ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-001415

STATE OF SOUTH CAROLINA,

Respondent,

vs.

FRITZ ALLEN TIMMONS.

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Should this Court affirm the dismissal of Appellant's appeal by the circuit court when the appeal was improperly pled as a civil appeal and did not appropriately state the exceptions to the magistrate's court judgment and when the seventeen issues presented to this Court were not properly raised to and ruled upon below; nevertheless the ruling on the limited issue Appellant presented to the magistrate at trial and construed by the circuit court as an issue of probable cause must be affirmed because the record supports the existence of probable cause.? (Appellant's Arguments 1 – 17)

STATEMENT OF THE CASE

Uniform Ordinance Summons were issued against Appellant in March 2013, for three (3) charges of Ill Treatment of Animals in violation of S.C. Code Ann. Section 47-1-40 (1900 – 1902); ten (10) charges of Animal Abandonment or Neglect (1884-1899; 1903-1905) in violation of S.C. Code Ann. Section 47-1-70; and eight (8) rabies vaccination violations as proscribed by County Ordinance 415.60 (1891-1892; 1907-1909). (Supplemental Record on Appeal [hereinafter Supp. R.] p. 3).

Appellant entered guilty pleas to the rabies vaccination violations and proceeded to a bench trial on the other charges on March 18, 2013, before Chesterfield County Magistrate Judge John A. Davis. (Supp. R. pp. 3; 4). Appellant was acquitted of three charges for Ill Treatment of Animals (1884 – 1886) and found guilty of the remaining charges. (Supp. R. p. 9). He was sentenced to a fine of $ 3,000.00. (Supp. R. p. 9).

Appellant filed and served notice of appeal dated March 25, 2013, from the magistrate's court convictions. (Supp. R .p. 67). The magistrate filed the Return on March 28, 2013. (Supp. R. pp. 1 – 66). The appeal was heard by the Honorable J. Michael Baxley in the Chesterfield County Court of Common Pleas. (Supp. R. p. 68). The appeal was denied and dismissed and judgment entered on May 8, 2013. (Supp. R. pp. 78-79; 81).

Appellant thereafter filed and served notice of appeal from Judge Baxley's order. (Supp. R. p. 81). This appeal follows.

STATEMENT OF FACTS

Magistrate Court

On March 18, 2013, the Honorable John A. Davis, of the Magistrate Court of Chesterfield County, held a bench trial in the case of Chesterfield County v. Fritz Timmons. (Supp. R. pp. 3 – 4).

When the case was called for trial, Appellant Fritz Timmons moved to dismiss, arguing the County lacked probable cause to obtain a search warrant for his property located at ** Road[1] in the McBee area of Chesterfield County (hereinafter referred to as "Property"). Citing S.C. Code Ann section 17-13-141, Appellant argued that an anonymous e-mail sent to Animal Control was not a sufficient basis for obtaining the search warrant. (Supp. R. p. 4). However, the County responded that the anonymous e-mail tip merely caused officers to initially visit the Property. (Supp. R. p. 4). Animal Control officers thereafter observed in plain view the disturbing conditions of the animals kept outside and at-large in the yard. (Supp. R. p. 4). Based upon their observations, Officers thereafter sought a search warrant. (Supp. R., p. 4). The Magistrate Court denied Appellant's motion to dismiss. (Supp. R. p. 4).

Appellant also made a second motion to dismiss arguing that the warrant issued was not specific as to the property to be searched at the address. (Supp. R. p. 4). The County responded that there was only one dwelling on the Property and the warrant sufficiently described the property or items to be searched for as "abandoned or neglected animals." (Supp. R. p. 4). The Magistrate Court denied the Appellant's motion to dismiss. (Supp. R. p. 4).

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[1] The specific street address for the Property has been omitted from Respondent's brief and the Supplemental Record on Appeal pursuant to the South Carolina Supreme Court Revised Order dated April 15, 2014 and Interim Guidance Order dated August 13, 2007, respecting personal identifying information in appellate court filings.

