STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Edward B. Cottingham, Circuit Court Judge
Appellate Case No. 2011-203769

THE STATE,

Respondent,

vs.

ALEX LORENZO ROBINSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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II.

The trial judge properly declined to require the disclosure of the confidential informant's identity because that information was not relevant or necessary towards Appellant's ability to defend his case, and Appellant failed to articulate any meaningful or compelling reason as to why the disclosure of the confidential informant's identity was necessary or required under the circumstances

III.

The trial judge properly declined to recuse himself on the sole basis that he had previously issued a search warrant in Appellant's case because the issuance of the search warrant in an earlier proceeding did not constitute evidence of bias or partiality on the part of the trial judge and no other evidence was presented to suggest the trial judge could not be fair and impartial to Appellant.

IV.

Any issue regarding the applicability of the cumulative error doctrine was not preserved for appellate review and abandoned because Appellant did not raise any issue in regards to cumulative error during trial and, instead, raised the issue for the first time on appeal in a conclusory and unsupported manner. Regardless, Appellant's trial was not rendered unfair as a result of any errors, cumulative or otherwise, and none of the errors identified by Appellant as rendering his trial unfair actually constituted an error.

STATEMENT OF THE CASE

In September of 2008, Appellant Alex Lorenzo Robinson was arrested after attempting to flee from law enforcement officers conducting a narcotics investigation. In August of 2009, the Horry County grand jury indicted Appellant for one count of trafficking in cocaine in an amount between 100 and 200 grams and one count of failure to stop for a blue light. On November 9, 2011, a jury trial was commenced in the Horry County court of general sessions with the Honorable Edward B. Cottingham, circuit court judge, presiding. Following a pre-trial ruling, the trial proceeded forward only on the trafficking in cocaine charge. At the conclusion of trial, the jury convicted Appellant of trafficking in cocaine in an amount between 100 and 200 grams. Following the verdict, the trial judge sentenced Appellant to a twenty-five year term of imprisonment and a $50,000 fine. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

In August of 2008, officers with the Horry County Police Department began a narcotics investigation targeting a residence in Conway, South Carolina, after a confidential informant indicated she knew someone who could arrange narcotics purchases from that residence. (R. pp. 23-24). As part of the investigation, Sergeant Kent Donald met with the confidential informant prior to the arranged drug transactions, and the confidential informant bought cocaine from the targeted residence on three separate occasions. (R. pp. 24-27). During the transactions, the confidential informant met with an individual named Christopher Oliver, the informant drove Oliver to the targeted residence and parked nearby, Oliver went into the residence while the informant watched Oliver go inside from the car, and Oliver returned from the residence shortly thereafter with cocaine. (R. pp. 25-26). As the investigation into the residence continued, Sergeant Donald began to suspect Appellant Alex Lorenzo Robinson was connected to the narcotics activity after discovering Appellant paid the electricity bills for the targeted residence. (R. p. 127; p. 329; p. 333).

Based on the confidential informant's successful narcotics purchases, Sergeant Donald sought a search warrant for the targeted residence and prepared an accompanying sworn affidavit. (R. pp. 27-28; pp. 543-547). In the search warrant affidavit, Sergeant Donald stated:

> I am a police officer, certified in South Carolina. I have been employed by the Horry County Police Department for 10 years with 7 years as a Detective. I have received training in the following: Drug Investigator Level I and Level II 80 hours, and Narcotics Commanders Course 40 hours. I have been involved in other search warrants relating to the seizure of illegal narcotics. I am authorized to make searches and seizures. A confidential and reliable informant working for the Horry County Police Department purchased a quantity of off white powder substance represented as being cocaine and field-testing positive for

> cocaine attributes from the occupants of the house identified as [the address of the targeted residence] in Conway, SC. That the informant has been able to make recent continuous purchases of illegal drugs from this residence leads to the affiant's belief that there is the possibility there may be more illegal drugs located at this residence.

(R. pp. 28-29; pp. 543-547). The search warrant was issued by the Honorable Edward B. Cottingham, circuit court judge, on September 17, 2008. (R. pp. 543-547).

Thereafter, on the morning of September 25, 2008, law enforcement officers went to the targeted residence to execute the search warrant. (R. pp. 126-128). The officers knocked on the door, announced their presence, and then forced entry after receiving no response from inside. (R. pp. 129-130). After the officers entered the residence, Sergeant Donald headed to the bedroom on the left side of the home. (R. pp. 130-131). Inside, he located Kenneth Durant, Appellant's half-brother, and Tiffany Smith, Durant' s girlfriend. (R. p. 133; p. 364; p. 373). The officer then secured the room, conducted a search, and discovered a book bag containing seven small bags of cocaine, a loaded nine-millimeter handgun, and a scale. (R. pp. 133-134). Meanwhile, Detective Ashley Hardee entered the bedroom on the right side of the house. (R. p. 303). Inside, he encountered Gil Yakoel, Appellant's pregnant girlfriend. (R. p. 156; pp. 233-234; pp. 304-305). After securing the room, Detective Ashley conducted a search and located men's clothing in the bedroom closet. (R. p. 306). Upon removing some of the clothing, a bag containing 109.35 grams of cocaine fell out of a pair of men's jeans. (R. p. 149; pp. 306-308; p. 350). Additionally, three Ecstasy pills, several bags of green plant material, a photograph of Appellant, and paperwork addressed to Appellant were discovered in the bedroom. (R. p. 147; p. 152; p. 351). As officers continued searching the residence, they additionally discovered a surveillance system with a monitor providing a view of the street outside, numerous letters addressed to Appellant, shotgun shells, a digital scale,

baking soda, and plastic bags. (R. pp. 137-138; pp. 141-142). A vehicle registered to Appellant was also discovered parked outside of the residence. (R. p. 152).

Following the discovery of the narcotics in the targeted residence, Sergeant Donald sought and obtained a warrant for Appellant's arrest based on the evidence connecting him to the home. (R. p. 162). Thereafter, Sergeant Donald learned Appellant was at a detention center on September 30, 2008, attempting to obtain the release of Yakoel, who had been arrested along with Durant and Smith after the search resulted in the discovery of the drugs. (R. p. 161; p. 163). In response, Sergeant Donald travelled to the detention center to arrest Appellant. (R. p. 163). When he arrived, he saw Appellant sitting in the detention center parking lot inside of the vehicle the officer had earlier seen parked outside of the targeted residence when he executed the search warrant. (R. pp. 165-167). Appellant looked in Sergeant Donald's direction and then immediately began driving away. (R. pp. 165-166). Sergeant Donald followed Appellant and activated his blue lights to initiate a traffic stop. (R. p. 169). However, Appellant did not stop and, instead, quickly accelerated and began fleeing from the officer. (R. p. 169). Appellant continued to flee at a high rate of speed until he hit a law enforcement device that punctured his tires. (R. pp. 170-171). Appellant then crashed his vehicle, and Appellant and a passenger in his vehicle immediately fled into a nearby soybean field on foot. (R. pp. 119-120; p. 171). In response, Corporal Scott Calderwood chased them into the field and quickly caught and arrested them. (R. p. 120; p. 171). After Appellant was arrested, Sergeant Donald searched Appellant and discovered a bank deposit slip with Appellant's name and the address of the targeted residence on it inside of Appellant's wallet. (R. p. 171; pp. 173-175).

Subsequently, Appellant was indicted for trafficking in cocaine in an amount between 100 and 200 grams and failure to stop for a blue light, and he proceeded to trial before Judge Cottingham. (R. p. 2; pp. 536-539). At the outset of trial, defense counsel moved for the solicitor to be required to select which of the indicted offenses to proceed forward on, and the trial judge granted that request. (R. pp. 3-4; p. 9). However, the trial judge ruled the testimony regarding Appellant's arrest would be admissible during trial, and defense counsel agreed the testimony would come in. (R. pp. 9-10).

Defense counsel then asserted the search warrant was defective because the information contained in the search warrant affidavit was allegedly false. (R. pp. 10-13). In response, the solicitor noted the affidavit was truthful because the confidential informant went to the targeted residence and had the cocaine brought to the car from the residence. (R. pp. 12-13). Following the exchange, the trial judge initially ruled the search warrant and affidavit were proper. (R. p. 13).

Defense counsel next sought the trial judge's recusal while contending it was allegedly improper for the trial judge to rule on the propriety of the search warrant because he personally issued it. (R. p. 13). Following Appellant's recusal request, the trial judge noted the issue was not raised in a timely fashion despite the fact that defense counsel was aware for several weeks that the trial judge would be presiding over Appellant's trial and had an opportunity to bring the issue before another judge. (R. pp. 13-14). In response, defense counsel asserted he did not raise the issue in a timely manner because he "couldn't believe" the solicitor called the case before the trial judge even though he admittedly had notice the solicitor intended to do so. (R. p. 16). After considering the matter, the trial judge declined to recuse himself from consideration of

the propriety of the search warrant. (R. p. 17). However, the trial judge agreed to conduct a pre-trial hearing on the warrant issue. (R. p. 18).

Prior to the hearing, defense counsel reasserted his claim that the information contained in the search warrant affidavit was false while acknowledging the alleged falsity was dependent on the context in which the statements were viewed. (R. p. 19). Defense counsel further contended he needed the confidential informant present to testify in regards to the validity of the search warrant without identifying a specific reason as to why the informant's presence was necessary. (R. p. 19). The trial judge declined that request. (R. pp. 19-20).

