STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Court of Appeals
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2015-000365

THE STATE,

Respondent,

v.

ANTONIO MILLER,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General
S.C. Bar No. 11973
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

J. STROM THURMOND
Solicitor, Second Judicial Circuit
P. O. Drawer 3368
Aiken, SC 29802
ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

PETITIONER'S QUESTION PRESENTED

I. Whether the Court of Appeals erred by affirming the refusal to suppress evidence located within the North Main Street home where the seized cocaine and guns were located in automobiles in the yard of that address, the search warrant affidavit did not provide the Magistrate with a reliable sufficient nexus to provide probable cause that this was petitioner's home, and if it was his house, that he was secreting drugs, weapons, or the fruits of the Aiken murder within that home?

STATEMENT OF THE CASE

Petitioner, Antonio Miller, murdered Fred Tucker on September 15, 2008 in Aiken County. Miller also burglarized Tucker's home and kidnapped the victim. Miller was arrested the same day. The Aiken County grand jury indicted him for murder, burglary 1st degree, kidnapping, and possession of a weapon during a violent crime. (*2010-GS-02-1526-27, 1529 & 1578*). He was represented by Ola A. Johnson, Esquire. Miller proceeded to a jury trial from February 14-17, 2012 before Judge Doyet A. Early, III., after which he was found guilty as charged. He was sentenced to life for murder *and* for burglary 1st degree, 30 years for kidnapping, and 5 years on the gun charge. (R. 1-118, 129-223, 229-87, 289-333, 338-404, 408-94, 582, 501-02). Miller appealed his convictions and sentences to the Court of Appeals which affirmed his convictions but vacated the kidnapping sentence. State v. Miller, 2014-UP-409 (Ct. App. filed November 19, 2014). The petition for rehearing was denied. The petition for certiorari followed.

RESPONDENT'S STATEMENT OF FACTS

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 from Aiken. At the time of the victim's murder, Cummings' mother still lived in Aiken. Several months before the victim's murder, Miller asked Cummings about whether they should rob the victim who lived in Aiken County, not far from Cummings' mother, and was known to be a drug dealer. Miller believed the victim would have money and/or drugs in his home. After months of discussion, Miller decided to go forward with the robbery. 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).[1]

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.[2] They 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 car 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 victim's front door, receiving no answer. Miller then stated out loud they were not returning to Columbia empty handed; so, the same 3 men got out of the *green Taurus* as earlier at the cemetery. Cummings drove to a nearby residence, pulled around back, and acted 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

---

[1]The persons who accompanied Miller and Cummings to case the victim's home differed on the dates approaching the date of the crimes. Some of those individuals were not involved in the commission of the substantive crimes. On the morning of the crimes, it was determined Marquis Redfield and Ronald Grooms would be the individuals who assisted Miller in committing the burglary and armed robbery. (R. 297-355).

[2]The *green Taurus* had been rented several weeks earlier by Miller's wife in Columbia, and Miller had physically gone to the rental car agency and made the last several rental payments. (R.162-84).

ransacked the home looking for drugs or money. As they were leaving, Miller fired 1 shot into the victim's side. The men then fled out the back door. A neighbor of the victim saw 3 men, dressed in black, flee 1 at a time from the victim's back door. The victim, who remained bound and nude, was able to crawl or drag himself to his front door, where he died from blood loss due to the gunshot wound to his side. Miller, Redfield, and Grooms ran from the victim's home in the direction of where Cummings had parked the *Taurus*. They eventually found Cummings, who had pulled off from the neighbor's residence, and the 3 men got into the *Taurus*. Miller told Cummings to "drive." The 4 men then fled to Columbia. (R. 129-95, 256-88, 297-355, 356-404, 408-508).[3]

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

At about the same time as the 3 men were getting out of the *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 the *green Taurus* rented by Miller and his wife had not been returned in a timely fashion, 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 car rental agency, and after receiving this information issued a nationwide BOLO for the car. Ham was also informed by the

---

3 When Aiken police responded to the victim's home, they found a back door window had been shot out and a bullet had traveled through the home lodging in a front wall. They also found a trial of blood from the kitchen, where the victim had been shot, to the front door where they found the deceased victim nude and on his stomach with his hands and ankles still bound. 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 stove surface unit 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 bullet fragments in the home. (R. 129-43, 356-404, 408-56).

manager the *Taurus* was equipped with a "GPS" and a kill switch, which allowed the rental agency to determine the car's location at any time and to prevent the car from being started wherever located. Ham was also informed Miller had made the last several payments on the *car* 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/disfigured arm. When Ham was informed the agency's computer showed *the Taurus* was located in Aiken County at that time [the time of the murder], 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 men had returned to Columbia in the *green Taurus*, Day checked the rental agency's computer and found the car was in Columbia at 5520 North Main Street and activated the kill switch. Day then called Deputy Ham and informed him of where the *Taurus* was located. (R. 162-88, 195-212).

