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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
The Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE OF SOUTH CAROLINA……RESPONDENT

v.

SAMANTHA FORD RABON……...APPELLANT

INITIAL BRIEF OF RESPONDENT
Appellant Case No. 2024-000330

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Treatises

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in failing to direct a verdict in favor of Appellant on indictments for two murders committed by Randy Grainger under an alleged murder-for-hire conspiracy when, taking the evidence in the light most favorable to the state, the alleged actions of Appellant in assisting Grainger amounted to criminal responsibility as an accessory before the fact and as a principal, thereby impermissibly allowing the state to extend the reach of accomplice liability under the hand of one hand of all theory?

2. Did the trial court err in failing to suppress evidence collected from Appellant's home under a search warrant that contained material omissions of facts that negated the finding of probable cause in violation of the Fourth Amendment?

3. Did the trial court err in finding a facially defective search warrant that misidentified the location and source of the cell phone, that was itself improperly seized in violation of the Fourth Amendment, was executed since the cell phone was subject to inevitable discovery?

4. Did the trial court err in failing to charge the jury regarding third-party guilt when evidence was introduced during trial that raised a reasonable inference that Appellant was innocent and a third-party was the conspirator in the crimes charged?

5. Did the trial court err in allowing Randy Grainger to speculate regarding his fear that Appellant would have her own kids killed for profit when the money Appellant inherited from her murdered father and brother ran out?

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in not granting a directed verdict for the Appellant in two murders when the murder for hire was prompted by the Appellant who hired her Randy Randy Grainger to kill her father and brother for $20,000.00, since during the directed verdict motion the trial judge looked at the evidence in the light most favorable to the State, and at the existence of evidence and not its weight?

2. Did the trial court err in denying the suppression motion of the Appellant when the evidence was obtained through a valid search warrant, submitted to a Magistrate containing probable cause which eventually provided evidence linking Appellant to the murder of her father and brother?

3. Did the trial court err in allowing the evidence obtained through a valid search warrant for the information in the Appellant's phone already in the custody of law enforcement, allowing this evidence to be admissible through the doctrine of inevitable discovery and the good faith doctrine?

4. Did the trial court err in not giving a jury charge for third party guilt when the evidence raised by the Appellant regarding an allegation of arson by her mother seven years prior did not raise a reasonable inference or presumption of the Appellant's innocence, but only casted a bare suspicion or a conjectural inference making that evidence inadmissible?

5. Did the trial court err in allowing the Randy to testify as to his opinion why he decided to testify which was based on his perception, giving the jury a clear understanding why he decided to testify, which did not require any special knowledge skill or experience, and this statement did not have any baring on the final outcome making it harmless?

STATEMENT OF THE CASE

Samantha Ford Rabon (Appellant) was arrested for the offense of two counts murder on August 17, 2020. On October 20, 2021, a Horry County Grand Jury indicted the Appellant for two counts of murder, two counts of solicitation to commit a felony, and two counts of criminal conspiracy. (*R). These indictments arise from the murder for hire plot the Appellant conceived with Randy Grainger (Randy) in the murder of the Appellant's father Robert Ford and her brother Robbie Ford.

On February 20, 2024, the Appellant appeared before the Honorable Benjamin Culbertson to stand trial for the above referenced offenses. Appellant was represented by attorneys Stephen Grooms and Bradley Richardson. This case was prosecuted by Assistant Solicitors, Mary-Ellen Walter and Leigh Andrew Waller of the Fifteenth Circuit Solicitor's Office.

After six days of testimony, a jury of her peers found the Appellant guilty of two counts of solicitation to commit a felony, two counts of criminal conspiracy to murder, and two counts of murder. (T. p. 1157 l. 10 – p. 1158 l. 10). After the reading of the verdict, the Appellant appeared before the trial judge for sentencing. The trial judge sentenced the Appellant to a period of incarceration for the remainder of her natural life for both counts of murder, five years' incarceration for each count of criminal conspiracy, and ten years' incarceration for each count of solicitation to commit a felony. The trial judge ordered that each sentence was to be served consecutively. (T. p. 1164 l. 22 – p. 1165 l. 8).

The Appellant filed a timely notice of appeal before the South Carolina Court of Appeals on March 1, 2024. The Respondent's brief follows.

STATEMENT OF THE FACTS

On August 17, 2018, Robert Ford was helping his son Robbie get ready to return to school. Robbie was a student at Clemson University. After they finished shopping, they went to a wing place to get something to eat. By the time they got home it was dark. A neighbor, Joseph Holliday, was outside his home, and heard a shot, a scream, and then two more shots. (Tr. p. 311 l. 11-12). The next day there was a call to police regarding a suspicious car sitting in a soybean field. Sergeant Dwayne Grainger of the Horry County Police Department responded to the scene. (Tr. p. 181 l. 16-18). He found a burned-out car, several cigarette butts outside of the car, and foot tracks leading away. (Tr. p. 184 l. 23 – p. 185 l. 3). Sergeant Grainger called in the license plate in to inform the owner that their vehicle was found. (Tr. p. 185 l. 20-23). Sergeant Dwight Tomlin was called to do a welfare check at the Ford residence. (Tr. p. 193 l. 1-4). When he arrived, he saw one of the victims lying on the sidewalk and another victim lying in the grass. (Tr. p. 194 l. 21 – p. 195 l. 2). Sergeant Tomlin then called his supervisor in order to notify fire and rescue. Sergeant Tomlin then set up a perimeter in order to preserve the scene. (Tr. p. 197 l. 12-14).

