STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Honorable Alexander S. Macaulay, Circuit Court Judge
Appellate Case No. 2013-000663

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SC Court of Appeals

THE STATE,

Respondent,

vs.

DAN LAVERT TEMPLE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 8

Any issue regarding the trial judge's denial of Appellant's pre-trial motion to suppress the evidence discovered during a search of his motel room was not preserved for appellate review because defense counsel waived any objection to the admission of that evidence by affirmatively indicating to the trial judge there were no objections to the admission of the evidence at the time it was introduced during trial. However, regardless of any issue preservation concerns, the trial judge properly declined to suppress the evidence discovered during the search of Appellant's motel room because the search warrant affidavit contained sufficient information to establish a reliable probable cause basis to believe crack cocaine and other incriminating evidence would be discovered at in the motel room at the time of the search. Furthermore, even if the trial judge erred in finding the search warrant affidavit sufficiently established a probable cause basis for the search, the trial judge properly declined to suppress the evidence discovered in the search because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that belief in and reliance on its validity was unreasonable. 8

CONCLUSION 20

TABLE OF AUTHORITIES

Cases:

Burke v. AnMed Health, 393 S.C. 48, 710 S.E.2d 84 (Ct. App. 2011). 11

Illinois v. Gates, 462 U.S. 213 (1983). 11, 12, 13, 15, 17, 18

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000). 9

Maryland v. Buie, 494 U.S. 325 (1990). 18

Segura v. United States, 468 U.S. 796 (1984). 17

State v. Arnold, 319 S.C. 256, 460 S.E.2d 403 (Ct. App. 1995). 12

State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999). 11, 14

State v. Bennett, 256 S.C. 234, 182 S.E.2d 291 (1971). 12

State v. Burton, 326 S.C. 605, 486 S.E.2d 762 (Ct. App. 1997). 11

State v. Carlson, 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005). 11

State v. Dicapua, 373 S.C. 452, 646 S.E.2d 150 (Ct. App. 2007). 10

State v. Dupree, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003). 13, 14, 18

State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005). 9

State v. Keith, 356 S.C. 219, 588 S.E.2d 145 (Ct. App. 2003). 13

State v. Pauling, 322 S.C. 95, 470 S.E.2d 106 (1996). 9

State v. Robinson, 408 S.C. 268, 758 S.E.2d 725 (Ct. App. 2014). 14

State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004). 9

State v. Rutledge, 373 S.C. 312, 644 S.E.2d 789 (Ct. App. 2007). 13

State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). 10

State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996). 10

State v. Smith, 337 S.C. 27, 522 S.E.2d 598 (1999). 9

State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976). 12

State v. Thomas, 275 S.C. 274, 269 S.E.2d 768 (1980). 13

State v. Viard, 276 S.C. 147, 276 S.E.2d 531 (1981). 15

State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997). 13, 16, 17

State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009). 10

State v. Williams, 262 S.C. 186, 203 S.E.2d 436 (1974). 11

Texas v. Brown, 460 U.S. 730 (1983). 18

United States v. Anderson, 851 F.2d 727 (4th Cir. 1988). 15, 17

United States v. Bynum, 293 F.3d 192 (4th Cir. 2002). 16

United States v. Colkley, 899 F.2d 297 (4th Cir. 1990). 14

United States v. Leon, 468 U.S. 897 (1984). 13, 16, 17, 18

Other Authorities:

S.C. Code Ann. § 17-13-140. 11

STATEMENT OF ISSUE ON APPEAL

Any issue regarding the trial judge's denial of Appellant's pre-trial motion to suppress the evidence discovered during a search of his motel room was not preserved for appellate review because defense counsel waived any objection to the admission of that evidence by affirmatively indicating to the trial judge there were no objections to the admission of the evidence at the time it was introduced during trial. However, regardless of any issue preservation concerns, the trial judge properly declined to suppress the evidence discovered during the search of Appellant's motel room because the search warrant affidavit contained sufficient information to establish a reliable probable cause basis to believe crack cocaine and other incriminating evidence would be discovered at in the motel room at the time of the search. Furthermore, even if the trial judge erred in finding the search warrant affidavit sufficiently established a probable cause basis for the search, the trial judge properly declined to suppress the evidence discovered in the search because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that belief in and reliance on its validity was unreasonable.

