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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AMY DANIELLE VILARDI,

APPELLANT

APPELLATE CASE NO. 2026-000648

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court should have quashed the indictments with prejudice on the grounds of excessive and unconstitutional pre-indictment delay, where the state waited more than eight (8) years to bring charges against Appellant despite finding no new evidence?

II.

Whether the trial court should have suppressed evidence found in Appellant's home when the search was authorized by two bare-bones search warrants that did not establish probable cause?

III.

Whether the trial court erred by finding that the state had laid the proper foundation for the photograph of money found on decedent Michael Scott's laptop?

STATEMENT OF THE CASE

On January 23, 2024, an Anderson County grand jury indicted Appellant and co-defendant Rossmore Vilardi for four counts of murder in the deaths of Violet Juanita Taylor, Cathy Delores Scott, Barbara Jean Scott, and Terry "Michael" Scott (collectively, "Decedents"). R.*(Indictments). The case was tried from February 23-27, 2026, before the Honorable R. Scott Sprouse and a jury. Tr. III: 1. Lori S. Murray and Joshua Snow Kendrick represented Appellant; assistant attorneys general Heather Savitz Weiss and Joel Alexaner Kozak represented the state. Tr. III: 1. The jury convicted Appellant as indicted. Tr. III: 820. Judge Sprouse sentenced Appellant to consecutive terms of life imprisonment on each indictment. Tr. III: 826-827; R.*(Amended Sentencing Order).

This appeal follows.

STATEMENT OF FACTS

On either the night of October 31 or the morning of November 1, 2015, Violet Taylor, Cathy Scott, Barbara Scott, and Michael Scott were murdered in their home. Almost immediately, police suspected Appellant and her husband, Rossmore Vilardi (hereinafter "Ross"). However, neither were arrested nor charged until eight (8) years later, in 2023.

Background

Decedents, Appellant, and Ross are related. The nature of their relationships was central to the state's case. Appellant is Cathy Scott's daughter. Tr. III: 136, ll. 11-13. Michael Scott was Cathy Scott's husband, and Barbara Scott was Michael Scott's mother.

Appellant and Ross lived in a single-wide trailer that sat on the same lot as Decedents' double-wide trailer. Tr. III: 144, ll. 4-8. Around July 4, 2015, something changed in the family dynamic. Tr. III: 159, ll. 18-19. From July to October of 2015, Appellant and Decedents had a "non-existent" relationship. Tr. III: 136, ll. 20-21. This family strife led to Appellant denying Decedents access to her and Ross's children. Tr. III: 159, ll. 22-23. This deteriorating relationship was demonstrated by Appellant's communications with friends and by her Facebook posts from around this time period. Tr. III: 163-168. Among other things, Appellant lamented that Michael Scott had called her a "whore" in front of her children. Tr. III: 165-168. Appellant's mother was emotionally abusive, which was compounded by Michael Scott, her stepfather. *Id.* Despite this, Appellant and Ross "did make up [with Decedents] prior to this incident," approximately one week before the murders. Tr. III: 175, ll. 2-3. Appellant and Ross informed Decedents that they would be allowed to see the children once Appellant and Ross returned from a trip to Columbia. Tr. III: 171, ll. 18-20.

Michael Scott was known to possess significant sums of cash, due to his involvement in buying and re-selling several different types of collectors' items, from video games, to fishing gear, to gold.[1] Tr. III: 157, ll. 19-23; 158, ll. 3-7. Michael Scott kept up with his cash very diligently; his sister testified that he had his own system for storage and record keeping. Tr. III: 159, ll. 2-13. Michael Scott typically kept his cash in money bands similar to those used by a bank. Tr. III: 230, ll. 18-25.[2]

Appellant and Ross operated a pet grooming business called Styles for Miles. Tr. III: 115, ll. 20-22; 180, l. 10. When they first opened the business, business was good. Tr. III: 180, ll. 18-22. However, towards the end of the business's life, business slowed down. Tr. III: 181, ll. 2-5. The business was operated out of a storefront that Appellant and Ross rented from a commercial landlord named Zuhair Namouz. Tr. III: 115, ll. 20-22. From January until October of 2015, Appellant and Ross paid their monthly rent to Namouz *via* check. Tr. III: 116-118. At the end of October or beginning of November of 2015, Appellant and Ross sought to terminate the lease early. Tr. III: 120, ll. 5-7. To that end, Appellant and Ross gave Namouz a check for $8,000.00. Tr. III: 120, ll. 5-7. However, prior to Namouz depositing the check, Appellant and Ross called him and told him not to cash the check because they would rather pay in cash. Tr. III: 121, ll. 3-5. Later that day, Ross gave Namouz $8,000.00 in cash. Tr. III: 123, ll. 14-15. Namouz acknowledged on cross-examination that Appellant and Ross were never behind on their rent. Tr. III: 123, ll. 14-16.

One of Appellant and Ross's employees was a woman named Rocksy Vorhies, and she had known Appellant since high school and had become close friends with her during her

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[1] Michael Scott also previously bought and sold methamphetamine. Tr. III: 172, ll. 14-18.

[2] However, it is worth noting that police found more than $21,000.00 in cash that was not organized in cash bands in Decedents' home. Tr. III: 410, ll. 7-13.

employment. Tr. III: 176, ll. 14-21. Vorhies testified that she was given very little notice of the impending closure of the business. On October 30, 2015, Vorhies texted Appellant to ask her for her last paycheck. Tr. III: 184, l. 14 – 185, l. 1. On November 1, 2015, Appellant texted Vorhies indicating that Appellant thought Vorhies was going to come by the previous night. Tr. III: 188, ll. 1-4. Vorhies texted Appellant that she could not because she was sick. *Id.* Appellant then told Vorhies that she had traveled to Columbia the previous evening and would be back that day, November 1, around 4:00 p.m. Tr. III: 188, ll. 7-14. Vorhies went to Appellant and Ross's home that night to pick up her paycheck. Tr. III: 189, ll. 11-13. On her way to Appellant and Ross's home, she had to pass Decedents' home. While doing so, Vorhies noticed that she could see the blue light from a television through Decedents' window and that a bathroom light was on. Tr. III: 189, ll. 24-25. While Vorhies was at Appellant and Ross's home, Appellant gave her a check and a cellphone. Tr. III: 192, ll. 2-3. About a week later, Vorhies gave the cellphone to police. Tr. III: 193, ll. 4-8.

At 12:23 p.m. on November 2, 2015, Appellant called Decedents' landline. Tr. III: 333, ll. 13-16. When there was no answer, Appellant went to Decedents' home. Seven minutes later, at 12:30 p.m., Appellant called 9-1-1 and reported finding Decedents' bodies. Tr. III: 45, ll. 12-15; 333, ll. 5-10. All the above events occurred in close temporal proximity. According to Vorhies, Appellant and Ross got married and then shut down their business and then the murders occurred all around the same time. Tr. III: 182, ll. 17-25.

The investigation

The investigation into the murders started immediately after Appellant reported them on November 2, 2015. Officer Thomas Dugan testified that he noticed several blood spatters and a fingerprint at Decedents' home. Tr. III: 372, ll. 9-11. Police also found bloody footprints in

Decedents' home. Tr. 560-565. The primary bedroom closet had been "ransacked" to the point that a shelf was broken. Tr. III: 378, l. 22 – 379, l. 4.

Appellant and Ross's home and vehicles were searched pursuant to a search warrant shortly after the police arrived. Tr. III: 414, ll. 18-21. Police found a gold purse in Appellant and Ross's home containing $1,601.00 in cash. Tr. III: 426, ll. 19-21. Police found a safe in Appellant and Ross's home that contained $67,998.00 in cash. Tr. III: 231, l. 7. Some of this cash was older or rare money, such as a ten-dollar bill that was marked by the Federal Reserve Bank of New York. Tr. III: 452, ll. 9-10.

