

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

v.

ANTONIO MILLER,

PETITIONER

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit
Post Office Box 3368
Aiken, SC 29802-3368

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

OPINION FROM THE COURT OF APPEALS (Filed November 19, 2014) 1

PETITION FOR REHEARING (Filed December 1, 2014) 4

RETURN TO PETITION FOR REHEARING (Dated December 15, 2014) 12

ORDER DENYING PETITION FOR REHEARING (Filed January 26, 2015) 51

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Antonio Miller, Appellant.

Appellate Case No. 2012-208640

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2014-UP-409
Heard October 6, 2014 – Filed November 19, 2014

AFFIRMED IN PART AND VACATED IN PART

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Assistant
Attorney General J. Anthony Mabry, all of Columbia,
and Solicitor James Strom Thurmond, Jr., of Aiken, for
Respondent.

NOV 19 2014

SC OFFICE OF
APPELLATE DEFENSE

PER CURIAM: Antonio Miller appeals his convictions of murder, kidnapping, burglary in the first degree, and possession of a firearm during the commission of a violent crime. Miller argues (1) the trial court erred in denying his motion to suppress the evidence located in a residence because the search warrant affidavit did not provide the magistrate with a reliable sufficient nexus to provide probable cause that the residence was his home and he was hiding drugs, weapons, or the fruits of a murder within the home and (2) his sentence for kidnapping should be vacated because it was improper due to his sentence for murder. We affirm in part and vacate in part.

1. We find the trial court did not err in denying Miller's motion to suppress the evidence located in a residence because given all the circumstances set forth in the search warrant affidavit, there was a fair probability evidence of a crime would be found in the residence identified. Thus, the trial court correctly found the magistrate had a substantial basis for concluding probable cause existed to issue the warrant. *See State v. Dupree*, 354 S.C. 676, 684, 583 S.E.2d 437, 441 (Ct. App. 2003) ("A magistrate may issue a search warrant only upon a finding of probable cause."); *State v. Bellamy*, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999) ("The South Carolina General Assembly has enacted a requirement that search warrants may be issued 'only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant.'" (quoting S.C. Code Ann. § 17-13-140 (1985))); *Dupree*, 354 S.C. at 684, 583 S.E.2d at 441 ("The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause."); *id.* ("The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant was issued."); *id.* at 685, 583 S.E.2d at 442 ("The magistrate's task in determining whether to issue a search warrant is to make a practical, common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, 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 the particular place to be searched."); *State v. Sullivan*, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976) (providing affidavits should be viewed in a common sense and realistic fashion because they are not meticulously drawn by lawyers); *id.* ("Search warrants are constitutionally preferred and in determining whether they should issue, magistrates are concerned with probabilities and not certainties."); *Dupree*, 354 S.C. at 683, 583 S.E.2d at 441 ("The appellate court should give great deference to a magistrate's determination of probable cause."); *id.* at 684, 583 S.E.2d at 441 ("In determining the validity of the warrant, a reviewing court may consider only information brought to the magistrate's attention."); *id.* at

683, 583 S.E.2d at 441 ("Our task is to decide whether the magistrate had a substantial basis for concluding probable cause existed."); *id.* (stating the term "probable cause" does not import absolute certainty); *id.* at 683-84, 583 S.E.2d at 441 ("Searches 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.").

2. We find Miller's sentence for kidnapping was improper due to his sentence for murder and should be vacated. *See* S.C. Code Ann. § 16-3-910 (2003) ("Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years *unless sentenced for murder* as provided in Section 16-3-20." (emphasis added)); *State v. Vick*, 384 S.C. 189, 201, 682 S.E.2d 275, 281 (Ct. App. 2009) ("Our courts have long held, where an appellant has been sentenced for murder of a victim, this code section precludes a sentence for kidnapping of that victim, and any such sentence should be vacated."); *id.* at 202, 682 S.E.2d at 282 ("[O]ur courts have, in the past, 'summarily vacated' sentences for kidnapping where such sentences were precluded by § 16-3-910 because the defendant received a concurrent sentence under the murder statute."); *Owens v. State*, 331 S.C. 582, 585, 503 S.E.2d 462, 463 (noting the appellate courts have "summarily vacated" sentences for kidnapping when the defendant received a concurrent sentence under the murder statute). Therefore, we affirm Miller's conviction for kidnapping, but vacate his sentence for kidnapping. *See Vick*, 384 S.C. at 203, 682 S.E.2d at 282 (affirming Vick's convictions, but vacating the clearly erroneous kidnapping sentence in the interest of judicial economy "because the State concedes the kidnapping sentence was erroneously imposed" and "our courts recognize there may be exceptional circumstances allowing the appellate court to consider an improper sentence even though no challenge was made to the sentence at trial and have further summarily vacated in matters such as the one at hand").

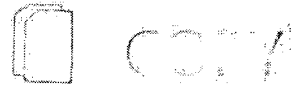
AFFIRMED IN PART AND VACATED IN PART.

HUFF, SHORT, and KONDUROS, JJ., concur.

SC OFFICE OF APPELLATE DEFENSE

DEC 1 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS



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DEC 0 1 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

ANTONIO MILLER,

APPELLANT

APPELLATE CASE NO. 2012-208640

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

Opinion No. 2014-UP-409

PETITION FOR REHEARING

Pursuant to Rule 221 (a), SCACR, appellant requests rehearing because this Court may have overlooked the fact that the position of the Attorney General's Office at oral argument, that drugs being found in an automobile in the yard of a residence, is sufficient to provide probable cause for a search warrant of that residence is incorrect. What happened at the trial level here, and what was argued on appeal, demonstrates a recklessness with appellant's Fourth Amendment rights in his house, his Castle.

During the argument on suppression of the evidence, Defense Counsel Johnson noted there was no linkage between the crack cocaine located in the automobile, and the residence. The judge

observed “the crack cocaine simply is a basis for getting a search warrant.” R. 110, l. 24 – 111, l. 5. Counsel countered that the law required “a finding of probable cause that some evidence of a crime is located within that location.”

At no point on the search warrant affidavit or anywhere does it say anybody lives at 5520 North Main. It doesn't identify that as anybody's residence . . .

[N]ow, if there's no linkage to 5520, it's impossible to see how a Magistrate, without additional sworn testimony, could discover that there's probable cause to go into 5520 [where they would] locate drugs or some illegal substance or evidence of a crime.

R. 111, l. 22 – 112, l. 10. R. 599.

Counsel further argued “the search warrant affidavit says nothing about anybody going into 5520, coming out of 5520, or living there. And it's impossible - - in my argument, I would say *it's impossible to have that linkage that's required for just basic probable cause.*” R. 113, ll. 3-8. (emphasis added). Counsel also noted **there was no confidential informant saying that anybody was inside the residence or had contraband** which would support a search warrant, and that “it's just a bad search warrant, and basically all the items should be excluded as a result.” R. 113, ll. 9-16.

Defense counsel also noted that the report reflected *Aiken County investigators participated in the search* where three guns and the shoes were discovered and there was no probable cause to believe that fruit of that murder would be found inside and because “they didn't get a special search warrant” for the items involving the murder scene, and they had to be suppressed. R. 113, l. 3 – 114, l. 8.

The solicitor argued that appellant was present in the yard with the rental car. The police wanted to give the rental car back to “the rightful owner, they found these drugs, and things

proceeded from there.” R. 116, ll. 14-23. The “proceeded from there” meant the police had another officer type an affidavit stating that the drugs had been located. R. 599.

Defense counsel repeated there was no confidential informant providing information to the police and the state’s argument was simply if someone was *“arrested and they’re near a car that has drugs in it, well, you can go search that house. And that’s basically what they’re arguing, because there’s nothing left. There’s nothing else in addition to the affidavit.”* R. 117, ll. 1-24. (emphasis added). Again, the Attorney General’s Office bluntly confirmed at oral argument before this Court that drugs being found in an automobile near the house where appellant was arrested was insufficient cause to justify the Magistrate in issuing the search warrant.

The trial judge stated he believed the Magistrate had a substantial basis for concluding probable cause existed to search the residence, and he denied the motion to suppress. R. 117, l. 25 – 118, l. 6. On appeal, in a summary opinion, this Court held that the trial court did not err in denying the motion to suppress because “given all the circumstances set forth in the search warrant affidavit, there was a fair probability evidence of a crime would be found in the residence identified. Thus, the trial court correctly found the magistrate had a substantial basis for concluding probable cause existed to issue the warrant.” State v. Antonio Miller, 2014-UP-409 (November 19, 2014), at p. 2.

The police guessed correctly here that evidence of the Aiken County homicide and drugs would be found inside the North Main Street Columbia residence. However, that *guess* based on the drugs being found in the automobile near the house was insufficient to establish probable cause to search the house.

As one Judge on this Court noted at oral argument: “A person’s house is his Castle,” and it is entitled to great protection absent viable probable cause to search it. “The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may

blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!” Miller v. United States, 357 U.S. 301, 307 (1958).

Further, the lack of candor on behalf of law enforcement in this case about the role of Aiken County law enforcement in its homicide investigation in the search of this house on North Main Street in Columbia remains very troublesome. It also appears law enforcement from Aiken County was participating in this case based on a hunch given the GPS indicated the rental car had been in Aiken County earlier where a drug dealer was murdered. The argument nonetheless goes full circle that the drugs found in the rental car did not provide the probable cause for the search of the house.

The defense would repeatedly object to evidence of the shoes that were found inside the residence with blood on them, that the state’s expert, SLED DNA analyst Stephanie Stanley, testified was a match to the decedent’s blood. R. 456, l. 1 – 464, l. 25.

The defense would also repeatedly object to the fruits of the search, or any item bearing any resemblance to it. R. 224, l. 11 – 225, l. 14 (reference to the crack cocaine); R. 260, l. 3 – 261, l. 18 (photographs of 5520 North Main Street); R. 278, ll. 2-14 (purported paraphernalia found in the house); R. 291, l. 14 – 293, l. 9 (the shoes with the blood stain); R. 393, l. 3 – 394, l. 17 (photographs and other evidence about the shoes); R. 477, l. 23 – 479, l. 8 (gun evidence); R. 484, ll. 1-18 (gun evidence); R.490, l. 6 – 491, l. 22 (gun evidence); R. 493, l. 21 – 494, l. 23 (gun evidence); R. 500, l. 18 – 501, l. 8 (gun evidence); R. 501, l. 16 – 502, l. 11 (gun evidence); R. 505, ll. 16-25 (gun evidence).

