STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger M. Young, Sr., Circuit Court Judge
Appellate Case No. 2014-001051

THE STATE,

Respondent,

vs.

JOSEPH TODD ROWLAND,

Appellant.

INITIAL BRIEF OF RESPONDENT

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I.

Appellant's issue regarding the admission of the incriminating evidence discovered during the search of his residence was not properly preserved for appellate review because defense counsel only objected to the admission of that evidence through a pre-trial suppression motion, did not renew that motion or raise any other objections when the incriminating evidence was offered into evidence, and expressly waived any objection he had to the incriminating evidence through his statements to the trial judge during trial. However, regardless of any issue preservation concerns, the trial judge committed no error in denying defense counsel's suppression motion because the information contained in the search warrant affidavit provided the magistrate who issued the search warrant with a substantial basis upon with he could conclude there was a fair probability drugs and other incriminating evidence would be found at Appellant's residence.

II.

The trial judge properly denied Appellant's directed verdict motion as to the trafficking in cocaine and possession of marijuana with intent to distribute charges because the evidence and testimony presented during trial, including the evidence and testimony demonstrating the drugs and other incriminating evidence were discovered in Appellant's bedroom after Appellant was observed participating in a hand-to-hand drug transaction, established Appellant's guilt for each and every element of the indicted offenses and supported a rational and logical conclusion Appellant was in constructive possession of the marijuana and cocaine located in his bedroom.

STATEMENT OF THE CASE

On June 3, 2011, Appellant Joseph Todd Rowland was arrested following a narcotics investigation that led to the discovery of cocaine and marijuana in his residence. In April of 2012, Appellant was indicted by the Charleston County Grand Jury for one count of trafficking in cocaine, one count of possession of marijuana with intent to distribute, one count of possession of a firearm during the commission of a violent crime, and one count of unlawful possession of a stolen pistol. On May 12, 2014, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Roger M. Young, Sr., circuit court judge, presiding. During trial, the trial judge granted a directed verdict as to the unlawful possession of a stolen pistol charge. Thereafter, at the conclusion of trial, the jury convicted Appellant of the three remaining indicted offenses. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty years for trafficking in cocaine, five years for possession of marijuana with intent to distribute, and five years for possession of a firearm during the commission of a violent crime. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On the afternoon of June 3, 2011, Sergeant Brandon Ratliffe and Investigator Keith Sumner, who were narcotics investigators with the Charleston Police Department, began conducting surveillance of the home of Appellant Joseph Todd Rowland, which was located at 31 Woodleaf Court in Charleston, South Carolina, after the officers received several complaints about drug activity occurring at that location over the course of the preceding year. (Tr. pp. 45-47; pp. 51-52; pp. 55-57; pp. 118-120). During their surveillance, the officers observed Appellant exit his residence and get into a vehicle parked outside.[1] (Tr. p. 57). As they continued to watch, a bicyclist rode up, got into the vehicle with Appellant, exited the vehicle after only a minute, and swiftly left the area. (Tr. p. 57). Shortly thereafter, the officers observed a blue car pull up and park in front of 31 Woodleaf Court. (Tr. p. 47; p. 57). Immediately after that, Appellant, who had gone back inside his home after meeting with the bicyclist, exited the residence, walked directly over to the passenger side of the blue car, reached in through the car's window, and conducted what appeared to be a hand-to-hand drug transaction with the driver. (Tr. p. 47; p. 57; p. 120). Appellant then hastily returned to his residence, and the driver of the blue car drove away. (Tr. p. 47; p. 57).

After the blue car left Appellant's residence, Sergeant Ratliffe and Investigator Sumner asked nearby officers waiting directly outside of Appellant's neighborhood to stop that vehicle based on the drug transaction they had just observed. (Tr. p. 48; p. 58). In response, the nearby officers quickly stopped the blue car and, during the ensuing stop, located marijuana and cocaine in the driver's possession. (Tr. pp. 48-49; p. 58). Sergeant

[1] While conducting the surveillance, the officers were positioned approximately fifty yards away from Appellant's residence with an unobstructed view and were using binoculars. (Tr. p. 47; p. 54).

Ratliffe and Investigator Sumner then responded to the scene of the stop and spoke with the driver, who confirmed he had just bought the drugs from "Blow," who the officers knew to be Appellant, at Appellant's address. (Tr. pp. 48-49; pp. 58-59).

Thereafter, Sergeant Ratliffe rapidly prepared a search warrant affidavit and appeared before a magistrate to obtain a search warrant for Appellant's residence. (Tr. p. 50; pp. 59-60; p. 63). The affidavit Sergeant Ratliffe presented to the magistrate specifically identified the premises to be searched as the home located at 31 Woodleaf Court and contained the following information about the investigation:

> Over the past 6 months, the Charleston Police Department Special Investigations Unit has received numerous complaints of narcotics activity from citizens, in reference to illegal narcotics being sold from 31 Woodleaf Ct. SIU has been conducting a[n] investigation on this residence and [Appellant] for more th[a]n a year for narcotic activity.
>
> In response, within the past 72 hours, the CPD Special Investigations Unit . . . established a fixed surveillance location in which Inv. Ratliffe and Inv. Sumner observed [Appellant], a registered resident at this location, conduct a hand to hand narcotics transaction. At approx 1440hrs. [Appellant] was observed exiting the residence via the front door and walk[ing] up to a vehicle which parked in front of the residence. [Appellant] approached the door of the vehicle and conducted a hand to hand transaction with a person inside the vehicle [with a specified license tag number]. Within 1 minute of making contact with the driver of the vehicle [Appellant] then walked back into the above residence. The vehicle [with the specified license tag number] then immediately left the area. Inv. Ratliffe and Inv. Sumner then corroborate this by having a CPD patrol unit conduct a traffic stop on the above vehicle [with the specified license tag number] and locate an amount of illegal narcotics. The driver of the vehicle then wrote a statement confirming the above mentioned transaction of illegal narcotics.
>
> Your affiant, Investigator C. Ratliffe, is a sworn police officer with the Charleston Police Department and has been for over 7 years with 1 year experience conducting narcotics investigation with the CPD Narcotics Unit. He has attended several narcotics investigation schools and seminars over the course of [his] career taught by the Drug Enforcement Administration, the South Carolina Criminal Justice Academy, and the Multi-jurisdictional Counterdrug Task Force Training. He has executed countless search warrants and has been involved in the arrest of over

> approximately 500 subjects for illegal drug offenses. Furthermore, he has conducted surveillance on suspected drug dealers, testified in court, managed informants, and interviewed numerous suspects and witnesses for drug related crimes.
>
> Based on Inv. Ratliffe's experience and the current investigation, there is probable cause to believe that illegal narcotics, and/or the proceeds of, are being stored at [an entirely unrelated Charleston address].

