STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

THE STATE,

Respondent,

vs.

ALPHONSO CHAVES THOMPSON,

Petitioner.

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

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, and that petition was granted on June 16, 2016.

STATEMENT OF FACTS

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 though 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.[1] (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 used as a cocaine cutting agent, several sets of scales, a box of wrapping material that smelled of marijuana, and

[1] 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).

bags of cocaine and marijuana in the garage.[2] (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.[3][4] (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.[5] (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.[6] (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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[2] 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).

[3] 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).

[4] 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).

[5] In his Brief of Petitioner, Thompson appears to contend he was interrogated for four hours at the River Street address. (Pet. Br. p. 5). However, that contention is unsupported by anything appearing in the record as Thompson did **not** testify during trial he was interrogated for four hours and, instead, simply stated he sitting on the tailgate of an officer's truck for "about four hours" while the search of the property was taking place. (App'x p. 245).

[6] 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.[7] (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.[8] (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. (App'x p. 44). The solicitor further asserted the information contained in the search warrant affidavit was not

[7] 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).

[8] 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 multi-year 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).

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.[9] (App'x p. 484; p. 489).

[9] 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).

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. However, even assuming the search warrant affidavit was insufficient to establish a probable cause basis for the search of the River Street residence, the Court of Appeals nonetheless correctly affirmed the denial of Thompson's suppression motion because the good faith exception to the exclusionary rule would have been applicable in Thompson's case as the law enforcement officers who conducted the search of the residence relied on the judicially-issued search warrant in objective good faith and the lengthy, detailed search warrant affidavit was not so lacking in indicia of probable cause that belief in and reliance on its validity was objectively unreasonable.

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. However, 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 good faith exception to the exclusionary rule would have been applicable under the facts and circumstances of Thompson's case as the lengthy, detailed search warrant affidavit 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. Accordingly, for the foregoing reasons, both Thompson's convictions and the decision of the Court of Appeals 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 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. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) ("[A]ppellate courts must affirm

if there is any evidence to support the trial court's ruling."); 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

A. Propriety of the Ruling Denying Thompson's Suppression Motion

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 search 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 the circumstances**. State v. Keith, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003); see United States v. Woosley, 361 F.3d 924, 926 (6th Cir. 2004) ("The affidavit should be reviewed in a commonsense – rather than a hypertechnical – manner, and the court should consider whether the totality of the circumstances supports a finding of probable cause, **rather than engaging in line-by-line scrutiny**." (emphasis added)); Henson v. State, 440 S.W.3d 732, 740 (Tex. App. 2013) ("[I]t is impermissible to employ a 'divide-and-conquer' or 'piecemeal' approach to analyzing the information upon which the magistrate found probable cause to exist."). 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); see also State v. Dunbar, 361 S.C. 240, 249, 603 S.E.2d 615, 620 (Ct. App. 2004) ("Certainly, magistrates can issue search warrants based upon hearsay information that is not a result of direct personal observations of the affiant."). 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 also United States v. Spry, 190 F.3d 829, 836 (7th Cir. 1999) ("In the case under consideration, *multiple* informants provided information which the police were able to partially corroborate. Thus, neither the uncertainty of the reliability of the informants, nor the age of the information in the warrant affidavit should give this Court cause to overrule and hold

that the district court committed error in finding that probable cause existed to support the 1998 search warrant."); United States v. Scott, 555 F.2d 522, 527 (5th Cir. 1977) (holding a substantial basis existed for crediting the information included in a search warrant affidavit where "in almost every instance specific information provided by one individual was corroborated by the fact that others contributed almost identical information"); 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"); cf. United States v. Jenkins, 525 F.2d 819, 823 (6th Cir. 1975) ("In attacking this portion of the affidavit appellant's principal claim is that as 'double hearsay' it is somehow per se ineligible to be considered in a probable cause

determination. We disagree, and hold that . . . hearsay upon hearsay may be so considered by a magistrate.").

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.[10] See State v. Pope, 410 S.C. 214, 224, 763 S.E.2d 814, 819 (Ct.