Thereafter, after further considering the search warrant issue, the trial judge stated he believed the search warrant was proper, affirmatively indicated he could be fair and impartial in regards to the search warrant despite the fact that he was the issuing judge, and reaffirmed his decision not to recuse himself. (R. p. 21). In support of his decision not to recuse himself, the trial judge noted the issue regarding the allegations of false statements in the search warrant affidavit was a distinct issue from the validity of the issuance of the search warrant itself. (R. p. 21). The trial judge further reaffirmed his decision to sever the charges while also reaffirming his decision to permit testimony regarding Appellant's flight. (R. p. 21).

Subsequently, a hearing was conducted on the search warrant issue, and Sergeant Donald testified about his investigation and the preparation of the search warrant affidavit. (R. p. 24; p. 28). During his testimony, the officer stated the confidential informant informed him that she purchased drugs from the targeted residence on three occasions, watched Oliver enter the residence on each occasion, and was in the vehicle when Oliver returned from the residence with the cocaine. (R. pp. 24-26). He further

indicated he did not believe he left anything out of the search warrant affidavit and did not attempt to mislead the trial judge through the information included in the affidavit. (R. p. 32). On cross-examination, Sergeant Donald acknowledged the confidential informant never went to the door of the targeted residence, never entered the residence, and never met with Appellant. (R. p. 35; pp. 37-39). However, those allegations were not contained in the search warrant affidavit. (R. pp. 28-29; pp. 543-547).

Following Sergeant Donald's testimony, the trial judge asked defense counsel to specifically identify which allegations contained in the affidavit were false. (R. p. 46). In response, defense counsel first moved for the warrant to be suppressed based on an alleged lack of information regarding the informant's reliability. (R. p. 47). Defense counsel then asserted the affidavit was false because it stated the confidential informant purchased the cocaine. (R. pp. 50-51). In reply, the solicitor asserted the reliability of the confidential informant was established by the successful narcotics purchases and the confidential informant's statements about purchasing the cocaine were accurate and truthful. (R. pp. 51-52). After considering the arguments of counsel, the trial judge ruled the search warrant affidavit was valid and truthful when considered in the proper context. (R. p. 52). Following the ruling, defense counsel moved for the search warrant to be quashed as stale, and the trial judge denied the motion. (R. p. 53). Defense counsel then renewed the request for the confidential informant to be produced to testify on the search warrant issue, and the trial judge again denied the request, noting the confidential informant was not a participant in regards to the narcotics for which Appellant was on trial. (R. p. 54). Thereafter, the trial judge reaffirmed his ruling that the search warrant affidavit was free of false statements and contained sufficient information to justify the issuance of the warrant. (R. p. 55).

Following the trial judge's ruling, defense counsel asserted that some evidence had been improperly destroyed, and the trial judge conducted a hearing on that issue. (R. pp. 58-59; pp. 64-65). During the hearing, Sergeant Donald testified that mail listing Appellant's name along with an address different from the address of the targeted residence was collected when the search warrant was executed at the targeted residence. (R. p. 65; pp. 68-72). Following the officer's testimony, the solicitor asserted some paperwork was unintentionally destroyed and noted a jury charge on spoliation of evidence would be appropriate. (R. p. 73; p. 79). In response, defense counsel asserted the case should be dismissed because he claimed there may have been more letters destroyed that he was unable to review. (R. pp. 78-79). The trial judge then continued the hearing on the spoliation of evidence issue, and Lori Rabon, the property and evidence supervisor for the Horry County Police Department, offered testimony in regards to the destruction of the letters recovered from the targeted residence. (R. p. 85). During her testimony, Rabon stated some paperwork with Appellant's name on it was mistakenly destroyed in response to the resolution of one of Appellant's codefendants' cases. (R. pp. 85-86). She further noted drug paraphernalia was destroyed pursuant to departmental policy and other items taken during the execution of the search warrant were returned to their owners. (R. pp. 87-88). On cross-examination, defense counsel asked Rabon about a gun, and she indicated she was unaware of a gun being entered into evidence in Appellant's case. (R. p. 95). Following Rabon's testimony, defense counsel asserted a gun was found, was destroyed, and was exculpatory in some way. (R. p. 96). Thereafter, the trial judge ruled defense counsel would be permitted to cross-examine the witnesses in regards to the firearm if he desired to do so but found none of the destroyed

evidence was destroyed as the result of misconduct while also finding the destruction of the evidence did not result in any meaningful prejudice to Appellant. (R. p. 96).

Following the ruling, defense counsel argued the video recording and evidence related to Appellant's flight prior to his arrest should not be admitted during trial. (R. p. 101; p. 105). In response, the trial judge indicated he would rule upon the admissibility of the video recording during trial but noted testimony and evidence related to Appellant's arrest would be admissible. (R. p. 101; pp. 103-104).

The solicitor and defense counsel then presented their opening statements to the jury. (R. pp. 106-114). During defense counsel's opening statement, defense counsel asserted to the jury that the solicitor did not mention anything in regards to destroyed evidence in his opening statement. (R. p. 112). In response to those remarks, the trial judge interrupted, stating: "In fairness to [the solictitor], that's an unfair comment because I specially asked him to keep his comments short and I'm asking you do the same." (R. p. 112). Defense counsel then requested a bench conference and asked for a mistrial based on the trial judge's interruption and remarks. (R. p. 112; pp. 178-179). At a later point during trial, the trial judge denied the mistrial motion and noted he interrupted the opening statement to stop defense counsel from improperly commenting on the solicitor's case. (R. p. 179). Thereafter, the trial judge issued a curative instruction to the jury, stating:

> Ladies and gentlemen, in our procedure, we have an opening statement wherein counsel for the State and the Defense gives you a short statement as to what their position is regarding the presentation of the State's case and of the Defense. At the conclusion of all the testimony, our rules require a lengthy summation if desired so that the attorneys for the State and the Defense can go into a lengthy explanation as to what they say the evidence thinks. On yesterday, counsel for the Defense was getting ready to elicit what the State had not shown to you in his opening statement. At that time I stopped her used unfortunately the word unfair which was not a

> responsible comment by me and I asked that you ignore this. My intent was and is to say to that attorney that the proper way to go into that issue was at summation and not in opening statement after all of the evidence had been presented. So, I would not ever suggest to you that that attorney was being unfair. It was not my intention to use that word. My intention was just to call to her attention to go into that issue if she thought necessary at summation rather than in opening statement. So, please accept this curative statement as a statement by me that I certainly didn't mean to infer in any way that she was unfair. Thank you.

(R. p. 191).

As the trial proceeded, Corporal Calderwood testified about his apprehension of Appellant after Appellant ran into the soybean field following his attempt to flee from Sergeant Donald. (R. pp. 115-120). During his testimony, a video recording from Corporal Calderwood's vehicle was played for the jury over Appellant's objection. (R. p. 121; p. 123).

Additionally, Sergeant Donald testified about his search of the targeted residence, his discovery of narcotics and mail addressed to Appellant in the residence, his attempt to arrest Appellant, and Appellant's attempted flight. (R. pp. 127-128; pp. 133-134; p. 138; p. 147; p. 149; p. 163; p. 169; p. 171). He further stated he conducted a post-arrest search of Appellant and discovered a bank deposit slip in Appellant's wallet with Appellant's name and the address of the targeted residence listed on it. (R. pp. 173-175). At that time, defense counsel objected based on his "previous argument," and the objection was overruled. (R. p. 173).

In addition to Sergeant Donald's testimony, Yakoel testified Appellant lived with her at the targeted residence in August and September of 2008, paid all of the bills for the residence, also paid the bills for another apartment he was renting at the same time, and kept his clothes at the residence. (R. pp. 233-239; p. 242; p. 249). However, she noted Appellant was not present at the residence when law enforcement officers executed the

search warrant. (R. p. 239). She further testified Appellant was a successful drug dealer and indicated the drugs discovered in the bedroom she shared with Appellant did not belong to her and fell out of a pair of pants that belonged to Appellant. (R. pp. 260-261; pp. 264-265; p. 267; pp. 295-296).

Furthermore, Detective Hardee testified about his discovery of the narcotics in the bedroom where he encountered Yakoel. (R. pp. 298-299; pp. 306-307). The detective noted he discovered a plastic bag containing over one hundred grams of cocaine after it fell out of a pair of men's jeans stored in the bedroom closet. (R. p. 306; pp. 308-309). He further testified Appellant was not present at the time of the search. (R. p. 319).

Thereafter, during the defense's case, Rabon testified about the destruction of the paperwork with Appellant's name on it. (R. pp. 409-410; p. 412). In addition to Rabon's testimony, Sergeant Donald confirmed some of the documents taken during the search did not have Appellant's name on them while noting numerous documents did have Appellant's name on them. (R. pp. 417-418).

Subsequently, at the close of the evidentiary phase of trial, defense counsel again moved to exclude any testimony related to Appellant's flight from law enforcement, and the motion was denied. (R. p. 456). The trial judge then instructed the jury on the applicable law. (R. pp. 459-472). As part of the jury charge, the trial judge instructed:

> [T]here are allegations of spoliation or destruction of evidence. The State not only has the burden of proof of guilt but it also has the burden of producing evidence which could establish the innocence of the defendant. When evidence is lost or destroyed by a party, you may if you choose infer the evidence which was lost or destroyed by that party would have been adverse to that party. If you find first that the evidence was spoiled or destroyed and if you further find that the evidence could have established the innocence of the defendant, you may then consider these facts in deciding whether or not the State has met its burden.

