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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE, RESPONDENT

v.

KARSEEM NICHOLAS HARDAWAY, APPELLANT

INITIAL BRIEF OF RESPONDENT
Appellant Case No. 2024-001245

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

Scarlett A. Wilson
Solicitor, Ninth Judicial Circuit
101 Meeting Street
Charleston, South Carolina 29401

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RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in admitting evidence from the Appellant's phone and phone location obtained by a valid search warrant issued by a circuit court judge pursuant to the Federal Closed Storage Act, while the trial court applied the correct standard established in Federal and South Carolina law, and each affidavit revealed probable cause that the Appellant possibly committed these offenses and evidence of this crime would be found within the items searched?
2. Were the items found by these search warrants essential to the case; therefore, not harmless; was there deceit by law enforcement in the affidavits presented to the circuit court judge, and if not were these search warrants issued in good faith, making them admissible?

STATEMENT OF THE CASE

Karseem Nicholas Hardaway was indicted by the Charleston County Grand Jury for the offenses of murder and possession with a weapon during the commission of a violent crime. (R*). On March 20, 2024, pre-trial hearings were held before the Honorable Deadra L. Jefferson. Appearing before the trial judge, was the Appellant along with his trial counsel Assistant Public Defender Rachael C. Arora of the Ninth Circuit Public Defender's Office, also appearing representing the State of South Carolina was Assistant Solicitor's B. Chad Simpson, and Kelly E.M. Barber of the Ninth Circuit Solicitor's Office.

During these hearings the Appellant made a motion to exclude the search warrants related to the Appellant's phone, phone contents, location, and Google searches. The Appellant argued that probable cause was not presented within the affidavits that were presented to the circuit court judge prior to the issuance of these search warrants; therefore, the items found should not be allowed into evidence. The trial court disagreed and dismissed the Appellant's motion.

On March 25, 2024, all parties appeared before the trial court for a jury trial. After four days of testimony a jury of his peers found the Appellant guilty of murder and possession of a weapon during the commission of a crime of violence. (Tr. p. 719 l. 7-12; l. 16-21). After the reading of the verdict, the Appellant appeared before the trial court for sentencing. The trial court proceeded to sentence Appellant to a forty-year period of incarceration for the offense of murder, (Tr. p. 738 l. 3-5), and five years for possession of a weapon during the commission of a crime of violence. (Tr. p. 738 l. 6-7). The trial court ordered that these sentences were to be served concurrently. (Tr. p. 738 l. 8-9).

While serving his sentence the Appellant filed a timely notice of appeal before this court. The Respondent's brief in defense of Appellant's accusations follows.

STATEMENT OF THE FACTS

In July of 2021, David Lee Conner (victim) was a construction foreman working with Sack Construction in Columbus, Georgia. His job was doing HVAC installation; he had worked for the company for eleven years. (Tr. p. 87 l. 6-13; p. 88 l. 24-25). The victim was doing remote work in the Charleston area, and since they were working more than an hour and a half from home they were set up in apartments by the company. (Tr. p. 123 l. 10-13). During this time the victim was living with a roommate, Mark Mosier, who also worked for Sack. (Tr. p. 121 l. 2-7; p. 124 l. 12). At that time Tiffany Hardaway lived in an apartment across the breezeway. Law enforcement later determined Tiffany was the sister of Karseem Hardaway (Appellant).

On July 12, 2021, the victim got into an argument with a person outside of his apartment complex. The victim left a voicemail with the apartment complex security officer complaining about what had occurred. Within this voicemail the victim requested that the person he had an argument with be removed from the complex. (Tr. p. 522 l. 22 – 523 l. 1).