At the bench trial, Chesterfield County Animal Control Director Danielle Bowe testified that she was present on March 5, 2013, when the Animal Control officers and County deputies entered the Property by the authority given to them in the search warrant. (Supp. R. pp. 7; see also 63 - 66). The officers found about thirty-one canines on the Property, mostly dachshund breed. (Supp. R., p. 7). Bowe stated the officers found multiple carcasses outside as well as an open kennel with dogs at-large. Officers also found outside a half-bag of dog food and several undrinkable water bowls overgrown with a green algae-like substance. (Supp. R. p. 7). One canine was diagnosed with hookworms, and five dogs were undersized and diagnosed with other various illnesses. (Supp. R. p. 7). Bowe also explained the interior of the mobile home on the Property was not properly cleaned for canines of low stature. (Supp. R. p. 7). In addition, the officers found many canines enclosed in a bathroom without food or water. (Supp. R. p. 7). Bowe testified the hunger and underweight of the canines likely developed over an extended period of time. (Supp. R. p. 8). She also testified that she had never professionally or personally known dogs to become hungry enough to eat other canines. (Supp. R. p. 8).

The magistrate was presented with veterinarian reports from the examinations of five of the dachshunds found at the property and photographs taken at the scene. (Supp. R. pp. 9; 32-37). The magistrate was also presented with a memo from Danielle Bowie to Chesterfield County Deputy Jay Lewis detailing the thirty-one (31) canines removed from the Property as well as the Incident Report generated by the Chesterfield County Sheriff's Office. (Supp. R. pp. 9-10). The Incident Report indicates Animal Services along with Animal Investigator Lewis responded to the Property on March 4, 2013, regarding the condition of animals on the property. (Supp. R. p. 39). Upon arrival, officers observed animals in the front yard without food or water. (Supp. R. pp. 39-40). Upon receiving no response at the front door of the home on the property,

officers proceeded toward the back door to make contact with the occupant. While en route, officers observed several dogs eating the carcass of another dog. (Supp. R. p. 39 – 40). Officers then obtained a search warrant for the property based upon their observations. (Supp. R. pp. 39 – 40). Upon executing the search warrant, officers entered the home and found the floor covered with feces. Officers also found approximately fifteen (15) dogs inside the home without food or water. (Supp. R. p. 39 – 40). All of the animals on the property were rescued. (Supp. R. pp. 39 – 40). The Incident Report indicates Appellant admitted he was aware of the health issues but did not have the funds to obtain veterinarian care; however, it also indicated Appellant saw no issue with the condition of the animals or the housing. (Supp. R. pp. 39 – 40).

Appellant did not call any witnesses to testify and did not testify himself. He entered a series of photographs, including that of food and water bowls and of a driveway; receipts for medicine and vaccinations; receipts for dog food purchases made by an unidentified purchaser; and a Sandshill Communications subscriber verification. (Supp. R. pp. 8; 44-51). It appears that no objections or other motions were presented during the trial with the exception of the two motions to dismiss outlined above. It also does not appear that objections to the matter involved in the motions to dismiss were renewed when the evidence was presented during the trial. (Supp. R. pp. 1 – 10).

Following the bench trial, Appellant was acquitted of three charges (1884 – 1886). Judge Davis found Appellant guilty of Uniform Ordinance Summons 1900, 1901, and 1901 for violating S.C. Code 47-1-40, which is commonly referred to as Ill-Treatment of Animals, and Uniform Ordinance Summons 1887, 1888, 1898, 1899, 1900, 1903, 1904, and 1905 for violating 47-1-70, which is commonly referred to as Animal Abandonment or Neglect. Judge Davis imposed a sentence of Three Thousand Dollars ($3,000.00) in fines with scheduled payments.

Appellant filed and served a Notice of **Civil** Appeal. Appellant listed six general exceptions in the Notice of Appeal. (Supp. R. p. 67). The magistrate judge filed his Return as required. (Supp. R. pp. 1 – 66).