Investigator John Caulder responded to find victim Robert Ford located behind the rear patio on his back with two gunshot wounds. (Tr. p. 223 l. 2-5). Investigator Caulder testified that the pools of blood indicated that Robert was turned over and shot a second time. (Tr. p. 223 l. 15-20). Investigator Caulder found that Robert's wallet was not on his person. (Tr. p. 225 l. 4-5). They saw that Robbie pockets were pulled out and he had bruising to both knees. (Tr. p. 218 l. 2-6). It appeared he was running and then fell. Robbie was shot in the back of the head. (Tr. p. 218 l. 18-20). In searching the victim's vehicle, law enforcement found a partially burned skull cap and a pair of partially burned jogging pants. (Tr. p. 232 l. 3; p. 233 l. 13-15). The skull cap, jogging pants

and cigarette butts were sent to the South Carolina Law Enforcement Division (SLED) for DNA analysis.

SLED agent Donna Money testified. Agent Money was qualified as an expert in forensic DNA analysis. (Tr. p. 562 l. 4-5). She analyzed the known DNA from Randy and matched it to DNA found on the victim's car door, the cigarette butts, and the skull cap. (Tr. p. 566 l. 4-21; p. 566 l. 23 – p. 567 l. 7; p. 569 l. 24 – p. 570 l. 7). After law enforcement received this information, Randy was arrested. Upon his arrest his one-time girlfriend, Teresa Martin (Teresa), decided to go with law enforcement to headquarters for questioning. (T. p. 989 l. 18-21).

Teresa testified that she knew the Appellant and her mother Sheila. The Appellant's mother lived near her house, and she was also her second cousin. (Tr. p. 324 l. 6-14). One day the Appellant went to Teresa's mother's house and she asked to speak to the Randy. (Tr. p. 328 l. 4-6). Teresa heard Appellant tell Randy, " I have a job for you", "taking care of my daddy and brother and its got to be done before he goes back to school so I inherit everything." (Tr. p. 328 l. 12; p. 328 l. 14-16). On August 17, 2018, Teresa dropped Randy off at the home of both victims. Randy told her that he was going there to fix their washer and dryer. (Tr. p. 329 l. 16-17; p. 331 l. 8-9). Randy later called Teresa around 10pm for her to pick him up near the site where the victim's car was burned. (Tr. p. 334 l. 6-13).

Randy also testified during Appellant's trial. During his testimony he stated that he went to the home of Teresa's mother who lived near the Appellant's mother. (Tr. p. 844 l. 4-9). He stated that the Appellant asked him if he would kill her dad and brother for $20,000. (Tr. p. 846 l. 4-5). Randy testified that Appellant told him that she wanted both of them killed, because if he just killed her daddy her brother would get half of the inheritance, and she did not want that. (Tr. p. 846 l. 24 – p. 847 l. 1). Randy also testified that the Appellant expressed to him that she wanted

him to kill her father and brother because she felt that her father was wasting her inheritance on her brother. (Tr. p. 847 l. 2). Randy stated that the Appellant knew that the victims were going out of town to look for an apartment for Robbie. (Tr. p. 850 l. 23-24). However, Appellant told Randy that the victims said that they should be back home around 6:30pm, after they stopped to get something to eat. (Tr. p. 850 l. 2-4). Appellant gave Randy a .38 caliber gun telling him to use it because she stole it from her father's house. Appellant wanted him to make it look like a robbery gone bad. (Tr. p. 847 l. 9-12).

Randy testified that his girlfriend, Teresa, dropped him off at the victim's house around 5:30pm. (Tr. p. 851 l. 15-15; Tr. p. 859 l. 25). While smoking cigarettes he waited for the victims to arrive home. He stuck the cigarette butts in his shoe to take them with him. (Tr. p. 854 l. 12-15). When the victims got home, he approached them. He first shot Robert in the face as he got out of the car. (Tr. p. 855 l. 5-6). Robbie started to run, so he shot Robbie in the back. (Tr. p. 855 l. 21-23). Randy then walked up to him and shot Robbie in the back of the head. (Tr. p. 856 l. 2-3). After shooting Robbie, he walked back to Robert and shot him under his chin to make sure he was dead. (Tr. p. 856 l. 8-11). He returned to Robbie to take his car keys and wallet. Randy got into Robbie's Ford Escape and drove away. (Tr. p. 856 l. 14-16).

Randy stated that he drove about twenty miles from the incident location to set the car on fire. (Tr. p. 857 l. 11-12). He stated that he put gasoline in and on the car, and all over the cap. (Tr. p. 858 l. 15-18). He lit the car on fire and then walked away. (Tr. p. 860 l. 3). Randy walked up the highway, then called Teresa to pick him up. (Tr. p. 860 l. 5-6). Randy testified that he never got paid. He further testified that Teresa was supposed to be handling the money. (Tr. p. 861 l. 12-13; p. 861 l. 18-19). At one point he got five-hundred dollars from Teresa, she told him that she got

that from the Appellant to give to him. (Tr. p. 862 l. 6-7). Randy testified that he took the gun to the PeeDee highway and threw it into the creek. (Tr. p. 862 l. 17-18).

