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**S.C. Supreme Court**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal From Richland County  
Hon. G. Thomas Cooper, Jr., Circuit Court Judge  
Appellate Case Tracking No. 2015-000204  
\_\_\_\_\_

The State,

Respondent/Petitioner,

v.

Theodore Manning,

Petitioner/Respondent.

\_\_\_\_\_  
Opinion No. 2014-UP-411 (S.C. Ct. App. refiled November 19, 2014)  
\_\_\_\_\_

**RETURN TO PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS**

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## STATEMENT OF QUESTIONS PRESENTED

- I. Did the Court of Appeals err in affirming the trial court's refusal to give a charge related to section 16-11-440(A) of the South Carolina Code and is Manning's current argument preserved for review?
- II. Did the Court of Appeals err in affirming the trial court's admission of a photograph which was highly probative and its prejudicial nature did not outweigh this probative value?
- III. Did the Court of Appeals err in affirming the trial court's denial of Manning's motion to suppress evidence seized as a result of the search warrant obtained in this case?

## STATEMENT OF THE CASE

### Procedural History

The Richland County Grand Jury indicted Theodore Manning on charges of murder in the death of Nikki McPhatter. Manning proceeded to trial from October 4-14, 2010, and the jury convicted him of voluntary manslaughter. The court sentenced Manning to thirty years imprisonment. Manning filed a Notice of Appeal and the case was heard by the Court of Appeals.

The Court of Appeals heard oral arguments and issued an opinion on May 7, 2014. See State v. Manning, Op. No. 5228 (S.C. Ct. App. Filed May 7, 2014). Both parties filed a Petition for Rehearing. The Court of Appeals granted both Petitions, withdrew the May opinion, and ordered new oral argument after the retirement of Judge Pieper from the bench and the addition of Judge McDonald to the panel considering the appeal.

The Court of Appeals heard new oral arguments and issued an unpublished opinion in November 2014. See State v. Manning, Op. No. 2014-UP-411 (Refiled November 19, 2014). Both parties again filed a Petition for Rehearing. Both Petitions were denied. Manning served and filed a Petition for Writ of Certiorari and the State filed a Cross-Petition for Writ of Certiorari from the Court of Appeals Opinion. The State now files this Return to Manning's Petition for Writ of Certiorari.

## ARGUMENT

**I. Did the Court of Appeals err in affirming the trial court's refusal to give a charge related to section 16-11-440(A) of the South Carolina Code and is Manning's current argument preserved for review?**

The Court of Appeals correctly found the trial court did not err in refusing to give a charge to the jury related to section 16-11-440(A) of the South Carolina Code. This Court has previously held a charge based on the language of 16-11-440 is not appropriate for the jury and Manning fails to provide any basis to distinguish that prior holding. Manning now seems to argue, contrary to the arguments before the Court of Appeals, the trial court failed to give a charge pursuant to the common law castle doctrine and does not even cite 16-11-440(A). This new argument is not properly preserved for review by this Court and is entirely without merit.

In State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), this Court considered the propriety of a jury charge which included language from section 16-11-440(C) of the South Carolina Code regarding the right of a person to stand their ground. This Court found the jury charge to be given should be based on common law principles and not based on the statute which is applicable in a determination of pre-trial statutory immunity.

Nothing should change in this Court's holding because Manning claims a right to the language found in 16-11-440(A) of the Act instead of subsection (C). Sections 16-11-440(A) and (C) create presumptions for use in determining whether a defendant is entitled to immunity from prosecution, they do not create instructions for the jury.

Accordingly, as this Court found in Curry, it would have been error to give the charge requested by Manning. Curry, 406 S.C. at 373, 752 S.E.2d at 267.

Even if a charge pursuant to section 16-11-440(A) could be appropriate, the trial court found the provision does not apply in the instant case.<sup>1</sup> Further, analysis of the subsection compared to the record before the Court as established through testimony and argument both pre-trial and at trial indicate Manning was not entitled to the presumption established in 16-11-440(A).

Section 16-11-440(A) provides:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle ...; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

....

S.C. Code Ann. § 16-11-440(A) (Supp. 2010). The Act continues:

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.

