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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2025-001886

THE STATE, ...RESPONDENT

v.

TYBERIOUS RAHKEEM PYLES, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

P. SANDERS LINKER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-0918

CYNTHIA SMITH CRICK
Solicitor, Thirteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

Whether the court erred in failing to suppress evidence obtained via a search warrant for Appellant's Facebook records, where the search warrant affidavit intentionally or recklessly misled the judge by omitting critical exculpatory information which would have negated a finding of probable cause, since the evidence was obtained in violation of the Fourth Amendment?

II.

Whether the court erred in admitting Appellant's confession, where his *Miranda* waiver was obtained under false pretenses, since the statements were tendered in violation of Appellant's *Miranda* rights and were involuntarily made under the totality of circumstances?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court abused its discretion in refusing to suppress evidence obtained from Appellant's Facebook pursuant to a search warrant where Appellant failed to prove law enforcement intentionally or recklessly omitted exculpatory information on a search warrant affidavit such as to defeat probable cause?

II.

Whether the trial court abused its discretion in admitting Appellant's confession where he was properly advised of his *Miranda* rights and then validly waived the same; and where the totality of the circumstances demonstrated that Appellant's confession was knowing and voluntary?

STATEMENT OF THE CASE

During their April, 2024 term, a Greenville County grand jury indicted Appellant Tyberious Rahkeem Pyles for murder, first-degree burglary, armed robbery, conspiracy, and possession of a weapon during the commission of a violent crime. (R. pp. * (Indictments)). Appellant proceeded to a jury trial before the Honorable R. Scott Sprouse from September 2–4, 2025. Michael Gambrell, Esq. represented Appellant while Deputy Solicitor Brian Moroney represented the State. (Tr. 1). At the end of trial, the jury found Appellant guilty of murder, first-degree burglary, armed robbery, and conspiracy. The jury found Appellant not guilty of possession of a weapon during the commission of a violent crime. (Tr. 367). Judge Sprouse sentenced Appellant to a term of 40 years imprisonment for murder, 30 years for burglary, 30 years for armed robbery, and five years for conspiracy—all sentences running concurrently. (Tr. 375).

This appeal now follows.

STATEMENT OF FACTS

Around approximately 3:30 AM on January 22, 2022, Joseph Smith (Victim) was shot and killed in front of his two roommates in his apartment at Cliffwood Terrace in Greenville County during the midst of a robbery/home invasion. Victim had one bedroom while his two roommates, cousins Marquez and Shareef McCarroll, shared another bedroom. Both bedrooms were upstairs. Marquez testified he had been living with Victim (AKA "Slim") for about a month prior to the incident. That day, Marquez testified he went to work, took his cousin Shareef to the mall after work, and then returned later that evening where the two cousins drank and hung out in their bedroom until they fell asleep around 10:30 or 11:00 PM. (Tr. 118–125). Marquez testified that he woke up to two masked men busting his bedroom door open and one of them pointing a gun at his head. Victim was between the two men. The two men were telling them to "give it up" while also threatening to kill them—both were armed. Marquez stated he fell backwards and wrapped himself in a bedsheet, whereupon he heard a gunshot and one of the men stating "come on, come on" as the two fled down the stairs. After a moment, Marquez unwrapped himself and found Victim shot on the floor. (Tr. 126–134). Marquez noted that when the men were telling them to "give it up," he heard Victim exclaim "[t]here's nothing in here." (Tr. 134).

Marquez further explained that the front door to the apartment on the first floor did not lock and could not secure properly due to damage from a prior, unrelated incident. To secure it, they would prop up a sandbag and/or a piece of furniture against it. Marquez also explained that his bedroom door had similar damage from another unrelated incident. (Tr. 135–138, 141–142). Marquez testified that Victim would have other people over and that another friend of Victim, a man named "Kane," would occasionally stay downstairs on a pink mattress that would be propped up against the wall when not in use. Law enforcement later confirmed that this man was Joseph

Kane Roach, an associate of Victim and Appellant. (Tr. 226). Marquez could not recall if he ever saw Appellant (though he did know him) at the apartment hanging out with Victim, explaining he would usually be gone all day working. (Tr. 139–140, 143–146). Marquez could not further identify who the men were in the apartment.

At the crime scene, law enforcement recovered two cartridge casings near Victim's body and a large bag containing marijuana in Victim's bedroom. (Tr. 168–170; *see also* Tr. 163–167 (description of apartment from crime scene tech and photos)). The firearms examiner would testify that the casings were both 9mm and were fired from the same gun. Based on the characteristics of the rifling marks, the examiner opined that the two cartridges could have been fired by a Taurus, Ruger, Sig Sauer, or another gun.[1] However, the examiner noted that the cartridges could not have been fired by a Glock-style barrel. (Tr. 185–191). The forensic pathologist testified that two projectiles and a projectile fragment were collected from Victim's body. (Tr. 210–213).

