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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

William McKinnon, Circuit Court Judge

Appellate Case No. 2025-001272

The State of South Carolina, Respondent,

v.

Kevin Richard Alexander, Jr., Appellant.

INITIAL BRIEF OF APPELLANT

Dayne Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court err by finding a package containing illegal drugs that had Appellant's name and address for delivery constituted probable cause to issue an arrest warrant for trafficking when Appellant never had actual or constructive possession of the package and law enforcement had no evidence of Appellant's knowledge regarding the contents of the package?

II. Did the Trial Court err by finding a package containing illegal drugs that had Appellant's name and address for delivery constituted probable cause to issue a search warrant for his cell phone data when Appellant never had actual or constructive possession of the package and law enforcement had no evidence of Appellant's knowledge regarding the contents of the package?

III. Did the Trial Court err by denying Appellant's motion to suppress Appellant's undocumented statement to Investigator Moore when the untimely disclosure violated Rule 5, SCRCrimP, and the State's discovery obligations under Kyles v. Whitley, 514 U.S. 419 (1995)?

IV. Did the Trial Court err by admitting State's Exhibit no. 1 (the physical cardboard package) and State's exhibit no. 2 (the MDMA) when the State failed to establish sufficient chain of custody by not providing any identities, records, or testimony from FedEx about how the evidence was stored and shipped in an unsecured, commercial FedEx box?

V. Did the Trial Court err by denying Appellant's motion for a directed verdict when the State failed to present substantial circumstantial or direct evidence of Appellant trafficking MDMA?

STATEMENT OF THE CASE

On May 18, 2023, the York County Grand Jury indicted Appellant, Kevin R. Alexander, for trafficking ecstasy in violation of Section 44-53-370(e) of the South Carolina Code of Laws. (R. * Indictment No. 2023-GS-46-01319).

On June 16–18 and 20, 2025, Appellant proceeded to a *bench* trial before the Honorable William A. McKinnon. (6/16 Tr. pp. 1–63; 6/17 Tr. pp. 1–214; 6/18 Tr. pp. 1–47; 6/20 Tr. pp. 1–127). Christopher Wellborn represented Appellant, and Assistant Solicitors Austin Smith and Matthew Hogge prosecuted the case for the State. The Trial Court found Appellant guilty and sentenced him to twenty-five years' imprisonment on June 20, 2025. (6/20 Tr. p. 126). The Trial Court also denied Defense Counsel's post-trial motions in a written order on June 24, 2025. (R. *).

On June 25, 2025, Appellant filed a Notice of Appeal. (R. *). This appeal follows.

STATEMENT OF THE FACTS

Relevant Facts

Package Seized by Federal Agents

On February 15, 2023, Agents Kevin Lai and Warren Wong of federal Customs and Border Protection (CBP) intercepted an international mail parcel at JFK international Airport in New York. (6/20 Tr. pp. 6–17; pp. 17–21). The package had Appellant's name and address listed for delivery with a tracking number (EE121664768HC). (6/17 Tr. p. 118, lines 1-16). The substance in the package purportedly tested positive for MDMA (ecstasy). (6/20 Tr. p. 10, lines 3-23).

Package Shipped via Standard FedEx

Rather than transporting the suspected narcotics via secure, documented government custody, Agent Christopher Herzog of the Department of Homeland Security Investigations (HSI) placed the package into a standard commercial FedEx box and sent the package "standard overnight shipping" via FedEx to Charlotte, North Carolina. (6/20 Tr. p. 24, lines 12-17). It is undisputed that law enforcement had no personal knowledge or records of who handled, stored, or shipped this package at FedEx or the procedure for how FedEx handles, stores, or ships packages during a standard commercial shipment.

Package Arrival in South Carolina

Upon its arrival in Charlotte, HSI Agent Courtney Roanhorse accepted the FedEx package that contained the original package. (6/20 Tr. p. 32, lines 1 – 34, p. line 5). HSI Agent David Catalano subsequently took possession of the package in Charlotte on February 21, 2023. (6/20 Tr. p. 35, line 17 – 52, p. line 13). Postal Inspector Ronell Parker received the package from Agent Catalano in a parking lot on Tom Hall Street in Fort Mill, South Carolina. (6/17 Tr. p. 115, lines 15-19).

Postel Inspector Parker then provided the package to York County Sheriff's Office (YCSO) Drug Enforcement Unit (DEU) Investigator Justin Moore. (6/17 Tr. p. 161, lines 10-11). Investigator Moore transported the package to the YCSO drug laboratory at the Moss Justice Center. (6/17 Tr. p. 140, lines 17-24).

YCSO chemist, Holly Tobias, received the package from the evidence custodian, Barbie Taylor, and conducted a presumptive chemical spot test and Gas Chromatography-Mass Spectrometry (GCMS) analysis, confirming the presence of MDMA, weighing approximately 2,348 grams. (6/20 Tr. p. 70, line 5 – p. 71, line 24).

Controlled Delivery

After the drug analysis, law enforcement removed the MDMA and replaced it with a ream of paper matching the exact weight of the original parcel to act as a "sham" package for the "controlled delivery". (6/17 Tr. p. 143, line 25 – p. 144, line 5).

On February 22, 2023, Postal Inspector Parker explained the notification system for the mailroom of Appellant's apartment complex and testified that he put the "sham" package inside a locker for the automatic notification. (6/17 Tr. p. 119, line 4 – p. 121, line 2). YCSO Investigator Everrett Ray Atwell, Jr., monitored a live, silent video feed of the mailroom in the apartment complex's surveillance camera room while officers Curtis and Gallant, wearing marked ballistic vests, waited in a nearby cafeteria/break room. (6/17 Tr. p. 166, line 14 – p. 167, line 18).

Apartment Complex Mailroom

Appellant subsequently entered the mailroom, looked at his cell phone, looked around, and exited the building. (6/17 Tr. p. 167, line 7 – 168, line 1). It is undisputed that Appellant "never went to the mailbox." (6/17 Tr. p. 167, line 16-17). Investigator Atwell claimed that Appellant appeared "startled" or "spooked" by noises in the hallway and immediately left the mailroom.

(6/17 Tr. p. 167, lines 10-18).

Storage Unit

Law enforcement then followed Appellant to the storage facility on Crisanto Avenue, where he went into unit 3123 and then left the facility. (6/17 Tr. p. 148, lines 4-12).

First Traffic Stop

Law enforcement followed Appellant onto Interstate 77 and conducted a traffic stop. (6/17 Tr. p. 152, lines 7-15). HSI agents detained Appellant on the side of the road, questioned him, and searched his vehicle. The agents released Appellant after failing to find any drugs or contraband. (6/17 Tr. p. 152, lines 12-15). Law enforcement claimed that Appellant left his residence with a black bag and that the bag was not in the vehicle during the search.

