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Mar 13 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,……RESPONDENT

v.

JUSTIN TYLER ELLAREE HOPKINS, ……APPELLANT

FINAL BRIEF OF RESPONDENT
Appellant Case No. 2022-001567

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STATEMENT OF THE CASE

On December 17, 2009, during the early morning hours, Duwan Williams, Sheldon Livingston, Branton Booker and Donnovin Haynes were asleep in their apartment in Lexington County, South Carolina. (R. p. 211 l. 18-20; p. 213 l. 11-13; p. 213 l. 12-22). There was a knock on the door and Mr. Booker answered. Once he answered he was immediately shot in the chest and right shoulder by either the Appellant or his co-defendant. As they gained entry they found Mr. Williams laying on the couch and shot him four times. Either the Appellant or his co-defendant proceeded to the bedroom of Mr. Livingston where he was shot twelve times. After the shootings, both defendants ransacked the apartment in search for money, guns, and drugs. In the master bedroom was Mr. Haynes, who woke up due to the gunfire. (R. p. 218 l. 1-6). Mr. Haynes went into the bathroom and hid inside a closet. (R. p. 218 l. 9-10).

While hiding Appellant kicked in the bedroom door and began looking for items. (R. p. 220 l. 4-7). Appellant then kicked in the door of the bathroom and attempted to forcibly open the door of the closet where Mr. Haynes hid. (R. p. 220 l. 4-7). Mr. Haynes leaned up against the door fighting Appellant's attempts to gain entry. Appellant's co-defendant then yelled, "Here it is, I found it." (R. p. 223 l. 8-12). That is when both defendant's left the apartment. Mr. Haynes waited a minute before exiting the closet, he saw Mr. Booker lying in the hallway under a mound of clothes. Mr. Haynes then crawled out of the bedroom window, and ran upstairs to call 911. (R. p. 218 l. 5-7).

The first person to respond was Deputy Scott Purdy of the Lexington County Sheriff's Department. When Deputy Purdy arrived, he saw Mr. Haynes standing outside the apartment in pajama pants, no shoes, and no shirt in the December cold. (R. p. 156 l. 21-24). Arriving next was Deputy Barber. When they got to the apartment the door was locked, so they kicked it in. As they

walked inside there was blood all over the entryway. (R. p. 162 l. 7-10). They walked into the living room and saw Mr. Williams wrapped in blankets struggling to breathe after losing a good amount of blood. (R. p. 163 l. 7-16). The officers walked through the apartment and saw all of the clothes from the closets dumped on the floor. They walked into a bedroom and saw a body near the bathroom, they then realized there was also a body under the clothes. (R. p. 164 l. 8-20).

When Detective John Donnelly also of the Lexington Sheriff's Department arrived he saw Mr. Williams was still alive, so he attempted to get a statement. Detective Donnelly asked Mr. Williams if he saw who did this, Mr. Williams could only answer that he was asleep. (R. p. 198 l. 21-24). Both Mr. Livingston and Mr. Booker were determined to be dead at the scene, Mr. Williams was later pronounced dead at the hospital.

After the incident law enforcement was informed by Dale Galloway that he saw a person fitting the Appellant's description fleeing the incident location. Two other people Christy and Hansen Meneses informed law enforcement they saw someone fitting the Appellant's description riding a bicycle in the area, that person then got into a white dually pickup and they drove off. Dr. Sabah Kahdim a nearby resident informed police that his bicycle was stolen. He later identified the bicycle being ridden by the Appellant as his stolen bicycle (R. p. 349 l. 12-14).

Law enforcement subsequently got information from Taquiem Ketter that the Appellant was a possible suspect (R. p. 842). Another person Jamel Patrick a former roommate of the Appellant informed law enforcement that Appellant told him personally that he committed this homicide (12/23/19 p. 842).

Later a confidential informant (CI) came to law enforcement and provided information that a 9mm Glock 26 was being sold (R. p. 836). This gun was being sold at a discounted price because it was "hot" and it had "3 bodies" on it (R. p. 837). The CI told them that the person selling the

gun was a heavy-set black male with a beard named Justin or "Justo" who lived in the Landmark Apartments (R. p. 842). Through this information, social media, and Landmark Apartment records, the Appellant became a person of interest regarding this crime. Law enforcement later set up a call with the CI and the Appellant. As law enforcement officers were listening in, the CI called the Appellant who confirmed that he was selling a Glock handgun for $380.00 (R. p. 837). They got a photograph of the Appellant who was positively identified by Mr. Galloway as the person he saw leaving the incident location soon after the incident. (R. p. 842)

With this information Sheriff deputies went to a magistrate to secure a search warrant of the Appellant's residence. While attempting to secure this warrant, Detective James Pratt was asked to do surveillance of Apartment 27-A at the Landmark Apartments, where the Appellant resided. (R. p. 409 l. 23-24). He sat in his unmarked car in the Apartment complex parking lot making sure the apartment was not disturbed and to observe who was going in and out. (R. p. 410 l. 20-23). While Detective Pratt was observing the apartment he saw an identical white dually pickup that was seen leaving the crime scene. (R. p. 414 l. 18-19). Detective Pratt then saw someone matching the description of the Appellant get out of the truck and walk into apartment 27-A. (R. p. 414 l. 20-22). Detective Pratt notified his supervisor and, (R. p. 416 l. 12-15) he was told to follow that truck, he did, and observed that the license plate lights were out. Detective Pratt waited until they were far enough down the road not to tip off the Appellant, and he pulled over the white pickup. (R. p. 417 l. 1-5).