A neighbor testified that he received a notification from his Ring doorbell camera around 2:00 AM that morning showing a man wearing dark clothes, a mask, crocs, and what appears to be a baseball hat. He testified that it was unusual for someone to be walking past there at that time of night. Neighbor shared this video with law enforcement, and he also shared a video that he discovered on Victim's Facebook showing a man wearing similar clothes to the man on the Ring footage hanging out with Victim some time prior to the murder. These two videos were admitted as State's Exhibits 2 and 3, respectively. (Tr. 147–154). Neighbor also testified that shortly after law enforcement left, he viewed another video on Facebook that "looked like the same guy from

[1] The examiner noted that these brands of gun typically have "six, right" rifling which is six lands/grooves spinning the bullet to the right or clockwise. The transcript appears to err in noting the last brand the examiner lists as "[s]ix, sour." Respondent contends that the examiner likely meant Sig Sauer, a popular gun manufacturer.

the Ring video." He emphasized that the man was wearing the same clothes. This video was admitted as State's Exhibit 4. (Tr. 155–158).[2] The person on the latter two of these three videos was confirmed to be Appellant—and law enforcement further believed that Appellant was on the Ring video based on his distinctive clothing. (Tr. 226–233). Based on this identification, Appellant was interviewed following his arrest for an unrelated incident. Following a verbal reading of his *Miranda* rights and signing a written acknowledgement of said rights, Appellant was questioned regarding this case. This interview was recorded and ultimately admitted and published at trial as State's Exhibit 62.[3]

Appellant gave many varying accounts during this interview, but he eventually admitted that he went with a group of people including his girlfriend "Dream" to Victim's apartment in an apparent scheme to rob Victim of drugs and to get back at Kane (who was not there at the time of the murder) for a prior incident where Kane allegedly punched Dream in the eye. Appellant's first account was that Dream drove him to the apartment complex, parking somewhere towards the top of the complex sometime between 8:00 and 9:00 PM to look for Kane and to purchase some marijuana from him.[4] Realizing that Kane was not there, Appellant stated he went upstairs and found Victim asleep, as well as the McCarroll cousins (AKA "Quez and Shareef") who had been drinking liquor in their bedroom. Towards the end of this segment, Appellant acknowledged being on video. (State's Ex. 62 at 16:10–18:45, 20:30–23:10).

[2] All three of these videos are on file for this Court's review.
[3] Another version of this interview, Court's Exhibit 4, is also on file for this Court's review. The State's Exhibit that was played before the jury contains additional audio redactions requested by defense counsel during trial. For purposes of summation, Respondent relies on what the jury heard.
[4] Later during this segment however, Appellant begins to backtrack on this timeframe in favor of stating he generally got to the complex when it was "dark out."

When questioned further regarding the Ring video, Appellant claimed he stopped briefly at another friend's apartment ("Gino") that was in the same complex closer to where he parked and then walked down the hill towards Victim's apartment when no one answered the door. Appellant also acknowledged insight into the broken front door, noting that Dream had kicked it in during an unrelated altercation. Appellant acknowledged spending time in that apartment in the past. During this segment, he reaffirmed that he left the apartment after realizing Kane was not there and everyone else was asleep. (*Id.* at 25:10–30:00).

Next, Appellant described a prior altercation between Dream and Kane where Kane punched Dream in the eye at the apartment. Dream then went back to the apartment with men who were armed and "masked up" looking for Kane after previously going to Appellant to ask him "to handle it," which Appellant claimed he refused at that point. He denied knowing who the men with Dream were. (*Id.* at 34:00–37:00). Appellant clarified that he was at the apartment "before all of that" looking for Kane but was not there for the shooting and did not know who shot Victim or when he was shot. (*Id.* at 41:45–42:15). At this point the interview became more confrontational—with the investigator walking out of the room after calling out Appellant's story and then returning and notifying Appellant he was being charged with murder. (*Id.* at 42:25–43:20).

After previously claiming at the beginning of the interview that "Buddha" was not involved in the incident (*see id.* at 5:15–6:30), Appellant stated Buddha killed Victim. Appellant stated he withheld this information because of his close relationship with Buddha and his fear of reprisal from him and/or Dream if he told law enforcement. In this instance, Appellant continued to affirm he was not at the apartment except for the time earlier that evening when he looked for Kane. However, regarding his prior time at the apartment, Appellant admitted he was not there to purchase marijuana, but to make sure Kane was not there for the later incident. During the

shooting, Appellant stated he was at a McDonalds down the road from the complex. The other two men with Dream and Buddha were "Drako" and "Drake." Appellant admitted to being in the car with them while they were discussing the scheme but claimed they dropped him off at a McDonalds down the street before going to the apartment.[5] (*Id.* at 44:05–52:35).

Appellant stated that afterwards, the group had acquired a large package of "beans" and "ice" from Victim's bedroom, but they could not find the bag of marijuana during the robbery. He further clarified that either Buddha or Drako killed Victim. Appellant stated that both had 9mms, one was black and another was a two-tone Glock. (*Id.* at 54:00–57:00). Appellant explained that one of these guns, the Glock, was a "ghost gun" of his that he had given to Buddha prior to the incident. He acknowledged this was the same two-tone gun he was seen with in social media videos.[6] He further noted that the gun that killed Victim was a black Ruger and that it was disposed of after the murder. (*Id.* at 59:00–1:04:40). Appellant was adamant that he was not in the house and was not the triggerman. At this point he also claimed he went along under duress. However, he admitted he was in fact not at McDonalds during the robbery but was actually waiting in the car with Dream. He explained that Victim was killed during the robbery after he "reached" for one of them. (*Id.* at 1:05:00–1:10:30). Finally, Appellant admitted that the clothes he was wearing on the Ring footage were the same clothes he was wearing on the social media videos. (*Id.* at 1:11:30–1:13:00; *see also generally* Tr. 241–256, 269).