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<sup>1</sup> As the State maintains in its Petition for Writ of Certiorari, the trial court made a pretrial determination neither sections 16-11-440(A) nor (C) apply in the instant case and he was not entitled to immunity. The State maintains this finding has never been raised as error on appeal and should be considered the law of the case.

S.C. Code Ann. § 16-11-440 (Supp. 2010).

In the instant case, the victim was invited into the home and was a guest in the home. As a result, she falls under subsection (B) and the presumption of subsection (A) does not apply because she had a right to be in the residence. Further, under every version of the facts presented (both pre-trial and at trial during Manning's own testimony), the victim was not "in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered" the residence. She was invited into the residence, and was in the residence under that invitation at the time she was shot and killed. At no time did she forcefully try to enter the residence or remove someone from the residence. Accordingly, subsection (A) by its own terms has no application in the instant case and it would have been clear error for the trial court to provide it as a charge to the jury.

Manning now couches his argument as entitlement to a charge based on the castle doctrine. Previously, while referring to the castle doctrine, Manning specifically referred to section 16-11-440(A) and its presumption as the requested charge.<sup>2</sup> Now, he merely speaks of the castle doctrine which could entail the common law castle doctrine. To the extent he is trying to claim error in failing to give a jury charge regarding the common law castle doctrine<sup>3</sup> the issue is not preserved for review on appeal because it is being raised in his Petition for Writ of Certiorari for the first time. Additionally, it is clear the Court of Appeals ruled based solely on an examination of the right to a charge pursuant to section 16-11-440(A) so the issue was never addressed by the Court of Appeals. See

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<sup>2</sup> In the very first paragraph of his argument on this issue in his Final Brief of Appellant to the Court of Appeals, Manning specifically indicates the requested charge which was denied was a charge pursuant to section 16-11-440(A).

<sup>3</sup> The common law castle doctrine provides a person has no duty to retreat if he is within his home or the curtilage of his home. See State v. Wiggins, 330 S.C. 538, 548 n.15, 500 S.E.2d 489, 494 n.15 (1998).

Rule 242(d)(2), SCACR (“Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari . . . .”); see also, Mazloom v. Mazloom, 392 S.C. 403, 709 S.E.2d 661 (2011) (consideration in a Petition for Writ of Certiorari based on issue being raised to the Court of Appeals and included in the petition for rehearing).

Finally, to the extent Manning is arguing error in failing to give a jury charge related to the common law castle doctrine, the issue is without merit because the trial court specifically charged the jury pursuant to the common law castle doctrine. Manning asked the court to insert language in the self-defense charge which provided that a person has no duty to retreat when in his own home. The court indicated it would give the charge. (R.1663). The court the charged as follows:

The final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as Mr. Manning did in this particular instance.

. . . .  
However, there is no duty to retreat where an act -- attack occurs in one’s own dwelling, his yard, or elsewhere on the property owned and lawfully occupied by him.

(R.1781). Manning received the common law castle doctrine charge he requested and as a result the charge given by the trial court was a complete and accurate statement of the law. See State v. Mattison, 388 S.C. 469, 478-479, 697 S.E.2d 578, 583-584 (2010) (“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.” “An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion.”); State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006) (trial court is required to charge the current and correct law of South Carolina).

**II. Did the Court of Appeals err in affirming the trial court's admission of a photograph which was highly probative and its prejudicial nature did not outweigh this probative value?**

The Court of Appeals correctly found the trial court did not err in admitting a single photograph of the condition of the victim's body when it was located. Manning contends the trial court erred in failing to exclude the photograph, Exhibit 226, of the victim's body when it was first discovered in the burned out trunk of her car. He asserts the admission was calculated to arouse the sympathies of the jury and was prejudicial. The trial court limited the admission to a single photograph depicting the condition of the body when it was found. Further, the photograph presents evidence from which the jury could infer the killing of the victim was committed with malice—the central issue during the trial. Finally, the photograph serves to disprove any accidental or self-defense shooting by Manning.

“The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court.” State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)). “A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.” State v. Kelley, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995) (emphasis added). Admitting photographs which serve to corroborate testimony is not an abuse of discretion. State v. Martucci, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008).

Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions. State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). “To constitute

unfair prejudice, the photographs must create ‘an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’” State v. Jackson, 364 S.C. 329, 334, 613 S.E.2d 374, 376 (2005) (quoting State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)).

