ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-000224

THE STATE,

Respondent,

v.

ERICK E. HEWINS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The initial contact between Appellant and officers was a simple encounter requiring no objective justification. Nonetheless, even prior to the encounter, several factors raised officers' suspicions that criminal activity may be afoot. During the encounter, officers' suspicions were further raised by Appellants' behavior. Ultimately, reasonably concerned for his safety, Officer Gardner conducted a Terry frisk. As a result of the frisk, and with Appellant's consent, Gardner's search of Appellant's pocket yielded a large sum of money and illegal drugs. Appellant's arrest flowed from this discovery. Subsequent to his arrest, an inventory search of Appellant's vehicle revealed additional narcotics. (Appellant's Issues 1-3.)

II.

The trial court did not abuse its discretion in admitting evidence where, even though one evidence custodian did not testify or offer an affidavit, he was identified and procedures testified to such that the State established that the drugs, Advil bottle, scale, cell phone, money order and currency were those taken from Appellant without any alteration, tampering or substitution.

STATEMENT OF THE CASE

Appellant Erick Hewins was indicted for trafficking in cocaine base (greater than 10 grams) and possession of a schedule IV controlled substance (clonazepam). He was tried by a jury January 14-17, 2013. Upon conviction, he was sentenced by the Honorable G. Edward Welmaker to an aggregate term of twenty-six (26) years. This appeal follows.

ARGUMENT

I.

The initial contact between Appellant and officers was a simple encounter requiring no objective justification. Nonetheless, even prior to the encounter, several factors raised officers' suspicions that criminal activity may be afoot. During the encounter, officers' suspicions were further raised by Appellants' behavior. Ultimately, reasonably concerned for his safety, Officer Gardner conducted a Terry frisk. As a result of the frisk, and with Appellant's consent, Gardner's search of Appellant's pocket yielded a large sum of money and four pills, later determined to be clonazepam. Appellant's arrest flowed from this discovery. Subsequent to his arrest, an inventory search of Appellant's vehicle revealed additional narcotics. (Appellant's Issues 1-3.)

"South Carolina appellate courts review Fourth Amendment determinations under a clear error standard." State v. Provet, 405 S.C. 101, 747 S.E.2d 453 (2013). The appellate court will affirm if there is any evidence to support the trial court's ruling. Id; State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013). The trial court's denial of Appellant's motion to suppress is supported by evidence in the record.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005). However, "[t]he purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'" United States v. Mendenhall, 446 U.S. 544, 553-554 (1980) (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976)).

Generally, police must have a warrant in order to conduct a search. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). However, a warrantless search

is proper under the Fourth Amendment if it falls within one of the exceptions to the warrant requirement. State v. Moore, 377 S.C. 299, 308-309, 659 S.E.2d 256, 261 (Ct. App. 2008). "These exceptions include: (1) search incident to a lawful arrest; (2) 'hot pursuit'; (3) stop and frisk; (4) automobile exception; (5) 'plain view' doctrine; (6) consent; and (7) abandonment." Weaver, 361 S.C. 73, 81, 659 S.E.2d 786, 790 (Ct. App. 2004) Furthermore, if police are following their standard procedures, they can inventory impounded property without obtaining a warrant. State v. Brown, 389 S.C. 473, 483-84, 698 S.E.2d 811, 817 (2010)

In United States v. Weaver the Fourth Circuit advised the following:

> The Supreme Court has recognized three distinct types of police-citizen interactions: (1) arrest, which must be supported by probable cause; (2) brief investigatory stops, which must be supported by reasonable articulable suspicion; and (3) brief encounters between police and citizens, which require no objective justification.

282 F.3d 302, 309 (4th Cir. 2002).

Thus, "[t]here is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked but may refuse to cooperate and go on his way." Terry v. Ohio, 392 U.S. 1, 34 (1968) (White, J., concurring; accord State v. Foster, 269 S.C. 373, 237 S.E.2d 589, 591-92 (1977) (quoting Terry and recognizing when a law enforcement officer asks a citizen on the street questions, the Fourth Amendment is not called into play).

