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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

The Honorable G. D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2025-001368

The State,

Respondent,

v.

Jason Ramone Stewart,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

APPELLANT’S STATEMENT OF THE ISSUES PRESENTED	2
RESPONDENT’S COUNTERSTATEMENT OF THE ISSUES PRESENTED	2
STANDARD OF REVIEW	3
ARGUMENT	4
1. The trial court correctly instructed the jury that constructive possession requires <i>both</i> dominion and control over the drugs themselves or the property on which they were found <i>and</i> the intent to control their disposition or use.....	4
2. The trial court did not err in explaining that the general concept of criminal intent includes “for example . . . purpose, intent, knowledge, recklessness, or criminal negligence,” where the court went on to explain that the State was required to prove Appellant acted “knowingly” as to each trafficking charge.....	6
3. The trial court properly denied the motion to suppress the evidence seized from the storage units, where the search warrant affidavit overwhelmingly established probable cause linking Appellant’s drug dealing activities to the storage units.	7
4. The trial court correctly denied Appellant’s directed verdict motion as to the drugs found in Units A23 and I15, where it was undisputed that Appellant maintained several other storage units at the same facility, where Appellant admits he was authorized to enter Unit A23, where the invoice for Unit I15 was located in Appellant’s vehicle, and where multiple items belonging to Appellant were found in Unit I15.	15
CONCLUSION.....	19

APPELLANT'S STATEMENT OF THE ISSUES PRESENTED

1. Did the trial court err in instructing the jury that "Constructive possession means that the Defendant had dominion and control or the right to exercise dominion and control over the drug—the drug itself or the property on which the drug was found"?
2. Did the trial court err in instructing the jury that they could convict Jason Stewart if he were reckless or negligent as to his knowledge or possession of the drugs in this matter?
3. Did the trial court err in failing to suppress the drugs seized from the storage units when the affidavit for the search warrant failed to establish that any drugs would be found in any particular storage unit?
4. Did the trial court err in failing to direct a verdict in favor of Jason Ramon Stewart when the State failed to prove Mr. Stewart ever entered the storage unit where the drugs were found nor prove that he had access to the storage unit where the drugs were found and this there was no substantial circumstantial evidence to sustain the conviction?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES PRESENTED

1. The trial court correctly instructed the jury that constructive possession requires *both* dominion and control over the drugs themselves or the property on which they were found *and* the intent to control their disposition or use.
2. The trial court did not err in explaining that the general concept of criminal intent includes "for example . . . purpose, intent, knowledge, recklessness, or criminal negligence," where the court went on to explain that the State was required to prove Appellant acted "knowingly" as to each trafficking charge.
3. The trial court properly denied the motion to suppress the evidence seized from the storage units, where the search warrant affidavit overwhelmingly established probable cause linking Appellant's drug dealing activities to the storage units.
4. The trial court correctly denied Appellant's directed verdict motion as to the drugs found in Units A23 and I15, where it was undisputed that Appellant maintained several other storage units at the same facility, where Appellant admits he was authorized to enter Unit A23, where the invoice for Unit I15 was located in Appellant's vehicle, and where multiple items belonging to Appellant were found in Unit I15.

STANDARD OF REVIEW

“An appellate court will not reverse a trial court’s decision regarding a jury instruction unless there is an abuse of discretion.” *State v. Brooks*, 428 S.C. 618, 625, 837 S.E.2d 236, 239 (Ct. App. 2019). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Id.* (quoting *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007)).

“The admission or exclusion of evidence is a matter within the trial court’s sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a ‘manifest abuse of discretion accompanied by probable prejudice.’” *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006)). The standard for review of a magistrate’s probable cause determination is highly deferential, and a reviewing court must uphold the validity of the search warrant if there is any “substantial basis” for concluding that a search would uncover evidence of a crime. *Illinois v. Gates*, 462 U.S. 213, 236 (1983). Even where an affidavit’s statement of probable cause is “doubtful or marginal,” a reviewing court should resolve such cases in favor of the warrant. *Id.* at 237 n.10 (quoting *U.S. v. Ventresca*, 380 U.S. 102, 109 (1965)).