There was not any of the normal indicia of reliability present in the search warrant affidavit in this case. Completely lacking was any indication that drugs were seen in this house on a recent date, or that drugs were recently sold from this house, or even that appellant was

linked to the house by anything other than the fact that drugs were found in the automobiles in the yard near the house, and appellant had been arrested for drugs in the past.

Instead, the affidavit stated that 22 grams of cocaine were found in the search of the rental car, appellant was arrested, and appellant had been arrested “at on least 12 occasions for illegal narcotics.” The affidavit then alleged that weapons are often found and used in drug cases, and “cellular phones, pages and hand-held ‘PDA’s’ are commonly used to store phone numbers of other individuals involved in illegal drug activity.” R. 599. Again, there is no allegation in this case that the affidavit was supplemented by oral testimony to the Magistrate, and there was no tie or nexus of appellant to the house other than the fact the vehicle wherein the cocaine was found was parked close to the house.

Appellant respectfully submits that this Court should reconsider its holding that the search warrant in this case was issued upon a finding of probable cause. See State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). The duty of the reviewing court to ensure that the issuing Magistrate had a **substantial basis** upon which to conclude that probable cause existed. State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987). This determination by the Magistrate, as the Court notes in its summary opinion is governed by the “totality of the circumstances test.” State v. King, 349 S.C. 142, 148, 561 S.E.2d 640, 643 (Ct. App. 2002, *citing* State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000).

The affidavit in this case did not set forth particular facts of circumstances underlying the existence of probable cause to allow the Magistrate to make an independent evaluation of the matter. See Franks v. Delaware, 438 U.S. 154 (1978). In this case, as the defense argued there was not a sufficient nexus found between the drugs or weapon found in the car in the yard of the residence, to show there was probable cause to believe that drugs and weapons, or fruits of the

Aiken murder would be found inside the residence. Moreover, the affidavit and search warrant contained conclusory statements that were not supported by a showing of reliability. Mere conclusory statements which give the Magistrate no basis to make the judgment of probable cause are insufficient. State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990). There must be a sufficient nexus, described in the affidavit, between the items to be seized and the criminal behavior. State v. McGuinn, 268 S.C. 112, 232 S.E.2d 229 (1977).

The state failed to demonstrate the reliability of any information leading the Magistrate to make an independent determination that fruits of a crime or drugs or weapons would be found inside the residence on North Main Street. See State v. Johnson, 302 S.C. 243, 247-248, 395 S.E.2d 167, 169, 170 (1990); State v. Gentile, 373 S.C. 506, 514-516, 646 S.E.2d 171, 174-176 (Ct. App. 2007).


Finally, counsel also correctly argued under Article I, § 10 of the State Constitution that appellant had the right to privacy under the State Constitution that went above the protections provided by the Fourth Amendment to the United States Constitution. See State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001). This Court did not address that argument in its opinion which is further reason that rehearing should be granted on this important suppression issue in this most unusual case.

The evidence in this case shows that the Aiken County investigators were at the scene of the search. In the final analysis, it is apparent this search was merely a fishing expedition for fruits of the Aiken County murder. A magistrate is not a rubber stamp to be used by law enforcement on the hopes that its hunches and guesses about the contraband, and the fruits of a crime may be turn out correct. The search and seizure in this case was unreasonable under the Fourth Amendment to the

United States Constitution, and it independently violated appellant's right to privacy under the State Constitution. See Article I, § 10, South Carolina Constitution.

Rehearing should be granted.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender
SC Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1343

ATTORNEYS FOR APPELLANT

December 1, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

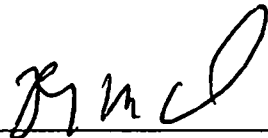
ANTONIO MILLER,

APPELLANT

APPELLATE CASE NO. 2012-208640

CERTIFICATE OF SERVICE

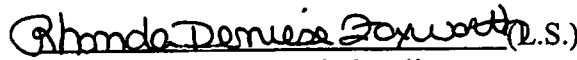
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Anthony Mabry, Esquire of the Office of the South Carolina Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of December, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 1st day
of December, 2014.


(L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-208640

THE STATE,

Respondent,

v.

ANTONIO MILLER,

Appellant.

APPELLATE CASE NO. 2012-208640

Appeals from Aiken County

Doyet A. Early, III, Circuit Court Judge

RETURN TO PETITION FOR REHEARING

On November 19, 2014, this Court affirmed Antonio Miller’s convictions for murder, burglary 1st degree, and kidnapping, and affirmed Miller’s sentences for murder and burglary 1st degree, while vacating Miller’s sentence for kidnapping. State v. Antonio Miller, Unpublished Opinion No. 2014-UP-409 (2014). Miller filed a Petition for Rehearing alleging this Court erred in affirming his convictions and sentences for several reasons. Miller is wrong. Respondent submits this Return to the Petition for Rehearing as directed by this Court. Miller’s Petition for Rehearing should be denied for the following reasons.

Re-statement of the Facts

Appellant Miller ("Miller") lived with his wife Diedre King Miller at 5520 North Main Street in Columbia, S.C. One of Miller's co-defendants, Melvin Cummings ("Cummings"), also lived in Columbia but was originally from Aiken. At the time of the victim Fred Tucker's murder, Cummings' mother still resided in Aiken. Several months before the victim was murdered, Miller asked Cummings about whether they should rob the victim. The victim lived in Aiken not far from Cummings' mother and was a known drug dealer. Miller believed the victim would have money and/or drugs in his home. After months of discussing the idea, Miller decided to go forward with the plan to rob the victim. Cummings agreed to be the wheel man. On September 12-14, 2008, Miller and Cummings, who were staying at Cummings' mother's home, drove by the victim's home "casing" the residence. (R. 297-355, 190-95, State's Ex. 58).

On Monday morning, September 15th, Miller, Cummings, Marquis Redfield, and Ronald Grooms left Cummings' mother's home, where they had stayed overnight, riding in a *green Ford Taurus* rented by Miller's wife, Diedre King Miller.¹ The men rode to a graveyard near the victim's home, where Miller, Redfield, and Grooms got out of the car and headed toward the victim's home dressed in all black. Cummings remained in the *Taurus* in the cemetery. The 3 men returned shortly not having committed any crime. All 4 men returned to Cummings' mother's home and slept until later in the morning. The 4 then drove back to the victim's home, and 1 of the men approached the home and knocked on the front door, receiving no answer. Miller stated out loud they were not returning to Columbia empty handed. The same 3 men got out of the *Taurus* as earlier at the cemetery. Cummings drove to a nearby residence, pulled around back, and acted

¹ The *Taurus* had been rented several weeks earlier by Miller's wife in Columbia, and Miller had gone to the rental car agency and made the last several rental payments.

as if he were interested in purchasing a car displayed there. (R. 162-95, 297-355, 394-400).

Miller, Redfield, and Grooms approached the back door of the victim's home. One of the men shot through a window in the door, and then all 3 entered the home without consent. Either when the first shot was fired, or during the entering and remaining in the home, a fired bullet grazed the victim's forehead. The men then forced the victim to remove all his clothing and bound his hands behind his back and his ankles with duct tape. The victim was beaten and tortured, including being burned with a screwdriver blade heated on a stove unit. The men also ransacked the home looking for drugs or money. As they were leaving the home, Miller fired 1 shot into the victim's side. The men then fled out the back door. A neighbor saw 3 men dressed in black flee 1 at a time from the victim's back door. The victim was able to crawl or drag himself to his front door, where he died from blood loss due to the gunshot wound. (R. 129-95, 256-88, 297-355, 356-404, 408-508).

Miller, Redfield, and Grooms ran in the direction of where Cummings had parked the *green Taurus*. They eventually found Cummings, who had pulled off from the neighbor's house, and the 3 men got in the *Taurus*. Miller told Cummings to drive away from the scene. All 4 men then fled to Columbia in the *Taurus*. (R. 129-95, 297-355).

Once in Columbia, the men dropped Cummings off at a "Books-A-Million" where Cummings' girlfriend worked. Miller instructed Cummings to meet him later at his home to assist Miller in dropping off the *Taurus* at the rental car agency. Miller, Redfield, and Grooms then left, and after dropping Grooms at another location, Miller and Redfield went to Miller's residence at 5520 North Main Street, in the *Taurus*. (R. 297-355).

When police in Aiken responded to the victim's home, they found a back door window had

been shot out and the bullet had traveled through the home lodging in a front wall. They also found a trail of the victim's blood from the kitchen where the victim had been shot to the front door. There they found the deceased victim nude and on his stomach with his hands and ankles still bound with tape. The entire home had been ransacked by someone looking for something. Police also found a footwear impression in the victim's blood on the floor. A surface unit to the stove was still on and hot. Police also found what appeared to be burn marks on the victim's body. Police recovered fired shell casings, a fired bullet, and fired bullet fragments inside the home. (R. 129-43, 356-404, 408-56).

At approximately the same time as the perpetrators were getting out of the *green Taurus* to commit the crimes in Aiken., Jeff Day, the manager of U-Save Auto Rentals in Columbia, was reporting to police in Richland County that the *green Taurus* rented by Miller and his wife had not been returned timely, i.e. a breach of trust or use of vehicle without owner's consent. The car should have been returned several days earlier. Deputy Frank Ham responded to the rental agency, and after receiving this information issued a nationwide BOLO for the car. Ham was also informed by the manager the *Taurus* was equipped with a G.P.S. and a kill switch, which allowed the rental company to determine where the car was located at any given time and to prevent the car from being started wherever located. Ham was also informed Miller had made the last several payments on the *Taurus* before it was not returned timely, and Miller would be driving the car. Day also gave Ham a description of Miller; a black male with long dreadlocks and a deformed or disfigured arm. The rental company's computer showed *the Taurus* was located in Aiken County at that time [the time of the murder]. Deputy Ham informed Day he should wait until the car was back in Richland County before activating the kill switch. (R. 7-30, 162-88, 195-212).

