

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals  
Appeal from Spartanburg County  
Honorable J. Derham Cole, Circuit Court Judge  
Appellate Case No. 2015-002221

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**S.C. Supreme Court**

THE STATE,

Respondent,

vs.

ALPHONSO CHAVES THOMPSON,

Petitioner.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## **STATEMENT OF ISSUE ON CERTIORARI**

The Court of Appeals correctly affirmed the trial judge's ruling denying Thompson's suppression motion because the information contained in the search warrant affidavit provided the circuit court judge who issued the search warrant with a substantial basis upon which he could conclude there was a fair probability drugs and other incriminating evidence would be found at the River Street residence connected to Thompson.

## STATEMENT OF THE CASE

### Procedural History

In May of 2010, Petitioner Alphonso Chaves Thompson was arrested following a lengthy narcotics investigation conducted by the Spartanburg County Sheriff's Office in conjunction with the United States Drug Enforcement Administration ("D.E.A."). In September of 2011, the Spartanburg County Grand jury indicted Thompson for one count of trafficking in cocaine in an amount greater than four hundred grams, one count of possession of marijuana with intent to distribute, and one count of possession of a firearm during the commission of a violent crime. On January 23, 2012, a jury trial was commenced in the Spartanburg County Court of General Sessions with the Honorable J. Derham Cole, circuit court judge, presiding. At the conclusion of trial, the jury convicted Thompson as indicted. Following the verdict, the trial judge sentenced Thompson to a twenty-five-year term of imprisonment coupled with a \$200,000 fine for the cocaine conviction, a five-year term of imprisonment for the marijuana conviction, and a five-year term of imprisonment for the firearm conviction. Thompson then timely filed and perfected an appeal.

Subsequently, on appeal, the Court of Appeals issued a published opinion in which a majority of the court affirmed Thompson's convictions. State v. Thompson, 413 S.C. 590, 776 S.E.2d 413 (Ct. App. 2015). Thereafter, Thompson petitioned the Court of Appeals for rehearing, and the petition was denied. Thompson then filed a petition for a writ of certiorari in the Supreme Court.

### Factual History

On May 13, 2010, Investigator Chris Raymond of the Spartanburg County Sheriff's Office sought search warrants for several locations, including a residence

located on River Street in Spartanburg County, at the conclusion of a several-year-long narcotics investigation jointly conducted by Spartanburg County law enforcement officers and members of the D.E.A. (App'x pp. 2-5; p. 7; pp. 210-212). In seeking a search warrant for the River Street residence, Investigator Raymond prepared a lengthy search warrant affidavit that included the following information:

In June of 2007 Investigators from the Spartanburg County Sheriff's Office Narcotics Division had two different Confidential Reliable Informants (CRI) give information that they had been buying large amounts of cocaine from a black male that they only knew as "POO BEAR". These two CRI's stated that several large cocaine transactions took place over the course of several months. These CRI's furnished information that was able to be corroborated such as vehicle descriptions and photo identifications. Both CRI's stated that they knew POO BEAR to drive a gray in color Honda Accord Station wagon when he would conduct these drug deals. It was learned through this Investigation that "POO BEAR" was positively identified as Alfonso Thompson and he also had an F350 Ford Dually blue and Gold in color. In August of 2007 the SCSO Narcotics Division arrested Keith Jeter who stated that he was being supplied 4 ½-9 oz of cocaine at a time from Alfonzo Thompson aka "POO BEAR". Jeter further stated that "POO BEAR" would bring the cocaine to his residence on Huxley St. in Spartanburg City. In September of 2008 the SCSO Narcotics Division interviewed a individual named Fred Meadows who stated that he was being supplied cocaine from "POO BEAR" and that "POO BEAR" drove a blue and gold Ford F-350 Dually. Meadows further stated that he grew up with "POO BEAR" in the city and has known him for a long time. Meadows stated that "POO BEAR" would deliver the cocaine to his house on Virginia St. in the city of Spartanburg. Also in late 2008 Spartanburg City Police Narcotics had an informant who came forward and stated the "POO BEAR" had a residence at the end of River St. on the left hand side and that "POO BEAR" was a large scale cocaine Trafficker. In January of 2009 the Spartanburg County Narcotics Division had two more different CRI's that came forward and stated that they had purchased 18 ounces of cocaine from "POO BEAR". They identified Alfonzo Thompson in a photo lineup as being the "POO BEAR" that they had dealt with. These two CRI's also confirmed that "POO BEAR" had an F-350 Ford Dually and it was Blue and Gold in color. On February 11, 2009 The Spartanburg County Narcotics Division arrested Jose Luis Diaz-Arroyo with a kilo of cocaine. During the interview with Arroyo he stated that his brother in law Alejandro Sosa Galvan was supplying a black male named "POO BEAR". Arroyo further stated that Sosa Galvan had multiple Kilos of cocaine delivered to "POO BEAR" at this River St. address on several different occasions. On July