The State also admitted a video sent by Victim to Appellant on Facebook the day before the murder depicting a large bag of marijuana, in addition to a picture of Dream with a large bruise

[5] The State would later admit evidence to the effect of suggesting the McDonalds was much farther away from the apartment then Appellant made it out to be. (Tr. 269–271).
[6] Appellant also explained that this "ghost gun," also known as a PMF (privately manufactured firearm), was constructed by a friend of his, ostensibly from a Glock-style kit, and that at some point, the barrel for the gun was swapped.

around her eye and another picture of the large bag of marijuana matching the one found on scene. (Tr. 258–262, 266–269; State's Exs. 65 (Bag Video), 63 (Dream Photo), 61 (Bag Photo)).

Appellant did not present any testimony.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Johnson*, 413 S.C. 458, 776 S.E.2d 367, 371 (2015). Regarding motions to suppress based on the Fourth Amendment, this Court engages in a dual inquiry: "we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to de novo review." *State v. Frasier*, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022).

On the issue of voluntariness of a custodial statement, this Court similarly "will review the trial court's factual findings . . . for any evidentiary support. However, the ultimate legal conclusion—whether, based on those facts, a statement was voluntarily made—is a question of law subject to de novo review." *State v. Miller*, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023).

ARGUMENT

I. The trial court did not abuse its discretion in refusing to suppress evidence obtained from Appellant's Facebook pursuant to a search warrant where Appellant failed to prove law enforcement intentionally or recklessly omitted exculpatory information on a search warrant affidavit such as to defeat probable cause

Appellant argues the trial court erred in failing to suppress evidence obtained from Appellant's Facebook pursuant to a search warrant where the affidavit intentionally or recklessly misled the issuing judge by omitting "critical exculpatory information which would have negated a finding of probable cause." (Brief of Appellant at 10). Specifically, Appellant claims that the affidavit intentionally or recklessly omitted the fact that one of the eyewitnesses stated that Appellant was not one of the two suspects inside the apartment and the fact that the same eyewitness stated that the gun he saw at the incident was not the same gun he saw Appellant holding in a video on Victim's Facebook. Respondent contends that Appellant fails on his *Franks* challenge because he cannot prove that exculpatory information was intentionally or recklessly excluded from the search warrant affidavit such as to defeat probable cause, and Appellant can otherwise show no prejudice from a failure to suppress evidence from his Facebook given his untainted (and voluntary) confession.

This Court should affirm.

A. Relevant Facts

Following jury selection, Appellant moved to suppress evidence gathered from Appellant's Facebook on the basis that the search warrant affidavit was misleading and thus failed to establish probable cause. (Tr. 49). Investigator Alvin King testified that he prepared a search warrant for circuit court Judge Morgan's review. The body of the affidavit, admitted as Court's Exhibit 2, read as follows:

> The affiant is assisting in a death investigation where the victim was found shot to death in his apartment at 4302 Edwards Rd. . . . The Greenville county Sheriff's Office received a call for service at 0336 AM on 01/22/22. Deputies arrived and [f]ound Greenville County EMS already present and working the victim. The victim was later pronounced dead. GCSO Uniform Patrol secured the scene and investigators arrived a short time later. There were two witnesses to this event, Shareef McCarroll and Marquez McCarroll. The two witnesses were reluctant to speak to investigators at first but they did travel to the LEC later and speak [sic] with investigators. The witnesses described a similar version of events that their bedroom door was kicked in and the victim was thrown into the room. There were two subjects with their faces covered and *one subject had a two tone (black/green) gun*. One of the subjects asked the victim where "it" was. The subject with the gun then shot the victim and both subjects fled the scene. During the course of this investigation a large amount of marijuana was located in the victim's apartment. This investigator believes that drugs was a motivating factor in this shooting. Other investigators spoke to the witnesses about the suspects they observed in the in this incident. *One of these witnesses reported seeing the shooter with a two tone handgun*. The victim's public Facebook profile was viewed and facial recognition was utilized that *showed what appears to be Tyberious Pyles with the victim at the victim's apartment a few days before the shooting. This video shows what appears to b[e] Tyberious Pyles holding a two tone handgun*. The affiant requests this warrant to further investigate this homicide by attempting to link Tyberious Pyles to this incident from information that has already collected and information that is in the data relating to the Facebook account of Tyberious Pyles.

(Court's Ex. 2 at 2) (emphasis added).

