STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2014-000880

THE STATE,

Respondent,

vs.

LASHAD DEMOND BREWTON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-1A York Highway
Moss Justice Center
York, South Carolina 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2014-000880

THE STATE,

Respondent,

vs.

LASHAD DEMOND BREWTON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-1A York Highway
Moss Justice Center
York, South Carolina 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2014-000880

THE STATE,

Respondent,

vs.

LASHAD DEMOND BREWTON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-1A York Highway
Moss Justice Center
York, South Carolina 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

Other State and Federal Cases:

Other Authorities:

STATEMENT OF ISSUES ON APPEAL

I.

Just as this Court concluded in Appellant's co-defendant's appeal, the trial judge properly denied Appellant's suppression motion because, under the totality of the circumstances, the officers possessed reasonable suspicion to conduct an investigatory stop and probable cause to search the vehicle Appellant was driving at the time of the stop after they received reliable information from a cooperating informant about the informant's crack cocaine supplier and corroborated significant aspects of that information prior to conducting the stop and search.

II.

Just as this Court concluded in Appellant's co-defendant's appeal, the trial judge properly denied Appellant's suppression motion based on an allegedly insufficient chain of custody in regard to the crack cocaine because testimony was presented establishing the identity of each person who was in custody of the crack cocaine along with what was done with the crack cocaine leading up to the analysis conducted at S.L.E.D.

III.

The trial judge properly denied Appellant's directed verdict motion as to the trafficking in crack cocaine charge because the evidence and testimony presented during trial, including the evidence and testimony demonstrating Appellant was driving a vehicle connected to a drug supplier to a location where the drug supplier intended to deliver over ten grams of crack cocaine while the drug supplier openly discussed the drug transaction over the telephone and another passenger in the vehicle openly possessed a digital scale covered in suspected drug residue, established Appellant's guilt for each and every element of the indicted offense and supported a rational and logical conclusion Appellant constructively and jointly possessed the crack cocaine subsequently discovered by law enforcement officers.

STATEMENT OF THE CASE

In June of 2010, Appellant Lashad Demond Brewton was arrested along with two other men following a narcotics investigation and automobile stop. In August of 2010, the Union County Grand Jury indicted Appellant for one count of trafficking in crack cocaine in an amount between ten and twenty-eight grams. On December 6, 2011, a jury trial was commenced in the Union County Court of General Sessions with the Honorable John C. Hayes, III, circuit court judge, presiding. At the conclusion of trial two days later, the jury convicted Appellant of the lesser-included offense of possession of crack cocaine with intent to distribute. Following the verdict, the trial judge sentenced Appellant to a ten-year term of imprisonment suspended to five years of imprisonment and five years of probation. At the conclusion of the sentencing proceedings, Appellant moved for reconsideration of his sentence, and the trial judge took the motion under advisement. Subsequently, on January 11, 2012, the trial judge granted Appellant's motion and resentenced him to a ten-year term of imprisonment suspended to thirty months of imprisonment and five years of probation. Appellant then filed a timely notice of appeal.[1]

[1] The other men arrested with Appellant, Roderick Pope and Randy Jarrod Crosby, were also indicted for one count each of trafficking in crack cocaine in an amount between ten and twenty-eight grams, and both men were tried together with Appellant. Like Appellant, Pope and Crosby were convicted of possession of crack cocaine with intent to distribute, and the trial judge sentenced Pope to a fifteen-year term of imprisonment suspended to seven-and-a-half years and five years of probation and Crosby to a fifteen-year term of imprisonment suspended to ten years and five years of probation. Also like Appellant, both men moved for reconsideration of their sentences. However, unlike Appellant, the trial judge subsequently denied both of Appellant's co-defendants' motions.

STATEMENT OF FACTS

On the afternoon of June 24, 2010, a confidential informant working with the Union County Sheriff's Office purchased crack cocaine from an individual he knew as "Vince" at a convenience store located off of Highway 176 in Union County while law enforcement officers covertly monitored the transaction. (R. pp. 49-50; pp. 62-63; p. 81; pp. 127-128; p. 153; pp. 238-239; pp. 288-289; p. 292; p. 374; p. 394). Once the transaction was completed, the officers moved in and arrested "Vince," who was subsequently identified as Vinson Eugene Harris. (R. pp. 49-50; pp. 62-63; p. 81; pp. 127-128; p. 153; pp. 238-239; pp. 288-289; p. 374; p. 394). After Harris was arrested, he was transported to the Union County jail, where he met with Sergeant James Johnson of the Union County Sheriff's Office and advised him he needed assistance in obtaining bond. (R. p. 50; pp. 128-129; pp. 134-135; pp. 374-375; p. 387; pp. 393-396). In exchange for the assistance, Harris offered to arrange for Roderick Pope, his narcotics supplier, to bring crack cocaine to Union County. (R. p. 50; pp. 128-129; pp. 134-135; p. 375; p. 387; pp. 393-396). In response, Sergeant Johnson accepted Harris's offer and notified Lieutenant John Sherfield of the Union County Sheriff's Office about the arrangement. (R. pp. 50-51; pp. 100-101; p. 128; p. 132; p. 396).

Subsequently, with Sergeant Johnson present but only able to hear Harris's side of the conversation, Harris called Pope to arrange for the delivery of crack cocaine, and Pope stated he would attempt to get some crack cocaine for Harris. (R. p. 51; pp. 128-129; p. 142; pp. 375-376; p. 395; p. 397). Shortly thereafter, Pope called Harris back, and the two agreed for Pope to drive to Union County from Spartanburg County along Highway 176, meet Harris at a convenience store located off the highway, and deliver half an ounce of crack cocaine to Harris in exchange for $650. (R. p. 65; pp. 130-132;

pp. 376-377; pp. 398-400). Following the call, Harris informed Sergeant Johnson of the details of the transaction while noting Pope always drove or rode in a black Ford Expedition, and those details were relayed to Lieutenant Sherfield. (R. p. 52; p. 131; pp. 148-149; pp. 377-378; p. 399).

