THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Florence County
The Honorable Steven H. DeBerry, Circuit Court Judge

THE STATE,

Respondent,

v.

ANTONIO DENON BRAYBOY,

Appellant.

Appellate Case No. 2023-001182

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

Did the trial court err in ruling Appellant did not have an expectation of privacy in his cell phone records and the CSLI, that there was probable cause for the issuance of the search warrant, particularly where the vague allegations did not even state what, if any, crime Appellant allegedly committed?

Did the trial court err in allowing evidence of SKIPTHEGAMES and SPOTLIGHT to be submitted to the jury without proper authentication?

Did the trial court err in denying Appellant's motion for directed verdict as there was no corroborating evidence presented and further inadmissible evidence was put in front of the jury?

STATEMENT OF THE CASE

On October 27, 2020, Appellant Antonio Denon Brayboy ("Brayboy") was arrested and charged with murder and possession of a weapon during violent crime. On November 23, 2021, the Florence County grand jury indicted Brayboy for murder and possession of a weapon during violent crime. (2021-GS-21-2508; 2507). On July 17-20, 2023, Brayboy proceeded to a jury trial before the Honorable Steven H. DeBerry. (R. 5). Brayboy was represented by Ralph Wilson, Jr., Esq., and Lauren Anderson, Esq. Assistant Solicitors Ryan White and Todd Tucker prosecuted the case. (R. 5). On July 20, 2023, the jury convicted Brayboy as charged. (R. 587). Judge DeBerry sentenced Brayboy to fifty (50) years in prison for murder conviction and five (5) years in prison for possession of a weapon during a violent crime to run consecutive (Sentence Sheet, R. 604-05). Brayboy timely filed a notice of appeal on July 21, 2023, followed by Brayboy's Initial Brief and designation of matter filed on February 29, 2024. Respondent's Final Brief now follows.

RESPONDENT'S STATEMENT OF FACTS

On the night of December 27, 2019, Rashad Maurice Jones ("the victim") was at home in Mullins talking on his cell phone while trying to put his 8-year-old son to bed. The victim and his son lived with the victim's parents. (R. 177, 301). The victim's father testified that on the night of December 27, 2019, it appeared to him that the victim was in a hurry to go somewhere. (R. 179-81). Earlier that day, the victim had gone to his bank and withdrawn approximately $180.00 in cash. (R. 462-63; State's Ex. 110). The victim's father and mother testified that the victim was eventually able to get his son to go to sleep, and then the victim left their home between 10:00 and 11:00 p.m. still on December 27, 2019. (R. 177-81). They never saw their son alive again.

Victim's vehicle was equipped with a GPS device that recorded when the vehicle stopped for any substantial period-of-time. The GPS device recorded that the victim drove from his home eventually arriving at Greenwood Athletic Park in Effingham in Florence County at approximately 1:30 a.m. on December 28, 2019. (R. 353-59). Greenwood Athletic Park is a recreation park where individuals are known to meet after hours to engage in sexual relations. (R. 452-53).

On December 28, 2019, Timothy Mitchell was flying his drone at Greenwood Athletic Park when he noticed a vehicle with the windows rolled down parked in the area. (R. 136-37). He saw a man sitting in the vehicle, whom he assumed to be sleeping. (R. 137). He eventually left the park and went on with his day. (R. 137). Approximately three (3) hours later, he noticed the individual was still sitting in the parked vehicle. (R. 137). He later told his wife, Shonda Mitchell, about the man in the vehicle and they decided to drive by the park later that night. (R. 137-38, 140). They drove to the park around midnight and noticed the vehicle was still parked in the same spot. (R. 141). Ms. Mitchell, a healthcare worker, suggested they call 911 in case the man had suffered a heart attack. (R. 141).

Upon arrival at the scene, officers found victim's vehicle parked in a dimly lit corner of the parking lot and inside the vehicle discovered a black male in the driver's seat, slouched backwards with blood coming from his ear with a gunshot wound to the head. (R. 451-52; 144, 421). There was blood flowing from the victim and there was blood transfer inside the vehicle on the passenger seat and the passenger door panel. (R. 197-213). Officers noticed the deceased male's zipper was undone, Vaseline was on the floorboard behind the front passenger seat, a condom and condom wrapper were outside the vehicle, and a condom was in the center console. (R. 155-58, 173). Officers discovered a wallet between the console and the driver's seat belonging to Rashad Jones, identified as the deceased male. (R. 159-60). The wallet contained $40 hidden in an interior wallet compartment, but no other cash was found inside the vehicle. (R. 159-60; 457). No fired shell casings were found in the vehicle. A cellphone box was found in the car, but no cell phone was found at the scene. (R. 455-56).

In cooperation with the U.S. Marshall's task force, police were able to ping the victim's cell phone to an area away from the crime scene. They searched for the victim's cell phone but were unable to locate it. (R. 455-56; 468-69).

The autopsy determined the victim had been shot at close range. There was soot around the gunshot wound such that the gun that killed the victim was approximately a foot away from the victim's head when fired. The victim was shot in his right forehead and the bullet traveled through the brain and lodged at the back of the victim's skull. The bullet was recovered and was determined to be a .45 caliber bullet. (R. 417-26).

Former investigator, now Chief of Police Alex Edwards, spoke with the victim's family during the course of the investigation and confirmed that the victim left his home on the night of December 27, 2019, between 10:00 and 11:00 p.m. with his cell phone the evening prior to officers

discovering his body. (R. 456-59). Chief Edwards obtained the victim's phone number from the family. (R. 458). He spoke with James Allen, victim's father, who stated the victim was at his house until approximately 10 PM that night. He informed Chief Edwards that the victim was trying to put his son to sleep and was talking to someone on the phone. (R. 458-59, 466-71).

Chief Edwards obtained and executed a search warrant *on the victim's cell phone provider* and received information that provided the last number the victim dialed was a (704) 777-8982 number. (R. 454-58, State's Ex. 105 & 106). The victim's phone records showed that the victim's number and the (704) 777-8982 number had significant contact leading-up-to the murder. (R. 462).

The victim's phone records showed there was a text from the victim to the (704) 777-8982 number around 7:53 p.m. on December 27, 2019. There was then a call from the same number to the victim at 11:52 p.m. There was then a call from the same number to the victim's number at 12:16 p.m. The victim then called the same number at 12:24 a.m. on December 28, 2019. There was then a call from the victim to the same number at 12:28 a.m. on December 28th. There was then a phone call from the victim to the same number at 1:26 a.m. This was the last phone call the victim made or received. (R. 319, 305-06; 310-12; 315; State's Ex. 105-06).

Due to the sexual nature of the crime, Chief Edwards sent the (704) 777-8982 phone number to a SLED investigator and Florence County investigator specializing in sex crimes and sex trafficking. (R. 465). The phone number was entered into a search engine for sex-related sites referred to as Spotlight, only accessible to investigators conducting these types of investigations. (R. 382, 385, 466). The Spotlight data base searches approximately eight (8) to nine (9) different online sexual escort commercial sex web sites where an individual posts an ad seeking someone to pay for sexual activity. (R. 382-83). To search for information on Spotlight, phone numbers, email addresses, pictures, etc., can be used to gather information from different escort sites,

whether or not the ad has been previously deleted. (R. 383). SLED Agent Jade Roy and Investigator Angel Clark of the Florence County Sheriff's Office entered the 704-phone number into the search engine database and Spotlight generated an advertisement, posted on December 19, 2022, located in Florence, from a site referred to as "Skipthegames" that was connected to and listed the (704) 777-8982 number advertising as a male prostitute for women. (R. 410-11; 396-98; State's Ex. 112). The ad listed (704) 777-8982 as the point of contact. (R. 396, State's Ex. 102). That advertisement was entered into evidence. (R. 411, State's Ex. 102 & 112). Investigators requested information related to the ad and the 704-phone number from "Skipthegames," however an agent of the website indicated that there was no record of any information related to that number, suggesting that the ad had been taken down. (R. 389, 393). Later, after the State rested, upon further inquiry, law enforcement received an e-mail from "Skipthegames" that the ad had been created using Brayboy's e-mail address and the phone number had been taken down shortly after the murder of the victim. (R. 507-12; Court's Ex. 2).