Under proffer, King explained that both McCarroll cousins were adamant that one of the subjects had a two-tone black in color firearm. He also explained getting the Ring camera footage from the neighbor up the hill and the same neighbor showing law enforcement a video from Victim's Facebook depicting Victim and Appellant together, with Appellant displaying a two-tone firearm. King also noted that the man on the Ring camera appeared to be wearing the same clothes as Appellant in the Facebook video. King thus wanted to look at Appellant's Facebook to continue the investigation. (Tr. 52–54). Under cross-examination, King explained that he relied on the later interview of the two witnesses by different investigators, noting that he was likely still at the crime scene when the interviews took place. King could not recall Shareef telling investigators that Appellant was not the perpetrator with the two-tone handgun. (Tr. 55–56). King was then shown a

video of Shareef's interview which refreshed his recollection.[7] Similarly, King conceded that Shareef's statement regarding Appellant not being a shooter was not included in the affidavit. (Tr. 57). King also conceded that the information regarding the Ring footage and Appellant's possible connection therefrom was not included in the affidavit.

Finally, King could not recall whether one of the cousins stated that the gun Appellant was seen holding was the same one as they saw until his recollection was refreshed with Shareef's interview video. King noted that this was also not included in the affidavit. (Tr. 58, 64). Appellant thus argued that failing to add some of this contradicting information regarding the witnesses' identification of the gun/Appellant make the affidavit insufficient to establish probable cause. (Tr. 65–66). The solicitor responded by first noting that the interview of Shareef discussed here was an early interview and that, in subsequent interviews, Shareef identified Appellant. As to the gun, the solicitor emphasized that the photograph shown to the witness was just a still frame and that it was more important that there was an identifiable firearm with "green/tan coloring that was viewed on that Facebook Live video associated with the Defendant, who was observed on this . . . video just days previously in the company of the victim at this same apartment complex in the same location where the murder happened." The solicitor thus surmised that the link between Victim, Appellant, and the two-tone gun was sufficient to establish probable cause. (Tr. 66–67). The trial court agreed with the solicitor:

> I have reviewed the search warrant signed by Judge Morgan. Heard the testimony from . . . the affiant officer. And Counsel, as you know when reviewing a search warrant, the Court is looking at the sufficiency of probable cause, and a number of cases established the standard, whether the decision to issue a search warrant, whether the judge made a practical common-sense decision concerning whether under the totality of the circumstances set forth in the affidavit, *there's a fair probability that evidence of a crime will be found in a particular place to be*

[7] Respondent notes that this video was not admitted as an exhibit for purposes of the hearing.

> *searched.* Or in this case, the documentation on the social media site that was solved.
>
> After hearing this, I find that . . . probable cause was sufficient, and I'll deny the motion to suppress.

(Tr. 67, ll. 9–22).

B. Discussion

A search-warrant "affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause." *State v. Gore*, 408 S.C. 237, 247, 758 S.E.2d 717, 722 (Ct. App. 2014) (quoting *State v. Philpot*, 317 S.C. 458, 461, 454 S.E.2d 905, 907 (Ct. App. 1995)). "The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant was issued." *State v. Dupree*, 354 S.C. 676, 684, 583 S.E.2d, 437, 441 (2003). "A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that . . . evidence of a crime will be found in a particular place." *State v. Crummey*, 443 S.C. 94, 107, 902 S.E.2d 391, 398 (Ct. App. 2024) (quoting *State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014)). "An appellate court reviewing the decision to issue a search warrant should decide whether the magistrate had a substantial basis for concluding probable cause existed." *Dupree*, 354 S.C. at 683, 583 S.E.2d at 441. Utilizing the same totality of the circumstances test, this Court is obligated to give "great deference to the issuing judge's probable cause determination." *State v. Jones*, 342 S.C. 121, 126, 536 S.E.2d 675, 678 (2000); *State v. Robinson*, 415 S.C. 600, 605, 785 S.E.2d 355, 357 (2016).[8]

[8] Notably, because the items/information at issue here came from Facebook, they were subject to the federal Stored Communications Act, meaning that the search warrant went before a circuit court judge, not a magistrate. *See* 18 U.S.C. § 2703(d) ("A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are

Pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), in order to obtain relief on a Fourth Amendment search warrant claim, "the defendant must prove the affiant *knowingly or intentionally, or with reckless disregard for the truth*, included false statements in the search-warrant affidavit. The burden is on the defendant to establish the intentional/reckless falsity by a preponderance of the evidence." *Robinson*, 415 S.C. at 606, 785 S.E.2d at 358 (emphasis added); *cf. State v. Porch*, 417 S.C. 619, 627, 790 S.E.2d 440, 444 (Ct. App. 2016) ("A party attempting to demonstrate information was intentionally or recklessly omitted from an affidavit bears a heavy burden of proof.") (citation omitted). This standard applies equally for proving that an affiant intentionally or recklessly omitted exculpatory information. *State v. Missouri*, 337 S.C. 548, 554–55, 524 S.E.2d 394, 397 (1999). In the case where a defendant has shown a statement to be false yet failed to prove that the false statement was included intentionally or recklessly, this Court has reviewed the affidavit on its face *including the false statement* in reviewing whether there was a substantial basis for probable cause—i.e. as if the false statement was actually true. *See State v. Brown*, 447 S.C. 617, 641–43, 929 S.E.2d 415, 428 (Ct. App. 2026). It follows then that even if exculpatory information was omitted, this Court should review the affidavit on its face without the exculpatory information if the defendant fails to show such information was intentionally or recklessly withheld from the magistrate.