(R. pp. 469-470). Defense counsel and the solicitor then presented their closing arguments to the jury, and the jury retired from the courtroom. (R. pp. 474-502).

After the jury left the courtroom, defense counsel asserted someone made a noise at the end of the solicitor's closing argument, and the trial judge responded that he did not hear anything. (R. p. 503). Following the trial judge's response, defense counsel's wife, who was present in the courtroom, asserted "they" were clapping and insisted one of the jurors looked in the direction of a group of students who had entered the courtroom earlier that morning. (R. pp. 419-421; p. 504). Following that assertion, defense counsel requested a curative instruction indicating the jury should not consider anything exhibited in the courtroom. (R. p. 505). Thereafter, one of the students acknowledged she accidently and unintentionally made a noise but indicated she was not clapping. (R. p. 506). However, defense counsel's wife responded by again asserting "kids were clapping." (R. p. 506). In response, the trial judge had the jurors return to the courtroom and instructed them to disregard anything they may have heard while noting he did not hear anything and did not think anything occurred. (R. pp. 507-508). He further asked the jurors if any of them were influenced by anything they may have heard, and no jurors responded in the affirmative. (R. p. 508). The jury then again retired. (R. p. 509).

After the jury once again retired, defense counsel objected to the trial judge's remark that he did not believe the event occurred. (R. p. 509). In response, the trial judge inquired if any of the students heard clapping, and several students indicated they heard something. (R. pp. 510-511). Of the students who responded, one indicated he heard a noise but it was not clapping, another indicated she heard a girl put her hands together, and another indicated he heard clapping but was not sure what the motivation for it was. (R. pp. 511-513). Following the statements of the students, the trial judge had

the jurors again return to the courtroom. (R. p. 515). The trial judge then instructed the jurors that noise or clapping had occurred, asked them if they heard it, and further asked if it influenced them in regards to their roles as jurors. (R. p. 516). All of the jurors unanimously indicated the noise did not influence them, and the jury again retired. (R. p. 516). After the jury left the courtroom, defense counsel moved for a mistrial based on the noise, and the trial judge denied the motion. (R. p. 517).

At the conclusion of trial, the jury convicted Appellant of trafficking in cocaine in an amount between 100 and 200 grams. (R. p. 524). Following the verdict, defense counsel renewed the motion for a mistrial, arguing it was "impossible" for the jury not to have been impacted by the noise in the courtroom, and the trial judge denied the motion after noting the jurors twice confirmed they had not been influenced by any noise they may have heard or did hear. (R. p. 529). Defense counsel then renewed the motions for the warrant to be quashed and the charges to be dismissed based on the destruction of the evidence, and the trial judge denied the motions. (R. pp. 531-532). Thereafter, the trial judge sentenced Appellant to a twenty-five year term of imprisonment and a $50,000 fine. (R. p. 535).

ARGUMENT

I.

The trial judge properly declined to quash the search warrant and suppress the evidence discovered during the search of the targeted residence because the search warrant affidavit established a reliable probable cause basis to believe narcotics would be discovered at the targeted residence at the time of the search while containing no false, inaccurate, or misleading information. Furthermore, even if the trial judge erred in finding the search warrant affidavit sufficiently established a probable cause basis for the search, the trial judge properly declined to suppress the evidence discovered in the search because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that belief in and reliance on its validity was unreasonable.

Appellant alleges the trial judge erred in refusing to quash the search warrant and in denying the motion to suppress the evidence recovered during the search of the targeted residence. In support of that contention, Appellant maintains the search warrant affidavit was stale and contained false and unreliable information. Contrary to Appellant's contentions, the search warrant affidavit contained sufficient reliable information to establish a probable cause basis to believe narcotics would be found at the targeted residence at the time of the search. Furthermore, the law enforcement officer who prepared the search warrant affidavit did not knowingly include false information in the affidavit or act with a reckless disregard for the truth in an effort to mislead the issuing judge, and the information contained in the search warrant affidavit was not false, inaccurate, or untruthful in any way. However, even if the search warrant was improperly issued due to some deficiency in the search warrant affidavit, suppression of the evidence recovered in the search of the targeted residence was not warranted because the warrant was obtained in good faith and was not so lacking in indicia of probable cause that the law enforcement officer's belief in its validity was unreasonable. Accordingly, the trial judge properly declined to quash the search warrant and correctly

denied Appellant's motion to suppress the evidence discovered during the search of the targeted residence. Appellant's conviction should be affirmed.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The reviewing court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). When reviewing a decision to issue a search warrant, the reviewing court should decide whether the issuing judge had a substantial basis for concluding probable cause existed. State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). Applying the same standard as the issuing judge, the court should base its determination on the totality of circumstances. State v. Keith, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003). The issuing judge's probable cause determination should be afforded great deference on appeal. State v. Rutledge, 373 S.C. 312, 316, 644 S.E.2d 789, 791 (Ct. App. 2007).

In order to justify the issuance of a search warrant, the affiant must present a sworn affidavit establishing the grounds for the warrant. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). A search warrant affidavit must contain sufficient underlying facts upon which an issuing judge can base a probable cause determination. State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990). The facts contained in the affidavit must be so closely related to the time of the issuance of the warrant to justify a finding of probable cause at that time. State v. Winborne, 273 S.C. 62, 64, 254 S.E.2d 297, 298 (1979).

A search warrant may only be issued upon a finding of probable cause. Bellamy, 336 S.C. at 143, 519 S.E.2d at 348. In State v. Williams, 262 S.C. 186, 189, 203 S.E.2d

436, 437-438 (1974), the South Carolina Supreme Court explained probable cause as it relates to the issuance of a search warrant:

> In order to justify the issuance of a search warrant, probable cause must be shown, but the term 'probable cause' does not import absolute certainty. In determining whether there is sufficient evidence to sustain a finding of probable cause, each case stands on its own facts. The evidence need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed.

(citing State v. Bennett, 256 S.C. 234, 182 S.E.2d 291 (1971)).

In deciding whether to issue a search warrant, the issuing judge must "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238 (1983). Critically, in making a probable cause determination, "[issuing judges] are concerned with probabilities and not certainties." State v. Sullivan, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976).

Consideration should be given to the fact that search warrant affidavits are typically prepared by non-lawyers in the haste of criminal investigations, and they must be viewed in a common sense and realistic fashion. State v. Arnold, 319 S.C. 256, 260, 460 S.E.2d 403, 405 (Ct. App. 1995). "Searches based on warrants will be given judicial deference to the extent that an otherwise marginal search may be justified if it meets a realistic standard of probable cause." Id. "Suppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " State v. Weston, 329 S.C.

287, 293, 494 S.E.2d 801, 804 (1997) (quoting United States v. Leon, 468 U.S. 897, 923 (1984)).

In the case sub judice, the trial judge correctly found the search warrant was properly issued because the information contained in the search warrant affidavit was sufficient to establish a reliable probable cause basis to believe narcotics would be found in the targeted residence at the time of the search. Accordingly, the trial judge properly denied the motion to quash the search warrant and properly declined to suppress the evidence recovered during the search of the targeted residence.

In challenging the propriety of the search warrant, Appellant initially contends the trial judge should have quashed the search warrant because Sergeant Donald allegedly knowingly included false information in the search warrant affidavit. Specifically, Appellant maintains the statements in the affidavit indicating the confidential informant purchased cocaine from the occupants of the targeted residence were knowingly false in light of the fact that Sergeant Donald allegedly knew the confidential informant did not actually observe a drug transaction. To the contrary, when viewed in the proper manner, none of the statements contained in the search warrant affidavit were false or misleading. Critically, contrary to Appellant's interpretation of the search warrant affidavit, the affidavit did not contain any language indicating the confidential informant actually entered the targeted residence. Cf. Rutledge, 373 S.C. at 319, 644 S.E.2d at 792 ("Rutledge . . . contends the affidavit improperly implied that the officers recovered the marijuana, seeds, and stalks from the residence itself. . . . Nowhere does the affidavit say it was found in the house."). Instead, when viewed in the proper context, the information contained in the affidavit only indicated the confidential informant purchased and obtained drugs from the targeted residence, which is exactly what occurred through

the informant's act of going to the residence, giving money to Oliver, watching Oliver enter the residence, and watching Oliver return from that same residence with cocaine. See State v. Thomas, 275 S.C. 274, 276, 269 S.E.2d 768, 769 (1980) (holding that courts should consider a "common-sense reading of the entire affidavit" in determining whether probable cause exists); see also United States v. Colkley, 899 F.2d 297, 300 (4th Cir. 1990) ("An affiant cannot be expected to include in an affidavit every piece of information gathered in the course of an investigation."). Thus, by going to the residence and receiving cocaine that was brought out of the residence, the confidential informant purchased cocaine from the occupants of the residence just as described in the search warrant affidavit, and, significantly, that information fully established a probable cause basis to believe narcotics would be discovered in the targeted residence irrespective of whether the confidential informant ever went inside. See United States v. Anderson, 851 F.2d 727, 729 (4th Cir. 1988) ("[T]he nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence."); Dupree, 354 S.C. at 691, 583 S.E.2d at 445 (instructing evidence of a drug transaction supports an inference that more drugs will be found at the same location); see also United States v. Cioni, 649 F.3d 276, 286 (4th Cir. 2011) ("[E]ven if the additional facts cited by Cioni were included in the affidavits, the probable cause calculus would nonetheless have remained unchanged. Under these circumstances, Franks is inapplicable."); Colkley, 899 F.2d at 298 ("We hold that the Johnson affidavit was not tainted by the affiant's failure to include within it all potentially exculpatory information. Johnson's incriminating statements were properly admitted because Johnson made no showing that the affiant intended to mislead the magistrate by

omitting information, and because the warrant with the omitted information would in any event have been supported by probable cause[.]").