30, 2009 a fifth CRI stated he was being supplied by a Deangelo Young aka "LITTLE MAN" and that Young was getting his cocaine from his cousin "POO BEAR". This CRI made a controlled buy from "LITTLE MAN" by taking him \$4000 in Spartanburg County Sheriffs Office recorded funds. "LITTLE MAN" left the buy location and was followed to 1868 Tamara Way where he met with "POO BEAR" (THOMPSON). Thompson was driving a white in color Honda Civic Sc tag number . . . This Civic is registered to a Pamela D. Jones of 1868 Tamara Way. Pamela Jones is a known girlfriend of "POO BEAR". "LITTLE MAN" left "POO BEAR" and met with the CRI at the buy location where he turned over 4 ounces of Cocaine to him.

Over the past 6 months the Spartanburg County Sheriff's Office Narcotics Division has conducted surveillance on 120 River St. and on several occasions has seen Thompson driving different vehicles to include the Ford F-350 Dually blue and gold in color and the white in color Honda Civic to and from this location. Investigators have also seen the gray in color Honda Accord station wagon come and go from this residence.

Over the past 6 months Investigators have witnessed Thompson visit this 120 River St. address just before making cocaine deliveries throughout Spartanburg City.

On May 11, 2010 Investigators bought ½ ounce of cocaine base from Authur Jones. When Jones was approached he started cooperating with the SCSO Narcotics Division. Jones stated that he was buying his cocaine from Alfonzo Thompson aka "POO BEAR". Jones stated that "POO BEAR" was fronting him about 9 ounces of Powder Cocaine a month. Jones stated that he would take the powder and then turn it into cocaine base and then sell it. When it was all gone he would call "POO BEAR" and tell him that he was ready for him. Jones stated that he was paying \$1000 an ounce for the cocaine. On 05-11-2010 Jones placed a recorded telephone call to Thompson stating that he was ready to re-up. Thompson agreed to come by. Jones stated that Thompson's M.O. was to come by in the next couple of days. On 05-12-2010 Jones called "POO BEAR" again with no response. At approximately 6:30 PM Jones received a telephone call from "POO BEAR" . . . asking Jones if he was going to be home. Jones stated yes and hung up. Jones knew this to mean that "POO BEAR" was coming shortly. At Approximately 7:19 PM Thompson pulled into Jones driveway driving the white Honda Civic. Thompson exited the vehicle and came inside. Once inside Jones handed Thompson \$9000.00 in recorded funds. Thompson stated that he would bring the package in the morning. Jones knew this to mean that Thompson would bring the cocaine to him the next day. Investigators were inside the residence watching the transaction take place as well as the transaction being Video and Audio recorded. There was also outside surveillance units near the

scene. Thompson was loosely followed in the Honda Civic after the transaction.

This investigator feels that Thompson has demonstrated a pattern over the course of the last 2 years of large scale cocaine trafficking. It is believed that Items related to the Drug Trafficking Trade will be located inside this residence as well as Cocaine and or Cocaine Base. It is also known by Investigators that Drug Traffickers hide their drugs and proceeds from drugs sales in various places about the residence and cartilage areas. Due to the violent Nature of Drug Trafficking Organizations a “NO KNOCK WARRANT IS REQUESTED”

(App’x pp. 4-5). After Investigator Raymond presented that affidavit to a circuit court judge, a search warrant was issued for the River Street residence. (App’x pp. 2-5; p. 212).