[10] 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

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 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."). Because Thompson, a known drug trafficker, was observed routinely travelling to and from the River Street residence and because Diaz-Arroyo's statements, which constituted powerful evidence against Diaz-Arroyo's own interests in relation to his own drug charges by demonstrating his knowledge of and connection to drug trafficking, 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.[11] See United States v. Grossman, 400 F.3d 212, 214 (4th Cir. 2005) ("[Grossman's]

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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).

[11] In challenging the sufficiency of the search warrant affidavit, Thompson appears to suggest the information contained in the portion of the search warrant affidavit discussing the investigators' observations of him visiting the River Street residence prior to making cocaine deliveries over the course of a six-month time period was not reliable because it "plainly" was not based on Investigator Raymond's personal knowledge. (Pet. Br. p. 20). Notably though, even if that information was not based on Investigator Raymond's own personal knowledge, it was nonetheless perfectly appropriate and reasonable for him to rely on it as it "plainly" came from his fellow officers involved in the investigation into Thompson's drug activity. See United States v. Ventresca, 380 U.S. 102, 111 (1965) ("Observations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number."). Thompson further appears to suggest that portion of the search warrant affidavit should be considered to be unreliable because he contends the officers should have arrested him at the time they observed him making cocaine deliveries. (Pet. Br. p. 20). However, officers conducting an investigation are **not** required to cease their investigation and make an arrest at the earliest point in time they believe they have probable cause to do so. See Hoffa v. United States, 385 U.S. 293, 310 (1966) ("There is no constitutional right to be arrested. . . . Law enforcement officers are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction."); State v. Bultron, 318

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**

S.C. 323, 333, 457 S.E.2d 616, 622 (Ct. App. 1995) ("Law enforcement officials are not constitutionally or otherwise legally compelled to halt a criminal investigation the moment they have minimal evidence to establish probable cause. It is within the discretion of the investigating officers to act to secure a search warrant when they deem sufficient evidence is present. To hold otherwise would seriously hinder the investigatory powers of law enforcement officials and often force them to forego evidence that would strengthen their case against perpetrators." (citations omitted)). Thus, the officers in Thompson's case did nothing improper by choosing to continue forward with their investigation and strengthen their case against Thompson before making an arrest.

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.[12] 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 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 States v. Ortiz, 143 F.3d 728, 732-733 (2nd Cir. 1998) ("[I]n investigations of ongoing narcotics operations, intervals of weeks or months between the last described act and the application for a warrant did not necessarily make the information stale. Indeed, narcotics conspiracies are the very paradigm of the continuing enterprises for which the courts have relaxed the temporal requirements of non-staleness." (citations and internal quotations omitted)); 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."); see also Gates, 462 U.S. at 246 ("[P]robable cause does not demand the certainty we associate with formal trials."). Additionally, the search warrant affidavit contained the information provided by Diaz-

[12] 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 Aug. 29, 2016); 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).

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."); cf. Ortiz, 143 F.3d at 733 ("In view of the continuous nature of the narcotics conspiracy that is charged in the indictment and described in the supporting affidavit, we reject the claim that the showing of probable cause in support of the Nieves search is impaired by staleness."). 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 – which was still ongoing nearly three years after it was first reported to officers – and 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); see generally Garcia v. County of Merced, 639 F.3d 1206, 1209 (9th Cir. 2011) ("For information to amount to probable cause, it does not have to be conclusive of guilt, and it does not have to exclude the possibility of innocence, a distinction which the district court overlooked. . . . [P]olice are not required 'to believe to an absolute certainty, or by clear and convincing evidence, or even by a preponderance of the available evidence' that a suspect has committed a crime. All that is required is a 'fair probability,' given the totality of the evidence, that such is the case." (citations omitted)); United States v. Sanchez, 689 F.2d 508, 515-516 (5th Cir. 1982) ("[O]ur ultimate inquiry is not whether there is some hypothesis of the yellow truck's 'innocence' which is reasonably consistent with the circumstances shown, for such an analysis is more appropriate to the 'beyond a reasonable doubt' standard used on the merits. Here, we are dealing with 'probable cause,' which requires 'far less evidence[.]' All that is required is a showing of 'facts and circumstances (that) would lead a reasonably prudent man to believe that the vehicle