Second Traffic Stop and Arrest

At approximately 9:05 p.m., Appellant returned to his apartment complex parking lot where law enforcement blocked his vehicle, arrested him for trafficking MDMA, and seized two iPhones from his person. (6/17 Tr. p. 148, line 18 – 150, line 7).

Pre-Trial Motions

Probable Cause for Arrest Warrant

Pre-Trial, Appellant challenged the existence of probable cause to issue an arrest warrant for trafficking ecstasy. (6/16 Tr. pp. 24–45; 6/17 Tr. p. 6, lines 3-15). Appellant argued a package containing illegal drugs that has an individual's name and address (in this case, a mailing facility for an apartment complex) for delivery does not constitute sufficient probable cause to issue an arrest warrant for trafficking when the individual never took constructive possession of the package. (6/16 Tr. pp. 32–33). Defense Counsel further argued, "[A]t the time they arrested my client, they had no indication whatsoever that he'd been following anything with tracking numbers,

because that was all derived later as a result of the search of the phones." (6/16 Tr. p. 24).

The following colloquy occurred between Defense Counsel and the Trial Court:

Trial Court:	I mean, I guess when I say delivered it to the house, I mean you don't -- you don't get it, you know. I mean, you never open the door, it's sitting on your front porch. That is enough for an arrest, isn't it?
Defense Counsel:	No, it's not.
Trial Court:	How can it not be? It's -- it's 2 kilos of drugs with your name on it delivered to your -- this makes you guilty.
. . .	
Trial Court:	I think clearly that having a package addressed to you -- so, you can use me as an example. If I get a package with 2 kilos of cocaine in it addressed to me at my house with my address, that's enough for an arrest warrant.
Defense Counsel:	Well, then, what Your Honor is saying is, even if it's never delivered to you, it's effort for an arrest warrant.
Trial Court:	Yes.
Defense Counsel:	So that means -- so that means if a package comes to -- is mailed with your address and your name and it never leaves customs in New York City, that's enough to have you arrested for trafficking in MDMA. And I think that is a massive leap that no court has ever gone to.
Trial Court:	I don't -- I don't know where we're going with it being frozen at customs. I'm talking about it's dropped on my porch or put in my mailbox or whatever, and that's enough. It doesn't mean -- it's not proof of guilt, but it's enough -- it's enough to support an arrest warrant and a search warrant.
. . .	
Trial Court:	But if the person never looks in the box, what

difference does it make?

Defense Counsel: Well, at least there's constructive possession. In this case, there's not even constructive possession. There is a package that the State is trying to get my client to take possession of. He does not do that. He does not commit the illegal act. Because he does not commit the illegal act, they then say, well, it still looks suspicious. But suspicious is not enough.

(6/16 Tr. pp. 25–27; pp. 29–30).

Defense Counsel noted the possibility of a novel issue before the Court and reiterated his argument against the existence of probable cause:

> And the only thing they have to show that my client was attempting to commit a crime is, number one, he was looking at -- and again, my client attempting to commit a crime, not someone else potentially committing a crime by mailing MDMA from a foreign country to the United States.
>
> But we're focused on what did my client do that was an attempt to commit a crime. He received notification that a package was available. He went to the mailroom, he looked at his phone, and he walked out. That's what they've got at the time that they placed him under arrest beyond what they found in the earlier search of the storage unit.

(6/16 Tr. p. 33).

The Trial Court referenced this Court's discussion regarding probable cause in *State v. Bowie*[1] and ruled as follows:

> I just think that's enough. I mean, I'm going to read - - this is State versus Bowie for a court of appeals decision. It go reversed on other grounds but not on the probable cause grounds . . . And I think under that standard is enough. I mean, just having the package there is enough.
>
> . . .

[1] *State v. Bowie*, 360 S.C. 210, 600 S.E.2d 112 (Ct. App. 2004), *aff'd in part and vacated in part by State v. Bowie*, 366 S.C. 335, 621 S.E.2d 890 (2005).

> But based on what I've heard today, the Court's ruling is, the alprazolam aside, all of that's immaterial, it's a red herring. The State has evidence that a package was mailed to the defendant with his name and address on them. He never got it, but it was to his name and address with approximately 2 kilograms of MDMA, and that is enough for a warrant. And the rest of it is completely immaterial.
>
> . . .
>
> [T]he Court's ruling is that -- that is -- again, and I know he didn't actually receive it. Having it addressed to him at his home and then acting in a way in this case where he goes to the mailroom and then leaves without picking it up, that -- that is enough in the Court's view to -- for probable cause
>
> . . .
>
> both for the arrest and for -and for -- and for the search.

(6/16 Tr. pp. 33–36).

Based on the Trial Court's comments, Defense Counsel noted that "there's no evidence that my client was aware of these officers[']' presence at any location prior to going into the mail room." (6/16 Tr. p. 40). The Trial Court also agreed with Defense Counsel's argument that the Court could not use the information obtained from Appellant's cell phone in determining the existence of probable cause because the officers "only got that information after arrest." (6/16 Tr. p. 41). The Trial Court stated simply, "I still think the package is enough" and reiterated his earlier ruling that "having a package mailed to you with your name on it and your address on it containing a large quantity of drugs is enough for an arrest and a search warrant." (6/16 Tr. pp. 41–43, 45).

The following day, the Trial Court clarified his ruling on the existence of probable cause for the arrest warrant:

> This is an unusual case because it's a trafficking statute. If this was a possession case, it very well may be there would not have been probable cause on these facts. But all the trafficking statute --- the trafficking statute is violated if you aid or abet an attempt to bring into the state, narcotics.
>
> And under the extremely broad language of the trafficking statute, I

> think having the package with five pounds of ecstasy addressed to your house and shipped from Switzerland, I think that's enough for --- for an arrest warrant, and --- and probable cause.

(6/17 Tr. p. 6, lines 5-15).

Probable Cause for Search Warrants

Pre-Trial, Appellant challenged the existence of probable cause to issue a search warrant for the seized cell phones. (6/16 Tr. pp. 14, 22, pp. 25–27, pp. 29–30, pp. 34–36, p. 45; 6/17 Tr. p. 6, lines 5-15). Defense Counsel argued that search warrants require "particularity, and it requires some indicia of why the thing that you're expecting to be there would be there." (6/16 Tr. p. 20). Defense Counsel also argued, "[A]t the time that [the] search warrant was issued . . . the only thing that the State had was suspicion based on a package that had my client's name and address on [it], which was never delivered to my client, which was never picked up, never took custody of [the package]." Defense Counsel further argued, "[A]t that point, they [law enforcement] had suspicion, but that's not enough for the warrant."