During the trial Dr. Thomas Beaver, clinical professor at the Medical University of South Carolina, testified. Dr. Beaver was found qualified as an expert in the field of forensic pathology. (Tr. p. 455 l. 10-11). Dr. Beaver testified that he himself did not perform the autopsy but that he was there to testify on behalf of Dr. Proctor. (Tr. p. 456 l. 17-20). He was given the photographs from the autopsy and all of Dr. Proctor's reports. Dr. Beaver was also provided all of the crime scene photos. (Tr. p. 457 l. 10-17). Dr. Beaver stated that his testimony was based on all of Dr. Proctor's reports. (Tr. p. 457 l. 21-22). Dr. Beaver stated that Robbie had two gunshot wounds, one in the bottom of the left abdomen and one in the back of the head. (Tr. p. 458 l. 2-9). The one in the abdomen would not have been immediately fatal. (Tr. p. 458 l. 11-14). The gunshots were at close range, within an inch from the skin because there was soot and residue on the skin. (Tr. p. 458 l. 18-25). Dr. Beaver testified that Robert had two gunshots to the head. The shot under the chin was definitely a contact wound and there was another shot in the middle of his forehead. (Tr. p. 460 l. 10-11).

ARGUMENTS

1. **The trial court did not err in not granting a directed verdict for the Appellant for two murders that were murders for hire prompted by the Appellant when she hired Randy Grainger to kill her father and brother for $20,000.00. Since during a directed verdict motion the trial judge is obligated to look at the evidence in the light most favorable to the State, and the court must look at the existence of evidence and not its weight, there was more than sufficient evidence revealing that the Appellant contracted Mr. Grainger to kill her father and brother.**

Relevant Facts

At the conclusion of the State's case the Appellant made a motion for a directed verdict. During this motion the Appellant argued that she could not be convicted under the "hand of one is

the hand of all" doctrine because she was not present at the crime scene. Appellant argued that her case relates more to an accessory before the fact than accomplice liability. The State argued that since the Appellant gave Randy the murder weapon, told him where and when to find the victims, that she was an accomplice. The trial judge decided to deny Appellant's motion.

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827 (2001). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence and not its weight. *State v. Morgan,* 352, S.C. 359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). On appeal from the trial court's denial of a motion for a direct verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling. *State v. Lindsey,* 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused [the appellate court] must find the case was properly submitted to the jury. *State v. Ward,* 374 S.C. 606, 615, 649 S.E.2d 145, 150 (Ct. App. 2007), *quoting, State v. Padgett,* 354 S.C. 268, 270-71, 580 S.E.2d 159, 161 (Ct. App. 2003). When reviewing a denial of a directed verdict at the trial level, the appellate court, "views the evidence and all reasonable inferences in light most favorable to the State." *State v. Bennett,* 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). When a conspiracy is proved, all acts and declarations in furtherance thereof, by any of the conspirators, to advance the common cause, are evidence against all though not done or made in the presence of each other. *State v. Blackwell,* 220 S.C. 342, 352, 67 S.E.2d 684, 689 (1951).

Discussion

The Appellant argues that she should have been allowed a directed verdict due to the fact that she was not present at the scene at the time the crime occurred. The Respondent argues that she provided the murder weapon, informed the killer when the victims would be home. She was more than an accessory. She was a co-conspirator that participated in this murder. The denial of the directed verdict was the correct decision. The evidence presented regarding the actions of the Appellant was left up to the jury to decide guilt or innocence, and they decided Appellant was guilty beyond a reasonable doubt.

The Respondent argues that due to the amount of participation by the Appellant to achieve the sought-after result, the murder, it was appropriately left up to the jury to decide innocence or guilt. There was an agreement made by two parties that the victims would be murdered for the payment of $20,000.00. They were murdered and the Appellant should be punished the same as the co-defendant. When several people pursue a common design to commit an unlawful act and each takes the part agreed upon or assigned to him in an effort to insure the success of the common undertaking the act of one is the act of all and all are presumed to be present and guilty. *State v. Chavis,* 277 S.C. 521, 522, 290 S.E.2d 412, 413 (1982).

In *State v. Blackwell,* the South Carolina Supreme Court determined that Appellant was part of the conspiracy even though he was not present at the scene but could be charged the same as the principal. In *Blackwell* the Supreme Court stated,

> If several persons in pursuance of a common design to commit an unlawful act whether it be a felony or misdemeanor, set out together or in small parties, and each takes the part agreed upon or assigned him, some to commit the act, others to watch at proper distances and stations to prevent interference or surprise or to encourage the commission of the unlawful act or to favor, if necessary, the escape of those immediately engaged in the commission of the unlawful act, under these circumstances, if the unlawful act is committed, the act of one is the act of all and all are presumed to be present and guilty; for this would be in pursuance of a

> common purpose in a common cause with them each operating in his station at one and the same instant to arrive at a common end. The act of each would tend to give countenance, encouragement, and protection to the whole gang and to insure the success of the common undertaking in the commission of the unlawful act. If they were there to carry out the unlawful designs in pursuance of a common design participating actually or potentially if necessary then all were guilty, the act of one was the act of all. To the same effect.