contain(ed) contraband.' " (citations omitted)). 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. See United States v. Ventresca, 380 U.S. 102, 108 (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."); see also Gates, 462 U.S. at 243 (holding probable cause existed where Gates's actions were "as suggestive of a pre-arranged drug run, as [they were] of an ordinary vacation trip"); cf. United States v. Sumpter, 669 F.2d 1215, 1218 (8th Cir. 1982) ("Essentially, the appellant attacks the affidavit using a piecemeal approach. He attempts to show that each element of the affidavit, when viewed independently, is insufficient to support a warrant. We cannot accept this approach. The determination of whether or not probable cause exists to issue a search warrant is to be 'based upon a common-sense reading of the entire affidavit.' " (citations omitted)). Accordingly, both Thompson's convictions and the decision of the Court of Appeals should be affirmed.

B. Applicability of the Good Faith Exception

Both the United States Constitution and the South Carolina Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; S.C. Const. art. I, § 10. When an unreasonable search or seizure occurs, any evidence seized as the result of that unconstitutional

action generally must be excluded from trial pursuant to the exclusionary rule, a judicially-created remedy designed to serve as a deterrent sanction against unconstitutional conduct. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007); see State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012) ("The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. However, the United States Supreme Court has fashioned a judicially-created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment." (citation omitted)). Importantly though, the exclusion of evidence following an unconstitutional search "is 'not a personal constitutional right,' nor is it designed to redress the injury occasioned by an unconstitutional search." Davis v. United States, 564 U.S. 229, 236 (2011) (citations omitted). Due to the heavy costs exacted by the exclusion of evidence on both the judicial system and society as a whole, application of the exclusionary rule is only appropriate where the deterrent benefits of the rule outweigh the heavy costs its application would exact. Brown, 401 S.C. at 88, 736 S.E.2d at 266. As a result, judicially-created exceptions to the exclusionary rule have been established, including the good faith exception first recognized by the United States Supreme Court in its decision in United States v. Leon, 468 U.S. 897 (1984). Brown, 401 S.C. at 88-89, 736 S.E.2d at 266; see also State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471, 473 (1987) ("Exclusion of evidence is not the only means available to insure that warrants are properly issued.").

In Leon, officers received information from an informant of **unknown** reliability about drug activity occurring at a particular residence and initiated a narcotics investigation as a result. Id., 468 U.S. at 901. During their investigation, they observed cars registered to individuals with criminal records come to and leave from the residence and saw individuals enter the residence

and leave a short time later with small paper sacks. Id. They also located a small quantity of marijuana at an airport in the belongings of two individuals connected to the targeted residence when those individuals returned from a trip to Miami. Id. at 902. Thereafter, a narcotics investigator prepared a search warrant affidavit recounting those details, obtained a search warrant, searched a variety of locations connected to Leon and his accomplices, and discovered large quantities of cocaine and other evidence. Id. Subsequently, during trial, Leon and his accomplices sought the suppression of the evidence discovered during the searches, and the district court judge granted the suppression motion after finding the search warrant affidavit contained insufficient information to establish probable cause. Id. at 903. Following that ruling, the State appealed, and the Ninth Circuit Court of Appeals affirmed the district court judge's decision. Id. at 904-905. The State then filed a petition for a writ of certiorari in the Supreme Court, and the Supreme Court granted that petition to address the issue of whether the exclusionary rule should be applied to evidence "obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause." Id. at 900.