From the beginning of the investigation, police believed that "something didn't seem right" with Appellant and Ross. Tr. I: 106, ll. 5-9. However, police never arrested or charged Appellant and Ross. In 2023, the Anderson County Sheriff's Office reached out to a reality television program called *Cold Justice*. Tr. III: 288, ll. 8-14.[3] *Cold Justice* hired a forensic expert named Eric Devlin who would later testify at trial. Tr. III: 297, ll. 6-10. Devlin reviewed all of the electronic evidence that had been in the possession of law enforcement for the entirety of the investigation. Tr. III: 289, ll. 7-10. According to the state, because Devlin was a former prosecutor, he looked at the evidence differently, and he was able to draw conclusions where police were previously unable. Tr. I: 123, ll. 6-13.

Also in 2023, Ross's brother David Vilardi gave a firearm to police that he said was given to him by Ross.[4] Tr. I: 121, ll. 3-15. After that, Investigator Tyler Duncan was asked to review the case again. Tr. I: 121, ll. 23-25. After *Cold Justice* became involved, and after

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[3] *Cold Justice* produced a two-part television episode about this case. *Cold Justice: House of Horrors Part 1 & 2*, season 7, episodes 10 & 11 (TNT, aired Apr. 27, 2024 & May 4, 2024).

[4] It must be noted that this firearm was found not to be related to this case in any way. Tr. I: 132, ll. 1-3.

Duncan's ultimately fruitless discovery, the Sheriff of Anderson County asked the Office of the Attorney General to review the case. Tr. I: 125, ll. 5-13. Assistant attorneys general Heather Weiss and Joel Kozak ultimately decided to prosecute Appellant and Ross. Tr. I: 125-126.

Pre-trial

The state originally planned to try Appellant and Ross jointly. On February 20, 2026, however, on motion of both Appellant and Ross, Judge Sprouse ordered Appellant and Ross's trials severed. Tr. I: 78, ll. 10-11. The state elected to prosecute Appellant first.

Motion to Quash Indictments

Appellant and Ross then moved to quash their indictments on the ground of "undue delay." Tr. I: 79. Defense counsel[5] asserted that police had been investigating the case since 2015; more than a decade before trial, and more than eight years before an arrest.

According to counsel, there were several potentially exculpatory leads that were now unavailable to Appellant and Ross because of the delays, including: (1) Police found male DNA at Decedents' home that did not belong to Decedents, Appellant, or Ross. Tr. I: 79, l. 21 – 80, l. 2; (2) A man named Jimmy Richardson King lived nearby Decedents. King was schizophrenic, trained in martial arts, and had prior difficulties with Decedents. Tr. I: 84, ll. 1-8. King and Micheal Scott argued shortly before the murder. *Id.* King was in possession of several knives and guns. *Id.* And an individual named James Richie told police that King had threatened to kill him "in the same way that [King] did Michael Scott and Cathy Scott." Tr. I: 81, ll. 3-10. The last search that Michael Scott ever made on his phone was to look up King. Tr. I: 80, ll. 22-25. By the time of trial, both King and Richie had died. Tr. I: 81, ll. 11-12; (3) A police report vaguely

[5] Several portions of the argument for this motion were articulated by Ross's attorney, Shaun Courtney Kent. Appellant's attorney expressly stated that Appellant joined in all of Ross's motions. Tr. I: 17, l. 20 – 18, l. 4.

mentioned someone named Aaron Lufty who had conversations with Michael Scott about buying and selling methamphetamine. Tr. I: 82, ll. 20-24; (4) Dr. Brett Woodard, who performed the original autopsies on the Decedents, placed the time of death at a time that Appellant and Ross were in Columbia. Tr. I: 85, ll. 2014. Dr. Woodward was not available to testify at the time of trial. Tr. I: 85, ll. 19-24; and (5) Another witness named Denise Herman provided SLED with a very detailed criminal tip regarding a mentally ill former Navy SEAL who wished to murder Michael Scott. Tr. I: 86, ll. 10-15. Ms. Herman died prior to trial. *Id.*

Appellant also showed the trial court an application for a mobile tracking device from January 2016, which demonstrated that the state had no new evidence now than they had at the time of that application. Tr. I: 87, ll. 6-14; R.*(Defense Exhibit No. 3) Defense counsel asserted that the above instances and others demonstrated specific prejudice from the state's failure to prosecute the case in a timely manner. Tr. I: 87, ll. 20-24. Further, counsel asserted that the state had no valid reason for failing to try the case before now. Tr. I: 89, ll. 13-14.[6] Ultimately, counsel asserted that there had been no "material objective change in evidence [that] wasn't available." Tr. I: 100, ll. 8-9. The only difference between the time of trial and six months after the crime was the loss of strong potential defenses. Tr. I: 100, ll. 12-14.

The state responded that there are no statutes of limitation on any crime in South Carolina. Tr. I: 103, l. 14. The Office of the Attorney General was only given the case in "December of 2023." Tr. I: 104, ll. 20-22.[7] The state argued that the witnesses named by defense

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6 Defense counsel specifically cited *State v. Lee*, 375 S.C. 394, 653 S.E.2d 259 (2007), in support of the argument. Tr. I: 97, ll. 3-4.

7 While it is not clear from the record, Appellant believes it is likely that the assistant attorney general misspoke here. Appellant was arrested in 2023 and was indicted in January 2024. It seems unlikely that the Office of the Attorney General made such an expeditious turnaround, but the record is not sufficiently clear on this point to know for sure.

counsel would not have helped her case and would have only established inadmissible third-party guilt evidence. Tr. I: 107, ll. 18-21. The state in fact asserted that it was unsure of what "substantial actual prejudice [Appellant] could actually argue," quipping: "The state is the state is the state."[8] Tr. I: 104, ll. 16-18. Thus, they argued Appellant was unable to establish prejudice from the delay. Tr. I: 107, ll. 9-11.[9]

The trial court held that it could not conclude that substantial, actual prejudice had befallen Appellant and Ross and that the state was likely more prejudiced by the delay. Tr. I: 139, l. 23 – 140, l. 11. The trial court did not analyze the reason for the delay, other than to find that the state had not delayed intentionally for the purpose of strategic advantage. Tr. I: 140, ll. 20-24. Therefore, the trial court denied the motion. Tr. I: 141, ll. 1-2.

Motion to Suppress Evidence from Appellant's Home

Appellant next moved to suppress any evidence found during the search of her home. Tr. II: 5; R.*(Motion to Suppress). The police obtained search warrants to search both Decedents' and Appellant's residences at the same time on November 2, 2015. Tr. II: 6, ll. 8-10. In total, there were two search warrants for Appellant's residence, both issued November 2, 2015. The probable cause section of the first search warrant affidavit read as follows:

> On November 2, 2015, deputies with the Anderson County Sheriff's Office responded to [address] in reference to a report of several deceased individuals. Upon arrival, deputies located four deceased subjects in the double-wide mobile home on the property. All four subjects had apparent gunshot wounds. The complainant who reported the incident to law enforcement lives in the single-

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[8] Here, the assistant attorney general was likely quoting Justice James's dissenting opinion in *State v. Price*, 441 S.C. 423, 451, 895 S.E.2d 633, 647 (2023) (James, J., dissenting). The full quote is: "'The state is the state is the state' *and 'the state failed.*'" *Id.* (emphasis added).

[9] In support of its argument, the state cited *Jones v. Angelone*, 94 F.3d 900 (4th Cir. 1996); *State v. Brazell*, 325 S.C. 65, 480 S.E.2d 64 (1997); and *United States v. Brown*, 742 F.2d 359 (7th Cir. 1984). Tr. I: 138, ll. 19-24.

> wide mobile home also on [address] and did enter the double-wide prior to calling law enforcement. This is in reference to [case number] and the affiant believes that a search of the residence will yield evidence pertinent to this investigation.

R.*(Court's Exhibit 2, p. 1). The "description of premis[es]...to be searched" stated that the police wished to search: "All property associated with the single-wide mobile home located at [address]." *Id.* The second search warrant contained essentially the same information, with the addition of the following: (1) "The victims appeared to have gunshot wounds *and injuries consistent with an edged weapon*;" and (2) "Also, the male victim in the residence is known to deal in gold/jewelry and usually has a large sum of cash according to neighbors." *Id.* (emphasis added).

