

IN THE SOUTH CAROLINA COURT OF APPEALS

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Appellant Case No. 2012-213141

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The State, Respondent

v.

Alphonso Chaves Thompson, Appellant.

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**INITIAL BRIEF OF APPELLANT**

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**SC Court of Appeals**

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| U.S. Const. amend. IV.    |  |
| S.C. Const. art. I, § 10. |  |

## STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying Appellant's motion to suppress all fruits of an illegal search where the search warrant was supported by a woefully inadequate affidavit that failed to show the reliability of the informants, was based on stale information and conclusory statements, and failed to demonstrate why there was reason to believe drugs existed in the place to be searched?
2. Did the trial court err in denying Appellant's motion to suppress his "confession" where that "confession" was coerced and flowed from an illegal arrest unsupported by probable cause?
3. Did the trial court err in denying Appellant's directed verdict motion as to the weapons charge where the State produced no evidence of constructive possession or, in the alternative, did not establish that a sufficient nexus existed between any weapon and a violent offense?

## STATEMENT OF THE CASE

This is a drug case involving a contested search warrant that originated in federal court under the direction of the United States Attorney's Office and the Drug Enforcement Administration ("DEA"). (Tr. p.12, l.25 – p.13, l.3). After the U.S. Attorney's Office dismissed this case, Appellant Alphonso Chaves Thompson was indicted by a Spartanburg County grand jury for trafficking cocaine more than 400 grams, possession of a firearm during the commission of a violent crime, and possession with intent to distribute marijuana. (Tr. p.15, ll. 5–11; Indictments).

On January 23, 2012, Appellant's case proceeded to trial before the Honorable J. Derham Cole and a jury. Following an extensive pre-trial suppression hearing, the trial court admitted into evidence drugs found during a search of Appellant's parents' home and certain statements Appellant made during the search. (Tr. p.10 – p.93). Appellant was subsequently convicted on all three counts and the trial court sentenced him to concurrent sentences of twenty-five years', five years', and five years' imprisonment, respectively. (Tr. p.384, l. 7 – p.385, l. 24; p.388, ll. 5–21; Sentencing Sheets). This appeal followed.

## STATEMENT OF FACTS

### I. Introduction

In May 2010, Appellant was arrested and charged with trafficking cocaine, possession with intent to distribute marijuana, and possession of a firearm during the commission of a violent crime. (Tr. p.12, ll.10–15). Appellant was charged with these crimes after drugs and guns were found during a search conducted at his parents' home located at 121 River Drive (the "River Drive Home")<sup>1</sup> in the Drayton community of Spartanburg, South Carolina. (Tr. p.39, ll.14–23; p.39, ll.18–23). At the time of the arrest, and for several years prior, Appellant lived in Fountain Inn and Greenville County, South Carolina, and he owned and operated "Ridiculous Rides," a body shop in Boiling Springs. (Tr. p.39, ll.16–17; p.47, ll.6–10; p.292, l.3 – p.293, l.4; p.294, ll.10–19).<sup>2</sup>

### II. The Investigations

*\*As this is a search warrant case, these background investigation facts are drawn primarily from the Spartanburg County Narcotics Division's (SCND) affidavit in support of the warrant.*

#### A. The First Investigation: 2007-2009

In June of 2007, the SCND, during an investigation run by Investigator Chris Raymond, received information from two confidential informants that they had been buying cocaine from Appellant. (Ct. Ex. 1). In 2008, an informant told the SCND that Appellant resided "at the end of River St." In January of 2009, "two more different" informants identified Appellant as a cocaine supplier. (*Id.*)

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<sup>1</sup> At trial, the home was alternatively referred to as River "Drive" and River "Street."

<sup>2</sup> Appellant owned the body shop for approximately three years at the time of trial and he had been working on cars for approximately fifteen years. (Tr. p.294, l.10 – p.296, l.7).

In February of 2009, a man named Jose Luis Diaz-Arroyo was arrested while transporting a kilogram of cocaine. (*Id.*) Following his arrest, Diaz-Arroyo stated that he and his brother-in-law, Alejandro Sosa Galvan, were supplying Appellant with cocaine “at this River St.” address. (*Id.*) Apparently, this led to the Diaz-Arroyo/Sosa-Galvan case being associated with Appellant’s case and a joint federal-state task force, run primarily by Special Agent (“S/A”) Russell Davis and Inv. Raymond. (Tr. p.27, l.24 – p.28, l.7).

In July of 2009, Inv. Raymond had an unknown informant conduct a “controlled buy” from a man named Deangelo Young. (Ct. Ex. 1). Mr. Young, aka “Little Man,” took \$4,000 from this unknown informant, and met with Appellant at Appellant’s girlfriends’ house at *1868 Tamara Way*. (*Id.*) Mr. Young later returned and apparently gave this unknown informant four ounces of cocaine. This transaction did not involve the River Drive Home. (*Id.*) Appellant was not arrested or charged during this first investigation.

**B. The Second Investigation: 2010**

In spring 2010, the SCND conducted surveillance on the River Drive Home and saw Appellant “*visit*” the River Drive Home. (*Id.*) On May 11, 2010, the SCND bought cocaine from a man named Arthur Jones. When Jones was subsequently arrested, he told the SCND that he was buying cocaine from Appellant. (*Id.*) So, the SCND convinced Jones to cooperate. (*Id.*) The following day, May 12, Jones called Appellant’s cell phone. (*Id.*) After this conversation, Appellant arrived at *Jones’ home*, took money from Jones, and left—*no drugs were exchanged*. (*Id.*; Tr. p.49, ll.1–12).

## **II. The Warrants**

### **A. The Arrest Warrant**

On May 13, 2010, the day after Appellant went to *Jones' home* and *did not sell him any drugs*, Inv. Raymond obtained an arrest warrant for Appellant from Spartanburg County magistrate Charles Jones.<sup>3</sup> (Tr. p.90, ll.3–5; State's Ex. 3). In his affidavit supporting the warrant application, Inv. Raymond averred that Appellant trafficked in cocaine the previous day. Thus, the magistrate signed an arrest warrant based solely upon a drug deal *that did not occur*. (Tr. p.30, l.3 – p. 31, l.2; State's Ex. 3).

### **B. The Search Warrant**

That same day, Inv. Raymond also applied for a warrant to search the River Drive Home. Although he applied for both warrants on the same day, Inv. Raymond sought out a different judge, Circuit Court Judge Hayes, for the search warrant. (Court's Ex. 2). Inv. Raymond did not present any sworn testimony. (Tr. p.16, l.19 – p.17, l.2; p.56, ll.3–4; Ct. Ex. 2). Thus, the affidavit was the only basis for the search of the River Drive Home. (Tr. p.55, l.17 – p. 56, l.5). Inv. Raymond also requested a “No Knock”<sup>4</sup> warrant by summarily concluding that drug trafficking organizations are “violent.” (Ct. Ex. 2). Notably absent from this affidavit—the vast majority of which details an investigation that took place two to three years prior—is any indication as to how or why any of the informants described in the affidavit were supposedly reliable or why Inv. Raymond believed that any drugs were going to be found *in the River Drive Home*.