Circuit Court

On May 8, 2013, the Honorable J. Michael Baxley heard Appellant's appeal from the magistrate's court criminal convictions as outlined above. Appellant appeared *pro se* and Adam Foard, Esquire, appeared for the State. At the hearing, Appellant stated a couple of reasons for his appeal. First, Appellant noted that his driveway was one tenth of a mile long. Thus, he believed that any possible evidence that could have been seen was unconstitutional because of an illegal "trespass." Appellant then alleged that the search warrant was based upon insufficient probable cause when Animal Control and the deputies viewed the condition of the animals and used that knowledge as the basis for the warrant. (Supp.R. pp. 74-75). Appellant also presented a general contention that the affidavit was insufficient to support the search warrant. He explained that the property sought in the affidavit is his address, has nothing to do with the dogs and, for that reason, did not support the search warrant. (Supp. R. p. 78). He also claimed the search warrant had "duality" in that it was unclear if the search was to be conducted for abandoned animals or neglected animals. (Supp. R. p. 78). Appellant also alleged a violation of section 17-13-141 and believed the e-mail was used as a basis for the search warrant and was "made up after the search warrant" was issued. (Supp.R. pp. 74-75).

In response to Appellant's arguments, the State contended Appellant failed to properly set forth the relief, if any, he was seeking on appeal but merely filed a general Notice of Appeal questioning the magistrate's judgment. (Supp. R. p. 75). The State also asserted Appellant failed to state with sufficient specificity the issues being appealed. (Supp. R. p. 76).

Furthermore, the State contended Appellant had not properly preserved the issues he was then presenting on appeal.

However, the State addressed the issue of probable cause upon the court's request. (Supp. R. p. 77). The State explained that the affiant for the search warrant, James Lewis, viewed malnourished and ill-treated animals and a lack of food for the animals on Appellant's Property. It appears that Animal Control conducted a welfare check on the Property after receiving an anonymous e-mail indicating Appellant was mistreating numerous animals on his Property. Animal Control officer thereafter observed the disturbing condition of the animals in plain view, providing sufficient probable cause to obtain a search warrant for the Property. (Supp. R. p. 77).

The circuit court judge orally dismissed Appellant's appeal finding, first, that the appeal was improperly pled because Appellant used a civil appeal form, as opposed to criminal, and Appellant did not appropriately state his exceptions to the magistrate's court judgment. (Supp. R. p. 78). Second, the court construed Appellant arguments at the hearing to raise an issue of probable cause and determined sufficient probable cause existed. (Supp. R. p. 79). A judgment was also entered on May 8, 2013, dismissing the appeal as inappropriately pled and without merit and finding that probable cause was sufficient. (Supp. R. pp. 79; 81).

Appellant appeals to this Court presenting seventeen (17) arguments in his brief.

ARGUMENT

This Court must affirm the dismissal of Appellant's appeal by the circuit court when the appeal was improperly pled as a civil appeal and did not appropriately state the exceptions to the magistrate's court judgment and when the seventeen issues presented to this Court were not properly raised to and ruled upon below; nevertheless the ruling on the limited issue Appellant presented to the magistrate at trial and construed by the circuit court as an issue of probable cause must be affirmed because the record supports the existence of probable cause. (Appellant's Arguments 1 – 17).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions to admit or exclude evidence rests in the sound discretion of the trial judge and will only be reversed on appeal for an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the trial court's ruling is based upon an error of law or upon a factual conclusion that is without evidentiary support. State v. Wright, 391 S.C. 436, 706 S.E.2d 324 (2011). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995).

In criminal appeals from magistrate or municipal court, the circuit court does not conduct a de novo review, but instead reviews the case for preserved error raised to it by appropriate exception. S.C. Code Ann. § 14-25-105 (Supp.2013); S.C.Code Ann. § 18-3-70 (Rev. 2014); State v. Hoyle, 397 S.C. 622, 725 S.E.2d 720 (Ct. App. 2012); State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001); City of Columbia v. Felder, 274 S.C. 12, 13, 260 S.E.2d 453, 454 (1979). In reviewing criminal cases, this Court may review errors of law only. State v. Cutter, 261 S.C. 140, 147, 199 S.E.2d 61, 65 (1973); State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct.App.1997). "When there is any evidence, however slight, tending to prove