Defense counsel told the trial court that she was in possession of the issuing magistrate's notes, which indicated that the search warrant affiant had not orally supplemented the affidavits. Tr. II: 9, ll. 17-20. Counsel argued that the affidavits did not establish probably cause for a search. Tr. II: 9, ll. 23-24. She based this argument on both the Fourth Amendment and Article I, § 10 of the South Carolina Constitution. Tr. II: 12, ll. 20-23. Appellant further argued that the warrants were overly broad and not sufficiently particularized. R.*(Motion to Suppress).

The state responded that Appellant's and Decedents' homes were very close together. Tr. II: 14, ll. 1-2. Appellant found the bodies, and she was inside the residence. Tr. II: 14, ll. 6-11. The state asserted that the proper standard is whether there is probable cause that evidence will be found in a particular place, not whether there is probable cause that Appellant committed a crime. Tr. II: 15, ll. 3-6. Therefore, according to the state, the search warrant was facially adequate. Tr. II: 16, ll. 6-8; 17, ll. 17-20.

The trial court agreed with the state and denied the motion to suppress. Tr. II: 21, ll. 24-25. It found that the first search warrant affidavit contained the specific fact that Appellant was

the one who reported the murder. Tr. II: 21, ll. 9-13. Therefore, the search warrant was supported by probable cause. Tr. II: 21, ll. 24-25.

As to the second search warrant, Appellant additionally argued that the sentence regarding Decedent Michael Scott being "known to deal in gold/jewelry and usually has a large sum of cash according to *neighbors*", R.*(Court's Exhibit 2, p. 2) (emphasis added), was false. Tr. II: 24, ll. 8-16. Responding to the state's assertion that Appellant stated in her 9-1-1 call that Michael Scott had large sums of money, Appellant asserted that the police on the scene would not have been aware of the exact contents of the 9-1-1 call, and that even though Appellant was technically a "neighbor," police would certainly have used Appellant's name rather than "neighbor" if they were actually aware of the call. Tr. II: 28, ll. 9-23.

The trial court agreed that the affidavit contained false information since it used the plural "neighbors." Tr. II: 29, ll. 4-7. However, the trial court concluded that the false information was not knowingly, intentionally, or recklessly added, and again denied the motion to suppress. Tr. II: 30, ll. 21-25.

Trial

The state's theory was that Appellant and Ross killed Decedents for financial gain out of desperation. Tr. III: 742, ll. 11-13. The time of Decedents' deaths was an issue in the case. Deputy Coroner Donald McCown testified that he performed an examination on the Decedents on November 2, 2015 at 1:40 p.m., and that the time of death was 24-to-36 hours prior to that examination. Tr. III: 102, l. 18; 103, l. 5. According to that examination, Decedents were killed sometime between October 31, 2015 at 1:40 a.m. and November 1, 2015 at 1:40 p.m.

The state presented evidence that Ross made a purchase from a QuikTrip gas station in Pendleton, South Carolina at 9:48 p.m. on October 31, 2015. Tr. III: 51, l. 24 – 52, l. 3; 223, l. 9.

The state also presented evidence that Appellant purchased a cellphone from a Verizon store on Killian Road in Blythewood some time on November 1, 2015. Tr. III: 130, ll. 7-8; 132, ll. 13-15; R.*(State's Exhibit 48).

A large part of the state's case centered around the large quantity of cash found in a safe in Appellant and Ross's home. Tr. III: 228, ll. 20-24. Eric Devlin testified that he had performed a digital extraction on Michael Scott's computer. Tr. III: 304-305. On the computer, there was a photograph of money that was taken in November 2014. Tr. III: 304, l. 10. One of the bills in that photograph matched the serial number of one of the bills found in Appellant's safe. Tr. III: 305, ll. 1-3.

Defense counsel objected to the introduction of the photograph of money from Michael Scott's computer. Tr. III: 240, ll. 1-21. Counsel asserted that Devlin's proffered testimony established that he searched Michael Scott's computer and located a photograph of money that was taken in 2014 by a camera. Tr. III: 243, ll. 16-24. However, the state was not in possession of the camera, and there was no way to establish that the money depicted belonged to Michael Scott. *Id.* The state responded by proffering the following additional testimony from Devlin:

> Q. You didn't find any...photos at all on that computer from that Eastman Kodak camera?...
> Q. Other photos anywhere on that computer that were from that camera?
> A. Yes.
> Q. Okay, you did find them?
> A. Yes. Sorry.
> Q. Okay. And were any of those specifically related to Mike Scott?
> A. *That I don't know*, so...
> Q. You would have to go through and look –
> A. Correct.
> Q. – and to pull those out?

Tr. III: 245, l. 21 – 246, l. 10 (emphasis added). The state asserted that because there were photographs from this particular camera on Michael Scott's laptop, there was a sufficient

connection between the camera and the computer to establish that the money depicted in the photograph belonged to Michael Scott. Tr. III: 248, ll. 7-16. Defense counsel argued that there was no evidence to determine who took the photograph, how the photograph got onto Michael Scott's computer, or who the money belonged to. Tr. III: 252, l. 6 – 253, l. 19. The trial court ultimately overruled the objection, finding that the state had established that money was found in Appellant's residence that matched the photograph of money on Michael Scott's computer. Tr. III: 253, ll. 20-25.

Devlin also performed digital extractions of Appellant's and Ross's cellphones. He found one message from Appellant to Ross from November 5, 2015, which stated: "Hey, babe, we need to go ahead and run." Tr. III: 307, ll. 14-20. He also located several messages from Appellant to Ross expressing frustration with Decedents. Tr. III: 308-310. And he discovered a video which was created on July 11, 2015, which depicted Ross wearing red tennis shoes. Tr. III: 315, ll. 3-5; 316, ll. 1-2. Devlin also pulled location history from Appellant's and Ross's cellphones. That history showed that Appellant's cellphone was in Pendleton on October 31, 2015 at 6:29 p.m.; the next location ping was the next day at 10:40 a.m., showing Appellant in Columbia. Tr. III: 340, ll. 14-24. Ross's cellphone was in Pendleton on October 31, 2015 at 7:56 p.m. Tr. III: 334, ll. 5-10.

DNA analyst Brian Browing testified that neither Appellant's nor Ross's DNA was found in Decedents' home. Tr. III: 530, ll. 1-3.

The state also located shoe and sock prints in Decedents' home. Melinda Worley-Blackmon from SLED was qualified as an expert in footwear and crime scene analysis. Tr. III: 588, ll. 10-13. She testified that she was asked to compare shoeprints found at Decedents' home to the usual shoeprint of an ASICS Gel Speedstar 5 shoe. Tr. III: 591, ll. 22-23. She believed that

the footprints found at Decedents' home were consistent with shoeprints made by that shoe. Tr. III: 608, l. 21 – 609, l. 1. However, the particular shoes that the state alleged Ross owned were never recovered, and Worley-Blackmon admitted that standard practice in her field was to always obtain and analyze the suspect's shoes because of the possibility of specific, random characteristics. Tr. III: 611, ll. 20-25.[10]

The state also presented the testimony of Jackie Phillips, an inmate who was housed with Appellant at the Oconee County Detention Center. Tr. III: 626, ll. 13-14. Phillips testified that Appellant told her that Appellant "corralled" Decedents into the living room, and Ross shot them. Tr. 629, ll. 18-19. Phillips reported the interaction to police two weeks later. Tr. III: 631, ll. 14-16. Phillips was in the detention center because she was charged with failure to stop for blue lights, possession of methamphetamine, shoplifting, possession of an adulterant to defeat a drug test, and resisting arrest. Tr. III: 627, ll. 9-14. She explicitly told police: "I'd be lying if I didn't say I wanted to make a deal." Tr. III: 638, ll. 18-20. On cross-examination, Phillips admitted that her statement to law enforcement was inconsistent with her trial testimony. Tr. III: 645, ll. 22-24.[11] Phillips also admitted to making several derogatory remarks about Appellant. Tr. III: 639, l. 22 – 640, l. 1. Appellant made the point during cross-examination that Phillips's description of

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[10] Without analyzing the specific characteristics of Ross's shoes, which may or may not even be the same specific ASICS product tested here, there is no way to know which of the potentially millions of ASICS shoes in circulation match the pattern found at Decedents' home. While there is no way to know how many Gel Speedstar 5 shoes ASICS sold, ASICS is a massive company that sells millions or hundreds of millions of shoes per year. For example, in just the first three months of 2025, ASICS reported gross sales of 208.3 billion Yen ($1.35 billion USD). ASICS, *Consolidated Financial Summary for the First Quarter and the Three Months Ended March 31, 2025* (May 15, 2025).