On January 8, 2020, Chief Edwards spoke with Allen Thomas who indicated that the victim would pay for sex using escort websites. (R. 466).

Based on the contact with the victim, and the circumstances surrounding the victim's death, a search warrant was obtained for AT&T for phone records for the (704) 777-8982 number the victim was repeatedly calling and receiving phone calls from immediately before his death. The request was for records of phone calls, cell site location information (CSLI), and subscriber information [who owned the account]. The subscriber information identified Appellant Antonio Brayboy ("Brayboy") from the Lake City area of Florence County as owning the phone attributed to the number. (R. 464). Asia Cooper, Brayboy's former girlfriend, identified the 704 number as

belonging to Brayboy, and Brayboy listed the 704 number on his paperwork when he was arrested. (R. 464-65).

SLED Agent Preston Simpson prepared a report mapping the locations of the phone numbers belonging to the victim and Brayboy on December 27th/28th, 2019, the time period of victim's murder. (R. 301; State's Ex. 107). The report showed that Brayboy's phone number and the victim's phone number were in contact with each other from December 27, 2019, into the early morning hours of the 28th and had no communications *via* cell phone prior to that date. (R. 304-05; State's Ex. 107). The records showed Brayboy's phone traveled from his home in the Lake City area of Florence County to the area of the crime scene at the same time the victim traveled to the area of the crime scene. (R. 306-19; State's Ex. 107). The records reflect as follows from the evening of December 27, 2019, to the early morning of December 28, 2019, when the victim was murdered:

> **7:53 PM:** The victim's number sends a text message to Brayboy's phone number. (R. 319).
>
> **11:52 PM:** Brayboy's phone number makes an outgoing call to the victim's phone number. (R. 319)
>
> **12:16 AM:** Brayboy's phone number makes an outgoing phone call to the victim's phone number lasting one (1) minute and seven (7) seconds. Brayboy's phone is located in Lake City and the victim's phone is located in Florence. (R. 305-06; State's Exhibit 107, p. 9).
>
> **12:24 AM:** The victim's phone number makes an outgoing call to Brayboy's phone number. The victim's location has not moved from Florence but Brayboy's phone location travelled toward the victim's phone location. (R. 306-08; State's Exhibit 10).
>
> **12:28AM:** The victim's phone number makes an outgoing call to Brayboy's phone number lasting fifty-three (53) minutes and thirty-five (35) seconds. (R. 308-10; State's Exhibit 109).
>
> **1:21 AM**: Brayboy's phone has now moved from Lake City and is utilizing a tower that is in the Florence area. (R. 311).

1:26 AM: The victim's phone number makes an outgoing call to Brayboy's phone number lasting approximately fifty-seven (57) seconds. (R. 315-16). Brayboy's phone number and the victim's phone number are located within the area of the crime scene. (R. 312-13, 328; State's Exhibit 107, p. 17). This is the last outgoing call from the victim's phone number. (R. 315). This also corresponds with the victim's vehicle's GPS putting the victim arriving at the crime scene at roughly 1:30 a.m.

2:17 AM: No further communication between the victim and Brayboy. Brayboy's cell site location is now near his listed address in Lake City. (R. 316-17; State's Exhibit 107, p. 19). The victim's phone location travels toward Lake City as well where it stops. (R. 317).

In October of 2020, Asia Cooper, a former girlfriend of Brayboy, came forward and informed Chief Alex Edwards, the lead investigator, and later testified at trial, that Brayboy confessed to her to murdering the victim and told her that he met the victim on an escort website. (R. 427-49; 430, 479). Brayboy told Asia that the victim initially pretended to be a woman until Brayboy asked for a picture of the victim. (R. 430-31). The victim then told Brayboy he was man, and they proceeded to meet up at a recreation park. (R. 431). When they met up, Brayboy got in the victim's vehicle and Brayboy shot the victim in the head. (R. 431). Brayboy took some money that had blood on it, the victim's cell phone, and a fired shell casing, and threw the phone out the window when he got down the road. (R. 431-32). Brayboy was subsequently arrested on October 27, 2020.

At trial, Brayboy did not testify or call any witnesses. As previously stated, at the conclusion of the trial, the jury found Brayboy guilty of murder and possession of a weapon during a violent crime.

APPELLATE STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Halcomb, 382 S.C. 438, 676 S.E.2d 152 (Ct. App. 2009). The appellate court is limited to determining whether the trial court abused its discretion. State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998). An abuse of discretion occurs when the trial court's ruling is based on an error of law or based on unsupported factual conclusions. State v. Prather, 429 S.C. 583, 840 S.E.2d 551 (2020). This Court does not reassess the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence. State v. Mattison, 352 S.C. 577, 583, 575 S.E.2d 852, 855 (Ct. App. 2003). Furthermore, this 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). The admission or exclusion of evidence is within the sound discretion of the trial court, and an appellate court will not reverse unless there was an abuse of discretion resulting in prejudice to the defendant. State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989).

ARGUMENT I.

Judge DeBerry did not err in admitting Brayboy's CSLI because the search warrant affidavit along with sworn supplemental testimony to the Magistrate adequately presented probable cause [a fair probability] that evidence of a crime would be found in the place sought to be searched.

Standard of Review

Appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This Court reviews the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion is a question of law subject to *de novo* review. State v. Frasier, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022). "When reviewing a magistrate's decision to issue a search warrant, [the reviewing court] must consider the totality of the circumstances." State v. Jones, 342 S.C. 121, 126, 536 S.E.2d 675, 678 (2000).

What occurred below

Pretrial, Brayboy moved to suppress his subscriber information, cell phone call records, and cell site location information (CSLI) obtained by the State through a search warrant issued by a South Carolina magistrate directed to AT&T, Brayboy's cell service provider. (R. 37-100). At the hearing, the State presented the search warrant (Court's Ex. 1) and the sworn testimony of Chief Alex Edwards who obtained the search warrant and supplemented his search warrant affidavit with sworn testimony to the issuing magistrate. (R. 52-77). After hearing argument from both parties, Judge DeBerry denied the motion to suppress finding there was sufficient probable cause in the affidavit to issue the search warrant without any supplementation. (R. 82-84). Brayboy asked Judge DeBerry to reconsider his ruling. (R. 84-95). Judge DeBerry heard further argument from Brayboy. (R. 95-99). After reconsidering the issue, and hearing further argument, Judge DeBerry again denied the motion to suppress finding the affidavit contained sufficient probable

cause without any additional supplementation. (R. 109-114). Judge DeBerry specifically ruled as follows:

> THE COURT: All right, I have reconsidered the motion from the defense to suppress the search warrant and the things that came from the search warrant. Certainly I still believe that my ruling is correct. I find that the affidavit certainly contains probable cause. There's certainly the fact that a homicide had taken place; that this phone number was not—it was a strange phone number in the sense that it wasn't contained in the call logs of the victim's phone. There were multiple contact leading up to the death of the victim, and certainly at that point, they didn't need probable cause to arrest anybody. They were just seeking or the affidavit needed to contain probable cause to search whatever it is they were going to search.
>
> I find that it was sufficient, you know, without any additional supplemental information that they may have been given before or after the issuance of the search warrant. So that's my ruling.
>
> (R. 109, ll. 2-19).

Analysis

First, Brayboy's **phone records** of who he called and when he called them are not protected by the Fourth Amendment because he has no legitimate expectation of privacy in what he voluntarily turned over to a 3rd party. Carpenter v. United States, 138 S.Ct. 2206 (2018); Smith v. Maryland, 442 U.S. 735 (1979); United States v. Miller, 425 U.S. 435 (1976). As the Court in Carpenter recognized, even after Carpenter this remains unchanged. Id. As a result, Brayboy cannot challenge the admission of *the record of phone calls he made or received, when he made or received them, how long they lasted, and to whom he called or received phone calls from.* Carpenter, 138 S.Ct. 2206, 2217; Smith, 442 U.S. 735. A search warrant was unnecessary for this particular information. Furthermore, the State already had the phone calls Brayboy made to the victim immediately before the victim's murder through the victim's phone records. Brayboy cannot suppress those.