The Courts of this state have considered the admissibility of graphic photographs in several different settings. In Kelley, this Court found two photographs of the victim’s nude body lying on the living room floor with her face and body visibly swollen from the beating by the defendant, as well as photographs showing blood smeared on the walls and floor were admissible to demonstrate the crime scene and the “excess nature of the killing.” Id. at 178, 460 S.E.2d at 370-371.

In State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986), the defendant maintained a photograph of the victim with her breast exposed was inflammatory and unfairly prejudicial because he was on trial for assault with intent to commit criminal sexual conduct in addition to murder. Id. at 213, 349 S.E.2d at 340. The Court explained: “The photograph at issue here corroborated the pathologist’s testimony regarding the location of the bullet wound. The Respondent was not prejudiced by its introduction because there was explicit testimony that the victim’s blouse and brassiere had been removed by medical personnel when they arrived at the scene in order to administer medical aid.” The Court found it was the corroborative effect, as well as the fact other testimony explained what was in the photographs, which allowed them to be admissible without constituting unfair prejudice.

This Court considered graphic photographs in the case of State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010). The Court explained the general rule: “[p]hotographs

calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.” Id. at 623, 703 S.E.2d at 228. In Torres, this Court specifically held: “[i]f the photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” Id. at 623, 703 S.E.2d at 229. The Court continued: “autopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and character of the defendant.” Id. (emphasis added). The Court explained:

The doctor who performed the autopsy used the introduced photographs during his testimony to illustrate the number of injuries, location of the injuries, and manner in which the injuries were committed. We do not suggest that these autopsy photographs are mild and easy to view; some of the photographs are close-ups of the victims’ injuries and are graphic in nature. However, the purpose of the close-ups was to help identify the nature of each particular injury. The net effect of the photographs was to show what Torres did to the Emerys, which goes straight to circumstances of the crime.

Id. at 624, 703 S.E.2d at 229 (emphasis added).

This case is similar to the above cited cases, most notably Torres. In this case, the photograph served to demonstrate the character of Manning. The character of the defendant, most notably his mental state, is a significant issue in this case where the shooting itself was admitted, and the only question is the manner in which it was done—in self-defense, with malice aforethought, or in the heat of passion. The depravity and wickedness of Manning is demonstrated through the condition of the body when it is found. As the jury was charged:

Malice can be inferred, also, from conduct showing a total disregard for human life. Malice is a legal term implying wickedness and excluding a just cause or excuse. The term malice indicates a formed purpose and design to

do a wrongful act under the circumstances that exclude the legal right to do it.

It's something which springs from wickedness, from depravity, from a heart devoid of social duty and fatally bent on mischief. In other words, malice is a mental state, and it may be inferred by facts and circumstances proven by the State beyond a reasonable doubt.

(T.1789; R. 1777). The photograph was introduced to demonstrate Manning's character as someone showing a complete disregard for human life, a wicked person with a formed purpose to do a wrongful act. While the photograph corroborated the testimony indicating the condition of the body, it really allowed the jury to truly see what Manning had done to the victim and to use that to determine his mental state and his character. See e.g., State v. Tuckness, 257 S.C. 295, 185 S.E.2d 607 (1971) ("The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances."); State v. Henderson, 80 S.C. 165, 60 S.E. 314 (1908) (malice may be inferred from circumstantial evidence).

Further, the photograph serves to provide evidence against an accidental or self-defense shooting. If the shooting were accidental or in self-defense, one would not go to the trouble to put the body in the trunk of the victim's own car, drive it out to the middle of nowhere, purchase gasoline, and then burn the body and car. Manning raised the defense of self-defense, and the State was required to disprove it. We have no testimony or other evidence from the victim. The only story told to the jury was that by Manning. As a result, the State presented the victim as she was found to provide evidence from which the jury could find Manning's actions were not those of someone with a reasonable belief they were going to be harmed and had to act in self-defense, but were instead the actions of someone who acted either in the heat of passion or with malice and then

attempted to cover up their guilty actions. The photograph serves as material evidence from which a jury can infer the act was not done in self-defense.

Finally, the photograph corroborates the investigation and details of the investigation as discussed at trial. The officer indicated they located the car, obtained entry to the trunk of the vehicle, and the victim's body was found. This photograph depicted one of the crime scenes involved in this case and shows what was uncovered during the investigation.