Blackwell, 220 S.C. at 349-50, 67 S.E.2d at 688.

The evidence was clear. Testimony from both co-defendant's stated that the Appellant approached Randy asking if he would kill her father and brother for $20,000. Once Randy agreed to perform this act, she provided him with the gun and the best time to commit this murder. She even told him that it must be done as soon as possible before Robbie went back to school, and also that Robbie must die so she can inherit everything. There was definitely evidence of a conspiracy. Any question of the credibility of the witnesses must be left up to the jury since they are the deciders of questions of fact. Juries determine all questions of fact, uninfluenced by the judge and unbiased by his impressions. *State v. Cash,* 209 S.C. 391, 393, 40 S.E.2d 498, 499 (1946). However, there could not be a directed verdict due to the presence of evidence of guilt.

The Appellant argues that the hand of one is the hand of all doctrine should not apply; therefore, she is entitled to a directed verdict. When a conspiracy is proved, all acts and declarations in furtherance thereof, by any of the conspirators, to advance the common cause, are evidence against all, though not done or made in the presence of each other. *Blackwell,* 220 S.C. at 352, 67 S.E.2d at 689. There was definitely evidence presented revealing that there was a conspiracy and there were actions by the Appellant to further this conspiracy, so the denial of a directed verdict was warranted. The Appellant argues that the Solicitor should not have gone forward with a murder charge but accessory before the fact. The Respondent argues that since there was evidence of a conspiracy the murder charge should have gone forward, and the jury was well within their right

to find the Appellant guilty since it was proven beyond a reasonable doubt. Any evidence, direct or circumstantial reasonably tending to prove the guilt of the accused creates a jury issue.[1] *Chavis,* 277 S.C. at 523, 290 S.E.2d at 413.

The Supreme Court of Virgina in *Sutton v. Commonwealth* made it clear that to be an accomplice you need not be present at the scene of the crime. If a person assists and offers the means to carry out the offense, that person is as present as the person who committed the crime. In *Sutton* it states,

> The *presence* need not be a strict, actual, immediate presence, such a presence as would make [the defendant] an eye or ear witness of what passes, but may be a constructive presence. So that if several persons set out together … upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each takes the part assigned him … they are all provided the fact be committed in the eyes of the law present at it.

Sutton v. Commonwealth, 228 Va. 654, 667 (1985)(emphasis in original).

The evidence presented was clear. The Appellant solicited the assistance of Randy to kill her father and brother and offered a set amount to be paid if this murder was completed. Evidence presented also revealed that the Appellant provided the murder weapon, informed Randy when would be the best time to commit this murder. Once she placed herself within this conspiracy, she was as guilty as the principle. The trial judge had no choice but to deny the directed verdict to allow the jury to make a decision regarding innocence or guilt. This issue has no merit and the decision of the trial court should be affirmed.

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[1] In the present case, evidence indicates appellant helped plan the robbery, appeared at the scene prior to the crime, provided necessary weapons and tools, and received a portion of the proceeds. Even though he did not accompany the actual perpetrators, submission of the case to the jury is justified. *Chavis,* 277 S.C. at 523, 290 S.E.2d at 413.

2. **The trial court did not err in denying the suppression of the evidence obtained through a valid search warrant. The search warrant submitted to the Magistrate contained sufficient probable cause in order to link the Appellant to this crime and that evidence of said crime would eventually be found inside the place to be searched.**

Relevant Facts

During their investigation, law enforcement presented a search warrant to Magistrate Aaron Butler. After presentment and verbal recitation made by the affiant Detective DJ Dudley, this search warrant was served on the Appellant in order to search her home, which was once the home of the victims and also where the murder occurred. (*R) During pre-trial, the Appellant requested that the items found in this search warrant be suppressed. The Appellant argued that the warrant stated that law enforcement was searching for a gun the officers already knew the Randy had thrown in the river. (Tr. p. 93 l. 4-7). The Appellant also argued that law enforcement purposely misled the Magistrate by expressing that multiple witnesses informed them of the murder, when it was just one witness. (Tr. p. 93 l. 8-10). Upon the conclusion of the arguments on both sides, the trial judge decided to deny the Appellant's motion and allow the State to present their foundation in order that it be allowed in evidence. (Tr. p. 100 l. 11-15).

Standard of Review

The admission or exclusion of evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. An abuse of discretion occurs when the trial court's conclusions either lack evidentiary support or are controlled by an error of law. *State v. Winkler,* 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010). A search warrant may be issued only upon a finding or probable cause, and it is the duty of the reviewing court to ensure the issuing official had a substantial basis upon which to conclude that probable cause exists. *State v. Chisholm,* 395 S.C. 259, 267, 717 S.E.2d 614, 618 (Ct. App. 2011). "The South Carolina General Assembly has enacted a requirement that search warrants may be issued 'only upon affidavit sworn

to before the magistrate … establishing the grounds for the warrant." *State v. Dupree,* 354 S.C. 676, 683, 583 S.E.2d 437, 441 (2003), *quoting, State v. Bellamy,* 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). When reviewing a magistrate's decision to issue a search warrant, we must consider the totality of the circumstances. *State v. Missouri,* 337 S.C. 548, 525 S.E.2d 394 (1999). The Fourth Amendment's proper function is to constrain, not against all intrusions as such, but against intrusions which are not justified by the circumstances, or which are made in an improper manner. *Maryland v. King,* 569 U.S. 435, 447, 133 S.Ct. 1958, 1969 (2013).