“[O]n appeal from the denial of a directed verdict, an appellate court views all facts in the light most favorable to the nonmoving party.” *State v. Lewis*, 434 S.C. 158, 166, 863 S.E.2d 1, 5 (2021). “When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” *Id.* (quoting *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006)).

ARGUMENT

1. The trial court correctly instructed the jury that constructive possession requires *both* dominion and control over the drugs themselves or the property on which they were found *and* the intent to control their disposition or use.

Appellant argues first that the trial court erred in instructing the jury that “[c]onstructive possession means that the Defendant had dominion and control or the right to exercise dominion or control over either the heroin or the property on which the heroin was found.” (Tr.p.728, lines 7–11). Appellant complains that this language impermissibly suggested the jury could find Appellant had constructive possession of the drugs based solely on the fact that he had control over the property where the drugs were found, without proof that he knew of the presence of the drug or had the ability to control their disposition or use. Appellant cites *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808 (2021), for the proposition that “the mere existence of evidence the defendant had control over the property does not equate to a finding of constructive possession.” *Id.* at 389, 858 S.E.2d at 811.

This argument is meritless. Appellant has simply ignored the immediately preceding paragraph of the trial court’s jury instructions, where the court explains that, “[t]o prove possession, the State must prove beyond a reasonable doubt that the Defendant had both the power and the intent to control the disposition and use of the heroin.” (Tr.p.728, lines 1–4).

In *Stewart*, the trial court gave the following definition of constructive possession:

“To prove possession, . . . the State must prove beyond a reasonable doubt the defendant had knowledge of, power over, and the intent to control the disposition or use of the drugs involved. . . . Constructive possession means that the defendant had dominion and control or the right to exercise dominion and control over either the drugs itself or the property upon which the drugs were found.”

Stewart, 433 S.C. at 388, 858 S.E.2d at 811. The appellant in that case, *Stewart*, objected to the

second statement of that charge. Our supreme court held that, “[i]f we considered the statement *only in isolation* as a complete definition of constructive possession, the statement would be problematic,” because it does not include the “knowledge and intent” element of constructive possession.” *Id.* at 388–89, 858 S.E.2d at 811 (emphasis added). “However, we do not consider jury instructions in isolation, but as a whole.” *Id.* at 390, 858 S.E.2d at 812 (citing *State v. Herndon*, 430 S.C. 367, 371, 845 S.E.2d 499, 502 (2020)). The supreme court explained that the first statement of the judge’s jury charge—that “the State must prove beyond a reasonable doubt the defendant had knowledge of, power over, and the intent to control the disposition or use of the drugs involved”—correctly conveyed the “knowledge and intent” element to the jury. “When considered as a whole, the trial court’s definition of constructive possession adequately conveyed both elements to the jury. Therefore, we find no error in the trial court’s definition of constructive possession.” *Id.* at 390, 858 S.E.2d at 812.

The instruction given in this case is substantially the same as the instruction expressly found to be correct in *Stewart*. Appellant focuses on the “property” statement in isolation, but jury instructions must be reviewed as a whole. And here, the trial court correctly instructed the jury that the State had to prove “that the Defendant had both the power and the intent to control the disposition or use of the heroin.” (Tr.p.728, lines 1–4). The trial court also correctly instructed the jury that the State must prove “[t]hat the Defendant was knowingly in . . . constructive possession” of the drugs.” (Tr.p.727, lines 21–23). These statements, together with the “property” statement, clearly informed the jury that it could find Appellant guilty only if had control over the property where the drugs were found *and* had knowledge of the drugs and the intent to control their disposition or use. In other words, just like in *Stewart*, the instruction in this case “adequately conveyed both elements to the jury” and was not erroneous.

2. The trial court did not err in explaining that the general concept of criminal intent includes “for example . . . purpose, intent, knowledge, recklessness, or criminal negligence,” where the court went on to explain that the State was required to prove Appellant acted “knowingly” as to each trafficking charge.

Appellant next argues that the trial court erred in instructing the jury that “the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence.” (Tr.p.726, lines 15–18). Appellant points out that the trafficking statute requires that the crime be committed “knowingly,” and he complains that this instruction was likely to confuse the jury as to what level of criminal intent the State had to prove in this case.