Thereafter, later that day, officers arrested Thompson at his place of business, informed him of his rights, and transported him to the River Street residence. (App’x pp. 84-87; pp. 196-197). Meanwhile, officers at the residence drove through the gate connected to the roughly six-foot-high fence surrounding the property, secured the perimeter, and made entry into the home.<sup>1</sup> (App’x pp. 104-108; pp. 113-114; p. 195). The officers then searched the home and located the following items: a loaded .223-caliber rifle, an assault rifle, an S.K.S.-style rifle, a loaded shotgun, and a video surveillance system in the master bedroom; marijuana, mail addressed to Thompson, and a loaded machine pistol that had been purchased from a pawn shop by Thompson in another bedroom; Pyrex dishes commonly used in the manufacture of crack cocaine, multiple vacuum sealers that appeared to have been used in the packaging of marijuana, marijuana, and partially-smoked marijuana cigarettes in the kitchen; a money counter and \$3,410 in cash hidden in a shoe in the living room; and a bottle of powder commonly

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<sup>1</sup> Thompson’s father was present inside the River Street residence when the officers made entry, and he was subsequently placed outside of the home while the officers conducted their search. (App’x p. 68; p. 109; p. 112; p. 223).

used as a cocaine cutting agent, several sets of scales, a box of wrapping material that smelled of marijuana, and bags of cocaine and marijuana in the garage.<sup>2</sup> (App'x pp. 113-125; pp. 140-143; pp. 151-178; p. 186; pp. 188-190; p. 200; pp. 203-206). In total, the officers recovered approximately 175 grams of marijuana and over 500 grams of cocaine in the search of the residence, which appeared to the officers to be consistent with a drug stash house.<sup>34</sup> (App'x p. 174; pp. 188-190; pp. 203-206).

After the drugs and other incriminating evidence were located on the property, Investigator Raymond again advised Thompson of his rights before speaking with him in front of the residence. (App'x pp. 61-64; pp. 197-198; pp. 213-216). During their ensuing conversation, Thompson waived his rights and freely admitted the cocaine and marijuana found in the search of the River Street residence belonged to him.<sup>5</sup> (App'x pp. 64-65; p. 199; pp. 217-220). Subsequently, Thompson was indicted for trafficking in cocaine, possession of marijuana with intent to distribute, and possession of a firearm during the commission of a violent crime, and he proceeded to trial. (App'x pp. 356-359).

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<sup>2</sup> During his trial testimony, Thompson admitted the machine pistol "clearly" belonged to him before claiming he had given that weapon to his father. (App'x pp. 259-260).

<sup>3</sup> One of the bags of cocaine found during the search weighed 253 grams and had a purity level of roughly sixty percent while the other bag of cocaine weighed 251.6 grams and had a purity level of seventy-two percent. (App'x pp. 203-204). During trial, Special Agent Jerry Davis of the D.E.A. explained the purity level of cocaine is significant in determining how close the tested cocaine was to its original source. (App'x p. 206).

<sup>4</sup> During trial, Lieutenant Steve Cooper, a highly-experienced narcotics investigator with the Spartanburg County Sheriff's Office, noted drug traffickers commonly attempt to distance themselves from residences where they store their guns and drugs by not associating their names with those residences. (App'x p. 136).

<sup>5</sup> During both an in limine hearing and the trial itself, Thompson insisted he was not informed of his rights and only confessed after officers threatened to send his parents to jail. (App'x pp. 73-83; pp. 244-250). However, Thompson's testimony regarding the circumstances surrounding his out-of-court confession was sharply contradicted by multiple officers, and the trial judge expressly determined by a preponderance of the evidence Thompson's confession was freely and voluntarily made. (App'x pp. 61-70; pp. 86-87; p. 89; p. 147; pp. 196-199; pp. 213-220; pp. 224-225).

At the outset of trial, defense counsel moved for the search warrant to be quashed and all of the evidence discovered as a result of the search to be suppressed. (App'x p. 6). In support of that motion, defense counsel contended the search warrant violated both the United States Constitution and the South Carolina Constitution because the information contained in the search warrant affidavit was allegedly “very stale” and was conclusory in regard to what had occurred in the six-month time period leading up to the issuance of the warrant. (App'x p. 7; pp. 12-13; p. 56). Additionally, defense counsel asserted the search warrant affidavit failed to contain information regarding the reliability of the informants or the source of the informants' knowledge. (App'x pp. 15-18; pp. 54-55). Furthermore, while conceding probable cause likely existed for a search of Thompson's personal residence, defense counsel maintained there was no information establishing drugs would be located at the River Street residence, which he identified solely as the residence of Thompson's parents.<sup>6</sup> (App'x p. 7; p. 18; pp. 28-29; pp. 33-34; p. 56). For those reasons, defense counsel argued the search warrant was lacking in probable cause and should be quashed.<sup>7</sup> (App'x p. 30; p. 56).

In response, the solicitor noted the search warrant affidavit detailed an extensive multi-year narcotics investigation that began in 2007 and contained recent information regarding a drug transaction that occurred just days before the search warrant was issued.