Second, Brayboy's subscriber information [who owned the phone number or account] is also not protected by the Fourth Amendment. It has been recognized by numerous courts, even

after Carpenter, that subscriber information, i.e. who owns a particular account or phone number, belongs to the phone company and is not protected by Fourth Amendment. *See, e.g.*, United States v. Hood, 920 F.3d 87, 92 (1st Cir. 2019) (holding that IP addresses are subject to the third-party doctrine and fall outside the scope of Carpenter); United States v. Contreras, 905 F.3d 853, 857 (5th Cir. 2018) (ruling that, post-Carpenter, ISP subscriber information "falls comfortably within the scope of the third-party doctrine"); *see also* United States v. Wellbeloved-Stone, 777 F. App'x 605, 607 (4th Cir. 2019) (declining to revisit Bynum's holding that subscriber information was not protected by the Fourth Amendment in light of Carpenter); United States v. VanDyck, 776 F. App'x 495, 496 (9th Cir. 2019) (declining to revisit Forrester's holding that IP addresses and ISP subscriber information are not protected by the Fourth Amendment in light of Carpenter); State v. Mixton, 250 Ariz. 282, 288, 478 P.3d 1227, 1233 (2021). As a result, Brayboy cannot suppress his subscriber information obtained by the search warrant to AT&T.

The only thing protected by the Fourth Amendment is a request for CSLI of 7 days or more. Carpenter, *supra*. Here, law enforcement requested seventeen (17) days of CSLI. (Court's Ex. 1, Search Warrant). Therefore, the request must comply with the Fourth Amendment. It did. The State obtained a valid search warrant containing probable cause, and also supplemented the search warrant with additional sworn testimony before the magistrate that further supported probable cause. *See* State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997)(allowing sworn testimony to supplement a search warrant affidavit).

The Affidavit in support of the Search Warrant for CSLI from AT&T stated as follows:

> On December 29, 2019, around 1:30 a.m., the Florence County Sheriff's Office responded to 2711 Pamplico Highway, Florence S.C. also known as **Greenwood Athletic Park** located within the jurisdiction of Florence County concerning a suspicious vehicle complaint. Deputies responded to make contact with the vehicle one 2003 GMC Yukon (SC Tag NPK 425) concerning this incident. Deputies observed a black male individual in the driver seat appeared to

> be sleeping. Upon approach deputies discovered the male individual was unresponsive and bleeding from the left side of his head area prompting them to call EMS. The Florence County Coroner's Office was notified along with investigators with the Sheriff's Office to respond to the scene. Upon further investigation it appeared the male victim sustained a gunshot wound to his head area. Investigators were able to identify the deceased victim, **Rshashad Maurice Jones**, of Mullins, South Carolina. During the course of the investigation the Mr. Jones personal cell phone made contact with the listed number **(1-704)-777-8982)** several times around the time of his death. Investigators have reason to believe the subscriber information along with the cell phone records contain vital information to assist with this ongoing investigation. **(FCSO Case #2019-12-0768).**

(Court's Ex. 1, Search Warrant)(emphasis in original). Investigator Edwards supplemented the affidavit with sworn testimony before the Magistrate Judge. (R. 52-77).[1] State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678-79 (2000)(sworn oral testimony may be used to supplement a search warrant affidavit). Edwards testified he kept the Magistrate informed of the entire investigation into the victim's death and the circumstances surrounding the victim's death. (R. 52-77). Edwards informed the Magistrate of what he found at the crime scene in and around the victim's vehicle including showing the Magistrate photographs of what was found at the crime scene. (R. 52-77). As a result, Edwards would have informed the Magistrate that the victim was murdered in his vehicle in a dark parking lot late at night and the murder of the victim appeared to be sex related. A used condom and condom wrapper were found outside the victim's vehicle and another condom in a condom wrapper was found inside the victim's vehicle. Additionally, in the back seat passenger area of the victim's vehicle an opened can of Vaseline was also found. And the victim's zipper was un-zipped. Edwards also informed the Magistrate he had talked to a personal friend of the victim who related to Edwards that the victim would solicit sex from women for money and meet them at the park where the murder occurred to engage in sex acts. (R. 76, ln. ln. 4-6; 69, ll.

[1] Edwards also testified he had gone to the same Magistrate for two (2) previous search warrants on this same case, the search warrant for the victim's phone records and the search warrant for victim's bank account information. (R. 57-58).

8-10; 70, ll. 13-15). Edwards also informed the Magistrate that on the night of the victim's death, the victim's family informed law enforcement that the victim was on his phone and appeared to be in a hurry to leave the home and meet someone; and, the victim had his phone. (R. 58). Edwards informed the Magistrate that on the night of his death the victim spoke with the (704)-777-8982 number [Appellant's number] numerous times including showing the Magistrate the victim's phone records that detailed the repeated text and calls to and from the victim to the (704)-777-8982 number over several hours, including the length of those calls, and leading up to the time of the victim's death. (R. 63, ll. 1-13). Edwards also showed the Magistrate the last call the victim made or received before his death was at 1:26 a.m. to the (704)-777-8982 number. (R. 63, ll. 1-13; 64). Edwards also informed the Magistrate by sworn testimony that the (704)-777-8982 number had been placed in a law enforcement search engine, Spotlight, which resulted in locating an advertisement for sex on the Website "SkipTheGames" linked directly to the (704)-777-8982 number taken out 10 days before the victim's death. (R. 63, ll. 1-11; 66, ll. 10-14; 76-77).[2] Finally, Edwards informed the Magistrate that the victim's cell phone was missing from the victim's vehicle after he was murdered. (R. 65, ll. 17-22, 58, ll. 2-18). There was sufficient probable cause to issue a search warrant to AT&T for cell phone call records, subscriber information, and CSLI for the (704)-777-8982 number.

Probable cause does not mean absolute certainty. State v. Dean, 282 S.C. 155, 317 S.E.2d 746 (1984). "Probable cause ... is not a high bar,[.]" State v. Jones, 435 S.C. 138, 145, 866 S.E.2d 558, 562 (2021)(quoting Kaley v. United States, 571 U.S. 320, 338 (2014)). Probable cause is a

[2] Brayboy asserted below and asserts in his brief that this particular information could not have been supplemented due to entries in the police file, however, Chief Edwards testified on direct examination, cross-examination, and re-direct examination that he supplemented the search warrant with this information. (R. 63, 66, 76-77).

flexible, common-sense standard. Texas v. Brown, 460 U.S. 730 (1983). It is a fluid concept - turning on the assessment of probabilities in particular factual contexts - not readily, or even usefully, reduced to a neat set of legal rules. Maryland v. Pringle, 540 U.S. 366 (2003); Illinois v Gates, 462 U.S. 213 (1983). The probable cause standard is incapable of precise definition or quantification into percentages, because it deals with probabilities and depends on the totality of the circumstances. Pringle, 540 U.S. 366; Gates. 462 U.S. 213. In dealing with determinations of probable cause, as the very term implies, a just determination must deal with probabilities, which are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Brinegar v. United States, 338 U.S. 160, 169 (1949). Probable cause "does not demand any showing that such a belief be correct or more likely true than false." State v. Bowie, 360 S.C. 210, 600 S.E.2d 112 (Ct. App. 2004), *quoting* Brown. 460 U.S. at 742. Probable cause to issue a search warrant is different than that to issue an arrest warrant. *See* Beck v. Ohio, 379 U.S. 89 (1964); State v. Ellis, 263 S.C. 12, 207 S.E.2d 408 (1974). Probable cause to issue a search warrant is whether given the evidence available to the issuing magistrate there is reasonable grounds to believe evidence of a crime will be found in the place sought to be searched. Gates, 462 U.S. at 238; State v. Tench, 353 S.C. 531, 534, 579 S.E.2d 314 (2003)(same). More specifically, the magistrate's task in determining whether to issue a search warrant is to make a practical, common-sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, **there is a fair probability that evidence of a crime will be found in the particular place to be searched.** Gates, 462 U.S. at 238. Finally, the Supreme Court has recognized police officers are not legal technicians and draft warrants in the heat and hurry of a criminal investigation. United States v. Ventresca, 380 U.S. 102, 108 (1965); Gates; Bowie, *supra.*