As Appellant acknowledged during trial, his contentions that the allegations in the affidavit were false were "a matter of the way you look at it." (R. p. 19). However, officers preparing search warrant affidavits are not required to prepare the affidavits with unerring technical precision, and search warrant affidavits are not to be viewed in an overly-technical manner. See Arnold, 319 S.C. at 260, 460 S.E.2d at 405 ("Affidavits are not meticulously drawn by lawyers, but are normally drafted by non-lawyers in the haste of a criminal investigation, and should therefore be viewed in a common sense and realistic fashion."). Therefore, Appellant's interpretation of the information contained in the search warrant affidavit, which was based on an overly-technical reading of the affidavit in an effort to find an interpretation that would support his contentions that the affidavit's information was false, was not proper under the circumstances and did not establish Sergeant Donald knowingly and intentionally included false information in the search warrant affidavit or acted with a reckless disregard for the truth in an effort to mislead the issuing judge. See United States v. Ventresca, 380 U.S. 102, 108 (1965) ("[W]here these circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants."); see also Colkley, 899 F.2d at 301 ("Franks protects against omissions that are *designed to mislead*, or that are made in *reckless disregard of whether*

they would mislead, the [issuing judge]." (italics in original)). As a result, the trial judge properly declined to quash the search warrant based on an alleged Franks violation.[1] See State v. Missouri, 337 S.C. 548, 554, 524 S.E.2d 394, 397 (1999) ("There will be no Franks violation if the affidavit, including the omitted data, still contains sufficient information to establish probable cause."); Rutledge, 373 S.C. at 319, 644 S.E.2d at 792 (finding no Franks violation occurred where nothing in the search warrant affidavit demonstrated a reckless disregard for the truth).

Next, Appellant contends the trial judge erred in refusing to quash the search warrant because the search warrant affidavit allegedly failed to contain sufficient information to establish the reliability of the confidential informant. To the contrary, the search warrant affidavit contained sufficient information to establish the reliability of the confidential informant through the information regarding the informant's successful narcotics purchases from the targeted residence on multiple occasions. See Dupree, 354 S.C. at 691, 593 S.E.2d at 445 ("The controlled buy was evidence of the credibility and trustworthiness of the informant."). Critically, the statements in the affidavit indicated the informant successfully purchased what was purported to be cocaine from the residence in a recent and continuous manner and the substance purchased from the residence tested positive for cocaine upon analysis. Thus, through her successful purchases of narcotics from the residence, the confidential informant's reliability was established, and there was probable cause to believe more cocaine would be found in a

[1] In Franks v. Delaware, 438 U.S. 154, 156 (1978), the United States Supreme Court held: "[W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit."

search of the residence. See Gates, 462 U.S. at 233 ("[A] deficiency in [veracity or basis of knowledge] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."); see also Bellamy, 336 S.C. at 145, 519 S.E.2d at 349 (finding a search warrant sufficiently established the confidential informant's reliability where, "[a]lthough the affidavit is weak on the element of the reliability of the informant, this deficiency is compensated for by the strong showing of specificity, first-hand observation, and partial corroboration").

In arguing the search warrant did not sufficiently establish the confidential informant's reliability, Appellant also contends the trial judge erred by failing to require the disclosure of the informant's identity so she could be called to testify during the pre-trial hearing on the search warrant issue. However, as the United States Supreme Court has recognized, criminal defendants have no constitutional right to confront or question confidential informants during pre-trial hearings in regards to the sufficiency of search warrants. See McCray v. Illinois, 386 U.S. 300, 312-313 (1967) (holding criminal defendants are not constitutionally entitled to the disclosure of a confidential informant's identity for the purposes of a preliminary hearing on the issue of whether probable cause existed to support an arrest or a search). Furthermore, any testimony beyond what was presented to the trial judge at the time he issued the search warrant was irrelevant towards a subsequent analysis as to the sufficiency of that warrant. See Arnold, 319 S.C. at 259, 460 S.E.2d at 405 ("A search warrant may issue only upon a finding of probable cause, and in passing on the validity of the warrant, a reviewing court **may consider only information brought to the [issuing judge]'s attention**." (emphasis added)). Accordingly, the trial judge committed no error in declining to require disclosure of the confidential informant's identity for the purposes of the pre-trial hearing on the propriety

of the search warrant, and such information was irrelevant as to whether or not the search warrant affidavit contained sufficient information to establish the informant's reliability. See State v. Burney, 294 S.C. 61, 62-63, 362 S.E.2d 635, 636 (1987) ("The confidential informant's role in this case was limited to supplying the police with information regarding Burney's possession of narcotics. Although he did participate in the controlled buy in 1985, the transaction here served only to aid in establishing the informant's reliability. The informant did not participate in the drug bust of January 17, 1986, or in any other transaction involving the possessory offenses for which Burney was tried and convicted. . . . Disclosure of the informant's identity was not required.").

Finally, Appellant contends the trial judge should have found the search warrant was stale based on the fact that it allegedly did not contain sufficient information to establish a probable cause basis to believe narcotics would be found in the targeted residence at the time the search warrant was issued. To the contrary, although the search warrant affidavit did not contain specific information regarding the dates of the drug transactions in which the confidential informant participated, the affidavit still contained sufficient information to establish a probable cause basis to believe narcotics would be found in the targeted residence at the time of the search based on the nature of the criminal activity alleged in the affidavit. See United States v. Johnson, 461 F.2d 285, 287 (10th Cir. 1972) ("[T]he vitality of probable cause cannot be quantified by simply counting the number of days between the occurrence of the facts relied upon and the issuance of the affidavit."). Critically, Sergeant Donald included information in the search warrant affidavit establishing the confidential informant had purchased drugs at the residence both recently and, most importantly, continuously. Through that information, the trial judge was made aware that narcotics had been sold from the

targeted residence recently and that the sale of narcotics from the residence was a continuous, ongoing enterprise. See State v. Thompson, 363 S.C. 192, 207, 609 S.E.2d 556, 564 (Ct. App. 1992) ("Given the continuous nature of the alleged drug activity, we find the record supports the trial court[']s finding that it was reasonable for the magistrate to conclude that Thompson would be found in possession of illegal substances. Although isolated sales of narcotics unquestionably occur, it is generally recognized that 'narcotics conspiracies are the very paradigm of the continuing enterprises for which the courts have relaxed the temporal requirements of non-staleness.' " (citation omitted)). Furthermore, based on the information regarding the recentness of the transactions, the search warrant affidavit clearly conveyed to the trial judge that the transactions had not occurred so long ago that the probable cause basis to believe drugs would be located at the residence had been diminished. Cf. Winborne, 273 S.C. at 64, 254 S.E.2d at 298 ("It gives no indication of how long ago the drugs were seen. It could have been many years ago."). Under those circumstances, the search warrant affidavit sufficiently established probable cause to believe drugs would be located at the targeted residence at the time of the search based on the continuous and recent nature of the drug activity connected to the residence, and the trial judge properly declined to suppress the evidence due to the alleged staleness of the information contained in the affidavit. See United States v. Farmer, 370 F.3d 435, 439 (4th Cir. 2004) (finding the ongoing nature of the alleged criminal operation rendered the recentness of the information contained in the search warrant affidavit less crucial and suggested probable cause would not be diminished solely by the passage of time); see also United State v. McCall, 740 F.2d 1331, 1336 (4th Cir. 1984) ("In some circumstances, the very nature of the evidence sought may suggest that probable cause is not diminished solely by the passage of time."); see, e.g, United

States v. Uhrich, 228 F. App'x 248, 254 (4th Cir. 2007) (finding a search warrant was not stale where the allegations in the search warrant affidavit detailed criminal conduct that was protracted and continuous in nature and not a mere isolated violation of law).

However, even if the search warrant affidavit in Appellant's case did not sufficiently establish the confidential informant's reliability or the timeliness of the information justifying the search, the trial judge properly declined to suppress the evidence discovered as a result of the search because Sergeant Donald acted in good faith in obtaining the search warrant and acted in objectively reasonable reliance on the issuing judge's probable cause determination in conducting the search. See Leon, 468 U.S. at 922 ("[T]he marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion."). Critically, Sergeant Donald complied with the statutory warrant requirements in obtaining the search warrant and included information in the search warrant affidavit establishing the confidential informant had purchased narcotics from the targeted residence on multiple occasions both recently and continuously. Under those circumstances, even if the issuing judge erred in determining the search warrant affidavit was sufficient to establish probable cause, the affidavit was **not** so lacking in indicia of probable cause that it was entirely unreasonable for Sergeant Donald to rely on the warrant after it was issued. See Weston, 494 S.C. at 293, 494 S.E.2d at 804 (recognizing that application of the good-faith exception is not prohibited simply because a search warrant was deficient in some respect); see also Leon, 468 U.S. at 918-921 ("[S]uppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule. . . . Penalizing the officer for the [issuing

judge]'s error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations."); Anderson, 851 F.2d at 729-730 (finding the good-faith exception applied even though the search warrant affidavit did not contain any information regarding the date of the crime or the date that Anderson offered to sell a weapon to the informants). Accordingly, as Sergeant Donald did not act unreasonably in relying on the search warrant, the trial judge properly declined to suppress the evidence discovered in the search of the targeted residence. See Segura v. United States, 468 U.S. 796, 806 (1984) ("By its terms, the Fourth Amendment forbids only 'unreasonable' searches and seizures.").