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<sup>3</sup> Although the arrest warrant was filed May 14, it was signed on May 13. (State's Ex. 3; Tr. p.89, l.24 – p.90, l.5).

<sup>4</sup> “No Knock” warrants are what they say they are—the officer is not required to knock before kicking down the suspect's door.

### **III. May 14, 2010.**

#### **A. The Search**

On May 14, 2010, officers simultaneously executed three search warrants. (Tr. p.11, ll.19–22). The first and second were executed at Appellant’s home at 110 Larchwood Dr. and his girlfriend’s home at 1868 Tamara Way, respectively. (Tr. p.11, ll.12–22). No drugs were found. (Tr. p.12, ll.4–9). The third was executed at his parents’ River Drive Home.<sup>5</sup> A team of officers drove through the fence and swarmed the property. (Tr. p.159, l.19 – p.160, l.25). Upon entering the home, the officers encountered Appellant’s elderly father, handcuffed him and began their search. (Tr. p.161, l.6 – p.161, l.2). Eventually, the officers found cocaine and marijuana on the property. (Tr. p.11, l.23 – p.12, l.3; p. 212, ll. 2–12). The officers also found five weapons inside the home. (*Id.*)

#### **B. The Arrest**

While the River Drive Home search was underway *but before anything was found*, S/A Davis and Officer Joe Pharis were arresting Appellant at Ridiculous Rides. (Tr. p.88, l.21 – p.89, l.19; p.197, l.24 – p. 198, l.13). The arrest was made pursuant to the arrest warrant that was based solely on a drug deal that did not occur. (Tr. p.56, l.14 – p.57, l.13; p.89, ll. 3–11; p.92, l.17 – p.93, l.6). The officers transported Appellant to the River Drive Home. (Tr. p.90, ll.19–21).

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<sup>5</sup> There was no dispute at trial that Appellant did not reside at or own the River Drive Home. Ernest Grant, the home’s owner, testified that Appellant’s mother was purchasing the home from him via a lease-to-own contract. (Tr. p.145, l.23 – p.148, l.25; p.153, l.21 – p.154, l.7; p.296, l.14 – p.297, l.14; Def. Ex. 4). And, Officer Hunter, who was part of the search team, testified that Appellant did not live there. (Tr. p.187, ll.18–23). Furthermore, Inv. Raymond’s arrest warrant application listed Appellant’s address as 110 Larchwood Dr. Simpsonville, SC. (State’s Ex. 3).

### **C. The “Confession”**

At the River Drive Home, S/A Davis and Inv. Raymond had Appellant sit on the tailgate of Inv. Raymond’s truck. (Tr. p.301, l.22 – p.302, l.3). During the course of an approximately four hour conversation, which occurred during the search, the officers revealed that they had found drugs in the garage. (Tr. p.302, ll.6–7; p.304, ll.2–15). When Appellant denied any knowledge of any drugs, S/A Davis and Inv. Raymond repeatedly told Appellant that they were going to arrest his parents if he did not admit they were his. (Tr. p.304, l.13 – p.305, l.9). Based on these threats and Appellant’s belief that his elderly father could not survive in jail, Appellant confessed both in writing and verbally to the drugs; he did not confess to owning, nor did he even mention, any weapons. (Tr. p.78, l.3 – p.79, l.17; State’s Ex.’s 1 and 2).

### **IV. The Federal Case<sup>6</sup>**

In October of 2010, based on the search of the River Drive Home, a superseding federal indictment was returned, charging Appellant with conspiracy. (Tr. p.12, l.25 – p. 13, l.3). A civil forfeiture action was also commenced in Greenville County, where Appellant resided, to seize currency found in Appellant’s home. (Tr. p.13, ll.7–9). Three months later, after voluminous discovery and several motions, the U.S. Attorney’s Office dismissed Appellant’s case. (Tr. p.13, ll.10–13). Prosecuting assistant U.S. Attorney Mormon stated that he (Mormon) had had misgivings about the probable cause for the search of the River Drive Home from the very beginning and the discovery process had not changed his mind. (Tr. p.13, ll.14–20). Again, according to Mr. Mormon, two federal magistrates had rejected the task force officers’ attempts to obtain a federal search

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<sup>6</sup> This section is drawn from defense counsel’s background recitation to the trial court during the suppression hearing.

warrant for the River Drive Home prior to Judge Hayes issuing the state warrant, and Mormon did not believe there was probable cause for the search. (Tr. p.14, ll.13–18). Greenville County also withdrew their civil forfeiture action and returned Appellant’s money, indicating they could not carry their burden of proof. (Tr. p.15, ll.12–16).

**V. The State’s Case**

**A. The Suppression Hearing**

Following the federal dismissal, the Spartanburg County Solicitors’ Office chose to prosecute Appellant and he was ultimately indicted for trafficking cocaine 400 grams, possession of marijuana with intent to distribute, and possession of a weapon during the commission of a violent crime.<sup>7</sup> (Tr. p.15, ll.5–11; Indictments). At a pre-trial suppression hearing, trial counsel argued that Appellant’s seizure and the subsequent search of the River Drive Home violated the Fourth Amendment, Article I, section 10 of the South Carolina constitution, and section 17-13-140 of the South Carolina Code. (Tr. p.16, l.4 – p. 64, l.11). During the hearing, trial counsel argued, among other things, that the search warrant affidavit: (1) provided no evidence that any of the informants were reliable or that any drugs were likely to be found at the River Drive Home; (2) was based upon extremely stale information; and (3) was filled with conclusory statements. (*Id.*) In response, the State argued, in part, that an informants’ reliability does not “ha[ve] to be corroborated” or “identified as reliable” and that the “accumulation of evidence

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<sup>7</sup> Appellant was also indicted for trafficking cocaine more than 200-grams but less than 400 grams and possession of a stolen weapon. (Tr. p.12, ll.10–15). The 200 gram charge was dismissed by a magistrate judge for lack of probable cause, and the weapon charge was *not proessed*. (Tr. p.12, ll.16–21).

corroborates itself.”<sup>8</sup> (Tr. p.51, ll.14–19). Appellant also attempted to suppress his confession. (Tr. p.64, l.12 – 93, l.17). Appellant’s motions were denied. (Tr. p.64, ll.6–11; p.93, ll.12–16).