As a result of the search warrant affidavit and the sworn testimony supplementing the search warrant Affidavit, the Magistrate had the following information. The victim had left his home in Mullins late on the night of December 27th around 10:00 to 11:00 p.m. and was on his cell phone with someone and appeared in a hurry to leave or meet someone and had his cellphone. The victim was known to solicit sex for money and meet those sexual partners at the recreational park where he was killed. There were a series of phone calls showing up on the victim's phone records which the Magistrate reviewed, showing a text and repeated phone calls between the victim's phone and the (704)-777-8982 number leading up to the victim's death including the last phone call the victim made or received at 1:26 a.m. on December 28th. That (704)-777-8982 number the victim was talking to immediately before his death was placed in a law enforcement search engine that monitors sex web sites, and it was discovered the number was linked to an ad on a sexual web site. [Brayboy contests this fact. See discussion below.] The victim was found sitting dead in his vehicle, at the same recreation park where he was known to solicit sex acts, with a gunshot wound to the head and his phone was missing from his vehicle. The circumstances surrounding the crime appeared to be sexual in nature. And, the killer had taken the victim's phone after shooting the victim in the head, indicating the killer did not want to leave any evidence at the crime scene on the victim's cell phone that could be traced to or linked to the killer. Further, the Magistrate would have known the cell phone records, subscriber information, and CSLI the State was requesting the search warrant for would identify the caller and could place the caller at the crime scene at the time of the murder. The record shows the State had shown probable cause to issue the search warrant to search AT&T's records for cell phone records, subscriber information, and CSLI for the (704) 777-8982 number the victim was communicating with because there was reasonable grounds to believe, or a fair probability, evidence of a crime would be found at the place to be

searched. (Court's Ex. 1, Search Warrant; R. 52-77). And, evidence of the crime of murder was found in Brayboy's phone records, subscriber information, and CSLI located at AT&T. The phone records, subscriber information, and CSLI revealed Brayboy was communicating with the victim for hours leading up to the victim's death, including the last phone call the victim made or received, and Brayboy traveled from his home in Lake City to the crime scene at the exact time the victim traveled to the crime scene and then Brayboy returned to Lake City after the murder and the victim's phone traveled in the same direction as Brayboy after the crime until it was discarded.

As previously stated, Brayboy argued below and argues extensively in his brief that one particular fact, the "Skipthegames" ad, could not have been supplemented to the Magistrate given an e-mail and notation in the police file. The evidence is conflicting on this issue. Even though Brayboy attempted to impeach Chief Edwards on this issue at the pretrial hearing (R. 66-67, 72-73), Chief Edwards repeatedly testified on direct, cross, and re-direct that he supplemented the search warrant with testimony informing the Magistrate about the advertisement discovered on "Skipthegames." (R. 63, ll. 1-11, 66, ll. 10-14, 80, ln. 7-87, ln. 1). Importantly, Judge DeBerry did not find this testimony was false. Regardless, even removing this one fact from the other supplementation testimony does not change the fact that probable cause existed to issue the search warrant. Gates, *supra*. There was a fair probability evidence of a crime would be found in the place sought to be searched, AT&T.

Brayboy also argues extensively that an unpublished opinion issued by this Court is controlling and precedential authority in this case. (IBOA). As it is a violation of the South Carolina Appellate Court Rules to cite to an unpublished opinion, and an unpublished opinion has no precedential authority, Respondent will not respond to Brayboy's argument in this regard.

SCACR, 268(d)(2)("Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.").

Brayboy also argues extensively that the search warrant is no good because it does not accuse him of a crime. There are two (2) problems with Brayboy's argument. First, the State did not know Brayboy's identity at the time of the issuance of this search warrant so it could not accuse him of any crime. The State was trying to identify the killer through the search warrant. (Court's Ex. 1, Search Warrant). Second, the search warrant itself states on its front that the search warrant involves a homicide, and the affidavit sets forth the victim had a gunshot wound to the head and was dead. (Court's Ex. 1, Search Warrant). Thus, the warrant does assert a crime has been committed, either murder or manslaughter. As Judge DeBerry found below, the search warrant does state a crime was committed. (R. 82-84; 10).

Further, even if this Court finds the search warrant and the sworn supplemental testimony was not sufficient, Chief Edwards acted in objectively reasonable reliance on the search warrant issued by the Magistrate such that the good faith exception would apply. United States v. Leon, 468 U.S. 897, 909 (1984)(adopting the good faith exception, holding that the "exclusionary rule does not bar the admission of evidence obtained by officers acting in reasonable reliance on a search warrant which was issued by a detached neutral magistrate [even though the warrant was] ultimately found to be invalid.); State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009)(recognizing good faith exception).

Further, Brayboy's phone records, subscriber information, and CSLI would have been discovered inevitably by police if they had not already obtained them by this search warrant. Nix v. Williams, 467 U.S. 431 (1984). Asia Cooper came forward in October of 2020 and informed Chief Edwards that Brayboy had confessed to her that he committed the murder of the victim.

Brayboy told Cooper things about the murder that had not been disclosed publicly. If the State had not already obtained Brayboy's CSLI, it would have obtained it then through a search warrant including Asia Cooper's new information in the affidavit in October of 2020. Id.

Finally, the exclusionary rule would not apply. "[T]he sole purpose of the exclusionary rule is to deter misconduct by law enforcement." Davis v. United States, 564 U.S. 229, 246 (2011); Hudson v. Michigan, 547 U.S. 586, 591 (2006)*see also* State v. Moore, 429 S.C. 465, 478, 839 S.E.2d 882, 889 (2020)(same); State v. Sachs, 264 S.C. 541, 566, 216 S.E.2d 501, 514 (1975). Exclusion is not automatic; it is a last resort. Id. In Davis, the United States Supreme Court concluded the officers who conducted the search did not violate Davis's Fourth Amendment rights "deliberately, recklessly, or with gross negligence." Id. at 240, 131 S.Ct. 2419. "Where there is no misconduct and no deterrent purpose to be served, suppression of the evidence is an unduly harsh sanction." State v. Adams, 409 S.C. 641, 653, 763 S.E.2d 341, 348 (2014); United States v. Calandra, 414 U.S. 338, 347 (1974) (prime purpose of the exclusionary rule is to deter future unlawful police conduct). *See* State v. Warner, 430 S.C. 76, 92–94, 842 S.E.2d 361, 369–70 (Ct. App. 2020)(finding the exclusionary rule would not apply), *aff'd in part and remanded* State v. Warner, 436 S.C. 395, 872 S.E.2d 638 (2022)(remanding to determine if CSLI warrant was supplemented and if not for the trial court to determine if the exclusionary rule should apply)).[3] Here, Chief Edwards properly sought a search warrant before obtaining the phone records, subscriber information, and CSLI, and there was no police misconduct. The exclusionary rule should not apply. Warner.

[3] In Warner, Justice Hearn wrote a dissenting opinion in which she concurred with this Court and would have found remand was unnecessary because the exclusionary rule should not apply.

Harmless Error

Furthermore, the admission of the CSLI was harmless on this record. Brayboy's record of phone calls to the victim were admissible in any event as was the fact (704) 777-8982 was Brayboy's phone number. The State had the victim's phone records which showed the phone calls between the victim and Brayboy shortly before the victim's death. Brayboy's record of phone calls was also not subject to the Fourth Amendment. Nor was Brayboy's subscriber information. Further, Brayboy admitted in a form he filled out upon arrest that (704) 777-8982 was his phone number. Asia Cooper also identified that number as Brayboy's number to Chief Edwards. The State could show through independent evidence that Brayboy took the victim's phone and the victim's phone pinged in the path toward Lake City. And, the State still had Brayboy's confession to committing the murder to Asia Cooper that would have been before the jury. The admission of the CSLI was harmless given the other evidence of Brayboy's guilt. State v. Drayton, 415 S.C. 43, 780 S.E.2d 902 (2015)(Any error is issuance of warrant for CSLI was harmless given defendant's guilt was conclusively proven by other competent evidence).

Argument II.

The trial court did not err in allowing Lieutenant Jade Roy of SLED to testify to how the Spotlight search engine is used by law enforcement and did not err in allowing Investigator Angel Clark of the Florence County Sheriff's Office to testify to how she used Spotlight resulting in identifying Brayboy's phone number with an ad on the website "Skipthegames."

What occurred below

As previously stated, due to the sexual nature of the crime, Chief Edwards sent the (704) 777-8982 phone number [Appellant's phone number] appearing on the victim's phone records to SLED investigators specializing in sex crimes and sex trafficking. SLED Agent Jade Roy explained the (704) 777-8982 phone number was entered into a search engine for sex-related sites referred to as Spotlight, only accessible to investigators conducting these types of investigations.

