]agistrates can issue search warrants based upon hearsay information that is not a result of direct personal observations of the affiant" but rather was "given to the affiant by other officers." *State v. Wright*, 416 S.C. 353, 365, 785 S.E.2d 479, 485 (Ct. App. 2016) (quoting *State v. Dunbar*, 361 S.C. 240, 249, 603 S.E.2d 615, 620 (Ct. App. 2004)). Appellant's arguments that the search warrant was issued by the court without specific knowledge as to which officer(s) possessed Appellant's address and phone number, and how that information was acquired, clashes with the permissible reliance upon hearsay from other officers who were familiar with Appellant. It likewise clashes with the focus upon the practical, commonsensical,

and nontechnical paradigm for which probable cause is evaluated. See *Texas v. Brown*, 460 U.S. 730, 741 (1983); *Illinois v. Gates*, 462 U.S. 213, 231 (1983). Appellant's argument skirts the issue that when the full name of the suspect is known, information as commonplace as an address can be easily obtained by law enforcement officers through any number of law enforcement and public databases, such as the county's public index, the DMV records, existing criminal records, and even the phonebook. These resources were alluded to by Sergeant Barr in her explanation of the testimony offered to the magistrate in supplement to the affidavit. (R. p. 35, line 21 through p. 36, line 9). In any case, law enforcement's thorough reliance upon *both* the home address and the CSLI ping of Appellant's phone at that address allow the two different pieces of information to be mutually corroborative for purposes of veracity. To argue that the court should find a lack of probable cause on the basis of the questioned accuracy of a suspect's address under the circumstances of this case is a meritless endeavor.

In addition to the sufficiency of the affidavit by itself, and the bolstered basis for probable cause provided by supplemental oral testimony, Appellant's argument on appeal fails to demonstrate why the search warrant should not be upheld under *United States v. Leon.* 468 U.S. 897, 104 S.Ct. 3405 (1984). The facts demonstrate that the officers acted entirely in good faith in their efforts to conduct a search of Appellant's home. While officers arrived at Appellant's home before the warrant had been obtained, they only knocked and received no answer. They then withdrew from the property and waited for the warrant before proceeding to enter the home. They likewise acted entirely within the scope of the warrant by looking for and confiscating evidence pertinent to the crime in question and pertinent to Appellant's own mirandized statements. Thus, the consideration of the search warrant is within the good faith exception under *Leon.* When reckless falsity and neutrality of the magistrate are not in dispute, suppression is only appropriate

when an affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Id.* at 468 U.S. at 923. Based upon the facts set forth above, there is substantial indicia of probable cause in which to satisfy the good faith exception standard.[3]

The affidavit and supplemental oral testimony of this case present no basis for which a substantial basis is lacking to support the magistrate's finding of probable cause. The collective information presented to the magistrate demonstrated that multiple eye-witnesses, who were familiar with Chesnee Mattress by both sight and sound and, identified her as the shooter in a murder mere hours prior to the request for a warrant. Likewise, there is no basis to find a lack of substantial basis for probable cause wherein police officers used their existing knowledge and resources to establish Appellant's home address and phone number, and demonstrate to the court that Appellant had gone home after the shooting. Appellant's claim that the search warrant was not supported by probable cause is entirely without merit.

II. The trial court did not abuse its discretion in allowing the introduction of the ammunition, firearm boxes, the magazine, and the holster.

Appellant's argument that the trial court erred in admitting the other items confiscated from the search of Appellant's home is likewise without merit. Appellant's statements to police which brought into question the potential use of a 9-millimeter firearm rendered each of the items relevant to the trial. Moreover, none of these items demonstrated any prejudice against Appellant, and these items certainly did not influence the jury's verdict in this case.