While Detective Pratt pulled over the co-defendant, Lieutenant Jonathan Brock was asked to replace Detective Pratt and continue surveillance. After Lieutenant Brock arrived, he saw a car pull up. Someone matching the Appellant's description walked out with two bags, one in each hand. That person got into the back seat of the vehicle. When the car was leaving the complex he

radioed for a marked police vehicle to conduct a traffic stop. (R. p. 438 l. 7-11). Lieutenant Brock thought getting a marked police unit would make it safer to make the traffic stop. (R. p. 439 l. 15-20).

Once the stop was made they found the Appellant in the back seat with the two bags between his legs. (R. p. 448 l. 5). Lieutenant Brock had to get into the back seat with Appellant because he was not following instructions. (R. p. 447 l. 19; p. 448 l. 5-6). The Appellant then exited the car and was placed in handcuffs. (R. p. 450 l. 1-2). The Appellant was then arrested for unlawful possession of a weapon because they found two guns and heroin. (R. p. 75 l. 1-4).

The bags were photographed inside the car and collected. (R. p. 470 l. 19-20). Law enforcement took the bags to headquarters, and obtained a search warrant in order to search these bags. (R. p. 470 l. 23-24). Inside the bags, law enforcement found two white tee-shirts, Appellant's wallet with his ID, two .38 caliber shell casings, three unfired .38 caliber rounds, and a 9mm brass colored bullet. (R. p. 472 l. 2-6, 7-11; p. 481 l. 4-10).

On December 21, 2019, the search was executed at the Appellant's residence. When they attempted to try the master key it appeared the locks had been changed. So, they had to break down the door. (R. p. 554 l. 7-11). Once inside they took a black cell phone, black i-phone, a white and red shirt, a pair of black jeans, two pairs of tan work boots, and a door mat (R. p. 829).

On October 24, 2022, this case was called for trial before the Honorable Debra R. McCaslin. Present before the trial judge was the Appellant along with his two attorneys David and Sarah Mauldin. Present representing the State of South Carolina was Eleventh Circuit Solicitor Samuel Rick Hubbard, and Deputy Solicitors Suzanne Mayes and Bruce Norton of the Eleventh Circuit Solicitor's Office.

Lexington County Sheriff's Department crime scene investigator Patrick Ward testified. Investigator Ward stated that he found 9mm cartridge cases in the living room, and bedroom. (R. p. 251 l. 19-21; p. 260 l. 23 – p. 261 l. 2). Agent Ward also testified that the door to the master bedroom was kicked in. The frame and door were damaged and there was a visible footwear tread impressions on the exterior side of the master bedroom door. (R. p. 262 l. 20-23). In Agent Ward's opinion, the foot pattern on the master bedroom door was an aggressive tread pattern consistent with more of a boot than a tennis shoe. (R. p. 283 l. 1-3). Agent Ward also processed the crime scene for fingerprints, and collected touch and blood DNA swabs. (R. p. 284 l. 17-20).

Agent James Green of the South Carolina Law Enforcement Division (SLED) also testified. Agent Green was accepted as an expert in the field of firearms identification. (R. p. 637 l. 20-24). Agent Green testified that the thirteen 9mm shell casings found at the scene were fired by the same gun. (R. p. 640 l. 19-24) Agent Green also testified that the .38 caliber rounds that were found in the Appellant's bag were also fired by the same gun. (R. p. 649 l. 2; p. 649 l. 25). The fired bullets that were recovered at the scene were .38 special or .357 magnum rounds each with similar rifling. (R. p. 651 l. 7-14). Agent Green stated that looking at the projectiles from the scene and from the autopsy, there were at least two separate firearms used. (R. p. 656 l. 22-24).

Testifying during the trial was also SLED Agent Melinda Worley. Agent Worley was accepted as an expert in the field of footwear impression examination and identification. (R. p. 591 4-9). Agent Worley testified that she received three pairs of boots. (R. p. 594 l. 13). There were two that were size ten and a half, and one size twelve. (R. p. 594 l. 17-18). Agent Worley stated that the ten and a half's that were found at the Landmark Apartments were excluded because they were too small and the tread wear on the bottom was too drastic. (R. p. 595 l. 20-25; p. 596 l. 23 – p. 597 l. 1). Agent Worley testified that the size 12 boot impression corresponded in combined

class characteristics, wear pattern and some random identifying characteristics as the impression found at the crime scene. (R. p. 600 l. 10-12). She also testified that the size twelve boots were consistent in size to the impression left at the crime scene. (R. p. 600 l. 20-25).

SLED Agent Samuel Allen Stewart also testified. Agent Stewart was accepted as an expert in DNA analysis. (R. p. 696 l. 12-16). During his testimony Agent Stewart stated that there were four DNA contributors on the deadbolt lock, one of which was the co-defendant. DNA inside the boots that were found in Appellant's apartment matched the Appellant. These were the identical boots that left the imprint on the master bedroom door. Agent Stewart also testified that the blood found on one of the tee-shirts found in the bag Appellant possessed matched victim Duwan Williams. (R. p. 713 l. 16-20). Agent Stewart stated that there were DNA samples for ownership of the tee-shirt that were taken from the underarm and the collar. (R. p. 715 l. 2-3). The number one contributor of this ownership DNA was the Appellant. (R. p. 715 l. 15-16).

Dr. Nicholas Ike Batalis also testified. Dr. Batalis was accepted as an expert in the field of forensic pathology. (T. p. 372 l. 6-9). Dr. Batalis was the individual that performed the autopsy on all three victims. He testified about the fatal injuries that were sustained by each victim.