[11] For example, in her statement, Phillips told police that Appellant said *she* corralled Decedents together; in her testimony, Phillips testified that Appellant said she *and* Ross corralled Decedents together.

Appellant's "confession" was inconsistent with what forensic evidence showed actually occurred. Tr. III: 647, ll. 2-6.

Appellant did not present any evidence, and the case was submitted to the jury. The jury returned guilty verdicts on each indictment. Tr. III: 820.

STANDARDS OF REVIEW

Issue I: A trial court's decision regarding pre-indictment delay is a mixed question of law and fact. *State v. Lee*, 360 S.C. 530, 537-38, 602 S.E.2d 113, 117 (Ct. App. 2004), *aff'd* 375 S.C. 394, 653 S.E.2d 259 (2007) (*citing United States v. Lynch*, 56 F.3d 62 (table), 1995 WL 325670 (4th Cir. June 1, 1995) (unpublished)). This Court should apply the same standard of review as it does in similar cases: the trial court's factual findings will be upheld if supported by any evidence, but this Court reviews the trial court's legal decisions *de novo*. *See, e.g., State v. Frasier*, 437 S.C. 625, 634, 879 S.E.2d 762, 766 (2022).

Issue II: This Court will uphold the trial court's factual findings if they are supported by any evidence but reviews the trial court's legal conclusions *de novo*. *Id.* "Entitlement to a *Franks* hearing is a matter of law subject to *de novo* review." *State v. Lynch*, 412 S.C. 156, 179, 771 S.E.2d 346, 358 (Ct. App. 2015).

Issue III: This Court reviews the trial court's decisions on whether to admit or exclude evidence for abuse of discretion. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012).

ARGUMENTS

I.

The trial court should have quashed the indictments with prejudice on the grounds of excessive and unconstitutional pre-indictment delay, where the state waited more than eight (8) years to bring charges against Appellant despite finding no new evidence.

In this case, the state possessed all the evidence it would ever possess in 2016. Despite this, Appellant was not charged or arrested until 2023. The only thing that changed was the involvement of reality TV producers and a new prosecutive agency. However, neither of those purported justifications pass legal muster. Further, Appellant demonstrated actual prejudice by naming myriad witnesses she would have called but were now unable to due solely to the extreme passage of time. Because the state's excessive and unexplainable delay deprived Appellant of her right to a fair trial, the trial court should have dismissed the case. Because it did not, this Court must reverse.

In a criminal case, a defendant has a right to a "speedy...trial." U.S. Const. amend. VI. However, the Speedy Trial Clause has only ever been applied to delay between *arrest* and trial. *See generally, e.g., United States v. Marion*, 404 U.S. 307, 320 (1971). However, the Constitution also provides a right to due process of law. U.S. Const. amends. V, XIV. Within that guarantee is a criminal defendant's inalienable right "to a fair trial." *Marion*, 404 U.S. at 324 (*citing Brady v. Maryland*, 373 U.S. 83 (1963) and *Napue v. Illinois*, 360 U.S. 264 (1959)). Because delay prior to indictment can work unfairness to a defendant in the same way as delay after an indictment, the United States Supreme Court has read the Due Process Clause to have "a limited role to play in protecting against oppressive delay." *United States v. Lovasco*, 431 U.S. 783, 789 (1977).

Whether a delay implicates a defendant's due process rights must be determined on a case-by-case basis; "Actual prejudice to the defense of a criminal case may result from the shortest and most necessary delay; and no one suggests that every delay-caused detriment to a defendant's case should abort a criminal prosecution." *Marion*, 404 U.S. at 324-35. To that end, courts have established a two-prong test: (1) "the defendant has the burden of proving the pre-indictment delay caused substantial actual prejudice to his right to a fair trial;" and (2) "if the defendant shows actual prejudice, the court must consider the prosecution's reasons for the delay and balance the justification for delay with any prejudice to the defendant." *State v. Brazell*, 325 S.C. 65, 72, 480 S.E.2d 64, 68-69 (1997). If the court finds that the state intentionally delayed prosecution in an effort to gain some tactical advantage, the court should dismiss the case. *Id.* at 72, 480 S.E.2d at 69 (*citing Howell v. Barker*, 904 F.2d 889 (4th Cir. 1990)). Of course, the defendant need not show intentional delay on the government's part. *Howell*, 904 F.2d at 895 ("Taking this position to its logical conclusion would mean that no matter how egregious the prejudice to a defendant, and no matter how long the preindictment delay, if a defendant cannot prove improper prosecutorial motive, then no due process violation has occurred. This conclusion...would violate fundamental conceptions of justice...."); *State v. Lee*, 375 S.C. 394, 400, 653 S.E.2d 259, 262 (2007) (expressly adopting the Fourth Circuit's rule from, *inter alia*, *Howell*). Rather, the court should balance the prejudice and the justification, with an eye towards whether the government's action "violates fundamental conceptions of justice or the community's sense of fair play and decency." *Lee*, 375 S.C. at 400, 653 S.E.2d at 262 (*quoting United States v. Automated Med. Labs., Inc.*, 770 F.2d 399, 404 (4th Cir. 1985) (internal quotation marks omitted)).

A defendant demonstrates "substantial actual prejudice" when he establishes that "he was meaningfully impaired in his ability to defend against the state's charges to such an extent that the disposition of the criminal proceeding was likely effected [sic]." *Brazell*, 325 S.C. at 73, 480 S.E.2d at 69 (*quoting Jones v. Angelone*, 94 F.3d 900 (4th Cir. 1996) (alteration in original)). When the alleged prejudice is based on the unavailability of a witness, a defendant must identify the witness, demonstrate specifically what that witness would have testified, establish that he made "serious attempted" to locate the witness, and show that the witness's testimony is not available from other sources. *Id.* However, this does not mean that the defendant must provide an exact replica of the unavailable witness's testimony, nor does it even mean that the defendant must demonstrate beyond doubt that the witness's testimony would have been exculpatory. It simply means that the defendant can establish the identity of an unavailable witness and give at least some specifics about that witness's value.

Lee provides an illustrative example. The defendant in that case was charged with criminal sexual conduct based on allegations that he sexually abused his stepdaughters between 1982 and 1985. *Lee*, 375 S.C. at 396, 653 S.E.2d at 260. In 1988, DSS—who at the time was represented by the solicitor's office in family court—removed the children from Lee's home but later returned the children. *Id.* at 396-97, 653 S.E.2d at 260. After the end of the DSS investigation, the solicitor's office took no further action on the case until it indicted Lee in 2001. *Id.* at 397, 653 S.E.2d at 260. Due to the delay, the family court records had been destroyed, and Lee was unable to find records contemporaneous with the alleged offenses. *Id.* at 398, 653 S.E.2d at 261. The state asserted that these facts did not demonstrate actual prejudice because the missing evidence was just as likely to be inculpatory as exculpatory—an argument which the *Lee* Court found to be "without merit." *Id.* Even though Lee had difficultly "accurately identify[ing]

specific pieces of evidence that would have exonerated him," the absence of such evidence, on balance, "would have likely benefitted Lee...." *Id.* at 399, 653 S.E.2d at 261. Therefore, Lee had demonstrated substantial, actual prejudice, even when he was unable to specifically state what would have been in the destroyed records. *Id.*

Here, Appellant demonstrated actual, substantial prejudice. Appellant identified three separate witnesses who could have established that someone other than Appellant and Ross committed the murders. Those facts, combined with the presence of unidentified male DNA at the murder scene, would have been exculpatory evidence. Appellant further established that the witnesses' testimonies were unavailable due solely to the passage of time. Further still, Appellant identified Dr. Brett Woodward, who could have provided time of death testimony that could have established an alibi defense. All these witnesses were identified with sufficient specificity to satisfy the first prong of the pre-indictment delay test.