The Trial Court replied, "[Defense Counsel], I just don't agree. That's probable cause to me." (6/16 Tr. pp. 28–29). The Trial Court again reiterated its ruling, "I still think the package is enough", that "having a package mailed to you with your name on it and your address on it containing a large quantity of drugs is enough for an arrest and a search warrant." (6/16 Tr. pp. 41–43, 45).

Additionally, Appellant challenged the existence of probable cause to issue search warrants for his residence and storage unit. (6/16 Tr. pp. 31–32; 6/17 Tr. pp. 5–28; pp. 106, line 22 – p. 107, line 17; R.* Exhibits Search Warrants). Defense Counsel argued, "There was nothing to indicate that there was any MDMA in his house or storage unit, and because they knew where the MDMA was, they had control of it." (6/16 Tr. pp. 18–19). Defense Counsel also argued that

search warrants require "particularity, and it requires some indicia of why the thing that you're expecting to be there would be there." (6/16 Tr. p. 20).

Notably, the State interjected:

> Your Honor, if I could just add for clarity purposes. The State is not seeking to use anything in this case that was obtained from the search of the storage unit or the search of that house. The only thing that is being offered is his cell phone, which was obtained off of his person, neither the storage unit or the house when he was arrested. ... But the State is not intending to use anything of the search warrants [of the residence or storage unit.]

(6/16 Tr. p. 21).

The following day, Defense Counsel explained, "we need to protect the record on the other issues related to that arrest warrant . . . whether or not there were any additional grounds for an arrest warrant or --- or to arrest my client at the time he was arrested other than the charge of trafficking and MDMA". (6/17 Tr. p. 5, lines 8-17). Defense Counsel then affirmed the Trial Court's reply, "[I]n other words, you want to make sure that if the Court finds you were correct on this issue that there --- that you don't have to relitigate the issue of whether there were --- there were other grounds to arrest him?" (6/17 Tr. p. 5, lines 18-23).

Defense Counsel clarified, "[A]t the time that my client was arrested, he was charged with --- or really shortly thereafter, he was served with warrant for not only the trafficking and MDMA, but also for the possession with intent to distribute alprazolam as well as the charges relating to the search of his apartment." (6/17 Tr. p. 6, line 25 – p. 7, line 5). Defense Counsel further explained that the alprazolam charge is "referenced in the search warrant for the search of his electronic data on the cell phone". (6/17 Tr. p. 6, lines 22-24).

The State responded, "[Appellant's] phone was taken because he was arrested" and explained that "[h]is phone was not taken pursuant to the search warrant of his house or the search

warrant of the storage facility." (6/17 Tr. p. 8, lines 14-16).

The Trial Court explained to the State, "[Defense Counsel] wants to already have litigated whether the other arrests were lawful because the other arrest would have provided the basis for another --- an independent basis for the search of the phone." (6/17 Tr. p. 8, lines 24 – p. 9, line 2). The State noted, "The arrest for the ecstasy is a completely separate case from the arrest of the alprazolam and the arrest from his house." (6/17 Tr. p. 9, lines 3-5). The State reiterated, "[Law enforcement] made contact with [Appellant] prior to any searches, they arrested him on trafficking MDMA. And pursuant to the arrest, they found the phones on his person. They got search warrant for those phones and searched the contents (6/17 Tr. p. 10, lines 4-8). It is undisputed that the State dismissed the charge for possession with intent to distribute alprazolam. (6/16 Tr. p. 18).

Defense Counsel read a portion of the warrant, noted the return, and argued: "[T]he officers own search warrant and the return indicates that these items were not taken pursuant to an arrest, they were taken pursuant to a search warrant, and they are listed on the inventory from search warrants." (6/17 Tr. p. 12, lines 2-5). Defense Counsel further argued the subsequently dismissed, separate arrest warrant for alprazolam that resulted from the search of Appellant's residence "would potentially give an independent basis to search the cell phone data which is the issue that I need to preserve". (6/17 Tr. p. 13, lines 19-21; p. 14).

Defense Counsel also challenged the search of the storage unit, arguing the unreliability of the police dog's alert to support probable cause and the affiant's omission of critical facts in the search warrant. (6/17 Tr. p. 19, line 10 – p. 21, line 8; pp. 61–62). Defense Counsel raised these issues under the Fourth Amendment of the United States Constitution and Article 1, Section 10 of the South Carolina Constitution. (6/17 Tr. p. 20, lines 18-24). Defense Counsel requested testimony to preserve these issues for appellate review. (6/17 Tr. pp. 21–22).

The Trial Court responded, "[M]y ruling on this material is irrelevant. I am not going to give you a ruling on the validity of the other warrant." (6/17 Tr. p. 26, lines 23-25). After hearing additional arguments from both the Defense and the State, the Court held, "Again, I'm not give you a ruling on any of this. I don't think it's material". (6/17 Tr. p. 28, lines 23-25).

The Trial Court did allow Defense Counsel to call Officer Joshua Todd who is the dog handler during the search of the storage unit. (6/17 Tr. p. 30, line 23 – p. 60, line 16). Investigator Todd acknowledged numerous issues in the dog's training records regarding his reliability and conceded that dog alerted to two units and could not say definitively which unit. (6/17 Tr. p. 53, lines 14-25). Notably, the State did not ask any questions of Investigator Todd, "Your Honor, since you're not ruling on this[,] I don't think it's necessary for me to ask any questions." (6/17 Tr. p. 60, lines 21-23).

The Trial Court then reiterated its prior ruling:

> Again, so the record is clear . . . the Court's ruling is that the --- the --- a package shipped from Europe with two kilograms of MDMA for the defendant's --- with the defendant's name and address on them, is sufficient for a probable cause for arrest and for search. And certainly in addition you have the circumstances of going to the mailroom and stepping out. But really in the Court's view that's --- that's just additional --- it's a package shipped from Europe with two pounds of illegal narcotics to the defendant's name and address is sufficient for a warrant and --- and --- and for a search --- for an arrest warrant and a search warrant.

(6/17 Tr. p. 63, lines 1-13).

Rule 5 and Discovery Violation

Pre-Trial, Defense Counsel moved for the disclosure of any statements made to law enforcement because Counsel was "not aware of" any potentially incriminating statements. (6/16 Tr. p. 45). The State replied,

> I sent this e-mail on Friday that says 'There is a portion of the

> incident report that says that they interviewed the defendant on the side of the road before being released. I asked Justin Moore if the defendant said anything, and he said that the defendant said that he couldn't talk because they would kill him.'