(R. 382, 385). The Spotlight data base searches approximately eight (8) to nine (9) different online sexual escort commercial sex web sites where an individual posts an ad seeking someone to pay for sexual activity. (R. 382-83). To search for information on Spotlight, phone numbers, email addresses, pictures, etc., can be used to gather information from different escort sites, whether or not the ad has been previously deleted. (R. 383). Agent Roy testified the search engine Spotlight is more accurate when a phone number or e-mail address is entered. (R. 387, ll. 5-8). SLED Agent Roy and Investigator Angel Clark of the Florence County Sheriff's Office separately entered the (704) 777-8982 phone number into the search engine database and Spotlight generated an advertisement from a site referred to as "Skipthegames" that was connected to and listed the (704) 777-8982 number [Appellant's number]. (R. 385). The advertisement, which was a male advertising himself as a male prostitute for women, was entered into evidence. (R. 411, State's Exhibits 112, 98-103; Court's Ex. 2). Investigators requested information related to the ad and the 704-phone number from "Skipthegames," however an agent of the website indicated that there was no record of any information related to that number, suggesting that the ad had been taken down. (R. 388, 393). Later, after the State rested, upon further inquiry, law enforcement received an e-mail and certification from "Skipthegames" confirming that the ad had been created originally December 19, 2019, using Brayboy's e-mail address [brayboy.antonio89@yahoo.com] and then on December 30, 2019, shortly after the murder of the victim, the user erased that phone number from the account. (R. 507-12; Court's Ex. 2). While Judge DeBerry denied the State's motion to reopen the record to present this record and information to the jury, he did allow the State to mark the e-mail and certification as an exhibit for this Court's review regarding his decision to admit the advertisement itself. (R. 507-12; Court's Ex. 2).

During the trial of the case, the State called as a witness Brayboy's former girlfriend Asia Cooper who testified Brayboy confessed to her that he had murdered the victim in this case. (R. 427-449). Among other things Brayboy told her was the fact that he had met the victim before the murder on an internet escort website. (R. 430, ll. 16-18; 431, ll. 3-5; 447, ll. 8-11).

During the trial, the State also proved through Brayboy's phone records and subscriber information, and Chief Edwards testimony, that Brayboy's telephone number was (704) 777-8982, the same number listed on the advertisement. (R. 464; 289-350).

On appeal to this Court and below, Brayboy objected to the admission of the advertisement on the grounds the advertisement was not sufficiently authenticated. (R. 254-64; 279-88; IBOA, pp. 12-18). Prior to the admission of this evidence, the State proffered the testimony of SLED Agent Roy regarding how the State was able to locate the advertisement using Spotlight, a law enforcement search engine, by typing in and searching Brayboy's telephone number. (R. 264-78). Agent Roy testified he regularly uses Spotlight and has since 2018. (R. 266-67). Agent Roy explained what Spotlight is, when it was formed and by whom, its purpose, and how it works. (R. 265-66). Agent Roy explained it monitors approximately nine (9) different commercial sex advertisement sites which law enforcement officers can enter information in the search engine and obtain a result if a certain person, phone number, or e-mail address is linked to one (1) of those websites. (R. 266-67). One (1) of those websites that Spotlight monitors is "Skipthegames." Agent Roy testified Brayboy's phone number was entered into the Spotlight search engine, and it generated an advertisement from "Skipthegames" linked directly to and listing Brayboy's phone number. (R. 267-68). Agent Roy explained the advertisement was first posted on 6:22 p.m., December 19, 2019, roughly ten (10) days before the murder. The advertisement indicated it was from Florence, South Carolina. (R. 268). And a search of Brayboy's phone number in Spotlight

yielded the advertisement in January of 2020 and again shortly before trial. (R. 266-269). After hearing argument on the objection, Judge DeBerry overruled the objection and admitted the advertisement. (R. 286-88). Thereafter, Agent Roy and Investigator Angel Clark testified how police were able to find the ad, through Spotlight, and a copy of the advertisement was admitted in evidence. (R. 380-407; 409-16; State's Ex. 112, 98-103).

Analysis

The burden of authenticating evidence is not high, and a party need not rule out any possibility the evidence is not authentic. State v. Gray, 438 S.C. 130, 882 S.E.2d 469 (Ct. App. 2022), reh'g denied (Jan. 23, 2023), cert. denied (Oct. 3, 2023); *see also* State v. Green, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (citation omitted), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020). "The trial judge acts as the authentication gatekeeper, and a party may open the gate by laying a foundation from which a reasonable juror could find the evidence is what the party claims." Gray, 438 S.C. 130, 882 S.E.2d 469. A witness with knowledge may authenticate evidence by testifying that "a matter is what it is claimed to be." Gray, 438 S.C. 130, 882 S.E.2d 469; *See* Rule 901(b)(1), SCRE. Or circumstantial evidence or the circumstances of the writing and the circumstances surrounding the writing may be sufficient to authenticate a document. State v. Benton, 435 S.C. 250, 865 S.E.2d 919 (Ct. App. 2021); Green, 427 S.C. 223, 830 S.E.2d 711; State v. Hall, 437 S.C. 107, 876 S.E.2d 328 (Ct. App. 2022).

> More narrowly, the method at issue here [Spotlight] is:
>
> (9) Process or System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

Rule 901(b)(9), SCRE. "As recognized by the Fourth Circuit Court of Appeals, 'Any concerns about the reliability of such machine-generated information is addressed through the process of authentication ....'" State v. Brown, 424 S.C. 479, 489, 818 S.E.2d 735, 741 (2018) (citing United

States v. Washington, 498 F.3d 225, 231 (4th Cir. 2007)). "[A] foundation must be established for the information through authentication, which Federal Rule of Evidence 901(b)(9) allows such proof to be authenticated by evidence 'describing [the] process or system used to produce [the] result' and showing it 'produces an accurate result.'" Brown, 424 S.C. at 489-90, 818 S.E.2d at 741 (citing Washington, 498 F.3d at 231).

The State must make some showing to authenticate the records, however no elaborate showing of the accuracy of the recorded data is required. Brown, 424 S.C. at 490, 818 S.E.2d at 741 (citing People v. Rodriguez, 16 Cal.App.5th 355, 224 Cal.Rptr.3d 295, 309 (2017)). A witness testifying to the method of the referenced process need not be an expert but should have experience with the system used and provide testimony describing the system, the process of generating or obtaining the information, and how this process has produced accurate results for the particular device or data at issue. Brown, 424 S.C. at 492, 818 S.E.2d at 742. *See, e.g.,* United States v. Brooks, 715 F.3d 1069, 1077–79 (8th Cir. 2013) (affirming, as to the specific device's accuracy, that the GPS records were authenticated because the Government's witness "had been trained by the company, he knew how the device worked, ... he had demonstrated the device for customers dozens of times," other testimony confirmed the device's accuracy, and any brief lapse in the device's transmission was explained); United States v. Espinal-Almeida, 699 F.3d 588, 612–13 (1st Cir. 2012) (stating "[t]he issues surrounding the processes employed by the GPS and software, and their accuracy, were not so scientifically or technologically grounded that expert testimony was required to authenticate the evidence, and thus the testimony of ... someone knowledgeable, trained, and experienced in analyzing GPS devices, was sufficient to authenticate the GPS data and software generated evidence" given the "testimony about the processes employed by both the GPS and the software"); Rodriguez, 224 Cal.Rptr.3d at 309–10 (holding the GPS data was properly

authenticated through the sergeant's testimony as he "testified about his familiarity and knowledge of how the ankle monitor transmitted defendant's location through GPS data, the computer software used to track the ankle monitor and the GPS data, and how the GPS report was generated" as well as "testified about the accuracy and reliability of the GPS report generated from the ankle monitor's signals"); State v. Kandutsch, 336 Wis.2d 478, 799 N.W.2d 865, 875–76 (2011) superseded by statute on different grounds, Wis. Stat. § 907.02, as recognized in In re Commitment of Jones, 381 Wis.2d 284, 911 N.W.2d 97 (2018) (finding "the State was permitted to authenticate and lay a foundation for the EMD report by providing testimony describing the electronic monitoring system and the process by which the daily summary reports are generated and showing that this process produces an accurate result" through the department of correction's agents, who were familiar with its operation and testified regarding the installation of the specific device and its accuracy).