The next day the victim left his job at 5:00pm. On the trip home he spoke on the phone to his wife Vicki, until the victim got to his apartment complex at 5:31pm. (Tr. p. 91 l. 25 – p. 92 l. 1; p. 92 l. 17). The victim's roommate, Mr. Mosier worked farther away so he arrived at the apartment later. (Tr. p. 126 l. 6-11). Surveillance video revealed that Mr. Mosier left the work site at 5:14pm. (Tr. p. 133 l. 17). Mr. Mosier then went to a convenience store prior to returning to the apartment. (Tr. p. 136 l. 6-9). Mr. Mosier did not arrive at the apartment until close to 6:00pm. (Tr. p. 136 l. 12). When Mr. Mosier arrived, he found the door unlocked. He tried to open it; however, there was something behind the door. (Tr. p. 136 l. 22-23). Mr. Mosier had to force the door open, and that is when he found the victim lying behind the door in a large pool of blood. (Tr. p. 136 l. 24 – p. 137 l. 3). Mr. Mosier then called 911.

Crime Scene Investigator for the Charleston Police Department, Paul Kelly, arrived at the crime scene and checked the victim. Investigator Kelly located a round wound on the backside of his neck on the left side of the hairline. (Tr. p. 74 l. 1-3). While processing the crime scene Investigator Kelly found a 10mm shell casing in the front of a recliner inside the apartment. (Tr. p. 70 l. 22-25; p. 71 l. 9-10). During the trial Investigator Kelly testified about the fact he has processed hundreds of crime scenes, however, he never collected a .10 millimeter shell casing at a crime scene before this case. (Tr. p. 72 l. 10-17).

During the investigation, law enforcement found that a neighbor Tiffany Hardaway had a Ring Door Camera outside her apartment door. (Tr. p. 250 l. 22 – p. 215 l. 3). Tiffany's apartment was at the front right; the victim's apartment was at the back left. (Tr. p. 251 l. 14-16). Law enforcement contacted Tiffany. She gave them a video revealing that the Appellant left her apartment, walking past the victim's apartment at 5:04pm on the day of the incident. (Tr. p. 525 l. 23-25). The video revealed no other person going towards the victim's apartment from 5:04 – 5:32pm. (Tr. p. 526 l. 1-4). Law enforcement investigated Ms. Hardaway and found out she had a brother. They also learned about the type of car he drove, as well as the cars Ms. Hardaway and other family members have that could be associated with her apartment. (Tr. p. 276 l. 16-19). Law enforcement later went to Tiffany to get more video. When they arrived at the complex, they found the Appellant sitting in his car. The Appellant admitted that he spent the night of July 12 at Tiffany's apartment. (Tr. p. 281 l. 4-6). The Appellant informed them that he left the apartment complex at 5:04 and drove to John's Island. (Tr. p. 528 l. 3-6).

During their investigation, law enforcement collected video from a surveillance camera at the apartment's leasing office and a nearby Circle K convenience store. (Tr. p. 528 l. 20-22). The

video revealed the Appellant's vehicle leaving the apartment complex at 5:35pm. (Tr. p. 530 l. 1-5). The Circle K video revealed that the Appellant drove past at 5:37pm. (Tr. p. 532 l. 19-20).

When law enforcement went back to Tiffany to get more video as she was scrolling through the videos Investigator William Crockett saw her stop at one video and select a red button on the video. (Tr. p. 284 l. 13-15). Tiffany gave her phone to Investigator Crockett, and he did the same thing and realized this is what you do to erase a video. (Tr. p. 284 l. 15-23).

Later, Law enforcement obtained a search warrant for the Appellant's phone. (R*). Once they received the Appellant's phone, they received another search warrant for the phone contents, site locations, and Google searches. (R*). Law enforcement found that the phone's location was near the crime scene at the estimated time of the crime. (Tr. p. 538 l. 18-22). Law enforcement was informed about the victim's voicemail complaining about the altercation with someone outside of his apartment, the voicemail was made on July 12, 2021, at 9:51pm. (Tr. p. 540 l. 24-25) Appellant's phone records revealed that he made a phone call on July 12, 2021, at 9:46pm. (Tr. p. 542 l. 16-19).