## **B. The Trial**

At trial, the State did not produce a single witness who testified that Appellant owned the River Drive Home or exercised dominion and control over the property. (Tr. p.283, l.22 – p.286, l.20). The State also did not introduce any fingerprint or identification evidence to link Appellant to the drugs or any other item found in the River Drive Home. (*Id.*) And, the State did not demonstrate that any of the weapons were ever in Appellant’s possession. (*Id.*) As a result, defense counsel moved for a directed verdict, arguing that the State had not proven constructive possession of either the drugs or weapons. (*Id.*) In response, the State argued that “[Appellant’s] own statement links him to the property in question. This is a constructive possession case, and the link is provided through the interviews, written and verbal, with the Defendant himself.” (Tr. p.286, l.22 – p.287, l.5). Although the trial court acknowledged that even Appellant’s “confession” did not mention any weapons, Appellant’s directed verdict motion was denied. (Tr. p.287, ll.6–9; p.287, l.15 – p.288, l.8).

Following Appellant’s testimony, where he again denied knowledge of the drugs and explained the officers’ threats, the jury found him guilty on all three counts. (Tr. p.316, ll.12–14; p.384, l. 7 – p.385, l.24). The trial court sentenced Appellant to

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<sup>8</sup> The State also argued that the trial court should place “great weight” on the fact that another circuit court judge, instead of a magistrate, issued the warrant. (Tr. p.49, ll.21–24). The State provided no support for this theory because there is none.

concurrent terms of twenty-five years', five years' and five years' imprisonment, respectively. (Tr. p.388, ll.5-21). This appeal followed.

## ARGUMENTS

Simply put, this case involves federal and state officers anxious to make an arrest and capitalize on asset forfeiture laws. Unable to survive the exacting scrutiny of the federal system, they went in search of a more sympathetic ear. Following the search and arrest, the officers were again unable to survive federal scrutiny. They again went in search of a sympathetic forum. They found it. The U.S. and South Carolina Constitutions and section 17-13-140 of the South Carolina Code do not countenance this behavior—even when the government is sure they have their man.<sup>9</sup> For several reasons, Appellant’s convictions should be reversed.

### **I. The Trial Court Erred in Denying Appellant’s Motion to Suppress All Evidence Found As a Result of The Illegal Search.**

Appellant’s challenge to the affidavit in support of the search warrant is brought pursuant to the Fourth Amendment and Article I, section 10 of the U.S. and South Carolina Constitutions, respectively, as well as section 17-13-140 of the South Carolina Code.

#### **A. Standard of Review**

When reviewing a magistrate’s decision to issue a search warrant, the duty of the reviewing court is to ensure that the magistrate had a *substantial basis* upon which to conclude that probable cause existed. State v. Baccus, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). The reviewing court may consider only information brought to the magistrate’s attention. State v. Gentile, 373 S.C. 506, 513, 646 S.E.2d 171, 174 (Ct.App. 2007).

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<sup>9</sup> The South Carolina Constitution and section 17-13-140 actually provide *greater* protection than the Fourth Amendment.

**B. The affidavit does not pass the totality of the circumstances test.**

When applying both the federal and state constitutions as well as South Carolina's search warrant statute, an appellate court reviewing the underlying affidavit must decide whether the magistrate had a substantial basis for concluding probable cause existed. State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct.App. 2003). This review is governed by the "totality of the circumstances test." Id. For several reasons, Inv. Raymond's affidavit cannot pass this test.

*i. Failure to demonstrate veracity and basis of knowledge.*

Under the totality of the circumstances test, the reviewing court considers all circumstances, including status, basis of knowledge, and veracity of the informants. Id. at 685, 583 S.E.2d at 442. Veracity and basis of knowledge are treated as closely intertwined in that they may usefully illuminate the commonsense, practical question of whether there is probable cause. Id. (quoting Illinois v. Gates, 462 U.S. 213, 230 (1983)). In Gates, the U.S. Supreme Court explained how these factors interact:

If, for example, a particular informant is known for the unusual reliability of his predictions of certain types of criminal activities in a locality, his failure, in a particular case, to thoroughly set forth the basis of his knowledge surely should not serve as an absolute bar to a finding of probable cause based on his tip. Likewise, if an unquestionably honest citizen comes forward with a report of criminal activity—which if fabricated would subject him to criminal liability—we have found rigorous scrutiny of the basis of his knowledge unnecessary. Conversely, even if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case.

Gates, 462 U.S. at 233-34. Inv. Raymond’s affidavit lists a total of eleven informants. Although Inv. Raymond employed the creative tactic of labeling these individuals “Confidential **Reliable** Informants,” absolutely nothing in the affidavit indicates they were actually reliable. (Ct. Ex. 2).

a. Two Unidentified Informants<sup>10</sup>

The first two informants are not identified. According to Inv. Raymond, these two informants stated they had been buying cocaine from Poo Bear—later identified as Appellant—over the course of several months in 2007. The only evidence that was corroborated from these two informants were “vehicle descriptions and photo identifications.” (*Id.*)

b. Keith Jeter

In August of 2007, Mr. Jeter stated that he was being supplied cocaine by Appellant, who would bring cocaine to *Mr. Jeter’s house*. (*Id.*)

c. Fred Meadows

In September of 2008, Mr. Meadows told the SCND that Appellant drove a Ford F-350 and supplied Mr. Meadows with cocaine at *Mr. Meadows’ house*. (*Id.*)

d. Unidentified Informant

In late 2008, an unidentified informant stated Appellant lived at the “end of River St.” (*Id.*)

e. “Two more different” Informants

In January of 2009, “two more different” informants stated that they purchased cocaine from Appellant and confirmed that Appellant drove a Ford F-350. (*Id.*)

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<sup>10</sup> Again, these facts are drawn directly from Inv. Raymond’s affidavit, which the State conceded was the only basis for the warrant. (Tr. p.16, l.19 – p.17, l.2; p.56, ll.3–4).

f. Diaz-Arroyo & Sosa-Galvan

In February of 2009, Diaz-Arroyo and Sosa-Galvan were arrested with a kilogram of cocaine. Diaz-Arroyo stated he was supplying Appellant with cocaine at the River Drive Home.<sup>11</sup> (*Id.*)

g. Unidentified Informant and DeAngelo Young

In July of 2009, an unidentified informant stated he was getting cocaine from Young who, according to the unidentified informant, was being supplied by Appellant. Thus, an unidentified criminal stated that he was being supplied by another criminal who was being supplied by Appellant. This unidentified informant attempted to make a

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<sup>11</sup> As it turns out, the DEA investigation does not appear to indicate that Diaz-Arroyo made this statement. During the suppression hearing, the trial court was presented with three “DEA-6’s” which are essentially reports of investigation. (Def. Ex.’s 1–3; Tr. p.25, l.18 – p.28, l.20). In these reports, S/A Davis detailed his investigation and his interviews with Diaz-Arroyo. Nowhere in these summaries did S/A Davis ever say that Diaz-Arroyo even mentioned the River Drive Home. (Def. Ex.’s 1 – 3; Tr. p.25, l.23 – p.26, l.19). Although these DEA-6’s were not reviewed by Judge Hayes prior to issuing the search warrant, they were provided to and considered by the trial court during the suppression hearing. (Tr. p.25, l.18 – p.28, l.20; p.55, l.13 – p.56; l.2). This is because, of course, S/A Davis (a federal agent) was not present when Inv. Raymond applied for the state warrant. (Tr. p.55, ll.11–13). However, according to the State, S/A Davis “would have been the one that would have supplied the information to Chris Raymond who prepared the affidavit.” (Tr. p.55, ll.8–10). From this, only one of two conclusions can be drawn. Either Inv. Raymond was confused or, he put materially false information in the warrant application. Therefore, this Court should consider the DEA 6’s when determining whether Inv. Raymond was acting in good faith.