STATEMENT OF THE CASE

On July 25, 2012, Appellant Dan Lavert Temple was arrested after law enforcement officers conducted a search of his motel room and discovered evidence of illegal activity, including crack cocaine. In January of 2013, the Oconee County grand jury indicted Appellant for one count of third-offense possession of crack cocaine with intent to distribute and one count of second-offense possession of a controlled substance. On March 18, 2013, a jury trial was commenced in the Oconee County court of general sessions with the Honorable Alexander S. Macaulay, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant of the lesser-included offense of possession of crack cocaine and the indicted offense of possession of a controlled substance. Following the verdict, the trial judge sentenced Appellant to consecutive terms of imprisonment of ten years for possession of crack cocaine and one year for possession of a controlled substance. Furthermore, the trial judge ruled Appellant willfully violated a previously-imposed probationary sentence as a result of his convictions and imposed a consecutive five-year term of imprisonment for that violation. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

In July of 2012, law enforcement officers from both the Seneca Police Department and Oconee County Sheriff's Office conducted a narcotics investigation into the activities of Appellant Dan Lavert Temple. (Tr. pp. 110-111; pp. 120-121; pp. 169-170; p. 183; p. 227; Court's Ex. # 1 (Search Warrant)). As part of the investigation, the officers worked with a confidential informant to purchase drugs from Appellant and conducted surveillance of Room 103 of the Town & Country Motel in Seneca, South Carolina. (Tr. pp. 121-122; Court's Ex. # 1). During the surveillance, the officers observed and photographed Appellant returning to and entering the motel room along with Appellant approaching the vehicle driven by the confidential informant. (Tr. pp. 122-124).

Based on the information obtained during the investigation, Investigator Tim Hunnicutt of the Seneca Police Department sought a search warrant on July 24, 2012, seeking authorization to search Appellant's motel room for controlled substances, counterfeit money, and other associated items. (Tr. p. 183; Court's Ex. # 1). In the affidavit attached to the search warrant, Investigator Hunnicutt included the following information to establish a probable cause basis for the issuance of the warrant:

> 1. That the affiant, Tim Hunnicutt, is an Investigator in the Narcotics Division with the Seneca Police Dept. and has been involved in numerous narcotics investigations and has been a sworn law enforcement officer for approximately eleven (11) years.
>
> 2. That during this time, the affiant has investigated various types of narcotics cases and has participated in the investigation, apprehension and arrest of numerous narcotic violators.
>
> 3. That on July 17, 2012 an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of crack cocaine from [Appellant] in the area of the 100 block of Bypass 123 Seneca, SC.

> 4. That on July 17, 2012 an undercover operative working under the direction of the Seneca Police Department/Oconee Sheriff's Office was distributed a quantity of crack cocaine from [Appellant] in the area of the 100 block of Bypass 123 in Seneca, SC.
>
> 5. That on July 23, 2012 an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of crack cocaine from [Appellant] in the area of the 100 block of Bypass 123 Seneca, SC.
>
> 6. Within the last 72 hours an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of lortabs from [Appellant] at 318 Bypass 123 in Seneca, SC. [Appellant] was seen walking to and from the Town & Country Motel.
>
> 7. Within the last 72 hours an undercover operative working under the direction of the Seneca Police Department was given a counterfeit 100 dollar bill by [Appellant] at 318 Bypass 123. He asked the undercover operative to take it to a store and exchange it for real US currency. The undercover operative turned the counterfeit money over to agents. Agents gave the undercover operative 100 dollars in documented funds. The undercover operative met with [Appellant] at the Town & Country Motel and gave [Appellant] the documented funds. [Appellant] was observed by agents exiting and re-entering room 103 at Town & Country Motel.
>
> 8. Based upon the Undercover Operation on the above listed dates, establishing a continuing criminal enterprise, the affiant believes illegal drugs, proceeds from illegal drug transactions, and drug paraphernalia and counterfeit money will be present at this residence.

(Court's Ex. # 1). Later that day, a magistrate judge issued the search warrant. (Tr. p. 183; p. 192; Court's Ex. # 1).