(Tr. p. 60; Search Warrant and Affidavit). Additionally, Sergeant Ratliffe provided supplemental information to the magistrate by informing him about his knowledge of and history with Appellant and about the tips he had received regarding Appellant in the past. (Tr. pp. 50-51; p. 61). The magistrate then issued a search warrant authorizing a search of Appellant's home. (Tr. p. 66; p. 120; Search Warrant and Affidavit).

Shortly thereafter, officers from the Charleston Police Department executed the search warrant at 31 Woodleaf Court while Appellant and his parents, who also lived in the home, were detained outside. (Tr. p. 52; pp. 66-68; p. 120; pp. 122-123). During the officers' search of the residence, they located pictures of Appellant with one of his children, letters addressed to Appellant at 31 Woodleaf Court, a notebook containing a ledger, multiple cellular phones, and a box of plastics bags in one of the residence's bedrooms. (Tr. pp. 125-127; p. 175; p. 186). Additionally, in that same bedroom, the officers found a digital scale on top of a dresser along with a bag of cocaine and two more digital scales hidden in the dresser's drawers. (Tr. pp. 126-127; pp. 175-176). Likewise, the officers located a .45-caliber pistol and a book entitled "Criminal Procedure Guide for Drug Agents" on a bookshelf near the bed and a plastic container containing individually-packaged quantities of marijuana near a television. (Tr. p. 109; pp. 127-128; pp. 185-186). Furthermore, the officers found a brown bag behind the bedroom door with two plastic bags of cocaine inside. (Tr. p. 128; pp. 185-187). One of those plastic

bags contained thirty-four grams of cocaine, and the other plastic bag contained twenty-one smaller bags that each contained roughly a gram of cocaine. (Tr. pp. 185-187).

Based on their discoveries during the search, the officers secured the incriminating evidence, and Appellant was placed under arrest. (Tr. p. 101; p. 103; p. 105; p. 110; pp. 176-177; pp. 187-188). Appellant was then searched incident to his arrest, and the officers discovered over $1,500 in cash in Appellant's pockets.[2] (Tr. p. 129). Thereafter, the drugs discovered during the search were transported to the Charleston Police Department's crime lab and analyzed by Elizabeth Mitchell, an expert in drug analysis. (Tr. pp. 156-159). Based on her analysis, Mitchell determined the drugs found in Appellant's residence during the search consisted of a total of 9.19 grams of marijuana and 57.45 grams of cocaine. (Tr. pp. 171-172).

Subsequently, Appellant was indicted for multiple offenses, including trafficking in cocaine and possession of marijuana with intent to distribute, and he proceeded to trial. (Tr. pp. 16-18; Indictments). At the outset of trial, Appellant personally argued to the trial judge his right to a speedy trial had been violated because his case was three years old and the solicitor had failed to comply with the proper procedure for bringing the case to trial. (Tr. pp. 6-7). In response, the trial judge asked Appellant how he had been prejudiced by the delays associated with his case, and Appellant asserted he was prejudiced because he spent two years in jail without bond and because one of the police officers involved in his case had been demoted subsequent to his arrest, which he contended rendered the officer's testimony against him unreliable.[3] (Tr. pp. 7-8). After

[2] During trial, Sergeant Ratliffe noted Appellant had fifty twenty-dollar bills in his pockets, which he stated was significant because narcotics were typically sold in amounts of ten to twenty dollars. (Tr. p. 129).

[3] Later during trial, the solicitor explained to the trial judge Appellant had been arrested in June of 2011, was released on bond in August of 2011, was rearrested for unrelated offenses in October of 2011, was

that, the trial judge informed Appellant he had made a record in regard to the issue and noted Appellant was only entitled to make motions through his defense counsel. (Tr. p. 8). The trial judge then continued forward with the proceedings. (Tr. p. 8).

Thereafter, defense counsel preliminarily moved for the evidence discovered in Appellant's case to be suppressed, and the trial judge conducted an in limine hearing on that motion. (Tr. pp. 8-9; p. 45). During the hearing, Investigator Sumner detailed his role in the investigation and confirmed he witnessed what appeared to be a hand-to-hand drug transaction between Appellant and another individual outside of the residence located at 31 Woodleaf Court shortly before they obtained a search warrant for that address. (Tr. pp. 45-54). Likewise, Sergeant Ratliffe testified about the tips he received in regard to Appellant's activities and the surveillance of Appellant's residence, confirmed he observed a hand-to-hand drug transaction involving Appellant, and noted he prepared the search warrant affidavit used to obtain the search warrant for Appellant's home. (Tr. pp. 55-60). Regarding that affidavit, the officer stated it contained accurate information about his investigation and correctly identified 31 Woodleaf Court as the location to be searched. (Tr. p. 60; p. 69). However, Sergeant Ratliffe noted the affidavit mistakenly listed an entirely unrelated address a single time due to his use of a search warrant template when preparing the affidavit. (Tr. pp. 60-61; p. 69).

At the conclusion of the in limine hearing, defense counsel asked the trial judge to suppress the evidence discovered during the search of Appellant's home. (Tr. pp. 70-71).