“controlled buy” from *Mr. Young*. SCND followed Mr. Young from the buy to *1868 Tamara Way* and observed him meeting with Appellant.<sup>12</sup> (*Id.*)

h. Authur Jones

On May 11, 2010, SCND bought cocaine from Mr. Jones who agreed to cooperate. Mr. Jones arranged a meeting with Appellant. SCND observed the meeting on May 12, 2010, at *Mr. Jones’ house* where *no drugs are exchanged*. (*Id.*) This was confirmed by the DEA-6. (Def. Ex. 3, p. 108, ¶ 13).

All eleven of these informants were criminals who were cooperating after their arrest; thus, they were extremely motivated to lie. Nowhere in the affidavit—not a single time—did Inv. Raymond indicate how or why any of these individuals were supposedly reliable or whether they had previously supplied reliable information. And, nothing that these informants said was ever independently corroborated—other than the fact that Appellant drove a Ford F-350. This deficiency is especially important here because all of the information from these informants was hearsay which is only proper “so long as the magistrate is afforded a basis for determining the credibility of the informer.” State v. Sachs, 264 S.C. 541, 555-56, 216 S.E.2d 501, 508-09 (1975) (citing U.S. v. Harris, 403 U.S. 573 (1971)).

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<sup>12</sup> Again, this statement in the affidavit is not supported by the DEA-6 which does not say who Mr. Young met with at 1868 Tamara Way because the officers’ could not follow the informant into the community. (Def. Ex. 3, p. 107, ¶ 6). However, the DEA-6 does confirm that the transaction took place at Tamara Way. (*Id.*) The DEA-6 also does not say who Mr. Young met with later at “the car wash.” (Def. Ex. 3; Tr. p.31, l.6 – p.32, l.4). In any event, both the affidavit and the DEA-6’s agree that this transaction did not take place at the River Drive Home. Indeed, the DEA-6’s do not mention the River Drive Home at all.

Inv. Raymond made two additional attempts to bolster his affidavit. First, he labeled his informants “Confidential *Reliable* Informants” or “CRIs.” Simply calling people reliable does not make them so. See U.S. v. Wilhelm, 80 F.3d 116, 121 (4th Cir. 1996) (affidavit that uses phrases such as “concerned citizen,” “mature person,” and describes informant as having a “truthful demeanor” does not cover for fact that no evidence of reliability has been provided). Second, Inv. Raymond discussed two controlled buys. Controlled buys, if properly conducted, can provide facts sufficient for probable cause. Dupree, 354 S.C. at 689, 583 S.E.2d at 444. However, in this case, neither of the “controlled buys” involved the River Drive Home and one of them did not even involve drugs. The first did not involve the River Drive Home as it was an apparent purchase between an unidentified informant, Mr. Young, and Appellant at an unidentified location and 1868 Tamara Way. The second occurred between Appellant and Mr. Jones at Jones’ house *where no drugs were exchanged*. Thus, as a matter of law, the trial court erred in finding the affidavit provided sufficient indicia of the informants’ reliability.

ii. *The affidavit failed to provide a sufficient link to the River Drive Home.*

“The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific ‘things’ to be searched for and seized are located on the property to which entry is sought.” Zurcher v. Stanford Daily, 436 U.S. 547, 556 (1978); see also State v. Ferrell, 274 S.C. 401, 408, 266 S.E.2d 869, 872 (1980) (citing Zurcher). Thus, residential searches are upheld only where some information links the criminal activity *to that residence*. U.S. v. Lalor, 996 F.2d 1578, 1583 (1993).

From the informants, Inv. Raymond presented exactly two links to the River Drive Home: first, from an unidentified informant in 2008 who said that Appellant *lived* at the end of River St;<sup>13</sup> second, from Diaz-Arroyo, a drug trafficker who said that he delivered cocaine to the River Drive Home in February 2009—fifteen months before the search of the home and Appellant’s arrest at a different location. From his investigation, Inv. Raymond noted that during spring 2010, officers observed Appellant “*visit*” the River Drive Home—*where his parents lived*.<sup>14</sup> These links are not enough to provide probable cause that drugs would be found at the River Drive Home. See Gentile, 373 S.C. at 514-15, 646 S.E.2d at 175-76 (link to residence not sufficient even though officers verified traffic to defendant’s residence, citizen reported marijuana smell from residence, and officers discovered marijuana on another man after he left the residence).

Compared to this case, the officers in Gentile provided a plethora of evidence. Here, unlike Gentile, the officers did not verify anything involving drugs at the River Drive Home, which, unlike the defendant in Gentile, was not Appellant’s home. They also did not receive any citizen tips or complaints, and they never found or observed anyone leaving the River Drive Home with drugs at any point in time—let alone immediately prior to the issuance of the warrant. Thus, as a matter of law, the trial court erred in finding the affidavit provided a sufficient link to the River Drive Home.

*iii. All relevant information in the affidavit was stale.*

A probable cause affidavit must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time. State v.

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<sup>13</sup> Again, this turned out to be false.

<sup>14</sup> Curiously, at trial, the State attempted to bolster its “link” to the River Drive Home by introducing a piece of mail found at the River Drive Home that was addressed to Appellant at 106 Rocking Chair Lane—*not the River Drive Home*. (Tr. p.230, l.1–9).

Corns, 310 S.C. 546, 550, 426 S.E.2d 324, 326 (Ct.App. 1992); see also State v. Winborne, 273 S.C. 62, 65, 254 S.E.2d 297, 298 (1979) (“The time should be sufficiently short to justify the conclusion that the evidence is likely still at the place where it was seen.”). There are two types of staleness arguments, this case falls into the second category—the warrant itself is suspect because the information is too old to furnish “present” probable cause. U.S. v. McCall, 740 F.2d 1331, 1336 (4th Cir. 1984). Thus, the ultimate inquiry is whether the affidavit furnished probable cause to believe that drugs would be found in the River Drive Home *at the time of the search*. Id.