At 1:30 p.m., Richland County and Columbia police responded to 5520 North Main Street in an attempt to locate the *Taurus* for Mr. Day. Upon arriving at a location next to the residence, police saw the *green Taurus* parked behind 5520 N. Main. Deputy Ham then drove to Miller's residence, and a red Taurus driven by Cummings turned into the residence' driveway in front of the Deputy. Ham then 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 N. Main as if whoever parked the car was trying to hide it from view of those passing by on N. Main *or* had backed the car up to the porch to load or unload it. Standing on that 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 man. All denied being Miller. Miller stated his name was "Eric Hughey," gave a date of birth, but could not provide an i.d. Deputy Ham noticed "Hughey" fit the description of 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. He was arrested and placed in a patrol car. Miller went to the red Taurus, entered it, and was told by police to get out of that car. When an officer searched that car, he found 2 pistols, 1 under the front seat, and one 1 in the back floor board where Miller had just been. Miller's wife then arrived. Miller tried to signal his wife not to tell police who he was. She eventually told police Miller's identity. Cummings told police the gun under the front seat of his car was his, but the other gun 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 agency and had not been timely returned. In the passenger door compartment, they found a large bag of crack cocaine [22 grams]. Miller admitted the crack was his, and the gun in the red Taurus back floorboard was his. Redfield also volunteered and removed a bag of cocaine from his pocket. Miller was arrested for trafficking more than 10 grams for the crack found in the door of the *green Taurus* and for possession of a pistol for the gun found in the back of the red Taurus. 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 him if he knew Cummings, and whether Cummings was a large, medium, or small drug dealer. The informant told Brown he did not know Cummings, but asked Brown if he had heard 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, 195-287, Court's Ex. 1 [Search Warrant]).

Investigator Crane brought the magistrate approved search warrant to Miller's residence for Richland County to execute. Upon searching the residence pursuant to the warrant, Richland County investigators found another bag of crack cocaine in a chest of drawers in Miller's bedroom and 3 more guns [pistols] in the top of Miller's bedroom closet. Police confiscated 2 sets of scales, a razor blade, and a bullet proof vest from 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 the top of a Richland or Columbia patrol car at the scene. The Aiken County homicide investigators arrived at the 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 on the patrol car and noticed a gold and black pair appeared to have blood on them. They also noticed 1 of the guns retrieved from the residence by Richland County appeared to have blood on it.[4] Miller admitted to Richland authorities the drugs and guns found in his room were his and told police where each item was. (R. 37-69, 195-212, 212-23, 224-87, 290-97).[5]

Police interviewed Cummings and Redfield, 1 of whom admitted the crack cocaine found in the *green Taurus* came from the victim's home 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 the day of the victim's murder. In the video, Miller could be seen wearing the pair of *counterfeit tennis shoes* confiscated from his residence by Richland County which contained what appeared to be blood on them. (R. 327-32).

Subsequent forensic testing revealed the 9mm pistol found in Miller's closet fired a bullet and a shell casing recovered from the crime scene in Aiken, and the .40 caliber pistol found in Miller's closet fired additional shell casings found in the crime scene. Forensic testing also

---

[4]Both 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).

[5]A copy of the Return to the warrant was provided to Miller's wife, Deidre King Miller. In addition to the guns and tennis shoes, it reflects police seized another bag of white powder 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).

revealed human blood containing DNA consistent with the victim's on 1 of the pistols belonging to Miller, and the tennis shoes recovered from Miller's residence contained human blood on them with the victim's DNA. Police also searched the trunk of the *green Taurus* before returning it to the rental agency and found 2 *black* shirts, 1 of which contained the victim's DNA. (R. 456-508).