This contention is meritless. The challenged statement did not appear in the definition of any of the crimes Appellant was charged with; rather, the statement was part of the trial court’s definition of the general concept of criminal intent. The entire comment was:

Now, in order to establish criminal liability in a case, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence.

(Tr.p.726, lines 14–18). This comment clearly informs the jury that the mental states listed are nothing more than “examples” of mental states that “might be” required for a particular crime. These examples merely helped to define the concept of criminal intent in the abstract; nothing about this language suggests that “recklessness” or “criminal negligence” are the mental states that apply to the specific crime of trafficking. The trial court went on to explain repeatedly that, for each of the specific crimes Appellant was actually charged with, the State had to prove he acted “knowingly.” (Tr.p.727, lines 14–23; p.728, line 18–p.729, line 2; p.729, lines 16–25). Viewed as a whole, the trial court’s instructions left no doubt that the applicable mental state in this case was

whether Appellant “knowingly” possessed the drugs.

Appellant likens this instruction to that held improper in *State v. Taylor*, 323 S.C. 162, 473 S.E.2d 817 (Ct. App. 1996). In *Taylor*, the trial court erroneously instructed the jury that , in order to prove Taylor guilty of trafficking crack, “the State must prove beyond a reasonable doubt that the defendant was at least criminally negligent.” *Id.* at 165, 473 S.E.2d 818. Clearly, the instruction in the present case is distinguishable from the erroneous instruction given in *Taylor*. The mention of “criminally negligent” in *Taylor* was part and parcel of the trial court’s definition of trafficking, whereas here it occurred in an entirely different context. Moreover, the trial court in this case expressly stated that “recklessness” and “criminal negligence” were merely examples, which “might be” required for some crimes. There was no such express limitation in *Taylor*; on the contrary, the trial court in *Taylor* expressly equated the level of intent required for trafficking with criminal negligence. *Taylor* simply does not support Appellant’s argument in this case.

3. The trial court properly denied the motion to suppress the evidence seized from the storage units, where the search warrant affidavit overwhelmingly established probable cause linking Appellant’s drug dealing activities to the storage units.

Appellant next argues the trial court erred in failing to suppress evidence obtained from the search of the U-Stor storage units, on the ground that the facts given in the search warrant affidavit were insufficient to establish probable cause. This argument is meritless.

The search warrant affidavits for the storage units in this case describe the relevant facts as follows: The Greenville County Multi-Jurisdictional Drug Enforcement Unit (the “DEU”) received a crime stoppers tip in January of 2021 that a black male named “Smooth” was selling narcotics; that he kept several pounds of narcotics at his wife’s dance studio, and that he was known to drive a gray Dodge Durango and a black Dodge Challenger. The affiant, Investigator Kelly R.

Norris, identified “Smooth” as Appellant and learned that his wife owned a dance studio. Norris and other DEU investigators surveilled the dance studio and observed a Dodge Durango and a Dodge Challenger, which they learned were registered to Appellant’s wife.

Norris began conducting controlled narcotics purchases from “Smooth” through a confidential informant (“CI”), who identified “Smooth” as Appellant from a six-pack lineup on three different occasions.

Appellant’s DMV records indicated his address as a mobile home on Anderson Road; however, surveillance confirmed that he lived with his wife at her address on 4th Avenue. DEU investigators observed the Durango and the Challenger at the 4th avenue address, along with a gray Dodge Charger.

Through surveillance, investigators observed Appellant’s travel patterns. Appellant often drove through neighborhoods and along secondary roads at high speeds. In addition, despite having access to the three vehicles seen at the 4th avenue address, Appellant was also observed driving rental cars. Norris noted these were known counter-surveillance techniques often employed to hide drug trafficking activity. Appellant often visited a mobile home park and a car wash, which were documented high-crime areas known for a high frequency of narcotics sales. On one occasion, investigators spotted a hand-to-hand drug transaction at the car wash, within feet of Appellant’s vehicle, although they could not determine whether Appellant was a participant at that time.

Appellant also frequently visited a U-Stor self-storage facility on Anderson Road. Investigators executed a document search warrant and learned that Appellant owned or was financially responsible for four storage units located at that facility: units A12, A23, N17, and O15.