For victim Brandon Booker, he had two gunshot wounds, one to his right shoulder and the other to the right side of his chest. (R. p. 372 l. 20-22). The one shot that went into the right side of his chest went through the right lung and continued to the spine and buried itself into his back. (R. p. 376 l. 13-18). As a result of going through his lung there was a significant amount of blood loss. About a liter and a half of blood was surrounding his lung and right plural cavity. (R. p. 376 l. 18-20). Dr. Batalis determined Mr. Booker's cause of death was due to a gunshot wound to the chest causing him to bleed out. (R. p. 379 l. 22-25). The manner of death was homicide as the death was due to the actions of another individual. (R. p. 380 l. 2-3).

Mr. Sheldon Livingston was shot a total of twelve times. (R. p. 380 l. 17-19). The first entered the left arm and exited. (R. p. 381 l. 9-11). Shots two and three went through his right arm one above the elbow, the other directly through his elbow. (R. p. 381 l. 21 – p. 382 l. 3). Both shots went through his arm breaking the bone in his arm. (R. p. 381 l. 7-8). The fourth shot went in at the anterior part of his thigh and exited the right side. (R. p. 382 l. 17-20). Shot five went through the left shin, it did not fracture the bone but went straight through. (R. p. 382 l. 6). Shot six went in at the posterior part of the left thigh just above the knee and exited the anterior part of the left thigh. (R. p. 383 l. 11-13). Shot number seven went in his left flank, the bullet traveled straight through his body. (R. p. 383 l. 22-25). The bullet perforated his left lung and then went into his intestines where the bullet was recovered. (R. p. 390 l. 5-7). Shot eight went into at the left side of his abdomen, the bullet then traveled through his body, and exited through his heart. (R. p. 386 l. 7-13). Shots nine and ten both entered the right side of his abdomen near were the bullet was recovered at shot number seven. They both exited the right side of his back. (R. p. 385 l. 3-8). Shot eleven entered the upper left side of his chest near the left armpit, going through his ribs and the bullet was recovered at the shoulder. (R. p. 388 l. 2-7). Shot number twelve entered just below the left armpit, the bullet was recovered at the left side of his back. (R. p. 388 l. 19-23). This bullet also struck his left lung causing bleeding on the left side of his chest. (R. p. 389 l. 2-4). The cause of death was gunshot wounds to his trunk. The manner of death was homicide. (R. p. 391 l. 11-13).

Victim Duwan Willimas had four gunshot wounds. (R. p. 392 l. 1). The first shot entered his mid-back and the bullet was recovered at the upper right side of his chest. (R. p. 392 l. 7-11). This bullet went through one of his ribs, the right lung, and his larynx. (R. p. 392 l. 12-14). Shot number two entered the left side of his neck, then the bullet traveled through the neck and was

recovered inside his neck. (R. p. 393 l. 4-10). Shot number three was in the back of the left arm, the bullet exited out the inner portion of the arm. (R. p. 393 l. 4-6). Shot number four was in the back of the left shoulder, the bullet traveled across the body and was recovered at his right armpit. (R. p. 394 l. 16 – p. 395 l. 3). Dr. Batalis testified that Mr. Williams was shot with two separate types of ammunition. (R. p. 397 l. 17-18). Dr. Batalis determined that the cause of death would be gunshot wounds of the neck and trunk. With the one to his back perforated his lung. The manner of death was homicide as the others. (R. p. 398 l. 11-15).

After five days of testimony a jury of his peers found the Appellant guilty of each count of murder and burglary in the first degree. (R. p. 823 l. 24 – p. 824 l. 7). After the announcement of the verdict the Appellant appeared before the trial judge for sentencing. The trial judge proceeded to sentence Appellant to a term of imprisonment for the remainder of his natural life for each count of murder, and eighteen years for burglary in the first degree. (R. p. 827 l. 17-21).

ARGUMENTS

1. **Law enforcement was justified in stopping a vehicle where Appellant was a passenger due to exigent circumstances, and the possibility of him destroying this evidence.**

Relevant Facts

On December 21, 2019, while law enforcement was attempting to obtain a search warrant for the Appellant's apartment, Detective James Pratt was doing surveillance. During his surveillance Detective Pratt observed a white dually pickup drive to this location and someone matching Appellant's description got out of the truck and walked into Apartment 27-A. The truck then exited the apartment parking lot. (R. p. 414 l. 18-23). This white dually pickup was a vehicle of interest due to it being observed by several eyewitnesses leaving the crime scene. Detective Pratt notified his supervisor, and he was told to follow that vehicle and find a reason to stop it. (R.

p. 416 l. 12-15). After Detective Pratt left the Apartment complex Lieutenant Jonathan Brock was asked to take over surveillance. After Lieutenant Brock arrived at the location he observed a person matching the Appellant's description coming out of Apartment 27-A carrying two bags, and getting into a vehicle. (R. p. 36 l. 3-12). At that time Lieutenant Brock radioed for a marked car to make a traffic stop of the vehicle Appellant was riding in. He called for a marked vehicle because it was safer. (R. p. 38 l. 2-25). The stop was made about a mile down the road from the Apartment complex.

During pre-trial Appellant moved to suppress items found in these two bags, Appellant argued that law enforcement did not have probable cause to stop this vehicle. He argued that this stop went against the United States Supreme Court case of *Bailey v. U.S.,* 568 U.S. 186, 133 S.Ct. 1031 (2013). The trial court decided that there was reasonable suspicion for the stop, and denied the Appellant's motion to suppress.