Discussion

The Appellant argues that the search warrant that was issued contains material omissions and facts that negated the finding of probable cause. The Appellant alleges that within the search warrant, law enforcement misled the magistrate when they listed that they were seeking a .38 caliber handgun, when they were already aware that it had been disposed of because they were told by Teresa that Randy threw the gun into the river. However, in the description of the property sought states, "Any and all evidence of .38 caliber revolver." It does not mention the gun itself but evidence pertaining to that gun. The magistrate was not misled. Law enforcement knew that the murder weapon was a .38 special or .357 magnum because SLED agent Paul Greer matched the bullets found in the victims to these two types of weapons. (Tr. p. 513 l. 7-9). The warrant never stated that they were looking for the actual gun but "any and all evidence of .38 caliber revolver." So, they were looking for anything linking the Appellant to that firearm. In the return they found a box of Remington .38 special bullets, twenty-three life .38 special rounds and forty-six (46) .38 caliber spent casings. (*R).

The Appellant also argues that officers misled the Magistrate by informing him that there were multiple witnesses that identified the murder weapon when there was only one. Within their

brief the Appellant mistakenly informed this court that law enforcement purposely informed the magistrate that there were multiple witnesses. They stated that the "statements concerning the gun were provided by a single witness – not the 'witness statements' provided to the magistrate which implied multiple sources." (Appellant Brief pg. 13). The information regarding the .38 caliber weapon being given by the Appellant to Randy relayed to law enforcement by Teresa. (Tr. p. 1004 l. 23 – p. 1005 l. 2). However, Teresa gave numerous statements, some of which law enforcement knew were untruthful. Within her last statement was where she informed them of what they believed to be the truth. Within the search warrant, it clearly states "witness statements" which means one single person who made numerous statements, not "witnesses statements" which would mean multiple people giving multiple statements. This is not an assertion to the magistrate that multiple people made statements, but one person making multiple statements which was what occurred.

Within their brief the Appellant also argues that the person who made this statement was never identified. When the evidence is given directly to the person obtaining the warrant, no identification is needed if the information is deemed reliable. Non-confidential informants should be given a higher level of credibility because they expose themselves to public view and to possible criminal and civil liability should the information supplied prove to be false. *State v. Driggers,* 322 S.C. 506, 510, 473 S.E.2d 57, 59 (Ct. App. 1996). The same principle holds true for an eyewitness. Eg., *Milbin v. State,* 792 So.2d 1272, 1274 (Fla. Dist. Ct. App. 2001)("A witness who provides information to a police officer through 'face to face' communication is deemed to be sufficiently reliable."); *Giles v. Commonwealth,* 529 S.E.2d 327, 329, 330 (Va. Ct. App. 2000)("Although Officer Devoti did not obtain the women's name or address, the reports were not anonymous. He stood face to face with them and listened to their accounts. He was able to assess their credibility

and the reliability of their information.") Teresa knew about the gun being given by the Appellant to Randy and that it had been previously stolen from the victims' home. There was sufficient probable cause in order to get a search warrant to find any viable evidence that remained inside that house. From practical consideration, unless the magistrate is personally familiar with the eye-witness, simply providing the name of the eye-witness to the magistrate does nothing to add to the veracity of the witness' statement. The search warrant mentions one witness, not several so there was no intentional misleading by the affiant to the magistrate prior to the warrant being issued.

The standard for probable cause does not require separate authenticated proof of each individual detail set forth in an affidavit as would be required at trial for the admission of evidence, nor does it require each officer involved in the investigation be present to attest to their respective independent knowledge of facts. "[M]agistrates can issue search warrants based upon hearsay information that is not a result of direct personal observations of the affiant" but rather was "given to the affiant by other officers." *State v. Wright,* 416 S.C. 353, 365, 785 S.E.2d 479, 485 (Ct. App. 2016), *quoting, State v. Dunbar,* 361 S.C. 240, 269, 603 S.E.2d 615, 620 (Ct. App. 2004).

The only arguments made by the Appellant within this affidavit were regarding mentioning "any and all evidence of .38 caliber revolver" and "witness statements," neither of these allegations made by the Appellant fit the narrative of what was placed within the affidavits. Mentioning the .38 caliber weapon was not regarding the gun itself, but any evidence relating to the weapon (ie. Bullets, carrying case etc.). The Appellant also argues regarding mentioning of "witness statements." Law enforcement did not place this in the search warrant to refer to more than one witness (ie. Witnesses) but only one witness that made more than one statement which was what occurred with Teresa. Since the Appellant failed to show that the affiant raised any false statement

knowingly, or intentionally, or with reckless disregard for the truth[2], this search warrant revealed sufficient probable cause that the Appellant was a suspect in a crime. The place to be searched had evidence leading to that crime. The search warrant was lawful and the evidence from that search warrant should have been allowed into evidence. No error was committed by the trial judge.

3. The trial court did not err in allowing the evidence obtained through a valid search warrant of the Appellant's phone that was in law enforcement's possession when the search warrant was obtained. The trial court was correct in allowing the phone into evidence through inevitable discovery. This also falls under the good faith doctrine.