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<sup>6</sup> The River Street residence was registered in the name of Ernest Grant as opposed to in the names of Thompson's parents. (App'x p. 96). During trial, Grant claimed he had entered into a lease-purchase agreement for that residence with Thompson's mother in 2003. (App'x pp. 94-96; p. 103).

<sup>7</sup> In arguing for the suppression of the evidence discovered as a result of the search, defense counsel also referenced separate federal proceedings involving Thompson while alleging a federal prosecutor dismissed several federal charges related to the search of the River Street residence due to “misgivings” the federal prosecutor had in regard to the probable cause basis for the search. (App'x p. 9). Defense counsel further claimed two federal magistrate judges had rejected attempts by the investigating agencies to obtain search warrants at some earlier unspecified point in the investigation. (App'x p. 10). However, when questioned by the trial judge, defense counsel readily conceded the information related to the federal proceedings did not have any impact on the trial judge's ability to make his own determinations in regard to the propriety of the search and the sufficiency of the search warrant affidavit. (App'x p. 10).

(App'x p. 44). The solicitor further asserted the information contained in the search warrant affidavit was not conclusory and was supplied by numerous informants who linked Thompson to both drug activity and the River Street residence. (App'x pp. 44-46). Based on the cumulative nature of the information in the search warrant affidavit coupled with the links between Thompson, drug activity, and the location to be searched, the solicitor asserted the search warrant affidavit provided the issuing judge with a probable cause basis to believe there was a reasonable probability Thompson would be keeping drug-related evidence at the River Street residence. (App'x pp. 47-50). However, even assuming the search warrant affidavit was somehow insufficient, the solicitor contended the good faith exception was applicable under the circumstances because the search warrant affidavit contained a significant quantity of information. (App'x pp. 56-57).

After considering the arguments of counsel, the trial judge determined there was a probable cause basis for the issuance of the search warrant based on the facts and circumstances detailed in the search warrant affidavit coupled with the reasonable inferences to be drawn from those facts and circumstances. (App'x p. 60). As a result, the trial judge denied Thompson's suppression motion in regard to the constitutionality of the search. (App'x p. 60). Thereafter, the trial proceeded forward, defense counsel renewed his earlier objection to the admission of the incriminating evidence discovered during the search of the River Street residence, and the trial judge overruled that objection. (App'x p. 97).

Subsequently, at the conclusion of trial, the jury convicted Thompson as indicted. (App'x p. 328). Following the verdict, the trial judge sentenced Thompson to an aggregate term of imprisonment of twenty-five years coupled with a \$200,000 fine. (App'x p. 332). Thompson then timely filed an appeal challenging his convictions on

several grounds, including on the basis the trial judge erred in denying his suppression motion. (App'x pp. 377-414).

On appeal, the Court of Appeals affirmed Thompson's convictions and sentence. (App'x pp. 473-474). In affirming, a majority of the Court of Appeals considered the totality of the information contained in the search warrant affidavit and concluded it provided the circuit court judge who issued the search warrant with a substantial basis upon which to find there was a fair probability contraband or other evidence of a crime would be located at the River Street residence. (App'x pp. 481-484). Specifically, in reaching that conclusion, the majority noted the search warrant affidavit included information provided by non-confidential, known informants along with information establishing the veracity, reliability, and basis of knowledge of those informants. (App'x pp. 482-483). Based on the information supplied by those informants coupled with the logical inferences that could be drawn from that information, the majority concluded "there was a fair probability Thompson would be retrieving [the drugs he indicated he would be delivering shortly before the search warrant was issued] from the River Street address." (App'x pp. 483-484). As a result, the majority found the warrant was supported by probable cause and affirmed the trial judge's denial of Thompson's suppression motion.<sup>8</sup> (App'x p. 484; p. 489).

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<sup>8</sup> In a dissent, Chief Judge Few indicated he believed the investigating officers had a probable cause basis to search Thompson's residence, Thompson's business, and Thompson's girlfriend's residence. (App'x p. 489). However, relying on the evidence and testimony presented during trial suggesting the River Street residence was Thompson's parents' home as opposed to Thompson's home, Chief Judge Few concluded the officers did not have a probable cause basis to search the River Street residence. (App'x p. 490). In support of that conclusion, he indicated the affidavit demonstrated Thompson was engaged in "extensive drug-related activity" that was largely "directly connected to the River Street home" for several years leading up to February of 2009. (App'x p. 490). However, Chief Judge Few determined the information in the search warrant affidavit did "not provide a substantial basis to support a finding of probable cause that evidence of his crimes would be found at River Street in May 2010." (App'x p. 490). For those reasons, Chief Judge Few dissented from the majority's opinion. (App'x pp. 490-491).