At trial, Manager Day testified Miller's wife initially rented the *green Taurus*; however, Miller made the last several payments, in person, including the last, made the Wednesday before the car was reported missing. The manager authenticated the rental contract showing the residence of Diedre King Miller was *5520 North Main Street, Columbia.*[6] Also introduced through the manager was a computer print-out showing the location of the *Taurus* at different times during the day of the murder. (R. 162-89). Investigator J.D. Sanders, who was familiar with various areas in Aiken, including the victim's home, introduced an exhibit showing the locations of the *Taurus* the morning of the murder, including that *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).

Cummings testified to the planning and execution of the crimes against the victim. Cummings testified: 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 home because Grooms or Redfield told Miller they could not leave the victim 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 him with it. One of the co-defendants threw the screwdriver out of the *car* as the men fled from the crime scene. (R. 297-355).[7]

---

6 A copy of the car rental contract was also found in the *green Taurus* when inventoried by police.

7 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. (R. 430). Police also fingerprinted several CD's found inside *the green Taurus* and

Cummings mother also testified that in 2008 she lived at 121 Gregg Avenue in Aiken. She met Miller several times before the weekend before the victim's murder and saw Miller the Saturday before the victim was murdered when he came to her home with her son, along with Ron Goode [sic] and Marquis Redfield in the *green Ford Taurus* and stayed there from the Saturday before the victim was murdered until the Monday of the murder. When she came in from work at 7:30 a.m. [after working the 3rd shift] the morning of the victim's murder, the 4 men were sleeping in her living room, and she went to bed, which was her 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 *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). The GPS records from the car rental agency did not show the car was in Charleston on the day of the victim's murder, as Miller claimed, but only in Aiken, and then returned to Columbia. (R. 162-89, 227-28, 431-34).

ARGUMENT

Judge Early did not err in denying the motion to suppress the fruits of the search of Miller's home conducted with a search warrant; and even assuming *arguendo* he did err, its admission was harmless given the overwhelming evidence of Miller's guilt independent of the fruits of the search of Miller's residence.

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, i.e. the murder weapons and the *counterfeit* tennis shoes containing the victim's D.N.A. Judge Early conducted an *in camera* hearing regarding the circumstances of the issuance of the search warrant and whether it was supported by probable

---

prints matching those of Miller were found on the CD's located on the passenger seat of *the car*. (R. 392).

cause. (R. 1-31, 33-118, Court's Ex. 1 [Search Warrant]). 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 verses Dupree, State verses Bellamy, State verses Keith, and respectfully deny [the motion to suppress]. (R. 117-18).

Standard of Review
(General Appellate Standard)

The conduct of a criminal trial is left largely to the discretion of the trial judge, and this Court will not interfere unless the rights of the appellant were prejudiced. State v. Bridges, 278 S.C. 447, 298 S.E.2d 212 (1982). This Court reviews errors of law only and is bound by the trial court's factual determinations unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id.

Standard of Review
(Circuit Court's Affirmation of Probable Cause)

The standard of review of Fourth Amendment search and seizure issues on appeal is deferential and limited to determining whether any evidence supports the trial court's finding, with the appellate court only being able to reverse where there is clear error. State v. Morris, ___ S.E.2d ___, 2015 WL 340805 (2015); State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013). 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. Taylor; State v. Brown, 401 S.C. 82, 736 S.E.2d 263 (2012).[8]

8 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

Standard of Review
(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); State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997). 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. Kinloch; State v. Herring, 387 S.C. 201, 212, 692 S.E.2d 490, 495 (2009). In making such a decision, an appellate court must consider the totality of the circumstances. Jones (under the this test, a reviewing court considers all circumstances, including status, basis of knowledge, and veracity of informant, when determining whether or not probable cause existed to issue a search warrant).[9]

"A search warrant may issue only upon a finding of probable cause." Weston, 329 S.C. at

---

"entails an inquiry into the totality of the circumstances" and an appellate court must affirm if there is "any evidence" to support the ruling). 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, 572 S.E.2d 456 (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). *But see* State v. Kinlock, 410 S.C. 612, 767 S.E.2d 253 (2014).

9 The Fourth 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, 480, 746 S.E.2d 41, 49, (2013), *quoting* New York v. Class, 475 U.S. 106, 116 (1986). The touchstone of an analysis under the Fourth 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). "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.

290, 494 S.E.2d at 802, *citing* State v. Owen, 275 S.C. 586, 274 S.E.2d 510 (1981).[10] 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 him 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. The duty of a reviewing court is simply to ensure the magistrate had a substantial basis for concluding 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).