In response, Lieutenant Sherfield and other officers with the Union County Sheriff's Office set up surveillance at various points along Highway 176 to wait for the black Ford Expedition to arrive. (R. p. 52; p. 245). As they waited, Pope continued to make phone calls to Harris and, during one of the calls, informed him he was passing the Lighthouse Fish Camp on Highway 176.[2] (R. p. 53; p. 132; p. 245; p. 377; p. 399). After learning that information, Captain James McNeil of the Union County Sheriff's Office began driving in the direction of the Lighthouse Fish Camp and, shortly thereafter, encountered a black Ford Expedition on Highway 176 headed in the opposite direction approximately a mile to a mile and a half before McNeil would have reached the Lighthouse Fish Camp and after the black Ford Expedition would have passed the restaurant. (R. pp. 326-327; p. 337; p. 340). Upon seeing the black Ford Expedition, Captain McNeil immediately relayed the vehicle's location to the other officers involved in the investigation. (R. p. 327). Moments later, Union County Sheriff David Taylor saw the black Ford Expedition approaching his position on Highway 176, and he moved behind it and activated his blue lights. (R. p. 54; pp. 114-115; pp. 247-248). After that, the passenger in the back seat of the vehicle briefly leaned forward, and the driver of the vehicle momentarily continued to drive along Highway 176 before partially pulling over

[2] Significantly, during the calls, Harris noted he could hear other individuals in the background in addition to Pope. (R. p. 61; p. 107; pp. 130-131; p. 377).

into the median of the highway approximately two miles away from the location where Harris had arranged for Pope to meet him. (R. pp. 54-55; p. 65; pp. 248-249).

Once the driver of the black Ford Expedition pulled over, several officers responded to the scene, and Lieutenant Sherfield approached the driver's side of the vehicle. (R. p. 54; p. 248). When he did so, he saw Appellant Lashad Demond Brewton seated in the driver's seat, Pope seated in the front passenger's seat with a cell phone in his hand, and Randy Jarrod Crosby seated in the rear passenger's seat. (R. pp. 54-55; pp. 248-249; p. 310). The officer then asked Appellant to step out of the vehicle, spoke with him briefly, advised him of his rights, placed him in handcuffs, and let him know that he was being detained. (R. p. 59; p. 69; p. 249). Meanwhile, other officers removed Pope and Crosby from the vehicle and similarly secured them. (R. p. 69; p. 93; p. 249).

After the men were secured, Lieutenant Sherfield searched the passenger compartment of the vehicle.[3] (R. p. 55; p. 249). Inside, he found a cell phone on Pope's seat and a gray digital scale with white residue on it hidden underneath the seat Crosby had been sitting in at the time of the stop.[4] (R. pp. 55-56; p. 106; p. 250; p. 310). Upon finding the scale, Lieutenant Sherfield conducted a field test on the white residue, and the residue tested positive for cocaine. (R. pp. 55-56). In response, he immediately arrested Appellant and the others for possession of cocaine.[5] (R. p. 56). He then asked Corporal

---

[3] The black Ford Expedition was subsequently determined to be registered to an individual named Barbara Pope. (R. p. 299).

[4] Following the automobile stop, Lieutenant Sherfield inspected Pope's cell phone and discovered the phone contained contact information for an individual named "Vince." (R. p. 279). Furthermore, Lieutenant Sherfield discovered the phone's records reflected "Vince" called Pope five times between 4:39 p.m. and 6:04 p.m. on the day of the automobile stop and Pope called "Vince" eleven times between 5:18 p.m. and 6:33 p.m. on the day of the stop. (R. pp. 261-263).

[5] Following the arrests, the officers briefly searched the men's outer clothing and located $573 in cash on Crosby and a cell phone along with $280 in cash on Appellant. (R. pp. 56-58; pp. 69-70; pp. 103-104; pp. 250-251; p. 268; p. 317; pp. 328-329; p. 333). Lieutenant Sherfield then spoke with Appellant about the

Russell Vinson of the Union County Sheriff's Office, another officer involved in the narcotics investigation, to inspect the back area of his law enforcement vehicle before transporting Appellant and Crosby to the Union County jail. (R. p. 251; pp. 342-343). Corporal Vinson complied with Lieutenant Sherfield's request, found nothing inside of his vehicle, and then transported Appellant and Crosby to the jail. (R. pp. 343-344). Once he had done so, Corporal Vinson searched his vehicle and discovered a small plastic bag containing what appeared to be crack cocaine hidden underneath the seat Crosby had been sitting in. (R. p. 94; p. 111; p. 253; p. 305; pp. 344-345; pp. 351-352). Corporal Vinson then secured the bag, and the substance was later transported to S.L.E.D. for analysis, where it was determined to be eleven-and-a-half grams of crack cocaine. (R. p. 97; p. 112; pp. pp. 253-254; 344-345; pp. 348-349; pp. 430-431).

Subsequently, Appellant and his co-defendants were indicted for trafficking in crack cocaine in an amount between ten and twenty-eight grams, and they jointly proceeded to trial. (R. p. 4; pp. 602-603). At the outset of trial, Appellant, Pope, and Crosby all moved for the suppression of the evidence discovered during and after the automobile stop and search, and the trial judge conducted a hearing on their motions. (R. pp. 35-36; pp. 45-49). During the hearing, Lieutenant Sherfield, Sergeant Johnson, and the other officers testified about the details of Harris's arrest, the subsequent stop and search of the black Ford Expedition, and the discovery of the crack cocaine in the law enforcement vehicle used to transport Appellant and Crosby to the jail. (R. pp. 49-55; p. 94; pp. 127-133). During Lieutenant Sherfield's testimony, he asserted the vehicle was

---

money that had been found, and Appellant refused to reveal how he acquired it but admitted he was unemployed at that time. (R. pp. 58-60). Subsequently, Sergeant Johnson spoke to a magistrate about Harris's assistance with the narcotics investigation, and Harris was able to obtain release on bond. (R. p. 133; p. 135; pp. 139-140; p. 378; pp. 400-402). Harris later pled guilty to distribution of crack cocaine and was sentenced to a three-year term of incarceration, which he was serving at the time of the trial. (R. p. 153; pp. 378-379).

stopped after Captain McNeil spotted a black Ford Expedition "right at" the Lighthouse Fish Camp following Harris's report Pope was travelling past that location. (R. pp. 51-55; pp. 60-61; p. 81; p. 107). Furthermore, Lieutenant Sherfield candidly admitted he incorrectly asserted on a chain of custody affidavit he seized the crack cocaine from Appellant, Pope, and Crosby when, in fact, he actually took custody of the narcotics from Corporal Vinson. (R. pp. 71-73; p. 94; pp. 96-97; pp. 106-107; pp. 111-112).

At the conclusion of the suppression hearing, Appellant and his co-defendants moved for the evidence discovered as a result of the automobile stop to be suppressed, arguing there was no reasonable suspicion supporting the stop of the black Ford Expedition and no probable cause supporting the search of the vehicle. (R. pp. 158-160; p. 162; pp. 165-166; pp. 168-169; pp. 171-172). In response, the solicitor noted Harris arranged a drug transaction with Pope and provided law enforcement officers with information that was subsequently corroborated regarding Pope's vehicle color, vehicle make, vehicle model, direction of travel, and precise location at a specific time. (R. pp. 173-175). Under those circumstances, the solicitor argued the officers had probable cause to believe drugs would be located in the black Ford Expedition, justifying the stop and search of that vehicle. (R. pp. 173-175).