## ARGUMENT

**The Court of Appeals correctly affirmed the trial judge's ruling denying Thompson's suppression motion because the information contained in the search warrant affidavit provided the circuit court judge who issued the search warrant with a substantial basis upon which he could conclude there was a fair probability drugs and other incriminating evidence would be found at the River Street residence connected to Thompson.**

Thompson contends the Court of Appeals reversibly erred by affirming the trial judge's ruling denying the motion to suppress the drugs and other evidence recovered during the search of the River Street residence. In support of that contention, Thompson maintains the search warrant affidavit did not provide a substantial basis upon which it could reasonably be concluded drugs and other incriminating evidence would be found at that residence on the day of the search. To the contrary, the lengthy and detailed search warrant affidavit prepared in Thompson's case contained substantial information in regard to Thompson's involvement in large-scale drug activity that took place over the course of nearly three years and was still ongoing just days before the search warrant was sought and obtained. Furthermore, the search warrant affidavit provided reliable information directly connecting Thompson's drug activity to the River Street residence, and that information was supplied by both confidential informants and known, non-anonymous informants who could be held accountable if the information they supplied proved to be false. Under those circumstances, the search warrant affidavit provided the issuing judge with a substantial basis upon which to find probable cause existed for a search of the River Street residence. As a result, the trial judge properly denied Thompson's suppression motion and admitted the incriminating evidence during trial, and the Court of Appeals correctly affirmed the trial judge's ruling. Thompson's petition for a writ of certiorari should be denied.

## STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (“[W]e will review the trial court’s ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling.”). The reviewing court may conduct its own review of the record to determine whether the trial judge’s ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (“ ‘When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.’ ” (citation omitted)). Critically, the appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 (“In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge’s ultimate determination de novo but, rather, would apply a deferential standard of review.”).

## ANALYSIS

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. Likewise, the South Carolina Constitution similarly protects our

citizens from “unreasonable searches and seizures and unreasonable invasions of privacy[.]” S.C. Const. art. I, § 10. Significantly, based on the plain language of the state and federal constitutional provisions regarding searches and seizures, the touchstone of those provisions is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) (“The touchstone of the Fourth Amendment is reasonableness.”). As a result, **only** unreasonable searches and seizures are constitutionally prohibited, and law enforcement officers are not required to be perfect or mistake-free in order to be in compliance with the constitutional requirements regarding searches and seizures. 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[.]”); see also Heien v. North Carolina, \_\_\_ U.S. \_\_\_, 135 S. Ct. 530, 536 (2014) (“To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’ ” (citation omitted)).

In South Carolina, an affiant 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), this 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.

(citation omitted).

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).

Importantly, 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).

Furthermore, in making such a probable cause determination in a case where an affiant relied upon information supplied by a confidential informant, the informant’s veracity, reliability, and basis of knowledge are highly relevant towards a determination of the value of the informant’s information. Gates, 462 U.S. at 238. However, those elements related to the informant are **not** “entirely separate and independent requirements to be rigidly exacted in every case” and, instead, “should be understood simply 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.” Id. at 230.

When reviewing a decision to issue a search warrant, the 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. State v. Keith, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003). The issuing judge’s probable cause determination should be afforded great deference on appeal. State v. Rutledge, 373 S.C. 312, 316, 644 S.E.2d 789, 791 (Ct. App. 2007). 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.” Id. “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) (citation omitted).

In the case sub judice, the search warrant affidavit presented to the issuing judge included largely first-hand information provided by a total of **ten** different informants – some acting in a confidential capacity and some not – regarding Thompson’s repeated and consistent involvement in large-scale drug activity. See Draper v. United States, 358 U.S. 307, 311 (1959) (recognizing probable cause can be established by evidence – including hearsay evidence – that would not be admissible during trial or sufficient to prove guilt during trial). Significantly, because a number of the informants were not confidential or anonymous and, instead, were known to the officers and, thus, could be held accountable for their statements had they proven to be false, the information