In this case, Appellant has many barriers to surmount to succeed on this Fourth Amendment claim. First, Respondent contests whether the omitted information at issue here was truly exculpatory. As to the fact that one of the McCarroll cousins told law enforcement that Appellant was not one of the men, just because Appellant may have not been a shooter or was not in the room

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reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.").

does not mean he is excluded as a possible suspect/accomplice—or that his Facebook would not contain evidence of a crime. Recall that by the time law enforcement interviewed these witnesses, they already knew that Appellant and Victim associated with one another at the apartment, Appellant had access to a two-tone gun in said apartment, and he was seen suspiciously walking towards Victim's apartment a couple of hours before the robbery, possibly as a lookout. Moreover, the presence of more than one gunman during the robbery makes it more likely that there are/were additional conspirators rather than if the robbery was conducted by a single suspect. Thus, as a factual matter, Appellant was not excluded as a suspect just because he was not in the room during the robbery.[9] As such, this statement was minimally exculpatory at best.

As to the statement from one of the witnesses regarding the two-tone gun Appellant was holding in the video not being the one they saw during the robbery, this statement was also marginally exculpatory. Recall that King emphasized that both witnesses were consistent in stating that one of the men had a two-tone black and green firearm. The fact that they may have stated they did not believe that this was the same gun as the one seen with Appellant in the video does not for certain conclude that these were not the same guns. It is just as likely (or more likely) that the two misidentified tan (or brown) for green based on the fact that it was the middle of the night when the robbery occurred and they did not have the benefit of the intruders turning the lights on for them to see them and their guns in full detail. Again, they emphasized seeing a two-tone gun and Appellant is seen on video with Victim in Victim's apartment wielding a two-tone gun a couple of days before the robbery. As King explained under cross-examination, he did not believe these

[9] The jury implicitly recognized this in convicting Appellant of all charges except for possession of a weapon during the commission of a violent crime, meaning as a factual matter they would have had to believe that Appellant was involved but not a shooter and likely not in the apartment during the robbery/murder.

facts "would've benefited one way or the other." (Tr. 58). Respondent argues the same here on appeal.

Second, even assuming these omitted facts had exculpatory value, Appellant has failed to show that the affiant intentionally or recklessly omitted such information when presenting the warrant for the magistrate's review. As explained above, King had a good-faith basis to conclude that this information was not exculpatory or only minimally so. Moreover, given the limited exculpatory value of the information here, Appellant fails in his *Franks* challenge because the affidavit would still support probable cause if such information was included. *See Gore*, 408 S.C. at 244, 758 S.E.2d at 721 ("[T]here must be 'allegations of deliberate falsehood or of reckless disregard for the truth . . . , and those allegations must be accompanied by an offer of proof.'" (emphasis added) (quoting *Franks*, 438 U.S. at 171)); *id.* at 245–46, 758 S.E.2d at 721 (finding that affidavit improperly omitted information but noting omission did not invalidate the warrant and defendant failed to show that the affiant included a deliberate falsehood or recklessly disregarded the truth to mislead the magistrate); *State v. Brown*, 437 S.C. 550, 573, 878 S.E.2d 364, 376–77 (Ct. App. 2022) (finding that omitting slight variations/contradictions between witnesses' regarding description of suspects and possession of a phone did not establish that affiant intentionally or recklessly misled the magistrate, and otherwise concluding that even with the variations/contradictions added, the affidavit still supported probable cause) (citing *Missouri*, 337 S.C. at 554, 524 S.E.2d at 397). Based on the foregoing then, Appellant has failed to meet his burden of proof on this *Franks* challenge to warrant suppression of the Facebook evidence.

Regardless, even assuming the evidence at issue should have been suppressed under *Franks*, any error in failing to do so would undoubtedly be harmless in this case. *See State v. Rivera*, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013) ("Most trial errors, even those which violate

a defendant's constitutional rights, are subject to harmless-error analysis."); *State v. Baccus*, 367 S.C. 41, 55, 625 S.E.2d 216, 223–24 (2006) (finding erroneous admission of evidence under defective search warrant/court order harmless as tainted evidence was cumulative). Notably, the evidence collected from Appellant's Facebook consisted of a photograph depicting injury to Appellant's girlfriend Dream, a video taken by Appellant after the shooting wearing the distinctive clothing seen on the Ring video and the other video taken at Victim's apartment prior to the shooting, and a video/photo purportedly sent to Appellant by Victim the day before the murder depicting a large bag of marijuana—ostensibly the same bag of marijuana collected by law enforcement in the apartment after Victim's death.