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The admission of exclusion of evidence is left to the sound discretion of the trial judge, whose discretion will not be reversed on appeal absent an abuse of discretion. *State v. Tucker,* 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. King,* 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017). When officers have probable cause to believe that contraband is present and, in addition, they reasonably believe that the evidence may be destroyed or removed before they can secure a search warrant, a warrantless entry is justified. *U.S. v. Turner,* 650 F.2d 526 (4th Cir. 1981). Police may stop a motor vehicle and briefly detain and

question the occupants if they have reasonable suspicion that an occupant is involved in criminal activity. *State v. Lesley,* 326 S.C. 641, 643, 486 S.E.2d 276, 277 (1997).

Discussion

The Appellant argues that this stop was unlawful due to the distance between the location to be searched and the actual stop. The Appellant relies on the United States Supreme Court case of *Bailey v. United States.* In *Bailey* law enforcement followed the Appellant for a distance of a mile after they already had secured a search warrant. The United States Supreme Court ruled that although the *Summers*[1] rule allows officers executing a search warrant to detain the occupants of the premises, this is spatially constrained and limited to the immediate vicinity of the premises to be searched. *Bailey v. United States,* 133 S.Ct. 1031, 185 L.Ed.2d 19 (2013). It is the opinion of the Respondent that *Bailey* nor *Summers* applies. This is due to the fact when the officer observed the Appellant leaving his apartment carrying two bags, this was sufficient for the officer to believe that the Appellant was in the midst of destroying evidence. If law enforcement believes that a person is going to destroy evidence in an exigent circumstance, this allows them to conduct a warrantless stop and search.

When a warrantless search falls within one of the well-established exceptions to the Fourth Amendment warrant requirement, the search will survive constitutional scrutiny. *State v. Dobbins,* 420 S.C. 583, 591, 803 S.E.2d 876, 880 (2017). The exigent circumstances doctrine provides an exception to the Fourth Amendment(s) protections against warrantless searches, but only where from an objective standard, a compelling need for official action and no time to secure a warrant exists. *State v. Abdullah,* 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004).

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[1] For Fourth Amendment purposes, a warrant to search for contraband found on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted. *Michigan v. Summers,* 452 U.S. 692, 101 S.Ct. 2587 (1981).

While observing Apartment 27-A the apartment that law enforcement had proof was the Appellant's residence, Lieutenant Brock saw someone matching the description of the Appellant leaving the premises carrying two bags. This was after his accomplice was stopped by law enforcement some fifteen to twenty minutes earlier. Appellant in their brief would like to make it look like this was a normal sized individual and that Lieutenant Brock relied on a "vague" description. Lieutenant Brock testified that he had seen the Appellant's DMV photo, and social media photos. (R. p. 34 l. 8-13). Lieutenant Brock knew the description of the Appellant was 5'8 – 5'9 300 lbs. That is not an average sized individual. It is impossible to believe that many residents of the Landmark Apartments, that live in Apartment 27-A, and are wanted for murder fit that description. Lieutenant Brock stated that night that an individual got out of a vehicle and went into Apartment 27-A, but because of the headlights he could not see who that individual was. (R. p. 35 l. 22-25). Lieutenant Brock also testified that when the individual exited 27-A and got into his side of the vehicle he went past the front headlights, Lieutenant Brock was able to see more of that person's height and weight. Lieutenant Brock specifically testified that, "Absolutely I know 100 percent that the guy that came out of that apartment was Mr. Hopkins. Absolutely." (R. p. 51 l. 25 – p. 52 l. 2).

At the time law enforcement saw the Appellant leaving his apartment with possible evidence they had every right to stop him, because exigent circumstances existed. There was a possibility that Appellant was going to destroy evidence. This created an exigency not created by law enforcement. In the United Supreme Court opinion of *Kentucky v. King,* the Supreme Court noted:

> The exigent circumstances rule justifies a warrantless search when the conduct of the police preceding the exigency is reasonable in the same sense. Where, as here, the police did not create the exigency by engaging or threatening to engage in

> conduct that violates the Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable and thus allowed.

Kentucky v. King, 563 U.S. 452, 462, 131 S.Ct. 1849, 1858 (2011).

There was nothing done by law enforcement in violation of the Fourth Amendment causing this exigency to take place. Law enforcement was observing the apartment for precisely this reason. Once there was the possibility of evidence being destroyed, police went into immediate action in order to preserve evidence, which was their duty as law enforcement officers.

There was also reasonable suspicion that a crime was going to be committed which also allowed law enforcement to make a stop and conduct a warrantless search. The police had every right to believe that those bags carried evidence that was going to be destroyed by the Appellant. The destruction of evidence is illegal. The South Carolina Code of Laws specifically state:

> A person who willfully and maliciously destroys, alters, conceals, or tampers with physical evidence or biological material that is required to be preserved pursuant to this article with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense, and not more that five hundred thousand dollars or imprisoned for not more than one year or both for each subsequent violation.

S.C. Code Ann. §17-28-350 (2008).

The actions of the Appellant exiting his apartment, getting into a car with two bags, only minutes after his co-defendant was stopped by law enforcement, made the actions of law enforcement reasonable. To determine whether reasonable suspicion exists, an officer, by a totality of the circumstances must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. *State v. Morris,* 411 S.C. 571, 578, 769 S.E.2d 854, 878, *citing, United States v. Cortez,* 449 U.S. 411, 417-18, 101 S.Ct. 690, (1981). Reasonable suspicion does not entail a set of legal rules, but entails common sense, nontechnical conceptions that deal with factual and

practical considerations of everyday life on which a reasonable and prudent person, not legal technicians act. *United States v. Foreman,* 369 F.3d. 776, 781 (4th Cir. 2004). Police may stop a motor vehicle and briefly detain and question the occupant if they have a reasonable suspicion that the occupant is involved in criminal activity. *Michigan v. Long,* 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983). This suspicion must be based on specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant that intrusion. *Terry v. Ohio,* 392 U.S. 1, 21, 88 S.Ct. 1868, 1880 (1968).