provided by those informants was inherently reliable and could be reasonably relied upon by the investigating officers and the circuit court judge who ultimately issued the search warrant, particularly given that some of the informants' statements constituted self-incriminating admissions to their own involvement in drug activity. See State v. Driggers, 322 S.C. 506, 511, 473 S.E.2d 57, 60 (Ct. App. 1996) (“[A] non-confidential informant should be given a higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false.”); see also United States v. Harris, 403 U.S. 573, 583-584 (1971) (“Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these statements. 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. That the informant may be paid or promised a ‘break’ does not eliminate the residual risk and opprobrium of having admitted criminal conduct.”); United States v. Christmas, 222 F.3d 141, 144 (4th Cir. 2000) (“Unlike the anonymous tipster, a witness who directly approaches a police officer can also be held accountable for false statements. As the [United States] Supreme Court has observed, citizens who personally report crimes to the police thereby make themselves accountable for lodging false complaints.”).

Furthermore, the information provided by the non-anonymous informants was consistent with and served to corroborate the information provided by the confidential informants, and the officers further corroborated many details reported by the informants, including the details regarding the vehicles used by Thompson, Thompson’s use of the name “Poo Bear,” and Thompson’s connection to the River Street residence. See United States v.

Barnard, 299 F.3d 90, 94-95 (1st Cir. 2002) (finding a confidential informant's statement to be reliable where it was corroborated by statements from another confidential source); see generally Alabama v. White, 496 U.S. 325, 331 (1990) (finding an investigatory stop was constitutionally permissible based on the officers' corroboration of several pieces of information provided by an anonymous caller even though the officers did not verify the reported name of the woman who got into the vehicle, did not verify the reported apartment number from which the woman left, and did not allow the woman to reach her reported destination prior to conducting the stop). Under those circumstances, the information in the search warrant affidavit provided the issuing judge with a reliable basis upon which to make a probable cause determination. See Bellamy, 336 S.C. at 145, 519 S.E.2d at 349 (finding a search warrant contained sufficient information to establish the confidential informant's reliability where, "[a]lthough the affidavit [was] weak on the element of the reliability of the informant, this deficiency is compensated for by the strong showing of specificity, first-hand observation, and partial corroboration"); see also Gates, 462 U.S. at 244-245 ("It is enough, for purposes of assessing probable cause, that 'corroboration through other sources of information reduced the chances of a reckless or prevaricating tale,' thus providing 'a substantial basis for crediting the hearsay.' ") (citation omitted); see generally Harris, 403 U.S. at 583-584 (finding an admission by an informant of involvement in a crime is "sufficient at least to support a finding of probable cause to search").

Moreover, based on the information provided by the informants that was included in the search warrant affidavit, there was a probable cause basis to believe Thompson was engaged in drug activity and his drug activity was connected to the River Street residence. Specifically, the search warrant affidavit contained information from

numerous informants indicating Thompson was actively engaged in drug activity and had been engaged in that activity for an extended period of time. See State v. Thompson, 363 S.C. 192, 207, 609 S.E.2d 556, 564 (Ct. App. 1992) (“Given the continuous nature of the alleged drug activity, we find the record supports the trial court[']s finding that it was reasonable for the magistrate to conclude that Thompson would be found in possession of illegal substances. Although isolated sales of narcotics unquestionably occur, it is generally recognized that ‘narcotics conspiracies are the very paradigm of the continuing enterprises for which the courts have relaxed the temporal requirements of non-staleness.’” (citation omitted)). Furthermore, the search warrant affidavit explained the investigating officers had regularly observed Thompson coming and going from the River Street residence in vehicles that had been connected to drug activity over a six-month period while further including information from Jose Luis Diaz-Arroyo, a known and non-anonymous informant who had a demonstrated basis of knowledge in light of the fact he was arrested while in possession of a kilogram of cocaine, that established a **direct** connection between Thompson’s drug-trafficking activities and the targeted residence through Diaz-Arroyo’s statements indicating multiple kilograms of cocaine had been delivered to Thompson at the River Street address on several occasions.<sup>9</sup> See State v. Pope, 410 S.C. 214, 224, 763 S.E.2d 814, 819 (Ct. App. 2014) (recognizing a non-confidential informant should be given a higher level of credibility because the informant can be held liable criminally and civilly for providing false information); see also United States v. Miller, 925 F.2d 695, 699 (4th Cir. 1991) (“The informant’s interest in obtaining

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<sup>9</sup> Notably, consistent with the information contained in the search warrant affidavit regarding his connection to the River Street residence, Thompson testified during trial he possessed a key to the River Street residence, visited that location on a nearly daily basis, was permitted to come and go as he pleased, and spent the night there on some occasions. (App’x pp. 36-37; p. 42; p. 239; pp. 251-252).