Brayboy raised the issue regarding Lieutenant Roy and Investigator Clark's testimony describing how the Spotlight search engine is used, which ultimately connected Brayboy's phone number to an advertisement on an escort website called "Skipthegames" taken out approximately a week before the murder. Brayboy argues that Lieutenant Roy and Investigator Clark's testimonies are insufficient to authenticate the advertisement. Brayboy is wrong.

After hearing Lieutenant Roy's proffered testimony, the Court allowed the testimony, noting that Brayboy was allowed to argue issues of unreliability to the jury and cross-examine the witnesses as such. The Court did not abuse its discretion.

The State presented sufficient evidence to meet the low bar of authentication that the advertisement is what it proposed to be, an advertisement on an internet website "Skipthegames" wherein an individual was advertising as a male prostitute for women and listed the number (704)

777-8982 as contact information. Benton, 435 S.C. 250, 865 S.E.2d 919. Not only was the advertisement sufficiently authenticated by Agent Jade Roy and Investigator Angel Clark through their testimony (R. 264-78; 380-407;409-16), but the State supported the authentication with phone records and subscriber information showing this number belonged to Brayboy, a form filled out by Brayboy showing this phone number was his phone number, and the testimony of Asia Cooper that Brayboy admitted to her that he met the victim, before he murdered the victim, on an internet escort website. (R. 430, ll. 16-18; 431, ll. 3-5; 447, ll. 8-11). Benton; Green, 427 S.C. 223, 830 S.E.2d 711; Hall, 437 S.C. 107, 876 S.E.2d 328. Finally, the certification from "Skipthegames" marked as Court's Ex. 2 shows Judge DeBerry did not err in admitting the advertisement because it was authentic. (Court's Ex. 2).

Harmless Error

Regardless, to the extent the admission of the advertisement was erroneous, it was harmless because the advertisement was cumulative to Asia Cooper's testimony that Brayboy told her that he met the victim on an internet escort website before he murdered the victim. (R. 430, ll. 16-18; 431, ll. 3-5; 447, ll. 8-11). State v. Benton, 435 S.C. 250, 865 S.E.2d 919 (Ct. App. 2021)("To the extent the admission of the Facebook messages was erroneous, we find it harmless because the messages were cumulative to Cheatham's testimony he began to plan the burglaries with Benton in late March and early April.")(citing State v. Martucci, 380 S.C. 232, 261, 669 S.E.2d 598, 614 (Ct. App. 2008)("The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence."); State v. Brown, 424 S.C. 479, 818 S.E.2d 735 (2018)(finding error in admission of evidence without proper authentication was harmless given the other evidence of defendant's guilt). The State also proved the victim was talking with Brayboy before he was murdered; Brayboy was at the crime scene at the time of the murder; and, Brayboy

confessed to his former girlfriend he committed the murder and gave details of the murder only the killer would know. Any admission of the advertisement containing Brayboy's phone number was harmless.

ARGUMENT III.

Judge DeBerry did not err in denying the motion for a directed verdict as the State sufficiently corroborated Brayboy's confession under the law.

What occurred below

Below Brayboy moved for a directed verdict at the close of the State's case. Brayboy specifically alleged he was entitled to a directed verdict because the State had not sufficiently corroborated his confession to his girlfriend thus failing to prove the *corpus delicti* and had failed to prove malice. He alleged proving the *corpus delicti* including proving his identity as the killer. (R. 495-500).

Brayboy now alleges Judge DeBerry erred in denying his motion for a directed verdict because allegedly the State did not corroborate the testimony of Brayboy's girlfriend that Brayboy confessed to her that he killed the victim, the State did not prove malice, and Judge DeBerry considered inadmissible evidence in ruling on the motion for a directed verdict. (IBOA, pp. 18-29). Judge DeBerry did not err in denying the motion for a directed verdict.

Standard of Review

"On appeal from the denial of a directed verdict, [an appellate court] views the evidence and all reasonable inferences in the light most favorable to the State." State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016) (quoting State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). "[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be

fairly and logically deduced.' " Id. at 236-37, 781 S.E.2d at 354 (quoting State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955).

Analysis

The corroboration rule is not what Brayboy alleged below or now alleges on appeal. State v. Osborne, 335 S.C. 172, 516 S.E.2d 201 (1999); State v. Abraham, 408 S.C. 589, 759 S.E.2d 440 (2014); Hill v. State, 415 S.C. 421, 782 S.E.2d 414 (Ct. App. 2016); State v. McCombs, 335 S.C. 123, 515 S.E.2d 547 (Ct. App. 1999). Under South Carolina law a confession or admission to a crime to support a conviction must be corroborated with evidence separate from the confession of the *corpus delicti* of the crime. State v. Dodd, 354 S.C. 13, 17, 579 S.E.2d 331, 333 (Ct. App. 2003) ("The 'corroboration rule' requires that extra-judicial confessions of a defendant be corroborated by proof *aliunde* of the *corpus delicti*."); Id. ("The [rule] is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, together with such statements, permits a reasonable belief **that the crime occurred**." (emphasis added) (alteration by Dodd) (quoting State v. Osborne, 335 S.C. 172, 180, 516 S.E.2d 201, 205 (1999))); Id. at 18, 579 S.E.2d at 334 (concluding the victim's testimony that the defendant threatened to kill her sufficiently corroborated his confession to using a firearm during the robbery, thereby establishing the use of a deadly weapon and the *corpus delicti* of armed robbery). This has similarly been held by the United States Supreme Court. Wong Sun v. United States, 371 U.S. 41, 83 S.Ct. 407, n. 15 (1963)("Where the crime involves physical damage to person or property, the prosecution must generally show that the injury for which the accused confesses responsibility did in fact occur, and that some person was criminally culpable. A notable example is the principle that an admission of homicide must be corroborated by tangible evidence of the death of the supposed victim. See *7 Wigmore, Evidence (3d ed. 1940)*, s 2072, n. 5. There

need in such a case be no link, outside the confession, between the injury and the accused who admits having inflicted it.").

The *corpus delicti* of a crime is the body, foundation, or substance of the crime which ordinarily includes two elements: the act and the criminal agency of the act. *Black's Law Dictionary,* p. 344 (6th Ed. 1990). *Corpus delicti* is the objective proof of substantial facts that **a crime has been committed.** It is a combination of two Latin words: "*corpus*" meaning a body or physical substance, and "*delictum*" meaning a wrong, tort, injury or offense. *Id.*, p. 344 (6th Ed. 1990). When applied to a particular offense, the term *corpus delicti* means the specific crime has actually been committed. State v. Teal, 225 S.C. 472, 82 S.E.2d 787 (1954).

Before a case can be submitted to a jury, the State must first produce proof *aliunde* of the *corpus delicti.* State v. Williams, 321 S.C. 381, 468 S.E.2dd 656 (1996); Brown v. State, 307 S.C. 465, 415 S.E.2d 811 (1992); State v. Johnson, 291 S.C. 127, 352 S.E.2d 480 (1987); State v. Speights, 263 S.C. 127, 208 S.E.2d 43 (1974); State v. Blocker, 205 S.C. 303, 31 S.E.2d 908 (1944). The connection of the accused with committing the crime, or the identity of the crime's perpetrator, is not an element of the *corpus delicti.* The *corpus delicti* embraces the fact that **a crime has been committed by someone,** not that the defendant was the one who did it. *Wayne R. LaFave & Austin W. Scott, Jr. Substantive Criminal Law*, Section 1.4(b), at 18-19 (2d Ed. 1986). Identifying the defendant as the perpetrator of the crime is not required for proof of the *corpus delicti*, although it is later necessary in the case when proving the guilt of the defendant, but it is not part of the *corpus delicti. 29A Am.Jur.2d Evidence* Section 753 (1994).

While evidence of the *corpus delicti* must be established by the best proof attainable, direct and positive evidence is not essential. State v. Speights, 263 S.C. 127, 208 S.E.2d 43 (1974); State v. Townsend, 321 S.C. 55, 467 S.E.2d 138 (Ct. App. 1996). The *corpus delicti* of a crime may be

proven by circumstantial evidence. State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (1997); State v. Roof, 196 S.C. 204, 12 S.E.2d 705 (1941); State v. Martin, 47 S.C. 67, 25 S.E.113 (1896).