the issues involved, [the appellate court] may not question a magistrate court's findings of fact that were approved by a circuit court on appeal." S. Carolina Law Enforcement Div. v. 1-Speedmaster S/N 00218, 397 S.C. 94, 96, 723 S.E.2d 809, 810 (Ct. App. 2011) (quoting Allendale Cnty. Sheriff's Office v. Two Chess Challenge II, 361 S.C. 581, 585, 606 S.E.2d 471, 473 (2004). "The circuit court 'may either confirm the sentence appealed from, reverse or modify it, or grant a new trial.'" State v. Hoyle, 397 S.C. at 625, 725 S.E.2d at 722. Review by this Court in criminal cases is limited to correcting orders of the circuit court for errors of law. Id. It is Appellant's obligation to present an appropriate record on appeal, including moving the magistrate to correct the Return, if necessary. Price v. Pickens County, 308 S.C. 64, 416 S.E.2d 666 (Ct. App. 1992); State v. Barbee, 280 S.C. 328, 313 S.E.2d 297 (1984); State v. Adams, 244 S.C. 323, 137 S.E.2d 100 (1964). Any issue presented to this Court for consideration on appeal must have been raised to and ruled upon below. Price v. Pickens County, 308 S.C. at 64, 416 S.E.2d at 666. Specifically, the circuit court may not consider a question not presented to the magistrate, Indigo Associates v. Ryan Investment Co., 314 S.C. 519, 431 S.E.2d 271 (Ct.App. 1994), and this Court may not consider an issue not raised to the circuit court. A & I, Inc. v. Gore, 366 S.C. 233, 621 S.E.2d 383 (Ct.App. 2005).

When reviewing a Fourth Amendment search and seizure issue, the appellate court is limited to determining if there is any evidence to support the trial court's findings and must affirm if there is any evidence to support the rulings. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006); State v. Flowers, 360 S.C. 1, 598 S.E.2d 725 (Ct.App. 2004); State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000).

I. Appellant fails to seek an appropriate remedy on appeal.

In his brief, Appellant, for the first time, seeks four remedies, including: the return of all dogs seized by the County; Two Million Dollars ($2,000,000.00) per dog; public apologies from various animal shelters; and, criminal investigation and termination of employment upon six individuals involved in his criminal conviction, including three judges. None of these issues or requests was presented below and may not now be considered on appeal.

At the circuit court hearing on Appellant's appeal from magistrate's court, the State noted its difficulty in construing whether Appellant sought a specific remedy. On appeal, Appellant has certainly included specific remedies; however, Appellant did not preserve these remedies for appellate review because he made no mention of them at the magistrate court trial or the circuit court hearing.. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (stating that issues not raised and ruled upon in the trial court will not be considered on appeal.). The circuit court may not consider a question not presented to the magistrate, Indigo Associates v. Ryan Investment Co., 314 S.C. 519, 431 S.E.2d 271 (Ct.App. 1994), and this Court may not consider an issue not raised to the circuit court. A & I, Inc. v. Gore, 366 S.C. 233, 621 S.E.2d 383 (Ct.App. 2005).

Preservation issues aside, Appellant's alleged remedies are inappropriate for the constitutional violation he raises. The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures and provides that no warrants shall be issued except upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized. U.S. Const. amend. IV; see also Baccus, 367 S.C. at 50, 625 S.E.2d at 221 (stating a search warrant may be issued only upon a finding of probable cause). "A search compromises the individual interest in privacy; a seizure

deprives the individual of dominion over his or her person or property." State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012), reh'g denied (Jan. 24, 2013), cert. denied, 133 S. Ct. 2779, 186 L. Ed. 2d 227 (U.S.S.C. 2013); State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (quoting Horton v. California, 496 U.S. 128, 133, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990)).

The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. Brown, 401 S.C. at 88, 736 S.E.2d at 266; Davis v. United States, —U.S. —, 131 S.Ct. 2419, (2011). However, the United States Supreme Court has fashioned a judicially-created remedy, the exclusionary rule, which bars the prosecution from introducing evidence obtained in violation of the Fourth Amendment. Id.; See Mapp v. Ohio, 367 U.S. 643, 653-57, 81 S. Ct. 1684, 1690-93. "The rule's sole purpose, [the Supreme Court] has repeatedly held, is to deter future Fourth Amendment violations." Id. (quoting Davis, —U.S. —, 131 S.Ct. at 2426).