However, a police officer may elevate a "police-citizen encounter" into an investigatory stop or detention if the officer has a "reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable

cause." United States v. Sokolow, 490 U.S. 1, 7 (1989) (quoting Terry, 392 U.S. at 30); see State v. Blassingame, 338 S.C. 240, 525 S.E.2d 535, 539 (Ct. App. 1999) ("A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity."). "If the officer's suspicions are confirmed or are further aroused, the stop may be prolonged and the scope enlarged as required by the circumstances." State v. Blassingame, 338 S.C. 240, 248-249, 525 S.E.2d 535, 539 - 540 (Ct. App. 1999)

Reasonable suspicion is something more than an "inchoate and unparticularized suspicion" or "hunch." Terry, 392 U.S. at 27. Instead, reasonable suspicion is founded upon "the specific reasonable inferences" the law enforcement officer "is entitled to draw from the facts in light of his experience." Id; State v. Burton, 349 S.C. 430, 562 S.E.2d 668, 672 (Ct. App. 2002), *rev 'd on other grounds*, 356 S.C. 259, 589 S.E.2d 6 (2003).

When deciding whether reasonable suspicion exists, courts look at the totality of the circumstances. State v. Corley, 383 S.C. 232, 240, 679 S.E.2d 187, 191 (Ct. App. 2009; Sokolow, 490 U.S. at 8 (recognizing that courts must look at the "whole picture" when determining whether or not reasonable suspicion exists). Furthermore, "[f]actors which alone may be 'susceptible of innocent explanation' can 'form a particularized and objective basis' for a stop when taken together." United States v. Glover, 662 F.3d 694, 698 (4th Cir. 2011 (quoting United States v. Arvizu, 534 U.S. 266, 277–78 (2002)).

Moreover, if the police have a reasonable suspicion that an occupant of a vehicle is involved in criminal activity, the police can stop the vehicle and briefly detain and question the occupant. State v. Lesley, 326 S.C. 641, 643, 486 S.E.2d 276, 277 (1997).

Once an officer has detained an individual based on a reasonable articulable suspicion, the officer is permitted to use whatever steps are reasonably necessary to effectuate the detention, ensure officer safety, and maintain the status quo throughout the course of the detention. See United States v. Hensley, 469 U.S. 221, 235 (1985) ("When the Covington officers stopped Hensley, they were authorized to take such steps as were reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop."); see also Adams v. Williams, 407 U.S. 143, 145-146, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972) ("The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, [Terry] recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.") (citations omitted).

The initial contact between Appellant and Officers Gardner and Hall constituted a brief encounter which required no objective justification. "The identification of oneself as a police officer, and the request to see a driver's license, with nothing more, is not a 'seizure.'" State v. Culbreath, 300 S.C. 232, 236, 387 S.E.2d 255, 257 abrogated by Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990). According to testimony of Gardner and Hall, Appellant's car was not blocked in, and either car could have driven away.[1] (R. p. 10, lines 10-15; p. 45, lines 8-20; p. 52, lines 9-14; R. p. 62, line 25 – p. 63, line 5; p. 153, lines 22-24; p. 155, lines 11-14; p. 177, lines

[1] While Appellant and one of the female occupants of the second car testified they were unable to leave their parking spots, the officers' testimony meets the "any evidence" standard necessary to support the trial court's ruling.

2-5; p. 193, lines 20-22.) Cf. Robinson v. State, 407 S.C. 169, 754 S.E.2d 862 (2014) (Where officer's vehicle blocked Petitioner's, preventing it from driving away, a reasonable person in Petitioner's position would not have felt free to leave.). Officers stood between the cars in such a way that Appellant could have opened his car door. (R. p. 31, line 23 – p. 32, line 2; p. 155, line 21 – p. 156, line 5.) Officers initially approached the group, mentioning the crime problem in the area and asked for identification. (R. p. 11, line 12; p. 71, line 18 – p. 72, line 5.) Under these circumstances, it is clear that this was initially a simple encounter, not a seizure.