Assuming *arguendo* that all of the informants listed in the affidavit were 100% reliable and that there were sufficient links to the River Drive Home, the last “link” in the affidavit between drugs and the River Drive Home occurred, at best, in February 2009—fifteen months before the warrant was issued—when Diaz-Arroyo said that he supplied Appellant cocaine at the home. The remainder of the affidavit as it relates to the River Drive Home contains the following facts: one, Appellant drove several different vehicles to and from the home; and two, investigators witnessed Appellant visiting the home. This is simply not enough especially because reasonable people would—of course—regularly visit their parent’s home. Cf. State v. Baker, 251 S.C. 108, 110-11, 160 S.E.2d 556, 557 (1968) (42 days between issuance of warrant and search too long); U.S. v. Brown, 958 F.2d 369, \*4 (4th Cir. 1992) (stale information where affidavit based on statements from four months prior); State v. Thompson, 363 S.C. 192, 206, 609 S.E.2d 556, 564 (Ct.App. 2005) (72 hours between possession of crack and affidavit not stale); State v. Clifton, 302 S.C. 431, 433-34, 396 S.E.2d 831, 832-33 (Ct.App. 1990) (72 hours

not stale) overruled on other grounds by Brightman v. State, 336 S.C. 348, 352, n.5, 520 S.E.2d 614, 616 n.5 (1999).

*iv. Summary of Affidavit.*

Inv. Raymond clearly believed he had his man and submitted a very lengthy affidavit to that effect. However, the affidavit is filled with conclusions drawn from hearsay statements made two and three years prior by unidentified, unreliable informants who were very motivated to lie. Furthermore, even if the informants were all reliable, nothing in the affidavit provides a sufficient link to the actual place to be searched—the River Drive Home. And, at best, the last link in the affidavit between drugs and the River Drive Home occurred fifteen months prior.

The assistant solicitor aptly summed up the State’s position when he said “accumulation of evidence corroborates itself.” In fact, accumulation of evidence does not corroborate itself. Indeed, the “whys” are critically important to a probable cause inquiry. See State v. Smith, 301 S.C. 371, 372-73, 392 S.E.2d 182, 183 (1990) (affidavit defective for failing to set forth *why* police believed defendant robbed particular place); State v. Weston, 329 S.C. 287, 291-92, 494 S.E.2d 801, 803 (1997) (affidavit defective for failing to show *why* defendant’s car contained contraband); Baccus, 367 S.C. at 51-52, 625 S.E.2d at 221-22 (affidavit failed to show *why* defendant committed crime).

Sheer volume of words does not equal a sufficient basis for probable cause. This affidavit—which was unsupported by sworn testimony—did not provide Judge Hayes

with a “substantial basis to conclude that probable cause existed.” For this reason, the trial court’s denial of Appellant’s suppression motion should be reversed.<sup>15</sup>

**C. All evidence seized at the River Drive Home, including Appellant’s “confession,” should be suppressed as a result of the illegal search.**

The purpose of the exclusionary rule is to deter Fourth Amendment violations. State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012). It “compel[s] respect for the constitutional guaranty in the only effectively available way—by removing incentive to disregard it.” State v. Jenkins, 398 S.C. 215, 229, 727 S.E.2d 761, 768 (Ct.App. 2012). The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police and the evidence that has been obtained by the exploitation of that illegality. Hutto v. State, 376 S.C. 77, 81, 654 S.E.2d 846, 848 (Ct.App. 2007). And, the taint of an illegal search can only be removed if the items or facts were obtained independent of the illegal act. In re Jeremiah W., 361 S.C. 620, 624 n.2, 606 S.E.2d 766, 768 n.2 (2004).

There is simply no reasonable dispute that the police were only at the River Drive Home pursuant to the search warrant. No exigent circumstances existed and the police could not have independently obtained the drugs, weapons, Appellant’s confession, or any of the other items found at the River Drive Home and introduced at trial without the

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<sup>15</sup> Even if this affidavit could survive an ordinary Fourth Amendment inquiry—and it cannot—both the South Carolina Constitution and section 17-13-140 impose stricter requirements than the Fourth Amendment and a warrant that would survive Fourth Amendment scrutiny may still be defective under our constitutional and statutory scheme. State v. Weaver, 374 S.C. 313, 321-22, 649 S.E.2d 479, 483 (2007) (South Carolina constitution offers higher level of privacy protection); State v. Herring, 387 S.C. 201, 214-15, 692 S.E.2d 490, 497 (2009) (code section imposes stricter requirements than Fourth Amendment).

search warrant.<sup>16</sup> Accordingly, the exclusionary rule applies and *all evidence* found at the River Drive Home, including Appellant's confession, should be suppressed.<sup>17</sup>

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<sup>16</sup> Neither of Appellant's "confessions" mentioned any drugs found inside the home or any other the other items introduced at trial; therefore, the State did not demonstrate he constructively possessed any of these items.

<sup>17</sup> Although a harmless error analysis may be applicable, State v. Reeves, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (Ct.App. 2005), the only evidence at trial were the drugs and weapons themselves and Appellant's "confession"; thus, the failure to exclude this evidence cannot be considered an "insubstantial error not affecting the result." State v. Covert, 368 S.C. 188, 196-97, 628 S.E.2d 482, 487 (Ct.App. 2006). Indeed, had the trial court correctly granted Appellant's pre-trial motions, there likely would not have been a trial at all.

**II. The Trial Court Erred in Denying Appellant's Motion to Suppress His Coerced Confession that Flowed From an Illegal Arrest.**

Appellant's coerced "confession" should also have been suppressed because it was obtained in violation of the Fourth Amendment's prohibition against illegal seizures and the Fifth Amendment and Due Process clause prohibition against coerced confessions.

**A. Appellant's arrest was unsupported by probable cause.**

In determining the presence of probable cause for an arrest, the affidavit must state facts upon which an ordinarily prudent and cautious person would believe that a person is guilty of a crime. Gist v. Berkeley Cnty. Sheriff's Dept., 336 S.C. 611, 615-16, 521 S.E.2d 163, 165 (Ct.App. 1999). Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. State v. Robinson, 335 S.C. 620, 630, 518 S.E.2d 269, 274 (Ct.App. 1999). The following is the entirety of Inv. Raymond's affidavit in support of Appellant's arrest:

Description of Offense: Drugs/Trafficking Cocaine, 200g or more, but less than 400 g.

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts.

That on May 12, 2010 in the county of Spartanburg, one Alphonso Chaves Thompson did knowingly sell, manufacture, bring into the state and/or possess between 200 and 400 grams of cocaine a Schedule II controlled substance without authority to do so.

Affiants belief is based upon police investigation.<sup>18</sup>

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<sup>18</sup> Officer Pharis confirmed that Appellant was arrested based on "the incident that occurred on May 12." (Tr. p.89, 1.24 – p.90, 1.16).