Moreover, Appellant did not object to the production of any evidence against him or move to suppress the evidence at the magistrate court trial or the circuit court hearing. Instead, he moved to dismiss the charges. Motions to dismiss the charges were inappropriate requests and remedies. Without more, the magistrate cannot dismiss the State's case before trial. State v. Ramsey, 381 S.C. 375, 673 S.E.2d 428 (2009); State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998); State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994).

Now, Appellant contends that multiple state officials violated his Fourth Amendment rights. Although the Fourth Amendment does not provide a specific remedy, it allows for the exclusion of evidence upon proper objection by the accused. The remedies Appellant seeks, disregarding the fact they are not properly preserved, are not appropriate remedies for a Fourth

Amendment violation.[2] Thus, this Court should affirm the decisions of the lower courts because Appellant has not provided an adequate basis for appeal.

II. Appellant did not properly preserve the issues for appeal.

An argument not raised to and ruled on by the trial court is not preserved for appeal. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) (objection must be entered on a specific ground at trial to preserve an appeal); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). "The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge." Id. "The same ground argued on appeal must have been argued to the trial judge." Id. The failure to object when evidence is offered constitutes a waiver of the right to raise the issue on appeal. State v. Simpson, 325 S.C.37, 42, 479 S.E.2d 57, 60 (1996). An issue must be raised to and ruled upon by the circuit court in order to be considered on appeal. State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 213 (Ct. App. 2002). South Carolina does not recognize the plain error rule. "The appellants have the responsibility to identify errors on appeal, not the Court." Kennedy v. South Carolina Ret. Sys., 349 S.C. 531, 532-33, 564 S.E.2d 322, 322-23 (2001). "An issue that was not preserved for review should not be addressed by the Court of Appeals. . ." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (citing Hendrix v. E. Distrib., Inc., 320 S.C. 218, 219, 464 S.E.2d 112, 113 (1995). The circuit court may not consider a question not presented to the magistrate, Indigo Associates v. Ryan Investment Co., 314 S.C. at 519, 431 S.E.2d at 271, and this Court may not consider an issue not raised to the circuit court. A & I, Inc. v. Gore, 366 S.C. at 233, 621 S.E.2d at 383.

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[2] It appears Appellant seeks monetary and injunctive relief against certain state officials, more akin to a section 1983 claim and remedy. See Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 673, 98 S. Ct. 2018, 2027 (1978).

In his brief, Appellant raises seventeen "counts" describing various alleged violations in his criminal proceeding. Approximately fifteen of those "counts" constitute arguments raised by Appellant for the first time and are not preserved for appellate review. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (ruling the argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review). The only issues raised at trial and preserved for review by the circuit court were the contentions that the email did not provide sufficient probable cause to support the search warrant and that the search warrant lacked specificity as to the property to be searched.

It appears the other two "counts" raised by Appellant in his brief are based on alleged Fourth Amendment violations. Specifically, Appellant seems to argue that the warrant issued to search his residence was not based on probable cause and the warrant itself did not properly describe the property to be searched. However, Appellant failed to allege these violations with sufficient clarity at the circuit court hearing and magistrate court trial. See Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001) ("The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge."). It was Appellant's obligation to allege with specificity the exceptions upon which his appeal was based in the Notice of Appeal from the magistrate's court conviction to the circuit court. Judge Baxley correctly determined that Appellant's conclusory exceptions were too broad and insufficient to allege grounds for appeal. See State v. Sullivan, 310 S.C. 311, 426 S.E.2d 766 (1992)(stating the scope of the exception on appeal was too broad to constitute a sufficient ground for appeal to the circuit court in that it failed to apprise the parties and courts of the ground for appeal). The exceptions listed in Appellant's notice of appeal from the magistrate

court were too broad and conclusory for the State and the circuit court to know the specific ground for appeal.

In his brief, Appellant cites State v. Winborne, 273 S.C. 62, 254 S.E.2d 297 (1979), and argues the affidavit to support the warrant does not properly state what type of crime was committed, when it was, where it was, or who committed it. However, Appellant failed to raise this specific issue in the trial and circuit courts and the issue is not properly preserved. Although the record reflects that Appellant argued the affidavit did not support the warrant, he did not allege any specific deficiencies with the affidavit, other than the baseless argument that the warrant did not contain the correct Property address or correctly describe the property to be searched, leaving the Court guessing as to which ground on which he based his objection. See State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) ("The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error.").