Within the Appellant's phone, law enforcement found Facebook photos with a picture of the Appellant that shows the top portion of a handgun with the inscription "20, Gen 4 10-millimeter auto." (Tr. p. 548 l. 4-14). On these Facebook photos law enforcement was also able to locate the serial number of the handgun. (Tr. p. 554 l. 7-10). On Appellant's phone there were also searches on YouTube for videos, "testing the SEM Tactical 30 round 10-millimeter mags," and "10-millimeter drum." (Tr. p. 561 l. 11-14).

On Appellant's phone there were also Google searches beginning at 11:35 on July 12, for "Sack company," "Sack Truck," Sack Truck logo," "Sack Inc." (Tr. p. 563 l. 3-19). Law enforcement revealed that these searches began on July 12 at 11:35pm and ended on July 13 at

5:25pm. They believed that victim was murdered at 5:32pm. (Tr. p. 564 l. 13-17). After the estimated murder time, there were no more searches of the Sack Construction Company found on Appellant's phone. (Tr. p. 564 l. 13-17).

During the trial agent, Bryce Eikenberg of Alcohol, Tobacco, and Firearms (ATF) testified. Agent Eikenberg was asked to research the prevalence of a .10mm recovered in the Charleston area. (Tr. p. 228 l. 15-18). Agent Eikenberg researched the database for Charleston and nine counties surrounding the Charleston area. (Tr. p. 229 l. 15-18). In this search Agent Eikenberg found fifteen thousand firearms which were traced through the system. Only 1.28% were .10-millimeter firearms. (Tr. p. 230 l. 17). Agent Eikenberg was also asked to do a search of the serial number found on the gun in the Facebook photograph. The serial number was traced to a .10mm Glock 20 pistol. (Tr. p. 236 l. 10-11).

Dr. Virginia Richards, forensic pathologist, also testified. Dr. Richards was found qualified as an expert in the field of forensic pathology. (Tr. p. 361 l. 3-9). Dr. Richards performed the autopsy on the victim on July 16, 2021. (Tr. p. 361 l. 10-13). Dr. Richards testified that the victim received a gunshot wound to the back of the neck, which was the only lethal wound. (Tr. p. 361 l. 15-18). Dr. Richards stated that she found that the bullet tore some of the victim's spinal cord where it connects to the top of the brain stem, as well as muscle and skin. The bullet also fractured some bones in the front of the face and at the base of his skull. It also caused bruising on the base of his brain. (Tr. p. 361 l. 23 – p. 362 l. 3). Dr. Richards found only one wound and no exit wound. (Tr. p. 364 l. 10-11). Dr. Richards determined that the victim died from a gunshot wound to the neck. (Tr. p. 368 l. 2-3).

ARGUMENTS

1. **The trial court did not err in admitting evidence from phone records obtained by a valid search warrant issued by a circuit court judge pursuant to the Federal Closed Storage Act, the trial court applied the correct standard established in Federal and South Carolina law and each affidavit established probable cause revealing that the Appellant possibly committed these offenses and that evidence of a crime would be found within the items searched; therefore, each search warrant was valid and the items found were lawfully entered into evidence.**

Relevant Facts

Prior to his arrest, law enforcement obtained search warrants for the Appellant's phone, phone contents, location pings, and Google searches. Prior to trial the Appellant moved to suppress the evidence found via the search warrants. Appellant argued that law enforcement failed to provide sufficient probable cause so the evidence acquired was not admissible.