Thus, Inv. Raymond described the offense and said that he believed Appellant committed the offense. This bare recital is the textbook example of a deficient affidavit. See Overton v. Ohio, 122 S.Ct. 389, 390 (2001) (explaining that the Supreme Court has made clear that affidavits which merely set forth the crime and state that the defendant “did it” are not sufficient without an indication of how or why the officer knows). Indeed, on its face, it would be difficult to conceive of an affidavit that was more lacking. Finally, and perhaps most importantly, Inv. Raymond could not possibly have believed that Appellant sold any amount of drugs on May 12—let alone 400 grams—because Inv. Raymond also drafted the affidavit in support of the search warrant describing the May 12 “transaction” at Mr. Jones’ house where *no drugs whatsoever were exchanged*.<sup>19</sup>

**B. Appellant’s “confession” should be suppressed because it was obtained following an illegal arrest.**

It is settled law that a confession obtained through custodial interrogation following an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession so that the confession is sufficiently an act of free will to purge the primary taint. Oregon v. Elstad, 470 U.S. 298, 306 (1985). This is because a violation of the Fourth Amendment’s prohibition against illegal seizures mandates a broad application of the “fruits” doctrine, no matter how probative the “fruits.” Brown v. Illinois, 422 U.S. 590, 601-02 (1975). Thus, the inquiry into a confession obtained via a Fourth Amendment violation is not “cured” by a finding

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<sup>19</sup> This may explain Inv. Raymond’s curious choice to seek out two separate judges for the arrest and search warrants despite the fact that they were issued the same day.

of voluntariness for purposes of the Fifth Amendment. Id.,<sup>20</sup> see also State v. Adams, 277 S.C. 334, 339, 659 S.E.2d 272, 275 (Ct.App. 2008) (“[C]onsent procured is per se invalid unless it is both voluntary and not an exploitation of the unlawful detention.”).

Appellant’s “confession” was obtained following his arrest at Ridiculous Rides. Thus, if the arrest is deemed to have been in violation of the Fourth Amendment—which, as explained above, it was—then Appellant’s confession is inadmissible unless this Court determines the taint has been purged. To determine whether the taint has been purged, this Court considers several factors: (1) the purpose and flagrancy of the police misconduct; (2) whether Miranda warnings were given; (3) the temporal proximity of the arrest and confession; and (4) the presence of intervening circumstances. State v. Greene, 330 S.C. 551, 560, 499 S.E.2d 817, 821 (Ct.App. 1997); U.S. v. Watson, 703 F.3d 684, 697 (4th Cir. 2013).

In this case, the very nature of the prolonged four hour detention was inherently coercive. Cf. Brown, 422 U.S. at 605 (concluding that the “impropriety of the arrest was obvious”). Although Miranda warnings were issued, they do not automatically cure the taint of an illegal arrest. U.S. v. Sanders, 954 F.2d 227, 231 (4th Cir. 1992). Instead, the record must satisfy the State’s burden of showing a break in the causal chain between Appellant’s unlawful arrest and his “confession.” Brown, 422 U.S. at 603-04. Here, this “temporal proximity” weighs strongly in Appellant’s favor because he was not freed from Inv. Raymond’s custody at any point between his initial illegal seizure and the time he

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<sup>20</sup> Although the trial court did not undertake a specific Brown inquiry, it did find that Appellant’s confession was voluntary. Thus, this Court may undertake its own inquiry where—as here and in Brown—“the trial resulted in a record of amply sufficient detail and depth from which the determination may be made.” Rawlings v. Kentucky, 448 U.S. 98, 107 (1980); see also U.S. v. Seidman, 156 F.3d 542, 548 (4th Cir. 1998).

“confessed.” Thus, the causal connection between his illegal arrest and confession was unbroken. Moreover, there were no “intervening circumstances” between the illegal arrest and Appellant’s confession. Appellant was continuously restrained in the back of Inv. Raymond’s pick-up truck for approximately four hours where the authorities later obtained his statement. The only “intervening act of significance” was the discovery of the drugs which, as explained, were found during an illegal search.<sup>21</sup> Accordingly, Appellant’s confession should be suppressed as it was obtained following an illegal seizure. See State v. Tindall, 388 S.C. 518, 524, 698 S.E.2d 203, 206 (2010) (suppressing cocaine and statement as fruit of poisonous tree flowing from illegal seizure).

**C. Appellant’s “confession” should be suppressed as a violation of the Fifth Amendment and Due Process Clause prohibition of coerced confessions.**

A confession is not admissible unless it was voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). A determination of voluntariness requires an examination of the totality of the circumstances, including the background, experience, and conduct of the accused; his age; the length of custody; and police misrepresentations. State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct.App. 2007). The pertinent inquiry is whether the defendant’s will was overborne. Myers, 259 S.C. at 47, 596 S.E.2d at 492. Importantly, a confession may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or

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<sup>21</sup> Furthermore, both Appellant and Inv. Raymond agreed that Appellant never actually saw any drugs; thus, this does not qualify as an intervening circumstance. Watson, 703 F.3d at 697 n.17.

by the exertion of improper influence. Corns, 310 S.C. at 552, 426 S.E.2d at 327. Appellant's "confession" was improperly coerced.

During the Jackson v. Denno hearing, Appellant testified that Inv. Raymond repeatedly threatened that his parents, including his sick elderly father, would be arrested if Appellant did not admit the drugs were his. (Tr. p.76, l.10 – p.79, l.20). Specifically, he explained:

[T]hey kept telling me, well, if you don't confess to these drugs, we're going to take your parents to jail, your daddy to jail. . . . I said look at my daddy, man, I said my daddy can't go to jail. I said my daddy's sick. And, you know, he was like, well, if you don't confess to it, he's going to jail.<sup>22</sup>

(Tr. p.77, ll.8–15). According to Appellant, the interrogation lasted approximately four hours. Inv. Raymond testified that it lasted at least three hours. (Tr. p.275, ll.4–8). Appellant also testified that when he started his verbal confession by explaining that he was confessing because of the threats, Inv. Raymond pulled the tape recorder away and said "no, you can't say it like that, you can't say it like I'm promising you something."<sup>23</sup> (Tr. p.78, ll.21–23; p.78, l.25 – p.79, l.2). Finally, Appellant testified that he started his written confession by explaining the same threats but was again stopped by Inv. Raymond. (Tr. p.79, ll.3–7; p.306, ll.17–25). Although Inv. Raymond originally denied having threatened Appellant's parents, he later admitted that "[Appellant] thanked me for not arresting his parents." (Tr. p.73, ll.19–21).

Essentially, Inv. Raymond arrested Appellant based upon a drug transaction that did not occur. He transported him to his parents' house and proceeded to interrogate him

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<sup>22</sup> Appellant's father passed away shortly after his arrest.