Later that day, after the 4 perpetrators had returned to Columbia in the *green Taurus*, Day checked the rental company's computer and found the car was in the city limits of Columbia. Day determined the car was located at 5520 North Main Street and activated the kill switch. Day then called Deputy Ham and informed him where the *Taurus* was located. (R. 162-88, 195-212).

At approximately 1:30 p.m., Richland County and Columbia police responded to 5520 North Main Street in an attempt to locate the *green Taurus* for Mr. Day. Upon arriving at a location adjacent to the home, police saw the *Taurus* parked behind the home. Deputy Ham then drove to Miller's home, and a red *Taurus* driven by Cummings turned into the residence' driveway in front of Ham. The Deputy pulled into the residence behind Cummings. In front of Cummings red *Taurus* was the *green Taurus* police were looking for. The *green Taurus* was parked 2 feet from the back porch of 5520 North Main Street as if whoever parked the vehicle was trying to hide it from view of those passing by on Main Street *or* had backed the car up to the porch to load or unload the vehicle. Standing on the back porch were 3 men including Miller and Redfield. (R. 1-31, 39-100, 195-212, 212-23, 224-87).

Deputy Ham asked for identification from each of the men. All denied being Miller. Miller stated his name was "Eric Hughey," gave a date of birth, but could not provide identification. Deputy Ham noticed "Hughey" fit the description given him by Mr. Day as the driver of the breach of trust vehicle, a black male with dreadlocks and a deformed arm. The alias Miller provided was run through driver's registration and determined to be false. When Cummings provided his i.d., it was determined he was driving under suspension, and he was arrested and placed in a patrol car. During this time, Miller went to the red *Taurus*, entered it, and was instructed by police to get out of that car. When an officer searched the red *Taurus*, he found

two pistols, one under the front seat, and one in the back seat floor board where Miller had just been. Miller's wife then arrived at the residence. Miller tried to signal his wife not to inform police who he was. She eventually informed police of Miller's real name. Cummings informed police the gun under the front seat of his car was his, but the gun found in the back floorboard was Miller's. (R. 1-31, 34-100, 195-212, 212-23, 224-87, 316-20).

Police conducted an **inventory** of the *green Taurus*, which belonged to the rental company and had not been timely returned. In the passenger door compartment, police found a large bag [22 grams] of crack cocaine. Miller admitted the crack was his, and the gun found in the red Taurus back floorboard was his. Redfield also volunteered and removed a bag of powder cocaine from his pocket. Miller was arrested for trafficking in cocaine for the drugs found in the *green Taurus* and for possession of a pistol for the gun found in the back of the red car. Miller's wife was arrested for use of vehicle without owner's consent. Cummings was also charged with the gun found under the front seat of his car. (R. 1-31; 39-100, 195-212, 212-23, 224-87, 316-20).

At approximately this time, Richland narcotics Investigator Marcus Brown was called to the location to see about getting a search warrant for the residence. Brown, who was originally from Aiken, realized Cummings was also from Aiken. Brown contacted a known informant in Augusta, whom Brown had previously used when working as a police officer in Aiken, and asked the informant if he knew Cummings, and whether Cummings was a large, medium, or small drug dealer. The informant informed Brown he did not know Cummings, but asked Brown if he had heard that Fred Tucker had been murdered in Aiken. The informant stated the murder was on the local news. Brown then asked Cummings if he knew Tucker, and Cummings stated he did and Tucker was "after" his cousin. The Aiken County Sheriff's Office was subsequently contacted

about what Columbia authorities had come upon when locating the unreturned *green Taurus*, and Aiken County dispatched homicide investigators to Columbia. (R. 37-62; 224-55).

Richland County investigators at Miller's residence contacted one of their own investigators, and asked him to prepare a search warrant for the residence at *5520 North Main Street, for drugs and drug distribution related items*. The warrant was prepared by Investigator Robert Crane, who received information directly from Investigator Brown *at Miller's residence* regarding the information police had received from the car rental agency manager [the manager or one of his employees was now at Miller's residence to retrieve the *green Taurus*, and Brown confirmed what Deputy Ham had learned earlier from the manager] and what police had found there at *5520 North Main Street*. Crane also conducted some of his own investigation regarding the residence itself and Miller's criminal record. Crane then drafted and presented his sworn affidavit and the search warrant to a Richland County magistrate. After reviewing the search warrant and sworn affidavit, the magistrate determined there was probable cause to issue the search warrant for Miller's residence, *5520 North Main Street, Columbia, S.C.* and the surrounding curtilage, **for drugs and drug distribution related items, including guns, scales, baggies, cell phones, etc.** (R. 37-62, 195-212, 212-23, 224-87, Court's Ex. 1 [Search Warrant]).

Investigator Crane then brought the magistrate approved search warrant to Miller's residence for Richland County investigators to execute. Upon searching Miller's residence, *5520 North Main Street*, pursuant to the search warrant, Richland County investigators found another bag of crack cocaine in a chest of drawers in Miller's bedroom. Police also found 3 more firearms [pistols] in the top of Miller's bedroom closet. Police also confiscated 2 sets of scales, a razor blade, and a bullet proof vest found under a couch. Police also confiscated 2 pairs of tennis shoes

because they appeared to be counterfeit Nike tennis shoes. These items were placed on top of a Richland / Columbia patrol car at the scene. The Aiken County homicide investigators arrived at Miller's residence while Richland County police were executing the search warrant for drugs and drug related items inside Miller's residence. When Aiken County investigators arrived, they inspected the shoes which had been placed on the patrol car. They noticed 1 of the pairs of shoes, a gold and black pair, appeared to have human blood on them. They also noticed 1 of the guns retrieved from inside the residence by Richland County also appeared to have blood on it.² Miller admitted to Richland County police the drugs and guns found in the residence were his as well. He also told police where they found each item. (R. 37-69, 195-212, 212-23, 224-87, 290-97).³

Police subsequently interviewed Cummings and Redfield, 1 of whom admitted the crack cocaine found in the *green Taurus* came out of the victim's residence in Aiken. (R. 444). Police also pulled a surveillance video from the *Books a Million* store, which was shown to the jury, which showed Cummings and Miller leaving the store together around lunch time of September 15th, the day of the victim's murder. In the video, Miller could be seen wearing 1 of the pair of *counterfeit tennis shoes* confiscated from Miller's residence by Richland County, the same pair of

²Both the Richland County officers and the Aiken County investigators testified Aiken County was not involved in the search of Miller's home pursuant to the search warrant. Aiken County detectives did not enter the residence until after Richland County officers had finished their search and removed the above listed items from the residence. The Aiken County investigators then walked through the residence but did not seize anything. (R. 1-31; 39-100, 195-225, 224-87, 427-28, 447-49, 455-56).

³A copy of the Return to the search warrant was provided to Miller's wife, Deidre King Miller. In addition to the guns and tennis shoes, it reflects that police also seized another bag of white powder substance believed to be cocaine from the top dresser drawer of Miller and his wife's bedroom, a set of black digital scales, a professional mini-scale, assorted bullets, and a razor blade from the kitchen, assorted paperwork with Miller's and his wife's name on the mail, and a bullet proof vest under the couch in the living room. (See Search Warrant, Return).

shoes which contained what appeared to be blood stains on them. (R. 327-32).

Subsequent forensic testing by S.L.E.D. revealed 1 of the guns found in Miller's closet, a 9mm pistol, fired a bullet and a shell casing recovered from the crime scene in Aiken. Forensic testing also showed additional fired shell casings found inside the crime scene in Aiken were fired by another of the guns found in Miller's closet, a .40 caliber semi-automatic pistol. Forensic testing also revealed there was human blood containing DNA consistent with the victim's DNA on 1 of the pistols belonging to Miller. DNA testing also revealed the tennis shoes recovered from Miller's residence contained human blood on them, which contained the victim's DNA. Police also searched the trunk of the *green Taurus* before returning it to the rental company and found 2 *black* shirts. One of these shirts also contained the victim's DNA. (R. 456-508).

At trial, the manager of the car rental agency testified Miller's wife initially rented the *green Taurus*; however, Miller made the last several payments on the rental contract, at the rental agency, including the last payment made the Wednesday before the car was reported as missing. The manager also authenticated the car rental contract, which was introduced into evidence, showing the residence of Diedre King Miller was *5520 North Main Street, Columbia*. A copy of the car rental contract was also found in the *green Taurus* when inventoried by police. Also introduced through the manager was a computer print-out showing the location of the *green Taurus* at different times during the day of the victim's murder. (R. 162-89). Investigator J.D. Sanders, who was familiar with various areas in Aiken, including the victim's home, testified and introduced an exhibit showing the various locations of the *green Taurus* during the morning of the murder, including the fact the car was in close proximity to the victim's home around 6:30 a.m. *and* also just moments after the murder when the 911 call came in. (R. 162-89, 431-34).

At Miller's trial, Cummings testified to the planning and execution of the crimes against the victim. It was Miller who came up with the idea of robbing the victim. When Miller returned to the *Taurus* after the burglary of the victim's home, Miller stated he shot the victim on the way out of the residence because either Grooms or Redfield told Miller they could not leave the victim at the scene alive. Miller admitted to Cummings that he, Grooms, and Redfield tortured the victim by heating the tip of a screwdriver with a stove unit and burning the victim with the screwdriver. One of the other co-defendants threw the screwdriver out the window of the *Taurus* as the perpetrators fled from the crime scene headed for Columbia. (R. 297-355). Police returned to the crime scene with Cummings several weeks after the murders and recovered a yellow and black flat head screwdriver in the ditch where Cummings stated the co-defendant threw the tool as they were fleeing the scene. (R. 430). Police also fingerprinted several CDs found inside *the green Taurus* and prints matching Miller's were found on CDs located on the passenger seat. (R. 392).