"The admission or exclusion of evidence is left to the sound discretion the trial judge,

[3] Notwithstanding the arguments demonstrating the sufficiency of the search warrant for Appellant's home, the police had probable cause to arrest and question Appellant. As Appellant quickly confessed to the crime and indicated where she kept her ammunition, the .40 caliber firearm would also have been found and would satisfy the standard for inevitable discovery. (R. p. 10, lines 9-13); *State v. Moore*, 429 S.C. 465, 481, 839 S.E.2d 882, 890 (2020).

whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Williams*, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010) (quoting *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). An abuse of discretion arises when a trial court bases its ruling on an error of law. In addition to an abuse of discretion, the complaining party must also demonstrate the wrongful admission of evidence resulted in prejudice, such that there is a reasonable probability that the disputed evidence influenced the jury's verdict. *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011). Appellant's argument fails to demonstrate error or prejudice.

Appellant argues that the additional items – the 9-millimeter ammunition, the gun case, the holster, and the magazine – are not relevant to the crime in question and therefore should have been excluded. Appellant is mistaken.

Appellant's own statements to law enforcement render each of these items relevant to the state's case. Appellant initially informed law enforcement that she had used her 9-millimeter pistol during the shooting that led to Victim's death. She also informed police officers that she did not know what she had done with the 9-millimeter pistol after the commission of the crime. However, the search of Appellant's home led to the discovery of the .40 caliber pistol and Appellant conceded that that was the fire arm she had used in the shooting. Nevertheless, with Appellant's statements made known to the jury, it was likewise relevant to admit evidence that corresponded to that statement. Probative value exists in linking the physical evidence to the statements given by Appellant, even if not directly connected to the perpetration of the murder.

Secondly, as the trial court noted during arguments, it is not illegal for Appellant to own the 9-millimeter pistol for which these items relate. Defense counsel could not counter the court's point in this regard. As such, there is no genuine argument to suggest that the introduction of these items was prejudicial to Appellant at trial. Moreover, the standard for prejudice requires proof that

the evidence in question would, with reasonable probability, influence the jury's verdict. In this case, the state presented five separate eye-witnesses who identified Appellant by name as the only shooter at the scene. Forensics recovered shell casings that matched the .40 caliber firearm found in Appellant's home mere feet from where Appellant was sitting when police entered the residence. (R. p. 11, lines 19-22). Appellant herself confessed to the being the shooter at the scene of the crime in question and confirmed that the .40 caliber firearm was the weapon she used. Such overwhelming evidence renders the additional ammunition, gun case, holster[4], and magazine practically inconsequential, and merely correlative evidence that ties into Appellant's early statements.

There is no error of law that would demonstrate an abuse of discretion on the part of the trial court. There is likewise no basis for prejudice. Appellant's argument is entirely without merit.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

[4] The holster is not caliber specific, so it could very well be the holster for the .40 caliber murder weapon. (R. p. 209, lines 9-10).

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 15, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2020-000183

THE STATE,

Respondent,

vs.

CHESNEE LABRI MATTRESS,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 15th day of April, 2021.

W. JOSEPH MAYE
Assistant Attorney General

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appellant.

CERTIFICATE OF SERVICE

I, Donna D'Alessio, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent, Certificate of Compliance, and Certificate of Service has been forwarded to Appellant's counsel, Susan B. Hackett, Esq., via email today, April 15, 2021 to shackett@sccid.sc.gov, and to her assistant, Kat Kasperski at kkasperski@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 15th day of April, 2021.

Donna D'Alessio

Donna D'Alessio,
Legal Assistant to W. Joseph Maye
Assistant Attorney General

Donna D'Alessio

From: Donna D'Alessio
Sent: Thursday, April 15, 2021 4:36 PM
To: 'shackett@sccid.sc.gov'; Kasperski, Katriel (kkasperski@sccid.sc.gov)
Cc: Joe Maye
Subject: Mattress, Chesnee L., Appellate Case No. 2020-000183 - Final Brief of Respondent
Attachments: Mattress, Chesnee L., Appellate Case No. 2020-000183 - Final Brief of Respondent, Certificate of Compliance, Cert of Service 4-15-21 (02542479xD2C78).pdf

Dear Ms. Hackett:

Attached is a scanned copy of the Final Brief of Respondent, Certificate of Compliance, and Certificate of Service regarding the above matter. The Final Brief of Respondent and supporting documents are being submitted to the South Carolina Court of Appeals through e-filing, along with a copy of this email.

Hope you are well, and thank you.

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