(6/16 Tr. p. 46). Defense Counsel disputed receiving the statement. (6/16 Tr. p. 47).

Defense Counsel moved to suppress the statement noting that he filed his motion for disclosure under Rule 5 of the South Carolina Criminal Rules of Procedure over two years ago, and the State's disclosure of an alleged statement the Friday before trial is "an absolute egregious violation of Rule 5[, SCRCrimP]." (6/16 Tr. p. 48). The Trial Court inquired whether the statement was memorialized in any way, and the State confirmed that it was not recorded or documented. (6/16 Tr. p. 49). The Trial Court then asked, "[I]f the statement [has] not been recorded or memorialized in any way, what's the violation?" (6/16 Tr. p. 49).

Defense Counsel argued that the statement is material to guilt under *Brady v. Maryland*, 373 U.S. 83 (1963), the State has an obligation to learn of that statement under *Kyles v. Whitley*, 514 U.S. 419 (1995), and the purpose of Rule 5 is to "avoid a trial by ambush" by requiring the disclosure of a defendant's statements in a timely manner. (6/16 Tr. pp. 50–58). Defense Counsel further argued, "I don't think there's any authority that suggests the Friday before trial when a case was made in 2023 -- specifically, of February of 2023 -- that as of June 14 of 2025, suddenly being given the substance of this statement complies with the tenets of Rule 5." (6/16 Tr. p. 58).

In response, The Trial Court held:

> I think it does. I mean, the State -- the State has said that they -- as soon as they discovered it, they e-mailed to you. I mean, you have your own client to ask him what he said to law enforcement. I'm not going to find any discovery -- I'm not going to find a Rule 5 -- I'm not going to find a Rule 5 violation here, and I don't think Brady or Eggers or any of the subsequent federal cases apply to inculpatory evidence.

(6/16 Tr. pp. 58–59). The Trial Court subsequently ruled, "I've ruled that there's no discovery

violation here." (6/16 Tr. pp. 61).

The following day, Defense Counsel cited *State v. Lawton*[2] and renewed his motion to suppress the statement. (6/17 Tr. p. 64, line 1– p. 66, line 25; p. 98, lines 8-15). Defense Counsel pointed out that the incident report noted that "[b]ody camera video was downloaded and saved to a media server from the York County Multi-Jurisdictional Drug Enforcement Unit and their respective agencies." (6/17 Tr. pp. 65, lines 19-22). Defense Counsel further noted that the State claimed that no body-worn camera (BWC) video recording exists of the interview with Appellant. (6/17 Tr. pp. 66, lines 9-11). Defense Counsel also informed the Court, "I've conferred with my client, he says he gave no such statement." (6/17 Tr. pp. 66, lines 25 – p. 67, line 1).

The State confirmed that that "there is no body cam of this statement" and claimed, "[t]he officers were speaking to him [in] an attempt to get him to cooperate and help himself out." (6/17 Tr. p. 67, lines 5-7). The State maintained, "In situations like that even if they do have their body cam on their person, they turn it off to protect the defendant." (6/17 Tr. p. 67, lines 7-10).

Defense Counsel called Officer Todd to testify. Officer Todd testified that he wrote the "case summary" as the listed "case agent", and that the report is based on what he knew either knew to be true or was told by another officer. (6/17 Tr. pp. 69–75). Officer Todd acknowledged that this included the BWC video referenced in the report, and that he did not have any knowledge about what happened to the video recording. (6/17 Tr. pp. 69–75).

The State then called Investigator Justin Moore of the YCSO DEU to testify. Investigator Moore maintained that Appellant made the statement that he could not talk to police because "they" would kill him. (6/17 Tr. p. 77, lines 5-10). Investigator Moore also claimed that none of the officers were wearing BWCs at the time of the statement. (6/17 Tr. p. 77, lines 11-13).

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[2] *State v. Lawton*, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009)

On cross-examination, Investigator Moore admitted that the statement did not occur during the first traffic stop (as previously stated by the Prosecutor), but that it occurred in the parking lot behind his apartment complex after the second traffic stop. (6/17 Tr. p. 79, lines 10-22). Investigator Moore acknowledged that he took no notes of the conversation, and that the statement occurred while they searched his residence. (6/17 Tr. p. 79, lines 7 – 80, line 6). Investigator Moore further agreed that the case summary report did not mention an interview with Appellant or any statements made at the apartment complex. (6/17 Tr. p. 81, lines 1-13).

Notably, Investigator Moore confirmed that he told the Prosecutor about the statement on Friday, but that he received notice regarding the trial "[a]pproximately a month ago, maybe." (6/17 Tr. p. 86, line 17 – 87, line 19). Investigator Moore also conceded that he could not remember Appellant's exact words regarding the statement, and that he never asked who Appellant was referring to in the statement. (6/17 Tr. p. 89, lines 20 – p. 91, line 21).

Defense Counsel renewed his motion to suppress and noted, "What was warranted to me yesterday and warranted to the Court, was that this conversation occurred during the traffic stop. Now that's now changed to the arrest at the apartment." (6/17 Tr. p. 99, lines 15-18). Defense Counsel also argued that the "statement is at best vague because the officer can't remember what the statement is" and "didn't take any contemporaneous notes." (6/17 Tr. p. 99, line 22 – 100, line 15). Defense Counsel reiterated the State's untimely disclosure of the statement. (6/17 Tr. p. 100, lines 16 – 101, line 6).

The State then claimed, "Your Honor, the mistake about the location was mine. I simply asked the officer did he make any statements to you and he said he couldn't talk because they would kill him. That was my assumption of where it was, that the officer did not say that and has now changed that, he simply told me the defendant made this statement." (6/17 Tr. p. 101, lines

8-14). The State continued to maintain that Defense Counsel should have interviewed Investigator Moore, and that she "turned over the statement as soon as I knew it." (6/17 Tr. p. 101, lines 15-19). The Trial Court ultimately held, "There's no basis to exclude the statement. Motion is overruled." (6/17 Tr. p. 101, lines 23-24).

Chain of Custody

During United States Postal Inspector Ronell Parker's and Investigator Moore's testimony, Defense Counsel objected to purported hearsay statements and noted the chain of custody issue with identifying how the package arrived in South Carolina after being seized in New York. (6/17 Tr. p. 114, line 21 – p. 115, line 1; p. 132, line 7 – p. 133, line 6).