Before a defendant can be required to present a defense, the State must establish some proof of the *corpus delicti*. State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. Townsend, 321 S.C. 55, 467 S.E.2d 138 (Ct. App. 1996). The prosecution must show the actual commission **by someone** of the particular offense charged. Brown, 103 S.C. 437, 88 S.E. 21. Where there is any evidence tending to establish the *corpus delicti* of a crime, it is the trial judge's duty to pass that question to the jury. Dodd, 354 S.C. 13, 579 S.E.2d 331. If there is no evidence to prove the *corpus delicti*, the defendant is entitled to a directed verdict. State v. Epes, 209 S.C. 246, 39 S.E.2d 769 (1946); Brown, 103 S.C. 437, 88 S.E. 21.

For a case to be submitted to a jury, there must be proof *aliunde* of the *corpus delicti* aside from any extrajudicial confession or statement of the defendant. Proof *aliunde* means evidence from another source. *Black's Law Dictionary*, p. 73 (6th ed. 1990). A conviction based solely upon a defendant's confession cannot stand, unless such confession is corroborated by proof *aliunde* of the *corpus delicti*. Teal, 225 S.C. 472, 82 S.E.2d 781. The requirement that the *corpus delicti* of a crime be sufficiently corroborated by independent evidence is rooted in the premise that the examination of this additional evidence will avert the danger that a crime was wrongfully confessed to, when in fact no such crime was ever committed. *Trent N. Pruett, Criminal Practice and Procedure in South Carolina,* Volume IV. p. 1525 (2009). Complete proof of the *corpus delicti* is not a prerequisite to the admission of an extra-judicial confession of a defendant, however, proof *aliunde* of the *corpus delicti* of the crime must be presented at some point during the State's case in chief. State v. Osborne, 335 S.C. 172, 516 S.E.2d 201 (1999). Regardless of whether the defendant's statement constitutes a confession or an admission, the rule of *corpus delicti* requires

that there be corroborative evidence, independent of any statements, of the *corpus delicti*, before a defendant may be found guilty of the crime. State v. Osborne, 335 S.C. 172, 516 S.E.2d 201 (1999); State v. Johnson, 291 S.C. 127, 352 S.E.2d 480 (1987); State v. Edwards, 173 S.C. 161, 175 S.E.2d 277 (1934). In Osborne, the South Carolina Supreme Court quoted from the case of Opper v. United States, 348 U.S. 84, 75 S.Ct. 158 (1986), as to the extent of corroboration of statements necessary as a matter of law for a judgment of conviction:

> [T]he corroborative evidence need not be sufficient, independent of the statements to establish the corpus delicti. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense. It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. Those facts, plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt.

Opper v. United States, 348 U.S. 84, 93, 75 S.Ct. 158, 164 (1986). The Osborne Court specifically adopted the Opper v. United States position, holding that the corroboration rule is satisfied if the State provides sufficient independent evidence which corroborates the defendant's extrajudicial statements, and, together with such statements, presents a reasonable belief that **the crime occurred**. If, however, *corpus delicti* of the crime is not proven, and the sole evidence of guilt is a confession, a directed verdict in favor of the defendant is required. State v. Williams, 321 S.C. 381, 468 S.E.2d 656 (1996); State v. Johnson, 291 S.C. 127, 352 S.E.2d 480 (1987). On the other hand, if there is any evidence tending to establish the *corpus delicti*, the trial judge has a duty to submit the case to the jury. Dodd, 354 S.C. 13, 579 S.E.2d 331. The question as to whether there is any proof of the *corpus delicti* is one for the court; whereas the sufficiency of the evidence to convict is a question for the jury. *See* Brown, 103 S.C 437, 88 S.E. 21.

In the present case, the State proved **the *corpus delicti* of the crime** sufficient to overcome the motion for a directed verdict. It was established during the State's case that the crime, a murder, actually occurred. The victim was found shot to death in his car. The victim had a gunshot wound to the right forehead that traveled through his brain killing the victim. A .45 caliber bullet was recovered from the back of the victim's head. No gun was found in the victim's vehicle, so the victim did not shoot himself. Someone murdered the victim. This is sufficient to establish the *corpus delicti* of the crime.

More specifically, the State proved the victim left his home in Mullins around 10:00 to 11:00 p.m. on December 27, 2019, to meet someone. The victim's phone records showed he spoke with the defendant Brayboy numerous times approaching the time of his death and the victim's last phone call was to Brayboy. Brayboy's phone records and those of the victim showed they were conversing with each other by text or actually talking on the phone. CSLI of both the victim and Brayboy showed both the victim's phone and Brayboy's phone approached the crime scene at the same time, 1:30 a.m., and then the victim quit talking with anyone on his phone. Brayboy's CSLI showed he came all the way from Lake City to the crime scene. After the murder, Brayboy then left the area of the crime scene and returned to Lake City, S.C., and so did the victim's cell phone where it was discarded. However, the following day, the victim was still in his car at the crime scene dead. Police searched the victim's vehicle and discovered the victim had been shot in the head with a .45 caliber pistol. No gun was recovered in the victim's car nor was any shell casing found inside the car. The victim did not shoot himself. The victim's cell phone was also missing from the victim's vehicle. Brayboy had a motive to take the victim's cellphone as he had been conversing with the victim all evening leading up to the victim's death at approximately 1:30 a.m. The pathologist testified the victim died from a gunshot wound to the right forehead that

traveled to the back of the victim's head. A firearms expert testified the bullet taken from the victim's brain was a .45 caliber bullet. No .45 caliber pistol was found in the victim's vehicle. The State more than proved the *corpus delicti* of the crime, that a crime was committed, murder, and it was committed by someone. Judge DeBerry appropriately denied the motion for a directed verdict.

To the extent there is some extra requirement in the law to corroborate the confession beyond establishing the *corpus delicti*, the State did that as well. *See* United States v. Brown, 617 F.3d 857, 860–64 (6th Cir. 2010), discussing Opper v. United States, 348 U.S. 84, 89 (1954), Smith v. United States, 348 U.S. 147, 156 (1954) and United States v. Calderon, 348 U.S. 160, 165 (1954) and the common law corroboration rule, and Wong Sun v. United States, 371 U.S. 471, 489–90 n. 15 (when an accused confesses to a crime involving "physical damage to person or property," the independent corroborating evidence need only show that the crime occurred.), and United States v. Daniels, 528 F.2d 705, 707–08 (6th Cir.1976) (When a suspect confesses to a bank robbery, showing that a bank robbery occurred satisfies the corroboration requirement.).

Brayboy's former girlfriend Asia Cooper testified as follows:

Q. Okay. Did he at some point, confide certain information to you?

A. He did.

Q. Okay. Did he confide to you information about a murder that he committed in Florence in December of 2019?

A. He did. He would throw hints. Like, he would say, you know, "I can go to jail for a long time for something that I did."

Q. And so he would hint at it for some time?

A. Yes, sir.

Q. And then, eventually, did he tell you—

A. Yeah, he showed me the news article on his phone. And that's how – I read it, and that's how I found out.

Q. Okay. And then did he tell you –

A. Yeah, he elaborated what happened.

Q. And what did he say?

A. He told me that he met the guy off of some little escort web site. And, at first, he portrayed himself to be a woman.

Q. And just stop you. When you say "he," let's –just tell me who, because I want to make sure. Who portrayed himself as a woman?

A. The victim who got killed.

Q. Okay, I'm sorry. Go ahead.

A. No, you're fine.

I forgot where I left off.

Q. I apologize.

A. No, you're fine.

He told me he met off of an escorting web site, like Back Page or whatnot. And the guy portrayed himself to be a woman. And he said he was at work that day when they were texting back and forth and he asked him for a picture of a vagina. We'll he doesn't have one. So he told him that he was a man and proceeded to meet up later that night to do whatever they were supposed to do.
So when he met up with him - - they tried – the guy tried to find an apartment complex or what not to meet at, to do whatever they were going to do, but it was too many lights, like, lit up for them to be secretive and discreet about it.