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). It 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).[11] This Court has adopted the "totality of

---

10 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."

11 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

the circumstances" test 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; State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990)(adopting Gates).[12]

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 (a search warrant can be supported by information given to the affiant by other officers); *see* Jones v. Unites States, 362 U.S. 257 (1960)[13] Probable cause for a search warrant can be supported by information given to the affiant by other officers. United States v. Ventresca, 380 U.S. 102, 108 (1965); United States v. Weiebir, 498 F.2d 346 (4th Cir. 1974).[14] It is not unusual for an affidavit of a police officer to contain hearsay information from another, which, in turn, is based on other information gathered by that person. Sullivan, 267 S.C. at 615, 230 S.E.2d at 623.

---

prudent men, not legal technicians, act. Brinegar v. United States, 338 U.S. 160, 169 (1949); State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995).

12 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 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.

13 *Overruled on other grounds* United States v. Salvucci, 448 U.S. 83 (1980).

14 Observations by fellow police 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. Pearson, 356 N.C. 22, 566 S.E.2d 50 (2002); State v. Hage, 568 N.W.2d 741 (N.D. 1997). *See also* United States v. Morales, 238 F.3d 952 (8th Cir. 2001); State v. Stickelman, 299 N.W.2d 520 (Neb. 1980); Iddings v. State, 772 N.E.2d 1006 (Ind. Ct. App. 2002).

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.[15] 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 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 Fourth 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, 241, 182 S.E.2d 291, 294 (1971).

The Search Warrant Affidavit

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

Personally appeared before me, one R. Crane who, being duly sworn, says that there

15 "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, *citing* Sullivan; Dupree, 354 S.C. at 683, 583 S.E.2d at 441.

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 curtiledge.

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). The Affidavit was sworn to by the Affiant, before the Magistrate. 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, Petitioner's wife, rented the vehicle [*the green Taurus]* police were looking for. The Affidavit sets forth the vehicle was not returned on time to the car rental agency. The Affidavit sets forth the rental car agency that owned the vehicle reported it was in the area of *5520 North Main Street.* The Affidavit sets forth when police arrived there, Miller and the vehicle 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 vehicle [*the green Taurus*], not his wife, and Miller was in possession and control of the vehicle. Further, the Affidavit sets forth that 22 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 that 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 vehicle 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* Fisher, 702 F.2d at 378). The Magistrate could find from these facts Miller was trafficking in crack cocaine 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 Miller's wife, Diedre Miller, who rented *the green Taurus,* then appeared at the residence, further establishing her, her husband's, and the vehicle'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.[16] *See* Dupree, 354 S.C. at 681, 583 S.E.2d at 439-440 (evidence of a sale of drugs

[16]The record shows what the affiant averred would be found in the residence and vehicles in the curtilage was exactly what police found. In the residence, police found more crack cocaine, cash, a razor blade, 2

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, 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 PWID crack), and the experience of the officer involved, the magistrate made a practical, common sense decision **a fair probability** existed additional evidence regarding Miller's drug dealing activities could be found in the residence. *See* State v. Keith, 356 S.C. 219, 588 S.E.2d 145 (Ct. App. 2003)(where defendant' s residence was under surveillance, and officers stopped his auto after leaving his home for an expired tag, being driven by him, and found a distinctive marijuana bud and a pipe containing marijuana residue in the auto, such evidence standing alone established sufficient probable cause for issuance of search warrant for defendant's home, even though the remainder of 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 his arrest for distribution of cocaine and he 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.

---

sets of scales, a bullet proof vest, the rental agreement for 5520 North Main Street signed by Miller and 3 firearms. Also, police had already found 2 pistols in the red Taurus.

312, 644 S.E.2d 789 (Ct. App. 2007)(where narcotics detective, who was search warrant affiant, received information from an anonymous informant defendant and 2 other subjects were selling marijuana from address, the information defendant lived at the address in question which was correct, made it more likely than not the information concerning illegal activity was also correct; further, the search was based on additional information officers found marijuana in trash can in front of the residence and 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 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."); 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. State v. Livingston, 282 S.C. 1, 6, 317 S.E.2d, 129, 132 (1984).