During YCSO evidence technician Paul Willey's testimony, Defense Counsel objected to the admission of State's Exhibit number one because of the "issue with the chain of custody before it gets to this particular witness." (6/18 Tr. p. 8, lines 1-3). The Trial Court noted its concern with the out-of-state witnesses. (6/18 Tr. p. 10, lines 8-10).

The State argued that the package is not in custody and the crime did not occur until after it arrived in South Carolina. (6/18 Tr. pp. 14–19). Based on the Trial Court's concerns, the State noted, "So if you're saying that the chain starts from New York, we have to identify the FedEx person, somebody in the part of the FedEx. So not every single person that touches it but somebody within FedEx. Somebody within customs, somebody within Homeland Security." (6/18 Tr. p. 19, lines 20-24).

Defense Counsel cited *State v. Pulley*[3] and argued that "the State had not established a sufficient chain" of custody. (6/18 Tr. p. 33, line 6 – p. 37, line 9). The Trial Court noted its "serious concerns" about the chain of custody before [the package] got to them [law enforcement

[3] *State v. Pulley*, 423 S.C. 371 815 S.E.2d 461 (2018).

in South Carolina]" and ultimately granted the State's request for a "break until Friday" to fly in the out-of-state witnesses. (6/18 Tr. p. 40, lines 3-4; pp. 46–47).

On June 20, 2025, the State presented testimony from CBP agent Kevin Lai, CFB agent Warran Wong, HIS agent Christopher Herzon, HSI agent Courtney Roanhorse, HSI agent David Catalano to address the Trial Court's concerns regarding chain of custody.

Defense Counsel renewed the prior objection to State's Exhibit number one:

> Same objection. We have a . . . missing link . . . because we don't know what the heck happened to anything from the time items were left with FedEx until they arrived in Charlotte.
>
> . . .
>
> Nobody knows who received it, who loaded it, who handled it, what they did with it, how they did it. . . . No one testified that the evidence tape was placed on item number one, which is the package that probably or more likely than not contained item number two.
>
> . . .
>
> We do know that item number two is fungible. We do know that item number two passed through the same potential six caveat between New York and Charlotte. None of whom are identified.
>
> And so -- again, this is not establishing a chain as far as is practical, which is the exact language used by our courts. The State, if they chose, and they had -- you know, and they chose not to, they could have contacted FedEx. They could have gotten the records as who the drivers were. They could have had testimony about how the storage takes place at FedEx, how the storage facility in New York handles things, what happens on the trucks, whether they're secure, whether they're not secure. All we know is a bunch of nice guys or potentially nice guys with FedEx uniforms, a whole lot of them handled this package before it got to Charlotte. We have no idea who they are.

(6/20 Tr. p. 53, line 6 – p. 55, line 1).

The Trial Court replied, "the issue I have with that argument is it means FedEx and UPS overnight are used in cases all the time. I mean, samples are sent -- you know, DNA samples are

sent for testing, blood samples are sent, and they're -- they're a common carrier." (6/20 Tr. p. 55, lines 2-6). The State referenced *United States v. Jones* and maintained, "As far as our argument is concerned, person before FedEx, they testified to the condition that it was not altered, that it was sealed, that they would not have given it to FedEx if it were not in that way, and the person after FedEx also did the same thing." (6/20 Tr. p. 56, lines 4-8). The Trial Court agreed with the State's argument. 6/20 Tr. p. 56, lines 9-15).

Defense Counsel noted that South Carolina has "a higher standard" under Article 1, Section 10 of the South Carolina Constitution's right to privacy. (6/20 Tr. p. 56, line 16 – p. 57, line 3).

The Trial Court found that the State did not have to present testimony from FedEx because "FedEx is a common carrier". (6/20 Tr. p. 57, lines 4-25). Defense Counsel again cited *State v. Pulley* and clarified his argument that the State must identify someone from FedEx that could attest to how the package was stored and shipped, and the fact that FedEx is a "common carrier" does not give the State a pass on establishing chain of custody as far as practicable. (6/20 Tr. p. 58, lines 22-25; p. 63, lines 1-18; p. 65, lines 11-18).

The Trial Court ultimately admitted State's Exhibit number 1, finding that the State had established the chain as far as practicable. (6/20 Tr. p. 66, lines 4-16). Specifically, the Trial Court held:

> There's testimony that the items were -- were – were sealed by Homeland Security in New York City. They were delivered to Federal Express as a common carrier. They were received by Homeland Security in Charlotte. The items were still sealed and did not appear to be tampered with. And I -- I think -- I think that's sufficient under the law. So I'm -- I'm going to admit State's 1.

(6/20 Tr. p. 66, lines 10-17).

Motion for Directed Verdict

After the close of the State's case-in-chief, Defense Counsel moved for a directed verdict

of acquittal. (6/20 Tr. p. 80, line 24 – p. 101, line 24). Specifically, Defense Counsel addressed the trafficking statute and lack of evidence for each element. Defense Counsel argued that Appellant's actions were merely suspicious but "doesn't meet the direct verdict standard." (6/20 Tr. p. 82, line 24 – p. 83, line 2). Defense Counsel also cited several cases regarding the knowledge requirement. (6/20 Tr. p. 84, line 4 – p. 85, line 24).

In response, the State claimed that the tracking number, text messages, walking into the apartment mailroom, and the statement to Officer Moore established substantial circumstantial evidence. (6/20 Tr. pp. 97–100).

The Trial Court ultimately held, "I found there's substantial circumstantial evidence and enough to submit this case to the fact finder, which will be me. But I'm going to deny the motion for a directed verdict." (6/20 Tr. p. 101, line 24 – p. 102, line 2). The Trial Court provided the following reasons in support of his ruling: (1) "[A]n 4 international package directed to the Defendant with just a 5 little -- a little under five pounds of MDMA in it"; (2) "the Defendant checking the status of the package on his phone"; (3) the comment made to the law enforcement officer about the . . . something to the effect of, 'I can't talk to you because they would kill me'; and (4) the previously admitted "text messages". (6/20 Tr. p. 102, lines 3-15).

ARGUMENT

I. THE TRIAL COURT ERRED BY FINDING A PACKAGE CONTAINING ILLEGAL DRUGS THAT HAD APPELLANT'S NAME AND ADDRESS FOR DELIVERY CONSTITUTED PROBABLE CAUSE TO ISSUE AN ARREST WARRANT FOR TRAFFICKING BECAUSE APPELLANT NEVER HAD ACTUAL OR CONSTRUCTIVE POSSESSION OF THE PACKAGE AND LAW ENFORCEMENT HAD NO EVIDENCE OF APPELLANT'S KNOWLEDGE REGARDING THE CONTENTS OF THE PACKAGE.