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again released on bond in November of 2011, and finally had his bond revoked in March of 2012 based on his arrest for the unrelated offenses. (Tr. p. 10; pp. 277-278). Additionally, the solicitor noted Appellant's case was originally scheduled for trial in May of 2013 but did not go forward because Appellant attempted to fire the attorney representing him at that time directly before the trial began. (Tr. p. 10). Furthermore, the solicitor noted Appellant had a total of three different attorneys representing him at various points in the proceedings before his latest defense counsel, who was the fourth defense attorney involved in the case, began representing him in November of 2013. (Tr. pp. 10-11).

In seeking that relief, defense counsel noted the search warrant affidavit contained at least one error, asserted there was nothing inherently suspicious about riding a bicycle, and contended the "only real substance" to the officers' surveillance was their observation of what appeared to be a hand-to-hand drug transaction between Appellant and another individual. (Tr. pp. 70-71). In rebuttal, the solicitor asserted the search warrant affidavit correctly identified the address of Appellant's residence numerous times and only incorrectly listed an unrelated address a single time due to a scrivener's error. (Tr. pp. 71-72). The solicitor further argued the information contained in the affidavit, including the information about the observed hand-to-hand drug transaction, established a probable cause basis supporting the issuance of the search warrant. (Tr. pp. 72-73). After listening to the solicitor's argument on the issue, defense counsel asserted to the trial judge he hated "to have to agree with my colleague[.]" (Tr. p. 73). The trial judge then denied the in limine suppression motion, explaining:

> Based on the totality of the circumstances, it's clear that the reference to the [entirely unrelated Charleston address] was a scrivener's error. The correct address, 31 Woodleaf [Court], is referenced several times in here, and that was obviously just a scrivener's error.
>
> The totality of the circumstances is that they had a reason to be observing [Appellant], the defendant's house. They witnessed – or they – based on tips that he had been drug dealing, et cetera, that's what got them to observe that house. They then witnessed at least one transaction, possibly two, on drugs. One was the bicycle, but, more importantly, the one was the one with the car.
>
> They then stopped that person in driving the car who said yes, I bought drugs just a short time before from the defendant. That gets the search warrant and gives them information that is sufficient to rise to the level of probable cause to issue the warrant, so the search warrant is valid.

(Tr. pp. 74-75).

Following the trial judge's ruling, the trial proceeded forward, and Detective Jennifer Habbestad of the Charleston Police Department testified first for the prosecution. (Tr. p. 91). During her testimony, Detective Habbestad indicated she was involved in the search of Appellant's home on June 3, 2011, received the items discovered during the search from other officers, packaged the items appropriately into bags, transported those items to a secure evidence locker once the search was completed, and secured them in the locker. (Tr. pp. 91-96; p. 101; p. 103; p. 105).

Thereafter, Randall Unterbrink, a crime scene technician with the Charleston Police Department, testified for the State and stated he recovered the gun found during the search of the residence. (Tr. pp. 106-108). The gun was then admitted into evidence without objection after Unterbrink confirmed it was the same gun he recovered during the search and was in substantially unchanged condition. (Tr. pp. 109-110).

Following Unterbrink's testimony, Sergeant Ratliffe testified about the investigation into Appellant's drug activity and the search of Appellant's home. (Tr. pp. 119-120). Specifically, Sergeant Ratliffe stated he observed a hand-to-hand drug transaction involving Appellant on June 3, 2011, and obtained a search warrant for Appellant's home. (Tr. pp. 119-120; p. 122; p. 149). After that, Sergeant Ratliffe indicated he and other officers searched the residence and located cocaine, marijuana, a stolen gun, multiple digital scales, and other items, including mail addressed to Appellant, in Appellant's upstairs bedroom.[4] (Tr. pp. 124-128; p. 137; p. 142).

Subsequent to that testimony, Mitchell testified about her analysis of the drugs recovered during the search of Appellant's residence and stated she received the drugs

[4] During his testimony, Sergeant Ratliffe indicated Appellant's parents' bedroom was located downstairs in the home while Appellant's bedroom was located upstairs. (Tr. p. 125; p. 143). In identifying the upstairs bedroom as Appellant's bedroom, Sergeant Ratliffe noted it contained multiple items linked to Appellant, including a bank statement addressed to Appellant at 31 Woodleaf Court. (Tr. pp. 125-126; p. 142).

from an evidence technician at the Charleston Police Department before conducting her analysis. (Tr. pp. 156-157; p. 160). Mitchell then presented the results of her analysis to the jury and confirmed the substances recovered during the search were cocaine and marijuana. (Tr. pp. 171-172).

Following Mitchell's testimony, both Investigator Sumner and Officer William Olson of the Charleston Police Department testified about their roles in the search of Appellant's home and the items they found during the search, which included the bags of marijuana and cocaine. (Tr. pp. 174-176; pp. 185-187). Additionally, both officers confirmed they collected the evidence they discovered during the search and turned it over to Detective Habbestad. (Tr. pp. 176-177; pp. 187-188). During Officer Olson's testimony, the solicitor moved to admit into evidence the digital scales, ledger, plastic bags, and letters discovered by the officer, and that evidence was admitted without objection after the officer confirmed those items were the same items he collected and were all in substantially unchanged condition. (Tr. pp. 177-178). Likewise, during Investigator Sumner's testimony, the solicitor moved to admit into evidence the criminal procedure book the officer discovered in Appellant's bedroom, and the book was admitted without objection after the officer confirmed it was the same book he found and was in substantially unchanged condition. (Tr. p. 188).

Subsequently, Linda Wilson, an evidence technician at the Charleston Police Department, testified she personally retrieved the evidence Detective Habbestad secured in the evidence locker following the search of Appellant's residence and then secured it in an evidence control room. (Tr. pp. 193-194). After that, Wilson indicated the drugs remained secured until they were retrieved by Mitchell for analysis. (Tr. p. 195). The solicitor then moved for the cocaine and marijuana to be admitted into evidence, and

defense counsel responded: "Your Honor, they've linked the chain." (Tr. p. 195). The trial judge then admitted the drugs into evidence without objection. (Tr. p. 195).