Another similarity between this case and Torres is further explicated by the Supreme Court: "Moreover, the trial judge did exercise his discretion by excluding three of the State's photographs, ruling that they were duplicative and prejudicial. While the admitted photographs graphically depict the injuries of the victim, this was a particularly horrific crime, and the admission of the photographs did not unduly prejudice the jury." Id. at 624, 703 S.E.2d at 229 (emphasis added). The probative value of the photograph substantially outweighs its prejudice. Further, the trial court limited the evidence to a single photograph so as to minimize the prejudice to Manning.

The graphic nature of the photograph, while clearly present to anyone who viewed it, should not be sufficient to prevent admissibility in this case because the underlying facts and circumstances were very graphic and disturbing. See also, State v. Holder, 382 S.C. 278, 291, 676 S.E.2d 690, 697 (2009) (finding photographs graphically displaying the beaten and abused body of a child corroborated testimony and were properly admitted: "Although the photographs were graphic, the facts in this case were graphic, and there is no suggestion that their admission had an undue tendency to suggest a decision on an improper basis.").

The photograph provided material evidence disproving self-defense and demonstrating malice and guilt on the part of Manning. As a result, the probative value was very high in comparison to the prejudicial nature of the single photograph. The photograph served to corroborate significant testimony regarding the investigation as well. As a result, the trial court properly admitted the photograph into evidence.

**III. Did the Court of Appeals err in affirming the trial court's denial of Manning's motion to suppress evidence seized as a result of the search warrant obtained in this case?**

The Court of Appeals correctly found the trial court did not err in denying Manning's motion to suppress evidence seized as a result of a search warrant obtained in this case. Manning contends the affiant on the search warrant lacked personal knowledge and could not support issuance of the warrant and the affidavit lacks probable cause.<sup>4</sup> The search warrant was validly obtained and executed. The affidavit provided probable cause for the warrant. Even if the affidavit was not sufficient, the good faith exception applies. Finally, Manning's consent allowed the search of the house.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, . . . ." U.S. Const. amend. IV. In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, . . . ." S.C. Const. art. I. § 10.

A search warrant may issue only upon a finding of probable cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999); State v. King, 349 S.C. 142, 150, 561 S.E.2d 640, 644 (Ct. App. 2002). "An appellate court reviewing the decision to issue a search warrant should decide whether the magistrate had a substantial basis for concluding probable cause existed." State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437,

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<sup>4</sup> Manning appears to have abandoned his claim that the search warrant was obtained and executed without proper jurisdiction by officers from Charlotte Mecklenburg Police Department.

441 (Ct. App. 2003); see also, State v. Baccus, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006) (“The duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed.”).

### **Affiant’s Knowledge**

Manning contends the trial court erred in failing to suppress the search warrant and evidence obtained through the search warrant because the affiant did not have personal knowledge of what was contained in the affidavit and did not establish the credibility of the source of his information. The affiant was briefed on the case and the details of the investigation to the time of obtaining the search warrant. Further, all information came from law enforcement agencies, including Charlotte Mecklenburg Police Department (CMPD) and Richland County Sheriff’s Department (RCSD), so establishing separate credibility was not an issue as it is with an informant.

It is well established in this state that magistrates may issue a search warrant based upon hearsay information that is not a result of direct personal observations of the affiant. See State v. Dunbar, 361 S.C. 240, 249, 603 S.E.2d 615, 620 (Ct. App. 2004). This is especially true when the hearsay is obtained from other law enforcement officers. The United States Supreme Court has sanctioned hearsay as a basis for a search warrant when the information is obtained from other law enforcement officers. In U.S. v. Ventresca, 380 U.S. 102, 108, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965), the Court found: “Observations of fellow officers . . . engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number.” As the Fourth Circuit has stated: “It is well settled that an affiant, seeking a search warrant, can base his

information on information in turn supplied him, as this information, by fellow officers.”  
U.S. v. Welebir, 498 F.2d 346, 350 n.2 (4<sup>th</sup> Cir. 1974).

Finally, the use of information from other officers was sanctioned by this Court in State v. Sullivan, 267 S.C. 610, 614-15, 230 S.E.2d 621, 623 (1976). The Court specifically held: “The propriety of an affiant attesting to information supplied him by a fellow officer has been judicially endorsed.” Id. at 615, 230 S.E.2d at 623.