On July 20, 2021, an affidavit for a search warrant was presented to the Honorable Jennifer B. McCoy, Circuit Court Judge, for the Appellant's cell phone. The following affidavit was presented to the court in order to acquire the Appellant's cell phone:

"On Tuesday, July 13, 2021, at approximately 6:00pm, officers with the city of Charleston Police Department responded to 1012 Bantry Circle, which is located in the City and County of Charleston, SC in reference to an unresponsive party. Upon arrival, officers located the victim, David Conner inside the front entry way lying in a large pool of blood. The victim was subsequently pronounced deceased on scene by Charleston County EMS. During the course of the investigation, Detectives discovered that the victim had sustained a single gunshot wound to the head. Detectives also noted that nothing inside the apartment appeared to be disturbed and the Victim was still in possession of all of his property. Also, the Victim's roommate confirmed that none of their personal property was missing from inside the apartment as well."

"During the course of the investigation, Detectives learned that the victim left work at approximately 1700 hours and was speaking with his wife on the telephone during the entire 30-minute-long trip home. Upon arriving at the apartment complex, the victim parked his vehicle in the rear parking lot, ended the call with his wife and entered the apartment. During the canvass of the incident location, the victim's vehicle (white-in-color Chevy Silverado, GA: PLJ3395) was located in the parking lot located behind building 1000 of the Bolton's Landing Apartments. Furthermore, Detectives discovered the Victim's license tag was captured on ALPR camera along I-526 at approximately 1717 hrs. as the Victim traveled home to his apartment."

"During a canvass the night of the incident, Detectives located a motion-activated Ring brand doorbell camera affixed to apartment 1013, which is one door from the indecent location toward the front breezeway entrance to the 1000 building. Detectives made contact with the resident, Tiffany Hardaway, who confirmed the device belonged to her and that the camera captured both audio and video. In this initial contact with Ms. Hardaway, she provided two videos from the time frame immediately following the homicide. The next morning, Detectives conducted a follow up with Ms. Hardaway for the purpose of obtaining additional video from the afternoon leading up to the homicide. During this interaction, Ms. Hardaway provided the requested footage and in reviewing it, Detectives observed a black male in his late teens to early 20's walking from Ms. Hardaway's apartment toward the incident location at 1704 hours. This observation immediately caught Detectives' attention because thus far, Ms. Hardaway had contended that she lived at the apartment alone and had not disclosed that anyone else was at the apartment on the incident date."

"Detectives conducted research into Ms. Hardaway and her relatives/associates and learned that she has a brother named Karseem Hardaway. Detectives are familiar with Karseem Hardaway from prior investigations to include firearms related offenses and learned that he had been arrested by the Charleston County Sheriff's Office in May of 2021 for several criminal charges to include being a felon in possession of a firearm. Karseem Hardaway has a unique physical appearance in that he only has one eye. Detectives reviewed the Ring video from Tiffany Hardaway and found that the subject observed exiting the apartment at 5:04pm on the date of the incident is consistent in appearance with Karseem Hardaway."

"On July 14, 2021 Detectives learned from the management of the apartment complex that the Victim had contacted the leasing office on Monday, July 12 around 9:00pm (a day before the homicide), to report that he had just had a confrontation with 'a guy' who was causing a disturbance outside of his apartment by taking too loudly on his telephone. In this instance the Victim relayed that he had asked the unknown male to quiet down to which the male responded 'go fuck yourself.' The victim then relayed to management he was 'worried that it was not a good situation' and requested the male be 'removed from the area.' This gave Detectives further cause for concern that the Victim may have encountered someone from within the complex with whom he might have had a problem."

"After learning this, Detectives responded back to the incident location to follow up with residents regarding the altercation the previous day. As Det. Crockett was arriving, he observed a black male enter a red Honda Accord (SC Tag UJ1776) which he knew from research to be registered to Karseem Hardaway."

"Det. Crockett made contact with the subject and identified him as Karseem Hardaway based on his unique physical appearance. Det. Crockett inquired as to whether he had been at Ms. Hardaway's apartment the night of July 12, 2021. Hardaway not only confirmed that he had been there and stayed over the night of the 12th but also positively identified himself as the subject captured on Ring video departing the apartment at 5:04PM on July 13th 2021 from a still photograph obtained from the aforementioned footage. Hardaway stated that upon exiting the apartment at that time, he left the complex in his vehicle and drove to the address on Johns Island.