Following the arguments of counsel, the trial judge took the matter under advisement to consider the motions overnight. (R. pp. 177-178). Thereafter, on the following morning, the trial judge denied the suppression motions. (R. p. 192; p. 196; pp. 198-200). In denying the motions, the trial judge found the law enforcement officers' corroboration of the information provided by Harris regarding Pope's vehicle make, vehicle model, vehicle color, direction of travel, and specific location established

probable cause to believe contraband would be contained in the vehicle, which justified the stop and the search. (R. pp. 192-200).

Subsequently, during trial, Lieutenant Sherfield testified about Harris's arrest and the ensuing investigation that led to the arrests of Appellant, Pope, and Crosby, the discovery of a scale in the black Ford Expedition, and the discovery of a bag of crack cocaine in the vehicle used to transport Appellant and Crosby to jail.[6] (R. pp. 238-239; pp. 244-255). Additionally, Captain McNeil testified about his role in the narcotics investigation and automobile stop, noting he received word a black Ford Expedition was passing the Lighthouse Fish Camp, immediately began driving in the direction of the restaurant, and encountered a black Ford Expedition at an intersection on Highway 176 approximately a mile to a mile and a half away from the restaurant. (R. pp. 326-327; p. 337; p. 340). Furthermore, Corporal Vinson testified about his role in the investigation and noted he responded to the location of the automobile stop after the black Ford Expedition had been detained. (R. pp. 342-343). After he arrived, Corporal Vinson stated Lieutenant Sherfield asked him to check the rear area of his vehicle before transporting two of the suspects to jail and he complied with the lieutenant's request. (R. pp. 343-344). Corporal Vinson indicated he then transported Appellant and Crosby to jail and searched the back of his vehicle after dropping them off. (R. p. 344). When he did so, Corporal Vinson testified he found a bag of crack cocaine hidden underneath Crosby's seat, secured the drugs in an evidence bag, and gave them to Lieutenant

[6] Specifically, regarding the crack cocaine, Lieutenant Sherfield indicated he received the crack cocaine from Corporal Vinson, sealed it in an evidence bag, secured the bag in an evidence vault, and then subsequently transported the bag to the evidence intake area at S.L.E.D., where he delivered the crack cocaine to Nikki Perry, an evidence technician. (R. pp. 252-256). Additionally, Lieutenant Sherfield acknowledged he incorrectly listed on a chain of custody affidavit he seized the crack cocaine from Appellant, Pope, and Crosby when he had actually received it from Corporal Vinson. (R. p. 282).

Sherfield when the lieutenant arrived at the jail. (R. pp. 344-345; pp. 348-349; pp. 351-352).

Following the officers' testimony, Pope renewed his motion to suppress the crack cocaine on the basis he believed the testimony from the suppression hearing differed from the trial testimony regarding where the black Ford Expedition was first observed. (R. p. 362). In response, the solicitor argued Captain McNeil saw the black Ford Expedition on the same highway the Lighthouse Fish Camp was located on approximately one mile after the vehicle would have passed the restaurant, which he asserted corroborated the information provided by Harris about the location of Pope's vehicle at that time. (R. pp. 364-365). The trial judge then took the matter under advisement, and Appellant and Crosby joined in Pope's objection. (R. p. 366; pp. 368-369). Thereafter, the trial judge denied the motion, concluding he would not have suppressed the narcotics had he been provided with Captain McNeil's trial testimony during the suppression hearing. (R. p. 369). In reaching that conclusion, the trial judge noted the fact the black Ford Expedition was observed approximately a mile away from the location Harris reported the vehicle had just passed sufficiently corroborated Harris's information. (R. pp. 369-370).

Subsequently, Sergeant Johnson testified about Harris's arrest and subsequent offer to assist their investigation by arranging for Pope to bring half an ounce of crack cocaine to Union County. (R. pp. 394-396; p. 400). Sergeant Johnson indicated Harris then provided him with information derived from phone calls Harris made to Pope and he relayed that information to Lieutenant Sherfield. (R. pp. 396-399). Specifically, Sergeant Johnson noted he advised the lieutenant Pope would be travelling in a black Ford Expedition along with other people and notified him when Pope passed the

Lighthouse Fish Camp. (R. p. 399). Furthermore, after the automobile stop was made, Sergeant Johnson testified he spoke to a magistrate on Harris's behalf regarding bond, which led to bond being set for Harris. (R. pp. 401-402).

Following Sergeant Johnson's testimony, the trial was recessed for the day. (R. p. 418). Then, on the third day of trial, Agent Willie Smith, an expert drug analyst working for S.L.E.D., testified about his receipt and analysis of the drugs found in Corporal Vinson's law enforcement vehicle. (R. pp. 425-428). Regarding his acquisition of the drugs, Agent Smith indicated he received the crack cocaine he subsequently tested from Doris Yarborough, who worked in the S.L.E.D. log-in department. (R. pp. 427-428). After that, Agent Smith testified he secured the evidence in a drug vault only he could access. (R. pp. 428-429). Thereafter, he stated he verified the evidence bag was sealed and intact prior to conducting his analysis, analyzed the substance in the evidence bag, and determined it was eleven-and-a-half grams of crack cocaine. (R. pp. 428-431).

At the conclusion of Agent Smith's testimony on direct examination, the solicitor moved to admit the crack cocaine into evidence. (R. pp. 433-434). Pope then objected and asked the trial judge to refrain from ruling on the objection until after he completed his cross-examination of Agent Smith. (R. pp. 433-434). Thereafter, on cross-examination, Agent Smith confirmed Perry received the evidence from an officer, took it into the drug intake area at S.L.E.D., and secured it until Yarborough retrieved the evidence and transported it to him. (R. pp. 437-438). He further noted he would not have tested the submitted substance if the evidence bag had been tampered with and indicated he would have returned the evidence to the submitting law enforcement agency if he had knowledge of a problem with the chain of custody. (R. p. 441; p. 443).

Following Agent Smith's testimony, Appellant and his co-defendants objected to the admission of the crack cocaine on the basis Agent Smith stated he would not have tested the drugs if he was aware there was a problem with the chain of custody, which they argued existed in light of the incorrect information on Lieutenant Sherfield's affidavit. (R. pp. 447-448). In response, the solicitor asserted the chain of custody was established by the testimony presented during trial and the arguments raised by Appellant and his co-defendants merely impacted the weight of the evidence as opposed to its admissibility. (R. pp. 448-449). After considering the issue, the trial judge agreed with the solicitor, found the chain of custody had been established in regard to the narcotics, admitted the crack cocaine over objection, and noted the issues with the affidavit could be argued to the jury but did not affect the admissibility of the drugs. (R. pp. 449-450).