Standard of Review

In criminal cases, an appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citations omitted). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012).

Law

An arrest must be supported by probable cause to believe that a crime has been committed and that the person to be arrested committed the crime. *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). The standard for an arrest is probable cause, defined in terms of facts and circumstances sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense. *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975). "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 has been obtained by exploitation of that illegality." *State v. Copeland*, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996) (citing *Wong Sun v. United States*, 371 U.S. 471 (1963)).

Discussion

In this case, the Trial Court erred by finding a package containing illegal drugs that had

Appellant's name and address for delivery constituted probable cause to issue an arrest warrant for trafficking because Appellant never had actual or constructive possession of the package and law enforcement had no evidence of Appellant's knowledge regarding the contents of the package. (6/16 Tr. pp. 24–45; 6/17 Tr. p. 6, lines 3-15). *See Garner*, 471 U.S. at 7; *Gerstein*, 420 U.S. at 111; *Copeland*, 321 S.C. at 323, 468 S.E.2d at 624 (citing *Wong Sun*, 371 U.S. 471).

A package sent through the mail system can be addressed to any citizen without their knowledge or intent to control its contents, and the mere mailing of a package to an addressee does not establish probable cause to arrest that person for its contents without additional evidence. Here, the State failed to present sufficient evidence of Appellant's knowledge and attempt to control the contents of the package prior to the issuance of the arrest warrant because Appellant never had the opportunity to accept, reject, or even see the package. It is undisputed that Appellant never approached the locker kiosk, never entered the access code, never opened the locker door, and never touched the "sham" package. Appellant's innocent conduct of walking into his apartment complex mailroom, looking at his phone, and leaving does not constitute an overt attempt to possess the package. (6/17 Tr. p. 167).

The Trial Court's erroneous ruling sets a dangerous precedent that every unsolicited package with unknown contents to an addressee is a strict-liability felony charge for drug trafficking. This is exactly why the State must establish sufficient evidence that Appellant knew the contents of the package and intended to possess the package. Without more, the facts presented here would not warrant a prudent man in believing that Appellant had attempted to possess MDMA or aided and abetted trafficking MDMA. *See Gerstein*, 420 U.S. at 111.

The State cannot use post-arrest evidence to retroactively salvage a deficient arrest warrant. Defense Counsel noted there was no evidence that Appellant was aware of the officers in the

nearby breakroom until *after* he had exited the mailroom. Defense Counsel also explained, "at the time they arrested my client, [law enforcement] had no indication whatsoever that he'd been following anything with tracking numbers, because that was all derived later as a result of the search of the phones." (6/16 Tr. pp. 24 and 40). Notably, the Trial Court agreed with Defense Counsel that the Court could not use the information obtained from Appellant's cell phone in determining the existence of probable cause because the officers "only got that information after arrest." (6/16 Tr. p. 41).

Therefore, law enforcement unlawfully arrested Appellant for trafficking MDMA and the resulting data from the seized cell phones must be suppressed as "fruit of the poisonous tree". *See Copeland*, 321 S.C. at 323, 468 S.E.2d at 624 (citing *Wong Sun*, 371 U.S. 471).

II. THE TRIAL COURT ERRED BY FINDING A PACKAGE CONTAINING ILLEGAL DRUGS THAT HAD APPELLANT'S NAME AND ADDRESS FOR DELIVERY CONSTITUTED PROBABLE CAUSE TO ISSUE A SEARCH WARRANT FOR HIS CELL PHONE DATA BECAUSE APPELLANT NEVER HAD ACTUAL OR CONSTRUCTIVE POSSESSION OF THE PACKAGE AND LAW ENFORCEMENT HAD NO EVIDENCE OF APPELLANT'S KNOWLEDGE REGARDING THE CONTENTS OF THE PACKAGE.

Standard of Review

Same standard of review as Issue I.

Law

"The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. Evidence seized in violation of the Fourth Amendment must be excluded from trial." *State v. Khingratsaiphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002). A search or seizure is reasonable under the Fourth Amendment when it is authorized by a warrant that is supported by probable cause. *State v. Kinloch*, 410 S.C. 612, 616, 767 S.E.2d 153, 155 (2014).

"In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures." *State v. Forrester*, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); S.C. Const. art. I, § 10. "The relationship between the two constitutions is significant because '[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution." *Forrester*, 343 S.C. at 643, 541 S.E.2d at 840 (quoting *State v. Easler*, 327 S.C. 121, 131 n.13, 489 S.E.2d 617, 625 n.13 (1997)). "Therefore, state courts can develop state law to provide their citizens with a second layer of constitutional rights." *Id.* "This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling." *Id.* "Thus, this Court can interpret the state protection against unreasonable searches and seizures in such a way as to provide greater protection than the federal

Constitution." *Id.* at 644, 541 S.E.2d at 840.

A search warrant may issue only upon a finding of probable cause. *State v. Bellamy*, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). The duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed. *See State v. Adams*, 291 S.C. 132, 352 S.E.2d 483 (1987); *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). Suppression of evidence to be an appropriate remedy when evidence is seized pursuant to an invalid search warrant. *See Baccus*, 367 S.C. at 52, 625 S.E.2d at 222.

In *Illinois v. Gates*, 462 U.S. 213, 238 (1983), the United States Supreme Court adopted a "totality-of-the-circumstances" test for probable cause determinations:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

In South Carolina, search warrants may be issued "only upon affidavit sworn to before the magistrate. . .establishing the grounds for the warrant." S.C. Code Ann. § 17-13-140; *see also State v. McKnight*, 291 S.C.110, 352 S.E.2d 471 (1987). The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter. *See Franks v. Delaware*, 438 U.S. 154 (1978). "Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient." *State v. Smith*, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990).

In *Riley v. California*, 573 U.S. 373, 386 (2014), the United States Supreme Court examined whether the search-incident-to-arrest exception to the Fourth Amendment applied when police searched data on cell phones following an arrest. The Court in *Riley* held that it did not apply to cell phone data, finding officers must generally secure a warrant before a search.

Discussion

In this case, the Trial Court erred by finding a package containing illegal drugs that had Appellant's name and address for delivery constituted probable cause to issue a search warrant for his cell phone data because Appellant never had actual or constructive possession of the package and law enforcement had no evidence of Appellant's knowledge regarding the contents of the package. *See* U.S. Const. amend. IV; S.C. Const. art. I, § 10*; see generally Baccus*, 367 S.C. at 50, 625 S.E.2d at 221; *Smith*, 301 S.C. at 373, 392 S.E.2d at 183. (6/16 Tr. pp. 14, 22, pp. 25–27, pp. 29–30, pp. 34–36, p. 45; 6/17 Tr. p. 6, lines 5-15).