Respondent contends that this evidence was merely cumulative to Appellant's confession and other uncontested evidence in the record linking Appellant to the robbery/murder such as the two videos shown to law enforcement by the neighbor (*See* State's Exs. 2, 3). Respondent also notes a procedural bar at least as to Appellant's objection regarding the Facebook video from after the shooting (State's Ex. 4) given that Appellant explicitly noted "[n]o objection" after the State moved to admit the video as a certified business record and the trial court explicitly noted that there was no objection. (*See* Tr. 157, ll. 2–11).[10] Regardless, Appellant fails to show prejudice and

[10] Under such circumstances, Respondent contends that Appellant's pre-trial objection, at least as to this video, was abandoned instead of simply not renewed, and any issue concerning the admission of this video was not properly preserved for appellate review. *See Burke v. AnMed Health*, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); *see also State v. Jones*, 435 S.C. 138, 144, 866 S.E.2d 558, 561 (2021) ("[A] different approach is warranted where a court rules after a[n in limine] hearing on a constitutional issue. Under those circumstances, the ruling is final and, unless something changes during trial that may reasonably cause the trial judge to alter the pretrial ruling, no further objection is required to preserve the issue for appellate review."); *cf. State v. Dicapua*, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the

fails to articulate his fruit of the poisonous tree argument such as to capture the other substantial evidence in this case—namely Appellant's confession. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting when a party fails to cite authority, the party is deemed to have abandoned the issue on appeal).

Respondent notes that even if Appellant attempted to argue that the confession should have also been suppressed under this doctrine, such an argument should fail given that the specific items from Appellant's Facebook only supported a small portion of the officer's basis for questioning and the interview was otherwise totally attenuated from any illegal conduct by law enforcement. Recall that Appellant's story began to quickly unravel after being confronted with only the Ring video. Appellant also cannot rely on an argument that the unlawfully obtained evidence produced the custody that led to Appellant's interrogation and questioning because he was picked up on different, unrelated charges almost *fourth months after* the murder and the issuance of the Facebook search warrant. *See, e.g., State v. Nelson*, 336 S.C. 186, 193, 519 S.E.2d 786, 789 (1999) (noting that since *Wong Sun*, "courts have recognized that new and distinct criminal acts following an illegal stop [or search] do not qualify as fruit of the poisonous tree simply because such acts were causally connected to the police misconduct.") (citations omitted); *State v. Herring*, 387 S.C. 201, 215–16, 692 S.E.2d 490, 497 (2009) (finding any error regarding search warrant would be harmless given other overwhelming evidence of guilt) (citing *State v. Gillian*, 373 S.C. 601, 646 S.E.2d 872 (2007); *State v. Garner*, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991)).

This Court should affirm.

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videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."); *accord* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

II. The trial court did not abuse its discretion in admitting Appellant's confession where he was properly advised of his *Miranda* rights and then validly waived the same; and where the totality of the circumstances demonstrated that Appellant's confession was knowing and voluntary

Appellant argues the trial court erred in admitting Appellant's confession where his *Miranda* waiver was obtained under false pretenses, thus making the resulting confession involuntary under the totality of the circumstances. Respondent contends that the trial court properly found that Appellant knowingly and intentionally relinquished his rights by agreeing to speak with law enforcement and then signing a written waiver of rights. Appellant's argument regarding false pretenses relating to Appellant's arrest for an unrelated crime has no merit where *Miranda* is not offense-specific, Appellant voluntarily submitted to questioning, and he failed to invoke his right to counsel or right to silence at any point during questioning. Moreover, Appellant can point to no other evidence showing that Appellant's confession was rendered involuntary.

This Court should affirm.

A. Relevant Facts

Following the trial court's denial of Appellant's motion to suppress evidence obtained from his Facebook, discussed *supra*, the State called Sergeant Andrew Herring to testify regarding Appellant's custodial interview pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964). Herring testified he became the lead investigator on the case in March 2022 and that he was able to interview Appellant later on May 13, 2022, at the Greenville County Law Enforcement Center. Herring testified that Appellant was not under the influence of alcohol or drugs and did not appear to have a physical or mental disability that would have impaired his ability to understand what was going on. Herring also explained that there were not any threats or promises made in exchange for his statement; rather, he explained that Appellant had been arrested prior to the interview on an

unrelated trespass warrant and was in custody at the time of the interview on those charges. However, Herring explained that they approached Appellant, advised him of the nature of their investigation, and he subsequently agreed to go to the interview room to speak with them. (Tr. 68–70).

Herring testified that he verbally advised Appellant of his *Miranda* rights and the same was done on an advisement of rights form. Herring explained that they went through the form together and Appellant signed and initialed it in the appropriate places. Herring further noted that Appellant did not appear to have any difficulties understanding his rights, his responses to questioning were rational and responsive, there were no threats, promises, or coercion by law enforcement during the interview, he did not want to speak with an attorney prior to questioning, and he never asked to stop questioning or for an attorney during questioning. (Tr. 71–74; *see also* Court's Ex. 3 (Waiver/Acknowledgement of Rights)). For purposes of this hearing, Appellant's interview as admitted as Court's Exhibit 4—containing less redactions than the interview played during trial. The interview was played at the hearing in its entirety. (Tr. 74–83; Court's Ex. 4).