It is certainly reasonable to expect a law enforcement officer, who is observing a suspect walking out of an apartment where they are attempting to obtain a search warrant to stop the suspect when he is walking out with bags that possibly contain evidence, that he possibly is going to destroy. The Fourth Amendment does not prevent an officer from making a warrantless entry and search if the officer reasonably believes that there is risk that the evidence will be destroyed before he can obtain a search warrant. *Dobbins,* 420 S.C. at 592, 803 S.E.2d at 880. Since the Appellant got into an automobile there was more of an urgent need to act, because once that vehicle got out of the reach of law enforcement they did not know which direction they were going. The automobile exception to requiring a search warrant exists in recognition of "the ready mobility of automobiles and the potential that evidence may be lost before a warrant is obtained." *Morris,* 411 S.C. at 580, 769 S.E.2d at 859, *quoting, State v. Cox,* 290 S.C. 489, 491, 351 S.E.2d 784, 787 (2013). Exigent circumstances as imminent destruction of evidence, the potential for a suspect to flee, or risk of danger to police or others may justify a warrantless entry, but absent hot pursuit, there must be at least probable cause to believe the exigent circumstances were present. *Dobbins,* 420 S.C. at 592, 803 S.E.2d at 880.

Probable cause is defined as good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce an ordinary prudent and cautious person, under the circumstances to believe likewise. *State v. Gamble,* 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013). Determining whether an officer has probable cause to conduct a warrantless search depends on the totality of the circumstances. *Morris,* 411 S.C. at 581, 769 S.E.2d at 859. It is clear when looking at the totality of the circumstances, probable cause exists that the Appellant was carrying evidence to potentially destroy. The Appellant got out of a vehicle that was seen leaving the crime scene that the police were looking for, and that vehicle was stopped by law enforcement minutes later. Not long after the Appellant left his apartment carrying two bags, and got into an automobile with these two bags, it became the duty of Lieutenant Brock to stop this vehicle in order to save the potential evidence in those bags. Since this exigent circumstance existed there was an exception to obtaining a warrant prior to the stop and search of this motor vehicle. If Appellant did not have evidence in his possession for destruction then *Bailey* would apply. However, since Appellant was found in possession of evidence an exigent circumstances existed allowing for a warrantless stop and search of that vehicle. The decision of the trial court should be upheld.

2. Law enforcement's search warrant for obtaining Appellant's DNA was lawful due to blood and DNA evidence found at the scene, and even if the warrant was unlawful the DNA would have been discovered evidently due to the items found in the Appellant's possession and in his apartment as a result of a valid search warrant.

Relevant Facts

When law enforcement arrived at the scene the door was locked from the inside, so they knew who ever committed this crime locked the doors and probably escaped out of the sliding glass doors. (R. p. 285 l. 11-14). Officer Ward, who was the responding crime scene investigator, collected swabs from the door for DNA and also dusted that door for fingerprints. Touch DNA was collected from the interior and exterior side of the sliding glass door. (R. p. 285 l. 15-17). At that

time law enforcement needed DNA samples from the Appellant in order to test to include or exclude him as the person who touched those doors.

The Appellant was stopped two days after the murder, inside a bag at the Appellant's feet were a Glock 26 handgun, and two white tee shirts. That night law enforcement got a search warrant for Appellant's residence. In that residence they found a pair of boots matching the imprint left on the door of the master bedroom, that footwear also possibly had blood. Due to those items being discovered on December 22, 2019, law enforcement obtained a search warrant for the Appellant's DNA. It was collected by buccal swab that same day.

Standard of Review

The admission or exclusion of evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. An abuse of discretion occurs when the trial court's conclusions either lack evidentiary support or are controlled by an error of law. *State v. Winkler,* 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010). A search warrant may be issued only upon a finding of probable cause, and it is the duty of the reviewing court to ensure the issuing official had a substantial basis upon which to conclude that probable cause existed. *State v. Chisholm,* 395 S.C. 259, 267, 717 S.E.2d 614, 618 (Ct. App. 2011). The Fourth Amendment's proper function is to constrain, not against all intrusions as such, but against intrusions which are not justified by the circumstances, or which are made in an improper manner. *Maryland v. King,* 569 U.S. 435, 447, 133 S.Ct. 1958, 1969 (2013).

Discussion

In order to obtain the bodily fluids from a person, it must come either by consent, search warrant, or an order of the court. An order issued pursuant to §17-13-140 that allows the government to procure evidence from a person's body constitutes a search and seizure under the

Fourth Amendment, and must comply with constitutional and statutory guidelines. *State v. Baccus,* 367 S.C. 41, 53, 625 S.E.2d 216, 222 (2006).

There were two search warrants obtained by law enforcement seeking Appellant's DNA. The first search warrant obtained on December 22, 2019, the second on September 23, 2022. The first search warrant provided probable cause that the Appellant committed this crime along with information regarding the stop and the evidence collected from the search warrant. The second search warrant also provided sufficient probable cause. Both search warrants informed the magistrate sufficient probable cause that the Appellant committed this crime. The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter. *Baccus,* 367 S.C. at 51, 625 S.E.2d at 221. The Appellant argues that this warrant was provided after DNA revealed that the touch DNA did not belong to him but to his co-defendant. This was an ongoing investigation so law enforcement has the right to make sure all bases are covered prior to taking this case to trial.