<sup>23</sup> A review of the confession shows that the tape begins, a voice can be heard (that Appellant asserts is his), the tape is stopped, and then Inv. Raymond begins his recitation.

for approximately four hours. During this interrogation, he repeatedly threatened to arrest Appellant's parents and promised that they would stay out of jail if Appellant confessed. At the time of the interrogation, Appellant had no prior drug convictions and presumably had never been interrogated. (Tr. p.290, l.23 – p.291, l.2). And, he was never even shown the drugs to which he was supposedly confessing. (Tr. p.279, ll.6–18). Indeed, both his written and audio confessions essentially stated “whatever is there is mine.” These threats, combined with Appellant's belief that his elderly father could not survive in jail, overbore Appellant's will such that his “confession” was not voluntary. See Corns, 310 S.C. at 552, 426 S.E.2d at 327 (veiled threats against family amount to involuntary confession); State v. Register, 323 S.C. 471, 479-80, 476 S.E.2d 153, 158 (1996) (confession can be involuntary where defendant fears adverse consequences); see also Lynumn v. Illinois, 372 U.S. 528, 534 (1963) (defendant's will overborne where police threatened to cut off financial aid); Spano v. New York, 360 U.S. 315, 323-24 (1959) (suspect's will overborn when he was led to believe that his police officer friend might be fired if he did not cooperate). Accordingly, Appellant's confession should be suppressed independent of the search and arrest warrants because it was obtained under duress.

**III. The Trial Court Erred in Denying Appellant's Directed Verdict Motion as To The Charge of Possession of a Weapon During The Commission Of a Violent Crime.**

As noted, Appellant was also convicted of possessing a weapon during the commission of a violent crime pursuant to section 16-23-490 of the South Carolina Code. (Tr. p.384, l.7 – p.385, l.24). Appellant received a concurrent sentence of five years' imprisonment. (Tr. p.388, ll.5–21; Sentencing Sheets). If Appellant's conviction for trafficking and possession with intent to distribute is reversed based upon the above arguments, Appellant's weapons' conviction would, of course, also have to be reversed. However, Appellant now provides two separate and independent reasons why his weapons conviction should be reversed irrespective of the drug convictions. *First*, the State did not prove Appellant constructively possessed any weapon. *Second*, the State did not establish any nexus between any weapon and any violent crime, as is required by State v. Whitesides, 397 S.C. 313, 725 S.E.2d 487 (2012).

At trial, the State introduced a total of five weapons, all of which were found inside the River Drive Home. (Tr. p.166, l.10 – p.173, l.19; p.221, ll.17–25). Of these five, the State only even attempted to link one, a 9mm pistol, to Appellant. According to Officer Hunter, who was part of the search team, the 9mm pistol was found in “the first bedroom on the right in the closet at the top of the stairs [of the River Drive Home].” (Tr. p.170, l.3–5). Officer Hunter believed that this weapon was purchased by Appellant in November of 2000. (Tr. p.171, ll.20–25). The State's witnesses admitted that they had not established any connection whatsoever between any of the other weapons and Appellant. (Tr. p.182, l.13 – p.184, l.12). The State's witnesses also conceded that Appellant was not present when the pistol was found; that no one had ever seen him with

the pistol; and that Appellant did not reside at the River Drive Home. (Tr. p.184, l.14–l.185; p.187, ll.7–23; p.198, ll.14–20; p.237, ll.5–15). Moreover, at no point during the trial did any witness ever testify to having seen Appellant with any weapons or using any weapons. And, neither of Appellant’s “confessions” mentioned any weapons.

During trial counsel’s directed verdict motion, the State conceded that this was a constructive possession case and admitted that the only link between Appellant and any of the items found at the River Drive Home was Appellant’s “confession.” (Tr. p.286, l.22 – p.287, l.1).<sup>24</sup> The trial court also recognized that Appellant’s “confession” did not mention any weapons. (Tr. p.287, ll.6–7). Nonetheless, after additional argument, the trial court denied Appellant’s motion in its entirety. (Tr. p.287, l.10 – p.288, l.4). The trial court erred.

#### **A. Constructive Possession**

“To prove constructive possession, the State must show a defendant had dominion and control, or the right to exercise dominion and control, over the [weapon].” State v. Pradubsri, 403 S.C. 270, 282, 743 S.E.2d 98, 105 (Ct.App. 2013). Constructive possession can be proven by direct evidence or by substantial circumstantial evidence. State v. Jackson, 395 S.C. 250, 255, 717 S.E.2d 609, 611 (Ct.App. 2011). In the instant case, there is no reasonable dispute that the only link provided by the State between Appellant and the River Drive Home was Appellant’s confession. No State witness testified to having even seen Appellant at the River Drive Home on a regular basis such

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<sup>24</sup> The jury was also charged on constructive possession at the State’s request, the bulk of the closing arguments focused on constructive possession and, during deliberations, the jury asked a question regarding constructive possession which led to a constructive possession re-charge. (Tr. p. 323, ll. 9 – 15; p. 328 – 349; p. 380, l. 17 – p. 383, l. 16; Ct. Ex. 1).

that an inference could be drawn that he knew of the existence of the prohibited substances. Pradubsri, 403 S.C. at 282, 743 S.E.2d at 105. As to the drugs, Appellant concedes that if his “confession” were properly admitted—and it was not—then the trial court correctly found that direct evidence linked Appellant *to the drugs*. However, as noted by the trial court and as conceded by the State, Appellant’s “confession” did not mention any weapon; thus, there is no direct evidence or any circumstantial evidence—let alone substantial circumstantial evidence—to show that Appellant constructively possessed *any weapon* found at the River Drive Home.<sup>25</sup> Accordingly, the trial court erred in denying Appellant’s motion for a directed verdict as to the weapons charge.

#### **B. Sufficient Nexus**

Even if the State proved Appellant constructively possessed a firearm—and it did not—the State did not provide a sufficient nexus between any firearm and any violent crime. In Whitesides, our supreme court unanimously determined that for purposes of section 16-23-490(A), the State “must prove a nexus between the predicate offense and the defendant’s actual or constructive possession of a firearm during its commission.” Whitesides, 397 S.C. at 316, 725 S.E.2d at 488. The Court explained that even though the General Assembly sought to deter the possession of a firearm in connection with a violent crime, this did not mean that it intended to criminalize the possession of a firearm, no matter how unrelated, to the commission of a violent offense. Id. at 318, 725 S.E.2d at 489. In short, simply because a person *owns* a weapon and *commits* a violent offense does not, *ipso facto*, mean that he *used* a weapon *during* the commission of the violent offense. Thus, the statute only penalizes defendants “who actually or constructively

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<sup>25</sup> Although Appellant initially testified that the pistol that was purchased ten years earlier was his, he explained that he had given it to his father. (Tr. p. 316, l. 18 – p. 317, l. 10).

possess a firearm *in order to further a violent crime* and who thereby increase the attendant risk of harm.” Id. at 318-19, 725 S.E.2d at 490 (emphasis added).