Thereafter, the State rested its case, and defense counsel moved for a directed verdict on all of the charges. (Tr. pp. 215-216). In support of that motion, defense counsel asserted the solicitor failed to "make out a prima facie case" in regard to the drug charges, the solicitor only presented evidence of constructive possession at best in regard to the possession of a weapon during the commission of a violent crime charge, and the solicitor presented no evidence establishing the knowledge required to prove Appellant's guilt for the possession of a stolen pistol charge. (Tr. p. 216). In rebuttal, the solicitor argued the evidence presented during trial was sufficient to establish Appellant's guilt for each of the indicted offenses. (Tr. pp. 217-218). After considering those arguments, the trial judge granted the directed verdict motion on the stolen pistol charge and denied the motion on the remaining charges. (Tr. p. 219).

Subsequently, at the conclusion of trial, the jury convicted Appellant of trafficking in cocaine, possession of marijuana with intent to distribute, and possession of a firearm during the commission of a violent crime. (Tr. pp. 265-266). Following the verdict, Appellant personally raised a number of complaints to the trial judge and argued the chain of custody presented in his case was insufficient because no sworn affidavits or physical proof of the chain of custody had been introduced. (Tr. pp. 271-274). The trial judge then sentenced Appellant to an aggregate term of imprisonment of twenty years. (Tr. pp. 280-281).

ARGUMENT

I.

Appellant's issue regarding the admission of the incriminating evidence discovered during the search of his residence was not properly preserved for appellate review because defense counsel only objected to the admission of that evidence through a pre-trial suppression motion, did not renew that motion or raise any other objections when the incriminating evidence was offered into evidence, and expressly waived any objection he had to the incriminating evidence through his statements to the trial judge during trial. However, regardless of any issue preservation concerns, the trial judge committed no error in denying defense counsel's suppression motion because the information contained in the search warrant affidavit provided the magistrate who issued the search warrant with a substantial basis upon with he could conclude there was a fair probability drugs and other incriminating evidence would be found at Appellant's residence.

Appellant contends the trial judge erred in admitting the marijuana, cocaine, and other incriminating evidence discovered after officers searched his residence. In support of that contention, Appellant maintains the search warrant authorizing the search of his residence was invalid because the information contained in the accompanying affidavit was not sufficient to provide the magistrate with a substantial basis upon which he could find the existence of probable cause. Initially, Appellant's issue with the admission of the incriminating evidence was not properly preserved for appellate review. Critically, in Appellant's case, defense counsel moved for the evidence to be suppressed during a pre-trial hearing, and the trial judge issued an in limine ruling denying that motion. Thereafter, during trial, the incriminating evidence was not offered into evidence directly after the trial judge issued his preliminary ruling, and, when it was introduced, defense counsel did not renew his pre-trial motion or raise any other objections to that evidence even though he was required to do so in order to preserve an objection to the evidence's admission under the circumstances. Instead, at that time, defense counsel expressly waived his earlier objection by stating he had no objection to the majority of the evidence

and by assuring the trial judge the solicitor had completed the steps necessary to admit the marijuana and cocaine. As a result, Appellant's issue with the admission of the incriminating evidence cannot properly be raised or addressed on appeal. However, even if the issue was somehow preserved for appellate review, the trial judge properly denied Appellant's suppression motion because Sergeant Ratliffe's search warrant affidavit contained sufficient information to establish a substantial basis upon which the magistrate could conclude probable cause existed for a search of Appellant's home. Accordingly, Appellant's convictions should be affirmed.

A. Issue Preservation

In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary, subject to change based on developments during trial, and not a final ruling on the admissibility of the challenged evidence. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999); see State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996)

("A ruling in limine is not a final ruling on the admissibility of evidence."). As a result, even if a pre-trial objection has been raised, a defendant must object at the time evidence is introduced during trial in order to preserve an issue with the evidence's admission for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993); see State v. Griffin, 339 S.C. 74, 77, 528 S.E.2d 668, 669 (2000) ("[A]n in limine ruling is not final and does not preserve the issue for appeal."). "However, where a judge makes a ruling on the admission of evidence on the record **immediately prior to** the introduction of the evidence in question, the aggrieved party does not need to renew the objection." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (emphasis added). "This exception is based on the fact that when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection." State v. Wiles, 383 S.C. 151, 156-157, 679 S.E.2d 172, 175 (2009).

In the case sub judice, defense counsel raised a pre-trial motion in limine seeking for the evidence discovered in the search of Appellant's home to be suppressed, and the trial judge issued a preliminary ruling denying Appellant's motion at the conclusion of a pre-trial hearing on the matter. Thereafter, during trial, the solicitor moved to admit the cocaine, marijuana, and other incriminating evidence discovered during the search of Appellant's home through various witnesses – none of whom were the first to testify. Each time the solicitor did so, defense counsel did **not** renew his pre-trial suppression motion and did **not** raise any other objections to the admission of that evidence. Instead, defense counsel directly stated he had no objection to the majority of the evidence and assured the trial judge the solicitor had satisfied the chain of custody requirements in regard to the marijuana and cocaine when the drugs were offered into evidence. Thus, in Appellant's case, the only objection raised to the admission of the incriminating evidence

discovered during the search of Appellant's residence was raised through a pre-trial motion in limine, the trial judge only ruled on the admissibility of that evidence in a preliminary fashion at the conclusion of a pre-trial in limine hearing, and defense counsel expressly waived any objection he had to the evidence when it was introduced during trial.