Subsequently, the State rested its case, and Appellant moved for a directed verdict while also renewing his previous motions. (R. pp. 473-482). In support of his directed verdict motion, Appellant argued no evidence had been presented to establish he had knowledge of the drugs, and he noted he did not own the car he was driving, did not act in a suspicious manner, and "could've just been acting merely as a taxi driver or chauffeur[.]" (R. pp. 473-481). However, the trial judge denied Appellant's directed verdict motion along with all of his other motions. (R. pp. 481-483).

Thereafter, Appellant's co-defendants also moved for directed verdicts while renewing their previous motions, and their motions were also denied. (R. pp. 483-486). Appellant and his co-defendants then raised new objections to the admission of the crack cocaine, arguing it should not have been admitted because Corporal Vinson was not asked to specifically identify the bag of crack cocaine offered into evidence during trial as the one he found in his law enforcement vehicle. (R. pp. 502-504). Again, the trial

judge denied the motions after finding the chain of custody regarding the crack cocaine had been sufficiently established. (R. pp. 505-506). Appellant, Pope, and Crosby then rested their cases, and the parties presented their closing arguments to the jury. (R. pp. 506-507; pp. 513-555). During the closing arguments of Appellant and his co-defendants, they challenged the credibility of Lieutenant Sherfield's testimony and repeatedly called the jury's attention to the lieutenant's misstatement on the chain of custody affidavit. (R. pp. 524-525; pp. 530-531; p. 536; p. 540; pp. 552-553).

Subsequently, at the conclusion of trial, the jury convicted Appellant and his co-defendants of the lesser-included offense of possession of crack cocaine with intent to distribute. (R. p. 583). Following the verdict, the trial judge sentenced Appellant to a ten-year term of imprisonment suspended to five years of imprisonment and five years of probation before imposing similar sentences on Appellant's co-defendants. (R. p. 589; p. 591; p. 596). Appellant then moved for reconsideration of his sentence, and the trial judge took the motion under advisement. (R. pp. 598-599). Subsequently, the trial judge granted Appellant's motion and resentenced him to a ten-year term of imprisonment suspended to thirty months of imprisonment and five years of probation. (R. pp. 606-607).

ARGUMENT

I.

Just as this Court concluded in Appellant's co-defendant's appeal, the trial judge properly denied Appellant's suppression motion because, under the totality of the circumstances, the officers possessed reasonable suspicion to conduct an investigatory stop and probable cause to search the vehicle Appellant was driving at the time of the stop after they received reliable information from a cooperating informant about the informant's crack cocaine supplier and corroborated significant aspects of that information prior to conducting the stop and search.

Appellant contends the trial judge erred in denying his motion to suppress the evidence discovered as a result of the investigatory stop and search of the black Ford Expedition. In support of those contentions, Appellant maintains there was no reasonable suspicion justifying the investigatory stop and no probable cause justifying the search of that vehicle. However, just as this Court determined in State v. Pope, 410 S.C. 214, 763 S.E.2d 814 (Ct. App. 2014), the officers in Appellant's case obtained both reasonable suspicion to conduct the investigatory stop and probable cause to conduct the search of the black Ford Expedition after the officers received information from a reliable cooperating informant about his narcotics suppliers, who he identified as Pope, and corroborated significant aspects of that information, including the color, make, model, direction of travel, and precise location of the vehicle, before conducting the stop and search.[7] As a result, the trial judge properly denied Appellant's suppression motion, and his ruling was supported by the evidence. Appellant's conviction should be affirmed.

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

[7] Puzzlingly and perhaps tellingly, Appellant failed to make any reference in his initial brief to this Court's decision in Pope despite the fact Appellant filed his initial brief over six months after this Court issued its decision in that case and over a month after the South Carolina Supreme Court denied Pope's petition for a writ of certiorari.

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 in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). 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).

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. Pursuant to the Fourth Amendment, "[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity." State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) ("To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity."); see also United States v. Sokolow, 490 U.S. 1, 7

(1989) ("[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." (citation omitted)). The reasonableness of a stop or detention "is measured in objective terms by examining the totality of the circumstances." Ohio v. Robinette, 519 U.S. 33, 39 (1996).

For Fourth Amendment purposes, an automobile stop, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). However, the initiation of an automobile stop is reasonable per se when either probable cause exists to believe a traffic violation has occurred **or** reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) ("[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity."); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) ("Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se.").

Reasonable suspicion consists of " 'a particularized and objective basis' that would lead one to suspect another of criminal activity." State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). In determining whether reasonable suspicion existed to support a stop, the totality of the circumstances must be considered as a whole to ascertain whether the officer's actions were reasonable in light of everything available to him or her at the time of the stop. See United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[W]e have said repeatedly that [reviewing courts] must look at the 'totality of the circumstances' of each

case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. The process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' " (citations omitted)).

However, even if an automobile stop is supported by reasonable suspicion, an automobile search is not constitutionally permissible unless it is reasonable under the circumstances. See U.S. Const. amend. IV (prohibiting "unreasonable searches and seizures"). The well-settled rule is warrantless searches are unreasonable per se unless they fall under an exception to the Fourth Amendment's warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978). Notably, South Carolina courts have recognized several exceptions to the warrant requirement, including the automobile exception. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981); see State v. Morris, 395 S.C. 600, 609, 720 S.E.2d 468, 472 (Ct. App. 2011) ("[T]he ready mobility of and the lessened expectation of privacy in automobiles endorse an exception to that rule based upon probable cause.").

Pursuant to the automobile exception, law enforcement officers can conduct a warrantless search of an automobile based on probable cause alone. State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995). Probable cause is "a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search, that there exists a practical, nontechnical probability that a crime is being committed or has been committed and incriminating evidence is involved." Id. Significantly, "[i]f a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth

Amendment permits police to search the vehicle without more." State v. Weaver, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007); see also State v. Willard, 374 S.C. 129, 135, 647 S.E.2d 252, 255 (Ct. App. 2007) ("[T]emporary immobility may still be considered readily mobile so as to qualify for the automobile exception.").

In the case sub judice, the trial judge properly denied Appellant's suppression motion because the officers' decision to conduct an investigatory stop and search of the black Ford Expedition was reasonable under the totality of the circumstances and was supported by reasonable suspicion and probable cause. Critically, the officers' decision was reasonable because the officers obtained reliable information about a narcotics supplier's active involvement in illegal activity from a cooperating informant and independently corroborated important aspects of that information. Based on the officers' corroboration of the information, it was reasonable for the officers to believe crack cocaine would be located in the black Ford Expedition Appellant was driving at the time of the stop, which justified the investigatory stop and search of the vehicle. As a result, the trial judge – just as this Court has already determined – correctly declined to suppress the scale, crack cocaine, and other evidence discovered during and after the investigatory stop and search. See Pope, 410 S.C. at 225-226, 763 S.E.2d at 820-821 (holding the trial judge did not err in denying the motion to suppress the evidence discovered during and after the search of the black Ford Expedition after concluding the officers' actions were justified by both reasonable suspicion and probable cause).