In the instant case, Investigator Robinson testified he participated in numerous meetings and discussions with officers from CMPD. In the meetings he learned the facts found in the investigation and was involved in determining the direction of the investigation in Richland County. (T.520-523; R. 520-523). Investigator Robinson then detailed the information including the details of CMPD’s investigation to Investigator Croxton who was the affiant for the search warrant. (T.522; R. 522).

Investigator Croxton testified he received a call from Investigator Robinson asking him to obtain a search warrant. Investigator Croxton testified Investigator Robinson advised him of the investigation and of what was found to date by CMPD and RCSD. (T.509-510; R. 509-510). Investigator Croxton testified the affidavit and information provided to the magistrate was consistent with what he was told by Investigator Robinson. (T.510; R. 510).

The information contained in the affidavit indicates much of the information contained in the affidavit was developed through investigation by CMPD. The information was provided to Investigators Robinson and Croxton. The affidavit, by virtue of specifically indicating the information was coming from CMPD to RCSD, provided sufficient indicia of reliability and satisfied the requirement for the magistrate to

find probable cause based on the hearsay contained therein. Accordingly, the fact CMPD provided information upon which the affidavit was based is insufficient to justify suppressing the search warrant and the evidence found as a result of its execution.

### **Probable Cause**

Manning contends the affidavit fails to provide sufficient evidence for the magistrate to have determined probable cause existed. The magistrate had a substantial basis for finding probable cause existed to issue the warrant and as a result the trial court properly refused to suppress the warrant or evidence obtained during the execution of the warrant.

The United States Supreme Court adopted a “totality-of-the-circumstances” test for probable cause determinations:

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.

Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983) (emphasis added); see also, State v. Keith, 356 S.C. 219, 223-224, 588 S.E.2d 145, 147 (Ct. App. 2003).

A reviewing court should give great deference to a magistrate’s determination of probable cause. State v. Rutledge, 373 S.C. 312, 316, 644 S.E.2d 789, 791 (Ct. App. 2007) (citing State v. Davis, 354 S.C. 348, 355, 580 S.E.2d 778, 782 (Ct. App. 2003)). The United States Supreme Court has expressly recognized “affidavits in support of search warrants should not be subject to “[t]echnical requirements of elaborate

specificity,’ and that a magistrate has the ‘authority . . . to draw such reasonable inferences as he will from the material supplied to him by applicants for a warrant.’” U.S. v. Bynum, 293 F.3d 192, 197 (4th Cir. 2002) (quoting Gates, 462 U.S. at 235, 240). “The term ‘probable cause’ does not import absolute certainty.” Dupree, 354 S.C. at 683, 583 S.E.2d at 441(internal citations omitted). “Rather, in determining whether a search warrant should be issued, magistrates are concerned with probabilities and not certainties.” Id.

The affidavit in the current case contains sufficient evidence from which the magistrate could determine probable cause existed to justify the search of Manning’s home. First, the affidavit issued on May 22 established the victim had been missing and not heard from since May 5, a period of 17 day. It stated she had not reported to work which was “uncharacteristic” for her. (Affidavit of Search Warrant part of Defendant’s Exhibit 1; R. 18-19).

Next, the affidavit indicated the victim was last known to be “enroute [sic] to South Carolina to end a relationship with a boyfriend known only as, ‘Teddy.’” It was determined through telephone records she called Theodore Roosevelt Manning IV. Manning was interviewed by CMPD detectives and confirmed he and the victim had sex on the day of her disappearance and that she had been to his house. Finally, the last indication of her cell phone being used was near Eastover on May 6. This evidence, taken as a whole, indicates the victim visited Manning, and Manning was likely the last person to see the victim. Further, the affidavit establishes the victim’s bank cards were used multiple times to access her account. Black males were observed completing the transactions. (Affidavit to Search Warrant; R. 18-19).

The evidence links Manning to the victim and it establishes murder as the probable crime. The victim was uncharacteristically missing for 17 days, and her cell phone had not been active for 16 days. These facts indicated she was more than a missing person, and instead was deceased. Manning's statements to the CMPD officers established the victim was at his house around the time of her disappearance. This fact likely establishes him as the last person to see her alive. Finally, at least one black male is seen on a bank camera attempting to access the victim's bank accounts after the day she traveled to see "Teddy" to break off a relationship with him. (Affidavit of Search Warrant in Defendant's Exhibit 1; R. 18-19).