The next morning, officers went to the motel room to execute the search warrant, knocked on the door, and announced their presence. (Tr. p. 112). They then attempted to enter the room but discovered the door was barricaded shut. (Tr. p. 112). As a result, the officers broke through the door and located Appellant in the bed with his hands hidden underneath the covers along with Appellant's girlfriend, Crystal Henry, hiding behind the door. (Tr. p. 112; p. 117; p. 135; p. 184). Upon finding Appellant and Henry in the

motel room, the officers ordered Appellant to reveal his hands, but he would not do so. (Tr. pp. 112-113). Appellant and Henry were then secured and arrested. (Tr. pp. 112-113; p. 184). As Appellant was secured, Investigator B.J. McClure of the Seneca Police Department observed a pill bottle fall out of Appellant's bed and onto the floor. (Tr. p. 113). Then, during an ensuing search of the motel room, officers discovered a rock-like substance in the pill bottle, a rock-like substance on a bedside nightstand, several pills in a nightstand drawer, $622 in cash, a cell phone, several computers, two glass crack pipes, and other items associated with the use of crack cocaine. (Tr. p. 114; p. 127; p. 129; p. 150; pp. 185-186; p. 192; p. 203).

Thereafter, Appellant asked to speak with an officer, and Captain Kenneth Washington of the Oconee County Sheriff's Office met with him. (Tr. p. 171; p. 180). Appellant then waived his rights and advised the officer he wanted to cooperate, he had purchased an ounce of crack cocaine in Pendleton, South Carolina, on the previous night, he could buy more from that source, and he could also buy drugs from a source in Georgia. (Tr. p. 171; p. 173; p. 176; p. 178). Captain Washington then relayed that information to Investigator Hunnicutt, and Investigator Hunnicutt subsequently spoke with Appellant at the police department. (Tr. p. 176; p. 187). During their conversation, Appellant again waived his rights, claimed the crack cocaine found in the motel room belonged to him, and admitted he had bought the drugs in Pendleton on the preceding night for $300. (Tr. p. 189; pp. 229-231).

Subsequently, Appellant was indicted for possession of crack cocaine with intent to distribute and possession of a controlled substance, and he proceeded to trial. (Tr. pp. 4-5; Indictments). At the outset of trial, defense counsel moved to suppress the evidence discovered in the search of Appellant's motel room, arguing the search violated

Appellant's Fourth Amendment rights. (Tr. p. 42). In support of that contention, defense counsel asserted the search warrant was invalid because it did not contain any information in regard to the reliability of a confidential informant, it did not establish any controlled buys actually occurred at Appellant's motel room, and it did not contain any information establishing the controlled buys were properly conducted. (Tr. p. 42; p. 46; pp. 48-49). In response, the solicitor argued the search warrant was properly issued because the totality of the circumstances as presented in the search warrant affidavit established a probable cause basis for the issuance of the warrant. (Tr. p. 55). After considering the arguments of counsel, the trial judge determined the search warrant affidavit contained sufficient information to support the issuance of the warrant and denied defense counsel's suppression motion. (Tr. pp. 56-57).

Thereafter, the officers involved in the operation testified before the jury about their investigation into Appellant's illegal activities, Appellant's apprehension and arrest, and the search of Appellant's motel room that led to the discovery of crack cocaine and other incriminating evidence. (Tr. pp. 110-114; pp. 120-121; pp. 169-170; pp. 183-189; pp. 227-228). Additionally, Henry testified for the State, indicated Appellant was a crack cocaine dealer, claimed the crack cocaine discovered on the nightstand belonged to her, asserted the bottle of crack cocaine and Xanax belonged to Appellant, and stated Appellant purchased crack cocaine in both Pendleton and Toccoa, Georgia, on the night before the search. (Tr. pp. 135-138; pp. 147-148; pp. 157-158; pp. 162-163). Following the testimony of the investigating officers and Henry, Agent Meredith Lanford, an analyst with the Anderson/Oconee Regional Forensics Laboratory and an expert forensic drug chemist, testified about her analysis of the drugs discovered during the search of Appellant's motel room. (Tr. pp. 242-246). Specifically, Lanford confirmed one of the

rock-like substances discovered during the search was 0.12 grams of crack cocaine, the substance recovered from the pill bottle was 1.10 grams of crack cocaine, and the ten pills located during the search were alprazolam, which was also known as Xanax. (Tr. pp. 246-248). Thereafter, the solicitor moved to admit the drugs recovered during the search and Lanford's analysis report into evidence, and the trial judge inquired of defense counsel as to whether there were any objections to the admission of that evidence. (Tr. p. 248). Defense counsel responded: "No objection, Your Honor." (Tr. p. 248). The trial judge then admitted the drugs and the report "[w]ithout objection[.]" (Tr. p. 248).