Miller further argues 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 therein. As shown, this contention has no basis in the law. 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. Ventresca, 380 U.S. at 108 (an affiant seeking a search warrant can base his information on information in turn supplied to him by fellow officers); Sullivan, 267 S.C. at 614-15, 230 S.E.2d at

623 (same); *see* Jones, 362 U.S. 257. Further, this was not a search warrant based a confidential informant or even a concerned citizen but on information gathered by police officers in the midst of a criminal investigation who gathered facts they directly observed. Reliability or corroboration was not necessary. *See* Gates. Our 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; Taylor (recognizing well-settled principle courts must give due weight to common sense judgments reached by officers in light of their experience and training. Id., *citing* Perkins, 363 F.3d at 321. There is no merit to this argument.[17]

Miller further argues this was merely a fishing expedition by Aiken County authorities to find evidence related to the homicide. The record below showed the opposite. Both Richland and Aiken County investigators testified Aiken investigators arrived 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, the shoes were *counterfeit*. (R. 84-86). 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 in plain view that are clearly contraband). Aiken County first saw the guns and shoes after they had been

17 Richland County and Columbia Police were working together in a joint criminal investigation. Investigators at the scene, *2250 N. Main St.*, reported to Inv. Crane information and facts developed by 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. There was no confidential informant involved in these facts. There was no requirement Crane corroborate information provided by other officers in the affidavit. The salient facts in the affidavit were provided by police 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; State v. Sullivan.

removed from the residence by Richland County and placed on a car. This argument has no merit.

The Exclusionary Rule Would Not Apply

Further, the exclusionary rule would not apply under the facts of this case. Because exclusion exacts a heavy toll on both the judicial system and society at large, the Supreme Court and this Court have stated the deterrence benefits of suppression, which must be appreciable, must outweigh its heavy costs to society for exclusion to be deemed appropriate. Davis v. United States, 131 S.Ct. 2419 (2011); United States v. Herring, 555 U.S. 135 (2009); State v. Brown.[18] 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, 547 S.E.2d 497 (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.[19] 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, officers had probable cause to search the residence, and obtained a search warrant before entering the same. "In the case of drug dealers, evidence is likely to be found where the dealers live."

---

18 *See* Weston, 329 S.C. at 293, 494 S.E.2d at 804); State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471, 473 (1987), *citing* Sachs, 264 S.C. 556, 566, 216 S.E.2d at 509, 514; State v. Jenkins, 398 S.C. 215. 229, 727 S.E.2d 761 (Ct. App. 2012); State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324 (Ct. App. 2011).

19 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).

Scott.[20] 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; United States v. Leon, 468 U.S. 897 (1984); 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).[21] 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.[22] This Court has also recognized a good faith exception to evidence seized pursuant to a search warrant defective under S.C. Code Ann. Section 17-13-140, if

---

20 Richland County and Columbia police 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 gun 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 Miller and his wife's. At most, officers either failed to communicate to Investigator Crane the rental agreement indicated the residence belonged to Miller and his wife, or Crane forgot to include this fact in the affidavit. The application of the exclusionary rule would make no sense in this case and evidence should not be excluded. Davis, *supra*; Brown, *supra*.

21 The exclusionary rule does not ban evidence obtained by officers acting in objectively reasonable reliance on a search warrant issued by a neutral magistrate but later found to be invalid for lack of probable cause. Herring v. United States, 555 U.S. at 142; Leon; Williams, 548 F.3d at 317 (same).

22 An officer's reliance on a warrant would not qualify as "objectively reasonable" in 4 circumstances: (1) Where the judge in issuing the warrant was misled by information in an affidavit 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 - - the executing officers cannot reasonably presume it to be valid. Williams, 548 F.3d at 317. *Accord* Weston; State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990).

the officers made a good faith attempt to comply with the affidavit requirement under that section. State v. Herring; [23]Sachs. State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009), *citing* McKnight. In this 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 the same searched Miller's residence for drugs and items related to drug trafficking or distribution and recovered the guns and the counterfeit shoes. The affidavit was not based on an informant's information, but on facts developed in a joint investigation by Richland and Columbia Police.[24]

The 4th Circuit has rejected arguments similar to those made by Miller, 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) defendant resided in targeted premises and (2) their grounds for believing 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 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).[25] Here, this was Miller's residence, and he was arrested immediately adjacent to the

---

23 In Herring this Court stated: "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." 387 S.C. at 215.

24 On this record, none of the 4 circumstances barring 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 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 home. *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).

25 *See* Williams, (applying good faith); United States v. Lelor, 996 F.2d 1578 (4th Cir. 1993).