Because the trial judge's in limine ruling did not constitute a final ruling on the admissibility of the incriminating evidence and the incriminating evidence was not admitted immediately after the trial judge issued his preliminary ruling on the matter, defense counsel was required to renew his pre-trial suppression motion and contemporaneously object to the admission of the incriminating evidence during trial in order to preserve any issue with the admission of that evidence for appellate review. See State v. Atieh, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012) ("A ruling in limine is not final; unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review."). However, defense counsel did **not** do so and, instead, either directly indicated he had no objection to the evidence or assured the trial judge the solicitor had completed the steps necessary to admit the evidence.[5] See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole

[5] Notably, defense counsel appeared to concede during the in limine hearing his suppression motion was meritless by instructing the trial judge he hated to agree with the solicitor after the solicitor identified the reasons she believed defense counsel's motion should be denied, which likely explains why defense counsel elected not to renew his suppression motion during trial. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (recognizing an issue conceded during trial cannot subsequently be argued on appeal).

objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."); see also State v. Stokes, 339 S.C. 154, 163, 528 S.E.2d 430, 434 (Ct. App. 2000) ("[T]he record reflects that this issue was only raised and ruled on in limine. Stokes never raised the issue again at any time during the trial. Merely raising an argument in limine does not preserve the issue for appellate review."). Accordingly, Appellant's issue in regard to the admission of the marijuana, cocaine, and other incriminating evidence was not properly preserved for appellate review and cannot properly be raised or addressed on appeal. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"). Appellant's convictions should be affirmed.

B. Propriety of the Search Warrant

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). Thus, only unreasonable searches and seizures are prohibited. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]").

Generally, in order for a search to be reasonable under the Fourth Amendment, a law enforcement officer must obtain a search warrant prior to conducting the search. Robinson v. State, 407 S.C. 169, 185, 754 S.E.2d 862, 870 (2014). In South Carolina, an

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

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

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

In deciding whether to issue a search warrant, the issuing judge must "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Gates, 462 U.S. at 238. In making the probable cause determination, "[issuing judges] are concerned with probabilities and not certainties." State v. Sullivan, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976). Furthermore, the issuing judge must view the warrant affidavit in a common-sense and

realistic fashion and give consideration to the fact such affidavits are typically prepared by non-lawyers in the haste of criminal investigations. State v. Arnold, 319 S.C. 256, 260, 460 S.E.2d 403, 405 (Ct. App. 1995); see United States v. Ventresca, 380 U.S. 102, 108 (1965) ("Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place [when evaluating the sufficiency of search warrant affidavits].").

When reviewing a decision to issue a search warrant, a reviewing court should decide whether the issuing judge had a substantial basis for concluding probable cause existed. State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). Applying the same standard as the issuing judge, the court should base its determination on the totality of circumstances and afford great deference to the issuing judge's probable cause determination. State v. Keith, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003). Significantly, "[s]earches based on warrants will be given judicial deference to the extent that an otherwise marginal search may be justified if it meets a realistic standard of probable cause." Dupree, 354 S.C. at 683-684, 583 S.E.2d at 441; see Ventresca, 380 U.S. at 106 ("[I]n a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall."). "Suppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (quoting United States v. Leon, 468 U.S. 897, 923 (1984)).

Recently, in State v. Kinloch, 410 S.C. 612, 613-614, 767 S.E.2d 153, 153-154 (2014), the South Carolina Supreme Court considered whether the information contained in a search warrant affidavit was sufficient to establish a probable cause basis for the

search of a residence. In that case, the officer who sought the search warrant included the following details in the search warrant affidavit: (1) officers conducted surveillance of a particular residence after receiving numerous tips about drug transactions taking place at that location; (2) during their surveillance, officers saw a man in a red shirt leave the residence and engage in hand-to-hand transactions with other individuals while a man in a black jacket stood nearby; (3) officers observed the man in the red shirt count money after the transactions; (4) later on, officers saw the man in the black jacket approach another individual and exchange a plastic bag for money; and (5) after that, officers approached the person who made the exchange with the man in the black jacket and recovered a plastic bag containing heroin when it was dropped to the ground. Id. at 614-615, 767 S.E.2d at 154. Based on those facts, the magistrate issued a search warrant for the targeted residence, drugs and other incriminating evidence were discovered during the ensuing search, and Kinloch subsequently successfully moved to suppress that evidence during trial. Id. Thereafter, the State appealed, and the Court of Appeals affirmed the trial judge's ruling. Id. at 614, 767 S.E.2d at 155. Ultimately though, the Supreme Court granted certiorari and reversed. Id. at 618, 767 S.E.2d at 156. In reversing, the Supreme Court concluded the search warrant affidavit provided the magistrate with a substantial basis for reaching his probable cause determination based on the information contained within it regarding the numerous tips received by the officers and the officers' subsequent observation of "seemingly drug-related behavior." Id. at 618, 767 S.E.2d at 156.

In the case at bar, the information included in the search warrant affidavit established the officers – much like the officers in Kinloch – had received numerous tips in regard to drug activity taking place at 31 Woodleaf Court. See id. (finding the receipt of numerous tips regarding drug activity to be relevant under the totality of the

circumstances towards establishing a probable cause basis for a search). Additionally, the information in the search warrant affidavit established the officers – much like the officers in Kinloch – corroborated those tips by conducting surveillance and observing Appellant engaged in what appeared to be drug transactions to the trained and skilled officers. See id. (finding a substantial basis for probable cause existed where the officers observed "**seemingly** drug-related behavior" (emphasis added)); State v. Adams, 291 S.C. 132, 134, 352 S.E.2d 483, 485 (1987) ("[T]he evidence of a contemporaneous drug deal cited in the warrant's supporting affidavit was a sufficient basis for the determination of probable cause under the totality of the circumstances."); see also United States v. Cortez, 449 U.S. 411, 418 (1981) ("[A] trained officer draws inferences and makes deductions – inferences and deductions that might well elude an untrained person."). Furthermore, the information in the search warrant affidavit established the officers stopped the driver of a vehicle who had just engaged in a hand-to-hand transaction with Appellant, discovered marijuana and cocaine during that stop, and were informed by the driver he had just purchased the drugs from Appellant at 31 Woodleaf Court.[6] See Keith, 356 S.C. at 224, 588 S.E.2d at 147 ("We find the portion of the