However, should the court determine the initial contact between officers and Appellant was an investigatory stop, reasonable suspicion would support the officers' actions. This incident occurred on August 9, 2010. Detective Scott Gardner ("Gardner") was working a 7:00 pm – 7:00 am shift with Officer Rachel Hall ("Hall"). (R. p. 5, line 22-p. 6, line 3; p. 39, lines 19-22; p. 128, lines 6-11.) Gardner and Hall were on patrol as part of an aggressive patrol unit ("APU"); the officers worked in plain clothes and in an unmarked car in order to "get to crimes such as narcotics or prostitution or auto break-ins" more easily. (R. p. 6, lines 5-10; p. 39, line 23 – p. 40, line 20; p. 127, line 24 – p. 128, line 5; p. 172, lines 12-18.) The APU focuses on "the most targeted areas that are plagued with crimes, such as auto break-in, prostitution and drugs." (R. p. 6, lines 19-21; p. 129, lines 2-6.) That morning, the patrol included the Clarion Inn just off of Haywood Road, a location where Gardner had personally made multiple drug trafficking and prostitution cases in the past. (R. p. 6, lines 21-25; p. 25, line 2 - p. 26, line 3; p. 129, lines 21-24; p. 173, lines 3-25.) The Clarion Inn was of particular interest due to its proximity to the highway, making it a prime location for drug and prostitution meetings. (R. p. 7, lines 5-11; p. 129, lines 8-13.) Gardner also noted its proximity to other hotels

and apartment complexes as it was common practice for perpetrators of auto break-ins to park in one parking lot and commit crime in a nearby parking lot. (R. p. 7, lines 12-20; p. 174, line 23 – p. 175, line 11.) According to Hall, there had been several incidents of auto break-ins in parking lots of hotels and apartment complexes in this area of Haywood Road. (R. p. 41, lines 17-24; p. 173, lines 3-25.)

Upon arriving at the Clarion Inn just after midnight, Gardner and Hall observed a black Lexus occupied by Appellant. (R. p. 8, lines 1-2; p. 42, lines 21-24; p. 53, lines 15-22; p. 174, lines 5-6.) A Camry occupied by two teenage females was parked alongside Appellant's car in a dimly-lit portion of the parking lot. (R. p. 8, lines 2-6; p. 18, lines 11-14; p. 130, lines 9-15; p. 132, line 23 – p. 133, line 1; p. 174, lines 7-12.) It did not appear that the parties had luggage or "had really any business being at the hotel," and "they appeared to have a meeting for some reason." (R. p. 8, lines 7-10; p. 132, lines 2-7.) The cars were positioned such that Appellant's car was backed in with Appellant facing the parking lot and the other car was pulled with the occupants facing the hotel, allowing the driver's side windows to face one another. (R. p. 8, lines 11-14; p. 31, lines 2-17; p. 42, line 21 – p. 43, line 1.) Gardner noted that vehicles in this area also often back into parking spaces to prevent law enforcement from seeing the vehicle's license tag. (R. p. 8, lines 17-20.) This is often seen in the case of stolen vehicles or a person trying to conceal identity. (R. p. 8, lines 19-20; p. 132, lines 14-22; p. 174, lines 13-22.) Such parking was also against a city parking law. (R. p. 15, lines 20-22; p. 139, line 24 – p. 140, line 2.) Gardner did not recall any other vehicles in the parking lot at the time. (R. p. 8, lines 21-23; p. 130, lines 2-6; p. 131, lines 20-21.)

In sum, even before speaking to the vehicle occupants, several factors raised reasonable suspicion:

1) High crime area based on law enforcement experience, with specific concerns regarding prostitution, drug traffic, and vehicle theft.

2) Parking so as to conceal tag on vehicle, consistent with stolen vehicles per officer experience. Parking in this manner was also against city ordinance.

3) Lateness of hour.

4) Meeting in darkened area of parking lot. No other cars were nearby.

5) Young females meeting an older male gave rise to suspicion of prostitution.

6) Occupants appeared to have no business at the hotel but appeared to be meeting for a purpose.