leniency created a strong motive to supply accurate information. The informant hoped that by giving reliable information she would receive a lenient sentence. If she provided false information she had nothing to gain and could have risked an additional charge for falsification.”). In light of the fact Thompson, a known drug trafficker, was observed routinely travelling to and from the River Street residence coupled with the Diaz-Arroyo’s statements, which constituted powerful evidence against his own interests in relation to his own drug charges by demonstrating his knowledge of and connection to drug trafficking, that linked Thompson’s criminal enterprise to that residence, there was a logical and rational basis upon which to reason, infer, and believe drugs and other incriminating evidence were being stored at the River Street address, and that belief was further supported by the information provided by several confidential informants also linking Thompson to both drug activity and the River Street residence. See United States v. Grossman, 400 F.3d 212, 214 (4th Cir. 2005) (“[Grossman’s] chief contention is that there was no nexus between his alleged drug offenses and the homes to which he had access. Grossman argues that because he did not live at the residences, the mere fact that he as a suspected drug dealer had access to them cannot establish probable cause absent some specific evidence that drugs were located therein. We decline to require specific evidence of the existence of drugs in a residence where other facts sufficiently establish probable cause for the search. Probable cause is ultimately a matter of common sense. And here common sense indicated that contraband was likely to be located within the three dwellings [to which Grossman was connected].”); see also United States v. Williams, 974 F.2d 480, 481-482 (4th Cir. 1992) (“The affidavit submitted to the magistrate clearly establishes that Williams was a drug dealer. The affidavit also contains evidence that Williams was currently residing in the Statesman Motor Lodge.

With this evidence before him, the magistrate must consider, in the light of all of the surrounding circumstances, the likelihood that drug paraphernalia would be found in the motel room of a known drug dealer. The magistrate concluded that there was a fair probability that drug paraphernalia would be found in Williams' motel room and issued the search warrant. The affidavit submitted to the magistrate fully supports this conclusion.”). Under those circumstances, the information in the search warrant affidavit provided the issuing judge with a probable cause basis to believe cocaine or other incriminating evidence connected to Thompson's drug activity would be found at the River Street residence.

Finally, the search warrant affidavit contained sufficient information to establish a probable cause basis to believe narcotics would be found in the targeted residence **at the time of the search** based on the nature of the criminal activity alleged in the affidavit coupled with the recentness of the transactional meeting between Thompson and Arthur Jones during which Thompson agreed to bring a package to Jones to allow him to “re-up” after taking \$9,000 in cash from Jones.<sup>10</sup> See United States v. Johnson, 461 F.2d 285, 287 (10th Cir. 1972) (“[T]he vitality of probable cause cannot be quantified by simply counting the number of days between the occurrence of the facts relied upon and the issuance of the affidavit.”). Specifically, the information provided by the informants established Thompson was involved in a continuous, ongoing enterprise involving cocaine trafficking, and nothing contained in the search warrant affidavit demonstrated a reason for the investigating officers or the issuing judge to believe Thompson's

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<sup>10</sup> Significantly, amongst drug dealers, the term “re-up” means to replenish or restock a supply of illegal drugs. See Urban Dictionary, <http://www.urbandictionary.com/define.php?term=re-up> (last visited Dec. 18, 2015); see also People v. Williams, 378 Ill. Dec. 830, 832-833, 5 N.E.3d 210, 212-213 (Ill. App. Ct. 2014) (relying on testimony indicating “the term ‘re-up’ involves purchasing and then distributing the drugs to others” when considering the sufficiency of the evidence in a drug case).

successful drug enterprise was simply abandoned. See United States v. Farmer, 370 F.3d 435, 439 (4th Cir. 2004) (holding it is reasonable to conclude an ongoing, extended criminal scheme will not simply be abandoned or discontinued); United State v. McCall, 740 F.2d 1331, 1336 (4th Cir. 1984) (“In some circumstances, the very nature of the evidence sought may suggest that probable cause is not diminished solely by the passage of time.”). Additionally, the search warrant affidavit contained the information provided by Diaz-Arroyo in February of 2009 that established Thompson received several kilograms of cocaine at the River Street residence on multiple occasions. See United States v. Vaandering, 50 F.3d 696, 700 (9th Cir. 1995) (holding twenty-two-month-old information regarding drug activity was not stale and was “an allowable basis upon which to find probable cause” where the information detailed an ongoing criminal business and was coupled with more recent information). Furthermore, the search warrant affidavit included information establishing Thompson had taken \$9,000 in cash and agreed to deliver cocaine to Jones **just two days** before the search warrant was sought and obtained, which supported a conclusion Thompson had cocaine stored in a location from which he could retrieve it to deliver to Jones. See 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.”). Under those circumstances, the search warrant affidavit sufficiently established a probable cause basis to believe drugs would be located at the River Street residence at the time of the search

based on the continuous and recent nature of Thompson's drug activity coupled with the information connecting Thompson's drug activity to the River Street address.