He stated that he was unaware of a dispute nor did he witness a shooting or any other type of altercation."

"Detectives then made contact with Ms. Hardaway to inquire about the individual they had witnessed on her Ring camera. Detective showed her an image of the male captured on her camera departing her residence at 5:04pm the night of the homicide and she identified him as her brother, Karseem Hardaway. Detectives then asked to review her Ring camera to see if it captured the interaction with the Victim and the unknown male on the night of July 12, 2021. At this request, Ms. Hardaway demeanor noticeably appeared to change and she reluctantly began to review her video. As Det. Crockett watched her scroll through her video feed, she appeared to delete at least one video by pressing several buttons on the screen of her device which resulted in a pop up screen with a red bar at the bottom being generated. Ms. Hardaway then pressed on the red bar on the screen before voluntarily handing Det. Crockett her device. Det. Crockett then repeated the actions he had just witnessed by selecting a video and pressing the delete button just as Ms. Hardaway had done. This action resulted in the same pop up screen with a red bar being generated Detective Crockett inquired if Ms. Hardaway had deleted any videos from the dates requested and she replied 'no.'"

"Through further investigation, Detectives learned that a vehicle consistent in appearance with Karseem Hardaway's 2004 Honda Accord (SC – UJ1776) was captured on camera traveling on Bluewater Way towards Bees Ferry Road, passing the management office for Bolton's Landing Apartments at 5:35PM the night of the homicide. Next, the same vehicle appears on video at the Blue Water gas station (1195 Bees Ferry Rd., Charleston, SC) at the intersection of Bees Ferry Rd. and Main Road at 5:37pm traveling on Main Road towards US 17. Hardaway's vehicle is then captured on ALPR camera at approximately 5:42pm traveling onto John's Island, SC. This direction of travel is not only away from the incident location but in the immediate time frame of the incident and in the appropriate direction Karseem states he traveled upon leaving the apartment complex. It should be noted, however, that Karseem exits the apartment at 5:04PM but is not observed traveling past the management officer of the complex until 5:35PM. This timeframe leaves nearly 30 minutes unaccounted for which potentially places Karseem in the area of the incident location at the time of the murder."

"When Detectives interacted with Karseem on July 14, 2021, he stated that he would be driving from the apartment complex to the O2 Fitness location on Daniel Island to go to the gym. Based on this statement Detectives made contact with staff at O2 Fitness who stated that Karseem has a trial membership and provided contact information associated with the account to include telephone number and email address. The phone number associated with the account is 843-259-5916 and the email address is karseemhardaway30@gmail.com. Detectives also observed Karseem to be in possession of and manipulating/operating a working cell phone at the time of their interaction."

"On July 16, 2021, Tiffany Hardaway was taken into custody on an arrest warrant for Obstruction of Justice relating to the decision of the aforementioned videos. After her arrest, Ms. Hardaway provided a post Miranda statement in which she confirmed that Karseem regularly stays at her apartment an had done so the night before and throughout the day of the murder. This statement matched that as provided by Karseem as well. Ms. Hardaway also conceded that she could not

account for his whereabouts starting around 2:30pm the day of the murder because she departed the apartment to go to Goose Creek and had not returned until later in the evening when police were already on scene."

"A lawful search warrant was executed upon her residence for the seizure of her cell phone. The device, an Apple iPhone was subsequently located, seized, and placed into evidence. A lawful search warrant for the forensic extraction of this device was then obtained and executed. An examination of the date obtained from this extraction revealed that Ms. Hardaway regularly communicates with Karseem via the phone number provided on the O2 Fitness application, 843-259-5916. Detectives also noted that Ms. Hardaway and Karseem were in frequent contact with each other after each were spoken to during their respective encounters with CPD Detectives on July 14, 2021. Finally, Detectives discovered a text message and phone call received by Ms. Hardaway from Karseem at approximately 5:36pm in which he instructed Ms. Hardaway to tell her children to lock the apartment door because he had forgotten to do so after he left. This is minutes after Detectives believe the homicide to have occurred."