Under cross-examination, Herring elaborated regarding Appellant's arrest on the trespass warrant, noting that he had instructed law enforcement to look for Appellant while patrolling a "gang-saturated" apartment complex, a complex that Appellant had previously been trespassed for and was thereafter seen on camera by property management—thus giving rise to the trespass warrant. During the arrest on the trespass warrant, Appellant picked up additional charges. However, Herring noted that he mainly wanted to talk to Appellant about this case in addition to a case where Appellant's cousin "Webbie" was murdered. (Tr. 83–85). Herring further elaborated that law enforcement asked Appellant after he was arrested if he "[w]ould be willing to go upstairs to talk about the murder" and "the weapon[.]" Appellant told them yes. (Tr. 86). Herring could not

recall if he asked any questions regarding Appellant's trespass charge, though he conceded that the main purpose of the interview was to discuss the murder in this case. (Tr. 86–87). Herring noted he did not re-read *Miranda* once Appellant was informed that he was being charged with murder, emphasizing that Appellant was already under arrest, was already being questioned after being read *Miranda*, and he had every right to stop talking or ask for a lawyer. (Tr. 88). Following the questioning of Herring, Appellant argued that the confession should be suppressed based on the fact that Appellant's initial waiver was not valid and that he should have been re-read his rights after he was informed he was being charged with murder. The solicitor responded by noting that *Miranda* warnings are not offense-specific and that there was a valid waiver of rights detailed in the hearing testimony and interview. The solicitor emphasized that Appellant verbally acknowledged his rights and in writing. (Tr. 89).

The trial court gave the following ruling, noting that he had reviewed the taped interview in its entirety:

> I find, first, that the interview was custodial, the Defendant was under arrest and was in custody. And brought up to the interview room, Defendant was not free to leave. I find that Miranda rights were given to the Defendant as shown on State's Exhibit 3 [sic], in which form was explained, and each line . . . was initialed by the Defendant. Court finds that there was no evidence, in the interview, of coercion.
>
> There was no evidence of Defendant denied food or water, or was in physical or mental distress. There, the Miranda form advised the Defendant that he had the right to remain silent. He had the right to counsel; he could stop questioning any . . . moment, and seek counsel.
>
> And it also, importantly, advised him as required that anything he said could be used against him in court of law. And [the State's] argument regarding Miranda is correct. It's not offense-specific. And there's . . . case law to that effect. So I'm going to find that the statement as set forth in State's Exhibit 4 [sic] as redacted with the mutations is admissible.

(Tr. 90, ll. 7–25). Later, during trial, when the solicitor offered State's Exhibit 62 into evidence, Appellant renewed his pretrial objections. (Tr. 241).

B. Discussion

"There are two constitutional bases requiring any confessions admitted into evidence to be voluntary: the Due Process Clause of the Fourteenth Amendment and the Fifth Amendment right against self-incrimination." *Miller*, 441 S.C. at 120, 893 S.E.2d at 313 (citing *Dickerson v. United States*, 530 U.S. 428 (2000)). It is "axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." *Jackson*, 378 U.S. at 376. "In analyzing whether a defendant's will was overborne and the resulting confession was offensive to due process, courts must consider the totality of the circumstances, including the details of the interrogation and the characteristics of the defendant." *Miller*, 441 S.C. at 120, 893 S.E.2d at 313–14 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)).

Courts apply a similar analysis when assessing the issue of voluntariness relating to *Miranda* warnings and the Fifth Amendment—yet emphasize that where proper *Miranda* warnings are given and the defendant still thereafter chooses to speak, voluntariness is satisfied. *Id.* at 127–28, 893 S.E.2d at 317 (citing *Berghuis v. Thompkins*, 560 U.S. 370, 387 (2010); *Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984) ("[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare."); *State v. Smith*, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977) ("The decisions are voluminous that the signing of a written waiver is usually sufficient" to show an accused "intelligently waived his privilege against self-incrimination.")). Notably, the Fifth Amendment right to counsel, protected by *Miranda*, is not offense-specific. The caselaw that has discussed this concept has distinguished the Sixth Amendment right to counsel, which is offense-specific, from the Fifth Amendment right to

counsel, which is not. This generally means that if a defendant has been appointed counsel on one set of charges, he can still voluntarily submit to questioning regarding uncharged issues while, in the Fifth Amendment context, if one invokes their right to counsel generally after being *Mirandized*, all questioning must cease until the accused is provided counsel. *McNeil v. Wisconsin*, 501 U.S. 171, 176–77 (1991); *State v. Wilder*, 306 S.C. 535, 537, 413 S.E.2d 323, 324 (1991) (noting that since "Wilder never requested counsel during the custodial interview . . ." and since he "explicitly waived all fifth amendment protection[,]" his constitutional rights were not violated) (citing *McNeil*); *but see also Michigan v. Mosley*, 423 U.S. 96, 104–107 (1975) (finding police had not violated defendant's "'right to cut off questioning'" where he stated he did not want to talk about robberies, law enforcement stopped questioning immediately, whereafter two hours later a different officer asked if he wished to speak about an unrelated murder, defendant agreed and was read rights; and then gave an incriminating statement regarding the murder).