Because the information included in the search warrant affidavit coupled with the logical and rational inferences to be drawn from that information reliably established there was a reasonable probability narcotics and other incriminating evidence would be discovered in the River Street residence at the time of the search, the issuing judge had a substantial basis upon which to make a finding of probable cause. See 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.”); see also State v. Thomas, 275 S.C. 274, 276, 269 S.E.2d 768, 769 (1980) (holding courts should consider a “common-sense reading of the entire affidavit” in determining whether probable cause exists). As a result, the issuing judge committed no error in issuing the search warrant for the River Street address based on the detailed and lengthy search warrant affidavit that was presented to him, the trial judge properly denied Thompson's suppression motion, and the Court of Appeals correctly affirmed the trial judge's ruling.<sup>11</sup> See United States v. Ventresca, 380 U.S. 102, 108

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<sup>11</sup> Notably, even assuming the Court of Appeals, the trial judge, and the circuit judge who issued the search warrant somehow erred in finding the search warrant affidavit provided a substantial basis for a finding of probable cause, Thompson's suppression motion was nonetheless properly denied because the lengthy, detailed search warrant affidavit submitted in Thompson's case was not so lacking in indicia of probable cause to render official belief in its existence entirely unreasonable and the officers who relied on the search warrant that was issued did so in objective good faith. See United States v. Leon, 468 U.S. 897, 923 (1984) (instructing suppression of the evidence based on a subsequently-invalidated search warrant was only appropriate in four limited situations: (1) where the affiant misled the issuing judge by including false or misleading information in the warrant affidavit; (2) where the issuing judge wholly abandoned his neutral and detached judicial role; (3) where the warrant affidavit was “‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable[;]’ ” and (4) when a warrant was so facially deficient in some technical respect the officer executing the search warrant could not reasonably

(1965) (“[W]here these circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.”). Accordingly, Thompson’s petition for a writ of certiorari should be denied.

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have presumed it to be valid (citation omitted)); see also United States v. Bynum, 293 F.3d 192, 195 (4th Cir. 2002) (“ ‘Substantial basis’ provides the measure for determination of whether probable cause exists in the first instance. If a lack of a substantial basis also prevented application of the Leon objective good faith exception, the exception would be devoid of substance. In fact, Leon states that the third circumstance prevents a finding of objective good faith only when an officer’s affidavit is ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’ This is a less demanding showing than the ‘substantial basis’ threshold required to prove the existence of probable cause in the first place.” (citations omitted)); see generally Messerschmidt v. Millender, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1235, 1245 (2012) (“Where the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner or, as we have sometimes put it, in ‘objective good faith.’ ” (citation omitted)); cf. United States v. Lalor, 996 F.2d 1578, 1583 (4th Cir.1993) (“[T]he warrant application is deficient because it fails to establish a nexus between the drug activity and the location that was searched. Nevertheless, the warrant is not so lacking in probable cause that the officers’ reliance upon it was objectively unreasonable. Indeed, two judicial officers have determined that the affidavit provided probable cause to search.”).

**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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BY:

A large, stylized handwritten signature in black ink, appearing to read 'M.R. Farthing', is written over a horizontal line. The signature is highly cursive and extends to the right with a long, sweeping tail.

Mark R. Farthing

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ATTORNEYS FOR RESPONDENT

December 21, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals  
Appeal from Spartanburg County  
Honorable J. Derham Cole, Circuit Court Judge  
Appellate Case No. 2015-002221

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THE STATE,

Respondent,

vs.

ALPHONSO CHAVES THOMPSON,

Petitioner.

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**PROOF OF SERVICE**

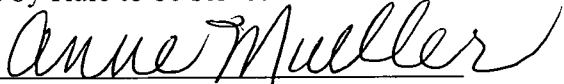
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I, Anne A. Mueller, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Michael P. Scott, Esquire  
Nexsen Pruet, LLC  
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Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.  
This 21st day of December, 2015.

  
ANNE A. MUELLER  
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