These facts, when considered in the totality of the circumstances, establish probable cause to believe Manning, as the rejected boyfriend, murdered the victim and evidence would be found in her last known location. Accordingly, given the totality of the circumstances, there is evidence in the record to support the magistrate's conclusion probable cause existed to issue the warrant.

### **Good Faith Exception**

Even assuming for the sake of argument the affidavit was insufficient to establish probable cause, the circuit court would have properly admitted the evidence under the Leon good faith exception.

The United States Supreme Court in Leon articulates that a court should not suppress the fruits of a search conducted under the authority of a warrant, even a "subsequently invalidated" warrant, unless "a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." Leon, 468 U.S. at 922 n. 23. The Supreme Court explained the limited circumstances in which an officer

could not be found to have acted with “objective reasonableness,” thereby excluding application of this good faith exception:

- (1) “the magistrate ... 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 so “wholly abandoned” his detached and neutral “judicial role”;
- (3) “an affidavit [is] so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable”; or
- (4) “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.”

U.S. v. Bynum, 293 F.3d 192, 195 (4th Cir. 2002) (citing Leon, 468 U.S. at 923) (internal quotation marks omitted).

The Fourth Circuit Court of Appeals explained:

“Substantial basis” provides the measure for determination of whether probable cause exists in the first instance. If a lack of a substantial basis also prevented application of the Leon objective good faith exception, the exception would be devoid of substance. In fact, Leon states that the third circumstance prevents a finding of objective good faith only when an officer’s affidavit is “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” This is a less demanding showing than the “substantial basis” threshold required to prove the existence of probable cause in the first place.

Bynum, 293 F.3d at 195 (internal citations omitted) (emphasis added).

The South Carolina Supreme Court explained the application of the Leon good faith exception: “Suppression is appropriate in only a few situations, including when an affidavit is ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’ State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801,

804 (1997) (emphasis added) (quoting Leon, 468 U.S. at 923). “[W]hen an officer acting in objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope, a reviewing court should not order a suppression of the evidence based on a lack of probable cause.” Id. at 292, 494 S.E.2d at 803-804.

In this case, even if the affidavit does not provide a substantial basis for determining the existence of probable cause, it is not “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” The affidavit cannot be described as so bare-boned that the magistrate’s issuance of the warrant could be viewed as a mere rubber-stamping of the warrant application, nor is the affidavit so lacking in indicia of probable cause that it was unreasonable for the officers or the magistrate to conclude that probable cause existed. Accordingly, even if the affidavit is insufficient in some manner, this Court should affirm the admission of the evidence under the additional sustaining ground of the Leon good faith exception.

### **Consent**

Finally, as an additional sustaining ground, the trial court could have correctly determined the evidence was admissible because Manning consented to the search of his residence. Manning contends he could not have consented to the search because the officers had a warrant. However, the evidence indicated Manning provided his consent prior to learning of the warrant so his consent would still be valid, knowing, and voluntary.

The Fourth Amendment generally prohibits the warrantless entry of a person's home, whether to make an arrest or to search for specific objects. The prohibition does not apply, however, to situations in which voluntary consent has been obtained, either from the individual whose property is

searched, or from a third party who possesses common authority over the premises.

Illinois v. Rodriguez, 497 U.S. 177, 181 (1990) (internal citations omitted). South Carolina also recognizes consent as an exception to the requirement of a warrant to conduct a search. See State v. Dupree, 319 S.C. 454, 456–57, 462 S.E.2d 279, 281 (1995).

The United States Supreme Court has also explained the requirement for consent:

We hold only that when the subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied. Voluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent.

Schneckloth v. Bustamonte, 412 U.S. 218, 249 (1973). The Court has also explained consent cannot be given when an individual is merely following an official directive or submitting to **known** authority. The Court stated:

When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given. This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority. A search conducted in reliance upon a warrant cannot later be justified on the basis of consent if it turns out that the warrant was invalid. The result can be no different when it turns out that the State does not even attempt to rely upon the validity of the warrant, or fails to show that there was, in fact, any warrant at all.