In *State v. Baccus,* the South Carolina Supreme Court set out elements that must be satisfied in order to obtain bodily fluids from a person accused of a crime. In *Baccus* it states that these elements are: (1) probable cause to believe the suspect has committed the crime; (2) a clear indication that relevant material evidence will be found; and (3) the method used to secure it is safe and reliable. *Id.,* 367 S.C. at 54, 625 S.E.2d at 223. It is clear by the reading of both search warrants the *Baccus* elements were satisfied. First, sufficient probable cause was placed on these warrants revealing that the Appellant committed this crime. The affidavit included information regarding two individuals that knew Appellant and who informed law enforcement that Appellant told them he committed this crime; and, the C.I. that gave information he got from the Appellant that was never released; texts sent between the Appellant and his co-defendant relating to their

involvement in the crime; Facebook photos revealing the Appellant holding guns that were the same caliber used in the crime; the touch DNA, boots, and tee shirt that was either found at the scene, belonged to the Appellant, or was found in the Appellant's possession, that a known sample had to come from the Appellant in order to obtain a match. There was an indication that evidence would be found either from the touch DNA at the scene; DNA ownership matching the boots whose imprint was found at the crime scene; or the tee shirt with the victim's blood. To obtain a buccal swab is very safe because all that law enforcement does is swab the inside cheek. This method has very little intrusion and is painless.

In *Baccus* the South Carolina the Supreme Court also added additional factors that should be considered by the magistrate during the issuance of a warrant for bodily fluids. In *Baccus* it states:

> Additional factors to be weighed are the seriousness of the crime and the importance of the evidence to the investigation. The judge is required to balance the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures.

Id.

A crime cannot get any more serious that the taking of a man's life, and this was not just the taking of one man's life but three. The DNA evidence was important due to it being found at the scene and the other evidence collected per a lawful search of the Appellant's residence, and what was found with the Appellant upon a search after a lawful stop. The Respondent argues that the search warrants revealed sufficient probable cause to give the magistrate an indication that the Appellant committed this crime, that evidence would be found, and that evidence was necessary in this ongoing investigation.

The Appellant argues that law enforcement received his DNA sample unlawfully because they received it in the mere suspicion that it may be useful later if the suspects DNA is ever found. Although there was evidence that was collected that contained DNA, there needed to be a known sample to either include or exclude the Appellant. To obtain DNA under a suspicion that DNA could be found later is not unlawful. In *U.S. v. Grubbs,* the United States Supreme Court stated:

> Because probable-cause requirement looks to whether evidence will be found *when the search is conducted*, all warrants are in a sense, "anticipatory" in the typical case were the police seek permission to search a house for an item they believe is already located there, the magistrate's determination that there is probable cause for the search amounts to a prediction that the item will still be there when the warrant is executed.

U.S. v. Grubbs, 547 U.S. 90, 95, 126 S.Ct. 1494, 1499 (2006), *quoting, Illinois v. Gates,* 462 U.S. 213, 238, 103 S.Ct. 2317 (1983)(emphasis in original).

The United States Supreme Court also made it lawful for law enforcement to collect DNA immediately after arrest, when there is no probable cause that this evidence will be used for the crime this person has committed, but so it could be stored and matched to ongoing, or future criminal investigations.[2] The Supreme Court compared it to taking a mugshot or obtaining fingerprints.[3] The taking of DNA from a prisoner who was just arrested only to compare it to possible DNA samples is no different than what the Appellant is arguing is unlawful in the present

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[2] Warrantless search in which a buccal swab was applied to the inside of defendant's cheeks as part of a routine booking procedure for serious offenses, as authorized by Maryland DNA Collection Act, was reasonable under the Fourth Amendment; in light of the context of a valid arrest supported by probable cause, defendant's expectations of privacy were not offended by the minor intrusion of a brief swab of his cheeks which did not break the skin, the swab did not increase the indignity already attendant to normal incidents of arrest, the state had significant interest in the identification of defendant and all arrestees, and DNA identification had unmatched potential to serve that interest. *Maryland v. King,* 569 U.S. 435, 133 S.Ct. 1958 (2013).

[3] When officers make an arrest supported by probable cause to hold for a serious offense and they bring the suspect to the station to be detained in custody, taking, and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment. *Id.*

case. Although the Respondent disagrees that the law enforcement collected DNA evidence on a mere suspicion, if that occurred the United State Supreme Court has deemed it as not being unlawful.

The Respondent will also argue that the second search warrant issued revealed probable cause that the Appellant committed this crime, was a part of an ongoing investigation; and since the victims DNA was found on the tee shirt found in Appellant possession, and boots found in Appellant's residence matched the impression left at the scene, ownership DNA would have been needed. So, this DNA would have been eventually sought and obtained by law enforcement. So. under the doctrine of evidential discovery, these search warrants are lawful. Even without an applicable exception to the search warrant requirement, evidence acquired as a result of a warrantless search or seizure may be admissible if the evidence would have inevitably been discovered by lawful means. *State v. Cardwell,* 425 S.C. 595, 600, 824 S.E.2d 451, 453 (2019). The second search warrant came after the boots and tee shirt were discovered. Upon that discovery a search warrant would have been requested and there would have been probable cause for a magistrate to believe the Appellant committed this offense, and there would have been a possibility that evidence would have been found after the DNA has been compared with the inside of the boots and tee shirt. This information would have been eventually discovered with the issuance of the second search warrant and the Appellant's claims have no merit. The decision of the trial judge should be affirmed.