After officers approached the vehicles, numerous factors further aroused Gardner's reasonable suspicions. Gardner and Hall were in an unmarked tan Impala and wore t-shirts with visible badges. (R. p. 128, lines 20-25.) Gardner and Hall identified themselves as police officers when they approached the vehicles. (R. p. 10, line 18 – p. 11, line 6.) Gardner noted that "all three individuals appeared to be very nervous almost instantaneously." (R. p. 11, lines 7-8.) As the officers approached, conversation among them ceased, and the subjects looked straight ahead. (R. p. 11, lines 8-10; p. 135, lines 16-18.) The young women provided identification, but Appellant did not have identification. (R. p. 11, lines12-13; p. 43, lines 23 – p. 44, line 4; p. 134, lines 23-24; p. 178, lines 19-23.) As Appellant provided his name and date of birth to Hall, he appeared "very nervous" and "was stuttering when he was speaking," so much so that he gave two different social security numbers. (R. p. 11, lines 14-15; p. 47, lines 9-15; p. 50, lines 11-12; p. 134, line 25 – p. 135, line 2; p. 136, lines 22-24; p. 179, lines 9-13.)

Gardner noticed that Appellant grew increasingly nervous as they talked even though Gardner asked innocuous questions. (R. p. 11, lines 16-17; p. 17, lines 12-15.) Officers particularly noticed Appellant sweating profusely after they began speaking with

him. (R. p. 50, lines 20-21; p. 135, lines 20-23; p. 180, lines 19-22.) Gardner found this odd because Gardner himself was "a large gentleman" and not sweating at all even though he was wearing body armor beneath his t-shirt. (R. p. 11, lines 17-20; p. 135, lines 18-23.) Gardner asked general questions, including what Appellant was doing at the Clarion. (R. p. 17, lines 12-16.) Appellant replied that he was there to visit his child's mother in room 237. (R. p. 17, lines 16-18.) However, when asked the woman's name, he replied that he did not know. (R. p. 17, lines 18-19; p. 135, line 23 – p. 136, line 1; p. 167, lines 20-22.)

The officers' assessment of the disparate ages of the parties was confirmed during the conversation and checking of identification. Appellant was approximately thirty-seven (37) years old, and the females were seventeen and eighteen years old, respectively. (R. p. 11, lines 23-25; p. 44, lines 7-10; p. 87, lines 17-25.) The confirmed age difference alerted Gardner to the possibility of prostitution, a common crime in the area. (R. p. 12, lines 1-3.)

Hall returned to the patrol vehicle to run the identification information on the subjects. Hall had trouble getting information back on Appellant, a possible indicator that he provided false information which often occurs when subjects have suspended licenses or warrants, and providing false information was itself a criminal offense. (R. p. 12, lines 14-24; p. 44, lines 13-22; p. 46, lines 1-3; p. 139, lines 16-23.) Hall returned to Appellant's vehicle to verify Appellant's identification information. (R. p. 13, lines 3-7; p. 46, lines 3-7; p. 180, lines 6-16.) Backup was requested. (R. p. 13, lines 9-12.)

While Hall continued to verify Appellant's identification, Gardner noticed Appellant continually touching his left pocket, at one point trying to place his hand in the pocket. (R. p. 13, lines 12-15; p. 46, lines 10-18; p. 136, lines 1-10.) Hall also noticed

Appellant touching his pocket "continuously" and felt concern that Appellant could have a weapon. (R. p. 49, lines 17-24; p. 50, lines 6-8; p. 50, line 19 – p. 51, line 5; p. 179, line 13 – p. 180, line 2; p. 180, lines 22-23; p. 181, lines 2-5.) Due to safety concerns, Gardner asked Appellant to refrain from touching the pocket and to leave his hands in sight. (R. p. 13, lines 15-17; p. 34, lines 3-6.; p. 136, lines 10-12) Gardner explained that this behavior is an indicator that the individual has drugs or a weapon in the pocket. (R. p. 13, lines 17-24; p. 136, lines 2-7.) After being asked not to, Appellant continued to touch the pocket multiple times. (R. p. 13, line 25 – p. 14, line 2; p. 136, lines 11-12.)