Relevant Facts

During the investigation, law enforcement presented a search warrant for the information contained in numerous electronics and telephones that were found in the home of the Appellant. Within the search warrant, they incorrectly listed the name and residence of Randy as the location that these items were found. (*R). Due to his error, during pre-trial motions, Appellant moved to suppress the Cellebrite report from the Appellant's phone. The State argued that the phone was in custody of law enforcement when the search warrant was presented to the Magistrate; therefore, the information should be allowed due to the doctrine of inevitable discovery. (Tr. p. 108 l. 25 – p. 109 l. 4). The trial judge agreed that this was inevitable discovery, so the court allowed what was found from the phone and the Cellebrite discovery into evidence. (Tr. p. 110 l. 4-6).

Standard of Review

In criminal cases, the appellate court only review errors of law. *State v. Baccus,* 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). On appeals from a motion to suppress on Fourth Amendment grounds, appellate courts review questions of law de novo. *State v. Bash,* 419 S.C. 263, 268, 797 S.E.2d 721, 723-724 (2017). The admission of evidence is within the discretion of the trial court

[2] *See, Franks v. Delaware,* 438 U.S. 154 (1978).

and will not be reversed absent an abuse of discretion. *State v. Gaster,* 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the trial court's ruling is based on an error of law, or when grounded in factual conclusions without evidentiary support. *State v. Jennings,* 394 S.C. 473, 477-478, 716 S.E.2d 91, 93 (2011). When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial judge's ruling if there is any evidence to support the ruling. *State v. Weaver,* 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2017). The exclusionary rule is more generally modified to permit the introduction of evidence obtained in the reasonably good-faith belief that a search or seizure was in accord with the Fourth Amendment. *U.S. v. Leon,* 468 U.S. 897, 909, 104 S.Ct. 3405, 3413 (1984). Error is harmless when it could not reasonably have affected the result of the trial. *State v. Simmons,* 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018). The inevitable discovery doctrine, one exception to the exclusionary rule, states that if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, the information is admissible despite the fact that it was illegally obtained. *State v. Spears,* 393 S.C. 466, 484, 713 S.E.2d 324 332 (2011). The balancing approach that has evolved in various contexts including a criminal trial "forcefully suggest(s) that the exclusionary rule be more generally modified to permit the introduction of evidence obtained in a reasonably good-faith belief that a search or seizure was in accord with the Fourth Amendment. *U.S. v. Leon,* 468 U.S. at 909, 104 S.Ct. at 3413.

Discussion

The Appellant argues that the trial judge erred in finding inevitable discovery in allowing the evidence found on Appellant's phone into evidence. The trial judge ruled that the phone was in possession of law enforcement for ten days when the search warrant was presented to the magistrate to actually search the phone. Therefore, they would have eventually found Cellebrite

locator information and would search the contents of the phone to find the information that was introduced into evidence. The purpose of the inevitable discovery rule, i.e, that evidence would ultimately or inevitably have been discovered notwithstanding constitutional violation, is to block setting aside a conviction that would have been obtained without police misconduct. *Nix v. Williams,* 467 U.S. 431, 104 S.Ct. 2501 (1984). The trial judge was correct in finding if law enforcement did not have the phone already in their possession, it would have been a different story. However, since it was already in their possession when they requested the search warrant, the doctrine of inevitable discovery applies. The trial judge was correct in allowing this information into evidence.

Respondent is not conceding that the search warrant was illegitimate; therefore, the introduction of the evidence was lawful, but if this court finds that the search warrant was unlawful then this evidence should be allowed under the good faith doctrine. Captain Heather Wilson of the Horry County Police Department testified that they obtained a search warrant to search the home of both Randy and the Appellant on the same day, August 17, 2020. (Tr. p. 609 l. 23 – p. 610 l. 6). The fact that they placed the wrong address on the search warrant was just a mistake, it did not affect probable cause, and the phone was already in police custody. There was no purposeful lie or deceit to the magistrate in order to obtain this search warrant. So, the warrant was lawful pursuant to the good faith doctrine.

In *United States v. Leon,* the United States Supreme Court held, even when a search warrant affidavit fails to contain probable cause, the fruits of that warrant will not be suppressed where the officers who executed the warrant relied on the search warrant in good faith. *U.S. v. Leon,* 468 U.S. 897, 104 S.Ct. 3405 (1984). The correct standard is whether a reasonably trained officer, in light of all the circumstances, would have known that the search was illegal despite the magistrate's

authorization. Good faith will not apply when the affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Id,* 468 U.S. at 923, 104 S.Ct. at 3421. It should be obvious that law enforcement had good faith that this warrant was lawful. *Leon,* established that, "pursuant to warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search." *Id.,* 468 U.S. at 922, 104 S.Ct. at 3420.

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

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

False information was not knowingly given to the magistrate during the application of the warrant; the magistrate had not "rubber stamped" the warrant prior to its execution; there was sufficient probable cause on the face of the affidavit; nor was the warrant affidavit "facially deficient," so none of the above listed factors apply.