"The affiant is aware, through over ten years of law enforcement training and experience, that cell phones are nearly ubiquitous in today's society. During contact with CPD Detectives on July 14, 2021, Karseem was observed to be in possession of an operational smart phone which Detectives believe he regularly uses for communication. This communication is reflected in Ms. Hardaway's cellular phone data and the affiant believes, based on these established facts, a seizure of Karseem's cellular telephone will provide CPD Detectives the opportunity to further this criminal investigation."

(R*).

There were also other search warrants having to do with information that was in the Appellant's phone, phone's location, and his Google searches. The other search warrants had almost identical information within the affidavit except for the last paragraph related to the actual information sought, how this information could be found, and why it related to this investigation.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus,* 367 S.C. 41, 48, 625 S.E.2d 216, 221 (2006). The admission or exclusion of evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. An abuse of discretion occurs when the trial court's exclusions 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 used only upon the finding of probable cause, and it is a duty of the reviewing court to ensure the issuing official had a substantial basis upon which to conclude that probable cause existed. *State v. Chisholm,* 395 S.C. 259, 267, 717 S.E.2d 614, 618 (Ct. App. 2011). The Fourth Amendment's proper function is to constrain, not against all instructions 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). Upon review, an appellate court's task is to decide whether the magistrate had substantial basis for concluding probable cause existed. *State v. Driggers,* 322 S.C. 506, 510, 473 S.E.2d 57, 59 (Ct. App. 1996).

Discussion

The Appellant alleges that the trial court erred in allowing the evidence that was collected as a result of the search warrants, because the search warrants did not have sufficient probable cause. The Appellant alleged that the search warrants were allowed due to the fact that Appellant was in proximity of the crime scene. The Appellant alleged that the only thing that was presented to the circuit court was the fact that he walked by the victim's apartment on the Ring video. There was much more presented by law enforcement revealing sufficient probable cause in order to obtain the search warrant.

A search warrant may be issued only upon the finding of probable cause. This determination requires the magistrate to make a practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of people supplying information, that there is a fair probability that contraband or evidence of a crime will be found in a particular place. *State v. Keith,* 356 S.C. 219, 223-224, 588 S.E.2d 145, 147 (Ct. App. 2003), *quoting, State v. King,* 349 S.C. 142, 150, 561 S.E.2d 640, 644 (Ct. App. 2002). The Appellant argues that the only probable cause presented was the fact the

Appellant was caught walking by the victim's apartment on a Ring Camera. This is not true. There is an ample amount of probable cause presented revealing that the Appellant was a suspect, and the items sought would reveal relevant evidence.

First, within the search warrant it stated that the Appellant drove a red Honda, and while in the parking lot, Detective Crockett spoke to him. The Appellant informed him that he was the person on the Ring camera that was leaving Ms. Hardaway's apartment at 5:04PM. The Appellant informed law enforcement that was the time he left the complex and drove to Johns Island. However, the search warrant stated that the apartment complex surveillance video revealed Appellant left the complex at 5:35, and was later seen on Bees Ferry Rd. at 5:37. Law enforcement believed that the crime occurred at 5:32. Therefore, the Appellant lied to law enforcement about his whereabouts at the time the crime occurred. The affidavit also reveals that there is nearly 30 minutes of unaccounted for which possibly places the Appellant at the scene of the crime.