As to establishing the nexus itself, the Whitesides court found that it must be established by showing that a firearm: (1) “furthered, advanced, or helped” in the commission of the crime; (2) was “accessible to the trafficker” and provided a defense against potential robbers; or (3) if the trafficker let everyone know that he was armed, to lessen the chances that a robbery would even be attempted. Id. at 319, 725 S.E.2d at 490; see also U.S. v. Emanuel, 955 F.2d 42, at \*2 (4th Cir. 1992) (analyzing the similar federal statute and explaining the weapon must be either present for protection and to facilitate the likelihood of success or strategically located so as to be quickly and easily available for use during a drug transaction). After establishing that a nexus was required, the Whitesides court found that, in that case, it had been established because the defendant kept the firearm in his car and safe during a drug transaction and ordinarily carried a pistol for the purpose of letting others know that he was armed while dealing drugs. Id.;

This case is easily distinguishable from the factual situation in Whitesides in that the State did not show that any firearm was accessible to Appellant, that he ever let anyone know that he carried a weapon, or that any weapon ever provided Appellant with a defense against potential robbers. Additionally, Appellant did not live at the River Drive Home and he was arrested at Ridiculous Rides without any weapons. Furthermore, the drugs and guns were not even found near each other as the drugs were in a detached garage and the guns were in the River Drive Home. Finally, Appellant was not even arrested *during* a drug transaction such that it is practically impossible for him to have ever *used* a weapon *during* a trafficking offense. Accordingly, Whitesides provides a

separate and independent basis for overturning Appellant's conviction for possession of a weapon during the commission of a violent crime.<sup>26</sup>

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<sup>26</sup> Although Appellant's five year weapons sentence runs concurrent with his twenty-five year drug sentence, it has independent significance because it impacts, among other things, his parole and good time credit eligibility. S.C. Code Ann. § 16-23-490(A)-(E).

## CONCLUSION

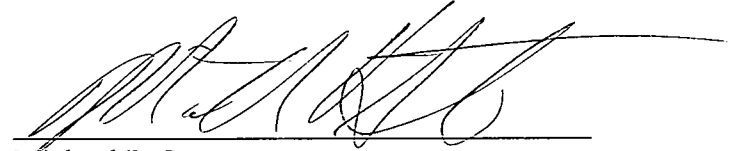
This case involved a bad search and a bad arrest that led to a bad confession. The search, arrest, and confession were only available to the State after the warrant application was rejected by two federal magistrates. This led to a charge that was dismissed by the U.S. Attorneys' Office. For some reason, the State did not exercise the same discretion. Our federal and state constitutions do not permit search and arrest warrants to be issued simply because the officers "are pretty sure" the defendant is a drug dealer. More is demanded and, in this case, more was not provided.

At trial, the State conceded three key points. First, that this is a constructive possession case where the only evidence is the drugs themselves and Appellant's confession. Second, that the only method by which the drugs were recovered was via a search warrant that was supported only by a sworn affidavit. Finally, that the only "link" sufficient to establish constructive possession of the drugs was Appellant's confession. Thus, the State's case only survives if the warrants were sufficient. This case would not have gone to trial had Appellant's suppression motion been properly granted.

Appellant concedes that direct evidence exists linking him *to the drugs*, in the form—and only in the form—of his improperly admitted confession such that the trial court—after admitting the confession—did not err in denying his directed verdict motion. However, absent Appellant's confession, the State did not—indeed it could not—demonstrate that Appellant constructively possessed the drugs. However, as noted, even with the admission of the confession, the State provided absolutely nothing to demonstrate that Appellant constructively possessed any weapon and the State did not

provide any nexus between Appellant, a weapon, and a drug transaction. Accordingly, Appellant requests that his convictions be REVERSED.

Respectfully submitted,



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IN THE SOUTH CAROLINA COURT OF APPEALS

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Appellant Case No. 2012-213141

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The State, Respondent

v.

Alphonso Chaves Thompson, Appellant.

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**PROOF OF SERVICE FOR INITIAL BRIEF OF APPELLANT**

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I, Michael P. Scott, hereby certify that I have served a copy of the PROOF OF SERVICE FOR INITIAL BRIEF OF APPELLANT upon counsel for the other parties by mailing copies to them at the address below via the United States Mail this 2<sup>nd</sup> day of December, 2013.

Mr. Alphonso Chaves Thompson, #349414  
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The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

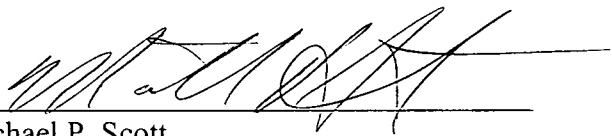
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**DESIGNATION OF MATTER TO BE INCLUDED  
IN RECORD ON APPEAL**

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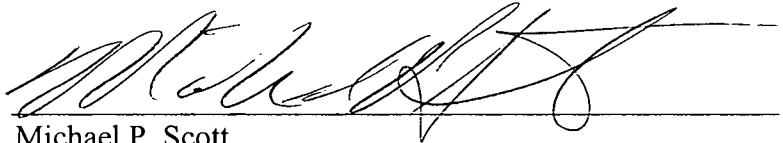
Appellant proposed the following be included in the Record on Appeal:

1. True-billed Indictments;
2. Sentencing Sheets;
3. State's Exhibit 1 (Pre-interrogation waiver form and statement);
4. State's Exhibit 2 (taped confession);
5. State's Exhibit 3 (arrest warrant);
6. State's Exhibit 40 (piece of mail);
7. Defendant's Exhibit 1 (DEA 6);
8. Defendant's Exhibit 2 (DEA 6);
9. Defendant's Exhibit 3 (DEA 6);
10. Defendant's Exhibit 4 (Deed);
11. Court's Exhibit 1 (Jury Question);
12. Court's Exhibit 2 (Search warrant, affidavit, and return);
13. Tr. 10-93;
14. Tr. 145-239;
15. Tr. 249-390.

I certify that this designation contains no matter which is irrelevant to this Appeal.

December 2, 2013

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IN RECORD ON APPEAL**

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I, Michael P. Scott, hereby certify that I have served a copy of the PROOF OF SERVICE FOR DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL upon counsel for the other parties by mailing copies to them at the address below via the United States Mail this 2<sup>nd</sup> day of December, 2013.

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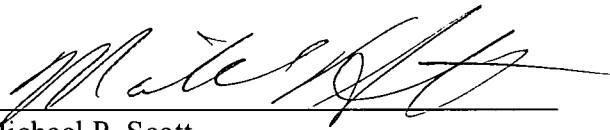
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