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

Further, 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 alleged warrant, 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 could conclude the murder weapons and the tennis shoes would have inevitably been discovered. Nix v. Williams, 467 U.S. 431 (1984).[26] *See* Herring v. United States (No evidence Coffey County police committed any misconduct but mistakenly relied in good faith on neighboring county's database, mistakenly showing outstanding warrant for defendant's arrest; therefore exclusionary rule was not applicable to fruits of his arrest). The evidence would have been inevitably discovered by Aiken County's reasonable reliance on Richland County's communicating a 2nd search warrant had been obtained.

Harmless Error

Regardless, even if Judge Early erred in admitting the fruits of the search of Miller's home, it was harmless because the evidence of Miller's guilt was overwhelming independent of this

26 United States v. Allen, 159 F.3d 832 (4th Cir. 1998); State v. Brown (recognizing inevitable discovery); State v. Jenkins, 398 S.C. 215, 727 S.E.2d 761 (Ct. App. 2012)(remanding to determine if applicable); State v. Bruce, 402 S.C. 621, 741 S.E.2d 590 (Ct. App. 2013)(recognizing exception but finding not met); Spears (evidence may be admitted if the state can prove the evidence would have been obtained inevitably.).

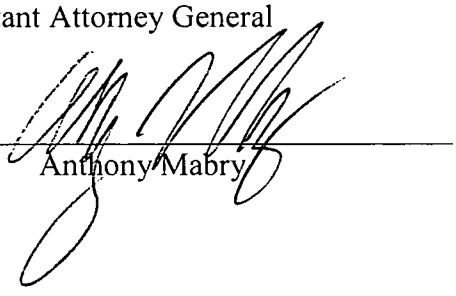
evidence. State v. Herring, *supra* (even if search of defendant's home was illegal any error was harmless given overwhelming evidence of defendant's guilt independent that seized in his home); *Citing* State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007); State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991)(holding improperly admitted evidence harmless error given overwhelming evidence of guilt). *See also* State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006).[27]

CONCLUSION

For the above stated reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

J. ANTHONY MABRY
Assistant Attorney General

By: 
Anthony Mabry

March 27, 2015

27 At trial, Cummings' mother established Miller's presence in Aiken the weekend before and the morning of the murder. Cummings explained to the jury how the plan to rob the victim unfolded over several months and what occurred immediately before the murder. A neighbor of the victim also testified 3 men in black fled from the victim's home immediately after the murder and ran in the direction of where Cummings was waiting. Another neighbor corroborated Cummings by informing the jury at the time the gunshots were fired at the victim's home, Cummings was at her residence with her looking at a car she had for sale, and then Cummings drove off in the green car and appeared to be waiting for someone. Cummings also testified to what occurred immediately after the murder, Miller's admission to torturing and murdering the victim, the flight from the scene, and what occurred after the 4 men returned to Columbia. The State also introduced the GPS tracking system information which established the *green Taurus* was near the victim's residence around 6:00 a.m., near Cummings' mother's residence around 9:00 a.m., and near the victim's residence at the time of the murder. And, it established the car had not been to Charleston, but only to Aiken and then returned to Columbia eventually ending up at Miller's residence. The surveillance video from *Books A Million* corroborated Cummings and proved Miller was with Cummings shortly after the murder but with time to have driven from Aiken. Cummings testimony was further corroborated by what occurred at Miller's residence including Miller's admission he had been in the car earlier in the morning, but falsely claimed he was in Charleston, not Aiken, and the recovery of the stolen drugs, and the 2 black t-shirts in the rental car, 1 of which contained the victim's D.N.A. Even if the admission of the fruits of the search was erroneous, its admission was harmless given the other overwhelming evidence of Miller's guilt.

CERTIFICATE OF SERVICE

I, Anthony Mabry, hereby certify that I have served the ***Return to Petition for Writ of Certiorari*** in the foregoing action by depositing copies in the InterAgency Mail to Robert M. Dudek, Chief Attorney, Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, SC 29201 this 27th day of March, 2015.

ANTHONY MABRY
Assistant Attorney General

ALAN WILSON
ATTORNEY GENERAL

March 27, 2015

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: The State v. Antonio Miller
Appellate Case No. 2015-000365

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-captioned matter for filing in your office. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Anthony Mabry
Assistant Attorney General

/lbb
Enclosures

cc: Robert M. Dudek, Esquire
J. Strom Thurmond, Solicitor
S.C. Court of Appeals
Trisha Allen, Victims Assistance