In conclusion, the trial judge properly determined the affidavit contained sufficient information to establish a reliable probable cause basis to believe narcotics would be discovered in the targeted residence at the time of the search. See Gates, 462 U.S. at 238 ("The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."); Texas v. Brown, 460 U.S. 730, 741 (1983) (instructing probable cause is a flexible, common-sense standard); see also Dupree, 354 S.C. at 691, 593 S.E.2d at 445 ("The magistrate had ample probable cause to issue the warrant. Given all the circumstances set forth in the affidavit, there was a 'fair probability' that crack cocaine would be found in the mobile home."). However, even if the search warrant should not have been issued due to some deficiency in regards to the search warrant affidavit, the trial judge properly declined to suppress the evidence recovered during the search because the affidavit was not so lacking in indicia of probable cause as to render

Sergeant Donald's reliance upon the search warrant entirely unreasonable. See Leon, 468 U.S. at 926 ("We have now reexamined the purposes of the exclusionary rule and the propriety of its application in cases where officers have relied on a subsequently invalidated search warrant. Our conclusion is that the rule's purposes will **only rarely be served by applying it in such circumstances**. . . . [S]uppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." (emphasis added)); see also Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]"). Accordingly, the trial judge properly denied Appellant's motion to quash the search warrant and declined to suppress the evidence recovered in the search of the targeted residence. Appellant's conviction should be affirmed.

II.

The trial judge properly declined to require the disclosure of the confidential informant's identity because that information was not relevant or necessary towards Appellant's ability to defend his case, and Appellant failed to articulate any meaningful or compelling reason as to why the disclosure of the confidential informant's identity was necessary or required under the circumstances.

Appellant asserts the trial judge committed reversible error by refusing to require the disclosure of the identity of the confidential informant. In support of that contention, Appellant appears to contend the confidential informant's testimony was somehow necessary in regards to Appellant's challenge to the validity of the search warrant. To the contrary, the trial judge properly exercised his discretion in declining to require the disclosure of the confidential informant's identity because the informant was only peripherally connected to Appellant's case through her provision of the information to Sergeant Donald that ultimately led to the issuance of a search warrant for the targeted residence. Significantly, the confidential informant was not connected in any way to the narcotics that resulted in Appellant's trafficking charge, and, thus, the identity of the confidential informant was not necessary or essential in regards to the preparation of Appellant's defense against that charge. Under those circumstances, the trial judge did not abuse his discretion in refusing to require disclosure of the confidential informant's identity, and Appellant failed to provide a valid or compelling reason justifying the disclosure of that information. Appellant's conviction should be affirmed.

"Generally, the State may not be compelled to disclose the names of its confidential informants." State v. Bultron, 318 S.C. 323, 330, 457 S.E.2d 616, 620 (Ct. App. 1995). "The purpose of the privilege [against disclosure] is the furtherance and protection of the public interest in effective law enforcement." Roviaro v. United States, 353 U.S. 53, 59 (1957). "The privilege recognizes the obligation of citizens to

communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform their obligation." Id.

However, the privilege against disclosure is limited to the extent necessary to ensure fundamental fairness for all parties to a case. Id. at 60. "Where the disclosure of an informant's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way." Id. at 60-61. Significantly though, there is "no fixed rule with respect to disclosure[.]" Id. at 62. Instead, the public's interest in perpetuating the flow of vital information to law enforcement officials must be balanced against the criminal defendant's right to prepare his defense. Bultron, 318 S.C. at 330, 457 S.E.2d at 620. Therefore, whether disclosure is required necessarily depends on the particular circumstances of each individual case. Roviaro, 353 U.S. at 62.

Typically, "[a]n informant's identity need not be disclosed where either the informant possesses only a peripheral knowledge of the crime or is a mere tipster who supplies a lead to law enforcement authorities." State v. Blyther, 287 S.C. 31, 33, 336 S.E.2d 151, 152 (Ct. App. 1985) (citations omitted). "Where, however, the informant either is a material witness to the crime or directly participates in it, disclosure may be required, particularly where, in a drug related case, he is the only witness to the transaction other than the buyer and the defendant." Id. (citations omitted); see State v. Diamond, 280 S.C. 296, 299, 312 S.E.2d 550, 551 (1984) ("Public policy considerations for nondisclosure of an informant's identity are absent where the informant openly participates in the criminal transaction."). However, "[e]ven if the informant is an active participant in the criminal act and/or a material witness, the court may still sustain an invocation of the nondisclosure privilege if other factors and circumstances warrant doing

so." Bultron, 318 S.C. at 330, 457 S.E.2d at 620; see State v. Riggins, 262 S.C. 466, 468, 205 S.E.2d 376, 377 (1974) (holding the trial judge properly declined to provide the name of a confidential informant who was present when Riggins sold marijuana to an undercover officer); see also McLawhorn v. North Carolina, 484 F.2d 1, 5 (4th Cir. 1973) ("[O]ne of the factors tending to show that the prosecution is not entitled to withhold from the accused information as to the identity of an informant is the qualification of the informant to testify directly concerning the very transaction constituting the crime. On the other hand, the privilege of nondisclosure ordinarily applies where the informant is neither a participant in the offense, nor helps set up its commission, but is a mere tipster who only supplies a lead to law investigating and enforcement officers. This appears to be the generally accepted rule where the informant merely provides a lead or tip that furnishes probable cause for a search and seizure. Ordinarily, knowledge of the identity of a tipster would not be essential in preparing the defense of the accused and the public interest in protecting such informants should weigh heavily in favor of nondisclosure." (citations and footnote omitted)).

In seeking the disclosure of the identity of a confidential informant, "the burden is upon the accused to show facts and circumstances giving rise to an exception to the privilege against disclosure[.]" State v. Batson, 261 S.C. 128, 134, 198 S.E.2d 517, 520 (1973). "[T]he onus is on the defendant to 'come forward with something more than speculation as to the usefulness of such disclosure.' " United States v. Blevins, 960 F.2d 1252, 1259 (4th Cir. 1992) (citations omitted). In deciding whether to require the disclosure of a confidential informant's identity, the trial judge has "considerable discretion" on the matter. Batson, 261 S.C. at 134-135, 198 S.E.2d at 520. On appeal, a trial judge's decision not to require disclosure of an informant's identity will not be

reversed unless the defendant can demonstrate that disclosure was required and prejudice resulted from the lack of disclosure. Id. at 135, 198 S.E.2d at 520

In the case at bar, the trial judge properly declined to require the disclosure of the confidential informant's identity because the disclosure of that information was not relevant, significant, or essential to any aspect of Appellant's defense. That is true because the confidential informant in Appellant's case merely provided information regarding drug transactions for which Appellant was **not** criminally charged, and the information provided by the confidential informant was solely used to obtain a search warrant as opposed to being used to prove Appellant's guilt or to obtain a warrant for Appellant's arrest in connection to the drug transactions in which the confidential informant actually participated. See United States v. Gray, 47 F.3d 1359, 1365 (4th Cir. 1995) ("In delineating the significance of this involvement, we have held that the government is privileged to withhold the identity of the informant when the informant was a "mere tipster," . . . or **was used only for obtaining a search warrant**, . . . but that failing to disclose the informant's identity more likely amounts to error when the informant was an active participant in the events leading to the arrest of the accused[.]" (emphasis added)); see also United States v. Ray, 61 F. App'x 37, 55 (4th Cir. 2003) ("Because the confidential informant was used solely to obtain a search warrant and not at trial, the government had no duty to disclose the identity."). Critically, Appellant was **not** indicted for any offense related to the transactions in which the confidential informant participated but, instead, was charged with trafficking in cocaine based solely on the discovery of narcotics during the search of the targeted residence. Cf. Bultron, 318 S.C. at 331, 457 S.E.2d at 621 (finding disclosure of the identity of a confidential informant was not required where "[t]he State presented evidence Appellants were in

constructive possession of the narcotics independent of the information offered by the informant"). Importantly, the confidential informant was not involved with and was not connected to the narcotics discovered in the search of the targeted residence in any way. Cf. Roviaro, 353 U.S. at 64 (finding the prosecutor was required to reveal the identity of an informant in "a case where the Government's informer **was the sole participant, other than the accused, in the transaction charged**" (emphasis added)); McLawhorn, 484 F.2d at 6 ("The facts in the case at bar clearly indicate that the informant **was a participant in the incident which resulted in the arrest and conviction of [McLawhorn]**." (emphasis added)); Diamond, 280 S.C. at 298, 312 S.E.2d at 551 ("The informant was clearly **a participant in the transaction**, not a mere 'tipster' or witness or, as the trial judge ruled, a 'conduit.' " (emphasis added)). Accordingly, under those circumstances, there was no compelling reason requiring disclosure of the identity of the confidential informant in Appellant's case, and the informant's identity was not essential to any aspect of Appellant's defense.