Also, at the magistrate court trial, Appellant only argued the e-mail was not a proper basis for obtaining the search warrant. On the contrary, law enforcement used its first-hand observations of the disturbing conditions of the canines on Appellant's Property as the basis of the search warrant.[3] Thus, the record reflects that law enforcement did not use the e-mail as a basis for the search warrant. (Supp. R. pp. 4; 39 – 40). Also, at the circuit court hearing, Appellant made no response to the court's inquiry regarding probable cause in support of the affidavit. Rather, Appellant merely argued the property sought in the warrant had "nothing to do with animals." Furthermore, in his brief, Appellant offers *many* allegations in support of his

[3] The issue of whether law enforcement was in a lawful position to view the poor conditions of the canines on which the warrant was issued is addressed in Issue III, infra.

theory that the warrant did not specifically describe the property to be searched. Despite Appellant's contentions, the warrant did sufficiently describe the property to be searched and included the proper address of the Property. Notably, at the magistrate court trial and the circuit court hearing, Appellant *only* argued that the warrant was not specific as the premises to be searched at his Property.[4] However, the search warrant described the premises to be searched with the specific address and further stated that the property or items to be searched for were neglected or abandoned animals. (Supp. r. p. 64). The search warrant affidavit further described the premises as the dwelling and property at the specific address. (Supp. R. p. 65). The County plainly stated that only one home was located on the premises. (Supp. R. p. 4). Therefore, this Court should affirm the decisions of the lower courts because Appellant did not properly preserve the issues for appellate review.

III. The warrant issued by the magistrate judge was sufficiently supported by probable cause because the officers viewed the incriminating evidence on the Property from a lawful vantage point free from Fourth Amendment intrusion.

Even if this Court finds the issue of probable cause to support the search warrant was properly preserved, the State submits that the record clearly established that the anonymous e-mail did not serve as probable cause for the search warrant. Rather, the search warrant was

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[4] The warrant described the premises to be searched with the specific street address and town and the description of the property or items to be searched for and seized, if found at that location, as "abandoned or neglected animals." The search warrant affidavit indicated that the premises to be searched were the dwelling and property at the specific address. Section 17-13-140 requires only a warrant "identify the property" to be seized and requires no more than the federal and state constitutions, both of which require warrants to "particularly" describe the things to be seized. U.S. Const. amend. IV; S.C. Const. art. 1, § 10; State v. Williams, 297 S.C. 404, 407, 377 S.E.2d 308, 310 (1989) (holding property description of "any illegal drugs" sufficient to describe the property to be seized).

based upon Animal Control's observations of Appellant's illegal treatment of the canines in plain view in the yard of the Property.

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. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). As a result, only unreasonable searches and seizures are constitutionally prohibited. State v. Foster, 269 S.C. 372, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]").

For purposes of the Fourth Amendment, a search occurs when "an expectation of privacy that society is prepared to consider reasonable is infringed." United States v. Jacobsen, 466 U.S. 109, 113 (1984). Likewise, a seizure occurs when there is some meaningful interference with an individual's possessory interest in property or with the individual's freedom of movement. Id.; see Terry v. Ohio, 392 U.S. 1, 16, n. 16 (1968) ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.").

In cases involving Fourth Amendment issues, the critical inquiry is "whether the challenged search or seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it." Rakas v. Illinois, 439 U.S. 128, 140 (1978). "That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect." Id.

Through its express language, the Fourth Amendment specifically protects persons, houses, papers, and effects as constitutionally-protected areas. Florida v. Jardines, __ U.S. __, 133 S. Ct. 1409, 1414 (2013). Thus, the Fourth Amendment unquestionably protects an individual's home from unreasonable governmental intrusion, and those protections extend to the home's curtilage. Id. at 1414-1415.