Subsequently, at the conclusion of trial, the jury convicted Appellant of possession of crack cocaine and possession of Xanax. (Tr. p. 400). Following the verdict, the trial judge sentenced Appellant to an aggregate eleven-year sentence for those convictions along with a consecutive five-year sentence for Appellant's willful violation of a previously-imposed probationary sentence. (Tr. pp. 414-415).

ARGUMENT

Any issue regarding the trial judge's denial of Appellant's pre-trial motion to suppress the evidence discovered during a search of his motel room was not preserved for appellate review because defense counsel waived any objection to the admission of that evidence by affirmatively indicating to the trial judge there were no objections to the admission of the evidence at the time it was introduced during trial. However, regardless of any issue preservation concerns, the trial judge properly declined to suppress the evidence discovered during the search of Appellant's motel room because the search warrant affidavit contained sufficient information to establish a reliable probable cause basis to believe crack cocaine and other incriminating evidence would be discovered at in the motel room at the time of the search. Furthermore, even if the trial judge erred in finding the search warrant affidavit sufficiently established a probable cause basis for the search, the trial judge properly declined to suppress the evidence discovered in the search because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that belief in and reliance on its validity was unreasonable.

Appellant alleges the trial judge erred in denying his motion to suppress the evidence recovered during the search of his motel room. In support of that contention, Appellant maintains the search warrant affidavit was insufficient to establish a probable cause basis for the search due to the fact it allegedly contained no information about the reliability of the confidential informant who supplied information to the law enforcement officers. Initially, any issue with Appellant's challenge to the trial judge's pre-trial ruling denying the suppression motion is not preserved for appellate review because defense counsel waived any objection regarding the admission of the crack cocaine and other incriminating evidence by indicating he had no objection to the admission of that evidence when it was introduced during trial. Accordingly, Appellant is precluded from now raising that issue on appeal. However, even if the issue had somehow been preserved for appellate review despite the lack of a contemporaneous objection to the admission of the evidence, the trial judge properly denied Appellant's suppression motion because the search warrant affidavit contained sufficient reliable information to establish a probable cause basis to believe crack cocaine and other incriminating evidence would

be found in Appellant's motel room at the time of the search. Furthermore, even if the search warrant had somehow been insufficient to establish probable cause, suppression of the evidence recovered in the search of the motel room was nonetheless not warranted because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that Investigator Hunnicutt's belief in its validity was unreasonable. Accordingly, the trial judge properly denied Appellant's suppression motion. Appellant's convictions should be affirmed.

A. Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Imposing issue preservation requirements on a party "is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000); see, e.g., State v. Pauling, 322 S.C. 95, 100, 470 S.E.2d 106, 109 (1996) ("Having denied the trial judge an opportunity to cure any alleged error by failing to contemporaneously object to the charge, Appellant is procedurally barred from raising these issues for the first time on appeal."). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not

constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993). "However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001); see State v. Wiles, 383 S.C. 151, 156-157, 679 S.E.2d 172, 175 (2009) ("This exception is based on the fact that when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection.").

In the case at bar, any issue with the admission of the crack cocaine and other evidence discovered during the search of Appellant's motel room was not properly preserved for appellate review. At the outset of trial, Appellant filed a motion in limine seeking the suppression of the evidence discovered during the search. Then, following a pre-trial hearing on the suppression motion, the trial judge issued a preliminary ruling denying Appellant's motion. Thereafter, when the solicitor moved to introduce the crack cocaine and other incriminating items into evidence later during trial, Appellant did not renew his pre-trial objection and, instead, affirmatively stated he had **no** objection to the admission of the evidence, which was then specifically admitted without objection by the trial judge. Cf. State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue

Dicapua had with the videotape."). Accordingly, under those circumstances, Appellant's pre-trial objection to the admission of the crack cocaine and other incriminating evidence was expressly waived, and the issue cannot properly be raised or reviewed on appeal. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); see also State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct induced."); State v. Burton, 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) ("This testimony was admitted without objection. Because Burton failed to object, he is barred from raising this issue on appeal."). Appellant's convictions should be affirmed.