The search warrant for the cell phones lacked particularized probable cause and incorrectly relied on post-arrest justifications. The State cannot retroactively construct the probable cause required to obtain the search warrant by the evidence obtained from an unlawful search (i.e., the digital extraction containing the text messages, Cellebrite reports, tracking history, and "parcel pending" emails). The State incorrectly argued that the cell phones were searched incident to arrest. *See Riley*, 573 U.S. at 386.

Even if the initial seizure of the cell phones were deemed lawful, the subsequent search warrant issued on February 23, 2023, at 11:29 p.m. to extract and search the phones' electronic data was constitutionally deficient. Specifically, the search warrant must establish a specific nexus between the device and the alleged crime and not present generalized, boilerplate reasons why Appellant's cell phone potentially contained incriminating evidence. Therefore, the Trial Court abused its discretion by admitting State's Exhibits 5, 6, 7, and 8 into evidence. (R. *).

Notably, the Trial Court also erroneously refused to rule on Appellant's challenges to the search of his storage unit and residence preventing this Court's review on appeal. (6/17 Tr. p. 26, line 23 – p. 28, line 25). *See Franks*, 438 U.S. 154; *Missouri*, 361 S.C. 107.

III. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO SUPPRESS APPELLANT'S UNDOCUMENTED STATEMENT TO INVESTIGATOR MOORE BECAUSE THE UNTIMELY DISCLOSURE VIOLATED RULE 5, SCRCRIMP, AND THE STATE'S DISCOVERY OBLIGATIONS UNDER KYLES V. WHITLEY, 514 U.S. 419 (1995).

Standard of Review

Same standard of review as Issues I and II.

Law

Rule 5, SCRCrimP, requires disclosure of evidence by the State, including statements by a defendant:

> **Statement of Defendant.** Upon request by a defendant, the prosecution shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecution agent.

Rule 5(a)(1)(A), SCRCrimP (emphasis in original). *See Earley v. State*, 418 S.C. 255, 792 S.E.2d (2016). Rule 5 also provides, "The prosecution shall respond to the defendant's request for disclosure no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court." Rule 5(a)(3), SCRCrimP; *see also United States v. Gleason*, 616 F.2d 2, 24 (1979) (noting "[t]he rule, of course, is intended to enable a defendant to obtain prior to trial any of his own statements relevant to the crime charged against him so that he will be able to prepare properly to face the evidence that may be introduced against him at trial.").

"[W]here a party fails to comply with Rule 5, the court may order the noncomplying party to permit inspection, grant a continuance, prohibit introduction of the nondisclosed evidence, or enter such order as it deems just under the circumstances." *State v. Kerr*, 330 S.C. 132, 150, 498

S.E.2d 212, 221 (Ct. App. 1998) (citing Rule 5(d)(2), SCRCrimP; *State v. Trotter*, 322 S.C. 537, 542, 473 S.E.2d 452, 455 (1996)). "Sanctions for noncompliance with disclosure rules are within the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.* (citing *State v. Davis*, 309 S.C. 56, 63, 419 S.E.2d 820, 825 (Ct. App. 1992)).

In *Kyles v. Whitley*, the United States Supreme Court held that "the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police." *Id.*, 514 U.S. at 437. The Court in *Kyles* also held that due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks. *Id*, 514 U.S. at 442 n. at 445-451.

Discussion

In this case, the Trial Court erred by denying Appellant's motion to suppress Appellant's undocumented statement to Investigator Moore because the untimely disclosure violated Rule 5, SCRCrimP, and the State's discovery obligations under *Kyles v. Whitley*, 514 U.S. 419. (6/17 Tr. p. 101, lines 23-24). The Trial Court abused its discretion in finding that Appellant's unrecorded oral statement to Investigator Moore did apply to Rule 5, SCRCrimP, because the statement was not memorialized in writing. (6/16 Tr. pp. 49, 58-59). The plain language of Rule 5(a)(1)(A) explicitly requires the pretrial disclosure of the substance of any oral statement that the State intends to offer at trial.

The Prosecutor's explanation that she had "just learned of" the statement from the officer the Friday before trial ignores her obligation set forth in *Kyles* "to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police." *Id.*, 514 U.S.

at 437. The purpose of Rule 5 and the holding set forth in *Kyles* is to avoid a "trial by ambush" and to ensure a defendant receives a fair trial. The Trial Court's abuse of discretion incentivizes law enforcement's concealment of incriminating statements until the eve of trial.

The untimely disclosure of this unrecorded statement is highly prejudicial to Appellant because the Trial Court relied on it rendering a guilty verdict, it strengthened the State's weak circumstantial evidence case regarding Appellant's knowledge of the illegal drugs, and the eleventh-hour disclosure prevents Defense Counsel from investigating the purported statement for impeachment and rebuttal evidence. (6/20 Tr. p. 102). Therefore, the Trial Court abused its discretion by refusing to suppress the untimely, unrecorded, and highly prejudicial statement.

IV. THE TRIAL COURT ERRED BY ADMITTING STATE'S EXHIBIT NO. 1 (THE PHYSICAL CARDBOARD PACKAGE) AND STATE'S EXHIBIT NO. 2 (THE MDMA) BECAUSE THE STATE FAILED TO ESTABLISH SUFFICIENT CHAIN OF CUSTODY BY NOT PROVIDING ANY IDENTITIES, RECORDS, OR TESTIMONY FROM FEDEX ABOUT HOW THE EVIDENCE WAS STORED AND SHIPPED IN AN UNSECURED, COMMERCIAL FEDEX BOX.

Standard of Review

The standard of review is the same as issues I, II, and III. "The trial judge's exercise of discretion must be reviewed in the light of the following factors: '. . . the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.'" Id. at 94-95, 708 S.E.2d 750, 754-55 (alteration in original) (quoting *United States v. De Larosa*, 450 F.2d 1057, 1068 (3d Cir. 1971)).

Law

"[T]his Court has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." *State v. Pulley*, 423 S.C. 371, 377, 815 S.E.2d 461, 464 (2018) (quoting *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011)). Where multiple people have handled the analyzed substance, "the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture." *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007)

"Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." *Id.* at 7, 647 S.E.2d at 206 (citing *State v. Taylor*, 360 S.C. 18, 27, 598 S.E.2d 735, 739 (Ct. App. 2004)). "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." *Id.* at 7, 647 S.E.2d at 206.