Cummings mother also testified at Miller's trial that in 2008 she lived at 121 Gregg Avenue in Aiken, S.C; she had met Miller several times before the weekend and day of the victim's murder; she saw Miller the Saturday before the victim was murdered when he came to her home with her son, Melvin Cummings, along with Ron Goode [sic] and Marquis Redfield; the men came to her house in the *green Ford Taurus* and stayed there from the Saturday before the victim was murdered until the Monday that the victim was murdered, September 15th. Mrs. Cummings testified that when she came in from work at 7:30 a.m. [after working the 3rd shift] the morning the victim was murdered, the 4 men were sleeping in her living room, and she went to her bedroom to sleep, which was her normal routine. When she awoke around 1:00 p.m., the men, including Miller, were gone. That was the last time she saw Miller. (R. 190-95).

On the afternoon after the murder, at his residence, 5520 North Main Street, Miller told police he was driving the *green Taurus* that morning but he had been in Charleston before returning to Columbia and had not been with Cummings or Redfield. (R. 39-40, 227-28). Cummings told police he had been driving the *green Taurus* earlier that day and had been in Augusta. The GPS records from the car rental agency did not show the car was in Charleston on the day of the murder, as Miller claimed, but only in Aiken, and then returned to Columbia. (R. 162-89, 227-28, 431-34).

What Occurred Below

Pre-trial, Miller moved to suppress the fruits of the search of his residence pursuant to the search warrant obtained by Richland County authorities, i.e. the murder weapons and the *counterfeit* tennis shoes with the victim's DNA on them. Judge Early conducted a suppression hearing regarding the circumstances of the issuance of the search warrant and whether the warrant was supported by probable cause. (R. 1-31, 33-118). At its conclusion, Judge Early found:

I'm going to respectfully deny your motion. I find that under the totality of the circumstances that the Magistrate in this case had a substantial basis for concluding that probable cause existed. And, I'm citing *State versus Dupree*, *State versus Bellamy*, *State versus Keith*, and respectfully deny [the motion to suppress]. (R. 117-18).

Standard of Review

(Circuit Court's Affirmation of Probable Cause)

The standard of review of 4th Amendment search and seizure issues on appeal is deferential and is limited to determining whether any evidence supports the trial court's finding, with the appellate court only being able to reverse the ruling of a trial judge where there is clear

error. State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013).⁴ The appellate court may conduct its own review of the record to ascertain if there is any evidence to support the ruling. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 459-60 (2002). In criminal cases, appellate courts are bound by fact findings in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law. State v. Asbury, 328 S.C. 187, 493 S.E.2d 349 (1997).

(Magistrate's Issuance of a Search Warrant)

Search warrants are constitutionally preferred; and, in determining whether they should issue, magistrates are concerned with probabilities, not certainties. State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976). As a result, a reviewing appellate court gives great deference to a magistrate's determination of probable cause. State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000); When determining the propriety of the issuance of a search warrant, the duty of the appellate courts is simply to determine whether the magistrate had a substantial basis for concluding probable cause existed. State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009). In making such a decision, an appellate court must consider the totality of the circumstances. Jones (stating under the totality of the circumstances test, a reviewing court considers all circumstances, including status, basis of knowledge, and veracity of informant, when determining whether or not probable

⁴ State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000))(whether a search violated the 4th Amendment depends upon "a number of antecedent determinations, each of which is inherently fact-specific" and "entails an inquiry into the totality of the circumstances" and an appellate court must affirm if there is "any evidence" to support the ruling); State v. Davis, 371 S.C. 412, 639 S.E.2d 457 (Ct. App. 2007) ("On appeal from a suppression hearing, the appellate court will give deference to the circuit court's findings and only reverse if there is clear error."); State v. Thompson, 363 S.C. 192, 199, 609 S.E.2d 556, 560 (Ct. App. 2005)(deferential standard of review applies in a challenge to a trial court's fact-driven affirmation of probable cause.). As a result, if there is any evidence to support the trial judge's ruling as to the validity of a search with a warrant, it will be affirmed on appeal. State v. Cheeks, 400 S.C. 329, 733 S.E.2d 611 (Ct. App. 2012).

cause existed to issue a search warrant).

The 4th Amendment to the United States Constitution guarantees the right of the people to be free 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. “The Fourth Amendment by its terms prohibits [only] unreasonable searches and seizures.” McHam v. State, 404 S.C. 465, 746 S.E.2d 41 (2013). The touchstone of an analysis under the 4th Amendment is always “the reasonableness in all the circumstances of the particular governmental invasion of a citizen’s personal security.” See Pennsylvania v. Mimms, 434 U.S. 106, 108-09 (1977), quoting Terry v. Ohio, 392 U.S. 1, 19 (1968). “Reasonableness, of course, depends ‘on a balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers.’” Id. at 109 (citation omitted).

“A search warrant may issue only upon a finding of probable cause.” State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997), citing State v. Owen, 275 S.C. 586, 274 S.E.2d 510 (1981). Under S.C. Code Ann. Section 17-13-140 (1985), a search warrant may be issued “only upon affidavit sworn to before the magistrate ... establishing the grounds for the warrant.” The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause: State v. Dupree, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003). For an affidavit in support of a search warrant to show probable cause, it must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time. State v. Winborne, 273 S.C. 62, 254 S.E.2d 297 (1979). The magistrate should determine probable cause based on all of the information available to the magistrate at the time the

warrant was issued. State v. Driggers, 322 S.C. 506, 473 S.E.2d 57 (Ct. App. 1996). In determining the validity of the warrant, a reviewing court may consider only information brought to the magistrate's attention. Owen. "[T]he duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis' for ... conclud[ing] that probable cause existed." Weston, 329 S.C. at 290-91, 494 S.E.2d at 802-03. However, all that is necessary for the issuance of a warrant is probable cause. State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009), citing State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975)(recognizing all that is necessary to justify issuance of a search warrant is probable cause).

Probable cause does not mean absolute certainty. State v. Dean, 282 S.C. 155, 317 S.E.2d 746 (1984). Probable cause is a flexible, common-sense standard. Texas v. Brown, 460 U.S. 730 (1983). Probable cause is a fluid concept—turning on the assessment of probabilities in a particular factual context—nor readily, or even usefully, reduced to a neat set of legal rules. Maryland v. Pringle, 540 U.S. 366 (2003); Illinois v. Gates, 462 U.S. 213 (1983). The probable cause standard is incapable of precise definition or quantification into percentages, because it deals with probabilities and depends on the totality of the circumstances. Pringle; Gates. In dealing with determinations of probable cause, as the very term implies, a just determination must deal with **probabilities**, which are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Brinegar v. United States, 338 U.S. 160 (1949); State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995). South Carolina has adopted the "totality of the circumstances" of Gates in determining whether sufficient probable cause exists to issue a search warrant. State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999). In Gates, the Court held:

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.

Gates, 464 U.S. at 238 (emphasis added); accord Herring, 387 S.C. at 212, 692 S.E.2d at 495-96; Probable cause “does not demand any showing that such a belief be correct or more likely true than false.” State v. Bowie, 360 S.C. 210, 600 S.E.2d 112 (Ct. App. 2004), quoting Brown, 460 U.S. at 742. “Under this formula, veracity and basis of knowledge are treated ‘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.” Gates, 462 U.S. at 230; Weston, 329 S.C. at 290-91; 494 S.E.2d at 802-03. Again, in determining whether a search warrant should be issued, magistrates are concerned with probabilities not certainties. Bowie; Sullivan, 267 S.C. at 617, 230 S.E.2d at 624.

An affidavit in support of a search warrant may be based on hearsay information and need not reflect the direct personal observations of the affiant. Sullivan, 267 S.C. at 614-15, 230 S.E.2d at 623 (finding a search warrant can be supported by information given to the affiant by other officers); see Jones v. United States, 362 U.S. 257 (1960), *overruled on other grounds* United States v. Salvucci, 448 U.S. 83 (1980); United States v. Ventresca, 380 U.S. 102, 108 (1965)(it is well settled that an affiant seeking a search warrant can base his information on information in turn supplied to him by fellow officers); State v. York, 250 S.C. 30, 156 S.E.2d 326 (1967)(affidavit for search warrant may be based on hearsay information); United States v. Weiebir, 498 F.2d 346 (4th Cir. 1974). Observations by fellow law enforcement officers engaged in a common investigation with the search warrant affiant are a reliable basis for a warrant applied for by one of their number. Ventresca, 380 U.S. at 111; State v. Hage, 568 N.W.2d 741 (N.D. 1997). See also United States

v. Morales, 238 F.3d 952 (8th Cir. 2001)(probable cause may be based on collective knowledge of all law enforcement officers involved in an investigation and need not be based solely on information within knowledge of officer on scene if there is some degree of communication).⁵

As the Supreme Court recognized in Gates, affidavits are normally drafted by non-lawyers in the midst and haste of a criminal investigation, in light of which technical requirements of elaborate specificity once exacted under common law pleading have no proper place. *See* Ventresca, 380 U.S. 102. “Affidavits are not meticulously drawn by lawyers, but are normally drafted by non-lawyers in the haste of a criminal investigation, and should therefore be viewed in a common sense and realistic fashion.” Bowie, *supra*, *citing* Sullivan; Dupree, 354 S.C. at 683, 583 S.E.2d at 441. Affidavits must be judged on the facts presented, not on the precise wording used. State v. Viard, 276 S.C. 147, 276 S.E.2d 531 (1981).

The decision to issue a search warrant should include consideration of the veracity of the person supplying the information and the basis of the affiant’s knowledge. State v. Adolphe, 314 S.C. 89, 441 S.E.2d 832 (Ct. App. 1994). Mere conclusory statements, without sufficient underlying facts, are insufficient to justify the issuance of a search warrant. State v. Smith, 301 S.C. 371, 392 S.E.2d 182 (1990). “The ‘experience of a police officer is a factor to be considered in the determination of probable cause.’” Dupre, 319 S.C. at 459, 462 S.E.2d at 282, *quoting* United States v. Fisher, 702 F.2d 372, 378 (2d Cir. 1983). *See* Taylor, (recognizing well-settled

⁵ A police officer making the affidavit for issuance of a warrant may do so in reliance upon information reported to him by other officers in the performance of their duties and probable cause is to be evaluated by the collective information of the police as reflected in the affidavit and is not limited to the first-hand knowledge of the officer who executes the affidavit. State v. Pearson, 356 N.C. 22, 566 S.E.2d 50 (2002); State v. Stickelman, 299 N.W.2d (Neb. 1980); *see* Iddings v. State, 772 N.E.2d 1006 (Ind. Ct. App. 2002).

principle that courts must give due weight to common sense judgments reached by officers in light of their experience and training), *citing United States v. Perkins*, 363 F.3d 317, 321 (4th Cir. 2004).