The state asserted to the trial court that Appellant was not prejudiced by the absence of witnesses to testify to potential alternate suspects because Appellant would have been barred from introducing such evidence anyway under the third-party guilt doctrine. The state misapprehends the third-party guilt rule.

The third-party guilt doctrine prohibits a criminal defendant from introducing evidence that someone else committed the crime if that evidence is not "inconsistent with his own guilt" or if the evidence is "remote" or "disconnected and outside the crime itself." *State v. Gregory*, 198 S.C. 98, 104-05, 16 S.E.2d 532, 534-35 (1941). For example, it is insufficient for a defendant to assert that a third-party "generally fit the description of the perpetrator and lived in the apartment complex..." where the crime occurred, without more. *See State v. Mansfield*, 343 S.C. 66, 85-86, 538 S.E.2d 257, 267 (Ct. App. 2000). It is also insufficient to offer, without more, testimony that

"the victims had been threatened over their drug debts in the months leading up to the murders." *See State v. Burgess*, 391 S.C. 15, 21, 703 S.E.2d 512, 515 (Ct. App. 2010).

Here, however, the evidence that Appellant would have used went far beyond mere conjecture. Looking specifically at Appellant's evidence regarding Jimmy Richardson King, Appellant demonstrated that there was evidence that King and Michael Scott had gotten into an argument shortly before the murders. King had severe mental health issues and was in possession of numerous firearms and knives. The last thing that Michael Scott ever searched on his phone was looking up King. And, most notably, Appellant would have presented evidence from another person who would have testified that King threatened to kill him "in the same way that [King] did Michael Scott and Cathy Scott."[12] If Appellant were only attempting to present evidence that King lived in the same neighborhood as Decedents or only that King was mentally ill and owned weapons or only that King and Decedent Micheal Scott had problems, then the state's third-party guilt objection may be well-founded. Just one of these pieces alone would likely only cast "bare suspicion" on King. *Mansfield*, 343 S.C. at 85, 538 S.E.2d at 267. The combination of all the evidence establishes more than that. Because there is no evidence that King and Appellant worked in concert, and because that concert would be wholly inconsistent with the state's theory of the case, strong evidence that the murders were committed by another person "raise[s] a reasonable inference" of Appellant's innocence. *Gregory*, 198 S.C. at 104, 16 S.E.2d at 534. And the chain of evidence that Appellant planned to put together, including both circumstantial and direct evidence of King's involvement, does far more than "indulge in conjectural inferences."

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[12] Anticipating the state's argument that King's threat to Richie is hearsay, Appellant submits that she could have avoided this by calling King as a witness first, and, upon his assumed denial of making the threat, called Richie to testify to the threat as an inconsistent prior statement. Rule 801(d)(1), SCRE.

Id.[13] Rather, Appellant premised her argument on evidence from within the state's discovery disclosures, such as a "dump" of Michael Scott's cellphone and police investigative notes into King. *Contra United States v. Brown*, 742 F.2d 359, 362 (7th Cir. 1984) ("Vague and conclusory allegations of prejudice resulting from the passage of time and the absence of witnesses are insufficient to constitute a showing of actual prejudice.").

Further still, there is "reasonable probability" that "the result of the proceeding would have been different." *Jones*, 94 F.3d at 907 (*quoting Stoner v. Graddick*, 751 F.2d 1535, 1547 (11th Cir. 1985)). The "reasonable probability" standard is not unique to this context; it is the same standard used to determine prejudice in a PCR action for ineffective assistance of counsel. *Graddick*, 751 F.2d at 1547; *accord, Strickland v. Washington*, 466 U.S. 668 (1984). Here, by the state's own admission, the state's case was wholly circumstantial. Tr. III: 719, l. 20 ("This is a circumstantial case...."). The state presented evidence that Appellant and Ross were in possession of cash that, at some point, belonged to Michael Scott, evidence that Appellant and Decedents did not get along, the testimony of a jailhouse informant who claimed that Appellant confessed the crime to her (albeit with incorrect details), and evidence that a shoeprint found at Decedents' home matched one shoe in particular from a highly popular shoe brand that Ross was

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[13] The state asserted to the trial court that the third-party guilt rule barred introduction of third-party guilt evidence unless it "would make it such that the...information that the state is presenting against [Appellant and Ross] *could not be true*." Tr. I: 107, ll. 19-21. That is not the third-party guilt rule. Third-party guilt evidence need only "raise a reasonable inference or presumption" as to Appellant's innocence. *Gregory*, 198 S.C. at 104, 16 S.E.2d at 534. It does *not* need to make the state's case impossible. In fact, to the extent that the state asserts that the admissibility of third-party guilt evidence is dependent on the *state's* evidence at all, that assertion has been expressly rejected by the United States Supreme Court. *See generally, Holmes v. South Carolina*, 547 U.S. 319, 329-330 (2006).

apparently known to wear.[14] The jury in this case made a determination based on the scant evidence it had, almost all of which was greater than a decade old. The jury was substantially likely to come to a different conclusion, were it presented evidence that someone else committed the crime or that the original pathologist believed the time of Decedents' deaths was during Appellant and Ross's trip to Columbia. Under these circumstances, Appellant's inability to present her evidence probably affected the outcome of the case, at least to the extent that "confidence in the outcome" is "undermine[d]." *Cf. Smith v. State*, 386 S.C. 562, 566, 698 S.E.2d 629, 631 (2010). Accordingly, Appellant's "ability to defend against the state's charges" was impaired "to such an extent that the disposition of the criminal proceeding was likely affected." *Jones*, 94 F.3d at 907.

For these reasons, Appellant's evidence would have been admissible. However, Appellant was unable to present that evidence due solely to the passage of time. Because Appellant identified the witnesses, demonstrated what they would have said, was unable to call them, and their testimonies could not be gathered from another source, *see Brazell*, 325 S.C. at 73, 480 S.E.2d at 69, Appellant has established specific prejudice.

Moving to the second prong of the analysis: the state's reason for delay. When weighed against the prejudice suffered by Appellant, the state's explanation is not sufficient. The state asserted that the ultimate reason for the delay was that "there are times that the cases come together at the right time, and that is what happened here." Tr. I: 124, ll. 13-16. According to the state, the reason this case "came together" eight years later boiled down to the case being viewed with fresh eyes by a different investigator and different attorneys. This explanation does not

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[14] The state did not present evidence that Ross owned the *particular* ASICS tennis shoe that its expert found matched the shoeprint found at Decedent's home, just that he previously wore ACICS shoes.

withstand even the barest scrutiny. The state investigated this case immediately after the murders occurred. Apart from the jailhouse informant testimony—which it did not acquire until after Appellant's arrest—the state presented the same evidence that it had gathered no greater than six months after the murders. *See, e.g., Lee*, 375 S.C. at 398, 653 S.E.2d at 261; *State v. Luck*, 472 N.E.2d 1097, 1105 (Ohio 1984) (state bringing a case after fifteen years "without one shred of new evidence" unjustifiable); *United States v. Sabath*, 990 F. Supp. 1007, 1016 (N.D. Ill. 1998) (where government discovers no new evidence, pre-indictment delay cannot be classified as justifiable investigatory delay). While the Office of the Attorney General may not have had the case until 2023, the Anderson County Sheriff's Office and the Tenth Circuit Solicitor's Office thoroughly investigated the case in 2015 and 2016. Simply, "'[t]he state is the state is the state' and 'the state failed.'" *State v. Price*, 441 S.C. 423, 451, 895 S.E.2d 633, 647 (2023) (James, J., dissenting).