Discussion

In this case, the Trial Court erred by admitting State's Exhibit no. 1 (the physical cardboard package) and State's exhibit no. 2 (the MDMA) because the State failed to establish sufficient chain of custody by not providing any identities, records, or testimony from FedEx about how the evidence was stored and shipped in an unsecured, commercial FedEx box. (6/20 Tr. p. 57, lines 4-25; p. 6, lines 4-17). *See Pulley*, 423 S.C. at 377, 815 S.E.2d at 464; *Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007) ("Where an analyzed substance . . . has passed through several hands, the identity of individuals who acquired the evidence *and what was done with the evidence* between the taking and analysis must not be left to conjecture.") (emphasis added).

The Trial Court abused its discretion because there is no "common carrier" exception to establishing a sufficient chain of custody. It is undisputed that law enforcement had no personal knowledge or records of who handled, stored, or shipped this package at FedEx or the procedure for how FedEx handles, stores, or ships packages during a standard commercial shipment. *See Sweet*, 374 S.C. at 6, 647 S.E.2d at 205-06 ("Accordingly, if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence *absent proof of tampering*, bad faith, or ill-motive.") (emphasis added).

The FedEx tracking number does not cure the prejudice created by the break in the chain because the FedEx box is not the original package and contraband. *See Hatcher*, 392 S.C. at 94-95, 708 S.E.2d at 754-55 (noting "the mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody."). Therefore, the Trial Court erred in admitting State's Exhibits numbers 1 and 2.

V. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT BECAUSE THE STATE FAILED TO PRESENT SUBSTANTIAL CIRCUMSTANTIAL OR DIRECT EVIDENCE OF APPELLANT TRAFFICKING MDMA.

Standard of Review

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the evidence in the light most favorable to the State. *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). An appellate court must find the trial court properly submitted a case to the jury [finder of fact] if any direct evidence or any substantial circumstantial evidence reasonably tended to prove the guilt of the accused. *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648.

Law

"A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'" *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). "[T]he trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt." *Id.* at 142, 708 S.E.2d at 778. In other words, when the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof. *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013).

"Circumstantial evidence . . . gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine

whether it is sufficient to submit to the jury." *State v. Rogers*, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (Ct. App. 2013). "[W]hen the State relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the trial [court] is concerned with the existence or non-existence of evidence, not with its weight." *State v. Pearson*, 415 S.C. 463, 469, 783 S.E.2d 802, 805 (2016).

When considering a directed verdict motion, the trial court must view the evidence in the light most favorable to the State and submit the case to the jury if any substantial evidence "reasonably tends to prove the guilt of the accused" or if any substantial evidence exists "from which his guilt may be fairly and logically deduced." *State v. Bennett*, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) (quoting *State v. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955)). "[T]he court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness." *Id.* at 237, 781 S.E.2d at 354 (emphasis omitted).

"Accordingly, in ruling on a directed verdict motion whe[n] the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *Id. See generally In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) ("Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.").

"It is well-settled law that a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof aliunde of the corpus delicti." *State v. Abraham*, 408 S.C. 589, 592, 759 S.E.2d 440, 441 (Ct. App. 2014) (footnote omitted). Stated another way, the State must prove the corpus delicti of the murders with evidence from a source other than a

defendant's confessions. "Circumstantial evidence . . . gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury." *State v. Rogers*, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (Ct. App. 2013). "[T]he corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, together with such statements, permits a reasonable belief that the crime occurred." *State v. Osborne*, 335 S.C. 172, 180, 516 S.E.2d 201, 205 (1999).

"A confession in a legal sense is restricted to an acknowledgment of guilt made by a person after an offense has been committed and does not apply to a mere statement or declaration of an independent fact or facts from which such guilt might be inferred." *State v. Epes*, 209 S.C. 246, 261, 39 S.E.2d 769, 775 (1946). The corroboration rule applies whether a statement amounts to a confession or merely constitutes an admission of essential facts from which guilt might be inferred. *Osborne*, 335 S.C. at 178, 516 S.E.2d at 203-04.

Discussion

In this case, the Trial Court erred by denying Appellant's motion for a directed verdict because the State failed to present substantial circumstantial or direct evidence of Appellant trafficking MDMA. (6/20 Tr. pp. 101–102). *See Bostick*, 392 S.C. at 139, 708 S.E.2d at 776; *Hepburn*, 406 S.C. at 429, 753 S.E.2d at 409.

The State failed to present substantial circumstantial evidence that Appellant "knowingly attempted" to become in actual or constructive possession of the package. It is undisputed that Appellant never approached the locker kiosk, never entered the access code, never opened the locker door, and never touched the "sham" package. Appellant's innocent conduct of walking into his apartment complex mailroom, looking at his phone, and leaving does not constitute an overt

attempt to possess the package. (6/17 Tr. p. 167). Notably, the State also failed to present any evidence that Appellant ordered the package or knew the contents of the package based on the purported vague unrecorded oral statement to Investigator Moore.

At worst, the tracking history proved that Appellant was aware that a package was in transit but it did not prove that Appellant ordered or knew the contents of the package. *See generally Mattison*, 388 S.C. at 480, 697 S.E.2d at 584 (finding "[m]ere presence at the scene is not sufficient to establish guilt as an aider or abettor."). (quotation citation omitted).

As persuasive as authority, the United States Court of Appeals for the Second Circuit recently held in *United States v. Belloisi*, 164 F.4th 232 (2d Cir. 2026) that the Government failed to prove that Belloisi possessed knowledge that the items in the compartment were controlled substances, rather than other contraband. The Government had introduced evidence that the defendant—an airplane mechanic—accessed a compartment on a plane where drugs were hidden while carrying an empty tool bag, received a suspicious text from an unknown individual minutes before accessing the compartment, and falsely claimed to police officers that he was legitimately inspecting the compartment. *See Id.* at 234-39.

Therefore, the Trial Court abused its discretion in denying Appellant's motion for a directed verdict. *See Bostick*, 392 S.C. at 139, 708 S.E.2d at 776; *Hepburn*, 406 S.C. at 429, 753 S.E.2d at 409.

CONCLUSION

Based on the foregoing reasons, Appellant respectfully requests that this Court reverse his conviction and sentence and issue an Order of Acquittal or remand this case to the York County Court of General Sessions for a new trial.

Respectfully submitted,

s/ Dayne Phillips

Dayne Phillips
S.C. Bar No. 77712

PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29072
803-272-4503 (office)
803-807-0234 (cell)
dayne@pricebenowitz.com

ATTORNEY FOR APPELLANT

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