The 4th Amendment evidences a “strong preference for searches conducted pursuant to a warrant. *Gates*, 462 U.S. at 236. Searches 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. *Bowie*, *citing State v. Bennett*, 256 S.C. 234, 182 S.E.2d 291 (1971); *State v. Arnold*, 319 S.C. 256, 460 S.E.2d 403 (Ct. App. 1995).

The Search Warrant Affidavit

The Affidavit presented to the magistrate who issued the search warrant in this case stated as follows:

Personally appeared before me, one R. Crane who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this Court:

DESCRIPTION OF PROPERTY SOUGHT

The controlled substance known as crack cocaine and marijuana, cellular phones, pagers and hand held “PDA type digital storage devices. Paraphernalia, paperwork and other items associated with the manufacture, sale, storage and distribution of said controlled substance. Weapons, US currency and articles of personal property tending to establish the identity of persons in control of areas where the aforementioned items are found.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

The location to be searched is located at 5520 North Main St. The location is described as a single story single family dwelling that is white in color with white in color front porch and black in color shutters. The location has a brick foundation that is painted gray. The location has cement steps leading to the front door. The numbers 5520 appear over the front door. The search is to include all persons at the premise, vehicles owned or operated by persons at the

premise and outbuilding on the curtilage.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS
ON THE SUBJECT PREMISES

On September 15, 2008 U-Save Auto rentals notified the Richland County Sheriff's Department that they had a 2006 Ford Taurus SC tag 2903CF that was rented by Deidra Miller and it had not been returned. An incident report was taken RCSD case number 08091449-15. During the course of the investigation U-Save advised that they had a GPS tracking unit on the said vehicle. U-Save advised Richland County Sheriff's Department that the vehicle appeared to be in the 5520 Main St. Area. Deputies responded to the location and observed the said vehicle parked in front of the incident location. Upon approaching the said vehicle Deputies made contact with Antonio Miller, who was placed into investigative detention. Moments later Deidra Miller arrived on the location and was placed under arrest for Use of motor vehicle without owners consent. A search of the vehicle prior to giving the vehicle back to U-Save rentals revealed approximately 22 grams of an off white rocklike substance that field tested positive for cocaine. At that time, Antonio Miller was placed under arrest for Trafficking crack cocaine. Also a search of Antonio Miller's criminal history revealed that he had been arrested on at least 12 occasions for illegal narcotics. Based on the totality of the circumstances the affiant believes that additional narcotics will be recovered from inside of the location to be searched. Through the affiant's and other Richland County Sheriff's Department Narcotic officers experience in drug enforcement, it is known that subjects present at the scene of illegal drug distribution and/or possession commonly have drugs in their possession and control or stored in their vehicles. Through the Affiant' and other RCSD Narcotics officer's experience in drug investigation and enforcement, it is known that there is a common connection between drug activity and weapons. Those engaged in illegal drug activity often carry or have weapons ranging from razors to firearms for protection of themselves or their drugs. Additionally, through the Affiant's and other RCSD Narcotics experience in drug investigation and drug enforcement, it is known that persons located in and around drug sales location commonly carry drugs and/or weapons concealed on their person. Even those not directly selling illegal drugs are used to conceal or hold illegal drugs for those engaged in selling them. It is also known through the Affiant's experience in drug investigation and enforcement that vehicles owned or operated by those present at drug sales locations are commonly used to transport and store illegal drugs and that illegal drugs are commonly stored in and around outbuildings within the curtilage of illegal drug sales locations. Through the Affiant's and other RCSC Narcotic Officers experience in drug investigation and enforcement, it is known that cellular phones, pagers and held-held "PDA's" are commonly used to store phone numbers of other individuals involved in illegal drug activities.

(Search Warrant Affidavit). The Affidavit was sworn to by the Affiant, before the Magistrate.

(Search Warrant Affidavit). The Affidavit was also signed by the Magistrate.

Miller contends that because the affidavit did not set forth that Miller and his wife resided at the residence, there was no probable cause to believe drugs would be found inside the residence. Miller is wrong. Judge Early's determination is supported by the record and the magistrate's determination of probable cause in this case was proper.

The Affidavit presented before the Magistrate sets forth that Deidre Miller, Appellant's wife, rented the car [*the green Taurus*] police were looking for. The Affidavit sets forth that the car was not returned on time to the rental agency. The Affidavit sets forth that the rental car company that owned the car reported it was in the area of 5520 North Main Street. The Affidavit sets forth that when police arrived there, Miller and the car were located at the residence, 5520 North Main Street, and Miller's wife was not at the residence. The Magistrate could conclude from these facts Miller was operating the car [*the green Taurus*], not his wife, and Miller was in possession and control of the car. Further, the Affidavit sets forth that twenty-two grams of crack cocaine were found in the door of *the green Taurus*, which Miller was in possession and control of. The Magistrate could conclude from these facts Miller was in constructive or actual possession of the crack cocaine located in the *green Taurus*. Further, the Affidavit sets forth Miller was arrested for this crack cocaine, not his wife, further substantiating the police investigation determined Miller was the one in possession and control of the car and the drugs. Further, the Affidavit informed the magistrate that Miller had previously been arrested 12 times for narcotics violations. State v. Davis, 354 S.C. 348, 580 S.E.2d 778 (Ct. App. 2003), citing United States v. Harris, 403 U.S. 573, 583 (1971)(holding " a policeman's knowledge of a suspect's reputation ... is ... a 'practical consideration of everyday life' upon which an officer (or a magistrate) may properly

rely.”); cf. Dupree, 319 S.C. at 459, 462 S.E.2d at 282 (“The ‘experience of a police officer is a factor to be considered in the determination of probable cause.’” (quoting United States v. Fisher, 702 F.2d 372, 378 (2d Cir. 1983))). The Magistrate could find from these facts Miller was trafficking in crack cocaine in violation of S.C. Code Ann. Section 44-53-375 or possessing with intent to distribute crack cocaine in violation of S.C. Code Ann. Section 44-53-375. Further, the Magistrate could find Miller was trafficking in crack cocaine or possessing crack cocaine with the intent to distribute *at the location of 5520 North Main Street*. Further, the Affidavit sets forth that Miller’s wife, Diedre Miller, who rented *the green Taurus*, then appeared at the residence, further establishing her, her husband’s, and the car’s connection to the residence, *5520 North Main Street*, Columbia, S.C. Further, based on the above, and the officer’s [affiant’s] experience and knowledge in narcotics investigations, as set forth in the Affidavit, he believed additional narcotics, weapons, and paraphernalia would be found inside the residence and in the curtilage.⁶ See Dupree, 354 S.C. at 681, 583 S.E.2d at 439-440 (evidence of a sale of drugs supports an inference that more will be found at the place of operation). The Affidavit does not contain mere conclusory statements, as Miller alleges, but facts on which the magistrate could make a practical, common sense determination, that probable cause existed to search the residence.

Based on the totality of the circumstances outlined in the affidavit and considering the nature of the evidence sought (narcotics, drugs, guns, drug paraphernalia, and records of drug activity), the type of offense involved (trafficking in crack cocaine or possession of crack cocaine with intent to distribute), and the experience of the officer involved, the magistrate, made a

⁶The record shows what the affiant averred would be found in the residence and vehicles in the curtilage was exactly what police found. Police found more crack cocaine, cash, a razor blade, 2 sets of scales, a bullet proof vest, the rental agreement for 5520 North Main Street signed by Miller and 3 firearms. Additionally, police had already found 2 pistols in the red Taurus.

practical, common sense decision that a **fair probability** existed that additional evidence regarding Miller's drug dealing activities could be found in the residence or curtilage. *See State v. Keith*, 356 S.C. 219, 588 S.E.2d 145 (Ct. App. 2003)(where defendant's home was under surveillance, and officers stopped the defendant's vehicle after leaving his residence for an expired tag, the vehicle being driven by the defendant, and found a distinctive marijuana bud in the ashtray and a pipe containing marijuana residue in the glove box, such evidence standing alone established sufficient probable cause for issuance of search warrant for the defendant's residence, even though the remainder of the search warrant affidavit may have contained conclusory statements by unreliable sources); *State v. Scott*, 303 S.C. 360, 400 S.E.2d 784 (Ct. App. 1991)(affidavit was sufficient to establish probable cause for search of defendant's residence where officers had warrant for defendant's arrest for distribution of cocaine and defendant was observed leaving residence and stopped and found in possession of 20 grams of white powder field tested for cocaine; in the case of drug dealers, evidence is likely to be found where the dealers live); *State v. Clifton*, 302 S.C. 431, 396 S.E.2d 831 (Ct. App. 1990)(magistrate is to make practical, common sense, decision whether under the totality of the circumstances there is a fair probability evidence of a crime will be found in a particular location); *State v. Rutledge*, 373 S.C. 312, 644 S.E.2d 789 (Ct. App. 2007)(where narcotics detective, who was the search warrant affiant, received information from an anonymous informant that defendant and 2 other subjects were selling marijuana from 167 Bailey Ave, Rock Hill, S.C., the information that defendant lived at the address in question which was correct, made it more likely than not that the information concerning illegal activity was also correct; further, the search was based on additional information that officers found marijuana in trash can in front of defendant's residence and the

defendant's prior convictions for marijuana); *See also Dupree*, 354 S.C. at 681, 583 S.E.2d at 439-440 (evidence of sale of drugs supports an inference that more will be found at the place of operation); *United States v. Severance*, 394 F.3d 222, 230 (4th Cir.), *vacated on other grounds*, 544 U.S. 2047 (2005)(recognizing "that the 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.") (internal quotation marks omitted); *United States v. Suarez*, 906 F.2d 977, 979 (4th Cir. 1990)(noting search warrant application was based, inter alia, on officer's surveillance of defendant during day before search, when he was seen walking to targeted residence of his girlfriend). A practical, common sense, and logical interpretation of the affidavit accompanying the search warrant in this case, along with the deference which must be accorded a magistrate, overcomes any deficiency alleged by Miller. . *State v. Livingston*, 282 S.C. 1, 6, 317 S.E.2d, 129, 132 (1984); *Keith*.