[6] In arguing the trial judge erred in denying the suppression motion, Appellant contends the discovery of drugs in the possession of the driver who had just been observed engaging in the transaction with Appellant did not establish probable cause because the officers did not search the driver and his vehicle before the driver met with Appellant. Appellant further contends the driver's incriminating admission to the officers did not establish probable cause because no evidence was presented in regard to the driver's reliability. Contrary to Appellant's contentions, the officers' failure to search the driver and his vehicle before the driver met with Appellant did not eliminate the probable cause basis for the search because the probable cause standard does **not** require officers to exclude every possibility a suspect could be engaged in innocent behavior before they can obtain a search warrant. See Gates, 462 U.S. at 243 (finding probable cause existed under the totality of the circumstances even though those circumstances were as suggestive "of an ordinary vacation trip" as they were of Gates' involvement in drug activity); see also Texas v. Brown, 460 U.S. 730, 741 (1983) (instructing probable cause is a flexible, common-sense standard); Ventresca, 380 U.S. at 107 (instructing probable cause "means less than evidence which would justify condemnation" (citation and internal quotations omitted)). Likewise, the driver's admission he had just purchased the marijuana and cocaine from Appellant was particularly significant towards establishing probable cause – and was inherently reliable – in light of the fact that admission was decidedly against the driver's penal interests since it constituted powerful evidence he was guilty of illegally possessing marijuana and cocaine.

affidavit related to the investigative surveillance, stop, and seizure of illegal drugs from Keith's car standing along sets forth sufficient information to support a probable cause finding in this case."); see also State v. Jenkins, 790 So. 2d 626, 627 (La. 2001) (holding a search warrant authorizing a search of a residence was properly issued and supported by probable cause where the investigating officers included information in the search warrant affidavit establishing they observed what appeared to be a hand-to-hand transaction take place on the porch of the targeted residence, they stopped a person involved in the transaction after that person left the residence, and they seized a plastic bag containing vegetable matter from that person).

Based on the information contained in the search warrant affidavit, the magistrate reasonably concluded – and had a substantial basis to conclude – there was a fair probability drugs and other incriminating evidence would be found at Appellant's residence. See Kinloch, 410 S.C. at 618, 767 S.E.2d at 156 ("We find based on these facts that the Court of Appeals erred in affirming the circuit court's suppression ruling as the magistrate had a substantial basis for reaching his probable cause determination."); cf. United States v. Rose, 321 F. App'x 324, 326-327 (4th Cir. 2009) (finding probable cause for the issuance of a search warrant existed where officers conducted surveillance at the targeted residence, observed traffic consistent with drug activity there, stopped an individual who left the residence shortly after arriving, and were advised by the individual he had just purchased crack cocaine from the residence). As a result, the magistrate was justified in issuing the search warrant for Appellant's residence, and the

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See United States v. Harris, 403 U.S. 573, 583-584 (1971) ("People do not lightly admit to a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility – sufficient at least to support a finding of probable cause to search."); see also State v. Driggers, 322 S.C. 506, 514, 473 S.E.2d 57, 61 (Ct. App. 1996) ("Klepp-Egge . . . acted against his best interests by providing the police with information that possibly linked him to the crime.").

trial judge correctly denied Appellant's motion to suppress the evidence discovered during the search of the residence.[7] See Dupree, 354 S.C. at 691, 593 S.E.2d at 445 ("The magistrate had ample probable cause to issue the warrant. Given all the circumstances set forth in the affidavit, there was a 'fair probability' that crack cocaine would be found in the mobile home."); see also Gates, 462 U.S. at 238 ("The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."). Appellant's convictions should be affirmed.

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[7] In seeking a reversal of his convictions, Appellant contends on appeal the warrant was invalid due to the fact an unrelated address was referenced a single time in the search warrant affidavit. In making that assertion, Appellant maintains – without explanation – the single reference to the unrelated address was "more" than a scrivener's error. To the contrary, the trial judge correctly concluded the single reference to the unrelated address was merely a scrivener's error in light of Sergeant Ratliffe's testimony about how the error occurred coupled with the fact 31 Woodleaf Court was the focus of the officers' investigation and was correctly identified as the location to be searched numerous times in the search warrant and the accompanying affidavit. See United States v. Moore, 119 F. App'x 438, 440 (4th Cir. 2004) ("In this case, it was clear to the officers that they were to search Moore's residence and that he resided at 401A Meredith Avenue. The application for the search warrant and the affidavit in support of the application inadvertently mentioned 401A Mendota Avenue, a similar sounding address; however, the majority of the references in these documents were to the correct address: 401A Meredith Avenue. Furthermore, the warrant clearly concerned the illegal activities of a particular individual, Moore, and the officers knew that he resided at 401A Meredith Avenue and had been investigating Moore's drug dealing at that address. We find that under the facts of this case, the technical error in the search warrant did not invalidate the warrant or the evidence seized when the warrant was executed."); see also United States v. Snyder, 471 F. App'x 884, 885 (11th Cir. 2012) ("Although the affidavit mentioned '1942 Queen City Avenue' once, it provided detailed directions to 1924 Queen City Avenue and provided a clear description of that house, including that it had the number '1924' by the front door. Construing these facts in the light most favorable to the government, we see no clear error in the district court's determination that the affidavit's singular reference to '1942 Queen City Avenue' was a typographical error."). Because the inclusion of the unrelated address was merely a scrivener's error, the search warrant issued in Appellant's case was in no way rendered invalid by that error. See State v. Herring, 387 S.C. 201, 213, 693 S.E.2d 490, 496 (2009) (holding a search warrant was valid despite the fact the search warrant affidavit contained a mistake in the search warrant affidavit); State v. Shupper, 263 S.C. 53, 57-58, 207 S.E.2d 799, 800-801 (1974) (finding a mere typographical error in a search warrant did not affect the validity of that warrant); see also United States v. Waker, 534 F.3d 168, 172 (2nd Cir. 2008) ("[W]e join with our sister Circuits in finding that minor clerical errors are not fatal to a search warrant.").

II.