B. Propriety of the Search Warrant

In South Carolina, an affiant seeking to obtain a search warrant must present a sworn affidavit to a judge presenting grounds sufficient to establish probable cause in order to justify the issuance of the warrant. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348-349 (1999); see S.C. Code Ann. § 17-13-140 ("A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant."); see also Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as "a fair probability that contraband or evidence of a crime will be found"). In State v. Williams, 262 S.C. 186, 189, 203 S.E.2d 436, 437-438 (1974), the South Carolina Supreme Court explained probable cause as it relates to the issuance of a search warrant:

> In order to justify the issuance of a search warrant, probable cause must be shown, but the term 'probable cause' does not import absolute certainty. In determining whether there is sufficient evidence to sustain a finding of probable cause, each case stands on its own facts. The evidence need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed.

(citing State v. Bennett, 256 S.C. 234, 182 S.E.2d 291 (1971)).

In deciding whether to issue a search warrant, the issuing judge must "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Gates, 462 U.S. at 238. In making the probable cause determination, "[issuing judges] are concerned with probabilities and not certainties." State v. Sullivan, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976). Importantly though, the issuing judge must view the warrant affidavit in a common sense and realistic fashion and give consideration to the fact that such affidavits are typically prepared by non-lawyers in the haste of criminal investigations. State v. Arnold, 319 S.C. 256, 260, 460 S.E.2d 403, 405 (Ct. App. 1995).

Furthermore, in making such a probable cause determination in a case where an affiant relied upon information supplied by a confidential informant, the informant's veracity, reliability, and basis of knowledge are highly relevant towards a determination of the value of the informant's information. Gates, 462 U.S. at 238. However, those elements related to the informant are **not** "entirely separate and independent requirements to be rigidly exacted in every case" and, instead, "should be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question

whether there is 'probable cause' to believe that contraband or evidence is located in a particular place." Id. at 230.

When reviewing a decision to issue a search warrant, the reviewing court should decide whether the issuing judge had a substantial basis for concluding probable cause existed. State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). Applying the same standard as the issuing judge, the court should base its determination on the totality of circumstances. State v. Keith, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003). The issuing judge's probable cause determination should be afforded great deference on appeal. State v. Rutledge, 373 S.C. 312, 316, 644 S.E.2d 789, 791 (Ct. App. 2007). Significantly, "[s]earches based on warrants will be given judicial deference to the extent that an otherwise marginal search may be justified if it meets a realistic standard of probable cause." Id. "Suppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (quoting United States v. Leon, 468 U.S. 897, 923 (1984)).

In the case sub judice, the trial judge correctly found the search warrant was properly issued because the information contained in the search warrant affidavit – when viewed in a common sense fashion and in its totality – was sufficient to establish a reliable probable cause basis to believe crack cocaine and other incriminating evidence would be found in the targeted motel room at the time of the search. See State v. Thomas, 275 S.C. 274, 276, 269 S.E.2d 768, 769 (1980) (holding that courts should consider a "common-sense reading of the entire affidavit" in determining whether

probable cause exists). Accordingly, the trial judge properly denied the motion to suppress the evidence recovered during the search of the Appellant's motel room.

In challenging the propriety of the search warrant, Appellant contends the trial judge erred in denying his motion to suppress the incriminating evidence found pursuant to the search warrant because the search warrant affidavit allegedly failed to contain sufficient information to establish the reliability of the confidential informant. To the contrary, the search warrant affidavit contained sufficient information to establish the reliability of the confidential informant through the information regarding the informant's successful drug purchases from Appellant on multiple occasions coupled with the other information linking Appellant to the motel room and other illegal activity, including the possession of counterfeit money. See Dupree, 354 S.C. at 691, 593 S.E.2d at 445 ("The controlled buy was evidence of the credibility and trustworthiness of the informant."); see also Bellamy, 336 S.C. at 145, 519 S.E.2d at 349 (finding a search warrant sufficiently established the confidential informant's reliability where, "[a]lthough the affidavit is weak on the element of the reliability of the informant, this deficiency is compensated for by the strong showing of specificity, first-hand observation, and partial corroboration"); see, e.g., United States v. Colkley, 899 F.2d 297, 300 (4th Cir. 1990) ("An affiant cannot be expected to include in an affidavit every piece of information gathered in the course of an investigation."); but see State v. Robinson, 408 S.C. 268, __, 758 S.E.2d 725, 728 (Ct. App. 2014) ("We find, however, that Sergeant Donald's failure to include in his affidavit any evidence of the informant's reliability renders the warrant invalid."). Critically, the statements in the affidavit indicated the informant successfully purchased crack cocaine – along with other controlled substances – from Appellant in the vicinity of the Town & Country Motel. The statements also indicated Appellant distributed currency verified as