On one occasion in February of 2021, officers followed Appellant to a different self-storage

facility located on Cedar Lane Road. There, Appellant met a white female, later identified as Laura McElligott. Appellant and McElligott were seen moving items within two storage units at that facility, which were later determined to belong to McElligott. When Appellant and McElligott left, officers conducted a traffic stop. Appellant was in possession of marijuana and a digital scale with fentanyl residue on it; McElligott was in possession of drug paraphernalia.

On February 23, 2021, Appellant was seen conducting a hand-to-hand transaction with someone in a vehicle at the car wash. After the vehicle left, officers conducted a traffic stop on the vehicle and located heroin and cocaine inside. The occupant of the vehicle admitted buying drugs from Appellant and further stated Appellant had been selling them drugs for months, sometimes at the store owned by Appellant's wife.

On February 25, 2021, officers made a controlled purchase of heroin from Appellant through a CI. During the buy, the CI and Appellant were under constant surveillance. Appellant was seen leaving his wife's store and going to meet the CI at the car wash, where the purchase took place. During the CI debrief, the CI recalled another instance where he met with Appellant to buy heroin, but Appellant claimed he forgot his "package" of narcotics and led him to the Anderson Road U-Stor facility. Appellant entered the facility and quickly returned with the heroin to complete the deal. Investigators had observed Appellant and an unknown black male entering the U-Stor facility earlier in February of 2021, staying for a few minutes, and then leaving.

The DEU conducted four more controlled purchases of heroin and fentanyl from Appellant in March and April of 2021. Each time, the CI was under constant surveillance and was equipped with audio/visual surveillance equipment.

The DEU also used electronic tracking to track Appellant's movements in March of 2021. He frequently stopped at his wife's store after business hours. He also made frequent visits to the

U-Stor facility on Anderson Road, sometimes as frequently as three times in a single day. In addition, electronic tracking revealed that Appellant visited the U-Stor mere hours prior to completing two of the controlled CI buys. (Court's Exhibit #4).

Based on this affidavit, officers obtained a search warrant for Units A12, A23, N17, and O15 at the U-Stor facility on Anderson Road. A search of Unit A23 resulted in the discovery of 136 grams of methamphetamine. (Tr.p. 443, line 13–p.444, line 25; p.500, lines 3–25).

Officers also went to the 4th Avenue address and searched the Dodge Durango, which Appellant had been seen driving. (Tr.p.290, line 9–p.291, line 8; p.328, line 11–p.329, line 14; p.557, lines 12–16). Inside, officers found additional receipts for self-storage units at the Anderson Road U-Stor facility, including one for Unit I15. (Tr.p.290, line 9–p.291, line 8; p.328, line 11–p.329, line 14; p.558, lines 6–10). Another receipt for Unit I15 was found in a bedroom at the Anderson Road mobile home. (Tr.p.454, lines 3–17; p.457, line 25–p.458, line 17).

Subsequently, officers sought another search warrant for Unit I15. The affidavit for that search warrant included the same information as the previous affidavit for Units A12, A23, N17, and O15. In addition, the affidavit included a supplemental statement explaining how officers had located documentation for the I15 unit of the Anderson Road U-Stor facility while executing the earlier search warrant. (Court's Exhibit #5). Upon executing that search warrant, officers discovered 33 grams of heroin/fentanyl/tramadol, 28 grams of cocaine, and 44 grams of methamphetamine. (Tr.p.573, lines 13–22).

“There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant.” *Franks v. Delaware*, 438 U.S. 154, 171 (1978). The trial court in this case was required to uphold the search warrant if the affidavit provided any “substantial basis” to support the magistrate’s determination of probable cause. *Gates*, 462 U.S. at 236.

Probable cause is a practical, nontechnical concept; it will be found wherever “the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.” *Ornelas v. United States*, 517 U.S. 690, 695–96 (1996). Probable cause “is not a high bar.” *State v. Jones*, 435 S.C. 138, 145, 866 S.E.2d 558, 562 (2021) (quoting *Kaley v. United States*, 571 U.S. 320, 338 (2014)). It requires only a “fair probability” upon which “reasonable and prudent people” might act. *Id.*

The probable cause standard “does not deal with hard certainties, but with probabilities.” *Gates*, 462 U.S. at 231 (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). Law enforcement officers, like all practical people, are permitted to draw conclusions based on their own common sense. *Id.* at 231–32. “[P]robable cause is a fluid concept” for which “[r]igid legal rules are ill-suited.” *Id.* at 232.