The trial judge properly denied Appellant's directed verdict motion as to the trafficking in cocaine and possession of marijuana with intent to distribute charges because the evidence and testimony presented during trial, including the evidence and testimony demonstrating the drugs and other incriminating evidence were discovered in Appellant's bedroom after Appellant was observed participating in a hand-to-hand drug transaction, established Appellant's guilt for each and every element of the indicted offenses and supported a rational and logical conclusion Appellant was in constructive possession of the marijuana and cocaine located in his bedroom.

Appellant contends the trial judge erred in denying his directed verdict motion as to the trafficking in cocaine and possession of marijuana with intent to distribute charges. In support of that contention, Appellant maintains the evidence was insufficient to establish he had either knowledge of the drugs or the right to exercise dominion and control over the drugs and, thus, could not support a conclusion he was in constructive possession of the cocaine and marijuana found during the search of the residence located at 31 Woodleaf Court. To the contrary, evidence and testimony was presented during Appellant's trial establishing marijuana, over fifty grams of cocaine, and other incriminating items were located in Appellant's bedroom in close proximity to Appellant's personal effects after Appellant, who was found to be in possession of a substantial quantity of cash at the time of his arrest, was observed participating in a hand-to-hand drug transaction. Based on that evidence and testimony, the jury could logically and rationally find Appellant was in constructive possession of the marijuana and cocaine located during the search and was guilty of each and every element of the indicted offenses. Accordingly, the trial judge properly denied Appellant's directed verdict motion and submitted the case to the jury. Appellant's convictions should be affirmed.

When presented with a motion for a directed verdict, the trial judge is concerned with the existence or non-existence of evidence and not its weight. State v. Long, 325

S.C. 59, 62, 480 S.E.2d 62, 63 (1997). The trial judge should deny a directed verdict motion and submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."); see also Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("The jury question of whether there was proof of guilt beyond a reasonable doubt presents a stricter or higher standard than the trial court's consideration of whether there is sufficient evidence to allow the jury to find guilt beyond a reasonable doubt, and it rests in the unreviewable ratiocinations of twelve reasonable persons whose deliberations are protected by the highest security.").

On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is **any** direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "[U]nless

there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see also Crawford, 375 F.2d at 334 ("It is not the function of appellate judges to weight the evidence and decided that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders.").

In South Carolina, it is illegal to traffic in cocaine and possess marijuana with intent to distribute. See S.C. Code Ann. § 44-53-370 (prohibiting – amongst other things – possession of marijuana with intent to distribute and trafficking in cocaine). In order to prove a defendant's guilt for trafficking in cocaine and possession of marijuana with intent to distribute, it is generally necessary for the State to present evidence establishing the defendant was in possession of those controlled substances and had knowledge of the presence of the drugs.[8] Id.; see State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980) ("[A] conviction for possession of contraband drugs requires proof of actual or constructive possession, coupled with knowledge of the presence of the drugs.")

Possession of a controlled substance may be either actual or constructive. State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995). An individual is considered to be in actual possession of drugs "when the drugs are found to be in the

[8] Although proof of possession is generally necessary to establish a defendant's guilt for a drug offense in South Carolina, trafficking can be established **without** proof of possession through evidence establishing the defendant provided financial assistance to another or otherwise aided, abetted, attempted, or conspired "to sell, manufacture, cultivate, deliver, purchase, or bring into this State" a certain amount of a controlled substance. See S.C. Code Ann. § 44-53-370(e) (explaining "[a]ny person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of" certain amounts of controlled substances is guilty of trafficking in a controlled substance).

actual physical custody of the person." Id. Likewise, an individual is considered to be in constructive possession of drugs "when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs were found." Id.; see State v. Stanley, 365 S.C. 24, 42-43, 615 S.E.2d 455, 464 (Ct. App. 2005) ("In order to prove constructive possession, the State must show the defendant had dominion and control, or the right to exercise dominion and control, over either the drugs or the premises upon which the drugs are found."). Significantly, possession of a controlled substance may be simultaneously shared by more than one person. Halyard, 274 S.C. at 400, 264 S.E.2d at 842.

In establishing possession of a controlled substance, the State can meet its burden of proof through the presentation of either circumstantial evidence, direct evidence, or a combination of the two. Stanley, 365 S.C. at 43, 615 S.E.2d at 464-465; see State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) ("Possession may be inferred from circumstances."). "When contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury." State v. Hudson, 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981). Furthermore, possession of a controlled substance can be inferred from the circumstances of a particular case and can be imputed to a person with both the power and intent to control the disposition and use of the drugs. State v. Brown, 319 S.C. 400, 404, 461 S.E.2d 828, 830 (Ct. App. 1995); see State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009) ("In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially. Knowledge can be proven by evidence of acts, declarations, or conduct of the accused from which the inference may be drawn that the accused knew of the

existence of the prohibited substances." (citations omitted)); see also Kimbrell, 294 S.C. at 54, 362 S.E.2d at 631 ("Because actual knowledge of the presence of the drug is strong evidence of intent to control its disposition or use, knowledge may be equated with or substituted for the intent element.").

In Appellant's case, evidence was presented establishing individually-packaged quantities of marijuana and cocaine were discovered hidden in a bedroom identified as Appellant's bedroom in a home identified as Appellant's home in close proximity to digital scales, multiple cellular phones, a firearm, and a criminal procedure guide for narcotics officers. See United States v. Shorter, 328 F.3d 167, 172 (4th Cir. 2003) ("[T]he fact that the firearms and marijuana were found in Shorter's home permits an inference of constructive possession."); see also United States v. Morris, 977 F.2d 617, 620 (D.C. Cir. 1992) (recognizing "[t]he inference that a person who occupies [a home] has dominion and control over its contents applies even when that person shares the premises with others"). Likewise, testimony was presented establishing Appellant's personal bank statement was discovered in the same bedroom as the drugs along with photographs of Appellant and his children, and the bank statement specifically identified the address of the residence where the drugs were found as Appellant's address. See Shorter, 328 F.3d at 171 (finding sufficient evidence was presented to link Shorter to an apartment where drugs were found based on the presentation of testimony establishing various documents with Shorter's name on them were discovered in a bedroom in the apartment); see also United States v. Surratt, 172 F.3d 559, 564 (8th Cir. 1999) (holding the presence of photographs and rent receipts established Surratt had dominion over the premises where contraband was found). Additionally, testimony was presented establishing Sergeant Ratliff directly observed Appellant, who had approximately $1,500