3. There does not have to be proof that the place to be searched is where the Appellant resides as long as there is probable cause to believe that evidence of the crime will be found, also there has been no showing by the Appellant that this search was done in bad faith; therefore, the search was lawful.

Relevant Facts

On December 21, 2019, two days after the murder, law enforcement went to a magistrate in order to get a search warrant for the apartment of the Appellant. During their investigation law enforcement discovered that the Appellant lived at the Landmark Apartments, apartment number 27-A. Within the description of the premises, it stated:

> The grounds, outbuildings, place, premise, residence, and vehicles to be searched are located at 19 Landmark Dr. Landmark Apartments in the Columbia area of Lexington County, South Carolina . The structure is a two story brick apartment building with wood on the upper part painted green. The room to be searched is **27A**.

(12/21/19 p. 830) (emphasis added).

In the affidavit it stated, "we were able to confirm was the same Verizon Wireless number listed for him with Landmark Apartments as accurate."

As a result of this search warrant law enforcement found size 12 work boots that matched the type of boot Appellant was wearing that day seen in numerous surveillance videos from a local grocery store and the Department of Motor Vehicles. Agent Melinda Worley of SLED was accepted as an expert of footwear impression examination and identification. (R. p. 591 l. 4-9). During trial Agent Worley testified that the size 12 shoe impression corresponds in combined class characteristics, wear pattern, and random identifying characteristics with the shoe impression that were on the bedroom door at the crime scene. (R. p. 600 l. 10-17). Agent Worley also testified that the size 12 boots were consistent in size to the impression at the crime scene. (R. p. 600 l. 20-25). SLED agent Samuel Allen Stewart also testified during the trial. Agent Stewart was accepted as an expert in DNA analysis. Agent Stewart testified that the number one contributor of the DNA

inside of the size 12 boots found at the Appellant residence and the tee shirt with the victims blood was that of the Appellant.

Standard of Review

An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause. *Illinois v. Gates,* 462 U.S. 213, 239, 103 S.Ct. 2317, 2333 (1983). In determining whether a search warrant is supported by probable cause the crucial element is not whether the target of the search is suspected of the crime, *but whether it is reasonable to believe that the items to be seized will be found in the place to be searched. State v. Thompson,* 419 S.C. 250, 256, 797 S.E.2d 716, 719 (2017)(emphasis in original). When reviewing a Fourth Amendment search-and-seizure case, an appellate court must affirm if there is any evidence to support the ruling. *State v. Wright,* 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011). The appellate court will reverse in a Fourth Amendment search-and-seizure case only when there is clear error. *State v. Morris,* 411 S.C. 571, 578, 769 S.E.2d 854 (2015). The balancing approach that has evolved in various contexts including a criminal trial "forcefully suggest(s) that the exclusionary rule be more generally modified to permit the introduction of evidence obtained in the reasonably good-faith belief that a search or seizure was in accord with the Fourth Amendment." *U.S. v. Leon,* 468 U.S. 897, 909, 104 S.Ct. 3405, 3413 (1984), *quoting, Gates,* 462 U.S. at 255, 103 S.Ct. at 2340.

Discussion

The Fourth Amendment of the United States Constitution provides that 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated.' *Terry v. Ohio,* 392 U.S. 1, 8, 88 S.Ct. 1868, 1873 (1968), *quoting,* U.S. CONST. amend. IV. The South Carolina Constitution is almost identical except it adds language that makes it even more narrow. The South Carolina Constitution adds "unreasonable

invasions of privacy" SC CONST. Art. I §10. The Appellant argues that the search warrant was unlawful because there was no probable cause revealing that the Appellant actually resided in the place to be searched. There is no other claim regarding the probable cause presented to the Magistrate. The only argument by the Appellant was no probable cause was revealed that the Appellant actually lived in apartment 27-A of the Landmark Apartments.

The Respondent will argue that it is not necessary for the Appellant to actually reside at the place to be searched, as long as probable cause is relayed to the magistrate by way of affidavit in a search warrant that reveal a practical, common-sense impression that under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in the particular place to be searched. *State v. Tench,* 353 S.C. 531, 534, 579 S.E.2d 314, 316 (2003).

Within the affidavit it stated the fact a CI informed law enforcement that the Appellant informed him that he was selling a gun with "3 bodies" on it and the shooter matched the description of the Appellant. That information from social media and the Landmark Apartments, as well as the South Carolina Department of Motor Vehicles made Appellant a person of interest. (12/21/19 p. 830). The affidavit also mentioned that there was a call from the number on the Appellant Verizon wireless bill "listed for him with the Landmark Apartments." At the conclusion of the affidavit, it stated:

> "The Lexington County Sheriff's Department is seeking a search warrant in this case for to search the property to preserve and collect any potential evidence related to this incident which may establish the facts of the shooting, which it is reasonably believed at this time will be present at the above listed premises.

(12-21-19 p. 830).