Looking to the specific information known to the officers prior to the stop and search, Harris, the cooperating informant, arranged a drug transaction with his narcotics supplier, whom he identified as Pope. Harris then provided information to the officers about the make, model, and color of the vehicle Pope typically used, the vehicle's

reported direction of travel, and the vehicle's expected route into Union County. Although the officers had not previously worked with Harris, it was reasonable for the officers to rely on the information provided by Harris because his admission of having a drug supplier was decidedly against his best interests and provided the officers with powerful evidence that could be used against him in any future trial on the distribution of crack cocaine charge for which he had been arrested earlier that day. 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. That the informant may be paid or promised a 'break' does not eliminate the residual risk and opprobrium of having admitted criminal conduct."); see also United States v. Tyler, 238 F.3d 1036, 1039 (8th Cir. 2001) ("Mr. Garza's disclosures were presumptively credible because they were made against his penal interest. . . . After the police caught Mr. Garza with drugs in his possession, he admitted not only that he had obtained the drugs from Mr. Tyler but also that he had purchased drugs from Mr. Tyler on 'numerous occasions' over the previous years. Thus, Mr. Garza's statements cannot be taken merely as blame-shifting because they admitted to criminal activities beyond those of which the police already knew him to be guilty."); Lopez v. State, 292 Ga. App. 518, 521, 664 S.E.2d 866, 869 (Ga. Ct. App. 2008) ("[T]he admissions against penal interest of a known informant in the hands of police (even though that informant's name is not disclosed at the trial of the accused) are valuable facts indicating that the informant is telling the truth and is reliable."); see generally State v. Driggers, 322 S.C. 506, 514, 473 S.E.2d 57, 61 (Ct. App. 1996) ("Klepp-Egge also acted against his best interests by providing the police

with information that possibly linked him to the crime."). Additionally, the officers' reliance on the information provided by Harris was further justified because Harris could have been held responsible if the information he provided proved to be false since his identity was known to the officers and he was in the officers' custody. See Driggers, 322 S.C. at 511, 473 S.E.2d at 60 ("[A] non-confidential informant should be given 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."). In fact, had Harris provided false information to the officers, Harris's chances of achieving his desired objective of getting the officers to assist him in obtaining bond would have been greatly diminished. Furthermore, because Harris's status as a drug dealer was unquestionable in light of his earlier arrest for distributing crack cocaine, the officers were fully justified in accepting Harris's statements about his narcotics supplier, which he logically had to have in order to successfully serve as a crack cocaine dealer. See Blitch v. State, 323 Ga. App. 677, 680, 747 S.E.2d 863, 866 (Ga. Ct. App. 2013) ("Webb's basis of knowledge was self-evident because, as a seller of cocaine, he would necessarily have a source that supplied him with cocaine and had the means of setting up the drug transaction."). Under those circumstances, the officers justifiably relied on the information provided by Harris, and Harris's reliability was sufficiently established to make the officers' reliance on his statements entirely reasonable. See Pope, 410 S.C. at 225, 763 S.E.2d at 820 ("Harris was not a confidential informant and exposed himself to criminal liability should the information he supplied to officers prove to be false."); see also Illinois v. Gates, 462 U.S. 213, 233 (1983) ("[An informant's veracity and basis of knowledge] are better understood as relevant consideration in the totality-of-the-circumstances analysis that traditionally has guided probable cause determinations: a

deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."); see generally State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) ("The required reasonable suspicion can arise from an anonymous tip provided that the totality of the surrounding circumstances justifies acting on the tip.").

However, beyond the inherent reliability of Harris's information under the circumstances, the reasonableness of the officers' actions in conducting the investigatory stop and search was established by the officers' corroboration of significant aspects of the information provided by Harris **before** they acted on that information. Critically, prior to the stop, Harris informed the officers his narcotics supplier would be travelling in a black Ford Expedition on Highway 176 and would be coming into Union County towards a convenience store located off the highway. Thereafter, as the officers waited along the highway for the described vehicle to arrive, Harris informed the officers his narcotics supplier had just driven past the Lighthouse Fish Camp. Moments later, the officers observed a black Ford Expedition driving into Union County along Highway 176 approximately a mile to a mile and half after it would have passed the Lighthouse Fish Camp and only a few miles away from the location where Harris arranged to meet Pope. Thus, before initiating the investigatory stop of the black Ford Expedition, the officers verified the vehicle matched the description of the make, model, and color of the vehicle identified by Harris, it was travelling towards the location where a narcotics supplier was supposed to meet Harris, and it had recently driven by a specific location on the highway the narcotics supplier reported he had just passed. See Alabama v. White, 496 U.S. 325, 332 (1990) ("Because only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to

such information is likely to also have access to reliable information about that individual's illegal activities."); 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)). Because the officers were able to corroborate those substantial details, including the information regarding the black Ford Expedition's precise location at a specific time, it was entirely reasonable for the officers to believe Harris was also correct when he indicated Appellant was involved in criminal activity and crack cocaine would be found in the black Ford Expedition. See White, 496 U.S. at 331 ("[B]ecause an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity."); see also State v. Martinez, 150 N.C. App. 364, 369, 562 S.E.2d 914, 917 (N.C. Ct. App. 2002) ("Although Goff was not a known informant, the officers independently verified the information that he provided to them. Based on Goff's information and the officers' independent verification of that information, the officers had probable cause to believe that defendant and Zavala were committing a felony in their presence."); see generally Gates, 462 U.S. at 241 ("Our decisions applying the totality-of-the-circumstances analysis . . . have consistently recognized the value of corroboration of details of an informant's tip by independent police work."). As a result, the investigatory stop and search were entirely reasonable under the circumstances. See Pope, 410 S.C. at 226, 763 S.E.2d at 821 ("[T]he trial court did not err in denying the motion to suppress the evidence seized during the search of the vehicle because law enforcement had probable cause to believe the vehicle contained evidence of criminal activity.").