Miller further argues that Judge Early should have suppressed the fruits of the search warrant because there was no showing of reliability of the information in the affidavit, i.e. the investigator who filled out the sworn affidavit did not have direct knowledge of facts set forth in the affidavit. As previously shown, this contention has no basis in the law. Probable cause for a search warrant can be supported by information given to the affiant by other officers. *Ventresca*, 380 U.S. at 108; *York*, (affidavit for search warrant may be based on hearsay information); *Weiebir*; *State v. Dunbar*, 603 S.E.2d 615 (Ct. App. 2004). Observations by fellow law enforcement officers engaged in a common investigation with the search warrant affiant are a reliable basis for a warrant applied for by 1 of their number. *Ventresca*, 380 U.S. at 111; *State v. Hage*. *See Morales* (probable cause may be based on collective knowledge of all law enforcement

officers involved in an investigation and need not be based solely on information within knowledge of officer on scene if there is some degree of communication); Sullivan, 267 S.C. at 614-15, 230 S.E.2d at 623)(a search warrant can be supported by information given to the affiant by other officers); see Jones v. Unites States, *overruled on other grounds* Salvucci; Morris v. State, 62 S.W.3d 817 (Tex. App. 2001)(information with which magistrate is supplied in affidavit for search warrant may be hearsay). Probable cause is to be evaluated by the collective information of the police as reflected in the affidavit and is not limited to the first-hand knowledge of the officer who executes the affidavit. Stickelman; see Iddings (probable cause for a search warrant may be based upon information known to the law enforcement organization as a whole). A police officer making the affidavit for issuance of a warrant may do so in reliance upon information reported to him by other officers in the performance of their duties. State v. Pearson.

Further, this was not a search warrant based a confidential informant or even a concerned citizen. The search warrant was based on information gathered by police officers and investigators in the midst of a criminal investigation who gathered facts they directly observed. Reliability or corroboration was not necessary. See Gates. Our appellate courts have recognized “[t]he ‘experience of a police officer is a factor to be considered in the determination of probable cause.’” Dupre, 319 S.C.at 459, 462 S.E.2d at 282, *quoting* Fisher, 702 F.2d at 378. In Taylor, *supra*, our Supreme Court recognized the well-settled principle that courts must give due weight to common sense judgments reached by officers in light of their experience and training. Id. *citing* Perkins. As a result, there is no merit to this argument either.

The record shows the Richland County and Columbia City Police were working together in a joint criminal investigation. Investigators at the scene, *2250 North Main Street*, reported to

Investigator Crane information and facts developed by criminal investigators at the scene and during the investigation, and Crane did some investigation regarding Miller's background / criminal history and the location on his own. These facts, those related by other criminal investigators, and those obtained by Crane, were included in the warrant and accompanying affidavit which Crane provided to the magistrate. There was no confidential informant involved in this investigation. There was no requirement that Crane corroborate the information provided by other officers in the affidavit. The salient facts in the affidavit were provided by criminal investigators engaged in a joint criminal investigation. The magistrate could rely on this fact in determining the reliability and credibility of the information averred to in the affidavit. Taylor; Dupree. There is no merit to Miller's argument. State v. Sullivan.

Miller continues to argue this was merely a fishing expedition by Aiken County authorities to find evidence related to the homicide. The record before Judge Early showed the opposite. Both the Richland County investigators and the Aiken County investigators testified the Aiken County investigators came upon the scene as Richland County authorities were conducting their search of the residence for drugs and drug distribution related items. The guns were seized because they were particularly described in the search warrant. The tennis shoes were seized because it was readily apparent to 1 Richland County investigator, with special training and experience, that the tennis shoes were *counterfeit*. (R. 84-86). See State v. Pressley, 288 S.C. 128, 341 S.E.2d 626 (1987)(during the execution of a lawful search, an officer may seize items that are in plain view that are clearly contraband). Aiken County investigators first saw the guns and tennis shoes after they had been removed from the residence by Richland County and placed on the top of a patrol car. There is no merit to this argument.

The Exclusionary Rule Would Not Apply

Further, the exclusionary rule would not apply under the facts of this case. “[T]he United States Supreme Court has narrowly interpreted the scope of the exclusionary rule in recent years.” State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324 (Ct. App. 2011), *citing* Hudson v. Michigan, 547 U.S. 586, 591-94 (2006)(noting exclusionary rule generates “substantial societal costs”).⁷ This Court and our state Supreme Court have recognized the same principle.⁸ Because “[e]xclusion exacts a heavy toll on both the judicial system and society at large,” the Supreme Court and our state Supreme Court have stated “the deterrence benefits of suppression must outweigh its heavy costs” for the exclusion to be deemed appropriate. Davis, at 2427; State v. Brown, *supra*. “Real deterrent value is a ‘necessary condition for exclusion,’ but it is not ‘a sufficient’ one.” Davis, at 2427, *citing* Hudson v. Michigan, 547 U.S. 586, 596 (2006).

The fact that a 4th Amendment violation occurred – i.e. that a search was unreasonable – does not mean that the exclusionary rule applies. United States v. Herring, 555 U.S. 135 (2009), *citing* Gates, 462 U.S. at 233. “Indeed, exclusion ‘has always been our last resort, not our first

⁷ The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. Davis v. United States, 131 S.Ct. 2419 (2011). The U.S. Supreme Court fashioned a judicially-created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the 4th Amendment. Id. at 2423. “Exclusion is not a ‘personal constitutional right,’ nor is it designed to ‘redress the injury’ occasioned by an unconstitutional search.” Id. at 2426 (citations omitted). “The rule’s sole purpose, [the Supreme Court] has repeatedly held, is to deter future Fourth Amendment violations.” Id.

⁸ “[T]he exclusionary rule was not designed to apply to every violation of the Fourth Amendment.” State v. Jenkins, 398 S.C. 215, 229, 727 S.E.2d 761 (Ct. App. 2012); *See* Weston, 329 S.C. at 293, 494 S.E.2d at 804 (“Suppression is appropriate in only a few situations. . .”); State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471 473 (1987)(“Exclusion of evidence is not the only means available to insure that warrants are properly issued.”), *citing* Sachs 264 S.C. 556, 216 S.E.2d at 509. In Sachs our Supreme Court observed “[t]he exclusionary rule is harsh medicine,” and “[e]xclusion should be applied only where deterrence is subserved.” 264 S.C. at 566, 216 S.E.2d at 514.

impulse,’ Hudson v. Michigan, 547 U.S. 586, 591 (2006), and our precedents establish important principles that constrain application of the exclusionary rule.” Herring, 555 U.S. at 140. The Supreme Court “has repeatedly rejected the argument that exclusion is a necessary consequence of a Fourth Amendment violation.” Id., *citing* United States v. Leon, 469 U.S. 897, 905-06 (1984). Instead, the Court has “focused on the efficacy of the rule in deterring Fourth Amendment violations in the future.” Id., *referencing* United States v. Calandra, 414 U.S. 338, 347-55 (1974); Stone v. Powell, 428 U.S. 465, 486 (1976). The exclusionary rule applies only where it “‘result[s] in appreciable deterrence.’” Herring, *quoting* Leon, at 909 (*quoting* United States v. Janis, 428 U.S. 433, 454 (1976)).

In addition, the benefits of deterrence must outweigh the costs. Herring, *citing* Leon, at 910. “We have never suggested that the exclusionary rule must apply in every circumstance in which it might provide marginal deterrence.” Id. at 141, *citing* Pennsylvania Bd. of Probation and Parole v. Scott, 524 U.S. 357, 368 (1998). “[T]o the extent that application of the exclusionary rule could provide some incremental deterrent, that possible benefit must be weighed against [its] substantial social costs.” Id., *quoting* Illinois v. Krull, 480 U.S. 340, 352-53, (1987)(internal quotation marks omitted).⁹ For exclusion to be appropriate, the deterrence benefits of suppression

⁹ “The principal costs of applying the [exclusionary] rule is, of course, letting guilty and possibly dangerous defendants go free – something that ‘offends basic concepts of the criminal justice system.’” Id. at 141, *quoting* Leon, at 908. “It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence.” Davis, at 2427, *citing* Stone, 428 U.S. at 490-91. “And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment.” Id. at 2427, *citing* Herring, at 141. “Our cases hold that society must swallow this bitter pill when necessary, but only as a ‘last resort.’” Id., *citing* Hudson, at 591. “[T]he rule’s costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its] application” Herring, at 141, *quoting* Scott, at 364-65 (internal quotation marks omitted); *see also* United States v. Havens, 446 U.S. 620, 626-27 (1980); United States v. Payner, 447 U.S. 727, 734 (1980).

must outweigh its heavy costs. Davis, supra; Herring, supra at 141.

Under the circumstances of this case, exclusion would not further the purposes of the exclusionary rule, and suppression is not proper. Id.; State v. Harvin, 343 S.C. 190, 194, 547 S.E.2d 497, 500 (2001)(recognizing the main purpose of the exclusionary rule is deterrence of police misconduct). See Gates, 462 U.S. 213 (recognizing affidavits are drafted by non-lawyers in the midst and haste of a criminal investigation). The conduct of the investigators here did not violate Miller's 4th Amendment rights deliberately, recklessly, or with gross negligence. Herring. Nor has Miller shown this case involves any "recurring or systematic negligence" on the part of law enforcement. Id. In fact, exclusion would only punish the Aiken County investigators, not the Richland County officers who obtained the search warrant in this case. See Herring, supra (no evidence Coffee County investigators committed misconduct where they relied on neighboring counties database showing outstanding warrant existed in arresting and searching defendant and fruits of search should not be suppressed).

Further, under the facts of this case, suppression of the evidence would make no sense where there is no evidence of police misconduct, there is no question the residence searched was that of Miller and his wife, officers had probable cause to search the residence, and obtained a search warrant before entering Miller's residence. "In the case of drug dealers, evidence is likely to be found where the dealers live." Scott, quoting United States v. Angulo, 791 F.2d 1394, 1399 (9th Cir. 1986).