counterfeit and was seen entering and exiting Room 103 of the Town & Country Motel. Thus, through the successful purchases of drugs from Appellant while under the direction of the law enforcement officers and the verification of Appellant's possession of counterfeit bills, the confidential informant's reliability was established, and there was probable cause to believe more crack cocaine, controlled substances, drug paraphernalia, and counterfeit bills would be found in a search of Appellant's motel room. See Gates, 462 U.S. at 233 ("[A] deficiency in [veracity or basis of knowledge] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."); see, e.g., United States v. Anderson, 851 F.2d 727, 729 (4th Cir. 1988) ("[T]he nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence."); cf. State v. Viard, 276 S.C. 147, 150-151, 276 S.E.2d 531, 532 (1981) ("Affiant alleged his informant had been at the residence, saw drugs there within the past 72 hours, and purchased drugs during a controlled buy which field tested positive for depressants. We conclude the affidavit contained sufficient underlying facts and information upon which the magistrate made her independent determination of probable cause."). As a result, the magistrate judge committed no error in issuing the search warrant, and the trial judge properly declined to suppress the evidence discovered during the search of Appellant's motel room.

However, even if the search warrant affidavit in Appellant's case did not sufficiently establish the confidential informant's reliability, the trial judge properly declined to suppress the evidence discovered as a result of the search because Investigator Hunnicutt acted in good faith in obtaining the search warrant and acted in objectively reasonable reliance on the issuing judge's probable cause determination in

conducting the search. See Leon, 468 U.S. at 922 ("[T]he marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion."). Critically, Investigator Hunnicutt complied with the statutory warrant requirements in obtaining the search warrant and included information in the search warrant affidavit establishing a confidential informant working under the direction of law enforcement officers had purchased crack cocaine and other illegal substances from Appellant on multiple occasions both recently and continuously. See id. at 921 (" '[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." (citation omitted and brackets in original)). Furthermore, the information contained in the search warrant affidavit prepared in Appellant's case was not " 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable[,]' " which is what is necessary for an officer's reliance on a search warrant to be objectively unreasonable. Id. at 924. Under those circumstances, even if the issuing judge erred in determining the search warrant affidavit was sufficient to establish probable cause, the affidavit was **not** so lacking in indicia of probable cause that it was entirely unreasonable for Investigator Hunnicutt to rely on the warrant after it was issued.[1] See Weston, 494 S.C. at 293, 494 S.E.2d at 804 (recognizing that application of

[1] Notably, in United States v. Bynum, 293 F.3d 192, 195 (4th Cir. 2002), the Fourth Circuit Court of Appeals explained there is a difference between the "substantial basis" standard for determining the existence of probable cause and the standard required for determining if reliance on an already-issued search warrant is in good faith and objectively reasonable, instructing: " 'Substantial basis' provides the measure for determination of whether probable cause exists in the first instance. If a lack of a substantial basis also prevented application of the Leon objective good faith exception, **the exception would be devoid of substance**. In fact, Leon states that the third circumstance prevents a finding of objective good

the good-faith exception is not prohibited simply because a search warrant was deficient in some respect); see also Leon, 468 U.S. at 918-921 ("[S]uppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule. . . . Penalizing the officer for the [issuing judge]'s error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations."); Anderson, 851 F.2d at 729-730 (finding the good-faith exception applied even though the search warrant affidavit did not contain any information regarding the date of the crime or the date that Anderson offered to sell a weapon to the informants). Accordingly, as Investigator Hunnicutt did not act unreasonably in relying on the search warrant, the trial judge properly declined to suppress the evidence discovered in the search of the Appellant's motel room. See Segura v. United States, 468 U.S. 796, 806 (1984) ("By its terms, the Fourth Amendment forbids only 'unreasonable' searches and seizures."); cf. Leon, 468 U.S. at 926 (finding that an officer's reliance on a search warrant was not objectively unreasonable despite the fact that the warrant affidavit did not contain sufficient information to establish probable cause where the warrant was supported by more than a "bare bones" affidavit).