However, further supporting the reasonableness of the search, the officers continued to corroborate the information provided by Harris after initiating the stop but before conducting the search. Specifically, upon approaching the black Ford Expedition, the officers saw multiple people inside of the vehicle just as Harris had reported and observed Pope with a cell phone in his hand, which was entirely consistent with the fact Pope was speaking to Harris on the phone shortly before the stop was initiated. See United States v. Draper, 358 U.S. 307, 313-314 (1959) ("Marsh[, the narcotics agent,] had personally verified every fact of the information given him by Hereford[, the informant,] except whether the petitioner had accomplished his mission and had three ounces of heroin on his person or in his bag. And surely, with every other bit of Hereford's information being thus personally verified, March had 'reasonable grounds' to believe that the remaining unverified bit of Hereford's information – that Draper would have the heroin with him – was likewise true. . . . [U]nder the facts and circumstances here, Marsh had probable cause and reasonable grounds to believe that petitioner was committing a violation of the laws of the United States relating to narcotic drugs at the time he arrested him."). Thus, the corroboration of the significant details of the information provided by Harris after Harris identified Pope as his narcotics supplier gave the officers a probable cause basis to believe crack cocaine would be located in the black Ford Expedition being driven by Appellant. See 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"); see also State v. Foreshaw, 245 N.J. Super. 166, 175, 584 A.2d 832, 836 (N.J. Super. Ct. App. Div. 1991) ("After receiving the informer's tip, the officers properly corroborated the data provided. Just as the informer had predicted, the officers observed a sliver-gray Eldorado bearing New Jersey license plates

traveling southbound on the Turnpike. Inside the vehicle were two males and a female. As was also foretold, the vehicle exited the highway at Exit 4 and headed towards Camden. Once the officers established that the informant had been correct, they had probable cause to believe that defendants' car contained contraband and as such properly stopped and searched the vehicle."); Lopez, 292 Ga. App. at 522, 664 S.E.2d at 869 ("Here the informant told police in advance the make, approximate model year, and color of the car the supplier would be driving, the location at which the car would be arriving, the gender of the supplier who would be driving the vehicle, and the time of the vehicle's arrival (the supplier would arrive within moments after the informant received the phone call). Police were able to personally witness and corroborate each of these details, which lent credibility to the informant's claim that the supplier was bringing drugs to the location."). Under those circumstances, the officers' decisions to stop and search the vehicle were entirely reasonable and were supported by both reasonable suspicion and probable cause.

In light of the fact the officers corroborated the information provided to them by an informant who could be held responsible if he was found to have given them false information, the officers were in possession of sufficient facts to establish reasonable suspicion and probable cause, which justified the investigatory stop and search of the black Ford Expedition. Compare State v. Rogers, 368 S.C. 529, 535-536, 629 S.E.2d 679, 682-683 (Ct. App. 2006) (finding an investigatory stop was supported by reasonable suspicion where "the officer received the information from a known, accountable informant whose reputation could be assessed and who explained how he knew about the planned robbery, thereby supplying a basis, outside of his already proven reliability for [the officer] to believe the confidential information had inside information on the

matter."); with State v. Green, 341 S.C. 214, 218, 532 S.E.2d 896, 898 (Ct. App. 2000) (finding an investigatory stop was not supported by reasonable suspicion where "[t]he only information available to the officer was the statement of an unknown, unaccountable informant who neither explained how he knew about the money and narcotics, nor supplied any basis for the officer to believe he had inside information about Green"). Critically, just as this Court concluded in Pope, the officers' decision to conduct the stop in Appellant's case was entirely reasonable and did not violate Appellant's constitutional rights even though the officers were not able to verify Appellant and the others were in possession of crack cocaine until after the stop was conducted. See Pope, 410 S.C. at 225, 763 S.E.2d at 820 (concluding the stop of the black Ford Expedition was proper and constitutional); cf. White, 496 U.S. at 331 (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). Likewise, just at this Court concluded in Pope, the officers' decision to search the vehicle in the case at bar was reasonable and supported by probable cause based on the officers' corroboration of the information provided by Harris in regard to his crack cocaine supplier. See Pope, 410 S.C. at 226, 763 S.E.2d at 821 (concluding the search of the black Ford Expedition was proper and constitutional); see also Blitch, 323 Ga. App. at 679-680, 747 S.E.2d at 866 (holding officers had probable cause to search Blitch's vehicle after an informant identified Blitch as his cocaine supplier and arranged a drug transaction with Blitch and then the officers observed Blitch arrive at the location where the transaction was supposed to take place

around the time it was supposed to take place in a vehicle matching the description of the one he was supposed to be driving); see also Gates, 462 U.S. at 246 ("[P]robable cause does not demand the certainty we associate with formal trials."). Because the investigatory stop and search were entirely reasonable, the trial judge properly denied Appellant's suppression motion, and his ruling was fully supported by the evidence presented during trial. See State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) ("It is only unreasonable searches and seizures that are prohibited."); see also State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."). Appellant's conviction should be affirmed.

II.

Just as this Court concluded in Appellant's co-defendant's appeal, the trial judge properly denied Appellant's suppression motion based on an allegedly insufficient chain of custody in regard to the crack cocaine because testimony was presented establishing the identity of each person who was in custody of the crack cocaine along with what was done with the crack cocaine leading up to the analysis conducted at S.L.E.D.

Appellant contends the trial judge erred in admitting the crack cocaine into evidence during trial. In support of that contention, Appellant maintains the chain of custody regarding the crack cocaine was incomplete because an officer listed incorrect information on a chain of custody affidavit. However, just as this Court previously determined in Pope, the testimony presented during trial established the identity of each person who was in custody of the crack cocaine along with what was done with it prior to the analysis of the crack cocaine at S.L.E.D.[8] Accordingly, a complete chain of custody was established in regard to the crack cocaine, and the trial judge did not abuse his discretion in admitting the crack cocaine into evidence during trial. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

The reception or exclusion of evidence is a matter left largely to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). On appeal, appellate courts give "great deference" to trial judges when reviewing evidentiary rulings. State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010); see State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Moreover, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the

[8] Once again, Appellant inexplicably failed to make any reference in his initial brief to this Court's decision in Pope even though that decision had been issued long before he filed his initial brief.

trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ANALYSIS

"The 'chain of custody' rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence." United States v. Howard-Arias, 679 F.2d 363, 366 (4th Cir. 1982). "The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be." State v. Hatcher, 392 S.C. 86, 95, 708 S.E.2d 750, 755 (2011); see Howard-Arias, 679 F.2d at 366 ("The purpose of this threshold requirement is to establish that the item to be introduced, i.e., marijuana, is what it purports to be, i.e., marijuana seized from the 'Don Frank.' "). Notably, "[c]ourts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts." Hatcher, 392 S.C. at 94, 708 S.E.2d at 754.