The facts listed in Investigator Norris’ exhaustively thorough affidavit easily met the bar for probable cause in this case. Every “man of reasonable prudence” would be justified in believing that evidence related to Appellant’s drug-dealing activities¹ would be found in the storage units at the Anderson Road U-Stor facility. *Ornelas*, 517 U.S. at 695–96.

Appellant was observed by law enforcement visiting the U-Stor facility with alarming frequency, sometimes as often as three times in a single day. Electronic tracking revealed that he made frequent trips to the U-Stor; notably, on two occasions, he stopped at the U-Stor shortly before proceeding to a drug deal. Law enforcement also heard from their CI that he had previously

¹ In his Brief, Appellant acknowledges the obvious: that “the facts in the attachments do support” the conclusion that Appellant “engaged in drugs transactions.” (Br.App.p.13).

been taken to the U-Stor by Appellant to retrieve a “package” of heroin.² These facts would have led any reasonable person to conclude that Appellant was likely using the U-Stor facility in connection with his drug-dealing business. If further confirmation were needed, law enforcement had also located drugs and drug paraphernalia on Appellant and McElligott after following them from a different self-storage facility on Cedar Lane Road, which further justified them in the belief that Appellant was in the habit of using self-storage units in pursuit of his illegal activities. Law enforcement also obtained documentary evidence specifically connecting Appellant and his wife to Units A12, A23, N17, and O15 at the Anderson Road U-Stor facility, confirming that they maintained those units at that location. Later, the supplemental affidavit explaining that documentation for Unit I15 of that same facility was discovered in a search of Appellant’s residence, combined with the assertion that narcotics had been discovered at the previous search of the U-Stor, certainly warranted the belief that contraband or evidence of a crime would also probably be found in Unit I15.

Appellant complains that the affidavit contains no claim that Appellant “had ever entered any specific unit” at the Anderson Road U-Stor. (Br.App.p.10). He also complains that affidavit does not specify the “number of days” on which Appellant was observed to stop at the U-Stor. (Br.App.p.10). Appellant is simply asking for more detail than the low bar of probable cause requires. *See Jones*, 435 S.C. at 145, 866 S.E.2d at 562 (Probable cause “is not a high bar.”).

² Appellant complains “that the affidavit does not explain why the informant is reliable.” (Br.App.p.11). However, the affidavit did not rely on the CI’s story alone; rather, it also established law enforcement’s efforts to independently corroborate the CI’s account. This is all that is required for probable cause. *See Gates*, 462 U.S. at 244–45 (“It is enough, for purposes of assessing probable cause, that ‘corroboration through other sources of information reduced the chances of a reckless or prevaricating tale,’ thus providing ‘a substantial basis for crediting the hearsay.’”) (quoting *Jones v. United States*, 362 U.S. 257, 269–71 (1960)).

There is no rigid requirement that officers must personally observe Appellant entering a specific storage unit before they can search that unit, any more than officers need to personally observe a suspect entering a specific room of his house before they can search that room. Nor do officers need to observe Appellant visiting the suspect location for a specific number of days before they are allowed to characterize his repeated visits as suspicious. All that is required is a “fair probability” that evidence will be found in the location to be searched. *Id.* When a known drug dealer repeatedly precedes his drug deals by visiting a storage facility where he has access to several storage units, there is a “fair probability” that those storage units contain evidence related to his drug-dealing activity. Rigid rules, such as Appellant asks this Court to follow, are ill-suited for such a determination. *Gates*, 462 U.S. at 232.

All in all, the trial court did not err in finding that the affidavits in this case stated a “substantial basis” to support the magistrate’s determination of probable cause. Even if the affidavit had been defective, however, suppression of the evidence would have been inappropriate due to the “good faith” exception to the exclusionary rule.