The state's non-existent rationale for the delay becomes even more odious when balanced against Appellant's prejudice. *Lee*, 375 S.C. at 400, 653 S.E.2d at 262 (court must "balance the justification for delay with any prejudice to the defendant"); *State v. Whitlow*, 326 P.3d 607, 612 (Or. App. 2014) ("[A]s the state's culpability in the delay increases, the weight of its justification decreases."). As detailed above, Appellant suffered great prejudice due to the delay. She was incapable of presenting several pieces of evidence which could have—and likely would have—made the difference between a quadruple life sentence and her freedom. By contrast, this is decidedly not a case where the state's delay was attributable to the "wise policy" of "careful investigation and consideration prior to the bringing of criminal charges." *See Automated Med. Labs., Inc.,* 770 F.2d at 404. The only interest of the state's that is implicated here is its ability to have even more investigators and even more lawyers review the exact same evidence that it had

all along, all while allowing a reality TV show to make Appellant's life into a media spectacle. "[F]undamental conceptions of justice," *see Lovasco*, 431 U.S. at 790, do not permit the state to delay endlessly simply because the first round of investigators and lawyers reached a different conclusion from the same evidence than a second round. And the "community" at large would not tolerate a decade-plus delay in prosecuting a quadruple homicide merely because of such a difference in opinion. *Id.* (court should consider "the community's sense of fair play and decency"); *cf. Barker v. Wingo*, 407 U.S. 514, 519 (1972) ("[T]here is a societal interest in providing a speedy trial...."); *and cf., e.g., Rylee v. Marett*, 121 S.C. 366, 113 S.E. 483, 487 (1922) ("[J]ustice delayed is justice denied."). On balance, Appellant's right to a fair trial must outweigh any interest the state may have in reviewing several-year-old evidence for a second (or tenth) time.

For these reasons, Appellant has demonstrated specific prejudice which outweighs the state's rationale for the delay in this case. Accordingly, the trial court should have quashed the indictment. Because it failed to do so, this Court should reverse.

II.

The trial court should have suppressed evidence found in Appellant's home because the search was authorized by two bare-bones search warrants that did not establish probable cause.

The police were authorized to perform a maximally intrusive search of Appellant's home merely because of her proximity to Decedents' home and the fact that she had called 9-1-1. Because those facts do not give rise to probable cause for any search, much less the search of a home, the trial court erred in holding that the search warrants were supported by probable cause. This Court should reverse and remand for a new trial. In the alternative, because Appellant made a preliminary showing that the police recklessly omitted materially exculpatory information, the existence of which would have defeated probable cause, this Court should reverse and remand to the trial court to conduct a *Franks v. Delaware*[15] hearing.

A. The search warrants were not supported by probable cause.

In relevant part, the Fourth Amendment provides: "The right of the people to be secure in their...houses...against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." *See generally, e.g., Mapp v. Ohio*, 367 U.S. 643 (1961) (Fourth Amendment and exclusionary rule incorporated onto the states by the Fourteenth Amendment). The South Carolina Constitution goes farther, providing: "The right of the people to be secure in their...houses...against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated." S.C. Const. art. I, § 10; *see generally, State v. Forrester*, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001) (South Carolina Constitution is more protective than the Fourth Amendment). The Fourth Amendment "appl[ies]

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[15] 438 U.S. 154 (1978)

to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life." *Boyd v. United States*, 116 U.S. 616, 630 (1886), *overruled on other grounds by Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294 (1967). And while the Fourth Amendment's protections are broad, "physical entry into the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. United States District Court*, 407 U.S. 297, 313 (1972); *Semayne's Case*, 77 Eng. Rep. 194, 195 (K.B. 1604) ("That the house of everyone is to him as his castle and fortress…."). For that reason, searches and seizures inside of a home, unlike other types of searches, are *per se* invalid in the absence of an authorizing search warrant. *Payton v. New York*, 445 U.S. 573, 586 & n.25 (1980); *Coolidge v. New Hampshire*, 403 U.S. 443, 475-76 (1971).

However, not just any search warrant will do. In fact, the Fourth Amendment was written in large part to prohibit the English practice of "general warrants," which did not "state the name of the party," or "the time, and place, and nature of the offence with reasonable certainty." 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 750 (1833). Therefore, the Fourth Amendment was adopted in part to enshrine a more recent English common law rule, *see id.*, that warrants should be specific enough to permit the magistrate "to judge" and "give certain directions to the officer." *Money v. Leach*, 97 Eng. Rep. 1075 (K.B. 1765); *see also, Entick v. Carrington*, 95 Eng. Rep. 807 (K.B. 1765) ("[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law."). "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is taken, nothing

is left to the discretion of the officer executing the warrant." *Marron v. United States*, 275 U.S. 192, 196 (1927). Thus, when a search warrant is defective, the Court must treat the search as if it were not authorized by a warrant at all. *See Groh v. Ramirez*, 540 U.S. 551, 559 (2004).

To that end, a valid search warrant affidavit must include sufficient underlying facts to permit the issuing magistrate to make a determination of probable cause. *State v. Dupree*, 354 S.C. 676, 684, 583 S.E.2d 437, 441 (Ct. App. 2003); S.C. Code Ann. § 17-13-140. Probable cause is determined based on "all of the information available to the magistrate at the time the warrant was issued." *Id.* (*citing, inter alia, State v. Driggers*, 322 S.C. 506, 473 S.E.2d 57 (Ct. App. 1996)). Therefore, when "determining the validity of the warrant, a reviewing court may consider *only* information brought to the magistrate's attention." *Id.* (emphasis added). "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." *Illinois v. Gates*, 462 U.S. 213, 239 (1983). "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 contraband or evidence of a crime will be found in a particular place." *State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014).

Because the judicial act of authorizing a search warrant "cannot be a mere ratification of the bare conclusions of others," the affidavit cannot simply make conclusory statements, but set forth sufficient facts as to *why* the police believe a crime was committed. *Gates*, 462 U.S. at 239. For example, in *State v. Smith*, 301 S.C. 371, 392 S.E.2d 182 (1990), our Supreme Court invalidated a search warrant that was based upon the following affidavit:

> That on [date and time] Reginald Jerome Smith went into the Master Inn located at [address] and he then robbed the manager at knife point. Smith has been staying at the Host of America Room 216 since Jan. 1, 1988 and there is every reason to believe the

> weapon and clothes used in the robbery will be located in the room. This information was confirmed in person by Sgt. Sherman on [date].

Id. at 372, 392 S.E.2d at 183. The Supreme Court found "the affidavit sets forth no facts as to *why* police believed Smith robbed the Master Host Inn." *Id.* at 373, 392 S.E.2d at 183 (emphasis in original).

In *State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997), our Supreme Court analyzed the viability of a search warrant affidavit related to a murder investigation. In that case, the decedent was found lying face down on the floor of his residence with his pants' pockets pulled out and money missing from his wallet. *Id.* at 289, 494 S.E.2d at 802. Several days later, a different witness provided the police with a written statement, accusing the *Weston* defendant of attempting to rob him at gun point. *Id.* Based on that statement, warrants were issued for the defendant's arrest, and the police obtained a search warrant for his car. *Id.* That warrant read:

> On March 18, 1994 at approx 2245 hours the victim (Claude Crumlin) was the victim of an armed robbery and assault with intent to kill at 5126 Farrow Rd. The defendant in this incident is a Kelvin Weston. Kelvin Weston, by S.C. highway depts., is the registered owner of the above listed vehicle. Also investigation revealed through witness in this matter that defendant was driving above vehicle at the time of the incident. The search for the above items are needed to fully complete this investigation.