The United States Supreme Court has held that the Fourth Amendment does not require an officer to have a warrant or reasonable suspicion to approach a home, knock on the door, and conduct an inquiry if the occupant opens the door because the officer does no more than a private citizen might do. Jardines, __ U.S. __, 133 S. Ct. at 1415; see also Wright, 391 S.C. at 436, 706 S.E.2d at 324. The right to do so is based upon an implied license permitting "solicitors, hawkers, peddlers," and other visitors to approach another person's home. This implied license has been held to extend to law enforcement officers if accomplished in a reasonable manner consistent with the way any citizen might approach the home. Id.; see also Kentucky v. King, __ U.S. __, 131 S. Ct. 1849 (2011). "When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak." Kentucky v. King, 131 S. Ct. at 1862 (citing Florida v. Royer, 460 U.S. 491 (1983)). Importantly, the act of approaching a home pursuant to the implicit license does not constitute a search for Fourth Amendment purposes. See Jardines, 133 S. Ct. at 1417, n. 4 ("[I]t is not a Fourth Amendment search to approach the home in order to speak with the occupant, *because all are invited to do that*." (italics in original)).

The record before this Court reflects that Animal Control officers visited Appellant's Property after receiving an anonymous e-mail about mistreatment of animals. Animal Control approached the Property to investigate and had proper reason to do so. While lawfully on the premises, Animal Control proceeded to the front door and observed the canines in the yard without food or water. When Animal Control failed to receive a response at the front door, they proceeded toward the back door in an effort to contact the occupant of the home. Animal Control then viewed the canines' poor and disturbing condition, and believed those conditions were violations of the law. As a result, Animal Control notified law enforcement, who properly obtained a warrant to search the Property.

Animal Control's first-hand view of the incriminating evidence constituted a sufficient basis for probable cause to obtain the warrant. See Illinois v. Gates, 462 U.S. 213, 244-245 (1983). In Gates, the United States Supreme Court held that "[p]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." Id. at 232. A challenge to the sufficiency of the evidence upon which a warrant is issued faces a major hurdle in the Supreme Court's often stated preference for searches conducted pursuant to a warrant. See Beck v. State of Ohio, 379 U.S. 89 (1964). Appellant has not overcome this hurdle. The facts as observed constituted sufficient probable cause to believe Appellant was violating laws relating to animal abuse and neglect.

Appellant mentioned in the circuit court hearing and his brief that his driveway is one tenth of a mile long. Appellant seems to argue that Animal Control officers and the deputies were not in a lawful position to view the disturbing treatment of animals on his Property since they travelled down the driveway to investigate the matter. However, these actions were

reasonable and mirrored that of an ordinary citizen when approaching a home. See Nieminski v. State, 60 So.3d 521 (Fla. 2011) (stating evidence developed for a search warrant during a "knock and talk" after officers walked through an unlocked gate to approach the door did not violate the petitioner's expectation of privacy); Robinson v. Commonwealth, 625 S.E.2d 651 (Va. App. 2006) (stating the implied invitation to have members of the public intrude upon areas of a homeowner's property extends only to those areas a visitor could reasonably be expected to cross when approaching the residence in an ordinary attempt to speak with the occupants such as the driveway, parking area, sidewalks, pathways, and front porch).

Pursuant to the implicit license, a law enforcement officer or other person is "*typically*" permitted "to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." Jardines, 133 S. Ct. at 1415 (emphasis added). However, if reasonable under the circumstances, officers may also attempt to make contact with a resident at a location other than the front door so long as they do so in a reasonable manner. See United States v. Raines, 243 F.3d 419, 421 (8th Cir. 2001) ("[L]aw enforcement officers must sometimes move away from the front door when attempting to contact the occupants of the residence."); United States v. Garcia, 997 F.2d 1273, 1279 (9th Cir. 1993) ("This circuit and other circuits have . . . recognized that officers must sometimes move away from the front door when they are attempting to contact the occupants of a residence."); see, e.g., Carroll v. United States, 267 U.S. 132, 147 (1925) ("The Fourth Amendment does not denounce all searches or seizures, but only such as are unreasonable.").