When a party seeks to admit fungible evidence like drugs or a blood sample during trial, a complete chain of custody must be established as far as practicable. State v. Governor, 362 S.C. 609, 612, 608 S.E.2d 474, 475 (Ct. App. 2005); see Hatcher, 392

S.C. at 95, 708 S.E.2d at 755 ("The State need not establish the identity of every person handling fungible items in all circumstances; rather, the standard is whether, in the discretion of the trial judge, the State has established the chain of custody as far as practicable."). However, the proof of the chain of custody need **not** exclude every possibility of tampering. State v. Smith, 326 S.C. 39, 41, 482 S.E.2d 777, 778 (1997); see State v. Rogers, 361 S.C. 178, 187, 603 S.E.2d 910, 915 (Ct. App. 2004) ("South Carolina law does not require testimony as to the exclusion of any possibility of tampering."). Instead, in order to satisfy the requirements for establishing the chain of custody, the evidence and testimony presented during trial must simply not leave to conjecture who was in possession of the fungible item and what was done with it between its seizure and analysis. State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct. App. 1995). "[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive." State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-206 (2007). Furthermore, "where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility." State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001).

In the case at bar, the trial judge committed no error in admitting the crack cocaine into evidence during trial. That is true because, just as this Court concluded in Pope, testimony was presented during trial establishing the identity of each person who was in custody of the crack cocaine and what was done with it prior to analysis, which meant a complete chain of custody was established in regard to the crack cocaine. See Pope, 410 S.C. at 229, 763 S.E.2d at 822 (holding the trial judge did not err in admitting

the crack cocaine into evidence during trial after finding a complete chain of custody had been established in regard to the drugs); see also Hatcher, 392 S.C. at 95, 708 S.E.2d at 755 ("The ultimate goal of chain of custody requirements is simple to ensure that the item is what it is purported to be.").

Specifically, during trial, Corporal Vinson testified he secured the crack cocaine after finding it in his law enforcement vehicle and turned it over to Lieutenant Sherfield, the lieutenant testified he secured the crack cocaine in a locked evidence vault only he could access and then delivered the drugs to the evidence intake area at S.L.E.D., and Agent Smith testified an evidence technician brought the crack cocaine to him from the S.L.E.D. evidence intake area before he conducted his analysis. Additionally, Perry and Yarborough, the other S.L.E.D. employees who handled the crack cocaine, were specifically identified through the trial testimony. Thus, every individual who handled the crack cocaine was identified, and a complete chain of custody was established. See Governor, 362 S.C. at 613, 608 S.E.2d at 476 (finding fungible evidence should have been admitted in light of the fact a complete chain of custody was presented and noting discrepancies in the manner in which the evidence was handled were not a proper basis for suppression). Furthermore, Corporal Vinson, Lieutenant Sherfield, and Agent Smith all confirmed they secured the crack cocaine when it was in their possession, and Agent Smith stated the evidence bag in which the crack cocaine was sealed had not been tampered with prior to his analysis, which established as far as practicable the crack cocaine had not been altered by anyone who handled the drugs. See Benton v. Pellum, 232 S.C. 26, 33-34, 100 S.E.2d 534, 537 (1957) (" 'Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis.' " (citation omitted)).

Based on that testimony, a complete chain of custody was established in regard to the crack cocaine. See Pope, 410 S.C. at 228-229, 763 S.E.2d at 822 (holding the evidence and testimony presented during the joint trial of Appellant and his-co-defendants established a complete chain of custody in regard to the crack cocaine). As a result, the trial judge properly admitted the crack cocaine into evidence during trial, and any issues with the incorrect information on the chain of custody affidavit merely impacted the weight of the testimony as opposed to the admissibility of the crack cocaine. See Johnson, 318 S.C. at 196, 456 S.E.2d at 444 ("The State established a continuous chain of custody through the testimony of all people who had control and possession of the evidence. Although a discrepancy existed as to the dates Dailey received the evidence, no evidence was presented to indicate the drugs were not within the control of identifiable people during the entire time. **A reconciliation of this discrepancy was not necessary to establish the chain of custody**, but merely reflected upon the credibility of the evidence rather than its admissibility." (emphasis added)); see also Sweet, 374 S.C. at 6, 647 S.E.2d at 205-206 ("[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive."). Appellant's conviction should be affirmed.

III.

The trial judge properly denied Appellant's directed verdict motion as to the trafficking in crack cocaine charge because the evidence and testimony presented during trial, including the evidence and testimony demonstrating Appellant was driving a vehicle connected to a drug supplier to a location where the drug supplier intended to deliver over ten grams of crack cocaine while the drug supplier openly discussed the drug transaction over the telephone and another passenger in the vehicle openly possessed a digital scale covered in suspected drug residue, established Appellant's guilt for each and every element of the indicted offense and supported a rational and logical conclusion Appellant constructively and jointly possessed the crack cocaine subsequently discovered by law enforcement officers.

Appellant contends the trial judge erred in denying his directed verdict motion as to the trafficking in crack cocaine charge. In support of that contention, Appellant maintains the evidence was insufficient to establish he had knowledge of the drugs or was in actual or constructive possession of the drugs. To the contrary, evidence and testimony was presented during Appellant's trial establishing Appellant was driving a vehicle connected to Pope, a drug supplier, towards a location to which Pope had recently agreed to deliver over ten grams of crack cocaine. Similarly, evidence and testimony was presented establishing Pope, who was seated next to Appellant in the vehicle, openly discussed the drug transaction by phone with Harris, the intended recipient of the crack cocaine, in Appellant's presence while Crosby, another passenger in the vehicle, openly possessed a digital scale covered in suspected drug residue. Viewing that evidence and testimony in a light most favorable to the State as required, the jury could logically and rationally concluded Appellant jointly and constructively possessed over ten grams of crack cocaine or aided and abetted a joint criminal enterprise to traffic in crack cocaine as he drove Pope and Crosby towards the arranged location of a drug transaction. Accordingly, the trial judge properly denied Appellant's directed verdict motion and submitted the case to the jury. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

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. Gaster, 349 S.C. at 555, 564 S.E.2d at 92. "[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 weigh the evidence and decide 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.").

ANALYSIS

In South Carolina, it is illegal to traffic in crack cocaine. See S.C. Code Ann. § 44-53-375(C) (prohibiting trafficking in crack cocaine). In order to prove a defendant's guilt for trafficking in crack cocaine, it is generally necessary for the State to present evidence establishing the defendant was in possession of crack cocaine and had knowledge of the presence of the drugs. 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."). However, the offense of trafficking in crack cocaine can also 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, deliver, purchase, or bring into this State" ten grams or more of crack cocaine. S.C. Code Ann. § 44-53-375(C).

Notably, possession of a controlled substance may be established through proof of either actual or constructive possession. 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 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; see State v. Muhammed, 338 S.C. 22, 27, 524 S.E.2d 637, 639 (Ct. App. 1999) (recognizing constructive possession may be shared).