Richland County and Columbia City authorities were there investigating the breach of trust or use of vehicle without owner's consent. They were not there initially to search Miller's residence. Miller admitted to police he had driven *the green Taurus*, rented by his wife, that day.

Miller admitted the 22 grams of crack cocaine found in the *green Taurus* rented by his wife and driven by him were his. The *green Taurus* and Miller were found immediately adjacent to Miller's residence. Miller admitted the firearm found in the rear of the red Taurus was his. The rental agreement clearly reflects the residence searched was Miller and his wife's. Miller and his wife were both at the residence prior to police obtaining the search warrant. Police did not search the residence without a warrant but waited until after they obtained from a neutral and detached magistrate a search warrant. *See Illinois v. McArthur*, 531 U.S. 326 (2001). Further, the evidence found inside the residence further confirmed the residence was that of Miller and his wife. At most, officers either failed to communicate to Investigator Crane the rental agreement indicated the residence belonged to Miller and his wife, or Investigator Crane forgot to include this fact in the affidavit. The application of the exclusionary rule would make no sense in this case. *Davis, supra*; *Brown, supra*. The evidence seized from Miller's residence should not be excluded. *Id.*

In addition, judicially created exceptions have been established to ameliorate the harsh effects of the judicially-created exclusionary rule. *Id.*; *Brown*.

The Evidence is Admissible under the Good Faith Exception

Further, the evidence recovered from Miller's home is admissible under the "good faith" exception to the warrant requirement. *Herring v. United States*; *Leon*; *United States v. Williams*, 548 F.3d 311 (4th Cir. 2008); *State v. Herring*, 387 S.C. 201, 212, 692 S.E.2d 490, 495 (2009). In *Leon*, the Court held the exclusionary rule does not ban evidence obtained by officers acting in reasonable reliance on a search warrant issued by a neutral magistrate but later found to be invalid for lack of probable cause. *Id.* As the Court made clear in *Herring v. United States*:

These principles are reflected in the holding of *Leon*: When police act under a warrant that is invalid for lack of probable cause, the

exclusionary rule does not apply if the police acted “in objectively reasonable reliance” on the subsequently invalidated warrant. 468 U.S., at 922, 104 S.Ct. 3405. We (perhaps confusingly) called this objectively reasonable reliance “good faith.” *Ibid.*, n. 23, 104 S.Ct. 3405. In a companion case, Massachusetts v. Sheppard, 468 U.S. 981, 104 S.Ct. 3424, 82 L.Ed. 2d 737 (1984), we held that the exclusionary rule did not apply when a warrant was invalid because a judge forgot to make “clerical corrections” to it. *Id.*, at 991, 104 S.Ct. 3424.

Herring, *supra* at 142. The 4th Circuit addressed the “good faith” exception at length:

As the Supreme Court instructed in Leon, “a court should not suppress the fruits of a search conducted under the authority of a warrant, even a ‘subsequently ‘invalidated’ warrant, unless ‘a reasonable well-trained officer would have known that the search was illegal despite the magistrate’s authorization.’” United States v. Byrum, 293 F.3d 192, 195 (4th Cir. 2002) (*quoting Leon*, 468 U.S. at 922, n. 23, 104 S.Ct. 3405). The Leon Court explained “that the deterrence purpose of the exclusionary rule is not achieved through the suppression of evidence obtained ‘by an officer acting with objective good faith’ within the scope of a search warrant issued by a magistrate.” United States v. Perez, 393 F.3d 457, 461 (4th Cir. 2004) (*quoting Leon*, 468 U.S. at 920, 104 S.Ct. 3405, 82 L.Ed. 2d 677). “Hence, under Leon’s good faith exception, evidence obtained pursuant to a search warrant issued by a neutral magistrate does not need to be excluded if the officer’s reliance on the warrant was ‘objectively reasonable.’” *Id.* (*quoting Leon* 468 U.S. at 922, 104 S.Ct. 3405, 82 L.E.2d 677).

Williams, 548 F.3d at 317. Leon admonished searches conducted “pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search.” 468 U.S. at 922 (internal quotation marks omitted). An officer’s reliance on a warrant would not qualify as “objectively reasonable,” however, in four circumstances: (1) Where the judge in issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth; (2) the magistrate acted as a rubber stamp for the officers and wholly abandoned his detached and neutral

judicial role; (3) where a supporting affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; (4) where a warrant is so facially deficient - - i.e., in failing to particularize the place to be searched or the things to be seized - - that the executing officers cannot reasonably presume it to be valid. Williams, 548 F.3d at 317.

South Carolina also recognizes a good faith exception to evidence seized pursuant to a warrant that is defective under S.C. Code Ann. Section 17-13-140, if the officers made a good faith attempt to comply with the affidavit requirement under Section 17-13-140. Sachs.¹⁰ South Carolina, like the U.S. Supreme Court and the 4th Circuit, refuses to apply the “good faith” exception when 1 of the 4 circumstances listed above apply. *See* Weston; State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990); Adolphe; State v. Austin, 306 S.C. 9, 409 S.E.2d 811 (Ct. App. 1991). Recently, our Supreme Court again recognized a good faith exception to the search warrant requirement and the requirements of 17-13-140 in State v. Herring, *supra*. There the Court made clear its recognition of a “good faith” exception to the requirements of Section 17-13-140:

Recently, however, we recognized that there is a “good faith” exception to the statute’s [S.C. Code Ann. 17-13-140] requirements where the officers make a good faith attempt to comply with the statute’s affidavit procedures.” State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009), *citing* McKnight. [fn 6] [In Covert, we left open the question of whether a good faith exception applies when “the officers reasonably believe the warrant is valid when the search is made, but is subsequently determined to be invalid.” Id. at 209, 675 S.E.2d at 743. Given our recognition of an exception for an officer’s good faith attempt to comply with the affidavit requirement, we find no reason not to extend such a good faith exception to a warrant reasonably believed to be valid, but later determined invalid. Accordingly, even if we were to determine the affidavit was improper, we would find the

¹⁰ *See also* State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987)(refusing to apply the good faith exception where the officers failed to attempt to comply in good faith to the affidavit requirements), and Covert, *Toal, C.J. concurring in result.*

SLED agents acted in good faith and reasonably believed the warrant valid,
Such that the search should be upheld.]

Herring, 387 S.C. at 215.

In the present case, police did not search Miller's residence without a warrant, but obtained what they believed to be a valid search warrant from a neutral and detached magistrate, who independently determined probable cause existed, and in reliance on that search warrant police searched Miller's residence for drugs and items related to drug trafficking or distribution and recovered the murder weapons and the counterfeit tennis shoes, which both contained the victim's DNA. The affidavit was not based on an informant's information, but on facts developed in a joint investigation by Richland County and Columbia City Police officers. On this record, none of the 4 circumstances listed above barring the application of the "good faith" exception apply: (1) There is no evidence the magistrate was misled by knowingly false or recklessly false information; (2) There is no contention the magistrate was not neutral and detached or acted as a rubber stamp; (3) The affidavit was not "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." [See Dupree, 354 S.C. at 681, 583 S.E.2d at 439-440 (evidence of a sale of drugs supports an inference that more will be found at the place of operation)]; (4) The warrant particularly describes the place to be searched and the items to be searched for. Leon. Further, Miller gave police a false name upon police approaching him at his own residence. See Davis, 354 S.C. 348, 580 S.E.2d 778 (defendant's subterfuge provided a reasonable inference that something was located in the room which he did not want police to discover).

The 4th Circuit has rejected arguments similar to those made by Miller in this case, finding the good faith exception applied. See United States v. Harris, 215 Fed. Appx. 262, 272 (4th Cir. 2007)(Unpublished)(applying Leon good faith exception, despite officer's omission from affidavit

(1) that defendant resided in targeted premises and (2) their grounds for believing that defendant lived there, because “[t]he apartment to be searched is prominently identified in the affidavit, and it is easy to read the affidavit and not realize that the officers failed to connect the final dots specifically linking the defendant to the apartment.”), *citing* United States v. Procopio, 88 F.3d 21, 28 (1st Cir. 1996). *See* Williams, (applying good faith exception); United States v. Lelor, 996 F.2d 1578 (4th Cir. 1993)(apply the exception). In this case, this was Miller’s residence, and Miller was arrested immediately adjacent to the residence for crack cocaine found immediately adjacent to the residence in the *Green Taurus* rented by Miller and his wife. In such a situation, the good faith exception would apply and the exclusionary rule would not be enforced. Davis; United States v. Herring; Leon; State v. Herring.

Inevitable Discovery

Furthermore, the evidence in question could or would have been inevitably discovered. At the suppression hearing, Investigator J. D. Sanders of Aiken County testified Aiken County investigators were informed a 2nd search warrant was issued or obtained for Miller’s residence by Richland County. (R. 95-99). While nothing was seized in Miller’s residence pursuant to this search warrant, and Aiken County investigators did inspect the interior of Miller’s residence for any evidence of the murder committed in Aiken after being informed by Richland County of the issuance of this 2nd search warrant. (R. 95-99). As a result, this Court or the trial court could conclude the murder weapons and the tennis shoes would have inevitably been discovered. Nix v. Williams, 467 U.S. 431 (1984); United States v. Allen, 159 F.3d 832 (4th Cir. 1998); United States v. Whitehorn, 813 F.2d 646 (4th Cir. 1987); State v. Brown (recognizing inevitable discovery is an exception to the exclusionary rule); State v. Jenkins, 398 S.C. 215, 727 S.E.2d 761

(Ct. App. 2012)(remanding to determine if inevitable discovery doctrine applied); State v. Bruce, 402 S.C. 621, 741 S.E.2d 590 (Ct. App. 2013)(recognizing exception but finding exception not met on the record before the Court); Spears, 393 S.C. at 482, 713 S.E.2d at 332 (evidence may be admitted “if the government can prove the evidence would have been obtained inevitably.”). See Herring v. United States (No evidence Coffee County police committed any misconduct but mistakenly relied in good faith on neighboring county’s database, which mistakenly showed outstanding warrant for defendant’s arrest; therefore exclusionary rule was not applicable to fruits of defendant’s arrest). Judge Early did not reach this issue because he found the original search warrant contained sufficient probable cause. The evidence would have been inevitably discovered through Aiken County’s reasonable reliance on Richland County’s communicating a 2nd search warrant had been obtained.