As his sole basis for arguing that the confidential informant's identity should have been disclosed, Appellant contends the confidential informant's presence was somehow needed at trial because Sergeant Donald admitted that the confidential informant never purchased cocaine from the occupants of the targeted residence. Notwithstanding the fact that Sergeant Donald did **not** testify that the confidential informant did not purchase cocaine from the targeted residence, such a contention would not establish why the confidential informant's presence was required at trial even if it was accurate. In regards to the sufficiency of the search warrant prepared by Sergeant Donald, the officer's testimony was the only testimony needed for the trial judge to be able to properly decide that issue, and the confidential informant's testimony was wholly irrelevant towards the

trial judge's determination of the propriety of the warrant. See Rugendorf v. United States, 376 U.S. 528, 534 (1964) ("[A] careful examination of the whole record shows that **he requested the informers' names only in his attack on the affidavit supporting the search warrant**. Having failed to develop the criteria of Roviaro necessitating disclosure on the merits, we cannot say on this record that the name of the informant was necessary to his defense. All petitioner's demands for identification of the informants were made during the hearings on the motion to suppress and were related to that motion. **Never did petitioner's counsel indicate how the informants' testimony could help establish petitioner's innocence**." (emphasis added and footnote omitted)). Furthermore, nothing was presented suggesting there was any reason to believe the confidential informant's testimony would have differed in any meaningful way from the testimony of Sergeant Donald, and Appellant has not identified any compelling reason to entertain such speculation. As a result, Appellant failed to articulate a valid reason for the identity of the confidential informant to be disclosed. See State v. Shupper, 263 S.C. 53, 57, 207 S.E.2d 799, 800 (1974) (finding no error in the refusal to require disclosure of the confidential informant's identity where "the defendant made no showing whatever that his lot may have been improved by the informer's testimony").

The confidential informant who provided the information to Sergeant Donald about the targeted residence did not supply drugs to the residence, did not personally interact with Appellant at the residence, did not accuse Appellant of committing any offense, did not participate in the search of the residence, and was not present when the narcotics for which Appellant was criminally charged were discovered by the law enforcement officers executing the search warrant. Instead, the confidential informant's role in Appellant's case was limited solely to providing the information that ultimately

led to the discovery of cocaine wholly unconnected to the informant by establishing the probable cause basis that justified the issuance of the search warrant for the targeted residence. See Gray, 47 F.3d at 1365 (noting the government is not required to disclose the identity of a confidential informant when that informant was used solely towards obtaining a search warrant). As a result, the confidential informant's testimony was irrelevant to any material issue in dispute in Appellant's trial. See State v. Boutilier, 12 A.3d 44, 49 (Me. 2011) ("A review of the record reveals that Boutilier has not presented adequate evidence to support his allegation that the confidential informant's statement served to enhance the charges against him or that the informant would have information relevant to the case at trial. Since the State specified that it relied only on the evidence found in the search of Boutilier's property in bringing the charges against him and did not plan to call the informant at trial, Boutilier failed to meet his burden of demonstrating that the informant may possess relevant knowledge that could assist in his defense at trial."). Because the confidential informant's testimony was not necessary towards establishing Appellant's guilt or innocence or towards aiding in the preparation of Appellant's defense, there was no compelling reason justifying or mandating the disclosure of the confidential informant's identity. Therefore, the trial judge did not abuse his broad discretion in declining to do so, and Appellant failed to articulate any meaningful reason either at trial or on appeal that would justify a conclusion to the contrary. See Batson, 261 S.C. at 134-135, 198 S.E.2d at 520 ("It is also generally recognized that the trial court has considerable discretion as to ordering, or refusing to require, disclosure and that in the event of refusal, the burden is upon the accused to show prejudice resulting therefrom."). Appellant's conviction should be affirmed.

III.

The trial judge properly declined to recuse himself on the sole basis that he had previously issued a search warrant in Appellant's case because the issuance of the search warrant in an earlier proceeding did not constitute evidence of bias or partiality on the part of the trial judge and no other evidence was presented to suggest the trial judge could not be fair and impartial to Appellant.

Appellant contends the trial judge erred in declining to recuse himself from presiding over the trial. In support of that contention, Appellant maintains the trial judge was required to recuse himself because his impartiality allegedly could reasonably be questioned in light of the fact he issued the search warrant he was called to rule upon during Appellant's trial. To the contrary, the fact that the trial judge had earlier issued a search warrant in Appellant's case did not prohibit the trial judge from ruling on the validity of that warrant in the adversarial setting of Appellant's trial and did not constitute evidence of judicial bias, prejudice, or partiality. Furthermore, no other evidence of the trial judge's prejudice or bias against Appellant was presented during trial. Thus, in the absence of any evidence establishing bias on the part of the trial judge, the trial judge was not disqualified from presiding over Appellant's trial, and the trial judge had a duty not to recuse himself under those circumstances. Accordingly, the trial judge properly denied Appellant's request for recusal. Appellant's conviction should be affirmed.

Every defendant has a right to a fair trial presided over by a fair and impartial judge. State v. Langford, 400 S.C. 421, 437, 735 S.E.2d 471, 479 (2012). "Pursuant to Canon 3(E)(1)(a) of Rule 501, SCACR, a judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." State v. Jackson, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct. App. 2003). However, when there is no valid reason for disqualification, a trial judge has a duty to preside over the case. Simpson v. Simpson, 377 S.C. 519, 525-526, 660 S.E.2d 274, 278 (Ct. App. 2008).

Judges are presumed to be unbiased, and that presumption is "more than a pious hope." Langford, 400 S.C. at 438, 735 S.E.2d at 480 (citation and internal quotation marks omitted). "It is not enough for a party seeking disqualification to simply allege bias or prejudice." Jackson, 353 S.C. at 627, 578 S.E.2d at 745. Instead, the burden is upon the party seeking recusal to show some evidence of that bias or prejudice. Id. Furthermore, "[t]he alleged bias or prejudice must stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge." Id.; see United States v. Grinnell Corp., 384 U.S. 563, 583 (1966) ("The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case."). Standing alone, judicial rulings **almost never** constitute a valid ground for recusal. Liteky v. United States, 510 U.S. 540, 555 (1994).

Decisions regarding recusal rest in the sound discretion of the trial judge. Ness v. Eckerd Corp., 350 S.C. 399, 404, 566 S.E.2d 193, 196 (Ct. App. 2002). A trial judge should exercise sound discretion in determining whether his partiality might reasonably be questioned. State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009). In reviewing a trial judge's decision not to recuse himself on appeal, an appellate court will not reverse a judge's failure to disqualify himself absent evidence of judicial bias or prejudice. Jackson, 353 S.C. at 627, 578 S.E.2d at 745.

In Appellant's case, the trial judge properly declined to recuse himself from presiding over Appellant's trial. Initially, the trial judge's earlier involvement in the issuance of the search warrant did not constitute evidence of bias or prejudice and did not result in the trial judge learning any information from an extra-judicial source. See

Grinnell Corp., 384 U.S. at 583 ("The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case."); see also Howard, 384 S.C. at 218, 682 S.E.2d at 54 ("[T]he alleged bias must be personal, as distinguished from judicial, in nature." (citation and internal quotation marks omitted)). Furthermore, no evidence of any kind was presented during trial suggesting the trial judge could not be fair and impartial to Appellant simply because he issued the search warrant, and the mere fact that the trial judge ruled upon the validity of the search warrant in a pre-trial, non-adversarial hearing neither established the trial judge was personally biased against Appellant nor prevented the trial judge from reconsidering his earlier ruling in light of the evidence and arguments Appellant presented in the adversarial setting of the trial.[2] See Liteky, 510 U.S. at 555 ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."); see also Withrow v. Larkin, 421 U.S. 35, 56-57 (1975) ("Judges repeatedly issue arrest warrants on the basis that there is probable cause to believe that a crime has been committed and that the person named in the warrant has committed it. Judges also preside at preliminary hearings where they must decide whether the evidence is sufficient to hold a defendant for trial. Neither of these pretrial involvements has been thought to raise any constitutional barrier against the judge's presiding over the criminal trial and, if the trial is without a jury, against making the necessary determination of guilt or innocence. Nor has it been thought that a judge is disqualified from presiding over injunction proceedings because he has initially assessed the facts in issuing or denying a temporary restraining order or a preliminary injunction. .

[2] Notably, the trial judge's decision not to recuse himself also did not prevent or hinder appellate review of the trial judge's rulings on the validity of the search warrant. See Liteky, 510 U.S. at 555 ("Almost invariably, [judicial rulings] are proper grounds for appeal, not for recusal.").

. . We should also remember that it is not contrary to due process to allow judges and administrators who have had their initial decisions reversed on appeal to confront and decide the same questions a second time around."). In fact, the trial judge specifically assured the parties he could be fair and impartial in ruling on the issues that arose during trial. Accordingly, in the absence of any legitimate evidence of bias or prejudice, the trial judge did not abuse his discretion in declining to recuse himself in Appellant's case.

In arguing the trial judge erred in failing to recuse himself, Appellant does **not** contend there is any actual evidence of bias or prejudice on the part of the trial judge and has not identified any specific evidence of bias or prejudice. Instead, relying solely on the trial judge's earlier issuance of the search warrant, Appellant speculatively contends the trial judge's impartiality might be questioned based on the fact that the trial judge issued a judicial ruling on the warrant prior to trial.[3] Contrary to Appellant's contentions, the fact that the trial judge issued the search warrant did not establish any bias or prejudice against Appellant, and such a contention should not be entertained or condoned.[4] See Langford, 400 S.C. at 439, 735 S.E.2d at 480 ("The contention that a

[3] Notably, the search warrant was issued for a specific address and not a person, and Appellant's name was not mentioned in the search warrant affidavit. (R. pp. 543-547).