Detective Dudley mistakenly listed the Randy address in the warrant. However, there is no evidence that he did this on purpose. The Magistrate did not just rubber stamp this warrant, especially when the Magistrate submitted an affidavit stating, "I would have followed my habit

and asked for a verbal recitation of the basis of probable cause." (*R). There was testimony given under oath given to the Magistrate before this search warrant was approved. The search warrant mentioned what was is to be searched, the electronics and phones found. It just inadvertently mentioned the wrong location where they were found, however, since the phone was in the possession of law enforcement it did not matter. The phone was already seized from a prior valid search warrant. Due to the good faith doctrine, this warrant will still be valid.

If the court finds this search warrant was not valid and that the trial court was in error in allowing the phone contents into evidence the Respondent argues that this decision should be considered harmless. There was more than ample evidence proving that the Appellant was guilty beyond a reasonable doubt without the contents of the phone or the Cellebrite information evidence. There was testimony from the Randy and Teresa that a deal was offered by the Appellant to Randy regarding receiving $200,000 for the killing of her father and brother. Randy, who himself was serving a life sentence, testified that the Appellant came up to him offered him this money to kill her family members, and provided him with the murder weapon.

Jimm Tompkins a Certified Financial Planner with Edward Jones testified that the Appellant was the beneficiary of accounts that Robert and Robbie had with them. (Tr. p. 630 l. 10). Upon their deaths, the Appellant opened an account with Edward Jones and the amount in Robert and Robbie's accounts were automatically transferred into her account. (Tr. p. 630 l. 11-13). There was an IRA that Robert had that was also transferred into her account. (Tr. p. 636 l. 19). The total she inherited was around $175,000.00 and the Appellant withdrew about $100,000. (Tr. p. 640 l. 19 – p. 641 l. 3). Holly Pingatore, who worked for South State Bank, testified that both Robert and Robbie had accounts in South State Bank that were immediately closed with the remaining balances going to the Appellant. (Tr. p. 647 l. 3-13; p. 648 l. 12 – p. 649 l. 6)). In June 2018 there

was $90,000 in that account and by May 2019 there was only $948.78 remaining. (Tr. p. 649 l. 17 – p. 650 l. 2). Kenneth Thompson, who was the life insurance agent for both Robert and Robbie. testified that Robert had a life insurance policy worth $128,012 (Tr. p. 664 l. 14-17), that had Robbie as the beneficiary and Appellant as the contingent. (Tr. p. 661 l. 19-21). So, the Appellant would not have received any money from this policy unless Robbie was deceased as well. (Tr. p. 662 l. 2-4). Robbie also had a policy worth $28,835. (Tr. p. 663 l. 24 – p. 664 l. 6). Mr. Larry Roscoe, an assessor for Horry County, testified that upon Robert's death the Appellant received ownership of an almost sixteen-acre tract in Conway and the deed to Robert's house. (Tr. p. 682 l. 15-16; p. 684 l. 15-23). In closing, Assistant Solicitor Walter stated that the Appellant was set to inherit a home, farmland, cash, investment accounts, IRA's, and pensions worth about 1.2 million dollars. (Tr. p. 1064 l. 5-7). That was definitely motive to kill her father and brother which did not have anything to do with the evidence found in her phone. There was also the matter of the murder weapon which was reported stolen by the Appellant ten months before the murders. (Tr. p. 1005 l. 10 – 19).

Although all this is circumstantial evidence, there was enough evidence for a jury to convict the Appellant even without the phone information that was allowed into evidence. So, if this evidence was not allowed it would not have changed the outcome of the trial. If it appears beyond a reasonable doubt that the error did not contribute to the verdict, then the error may be deemed harmless. *State v. Trapp,* 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012).

4. **The trial court did not err in not giving a jury charge for third party guilt. The evidence raised regarding arson the Appellant's mother may have committed occurred seven years prior and did not raise a reasonable inference or presumption**

of the Appellant's innocence, only cast a bare suspicion or raised a conjectural inference so it is thereby inadmissible.

Relevant Facts

During the trial the Appellant raised the fact that there was a warrant for arson that was pending for the Appellant's mother, Shelia Ford Burris (Shelia). Sheila was accused of burning down the Appellant's grandmother's house, which was the house Sheila and Robert was rebuilding. (Tr. p. 977 l. 25 – p. 978 l. 4). The State objected to allowing this into evidence since this occurred seven years prior to the murder and there was no connection to this arson and these murders. (Tr. p. 979 l. 9-14). During the trial the Appellant attempted to get the trial judge to charge the jury on third party guilt. The Appellant argued that it was Ms. Burris on the phone with Teresa the night of the murder, and not the Appellant. The trial court decided not to charge the jury on third-party guilt.

Standard of Review

To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. *State v. Mattison,* 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. *State v. Pittman,* 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007). An abuse of discretion occurs when the trial court's ruling based on an error of law or, when grounded in factual conclusions, without evidentiary support. *Id.* In order to be admissible, facts offered in support of a third party guild defense must "raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible. *State v. Gregory,* 198 S.C. 98, 16 S.E.2d 532, 534 (1941), *quoting,* 16 C.J. Criminal Law §1085 (1918).