In summary, during the conversation with the parties, officers assessed:

- Appellant noticeably stuttered and appeared nervous when officers greeted him and identified themselves as law enforcement officers.
- Appellant's nervousness increased as they talked.
- Appellant was sweating profusely, much more than the officer of his same physical stature. He began sweating after the encounter began.
- Disparate ages of the parties alerted officers to possible prostitution.
- Appellant failed to present identification, a possible indicator that he did not have a valid license.
- Hall had difficulty running the information Appellant provided, causing concern that he may be providing false information.[2]
- Appellant claimed to be visiting his child's mother at the hotel in room 237, but could not provide her name, further indication of deception.
- Appellant was constantly touching his pocket, an indicator that he possibly had narcotics or a weapon. After being asked not to touch the pocket, Appellant continued to do so.

[2] While it was ultimately determined that Appellant had provided valid identification information, the officer's reasonable perceptions at the time must be considered. The officer cannot be required to be clairvoyant. It was determined that Appellant did not have a valid driver's license. (R. p. 15, lines 15-19; p. 141, lines 1-6; p. 181, lines 21-22.)

While the State maintains the encounter was consensual, all of these factors, taken together and in addition to the factors assessed prior to contact, show that Gardner had reasonable suspicion that criminal activity was afoot when he asked Appellant to step out of his vehicle.

The Terry frisk of Appellant was justified. Gardner was particularly justified in his concern due to the fact that Appellant repeatedly touched his pocket even after being directed not to. Based on training and experience, this particular behavior caused concern that Appellant may have a weapon. In this situation, a reasonably prudent man, fairly isolated in a dark parking lot with a sizeable man who could not satisfactorily explain why he was in the area and who repeatedly touched his pocket despite the officer's request to the contrary, was warranted in his belief that his safety was in danger. In contrast to State v. Butler, 353 S.C. 383, 577 S.E.2d 498 (Ct. App. 2003), Gardner had reason to fear that Appellant was armed due to his repeated touching of his pocket. This case also differs from the case of Burton, 349 S.C. 430(finding trial court's alleged error in admitting evidence of search and seizure not preserved for appeal where propriety of police action questioned for first time in motion for directed verdict)) in that Gardner's suspicions of criminal activity were based on more than Appellant's furtive conduct in touching his pocket.

Once other officers arrived, Gardner asked Appellant to step out of the car. (R. p. 14, lines 7-9; p. 137, line 24 – p. 138, line 3 .) He explained to Appellant that he was going to conduct a Terry frisk for weapons. (R. p. 14, lines 9-11; p. 138, lines 3-5.) Gardner felt a large lump in Appellant's pocket and requested permission to reach inside. (R. p. 14, lines 11-15; p. 138, lines 6-11.) With Appellant's consent, Gardner reached in the pocket and retrieved a large wad of cash. (R. p. 14, lines 15-17; p. 35, lines 3-10; p.

138, lines 11-15; p. 163, lines 1-4.) Gardner asked why he had such a large wad of cash, approximately $1400.00, and Appellant responded that he did not know.[3] (R. p. 14, lines 17-20; p. 138, lines 15-17.) When asked what he did for a living, Appellant responded, "this and that." (R. p. 14, lines 20-21; p. 138, lines 18-19.) Within fifteen to thirty seconds of retrieving the cash, still concerned that a weapon could be beneath the wad of cash because he had been unable to fully clear Appellant's pocket, Gardner reached back into the pocket. At that time, he found four round green pills, later identified as clonazepam, a Schedule IV drug. (R. p. 14, line 21 – p. 15, line 8; p. 35, lines 11-16; p. 36, lines 4-15; p. 38, lines 5-10; p. 138, line 19 – p. 139, line 9; p. 140, lines 5-8.)

Evidence in the record further supports that the discovery of the clonazepam pills was the result of a consensual search. Gardner testified that Appellant consented to his request to reach into his pocket. According to Gardner, he reached into Appellant's pocket the second time to finish searching it within seconds of the initial consent. According to Gardner, Appellant made no protest. "Effective withdrawal of a consent to search requires unequivocal conduct, in the form of either an act, statement or some combination of the two, that is inconsistent with consent previously given." State v. Mattison, 352 S.C. 577, 587, 575 S.E.2d 852, 857 (Ct. App. 2003).