In conclusion, the trial judge properly determined the affidavit contained sufficient information to establish a reliable probable cause basis to believe crack cocaine and other incriminating evidence would be discovered in Appellant's motel room at the

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faith only when an officer's affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' This is a less demanding showing than the 'substantial basis' threshold required to prove the existence of probable cause in the first place." (citations omitted and emphasis added); see also Gates, 462 U.S. at 239 ("An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause[.]"); Weston, 329 S.C. at 293, 494 S.E.2d at 804 ("Johnson should not be read as prohibiting the applicable of the good-faith exception every time an affidavit fails to satisfy the technical requirements of Gates. Suppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " (citation omitted)).

time of the search. See Gates, 462 U.S. at 238 ("The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."); Texas v. Brown, 460 U.S. 730, 741 (1983) (instructing probable cause is a flexible, common-sense standard); see also Dupree, 354 S.C. at 691, 593 S.E.2d at 445 ("The magistrate had ample probable cause to issue the warrant. Given all the circumstances set forth in the affidavit, there was a 'fair probability' that crack cocaine would be found in the mobile home."). However, even if the search warrant should not have been issued due to some deficiency in regard to the search warrant affidavit, the trial judge properly declined to suppress the evidence recovered during the search because the affidavit was not so lacking in indicia of probable cause as to render Investigator Hunnicutt's reliance upon the search warrant entirely unreasonable. See Leon, 468 U.S. at 926 ("We have now reexamined the purposes of the exclusionary rule and the propriety of its application in cases where officers have relied on a subsequently invalidated search warrant. Our conclusion is that the rule's purposes will **only rarely be served by applying it in such circumstances**. . . . [S]uppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." (emphasis added)); see also Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]"). Accordingly, assuming the issue had somehow been properly preserved for appellate review despite the fact defense counsel specifically indicated he had no objection to the admission of the evidence recovered during the search of

Appellant's motel room when that evidence was introduced during trial, the trial judge properly denied Appellant's suppression motion. Appellant's convictions should be affirmed.

CONCLUSION

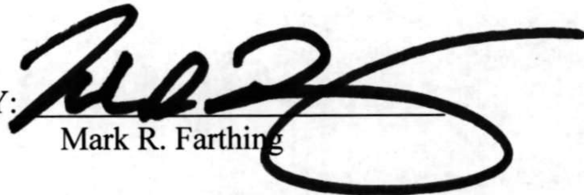
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit



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ATTORNEYS FOR RESPONDENT

July 16, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Honorable Alexander S. Macaulay, Circuit Court Judge
Appellate Case No. 2013-000663

RECEIVED
JUL 16 2014
SC Court of Appeals

THE STATE,

Respondent,

vs.

DAN LAVERT TEMPLE,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

(1) Trial Transcript, Pages 1, 4-5, 42-57, 101-216, 223-236, 242-249, 278-294, 302-314, 323-372, 400, and 404-422;

(2) Indictments;

(3) Sentencing Sheets; and

(4) Court's Exhibit # 1 (Search Warrant).

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit

BY: ______________________
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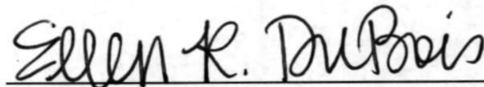
PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 16th day of July, 2014.



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ALAN WILSON
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July 16, 2014

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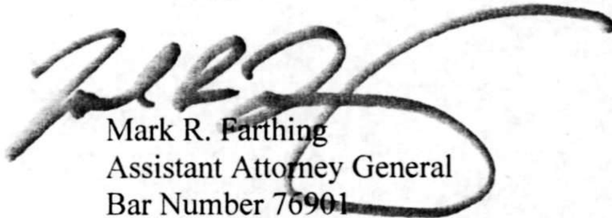
RE: State v. Dan Lavert Temple – Appellate Case No. 2013-000663

Dear Ms. Ganjehsani:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,



Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

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