Discussion

The Appellant argues that the trial court erred in not charging the jury on third-party guilt due to evidence raised concerning the mother of the Appellant, Shelia, who was accused of burning down the house of the Appellant's grandmother that she was going to live in with Appellant's father. The Respondent argues that there was no evidence linking Shelia to this crime other than a phone call between Shelia and Teresa lasting 30 minutes on the night of the murder. There was no evidence presented regarding what transpired during this conversation. There was no motive for Shelia to commit this murder, all of the inheritance went to the Appellant. Shelia did not receive anything from the death of Robert and Robbie. This supposed arson occurred seven years prior to the murder, and the defense presented no evidence that Shelia wanted the victims dead or that she had any contact with Randy regarding planning the murder of the victims.

The possible link between this arson and these murders was just conjecture. Nothing that was presented linked Shelia to these murders that would totally absolve the Appellant of guilt. As stated in *State v. Gregory,*

> Before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty.

Gregory, 198 S.C. at 98, 16 S.E.2d at 535.

The only evidence of Shelia's possible link to this case was a phone call on the night of the offense to Teresa. However, there was no proof provided that this conversation had anything to do with the murder of the victims. Teresa also testified that she knew Shelia and that she lived right across

the yard from her house and she was Teresa's second cousin. So that conversation could have been about anything. The Appellant failed to provide any evidence that this conversation was about the murders. Appellant failed to raise any evidence linking Shelia to this crime. The trial judge was correct in not charging the jury on third party guilt.

5. **The trial court did not err in allowing Randy Grainger to testify as to his opinion regarding why he decided to testify which was based on his perception, giving the jury a clear understanding of why he decided to testify, and it did not require any special knowledge, skill, or experience, this statement also did not have any bearing on the trial's final outcome thereby making any error allowing this statement harmless.**

Relevant Facts

During his testimony, Randy was asked about his reasoning for testifying. Randy discussed possibly seeing the "light of day" at some time in the future. (Tr. p. 908 l. 10-12). Then he was asked if there was any other reason for his testimony. Randy stated, "Well I give it a lot of thought. And Samantha done hired somebody to kill her brother and her daddy. When that money runs out, who is she going to kill next? Her kids? Them kids ain't hurt nobody." The Appellant objected to this answer which was overruled by the trial court. The Appellant now argues that the court erred in allowing Randy to speculate regarding his fear that the Appellant would kill her own kids for profit. The Respondent argues that this is a lay witness opinion, so it is allowed pursuant to Rule 701 of the South Carolina Rules of Evidence.

Standard of Review

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose discretion will not be reversed on appeal absent and abuse of discretion. *State v. Tucker,* 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. King,* 422 S.C. 47, 54, 810

S.E.2d 18, 22 (2017). Error is harmless when it could not reasonably have affected the result of the trial. *State v. Reeves,* 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990).

Discussion

The Appellant argues that the trial judge erred in allowing testimony regarding a statement made by the Randy regarding the Appellant killing her children for money. Randy was asked a question regarding why he decided to testify. His answer was his perception regarding how dangerous the Appellant was and the fact he found it to be an obligation to testify. As stated in the South Carolina rules of evidence,

> If the witness is not testifying as an expert, the witness'[s] testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness'[s] testimony or determination of the fact in issue, and (c) do not require special knowledge, skill experience or training.

Rule 701, SCRE.

The witness was asked a question why he decided to testify. His answer was that since the Appellant contracted to kill her father and brother, when the money runs out, she may kill her kids. The Randy has first-hand knowledge of the Appellant contracting someone to kill her family members, because he was the one that she contracted with, he killed her father and brother. This statement was made to give the jury an idea why he decided to testify, even though he is serving a life sentence with absolutely no guarantee if it ever would be reduced. This statement did not need any special knowledge or training. It was from his own experiences. He was contacted by the Appellant to kill her father and brother for $20,000. That is first-hand knowledge of the type of person the Appellant is. Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. *State v. Fripp,* 396 S.C. 434, 439, 721 S.E.2d 465, 467 (Ct. App. 2012), *quoting,* Rule 704, SCRE.

The Respondent does not concede that the statement of the Randy was unlawful but just his lay opinion from his observation that is allowed pursuant to Rule 701 of the South Carolina Rules of Evidence. However, if the Court decided that this was allowed in error it should be considered harmless. When determining if an error is harmless, jurisprudence requires not to question whether the State proved their case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict. *Trapp,* 398 S.C. at 390, 728 S.E.2d at 475. Testimony by Randy did not excuse the fact that he was approached by the Appellant to kill her father and brother for $20,000.00, and was provided a gun that was the same caliber of the bullets that were removed from the father's body, a gun that matched a gun that was reported stolen by the Appellant nine months earlier. This statement also does not excuse the abundance of money the Appellant received due to the deaths of her father and brother and the searches that were found in her phone after it was recovered pursuant to a valid search warrant. If this statement was not made, all of this evidence would have still been presented to the jury proving her guilt. Error is harmless when it 'could not reasonably have affected the result of the trial.' *Id.,* 398 S.C. at 389, 728 S.E.2d at 475, *quoting, State v. Key,* 256 S.C. 90, 180 S.E.2d 888 (1971). There was ample evidence presented proving the Appellant's guilt beyond a reasonable doubt that had nothing to do with this statement made by the Randy. The harmless error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence. *Delaware v. VanArsdall,* 475 U.S. 673, 681, 106 S.Ct. 1431, 1436 (1986).

CONCLUSION

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

Respectfully submitted,

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