Time delay was not an issue in this encounter. Hall diligently attempted to confirm Appellant's identification, a matter complicated by the fact that Appellant, despite the fact that he claims he had driven to the hotel and was about to drive, did not possess a driver's license.

Accordingly, evidence supports the trial court's ruling.

[3] At some point, Appellant also advised Gardner that he had purchased the Lexus for $3500.00 cash three to four days prior to the encounter. (R. p. 141, lines 11-14.)

II.

The trial court did not abuse its discretion in admitting evidence where, even though one evidence custodian did not testify or offer an affidavit, he was identified and procedures testified to such that the State established that the drugs, Advil bottle, scale, cell phone, money order and currency were those taken from Appellant without any alteration, tampering or substitution.

Appellant argues that evidence, presumably State's exhibits 3-8, should not have been admitted because a clerk who received and initially logged the evidence into the property and evidence room did not testify at trial. At trial defense counsel posed his issue as a failure to comply with the Defendant's request to have each person in the chain of custody present in court pursuant to Rule 6(b), SCRCrimP, claiming that his objection was different than that raised in cases such as State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011). (R. p. 114, line 5 – p. p. 126, line 24.) Appellant specifically focused on the portion of Rule 6(b), SCRCrimP, which provides:

> The defendant or his attorney may demand appearance in court of the persons within the chain of custody in the same manner as provided in Section (a).

Appellant's concern was with the absence of Israel Flounders. (R. p. 214, line 22 – p. 215, line 2.)

In State v. Chisolm, 355 S.C. 175, 584 S.E.2d 401 (Ct. App. 2003) overruled by State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004), the court found that the State failed to submit testimony of each person in the chain of custody or to comply with Rule 6(b), SCRCrimP. In Chisolm, 355 S.C. at 181, 584 S.E.2d 404, the court found that this failure rendered the evidence inadmissible, noting that "custodial signatures on an evidence bag fail to establish an adequate chain of custody where the custodians do not provide testimony under oath or produce sworn statements pursuant to Rule 6(b), SCRCrimP." In Chisolm, the signatures on the evidence bag were the only evidence of

the handling of the evidence for a time period of just over a month. In State v. Taylor, 360 S.C. 18, 27, 598 S.E.2d 735, 738 (Ct. App. 2004), the court clarified,

> ...we do not read Chisholm to require the testimony of each evidence custodian as a prerequisite to admissibility. ... To the extent the language quoted above can be read to require the testimony of each person in the chain of custody under all circumstances, it is inconsistent with the precedent established by our supreme court, and is hereby overruled.

Taylor announced that where "the State introduced evidence to establish the identity of each person in the chain of possession and the manner of handling," evidence may still be admissible.

As stated in Hatcher, 392 S.C. at 95, the "ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be." In Hatcher, the police officer who received drugs from an undercover buyer transported them to SLED and placed them in tamper-evident bags marked with the case number and date. The chemist testified that she received the evidence from the log-in department, conducted testing, repackaged the evidence in a heat-sealed bag, and returned the evidence to the log-in department. The officer picked up the bag from the log-in department. The chemist confirmed at trial that the bag was in the same condition as when she sealed it. The defense argued that because the person who received the evidence at the SLED log-in room was not personally identified and there were no details presented about how the evidence was handled, the evidence was inadmissible. The Supreme Court disagreed, finding the record indicated "the drugs received for testing were in fact those taken from Hatcher without any alteration, tampering or substitution." Id.