Id. The resultant search of the car located the gun used to kill the decedent. *Id.* The Supreme Court found that the warrant was not supported by probable cause. *Id.* at 291, 494 S.E.2d at 803. The search warrant had not "set forth any facts as to why police believed [defendant] had committed the...crime." *Id.* at 291-92, 494 S.E.2d at 803. While the warrant "link[ed] Weston to

his car at the time of the incident, it offered nothing to link Weston or [the car] to the...crime itself." *Id.*[16]

Here, Appellant's home was searched. Therefore, the warrants must be reviewed with even more judicial scrutiny, as Appellant's home, as a constitutional matter, is "sacred." *Entick*, 95 Eng. Rep. 807; *Silverman v. United States*, 365 U.S. 505, 511 (1961) ("At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."). The search warrants authorizing the search of Appellant's home in this case provided three main bases for probable cause: (1) Appellant's home was on the same lot as Decedents' home; (2) Appellant called 9-1-1; and (3) Appellant entered Decedents' home before calling 9-1-1. The second search warrant added the additional fact that Michael Scott was known to deal in large amounts of cash.

The fact that Appellant's home was near Decedents' home does nothing to establish probable cause. In fact, Appellant's proximity to a crime scene does not even establish reasonable suspicion, much less probable cause. *Cf. Brown v. Texas*, 443 U.S. 47, 52 (1979) ("The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct.").[17] Appellant's mere presence at Decedents' home does not establish probable cause. *See Illinois v. Wardlow*,

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16 In fact, the Supreme Court found the warrant affidavit in *Weston* to be *so* lacking in probable cause that the Court refused to apply the good faith exception. *See id.* at 293, 494 S.E.2d at 804 (*discussing United States v. Leon*, 468 U.S. 897, 923 (1984)).

17 The fact that Appellant's home is on the same property as Decedents' home does not, alone, give police probable cause to search it. *See generally,* 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 4.5(b) (6th ed. Nov. 2025 update); *cf. also, Maryland v. Garrison*, 480 U.S. 79, 88 n.13 (1987) ("We expressly distinguish the facts of this case from a situation in which the police know there are two apartments on a certain floor of a building and have probable cause to believe that drugs are being sold out of that floor, but do not know in which of the two apartments the illegal transactions are taking place.").

528 U.S. 119, 124 (2000) (mere presence not sufficient for reasonable suspicion). In fact, the first and third facts—that Appellant lived on the same property and entered Decedents' home—when taken together, *negate* probable cause rather than support it. Were Appellant a random passerby who entered into Decedents' home, police would likely have probable cause to suspect Appellant of at least burglary. But combined with the knowledge that Appellant lived mere feet from Decedents' home, the most reasonable conclusion is that Appellant frequently entered the home to visit Decedents. *Cf. United States v. Black*, 707 F.3d 531, 540 (4th Cir. 2013) ("[W]e refuse to find reasonable suspicion merely by association."). Therefore, the fact of her entry does not even give rise to *suspicion*, much less sufficient circumstances "to warrant a man of reasonable caution" to believe that Appellant has committed "an offense." *State v. Warner*, 436 S.C. 395, 404, 872 S.E.2d 638, 642 (2022). And the fact that Appellant reported the crime to police is not suspicious either, lest every person who reports criminality to law enforcement be subjected to searches of their homes. Finally, the fact that Michael Scott was known to deal in large amounts of cash does nothing to suggest that Appellant had anything to do with his murder.

Further, the standard is not only whether Appellant committed a crime, but whether there is probable cause that evidence of that crime will be found *in her home*. *Kinloch*, 410 S.C. at 617, 767 S.E.2d at 155. Even if there were probable cause that Appellant committed a crime in Decedents' home—which there emphatically was not—that fact would not automatically render a search of her home reasonable. *See, e.g., Commonwealth v. Wallace*, 42 A.3d 1040, 1049-50 (Pa. 2012) ("probable cause to believe that a man has committed a crime [elsewhere] does not necessarily give rise to probable cause to search his home."). There must be some nexus between Appellant's home and the crime; otherwise, the warrant is little more than judicial authorization for "a general, exploratory rummaging in a person's belongings," which contravenes the entire

purpose of the Fourth Amendment. *State v. Williams*, 297 S.C. 404, 407, 377 S.E.2d 308, 310 (1989) (*quoting Coolidge*, 404 U.S. at 467); *see also* STORY, *supra*, at 750. Especially in this case, where the police sought to search "All property associated with [Appellant's home]," R.*(Court's Exhibit 2), probable cause did not exist for such a "sweeping...general, exploratory search." 2 LAFAVE, *supra*, § 4.6(d).

Appellant's home was set upon by the police, justified only by the knowledge that she called 9-1-1 to report that her nearby family had been murdered. That is not probable cause in any sense of the term. Rather, it is an attempt by the state to "patch[] together a set of innocent, suspicion-free facts" to establish probable cause. *Black*, 707 F.3d at 539. Therefore, the trial court should have suppressed the fruits of the search. Because it did not, this Court must reverse.[18]

B. In the alternative, this Court should reverse due to the omission of material facts from the search warrant affidavits.

For the reasons stated above, the search warrant affidavits did not supply probable cause for a search of Appellant's home. However, there was a significant material fact that was omitted from the affidavits that would have entirely negated probable cause: Appellant's mother lived in the mobile home. With that information, the magistrate would have been asked to authorize a search of Appellant's home based only on the fact that Appellant checked on her mother, found her dead, and called 9-1-1. Those facts do not even give rise to suspicion, much less probable cause. The trial court, however, found that the search warrant affiants did not intentionally or recklessly omit that crucial piece of information from the affidavits. Because the trial court did

[18] Further, Appellant asserts that the search warrant cannot be saved by the good faith exception because the search warrants, like the one in *Weston*, were so lacking in probable cause that the police were not reasonable in relying on them. *See Weston*, 329 S.C. at 293, 494 S.E.2d at 804.

not conduct a hearing or take evidence for that proposition, the trial court's ruling lacks evidentiary support.

If false information is included in a search warrant affidavit, the Fourth Amendment is violated if: (1) the false information was intentionally or recklessly included; and (2) when considered without the false information, the search warrant is unsupported by probable cause. *Franks v. Delaware*, 438 U.S. 154, 171-72 (1978). This rule also applies when exculpatory information is omitted from the search warrant affidavit. *State v. Missouri*, 337 S.C. 548, 554, 524 S.E.2d 394, 397 (1999) (*citing, inter alia, United States v. Colkley*, 899 F.2d 297 (4th Cir. 1990)). The *Franks* process is two-fold. First, the defendant must make a preliminary showing that the information was omitted either intentionally or with reckless disregard of the fact that the warrant would be misleading to the magistrate. *Id.* If that showing is made, the defendant is entitled to an evidentiary hearing on the matter. *Id.*; *United States v. Shorter*, 328 F.3d 167, 170 (4th Cir. 2003). If, after the evidentiary hearing, the court determines that the omitted material was omitted recklessly or intentionally, and the omitted material would have defeated probable cause, the court must suppress any fruits of the warrant. *State v. Lynch*, 412 S.C. 156, 180, 771 S.E.2d 346, 359 (Ct. App. 2015).

Here, the fact that Appellant was related to Decedents is a critical fact. A large part of the state's allegations of probable cause presented to the magistrate came from the fact that this "complainant" entered Decedents' home. However, the omitted fact that "complainant" is related to the Decedents, combined with the non-omitted fact that she lives on the same property, would have led the magistrate to conclude that there was nothing at all suspicious about Appellant entering Decedents' home. A full factual presentation would have established that a family member checked on Decedents, found them dead, and called 9-1-1 to report their deaths. If that

alone is sufficient to authorize a search of Appellant's home, the Warrant Clause of the Fourth Amendment has no force whatsoever. With the omitted information included, any magistrate issuing the search warrant would have been doing little more than issuing a "mere ratification of the bare conclusions" of the police. *Gates*, 462 U.S. at 239.

Thus, the material fact that "complainant" was related to Decedents, a fact known to police, would have defeated probable cause. Accordingly, Appellant was entitled to a *Franks* hearing on the issue. Rather than conducting one, the trial court held, on the bare face of the warrant, that the police had not intentionally or recklessly omitted the information from the search warrant affidavit.[19] That was error. The trial court's holding is therefore not supported by evidence, *Fraiser*, 437 S.C. at 634, 879 S.E.2d at 766, and should be reversed. In the alternative, this Court should remand to the trial court to conduct a *Franks* hearing. *See United States v. Tate*, 524 F.3d 449, 457 (4th Cir. 2008) (reversing and remanding to the trial court to conduct a *Franks* hearing when the trial court wrongly refused to conduct one).