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 the case at bar, evidence was presented establishing Appellant was driving a vehicle that was registered to an individual with the same last name as Pope, the drug supplier seated next to him in the vehicle, towards a location where Pope had just arranged to deliver crack cocaine to another individual. Significantly, the testimony presented during trial further established Pope repeatedly engaged in telephone calls with Harris, the person he was delivering crack cocaine to, while seated next to Appellant in the vehicle, and Harris, the intended recipient of the crack cocaine, was able to overhear the voices of the other occupants in the vehicle during the calls, meaning Appellant would have likewise overheard Pope discussing the details of the drug transaction with Harris. Additionally, evidence was presented establishing a digital scale covered in suspected drug residue was located in the vehicle Appellant was driving underneath one of the vehicle's seats after Crosby was observed furtively leaning forward towards the spot where the scale was found in response to the sheriff activating his law enforcement vehicle's blue lights to stop the black Ford Expedition. Furthermore, evidence was presented establishing Appellant and Crosby were both in possession of a significant

quantity of cash after they were stopped, and more than eleven grams of crack cocaine were discovered in the law enforcement vehicle used to transport Appellant and Crosby to the jail. Thus, the evidence and testimony presented during trial established Appellant exercised dominion and control over a vehicle connected to a drug supplier who was bringing crack cocaine to another person while openly discussing that drug transaction in Appellant's presence at the same time Crosby, the person seated in the back seat of the vehicle, was openly in possession of a digital scale covered in drug residue that he furtively hid from view in response to the presence of law enforcement officers.

Critically, viewing that evidence and testimony in a light most favorable to the State as required, the jury could have rationally and logically concluded Appellant and the others seated in the vehicle Appellant was driving jointly possessed the crack cocaine subsequently discovered by the officers. See United States v. Lochan, 674 F.2d 960, 966 (1st Cir. 1982) ("Drivers generally have dominion and control over the vehicles that they drive."); Navarro v. State, 293 Ga. App. 329, 331, 667 S.E.2d 125, 127 (Ga. Ct. App. 2008) ("[A] presumption of possession applies even where the driver of a car does not own the same."); see also Hudson, 277 S.C. at 202, 284 S.E.2d at 775 ("[P]ossession may be shared."); cf. United States v. Speer, 30 F.3d 605, 611 (5th Cir. 1994) (holding sufficient evidence was presented to overcome a directed verdict motion and establish Speer was in constructive possession of a weapon where the evidence showed Speer was the driver of a vehicle in which a passenger was visibly in possession of a firearm). Likewise, based on Pope's ongoing conversations with Harris about the drug transaction conducted in the presence of Appellant and Crosby, Crosby's open possession of a digital scale covered in drug residue, Appellant's control of a vehicle connected to a drug supplier and being used to facilitate a drug transaction, and Appellant's possession of a

large quantity of cash, the jury could have rationally and logically concluded Appellant and the others were jointly engaged in a criminal enterprise to deliver and sell the crack cocaine to Harris. See State v. Lewis, 277 S.C. 234, 236, 285 S.E.2d 354, 355 (1981) ("Moreover, a person may be convicted of an offense related to narcotics where he was a *joint participant* in committing the offense."); see also State v. Langley, 334 S.C. 643, 648-649, 515 S.E.2d 98, 101 (1999) (recognizing a defendant can be guilty under an accomplice liability theory where the defendant was present at the scene of the crime and intentionally, or through a common design, aided, abetted, or assisted in the commission of the crime through some overt act); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002) ("Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design or purpose."); see generally Maryland v. Pringle, 540 U.S. 366, 373 (2003) ("[I]t was reasonable for the officer to infer a common enterprise among the three men. The quantity of drugs and cash in the car indicated the likelihood of drug dealing, an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him."); Wyoming v. Houghton, 526 U.S. 295, 304-305 (1999) (recognizing passengers in an automobile are often engaged in a common enterprise with the driver of the vehicle).

Accordingly, the evidence was sufficient to establish Appellant was in constructive possession of over ten grams of crack cocaine or aided, abetted, attempted, or conspired to sell or deliver over ten grams of crack cocaine and, thus, was guilty of the indicted offense of trafficking in crack cocaine. 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 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); cf. State v. Jennings, 335 S.C. 82, 87, 515 S.E.2d 107, 109 (Ct. App. 1999) ("[T]he evidence was sufficient to create a jury issue in regard to whether Jennings exercised such dominion and control over the shotgun to amount to constructive possession. The trial judge correctly ruled that Jennings could be convicted of possession of a firearm during the commission of a violent crime even though Jennings never actually possessed the shotgun during the armed robbery."). As a result, the trial judge properly denied Appellant's directed verdict motion and submitted the case to the jury. See State v. Riley, 219 S.C. 112, 114, 64 S.E.2d 127, 128 (1951) ("When considering a motion for a directed verdict in favor of a defendant, it is not the function of the Court to pass upon the weight of the evidence, but to determine its sufficiency to support the verdict. Where there is any evidence, however slight, on which the jury may justifiably find the existence or nonexistence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issue should be submitted to the jury."); see also State v. Larmand, Op. No. 27562 (S.C. Sup. Ct. filed Aug. 12, 2015) (Shearouse Adv. Sh. No. 31 at 31, 37) ("Although [Larmand] presented plausible explanations for each of these facts, our duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was *any* evidence from which the jury could infer [Larmand]'s guilt."). Appellant's conviction should be affirmed.

CONCLUSION

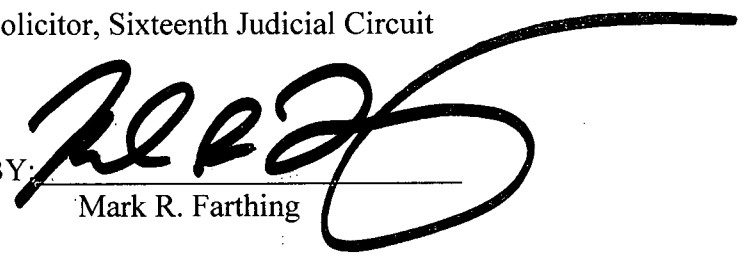
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 15, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
SEP 15 2015
SC Court of Appeals

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2014-000880

THE STATE,

Respondent,

vs.

LASHAD DEMOND BREWTON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: _____
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 15, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2014-000880

THE STATE,

Respondent,

vs.

LASHAD DEMOND BREWTON,

Appellant.

PROOF OF SERVICE

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

Tiffany L. Butler, Esquire
S.C. Commission on Indigent Defense
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 15th day of September, 2015.

Anne A. Mueller

ANNE A. MUELLER
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727