In the present case, the chain of custody is established with even more definitive evidence than that in Hatcher, 392 S.C. 86. Gardner took custody of the evidence collected from Appellant and his vehicle. (R. p. 140, lines 15-20; p. 143, lines 1-7.) Gardner stated that when items are taken, "you put your initials, case number and the date that you put it in, and then you also heat seal it." (R. p. 144, lines 23-24.) Gardner described the process he undertook with regard to handling evidence seized in this case:

> ...After hours I believe now is after four-thirty approximately, in the afternoon, they won't accept anything else. What they have you do is they put it — you fill out a P&E sheet, you put it in the evidence bag, you put your initials, date and the case number. You heat seal it, the bag. And you take all your evidence and you take you P&E sheet, you put it in an envelope. And they have like a slot or a drop-box that you slide it down into. And even now that they have lockers, you put them in the locker that nobody has a key to it, to my knowledge, except for P&E.
> Q. Can a person stick their hand in there and pull it back out?
> A. No, they cannot.
> Q. Is it like a mailbox?
> A. Yes. It's almost like the new drink machines type thing that once you open it this way, you can put something in, but there's no way to reach through.
> Q. And was Officer Hall with you when you turned these items in?
> A. I believe she was.
> Q. And describe what you mean by heat sealing, specifically regarding the crack cocaine?
> A. It's plastic -- the bags are plastic bags and we have this long metal machine that once you put down there, it just heat seals it closed and there's absolutely no way to open it without obvious signs of tampering.
> Q. And do you request an analysis when you turn something like crack cocaine in?
> A. Yes, we do.
> Q. And did you receive an analysis?
> A. Yes, we did.
> Q. And did you bring these items to court today?
> A. I did.
> Q. And where did you have to go to check them out to bring them to court?

> A. You have to go back down to property and evidence during the hours that they're open, again, before four-thirty. And I requested them and they gave them to me. I have to sign them out into my custody and then I brought them in.
> Q. And when this trial started yesterday, did you check them out yesterday?
> A. I did check them out yesterday.
> Q. And did you keep it in your custody until today?
> A. I did.
> Q. And describe how secure the property and evidence area is? Who has access?
> A. Only property and evidence employees themselves. No officers, no deputies, nobody's allowed back there except the few people that have access to it.
> Q. So Detective, you brought State's Exhibits 3, 4, 5, 6, 7, and 8 to court with you?
> A. Yes, ma'am.

(R. p. 145, line 18 – p. 147, line 20.) Hall affirmed that she had accompanied Gardner to transport evidence to the property and evidence room:

> The law enforcement center itself, you have to have a scan code to make entry into the building. So once you make entry into the building ---
> Q. And who has the scan code?
> A. That would be City or Greenville County employees that— they give special authorization. You have to work directly in that building.
> Q. Okay. Please continue.
> A. But once you get down to the property and evidence, like Officer Gardner explained, you fill out all of the appropriate paperwork, you heat seal the plastic bags. That's to ensure that it's obvious if it has been tampered with. And then you actually place all of your paperwork, along with the evidence, into an envelope and into a drop box that is secured behind a locked door.
> Q. Do you know the case number that was assigned to this case?
> A. I do not know it by heart, but I do have it right here. I was 2010-067312.
> Q. And is that number associated with the items that you and Officer Gardner put into property and evidence?
> A. Yes. That case number, that same case number would be listed on the property and evidence sheet.

(R. p. 183, line 20 – p. 184, line 17.)

Kara Bennick, the supervisor of the evidence room, also testified. Bennick explained that only four full time clerks have unlimited access to the area. (R. p. 218, lines 9-12.) Keys, swipe cards, and 24/7 camera monitoring are utilized. (R. p. 218, lines 12-16; p. 219, lines 16-17.) When officers drop evidence after hours, it goes into a lock box. (R. p. 220, lines 1-5.) The next morning, employees remove evidence from the boxes, complete an inventory sheet, and sign for the items. (R. p. 220, lines 8-12.) In order to be accepted, drug evidence must be sealed and marked with the case number, officer's initials, and the date. (R. p. 220, line 16 – p. 221, line 5.) Bennick testified that the evidence Gardner submitted in this case was collected from the after-hours drop box by Israel Flounders, a former property and evidence clerk. (R. p. 221, lines 6-18.) Bennick supervised Flounders and identified his signature on the form completed when the evidence was submitted. (R. p. 221, lines 19 – 24.) According to procedure, once collected from drop boxes, the evidence would remain in the secured evidence area. (R. p. 222, lines 17-20.) At the time of Appellant's trial, Flounders was on military duty. (R. p. 221, line 25 – p. 222, line 1.) Though Bennick could not say that she personally observed Flounders collect the items, she did testify as to his completion of the property and evidence form and to the standard procedures in the area.