The Appellant argues that this search warrant was not lawful; therefore, anything produced as a result of this search should have been excluded. The argument of the Appellant is that since

this search warrant did not state that the Appellant resided at that address the warrant did not establish probable cause that the Appellant resided at the address that was searched. The Respondent will argue that the Appellant does not have to actually reside at the location of the search. All that is needed is probable cause that items are at the location of the search that are evidence of the crime that the Appellant was accused of committing. Valid warrants may be issued to search property, whether or not occupied by a third party, at which there is probable cause to believe that fruits, instrumentalities, or evidence of the crime will be found. *Zurcher v. Standford Daily,* 436 U.S. 547, 553, 98 S.Ct. 1970, 1975 (1978). A search warrant is valid even though the person that was accused does not live at the residence because, "Search warrants are not directed at persons; they authorize the search of "place[s] and the seizure of "things" and as a constitutional matter they need not even name the person from whom the things will be seized." *Zurcher,* 436 U.S. at 555, 98 S.Ct. at 1976, *quoting, United States v. Kahn,* 415 U.S. 143, 155 n.15, 94 S.Ct. 977, 984 (1974). The person who resides at the property does not even have to be a suspect or charged with any crime. The critical element is a reasonable search is not that the owner of the property is suspected of a crime but that there is reasonable cause to believe that the specific "things" to be searched for and seized are located on the property to which entry is sought. *Id.*

There is no other argument regarding this search warrant, so the Appellant concedes that probable cause was revealed that he committed this crime. The only argument raised by the Appellant is that there is no mention that he resided at that apartment. However, the Apartment number, and full description of the complex was revealed to the magistrate. Since the defendant does not need to reside at the place to be searched, that all that is needed is probable cause that the Appellant committed the crime, and that evidence of said crime would be found at the location to

be searched, which the Appellant himself does not object that this was revealed, this search warrant was valid and the decision of the trial court admitting this evidence should be upheld.

The Respondent is not conceding that the search warrant was illegitimate. The introduction of the evidence was lawful, but if this court finds that the search warrant was unlawful then this evidence should be allowed under the good faith doctrine.

In *United States v. Leon,* the United States Supreme Court held, even when a search warrant affidavit fails to contain probable cause, the fruits of that warrant will not be suppressed where the officers who executed the warrant relied on the search warrant in good faith. *U.S. v. Leon,* 468 U.S. 897, 104 S.Ct. 3405 (1984). The correct standard is whether a reasonably trained officer, in light of all the circumstances, would have known that the search was illegal despite the magistrate's authorization. And good faith will not apply when the affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Id,* 468 U.S. at 923, 104 S.Ct. at 3421. No argument has been raised regarding the probable cause that was presented in the affidavit, only that the Appellant was not listed as living at the residence that was to be searched. It should be obvious that law enforcement had good faith that this warrant was lawful. *Leon,* established that, "pursuant to warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search." *Id.,* 468 U.S. at 922, 104 S.Ct. at 3420.

Leon establishes that an officer reliance on a warrant will not qualify as "objectively reasonable" only in four circumstances:

(1) Where "the magistrate or judge in issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth. *Id.,* 468 U.S. at 923, 104 S.Ct. at 3405.

(2) Where "the magistrate acted as a rubber stamp for the officers and so 'wholly abandoned his detached and neutral 'judicial role'" *U.S. v. Bynum,* 293 F.3d 192, 195 (4th Cir. 2002), *quoting, Leon,* 468 U.S. at 923, 104 S.Ct. 3405.
(3) Where a supporting affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon,* 468 U.S. at 923, 104 S.Ct. at 3405.
(4) Where "a warrant is so facially deficient . . . i.e. in failing to particularize the place to be searched or the things to be seized . . . that the executing officers cannot reasonably presume it to be valid. *Id.*

United States v. Williams, 422 F.3d 311, 317 (4th Cir. 2008), *See, State v. Sachs,* 264 S.C. 541, 216 S.E.2d 501 (1975); *State v. Herring,* 387 S.C. 201, 215, 692 S.E.2d 490, 497 (2009).

Since there are no accusations being made by the Appellant that false information was knowingly given to the magistrate during the application of the warrant; that the magistrate had not "rubber stamped" the warrant prior to its execution; that there was not sufficient probable cause on the face of the affidavit; or that the warrant affidavit was "facially deficient," none of the above listed factors apply.

To verify that the apartment that was searched was the residence of the Appellant, Kim Herlong, the property manager of the Landmark Apartments, was called to testify. Ms. Herlong testified that although the apartment was leased to the Appellant's half-brother, she became aware that the Appellant was living in that apartment the previous Thanksgiving. (R. p. 544 l. 6-8; p. 545 l. 15-10). Ms. Herlong and the Appellant actually had a discussion that when his half-brother's lease ran out, that next January he would like to take it over. (R. p. 546 l. 1-3). The Appellant gave her his contact information and she gave him a pamphlet of the qualifications for him to live in that apartment. (R. p. 546 l. 4-6). This conversation occurred around the time of the incident. (R. p. 546 l. 10-13). So, it should be obvious that if any exclusion of the fact that the Appellant actually resided at that apartment, it was not a mistake committed by law enforcement. There was never any intentional false information given to the magistrate, this warrant was done in good faith so the evidence was properly admitted.

The Appellant wishes the court to exclude valuable evidence proving that the Appellant was involved in a triple homicide, due to the law enforcement leaving out one sentence in the search warrant. There is no other element that the Appellant argues that the warrant was invalid. So pursuant to the United States Supreme Court decision of *U.S. v. Leon* we request that if this court finds that the warrant was unlawful due to a failure to mention that the Appellant resided at the listed address, that the good faith of law enforcement that this warrant was valid be recognized and the decision of the trial court be upheld.

CONCLUSION

The trial court made the proper decisions regarding this matter so the Respondent respectfully requests this Court affirm the decision of the trial court.

Respectfully submitted,

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March 13, 2024

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,……RESPONDENT

v.

JUSTIN TYLER ELLAREE HOPKINS, …….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 the 13th day of March 2024.

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