When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation

is instinct with coercion—albeit colorably lawful coercion.  
Where there is coercion there cannot be consent.

Bumper v. North Carolina, 391 U.S. 543; 548-550 (1968) (footnotes omitted).

This case is clearly distinguishable from Bumper. All the officers present at the search indicated consent was obtained from Manning **prior** to his being informed of the existence of the warrant. Detective Hopkins from CMPD testified she explained they had a warrant after Manning already consented to the search of his residence. (T.478; 486; R. 478; 486). She explained Manning came to the door and she and Detective Martin from CMPD talked with him about wishing to search the residence to rule him out as a suspect. She indicated they talked about how the search would be conducted and he had a lot of questions but consented to them searching. (T.480-481; R. 480-481). She testified as part of his statement given that day, Manning admitted he was voluntarily talking with the officers and he had previously consented to the search of his residence. (T.482-483; R. 482-483).

Detective Martin testified he and Detective Hopkins went to Manning's home to speak with him. He testified one of the reasons for going was to obtain Manning's consent to search his residence. Detective Martin testified Manning gave his consent to search. (T.223-224; R. 223-224). Detective Martin explained Manning gave consent and was later informed the officers had the search warrant. (T.232-233; 239-240; R. 232-233; 239-240).

The testimony in this case establishes Manning gave his consent prior to being informed of the search warrant. As a result, the situation in this case is not "instinct with coercion" and is not mere "acquiescence to a claim of lawful authority." Manning's

consent, unlike that in Bumper, was voluntary and was given without coercion, or any other basis for invalidating the consent.

The trial court properly found the search warrant was validly obtained and supported by probable cause. He properly admitted all evidence obtained through the search warrant. Further, the officers acted with good faith. Finally, it is clear Manning consented to the search prior to acquiescing to the warrant, and as a result, there was no need to obtain the warrant for the search. Under the facts of this case, the search of Manning's home and, therefore, the admission of all evidence resulting from the search were admissible based on the validly obtained and executed search warrant as well as Manning's voluntary consent to allow the search.

**CONCLUSION**

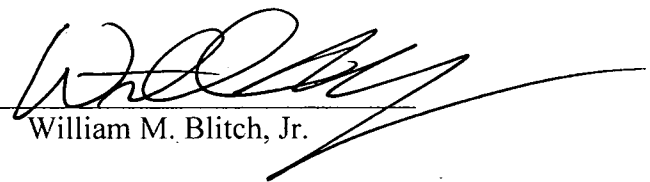
For all of the foregoing reasons, it is respectfully submitted that this Court should deny Manning's Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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ATTORNEYS FOR  
RESPONDENT/PETITIONER

March 9, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals  
Appeal From Richland County  
Hon. G. Thomas Cooper, Jr., Circuit Court Judge  
Appellate Case Tracking No. 2015-000204

The State,

Respondent/Petitioner,

v.

Theodore Manning,

Petitioner/Respondent.

**PROOF OF SERVICE**

I, Sally Ellison, certify that I have served the within Return to Petition For Writ of Certiorari to the Court of Appeals by depositing copies of the same in the United States mail, postage prepaid, addressed to:

E. Fielding Pringle, Chief Public Defender  
Richland County Public Defender's Office  
1701 Main Street  
Columbia, South Carolina 29201

Luke A. Shealey, Esquire  
The Shealey Law Firm, LLC  
2008 Lincoln Street  
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.  
This 9<sup>th</sup> day of March, 2015.



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ALAN WILSON  
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RECEIVED

MAR - 9 2015

S.C. Supreme Court

March 9, 2015

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Columbia, South Carolina 29201

Luke A. Shealey, Esquire  
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Re: State v. Theodore Manning  
Appellate Case Tracking No. 2015-000204

Dear Ms. Pringle and Mr. Shealey,

I am enclosing a copy of the Return to Petition for Writ of Certiorari to the Court of Appeals in the above-referenced case for each of you. The Return will be filed with the South Carolina Supreme Court today.

If you have any questions concerning this matter, please contact me.

Sincerely,

William M. Blich, Jr.  
Assistant Attorney General  
S.C. Bar No. 15608

cc: ✓ Honorable Daniel E. Shearouse (original and six enclosed)  
Honorable Jenny A. Kitchings  
Victim Services (enclosure)