[4] In arguing a trial judge should be disqualified from ruling on the validity of a search warrant that the trial judge personally issued, Appellant primarily relies upon the decision of the Mississippi Court of Appeals in Brent v. State, 929 So. 2d 952 (Miss. Ct. App. 2006). In that case, the trial judge presiding over Brent's trial issued the search warrant at issue in Brent's case and had previously prosecuted Brent while serving as an assistant district attorney. Id. at 955. After considering the circumstances of Brent's case, the Mississippi Court of Appeals concluded the trial judge's partiality might and should reasonably be questioned under those circumstances and, as a result, reversed the trial judge's decision not to recuse himself. Id. at 955. Significantly though, unlike the analysis applied by the Missouri Court of Appeals, parties seeking recusal in South Carolina must present actual evidence of bias or prejudice and cannot simply rely on the possibility of partiality when seeking the disqualification of a trial judge. See Jackson, 353 S.C. at 627, 578 S.E.2d at 745 ("It is not enough for a party seeking disqualification to simply allege bias or prejudice."). Furthermore, numerous other appellate courts have reached a starkly different conclusion than the Mississippi Court of Appeals, with the overwhelming majority of courts that have considered the issue determining the issuance of a search warrant does not automatically prevent the issuing judge from considering the validity of the warrant in a subsequent proceeding. See Heard v. State, 574 So. 2d 873, 875 (Ala. Crim. App. 1990) ("[A]bsent a showing of prejudice, an issuing magistrate may

judge was biased *solely* because he ruled against a defendant is untenable and insulting towards the court, and it would set a dangerous precedent were we to sanction it." (italics in original)). Demonstrating the erroneous nature of such an assumption, courts in South Carolina have historically and consistently recognized judges are capable of reconsidering the judicial determinations they have previously made without being rendered impartial by virtue of making those determinations. See State v. Floyd, 295 S.C. 518, 520, 369 S.E.2d 842, 843 (1988) ("A ruling on the motion is not the ultimate disposition on the admissibility of evidence. It remains subject to change based upon developments during trial."); see also Rule 221, SCACR (outlining the procedure for petitioning an appellate court for rehearing following the issuance of the court's decision). However, assuming Appellant was somehow correct on the potential for bias

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properly serve as the trial judge on the same cause."); Holloway v. State, 293 Ark. 438, 441, 738 S.W.2d 796, 798 (Ark. 1987) (holding a trial judge who issued a search warrant is not required to recuse himself from subsequently determining the propriety of that warrant during trial); Heidt v. State, 292 Ga. 343, 347-348, 736 S.E.2d 384, 389-390 (Ga. 2013) (finding no error in the denial of a motion to recuse the trial judge on the basis that he had previously issued two search warrants and several orders in Heidt's case because "the involvement of the trial judge with the issuance of search warrants and orders for records was directly related to Heidt's case and was not 'extra-judicial' "); People v. Antoine, 335 Ill. App. 3d 562, 573, 781 N.E.2d 444, 454 (Ill. App. Ct. 2002) ("That [the trial judge] presided over the warrant proceedings and issued the search warrant is not sufficient alone to establish prejudice."); Bussell v. Commonwealth, 882 S.W.2d 111, 112 (Ky. 1994) ("The second allegation in the recusal motion was that the trial judge had ruled on an ex parte motion for a search warrant. This claim is without merit. Recusal is appropriate only when the information is obtained from an extrajudicial source."); State v. Poole, 472 N.W.2d 195, 197 (Minn. Ct. App. 1991) (holding a trial judge who issues a search warrant is not automatically precluded from subsequently considering the validity of the warrant); State v. Pointer, 135 N.J. Super 472, 480, 343 A.2d 762, 766 (N.J. Super. Ct. App. Div. 1975) (finding no merit to the contention that a judge who issued a warrant was required to disqualify himself from considering a subsequent motion to suppress); People v. McCann, 85 N.Y.2d 951, 952-953 (N.Y. 1995) (holding a trial judge was not required to recuse himself from ruling on the validity of a search warrant that he issued, finding there is no basis to conclude a trial judge reviewing a search warrant under those circumstances would give the issue anything less than fair and impartial consideration, and further noting a trial judge's decision in regards to a warrant he issued is nonetheless subject to appellate review); State v. Monserrate, 125 N.C. App. 22, 32-33, 479 S.E.2d 494, 501 (N.C. Ct. App. 1997) (holding a trial judge who issued a search warrant is not automatically required to recuse himself from subsequently ruling on the validity of the search warrant); Kemp v. State, 846 S.W.2d 289, 306 (Tex. Crim. App. 1992) ("The mere fact that a trial judge issued a defendant's search or arrest warrant, alone, does not establish bias against the defendant in a subsequent criminal proceeding[.]"); State v. Chamberlain, 161 Wash. 2d 30, 37, 162 P.3d 389, 392 (Wash. 2007) (finding no error in the trial judge's decision to decline to recuse himself in a case where he issued the search warrant that was subsequently challenged during trial and stating "[e]vidence of a judge's actual or potential bias must be shown before an appearance of fairness claim will succeed").

that could result from a trial judge reviewing a search warrant he issued, the mere possibility the trial judge's earlier decision to issue the warrant might raise a question regarding the trial judge's partiality is not sufficient to disqualify the trial judge from presiding over the trial without some actual evidence of prejudice or bias. See Langford, 400 S.C. at 438, 735 S.E.2d at 480 (recognizing "[t]he right to a judge who is free from the mere *appearance* of partiality is not part of due process at all" (italics and brackets in original and citation and internal quotations marks omitted)). As a result, since Appellant has not identified any specific evidence of the trial judge's bias or prejudice against him aside from the trial judge's earlier judicial ruling on the search warrant, the trial judge had an affirmative duty to decline to recuse himself and preside over Appellant's trial. See Simpson, 377 S.C. at 525-526, 660 S.E.2d at 278 ("When disqualification is not required, the South Carolina Code of Judicial Conduct holds, 'A judge *shall* hear and decide matters assigned to the judge . . . .' " (italics in original and citation omitted)).

Appellant has failed to meet his burden of establishing evidence of bias or prejudice on the part of the trial judge, and no evidence was presented suggesting the trial judge could not be fair and impartial in Appellant's case. See Jackson, 353 S.C. at 627, 578 S.E.2d at 745 ("The party must show some evidence of that bias or prejudice."). The fact that the trial judge issued a search warrant in Appellant's case did **not** establish the trial judge was biased or prejudiced against Appellant and, thus, did not disqualify the trial judge from ruling on the validity of the search warrant. Accordingly, as there is a total lack of evidence of bias, the trial judge did not abuse his discretion in declining to recuse himself from further participation in Appellant's trial. See id. ("If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal."). Appellant's conviction should be affirmed.

IV.

Any issue regarding the applicability of the cumulative error doctrine was not preserved for appellate review and abandoned because Appellant did not raise any issue in regards to cumulative error during trial and, instead, raised the issue for the first time on appeal in a conclusory and unsupported manner. Regardless, Appellant's trial was not rendered unfair as a result of any errors, cumulative or otherwise, and none of the errors identified by Appellant as rendering his trial unfair actually constituted an error.

Appellant asserts the trial judge erred by not granting a new trial based on the cumulative effect that a number of alleged errors had on the fairness of the trial. Without presenting any specific argument to establish any actual errors occurred, Appellant maintains several alleged errors collectively deprived him of a fair trial. Initially, any issue regarding the applicability of the cumulative error doctrine was not properly preserved for appellate review because that issue was not raised to or ruled upon by the trial judge. Additionally, even if the issue was somehow preserved for review, Appellant abandoned the issue on appeal by merely raising a conclusory and unsupported argument on the issue. Furthermore, regardless of any concerns regarding issue preservation and abandonment, the cumulative error doctrine was not applicable to Appellant's case because none of the alleged errors identified by Appellant as collectively depriving him of a fair trial actually constituted an error. As Appellant's trial was not rendered unfair by any alleged error, cumulative or otherwise, the trial judge did not err by not granting Appellant a new trial following the jury's verdict. Appellant's conviction should be affirmed.

A. Issue Preservation and Abandonment

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v.

Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see also JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

If an error is not presented to and ruled upon by the trial judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). The appellate court will not consider any issues or arguments that were not presented to or passed upon by the trial judge, and an appellant is limited on appeal solely to the grounds raised during trial. State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); see also State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and **arguments**." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000) (emphasis added).

Likewise, "conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review." State v. Crocker, 366 S.C. 394, 399, n. 1, 621 S.E.2d 890, 893 (Ct. App. 2005). "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." Howard, 384 S.C. at 217, 682 S.E.2d at 45. Appellate courts will not consider arguments or issues raised on appeal in a conclusory or

unsupported manner. Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 252, n. 3, 734 S.E.2d 161, 164 (2012).

In the case sub judice, Appellant failed to preserve any issue in regards to the cumulative effect of the errors he contended occurred during trial because Appellant did not raise any issue regarding cumulative error to the trial judge and never contended to the trial judge that the alleged errors taken together adversely impacted his constitutional right to a fair trial. See Patterson, 324 S.C. at 19, 482 S.E.2d at 767 ("Appellant is limited to the grounds raised at trial."); see also In re Care and Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appellate review."). Because Appellant did not raise an argument regarding the cumulative effect of the alleged errors to the trial judge, Appellant is precluded from raising such an argument for the first time on appeal. See West v. Morehead, 396 S.C. 1, 14, 720 S.E.2d 495, 502 (Ct. App. 2011) ("Appellants make arguments and cite authorities in their briefs that were not presented to the trial court. These arguments are not preserved."); see also State v. Senter, 396 S.C. 547, 555, 722 S.E.2d 233, 237 (Ct. App. 2011) ("Because Senter failed to raise this argument to the trial court, it is not preserved for our review.").