Harmless Error

Regardless, the admission of this evidence was harmless because the evidence of Miller’s guilt was overwhelming despite this evidence. State v. Herring (finding even if search of defendant’s home was illegal any error was harmless given the overwhelming evidence of defendant’s guilt independent of the evidence seized in the defendant’s home), citing State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007); State v. Garner, 304 S.C. 220, 403 S.E.2d 631 (1991)(improperly admitted evidence harmless given overwhelming evidence of guilt). See State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006).

The evidence of Miller’s guilt independent of the results of the search of his residence

At trial, Cummings’ mother established Miller’s presence in Aiken on the morning of the murder of the victim. She testified Miller arrived at her residence on Saturday, along with her

son, Redfield and Grooms. The 4 men arrived at her residence on the Saturday before the murder in a *green Ford Taurus*. She identified the *Taurus* later seized by police as the car they arrived in. All 4 men stayed at her residence until Monday morning, the day of the victim's murder, when she last saw them asleep in her living room at approximately 7:30 a.m., when she arrived home from work, before she went to her room to sleep. She awoke around 1:00 p.m. and Miller, her son, and the 2 other men were gone. (R. 190-95).

Cummings testified and explained to the jury how the plan to rob the victim unfolded over several months. Miller believed, because the victim was a drug dealer, that he would have drugs and/or cash in his home. Miller came up with the idea to rob the victim, and Cummings agreed to be the driver of the getaway vehicle. Cummings and Miller arrived in Aiken several days before the murder, staying at his mother's residence, and they "cased" the residence with several other men over the days preceding the murder. It was finally determined Miller, Redfield, and Grooms would commit the armed robbery, while Cummings waited in the car. Cummings dropped the 3 men off first at a cemetery, and the men returned without committing the crime. They all returned to his mother's residence where they slept. They tried again later in the morning. He dropped Miller, Redfield, and Grooms off at the victim's residence while he waited next door pretending to look at an automobile that was for sale. (R. 297-355).

A neighbor of the victim, who heard the gunshots at the time of the victim's murder, testified 3 separate men, one with dread-locks [Miller], all wearing black clothing, left out of the victim's home one at a time after the shots were fired. The 3 men ran in the direction away from her home, toward where Cummings testified he was waiting with the car. (R. 143-56).

Another neighbor corroborated Cummings' testimony by informing the jury that at the

time the gunshots were fired at the victim's residence, Cummings was at her residence standing with her looking at a car she had for sale. As a result, Cummings could not have been one of the three men who actually entered the victim's home and committed the murder, armed robbery, and kidnapping. This neighbor also testified that after she and Cummings heard the gunshots from the victim's residence, Cummings immediately left her yard in the *green car* he was driving, but in leaving her driveway, he appeared to be stopped waiting for someone. (R. 156-62).

Cummings testified that after he heard the gunshots and left the neighbor's yard driving the *green Taurus*, he saw Miller, Redfield, and Grooms coming through some bushes, and he picked them up. Miller told Cummings to drive fast and told Cummings they had tortured the victim with a heated screwdriver and he shot the victim before he left the house to leave no witness. (R. 297-355). One of the co-defendant's discarded a screwdriver out the window of the car, and police corroborated that Cummings led them exactly to where they recovered a screwdriver as he described. (R. 297-355). Cummings testified the 4 men then drove to Columbia, S.C. where they went to a *Books A Million* store where his fiancé worked, and he obtained keys to the red Taurus from his fiancé. Cummings and a female left from there to get something to eat, and he eventually went to Miller's residence shortly after lunch, because Miller summoned him there to help return the rental car [*the green Taurus*]. (R. 297-355).

The GPS tracking system established the *green Taurus* rented by Miller and his wife was located near the victim's residence around 6:00 a.m.. The GPS system also established the *green Taurus* rented by Miller was on Gregg Avenue, in Aiken, near Cummings' mother's residence at around 9:30 a.m. on the date of the murder. The GPS also established the *green Taurus* rented by Miller was in close proximity to the victim's home, in Aiken, at the time the 911 call came in

regarding the victim's murder. The testimony at trial established not only that Miller's wife had rented the vehicle, but that Miller made the last payment on the vehicle in person the Wednesday before the car was not returned to the rental agency. Further, Miller admitted to police he was driving the *green Taurus* on the morning of the murder; however, he falsely informed the police he was in Charleston not Aiken that morning. The GPS system also showed the *Taurus* had only been to Aiken and Columbia on the date of the murder, not Charleston. (R. 162-88, 195-212).

The GPS tracked the *green Taurus* rented by Miller from Aiken to Columbia, S.C. immediately after the victim's murder. And, then the GPS tracked the *green Taurus* used in the murder to Miller's own residence, 5522 North Main Street, Columbia where it was found in the back yard backed up to the back porch of the house. Miller was there, next to the car, when police arrived looking for the vehicle. (R. 162-88, 195-212, 212-23, 224-87).

A surveillance video from *Books A Million* established Miller and Cummings were together there, exactly as Cummings testified, shortly after the murder of the victim, but after sufficient time had passed for them to have driven from Aiken to Columbia. (R. 327-32).

Cummings testimony was further corroborated by what occurred at Miller's residence. Police testified the *green Taurus* was already at Miller's residence with Miller when Cummings pulled into the drive-way and was blocked in by the first responding officer. Cummings was driving the red Taurus and a female was in the car with him. (R. 195-212, 212-23, 224-87).

An *inventory search* of the *green Taurus*, beside which Miller was standing, revealed 22 grams of crack cocaine. (R. 195-212, 212-23, 224-87, 316-20). The victim was a known drug dealer, and his house had been burglarized and ransacked by 3 men dressed in *black* who entered his residence and bound, tortured and murdered him. (R. 367-432, 256-88, 297-355, 356-404,

408-508). Testimony was admitted at trial that this crack cocaine, the 22 grams, came from the victim's residence. (R. 444). Miller admitted to police the crack cocaine found *in the green Taurus* was his. (R. 195-212, 212-23, 224-87, 316-20). Miller's fingerprints were found inside the *green Taurus*. (R. 392). Further, found in the trunk of the *green Taurus* rented by Miller, were 2 *black* shirts, 1 of which contained the DNA of the victim, Fred Tucker, from Aiken. (R. 456-508). The evidence of Miller's guilt was overwhelming independent of what was found in his residence. The admission of the fruits of the search of Miller's home was harmless given the overwhelming evidence of Miller's guilt introduced at trial independent of that found in Miller's residence. Herring; Gillian; Garner; Baccus.

Conclusion

Neither this Court nor Judge Early erred in finding the magistrate had a substantial basis for finding probable cause existed to issue the search warrant for Miller's residence. Even assuming *arguendo* Judge Early somehow erred, the exclusionary rule would not apply here. Further, the evidence was still admissible because officers relied in good faith on the search warrant issued by the Magistrate in searching Miller's residence. Further, even assuming *arguendo* the good faith exception does not apply, the evidence would have been inevitably discovered where Aiken County investigators reasonably relied on a neighboring county's assertion a 2nd search warrant and been obtained and inspected Miller's residence pursuant to the same. Finally, the admission of this evidence was harmless given the other overwhelming evidence of Miller's guilt independent of that recovered from his residence. As a result, Miller's convictions for murder, burglary in the 1st degree, and kidnapping were appropriately affirmed.

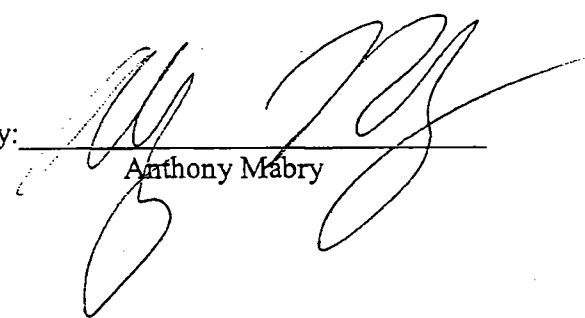
CONCLUSION

For the above stated reasons, the petition for rehearing should be denied.

Respectfully submitted,

J. ANTHONY MABRY
Assistant Attorney General

By: _____

A handwritten signature in black ink, appearing to read 'Anthony Mabry', is written over a horizontal line. The signature is stylized and cursive.

Anthony Mabry

December 15, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-208640
THE STATE,

Respondent,

v.

ANTONIO MILLER,

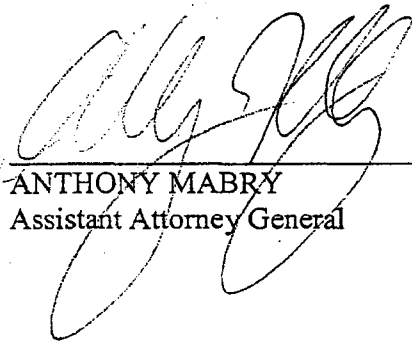
Appellant.

APPELLATE CASE NO. 2012-208640

Appeals from Aiken County
Doyet A. Early, III, Circuit Court Judge

CERTIFICATE OF SERVICE

I, Anthony Mabry, hereby certify that I have served the *Return to Petition for Rehearing* in the foregoing action by depositing copies via United States Mail, postage pre-paid, to Robert M. Dudek, Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, SC 29201 this 15th day of December, 2014.



ANTHONY MABRY
Assistant Attorney General

The South Carolina Court of Appeals

The State, Respondent,

v.

Antonio Miller, Appellant.

Appellate Case No. 2012-208640

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Luff

J.

Paul E. Short, Jr.

J.

[Signature]

J.

Columbia, South Carolina

cc:
Robert Michael Dudek, Esquire
J. Anthony Mabry, Esquire
Alan McCrory Wilson, Esquire

FILED

January 26, 2015

FILED

JAN 26 2015

SC OFFICE OF
APPELLATE DEFENSE