The exclusionary rule “is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.” *United States v. Calandra*, 414 U.S. 338, 348 (1974). “The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right”; the purpose of the exclusionary rule is “to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused.” *Michigan v. Tucker*, 417 U.S. 433, 447 (1974). “The rule’s sole purpose, we have repeatedly held, is to deter future Fourth Amendment violations.” *Davis v. United States*, 564 U.S. 229, 236–37 (2011). Therefore, the

exclusionary rule should only be applied where the benefits of deterring future police misconduct outweigh the “heavy costs” of exclusion: namely, requiring courts “to ignore reliable, trustworthy evidence bearing on guilt or innocence”; to “suppress the truth”; and often to “set the criminal loose in the community without punishment.” *Id.*

The exclusionary rule is harsh medicine. The jury is charged with the duty of searching for the truth to determine the innocence or guilt of the accused, within the appropriate legal standard. Denial of probative evidence detracts from that search. Exclusion should be applied only where deterrence is clearly subverted.

State v. Sachs, 264 S.C. 541, 566, 216 S.E.2d 501, 514 (1975).

For this reason, the courts of South Carolina and the federal courts have long recognized a “good faith” exception to the exclusionary rule: “When police officers act with an objectively reasonable good-faith belief that their conduct is lawful, trial courts will not exclude evidence seized as a result of that conduct, even though it later turns out the conduct violated the constitution.” *State v. Carter*, 445 S.C. 157, 162, 912 S.E.2d 264, 267 (2025) (internal quotations omitted). “[W]hen the police act in good faith, ‘the deterrence rationale loses much of its force.’” *Id.* at 163, 912 S.E.2d at 267 (quoting *Davis*, 564 U.S. at 238). In such cases, the deterrent function of the exclusionary rule no longer justifies its heavy social costs, and trial courts should not suppress the evidence. *Id.* at 163, 912 S.E.2d at 267–68.

The rationale behind the good faith exception applies most forcefully when officers act pursuant to a facially valid search warrant issued by a magistrate:

It is the magistrate's responsibility to determine whether the officer's allegations establish probable cause . . . [A]n officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient. “[O]nce the warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law.” . . . Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment

violations.

United States v. Leon, 468 U.S. 897, 921 (1984) (quoting *Stone v. Powell*, 428 U.S. 465, 498 (1976) (Burger, C.J., concurring)).

In this case, the officers properly sought a search warrant for the suspect units, as required by the Fourth Amendment. An independent judicial officer reviewed the facts extensively set forth in the affidavit and determined that probable cause supported issuing the search warrant. The officers, relying on the magistrate's finding, faithfully executed the search warrant; there is no indication, or even allegation, that any officer exceeded the scope of the warrant as to any of the locations searched. Even if this Court were to accept Appellant's argument that those search warrants were somehow defective, there is no basis to conclude that the officers involved acted with reckless or willful disregard for Appellant's Fourth Amendment rights.

4. The trial court correctly denied Appellant's directed verdict motion as to the drugs found in Units A23 and I15, where it was undisputed that Appellant maintained several other storage units at the same facility, where Appellant admits he was authorized to enter Unit A23, where the invoice for Unit I15 was located in Appellant's vehicle, and where multiple items belonging to Appellant were found in Unit I15.

Finally, Appellant argues he was entitled to a directed verdict as to the drugs found in Units A23 and I15 because the State never proved that Appellant ever actually entered Unit A23 or that he had access to Unit I15.

"[O]n appeal from the denial of a directed verdict, an appellate court views all facts in the light most favorable to the nonmoving party." *State v. Lewis*, 434 S.C. 158, 166, 863 S.E.2d 1, 5 (2021).

Viewed in the light most favorable to the State, there was substantial evidence from which

the jury could have concluded Appellant possessed the drugs found in Units A23 and I15. First of all, there was no dispute that Units A12, O15, and N17 at the same U-Stor facility were all in defendant's name. (Tr.p.289, lines 1–18). Unit A23 was in the name of Keisha Stewart, Appellant's wife. (Tr.p.289, lines 19–22). The lease agreement for Unit A23 lists "Jay," another name for Appellant, as an "authorized user" for the unit. (Tr.p.570, line 9–p.572, line 13).³ The manager of the Anderson Road U-Stor, Robert Jeffrey Williamson, testified that it would be easy for anyone who rented a unit at the facility to give their access code to someone else. (Tr.p.302, line 19–p.503, line 9). Officer Norris testified that, in his experience as a law enforcement officer, it was known that narcotics traffickers keep property in other people's names. (Tr.p.649, lines 12–21).