There was also information within the affidavit of the Appellant's sister possibly destroying evidence and lying about it. The Appellant argues that information regarding the actions of another person should not be considered as probable cause in an affidavit for a search warrant against him. The Court must look at the totality of circumstances in order to see if probable cause exists. It is the combined circumstances and not each circumstance separately, by which probable cause must be evaluated. Probable cause turns on a totality of the circumstances analysis and requires a practical common-sense decision whether there is a fair probability that contraband or evidence of a crime will be found in a particular place. *United States v. Gondres-Medrano,* 3 F.4th 708 714 (4th Cir. 2021). The fact that the Appellant's sister, who resided at the apartment in which the Appellant was recorded coming out about 30 minutes before the crime, leads to a common-sense deduction that Appellant may be involved in the crime. On top of this fact, the sister proceeded to possibly

erase incriminating evidence and then lie about it to the authorities. This along with all of the other evidence presented within the affidavit definitely reveals probable cause. The search warrants were justifiably granted and the incriminating evidence found was lawfully allowed into evidence during trial. Valid warrants may be issued to search property, whether or not occupied by a third party. When there is probable cause, the fruits, instrumentalities, or evidence of the crime will be found. *Zurcher v. Standford Daily,* 436 U.S. 547, 553, 98 S.Ct. 1970, 1975 (1978). Search warrants are not directed at persons; they authorize the search of "place[s] and the seizure of "things" and as a constitutional matter they need not even name the person from whom the things will be seized." *Zurcher,* 436 U.S. at 555, 98 S.Ct. at 1976, *quoting, United States v. Kahn,* 415 U.S. 143, 155 n.15, 94 S.Ct. 977, 984 (1974).

The Appellant also accuses the trial court of using the wrong standard in determining the lawfulness of these search warrants. Within her decision the trial court stated that the issuing judge's, "task was to determine whether – her role was to make a practical, commonsense decision whether under the totality of the circumstances set forth in the affidavit there was a fair probability that evidence of a crime would be found in the particular place to be searched." (Pre-trial Tr. p. 75 l. 2-6). In *State v. Gentile* 373 S.C. 506, 646 S.E.2d 171 (Ct. App. 2007), this Court decided,

> A magistrate may issue a search warrant only upon a finding of probable cause. "This determination requires the magistrate to make a **practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit, including** the veracity and basis of knowledge of persons that the bases of knowledge of persons supplying the information, **there is a fair probability that contraband or evidence of a crime will be found in a particular place**"

Gentile, 373 S.C. at 512-13, 646 S.E.2d at 174, *quoting, State v. King, 349* S.C. 142, 150, 561 S.E.2d 640, 644 (Ct. App. 2002)(emphasis added).

The trial court quoted the exact language as instructed by the Court when a determination is made that sufficient probable cause was presented in the affidavit to allow the search. Since the trial

court stated the language found in caselaw, the Appellant's argument that the trial court did not apply the proper standard has no merit. There was more than sufficient probable cause presented to the Judge McCoy in order to have the search warrant granted. The seizure of the Appellant's phone where law enforcement found a multitude of incriminating evidence, was lawful and lawfully introduced as evidence trial.

There was sufficient probable cause presented to the court in the affidavit in order to allow the court to accept and issue the search warrant. The trial court used the proper standard in order to accept the search warrant and deny the Appellant's motion to suppress the evidence due to the warrant not having sufficient probable cause. The traditional standard for review of an issuing magistrate's probable cause determination has been that so long as the magistrate had a "substantial basis for ….conclud[ing]" that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more. *Illinois v. Gates,* 462 U.S. 213, 236 (1983), *quoting, Jones v. United States,* 362 U.S. 257, 271, 80 S.Ct. 725, 736 (1960).