So that's where they went, to the recreational place, and they met there. He said he had a hoodie on, put his hands in his pocket, and he got in the car with the victim. And he said the victim was talking, and he reached over for some money, and that's when he pulled the trigger and shot him in the head.

So after he did that, he said he went to go grab the money, but the money had blood all over it. So he disposed of the money, got out, left - - took his phone before he got out the car, left, and he said he chucked it out the window before he got - - he got down the street.

Q. Let me be clear: He said he meets him at the rec center?

A. Mm-hmm.

Q. He gets in the car, wearing a hoodie, hands in his pockets. The victim gets money out?

A. Yeah.

Q. While he's talking, he shoots him, takes his money, takes his phone and leaves?

A. Yes.

Q. And then throws his phone out?

A. Yes.

Q. Is that right?

A. That's what he told me.

Q. And then, because the money was bloody, at some point he discarded it?

A. Right.

Q. Okay, and did he tell you that he took anything else from out of the vehicle?

A. No.

Q. Now, let me ask you this: Do you recall, back in 2020, giving a statement to Investigatory Edwards? Do you remember that?

A. Yes, I remember talking to him.

Q. Okay. Do you recall, during that statement, that you told him that the defendant also admitted to taking a shell casing with him when he went?
A. Yes, he did.

Q. And so you recall him saying that to you as well?

A. Yes, sir.

(R. 429, ln. 25-433, ln. 5). Ms. Cooper also testified to the following before the jury:

Q. During that time, did he admit to you that he had access to guns?

A. Yes.

Q. Did he admit to you that he had access to a .45 caliber weapon?

A. Yes.

(R. 435, ll. 13-18). She also testified as follows:

Q. Okay. All right. Now, this .45 weapon that the State is asking you about - -

A. Mm-hmm.

Q. – tell this jury if you ever laid eyes on him ever having a .45 caliber weapon.

A. I have never laid eyes on him having it, but he's told me he has it. He had another gun, but he told me about the .45.

Q. Okay. All right. Did you ever see him with a .45?

A. I haven't.

(R. 442, ln 19 – 443, ln. 3).

Q. Okay. All right. Now, did you tell Detective Edwards also when he asked you, "Well, where did you see this .45 at?" and then you said to Detective Edwards, "I believe his baby momma's stepdaddy got the gun."

A. Right.

Q. Right.

A. Right

(R. 443, ll. 16 – 22). Finally, Ms. Cooper testified as follows:

Q. You don't know what happened.

A. No, I don't' know what happened. I'm just going off what he [Appellant] told me. Like, I would have known nothing about this case if it wasn't for him telling me.

Q. And you had very specific details that are consistent. They met on an escort web site. Is that what he told you?

A. Yes, sir.

Q. That they met up late?

A. That night, after he got off work –

MR. WILSON: Objection, Judge. He's leading.

THE COURT: Sustained.

Q. Did he tell you that they met up after work that evening?

A. Mm-hmm.

Q. Did he tell you he was wearing a hoodie?

A. Yes.

Q. Did he tell you he got in the vehicle?

A. Yes.

Q. Did he tell you he shot and killed the victim.

A. He told – yes, yes.

Q. Did he tell you he left the vehicle with the cash, the shell casing, and the cell phone?

A. He did. Yeah, he left with all those, yes, sir.

Q. And did he tell you, when he got back towards home, that he discarded the cell phone?

A. Yes sir.

Q. And did he tell you, on numerous occasions, that he hated homosexual people?

A. Yes, sir.

(R. 447, ln. 4 – 448, ln. 9).

As this Court is already aware, the State corroborated many of these facts that Brayboy admitted to Asia Cooper. Brayboy admitted he and the victim met on a social escort web site, and the State admitted in evidence an advertisement for sex on a website tied directly to Brayboy's phone number. Brayboy stated he and the victim communicated by phone, and the State entered the victim's and Brayboy's phone records showing the same. Brayboy stated the victim and Brayboy agreed to meet at a secluded place. The State proved by physical evidence and CSLI that Brayboy and the victim met at a recreation center parking lot at approximately 1:30 a.m. Brayboy

stated they met at a recreation park. The State proved the victim was killed at Greenwood recreation park. Brayboy stated he got in the victim's vehicle. The State proved Brayboy shot the victim inside the car. Brayboy stated he shot the victim at close range and shot the victim in the head. The pathologist testified the victim was shot at close range and the physical evidence showed there was blood flow on the driver's seat and blood transfer inside the victim's vehicle on the passenger seat and passenger door panel. Brayboy stated he took the victim's phone. Police could not find the victim's phone after the murder. Brayboy stated he discarded the victim's phone in his flight from the crime scene. It was established the victim's phone pinged after the murder in the direction of Brayboy's flight and even though police searched for the same the phone was never recovered. All of these facts were corroborated by testimony and physical evidence introduced at trial. The State sufficiently corroborated Brayboy's confession to Asia Cooper to the extent there was any requirement to do so in addition to establishing the *corpus delicti*. Smith, 348 U.S. at 153; Opper, 348 U.S. at 93 (the government may satisfy the rule if it introduces "substantial independent evidence which would tend to establish the trustworthiness of the statement."); *Compare* Wong Sun; Daniels. Judge DeBerry did not err in denying the motion for a directed verdict.

Brayboy also argues that the State failed to prove malice. Again, Brayboy is wrong. State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000) (malice is hatred, ill-will, or hostility toward another person; a wrongful intent to injure another person indicating a wicked or depraved spirit intent on doing wrong; a formed purpose and design to do a wrongful act without legal justification or excuse); State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951) (as used in the description of murder, malice does not necessarily import ill-will toward the individual injured, but signifies a general malignant recklessness toward the lives and safety of others, or a condition of the mind

that "shows a heart regardless of social duty and fatally bent on mischief."), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). The State proved by the testimony of the pathologist, the firearms expert, and those that processed the crime scene that Brayboy shot the victim at close range in the forehead with a .45 caliber pistol killing him. The State proved through the testimony of Asia Cooper that Brayboy spoke with the victim by phone, arranged to meet the victim in a secluded place, entered the victim's car, and while the victim was talking Brayboy pulled a gun and shot the victim in the head and then proceeded to take the victim's money, a fired shell casing, and the victim's phone and flee the crime scene. The State presented sufficient evidence of malice to overcome the motion for a directed verdict. Fennell; Harvey. If that was not enough, Asia Cooper also testified the victim initially pretended to be a woman over the phone, but when confronted admitted he was a man. The victim and Brayboy then arranged to meet and Brayboy, who openly stated he did not like gay people, shot the victim in the head after entering the victim's car after agreeing to meet the victim at a secluded location. Again, the State presented sufficient evidence of malice. Id.

Finally, Brayboy complains that Judge DeBerry considered inadmissible evidence in ruling on the directed verdict motion. Brayboy is wrong. First, in ruling on a directed verdict motion the trial judge is concerned with the existence of evidence, and he must consider the evidence which was admitted during the trial. State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016); State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014); State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955). Judge DeBerry did so; therefore, he committed no error. Regardless, even removing the evidence Brayboy claims should not have been admitted there was more than sufficient evidence to overcome the motion for a directed verdict on the charge of murder and possession of a weapon during a violent crime. Jackson v. Virginia, 443 U.S. 307,

318-19 (1979) "...the relevant question is whether after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."); Closs v. Leapley, 18 F.3d 574 (8th Cir. 1994)(burglary conviction supported by evidence where footprints in the snow corroborated petitioner's possession of stolen items). Judge DeBerry did not err in denying the motion for a directed verdict.

CONCLUSION

For the above stated reasons, Brayboy's convictions and sentences for murder and possession of a weapon during a violent crime should be affirmed.

Respectfully submitted,

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March 18, 2025.

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Florence County
The Honorable Steven H. DeBerry, Circuit Court Judge

THE STATE,

Respondent,

v.

ANTONIO DENON BRAYBOY,

Appellant.

Appellate Case No. 2023-001182

PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to J. Anthony Mabry, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent has been forwarded to Appellant's counsel, Ralph James Wilson, Jr., Esq., and to Lauren Kay Anderson, Esq., via email today, March 18, 2025 to attorney@ralphwilsonlaw.com, and to attorney@ralphwilsonlaw.com

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

This 18th day of March, 2025.

s/ Donna D'Alessio
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