After considering the issue, the Supreme Court determined the exclusionary rule should only "rarely" be applied to cases where officers reasonably relied upon subsequently-invalidated search warrants. Id. at 926. Specifically, the Supreme Court concluded 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 search warrant affidavit; (2) where the issuing judge wholly abandoned his neutral and detached judicial role; (3) where the search warrant affidavit was " 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable[;]' "

and (4) when a search warrant was so facially deficient in some technical respect the officer executing that warrant could not reasonably have presumed it to be valid. Id. at 923 (citation omitted). Thereafter, the Supreme Court reversed the district court judge's decision despite the fact the search warrant affidavit had been found to contain insufficient information to establish probable cause after concluding "the officers' reliance on the magistrate's determination of probable cause was objectively reasonable" under the circumstances. Id. at 926.

Just as in Leon, even assuming the search warrant affidavit was insufficient to establish a substantial basis for a finding of probable cause in Thompson's case, the good faith exception would have nonetheless been applicable under the circumstances because the search warrant affidavit was not " 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable' " and the officers' reliance on the judicially-issued search warrant was objectively reasonable. Id. at 924; cf. United States v. Bynum, 293 F.3d 192, 195 (4th Cir. 2002) ("[I]f Agent Peterson's affidavit does not provide a substantial basis for determining the existence of probable cause, . . . it is not 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " (citations omitted)). Specifically, the information in Investigator Raymond's lengthy and detailed search warrant affidavit was not "bare bones." Instead, that multi-page affidavit contained statements establishing Thompson had been engaged in ongoing and continuous drug activity for nearly three years at a minimum, included information from ten different informants in regard to Thompson's drug activity, and contained specific information linking Thompson's drug activity to the River Street residence. Cf. Leon, 468 U.S. at 926 (finding an officer's reliance on a search warrant was not objectively unreasonable despite the fact the search warrant affidavit did not contain sufficient information to establish probable cause where the warrant was supported by

more than a "bare bones" affidavit). Moreover, before conducting any search, Investigator Raymond acted in an objectively-reasonable manner by obtaining a search warrant from the issuing judge, and the search warrant affidavit used to obtain that search warrant was subsequently found to be sufficient upon review by the trial judge **and** multiple appellate court judges. See 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)); see also United States v. Martin, 833 F.2d 752, 756 (8th Cir. 1987) ("When judges can look at the same affidavit and come to differing conclusions, a police officer's reliance on that affidavit must, therefore, be reasonable."). Under those circumstances, Investigator Raymond and the other officers' reliance on the search warrant was not objectively unreasonable, the officers acted in good faith in executing the search warrant, and the trial judge properly declined to suppress the evidence discovered during the search of the River Street residence. Cf. Leon, 468 U.S. at 927 ("Officer Rombach's application for a warrant clearly was supported by much more than a 'bare bones' affidavit. The affidavit related the results of an extensive investigation and, as the opinions of the divided panel of the Court of Appeals make clear, provided evidence sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause. Under these circumstances, the officers' reliance on the magistrate's determination of probable cause was objectively reasonable, and application of the extreme sanction of exclusion is inappropriate.").

In arguing the good faith exception was not applicable in his case, Thompson contends the officers' action were not conducted in good faith because Investigator Raymond allegedly

engaged in "judge shopping" until he found a judge willing to find the search warrant affidavit that was actually used to obtain the search warrant to be sufficient. (Pet. Br. pp. 27-28). Importantly though, **no** evidence of any kind was presented to the trial judge to support such a contention and, instead, defense counsel merely made a brief, unsupported claim of "judge shopping" during trial. As a result, Thompson's "judge shopping" claim cannot appropriately be considered on appeal in any manner. See McManus v. Bank of Greenwood, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This Court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."); cf. Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 302, 551 S.E.2d 588, 590 (Ct. App. 2001) ("Although the League's attorney argued that there was an injury in fact, **arguments of counsel are not evidence**." (emphasis added)); Gilmore v. Ivey, 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct. App. 1986) (instructing the circuit court judge properly rejected claims made by counsel that were not supported by evidence appearing in the record). Moreover though, defense counsel's vague "judge shopping" claim made during trial did not specify when during the multi-year investigation the officers allegedly unsuccessfully sought a search warrant from other judges and in no way established the same search warrant affidavit that was ultimately found to be sufficient was used in the purported failed attempts. As a result, defense counsel's claim – even if it somehow could appropriately be considered on appeal – did **not** establish the officers acted in bad faith in seeking a search warrant in Thompson's case. See United States v. Otero, 495 F.3d 393, 398 (7th Cir. 2007) (recognizing a defendant must rebut the presumption of good faith that arises when an officer obtains a search warrant).