2. The items found within these search warrants were essential to the case; therefore, they were not harmless. There was no deceit by law enforcement in the affidavit presented to the circuit court in the issuance of these search warrants; therefore, if there was any error, these warrants were issued in good faith, the evidence was still admissible pursuant to *U.S. v. Leon.*

Relevant Facts

The Appellant argues that the evidence found as a result of the search warrants issued by the Circuit Court was critical to the state's case; therefore, this cannot be considered harmless. The Respondent would agree. The evidence found within the phone of the Appellant includes Facebook photos revealing that the Appellant had access to the type of weapon used in the murder of the victim, a gun type that only 1% of the people in a nine-county radius was in the ATF database. The phone revealed Google searches made by the Appellant relating to Sack Construction, the company

where the victim worked. These searches stopped right after the murder. There was also evidence that the phone was located in the same location of the murder and at the time it occurred. The evidence was essential in convicting the Appellant, so it cannot be considered harmless. Also, these search warrants were obtained in good faith. If this court determines that the issuance of these warrants was in error, the evidence still should have been allowed pursuant to the good faith doctrine.

Standard of Review

An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause. *Gates,* 462 U.S. at 239, 103 S.Ct. at 2333. When reviewing a Fourth Amendment search-and-seizure case, an appellant court must affirm if there is any evidence to support the ruling. *State v. Wright,* 391 S.C. 436, 442, 706 S.E.2d 324 326 (2011). The appellate court will reverse in a Fourth Amendment search-and-seizure case only when there is clear error. *State v. Morris,* 411 S.C. 571, 578, 769 S.E.2d 845 (2015). The balancing approach that has evolved in various contexts including a criminal trial "forcefully suggest(s) that the exclusionary rule be more generally modified to permit the introduction of evidence obtained in the reasonably good-faith belief that a search or seizure was in accord with the Fourth Amendment." *U.S. v. Leon,* 468 U.S. 897, 909, 104 S.Ct. 3405, 3413 (1984), *quoting, Gates,* 462 U.S. at 255, 103 S.Ct. at 2340.

Discussion

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

of all the circumstances, would have known that the search was illegal despite the magistrate's authorization. And good faith will not apply when the affidavit is, "so lacking in indicia of probable cause as to render official brief of its existence entirely unreasonable." *Id.,* 468 U.S. at 923, 104 S.Ct. at 3421. The argument raised by the Appellant was that proximity is not enough to establish probable cause. Appellant alleges the affidavit does not establish probable cause because the evidence is not related to actions of the Appellant. Also, Applicant alleges the trial court applied the wrong standard. No argument was raised that law enforcement placed untruthful information within the affidavit, or made efforts to "trick" the Circuit Court judge into granting this search warrant through deception. *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 acted in good faith in conducting the search." *Id.,* 468 U.S. at 922, 104 S.Ct. at 3420.

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

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

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

There have been no accusations by the Appellant that false information was knowingly given to the magistrate during the application for the warrants. A circuit court judge actually reviewed the probable cause, not a local magistrate, and there is absolutely no evidence that Judge McCoy "rubber stamped" this warrant before signing off. There was more than sufficient probable cause included in this affidavit, each warrant listed what needed to be seized or searched in each warrant. So, the warrant cannot be considered "facially deficient."

The trial court mentioned how "thorough" the affidavit is, within her ruling the trial court stated:

> "And clearly, when reading these – these affidavits are very detailed. They are thorough. They clearly establish probable cause when looking at making a practical, commonsense determination under the totality of the circumstances as set forth in the affidavit. And clearly, Judge McCoy issued these warrants under a finding of probable cause." (Pre-trial Tr. p. 75 l. 7-13).

It is clear that the affidavit was very detailed and it mentioned almost all of what had occurred prior to requesting the search warrants. An affidavit made by law enforcement cannot be held to the standards of documents written by lawyers. We have recognized that affidavits are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleading have no proper place in this area. *Gates,* 462 U.S. at 235, 103 S.Ct. at 2330.

Pursuant to the United States Supreme Court decision of *U.S. v. Leon* we request that if this court finds that the warrant was insufficient, that the good faith of law enforcement validates this warrant and that it be recognized, and the decision of the trial court upheld.

CONCLUSION

The Respondent argues that decisions made by the trial court were lawful and should be affirmed by this court.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

By: *s/Tommy Evans, Jr.*
Tommy Evans, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

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