Here, Animal Control received an anonymous tip indicating that Appellant was mistreating canines on his Property. However, the officers were *not* required to abandon any efforts to investigate the anonymous tip and to simply allow criminal activity to take place

unimpeded merely because they had not yet developed sufficient probable cause for a warrant. See, e.g., Adams v. Williams, 407 U.S. 143, 145 (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.") (emphasis added). As a result, the officers elected to drive to the residence in an effort to speak with Appellant about the tip, and their decision to do so was unquestionably reasonable and constitutionally permissible under the circumstances. See King, 131 S. Ct. at 1862 ("When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak.") Also, the officers did not veer from the normal route to the front door, meander, or take another route. Appellant has not asserted any facts to indicate there were any signs warning trespassers not to enter or other impediments restricting access to the apartment or the porch. As confirmed in Florida v. Jardines, the United States Supreme Court in Kentucky v. King established that law enforcement officers do not engage in a Fourth Amendment search when officers approach a house to speak with the occupant(s) because all citizens are entitled to do that. The mere purpose of discovering information while doing so does not violate the Fourth Amendment. 133 S. Ct. at 1416. The officers in this case did not exceed their investigative authority, but only used the senses any ordinary citizen would have available.

Moreover, the officers approached the apartment to *investigate* and had reason to do so based on the e-mail indicating Appellant mistreated canines on his Property. Beyond the reasonableness of their decision to go to the residence to investigate the anonymous tip, the officers' actions remained entirely reasonable once they arrived at their destination due to the

fact that Appellant's property consists of a home and surrounding land, and it was objectively reasonable for the officers to believe they would make contact with Appellant at the back of the residence when he did not answer the front door. See Alvarez v. Montgomery County, 147 F.3d 354, 356 (4th Cir. 1998) ("The Fourth Amendment does not prohibit police, attempting to speak with a homeowner, from entering the backyard *when circumstances indicate they might find him there[.]*" (emphasis added)); see also In re Bazen, 275 S.C. 436, 437-438, 272 S.E.2d 178, 178 (1980) (holding that a law enforcement officer did not violate Bazen's Fourth Amendment rights when he responded to Bazen's home in response to a noise complaint, walked to the rear of the house, saw Bazen enter an open garage, followed him into it, and subsequently arrested Bazen for possession of marijuana after smelling marijuana in the garage); see, e.g., Raines, 243 F.3d at 421 (holding that a law enforcement officer did not violate a homeowner's Fourth Amendment rights by obtaining a warrant to seize marijuana plants that the officer observed growing in plain view in the back yard of the homeowner's residence when the officer legitimately went to the residence to make contact with the homeowner and proceeded into the backyard based upon a reasonable belief that he would find the homeowner there).

Thus, it was reasonable for the officers to proceed toward the back door of the residence when Appellant did not respond their knocks at the front door. Likewise, not only was their decision to approach the property entirely reasonable, the officers' manner of approach backyard to access the doors was consistent with the manner of entry that any private citizen was impliedly permitted to use in making contact with Appellant to inquire about the tip.

Because the officers moved toward the backyard for a legitimate purpose in an objectively reasonable manner, the officers' entry did not constitute a search and did not violate Appellant's Fourth Amendment rights. See Jardines, 133 S. Ct. at 1417, n. 4 ("[I]t is *not a*

Fourth Amendment search to approach the home in order to speak with the occupant, *because all are invited to do that*." (emphasis added and italics in original)); see also Foster, 269 S.C. at 378, 237 S.E.2d at 591 ("It is only unreasonable searches and seizures that are prohibited."); cf. Alvarez, 147 F.3d at 359 (holding that law enforcement officers did not violate Alvarez's Fourth Amendment rights by entering the backyard of his residence to speak with him about a report of underage drinking when it was reasonable for the officers to believe they would find the homeowner in the backyard under the circumstances.). Furthermore, upon viewing the disturbing and unlawful conditions, the officers applied for a warrant to come back to the Property and seize the abused or neglected canines. The officers' actions were proper. Accordingly, the decisions of the lower courts should be upheld.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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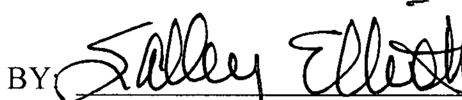
BY 
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Columbia, South Carolina
August 28, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-001415

STATE OF SOUTH CAROLINA,

Respondent,

vs.

FRITZ ALLEN TIMMONS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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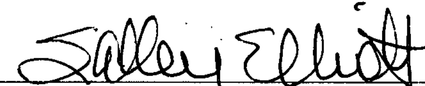
BY: 
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PROOF OF SERVICE

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

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I further certify that all parties required by Rule to be served have been served.
This 28th day of August, 2014.

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