Critically, because Investigator Raymond and the other officers' actions were objectively reasonable in light of the fact a judicially-issued search warrant was obtained prior to any search

and because the search warrant affidavit was not so lacking in indicia of probable cause to render official belief in its existence entirely unreasonable, the application of the exclusionary rule in Thompson's case would not have been warranted even if the search warrant had ultimately been defective due to some problem regarding the information contained in the accompanying affidavit. See Messerschmidt, 132 S. Ct. at 1250 ("The question in this case is not whether the magistrate erred in believing there was sufficient probable cause to support the scope of the warrant he issued. It is instead whether the magistrate so obviously erred that any reasonable officer would have recognized the error. The occasions on which this standard will be met may be rare, but so too are the circumstances in which it will be appropriate to impose personal liability on a lay officer in the face of judicial approval of his actions. **Even if the warrant in this case were invalid, it was not so obviously lacking in probable cause that the officers can be considered 'plainly incompetent' for concluding otherwise.**" (emphasis added and citation omitted)); Weston, 329 S.C. at 293, 494 S.E.2d at 804 ("Johnson should not be read as prohibiting the applicable of the good-faith exception every time an affidavit fails to satisfy the technical requirements of Gates. 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.' " (citation omitted)); see also Herring v. United States, 555 U.S. 135, 147-148 (2009) ("In light of our repeated holdings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, . . . we conclude that when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not 'pay its way.' In such a case, the criminal should not 'go free because the constable has blundered.' " (citations omitted)). As a result, even assuming the circuit court judge who issued

the search warrant, the trial judge, and the Court of Appeals erred in concluding the search warrant affidavit provided a substantial basis for a finding of probable cause, Thompson's suppression motion was nonetheless properly denied and the incriminating evidence discovered during the search of the River Street residence was properly admitted during trial. See Leon, 468 U.S. at 918-921 ("[S]uppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule. . . . Penalizing the officer for the [issuing judge]'s error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations."); 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."); United States v. Corral-Corral, 899 F.2d 927, 939 (10th Cir. 1990) ("Just as reviewing courts give 'great deference' to the decisions of judicial officers who make probable-cause determinations, police officers should be entitled to rely upon the probable-cause determination of a neutral magistrate when defending an attack on their good faith for either seeking or executing a warrant. This is particularly true, where, as here, with the benefit of hindsight and thoughtful reflection, reviewing judges still cannot agree on the sufficiency of the affidavit."); United States v. Anderson, 851 F.2d 727, 729-730 (4th Cir. 1988) (finding the good-faith exception applied even though the search warrant affidavit did not contain **any** information regarding the date of the crime or the date of Anderson's offer to sell a weapon to the informants). Accordingly, both Thompson's convictions and the decision of the Court of Appeals should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals and the judgment and conviction of the trial court should be affirmed.

Respectfully submitted,

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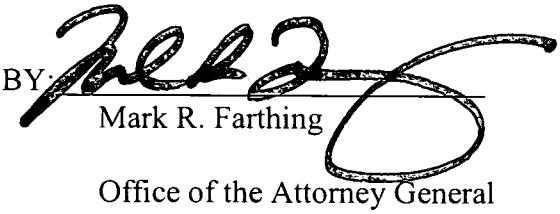
BY: 
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August 31, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

THE STATE,

Respondent,

vs.

ALPHONSO CHAVES THOMPSON,

Petitioner.

CERTIFICATE OF COUNSEL

The undersigned certifies that this 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."

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August 31, 2016

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PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Brief of Respondent on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 31st day of August, 2016.

KEELY CARTER
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