Appellant has argued that despite being given *Miranda* warnings and despite signing a written waiver of the same, his confession was nonetheless involuntary since law enforcement used the pretext of arresting Appellant on an unrelated charge to get him to talk about the murder at issue here. However, Appellant's argument regarding "false pretenses" attempts to create new law from whole cloth as it is not supported in case law and it should not be accepted here. *Cf. Maryland v. Shatzer*, 559 U.S. 98, 105–106 (2010) (noting that extension of *Edwards* rule regarding follow-up questioning after invocation of *Miranda* right to counsel requires judicial justification since it is a prophylactic rule, not a constitutional mandate); *id.* at 108–109 (later concluding that extension of *Edwards* rule not justified); *Howes v. Fields*, 565 U.S. 499, 505–506 (2012) (noting SCOTUS' rejection of bright-line rule regarding *Miranda*'s custody element for incarcerated persons).

Missouri v. Seibert, 542 U.S. 600 (2004) offers Appellant no relief on the "false pretense" argument because no illegal *Miranda* "two-step" or "question-first" strategy was employed here. Appellant was asked if he wanted to speak with law enforcement, agreed to do so, was read his rights, and then he waived the same. There was no "conscious decision" by law enforcement to withhold *Miranda* warnings or any indication in the record of pre-warning questioning. Similarly, Appellant's citation to cases like *State v. Collins*, 442 S.C. 444, 900 S.E.2d 428 (2024) offers no help because there is no evidence that police gave any misrepresentations during the interview, gave any promises in exchange for incriminating info, or otherwise did anything to induce his confession. Moreover, Respondent questions whether there were any false pretenses in this case. Herring testified that Appellant was specifically asked if he wanted to talk about "the murder" and "the weapon." (Tr. 86).

Appellant contends "the murder" discussed here only referred to the murder of Appellant's cousin, but this contention is not clear from the record. Admittedly, there may have been confusion in Appellant's mind as to whether law enforcement wanted to talk to him about his cousin's murder—as Herring noted—or Victim's murder (or both) based on being ambiguously asked about "the" murder; but those questions should have at least made clear to Appellant that the resulting interview was likely not going to be about his trespass and drug charges. At this point, knowing there was at least a non-zero chance that there would be discussion regarding Victim's murder, Appellant was on notice—yet he still voluntarily agreed to go upstairs and sit down for questioning. This was *before* he was read his rights. Then, he was read his rights and signed a written acknowledgement of said rights. (*See* Court's Ex. 4 at 0:00–5:15; Court's Ex. 3). A mere misunderstanding is not the same as a false pretext.

Even if this was a false pretext or a misrepresentation, it was minor and not enough to render Appellant's resulting questioning involuntary. *See State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) ("Misrepresentations of evidence by police, although a relevant factor, do not render an otherwise voluntary confession inadmissible."); *State v. Myers*, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004) (holding defendant's confession voluntary and admissible after police told him his hair was found clutched in victim's hand because "[e]ven if the information were untrue, it is not, alone, enough to render the confession involuntary"); *State v. Register*, 323 S.C. 471, 478, 476 S.E.2d 153, 158 (1996) (confession voluntary and admissible despite police misrepresentation that appellant had been seen with victim, tire and shoe impressions at the murder scene were a match, and DNA evidence established guilt).

The issue here then is actually rather simple. If Appellant voluntarily submitted to questioning, was validly informed of his rights, validly waived the same by acknowledging said rights and signing a written acknowledgement, and then failed to invoke any of these rights during questioning, then Appellant has no claim here. Showing waiver under the circumstances in this case, though it is the State's burden, is not a difficult task. *See Thompkins*, 560 U.S. at 385 ("As a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford.") (citing *North Carolina v. Butler*, 441 U.S. 369, 372–76 (1979); *Colorado v. Connelly*, 479 U.S. 157, 169–170 (1986)); *cf. Berkemer*; *Smith*, *supra*.

Since Appellant voluntarily acknowledged and waived his rights, he was required to thereafter unambiguously invoke them during questioning. *Davis v. United States*, 512 U.S. 452, 459 (1994). This he clearly failed to do. At no point during his interview did Appellant indicate he did not wish to answer questions or otherwise wanted the interview to stop. The trial court

specifically found that there was no evidence of coercion, no evidence that Appellant was denied access to food or water, and no evidence of any physical or mental distress. (Tr. 90). Appellant's lack of acknowledgement of these facts in briefing is thus quite telling. *See Thompkins*, 560 U.S. at 382 ("Thompkins did not say that he wanted to remain silent or that he did not want to talk with the police. Had he made either of these simple, unambiguous statements, he would have invoked his 'right to cut off questioning.' . . . Here he did neither, so he did not invoke his right to remain silent.") (cleaned up, citations omitted); *State v. George*, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996) (finding that record "clearly indicate[d] that Appellant waived this right by not requesting counsel and by signing the *Miranda* form."). In light of the foregoing, Appellant fails to show an abuse of discretion in the trial court's decision on voluntariness and thus the admission of his confession. Instead, Appellant relies on novel arguments on "false pretenses" and involuntariness not supported by the record or by law.

This Court should affirm.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

P. SANDERS LINKER
Assistant Attorney General

CYNTHIA SMITH CRICK
Solicitor, Thirteenth Judicial Circuit

BY: *s/ P. Sanders Linker*
P. Sanders Linker
S.C. Bar No. 107688

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-0918

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
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