in cash in his pockets at the time of his arrest, personally engage in a hand-to-hand drug transaction shortly before the officer obtained the search warrant for Appellant's home and conducted the search of Appellant's home that led to the discovery of roughly nine grams of marijuana, fifty-seven grams of cocaine, and other incriminating evidence. See Whitfield v. State, 217 Ga. App. 402, 405, 457 S.E.2d 682, 685 (Ct. App. 1995) (holding sufficient evidence was presented to establish Whitfield was in constructive possession of drugs found in the toilet of a residence he lived in with other occupants where testimony was presented establishing Whifield had earlier engaged in a drug transaction and had a large quantity of cash on his person at the time of his arrest); see also Hernandez, 382 S.C. at 624, 677 S.E.2d at 605 (recognizing knowledge of drugs can be established by the presentation of evidence regarding the acts and conduct of the accused that support an inference the accused knew of the existence of the drugs).

Because the evidence and testimony supported a conclusion the drugs were found in Appellant's own bedroom in Appellant's own home, the jury could have rationally and logically found Appellant had the right to exercise dominion and control over the drugs. See Hudson, 277 S.C. at 203, 284 S.E.2d at 775 ("When contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury."). Moreover, the testimony establishing Appellant had recently engaged in a hand-to-hand drug transaction and was in possession of a substantial quantity of cash at the time of his arrest supported a rational and logical inference Appellant was engaged in the distribution of drugs and, thus, had knowledge of the drugs hidden in his bedroom along with the intent to control the distribution of those drugs. See State v. Goldsmith, 301 S.C. 463, 466, 392 S.E.2d 787, 788 (1990) ("Actual knowledge of the presence of

contraband is strong evidence of intent to control its disposition or use."). Accordingly, the evidence was sufficient to establish Appellant was in constructive possession of the marijuana and cocaine found in his bedroom and was guilty of the indicted offenses of trafficking in cocaine and possession of marijuana with intent to distribute. As a result, the trial judge properly denied Appellant's directed verdict motion and submitted the case to the jury.[9] See State v. Bowers, 301 S.C. 457, 461, 392 S.E.2d 482, 485 (Ct. App. 1990) (finding the evidence presented during trial was sufficient to survive a directed verdict motion and create a jury question as to whether Bowers was in either actual or constructive possession of drugs despite the fact the evidence against Bowers was circumstantial). Appellant's convictions should be affirmed.

[9] In arguing on appeal the evidence presented during trial was insufficient to establish he was in constructive possession of the drugs located in his home, Appellant maintains no evidence was presented demonstrating he owned the home, had the right to control the home, or had any knowledge of the drugs found inside of the home. Importantly though, ownership of a premises where drugs are found is **not** required before an individual can be found to have had the right and ability to exercise dominion and control over the premises or the drugs that were found in the search of the premises. See Halyard, 274 S.C. at 400, 264 S.E.2d at 842 (finding sufficient evidence was presented to establish Halyard was in constructive possession of a shotgun located under the driver's seat of a vehicle Halyard was riding in as a passenger); see also United States v. Griffin, 175 F. App'x 627, 628 (4th Cir. 2006) ("[C]onstrutive possession does not require proof that the defendant actually owned the property on which the contraband was found."). Furthermore, Appellant appears to maintain the evidence was insufficient because other people were inside the home at the time of the search while Appellant himself was not present. Significantly though, Appellant was not required to be present at the time of the search in order to be in constructive possession of the drugs, and the presence of other people in the home did not preclude the jury from finding Appellant was in constructive possession of the drugs based on the evidence presented during trial establishing the connection between Appellant and the room where the drugs were found. See Hudson, 277 S.C. at 203, 284 S.E.2d at 775 (finding sufficient evidence existed to establish Hudson was in constructive possession of the drugs in a possession of heroin with intent to distribute case where the evidence presented during trial showed Hudson was not at home when police entered Hudson's home, found his wife standing next to the bathroom door, and located heroin in the toilet); see also Commonwealth v. Rarick, 23 Mass. App. Ct. 912, 912, 499 N.E.2d 1233, 1233-1234 (Mass. Ct. App. 1986) ("When contraband is found in a dwelling shared by a defendant and one or more other persons, a finder of fact may properly infer that the defendant is in possession of the contraband (not necessarily exclusive possession) from evidence that the contraband was found in proximity to personal effects of the defendant in areas of the dwelling, such as a bedroom or closet, to which other evidence indicates the defendant has a particular relationship.").

CONCLUSION

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

Respectfully submitted,

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May 4, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger M. Young, Sr., Circuit Court Judge
Appellate Case No. 2014-001051

THE STATE,

Respondent,

vs.

JOSEPH TODD ROWLAND,

Appellant.

PROOF OF SERVICE

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

Mark A. Peper, Esquire
1637 Savannah Highway, Suite 202
Charleston, SC 29407

I further certify that all parties required by Rule to be served have been served. This 4th day of May, 2015.

Anne Mueller

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ALAN WILSON
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May 4, 2015

Mark A. Peper, Esquire
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RE: State v. Joseph Todd Rowland – Appellate Case No. 2014-001051

Dear Mr. Peper:

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

Please be advised our office did not receive service of either Appellant's Return to Respondent's Motion to Strike and Require Filing of Amended Initial Brief of Appellant or the Amended Initial Brief of Appellant, which were filed with the Court of Appeals. I respectfully request that you serve any future filings in this appeal directly on me as required by the South Carolina Appellate Court Rules.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

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