Bennick further explained that when chemists collect evidence for testing, the chemist will sign for all items. (R. p. 222, lines 12-16.) Bennick identified State's exhibits 3 (four green tablets), 4 (bag containing rock substance), 5 (Advil bottle), 6 (scale), 7 (money order), and 8 (cell phone) as having been processed in the property and evidence room by the bags used by the section to secure drugs and the envelopes. (R. p. 222, line 21 – p. 223, line 2.) Chemist James Armstrong checked out items for analysis on September 8, 2010 from clerk Tabitha Frick. (R. p. 228, line 1 – p. 229, line 3; p. 240,

lines 3-24.) Though Armstrong would be analyzing only the pills and crack cocaine, all items were checked out to him because all items on the same property and evidence form are always kept together. (R. p. 228, lines 10-22; p. 242, lines 5-8.) Armstrong noted no abnormalities in the packaging of the evidence. (R. p. 243, line 24 – p. 244, line 11.) Bennick herself checked the items back in on September 10, 2010. (R. p. 222, lines 2-9; p. 223, lines 3-12; p. 242, lines 9-13.)

Thereafter, Gardner checked the items out on September 10, 2012, for another court proceeding, kept them in his custody and control, and returned them on September 11, 2012. (R. p. 230, lines 5-21.) Melanie Watson testified that she collected the items from the drop box on September 12, 2012, noting that the drug evidence remained sealed. (R. p. 233, lines 9-25.) Officer David Kern, pursuant to a search warrant, collected the cell phone from the evidence room on January 7, 2013. (R. p. 236, line 22 – p. 297, line 13.) Kern returned the cell phone, and Watson checked the cell phone back into the evidence room on January 10, 2013. (R. p. 234, line 4 – p. 235, line 1; p. 237, lines 14-18.) Gardner also checked the items out and transported them for trial. (R. p. 230, line 22 – p. 231, line 5.)

The court did not abuse its discretion in finding the evidence admissible. All items were collected by Gardner, marked with the case number and given item numbers, catalogued on a form, and turned in to the after-hours drop box. Thereafter, according to signatures on the form, clerk Israel Flounders accepted the items and stored them. Though Flounders was not available, the evidence room supervisor noted that according to procedure, had the items not been packaged as described by Gardner, they would not have been accepted. Further, when the chemist came to collect these items, they were located in the proper place in the evidence room by another clerk, Frick. This strongly

suggests that Flounders properly stored the items. The evidence room is a well secured environment where only a limited number of employees have access. Armstrong testified that when he received the items, they were properly sealed and marked as Gardner indicated. Upon presentation in court, the items were packaged and marked as stated by the witnesses. The chain of custody evidence meets and exceeds the standard set by Hatcher in that the evidence custodian was identified and additional testimony was provided regarding procedures in the evidence room. For all these reasons, the evidence was properly found to be admissible by the trial court.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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July 3, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-000224

THE STATE,

Respondent,

v.

ERICK HEWINS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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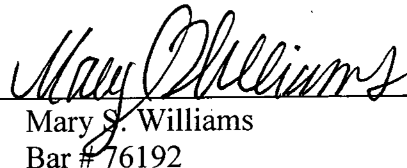
BY: 
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PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within Final Brief of Respondent, with proof of service, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jessica H. Lerer, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 3rd day of July, 2014.

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RE: State v. Erick Eton Hewins
Appellate Case No. 2013-000224

Dear Counsel:

I am enclosing two (2) copies of the Final Brief of Respondent, with proof of service, in the above-referenced case.

Sincerely,

Mary S. Williams
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MSW/erd
Enclosures

cc: ~~Honorable Jenny A. Kitchings (original and fourteen enclosed)~~
Victim Services

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