[19] The fact that the warrant affidavits were not orally supplemented makes this error particularly glaring.

III.

The trial court erred by finding that the state had laid the proper foundation for the photograph of money found on decedent Michael Scott's laptop.

The state sought to introduce a photograph of money that it located on Michael Scott's laptop. The state asserted that money found in Appellant's home matched the money in the photograph. However, the photograph was taken a year prior to the discovery of the money in Appellant's home, the state did not have access to the camera used to take the photograph, and the state presented no evidence of who took the photograph or whether the money it depicted belonged to Michael Scott. Despite this, the trial court found that the state had laid the foundation for the photograph and allowed it to be introduced as evidence. That was error.

"Whenever counsel intends to admit photographic evidence into the record, it is necessary to lay proper foundation testimony as to authentication, identification, and verification." *State v. Hurell*, 424 S.C. 341, 353, 818 S.E.2d 21, 27 (Ct. App. 2018). "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), SCRE. Authentication is closely related to relevance, "for something that cannot be connected to the case carries no probative force." *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019). The trial court's role is to ensure that the proponent of evidence makes a *prima facie* showing "that the 'true author' is who the proponent claims it to be." *Id.* (*quoting United States v. Davis*, 918 F.3d 397, 402 (4th Cir. 2019)).

While authentication is not a high bar, the proponent of evidence must offer some satisfactory foundation which permits a reasonable jury to find that the evidence is authentic. *State v. Benton*, 435 S.C. 250, 262, 865 S.E.2d 919, 925 (Ct. App. 2021). The extent of

foundation that needs to be laid will largely depend on the purpose for which the evidence is authored. *Hurell*, 424 S.C. at 353, 818 S.E.2d at 27. When the evidence sought to be admitted is a writing, the Rules of Evidence view the identity of the author of those writings "with a skeptical eye." *Green*, 427 S.C. at 230, 830 S.E.2d at 714. In such cases, for example, a person's purported signature on the face of the writing, without more, is insufficient to authenticate the exhibit. *Id.*; 2 McCORMICK ON EVIDENCE § 221 (9th ed. Feb. 2025 update). The rule "does not care what form the writing takes, be it a letter, a telegram, a postcard, a fax, an email, a text, graffiti, a billboard, or a Facebook message. All that matters is whether it can be authenticated...." *Green*, 427 S.C. at 231, 830 S.E.2d at 714.

Here, the state sought to admit the photograph for the proposition that the money found in Appellant's safe must belong to Michael Scott. Because the purpose of the exhibit is relevant to the level of foundation that must be laid, *see Hurell*, 424 S.C. at 353, 818 S.E.2d at 27, the state necessarily needed to present some evidence to prove "authorship" of the photograph or at least some evidence that the photograph depicted what the state claimed: *Michael Scott's* money. While the photograph of money is not a "writing" in the traditional sense, the state entered this exhibit because the exhibit made a sort of statement, that the money was Michael Scott's, and that ownership was proven by the fact that Michael Scott took a picture of his own money. Therefore, the Rules' treatment of writings is instructive in this regard. It is not sufficient for a writing to bear someone's signature, more evidence of authorship is required. *Green*, 427 S.C. at 230, 830 S.E.2d at 714; 2 McCORMICK ON EVIDENCE § 221. Likewise, it is not sufficient that the photograph was found on Michael Scott's laptop; the state needed to present at least some evidence that the money depicted belonged to Michael Scott.

The state, however, presented no evidence that Michael Scott was the owner of the money in the photograph or even that Michael Scott took the photograph. At the outset, Appellant believes it is doubtful that the state could have met the authentication bar by demonstrating that, for example, the same camera took both the picture of the money and a picture related to Michael Scott. Just like writings on the same "letterhead" are not presumed to be written by the same author, *Green*, 427 S.C. at 231, 830 S.E.2d at 714, pictures taken by the same camera should not be presumed to be taken by the same person. However, it is doubtful that even if the state could prove that Michael Scott took the picture, that fact alone would establish that Michael Scott was the owner of the money depicted therein.

However, the state was unable to establish even that. When the state asked its expert whether there were other photographs taken by the same camera that specifically involved Michael Scott, its expert simply answered, "I don't know." *Contra State v. Dent*, 442 S.C. 38, 50, 897 S.E.2d 46, 52 (Ct. App. 2023) ("we find Victim's *personal knowledge* of the scene and subject of the photos was sufficient to authenticate them." (emphasis added)); *rev'd on other grounds* 446 S.C. 121, 919 S.E.2d 394 (2025). Therefore, all the state presented evidence of was that the same camera took several photographs that were found on Michael Scott's computer, none of which involved Michael Scott in any way. The same would be true had Michael Scott downloaded the photographs from the internet or received the photographs from some other person and saved them to the computer.

The "content, tenor, and timing" of the photograph does not help the state's case either. *See Benton*, 435 S.C. at 263, 865 S.E.2d at 925. The photograph was taken one year before the murders. Any number of things could have happened in that time frame that could have changed the ownership of the money; such as, for example, Michael Scott giving Appellant—his step-

daughter—one hundred dollars. Further, the money lacks "distinctive characteristics," *id.* at 263, 865 S.E.2d at 926, that would be sufficient to establish Michael Scott's ownership on their own. Simply, the photograph depicts United States currency. Based on the photograph alone, there are at least 342.6 million potential owners of the money depicted. *See* United States Census Bureau, *U.S. and World Population Clock*, https://www.census.gov/popclock/ (last accessed Sept. 10, 2026). The state cannot make any showing that, for example, the photograph is not of cash that belonged to Appellant to begin with. And while the state "need not rule out any possibility the evidence is not authentic," *Green*, 427 S.C. at 230, 830 S.E.2d at 714, the state should at the very least have to rule out the possibility that the money did not belong to the person accused of stealing it during a quadruple homicide. Therefore, the trial court erred in finding that the state laid the proper foundation for the photograph of the money and the evidence should have been excluded.

Further, the error was not harmless. An error is harmless only when "the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt." *State v. Hall*, 437 S.C. 107, 119, 876 S.E.2d 328, 334 (Ct. App. 2022). This means that error is not harmless unless "guilt has been conclusively proven by competent evidence *such that no other rational conclusion can be reached.*" *State v. Bell*, 430 S.C. 449, 469, 845 S.E.2d 514, 525 (Ct. App. 2020) (*quoting State v. Kirton*, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008) (emphasis in original)). The state's primary theory in this case was that Appellant and Ross committed these murders for financial gain. It follows that a necessary component of this theory is proof that Appellant and Ross made a financial gain from the murders. Without this photograph, there is no link between the money found in Appellant and Ross's home and the Decedents, save for the fact that the money was kept in standardized money bands that could be acquired from any bank.

Without evidence of motive, the state's already thin case falls apart. The jury would be left to wonder why Appellant would commit such a crime against her own family. And the state's evidence of strife between Appellant and her family likely would do little to answer those questions, especially since the state presented evidence that Appellant and Decedents had mended their relationship prior to the murders. Further, the evidence was prejudicial in that it painted Appellant "as a thief." *See Bell*, 430 S.C. at 471, 845 S.E.2d at 526. The evidence, therefore, was likely to "predispose the minor of the juror to believe [Appellant] guilty." *See State v. Lyle*, 125 S.C. 406, 118 S.E. 803, 807 (1923).

Therefore, the photograph was both the only evidence supporting the state's primary motive theory and was highly prejudicial. Under such circumstances, its admission cannot be harmless. Accordingly, the trial court should not have admitted the photograph of money found on Decedent Michael Scott's computer. Further, the error was not harmless. This Court should reverse and remand for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse Appellant's convictions and sentences. In the alternative, this Court should reverse Appellant's convictions and sentences and remand for a new trial.

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ATTORNEY FOR APPELLANT

This 25th day of September, 2026.