Unit I15 was in the name of Gloria Stewart, Appellant's mother. (App.p.292, lines 12–20). Gloria Stewart was described as ill, immobile, and nearly blind. (Tr.p.401, line 20–p.402, line 2; p.405, lines 6–17). Apart from trafficking quantities of methamphetamine, heroin, and cocaine, Unit I15 also contained three bulletproof vests, a packaging press for narcotics, a handheld pill press, a digital scale, and two SKS rifles. (Tr.pp.461–66; p.622, lines 6–23).

In a recorded interview with investigator Norris, Appellant indicated that he owned an SKS rifle. (State's Exhibit #95; Tr.p.621, line 6–p.622, line 23; p.699, lines 21–23). A receipt for Unit I15 was discovered in Appellant's vehicle during a search of the 4th Avenue residence. (Tr.p.290, line 14–p.291, line 5). Mail for Appellant was also located in Unit I15. (Tr.p.574, lines 5–9).

Combined with the evidence of electronic tracking and surveillance video that showed Appellant's frequent visits to the U-Stor facility, it was inferable from all of the above that

³ In his Brief, Appellant admits he was authorized to enter his wife's unit. (Br.App.p.14).

Appellant had sufficient access to Units A23 and I15 to be constructively in possession of the drugs found inside. As the solicitor pointed out in closing, it would be absurd to believe that the items in Unit I15—including guns and bulletproof vests—belonged to Gloria Stewart, the frail and nearly blind older woman who nominally rented the unit. (Tr.p.691, line 24–p.692, line 7). It was far more likely that, as Officer Norris testified was common, someone else was using Gloria Stewart to rent the property for their own drug trafficking operation. The same reasoning applies to Unit A23, nominally rented by Appellant’s wife, but to which he had authorized access. In both cases, the obvious culprit was Appellant, who undisputedly made frequent visits to the storage units and could easily have accessed them. Appellant’s own recorded interview established that he was engaged in drug dealing and that he kept drugs at his wife’s business. (Tr.p.567, line 20–p.569, line 24). Therefore, it was fairly inferable that Appellant similarly used the storage units nominally rented by his wife and his mother to store drugs as well. In further support of that conclusion, the fact that items belonging to Appellant were located at Unit I15 is, by itself, evidence that Appellant had dominion and control over the unit.

Appellant attempts to liken this case to *State v. Heath*, 370 S.C. 326, 635 S.E.2d 18 (2006). In that case, the sole evidence of constructive possession was the fact that the drugs were located in a recycling bin outside the house where Heath lived with his mother and brother. *Id.* at 330, 635 S.E.2d at 19. The *Heath* court found that was insufficient to support a finding that Heath had “dominion and control” over the drugs. *Id.*

In *Heath*, there was no evidence that Heath was a drug dealer, that he admitted keeping drugs in locations nominally controlled by other people, or that he made frequent unexplained visits to the location where the drugs were found. In addition, a recycling bin outside of a house is not probative of any special degree of “dominion and control” to the same extent as a private

storage unit. Finally, there is no equivalent in *Heath* to the receipt found in Appellant's vehicle or the personal items belonging to Appellant that were found at the storage units. For all these reasons, *Heath* is distinguishable, and the trial court in this case did not err in finding that the evidence, viewed in the light most favorable to the State, was sufficient to support a guilty verdict.

(conclusion and signature on following page)

CONCLUSION

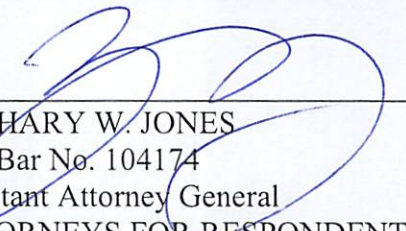
For the foregoing reasons, this Court should affirm Appellant's convictions and sentences.

Respectfully submitted,

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