However, even assuming the issue regarding cumulative error was somehow preserved during trial despite the fact Appellant did not raise the issue to the trial judge, Appellant abandoned the issue on appeal by merely raising a conclusory argument in support of his appellate contentions. Significantly, on appeal, Appellant contends several specified errors taken together cumulatively deprived him of his constitutional right to a fair trial. However, aside from merely identifying four errors that allegedly occurred during trial, Appellant has not presented any argument or supporting authority to

establish the **alleged** errors constituted **actual** errors. In light of the conclusory and unsupported manner in which the issue has been raised on appeal, any issue regarding the cumulative effect of the alleged errors has been abandoned and, thus, cannot properly be considered on appeal. See State v. Garner, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010) (holding a conclusory, unsupported argument was abandoned on appeal); see also State v. Attardo, 263 S.C. 546, 551, n. 1, 211 S.E.2d 868, 869 (1975) (" 'The burden of proof is on the appellant to convince this Court that the lower court was in error.' " (citation omitted)). Accordingly, for the foregoing reasons, Appellant failed to meet his burden of establishing his trial was rendered unfair by the cumulative effect of errors he claims occurred during trial. See State v. Huggins, 336 S.C. 200, 205, 519 S.E.2d 574, 577 (1999) ("It is well-settled that issues may not be raised for the first time on appeal."). Appellant's conviction should be affirmed.

B. Propriety of the Trial Judge's Allegedly-Erroneous Rulings

Pursuant to the cumulative error doctrine, a criminal defendant may be entitled to reversal if he can demonstrate that errors occurred during trial **and** those errors taken together adversely affected his right to a fair trial. State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). However, an argument based on the cumulative error doctrine necessarily must fail if the defendant cannot meet his burden of establishing any errors actually occurred. State v. Kornahrens, 290 S.C. 281, 290, 350 S.E.2d 180, 186 (1986). Furthermore and significantly, a criminal defendant is only constitutionally entitled to a fair trial and not a perfect one. State v. McEachern, 399 S.C. 125, 149, 731 S.E.2d 604, 616 (Ct. App. 2012); see State v. Black, 400 S.C. 10, 29, 732 S.E.2d 880, 891 (2012) ("[A] defendant is entitled to a fair trial, not a perfect one.").

In the case at bar, notwithstanding the fact that the issue regarding the cumulative error doctrine was not preserved for appellate review and has been abandoned on appeal, Appellant failed to establish his trial was rendered unfair as a result of the cumulative effect of the errors he identified in a conclusory fashion on appeal. Critically, the reason why those errors could not have rendered Appellant's trial unfair is that none of the errors Appellant identified as collectively warranting reversal actually constituted an error.

Turning to the errors identified by Appellant, Appellant first contends the trial judge erred in admitting testimony and evidence related to the failure to stop for a blue light charge because that charge was severed from Appellant's trial for trafficking in cocaine. However, despite the fact the trial judge did not permit the solicitor to submit the failure to stop for a blue light charge to the jury, the evidence related to Appellant's flight and substantial efforts to evade arrest was directly related to the trafficking offense for which he was on trial because the circumstances surrounding Appellant's flight supported an inference that he knew law enforcement officers were seeking to arrest him for the trafficking offense as he was unquestionably aware officers had seized the narcotics stored inside of his home. See State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) ("It is sufficient that circumstances justify an inference that the defendant's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose."); State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011) ("[A]ny guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt."); State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005) ("It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for

that purpose."); State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005) ("Flight, when unexplained, is admissible as indicating consciousness of guilt, for it is not to be supposed that one who is innocent and conscious of that fact would flee."). Accordingly, the trial judge did not abuse his broad discretion by admitting testimony related to Appellant's flight immediately before his arrest for the trafficking offense. See State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.").

Additionally, Appellant contends the trial judge erred in denying his motion for a mistrial based on the trial judge's interruption of defense counsel's opening statement. Initially, the trial judge properly exercised his discretion to interrupt defense counsel's opening statement because defense counsel improperly referred to the solicitor's case in an argumentative manner during the opening remarks, which was not consistent with the purpose of an opening statement. See State v. Brown, 277 S.C. 203, 204-205, 284 S.E.2d 777, 778 (1981) ("An opening statement serves to inform the jury of the general nature of the action and the defenses involved in a case so they will be better prepared to understand the evidence presented. . . . [T]he scope of an opening statement is within the discretion of the trial judge[.]" (citations omitted)). However, even assuming the trial judge somehow abused his discretion by interrupting defense counsel's opening statement, the trial judge nonetheless issued a curative instruction to the jury in regards to the interruption, and Appellant raised no objection to the sufficiency of that curative instruction. See State v. George, 323 S.C. 496, 510, 476 S.E.2d 903, 912 (1996) ("No issue is preserved for appellate review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the

curative charge or move for a mistrial."). Accordingly, the trial judge did not abuse his discretion in regards to defense counsel's opening statement, and any possible error that could have occurred was cured by the trial judge's curative remarks to the jury. See State v. Brown, 389 S.C. 84, 95, 697 S.E.2d 622, 628 (Ct. App. 2010) ("A curative instruction is usually deemed to cure an alleged error.").

Next, Appellant contends the trial judge erred in declining to grant a mistrial in light of his comments to the jury following a courtroom disturbance. Contrary to Appellant's contentions, the trial judge properly responded to a disturbance in the courtroom by taking steps to determine the nature of disturbance and taking steps to determine if any jurors were impacted by it. See State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007) ("The conduct of a criminal trial is left largely to the sound discretion of the trial judge."); see also State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958) ("Necessarily the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had."). After discussing the matter with individuals in the courtroom and with the jury, the trial judge determined a mistrial was not warranted after all of the jurors indicated they were unaffected by anything that occurred in the courtroom, and the noise that was reported did not and could not have resulted in any actual articulable prejudice to Appellant. See State v. Grovenstein, 335 S.C. 347, 351, 517 S.E.2d 216, 218 (1999) ("We have consistently required defendants to demonstrate prejudice due to improper jury influences."); State v. Aldret, 333 S.C. 307, 313, 509 S.E.2d 881, 814 (1999) ("[T]he trial court has broad discretion in assessing allegations of juror misconduct."); State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998) ("The trial judge is in the best position to determine the credibility of the jurors; therefore, [the appellate court] should grant him broad deference

on this issue."). Therefore, based on the jurors' assurances that any disturbance they may have occurred did not impact their abilities to remain fair and impartial in Appellant's case, the trial judge properly declined to grant a mistrial based on the disturbance or his remarks to the jury on the matter. See State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999) ("The granting of a motion for mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way.").

Finally, Appellant contends the trial judge erred in dismissing the trafficking charge in light of the fact that evidence was admittedly destroyed by the State prior to trial. However, although the State mistakenly destroyed a number of documents taken during the search of the targeted residence, there was no evidence suggesting that the State destroyed the evidence in bad faith or that the evidence possessed apparent exculpatory value, and comparable evidence was introduced during trial through the presentation of testimony and evidence establishing letters addressed to other individuals and to Appellant at an address different from the targeted residence were found in the search of that residence. See Arizona v. Youngblood, 488 U.S. 51, 57 (1988) ("[W]e think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant."); California v. Trombetta, 467 U.S. 479, 488 (1984) ("The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense."); State v. Cheeseboro, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001) ("The State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant.");

see also Baker v. McCollan, 443 U.S. 137, 146 (1979) (instructing law enforcement officers are not required to perform entirely error-free investigations); State v. Bland, 399 S.C. 220, 226, 730 S.E.2d 909, 912 (Ct. App. 2012) ("[O]ur holding that Bland failed to demonstrate that the lineup had exculpatory value is sufficient to uphold his convictions[.]"). Furthermore, the trial judge greatly minimized any potential for prejudice to Appellant by instructing the jury on the adverse inference to the State that could be drawn from the destruction of the evidence. See, e.g., Foye v. State, 335 S.C. 586, 590, n. 1, 518 S.E.2d 265, 267 (1999) ("A jury is presumed to follow instructions."). Accordingly, the destruction of the letters collected from the targeted residence did not entitle Appellant to dismissal of his charges or render his trial fundamentally unfair.

Thus, in raising the applicability of the cumulative error doctrine on appeal, Appellant failed to identify any actual errors in support of his contention that his trial was rendered unfair as a result of the cumulative effect of the trial errors taken together. For that reason, Appellant failed to establish he was entitled to relief pursuant to the cumulative error doctrine. See Johnson, 334 S.C. at 93, 512 S.E.2d at 803 ("[A party raising an issue pursuant to the cumulative error doctrine] must demonstrate more than error in order to qualify for reversal on this ground. Instead, the errors must adversely affect his right to a fair trial."); see also Kornahrens, 290 S.C. at 290, 350 S.E.2d at 186 ("[Kornahrens] asserts the trial judge should have granted a new trial because of the cumulative effect of the asserted trial errors. Since we have found no errors, this issue is without merit."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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May 30, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Edward B. Cottingham, Circuit Court Judge
Appellate Case No. 2011-203769

THE STATE,

Respondent,

vs.

ALEX LORENZO ROBINSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served. This 30th day of May, 2013.

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