STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Carmen T. Mullen, Circuit Court Judge
Appellate Case No. 2015-000281

THE STATE,

Respondent,

vs.

TREVIN MILLIDGE,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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I.

The trial judge properly declined to suppress the incriminating evidence obtained during and as a result of the search of Appellant's residence because the search warrant affidavit contained sufficient information to establish a reliable probable cause basis to believe cocaine, crack cocaine, and other incriminating evidence would be discovered in that residence at the time of the search. Moreover, even if the trial judge somehow erred in finding the search warrant affidavit sufficiently established a probable cause basis for the search, the trial judge properly declined to suppress the evidence discovered as a result of the search because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that belief in and reliance on its validity was unreasonable.

II.

The trial judge committed no error in admitting into evidence the incriminating statement Appellant made after the search warrant was executed at his home because that statement was not the product on an unlawful search and was freely and voluntarily made after Appellant was informed of and validly waived his constitutional rights with a full understanding of those rights.

STATEMENT OF THE CASE

In July of 2011, Appellant Trevin Millidge was arrested after illegal drugs were found inside his pockets and residence during the course of a narcotics investigation. In October of 2011, the Beaufort County Grand Jury indicted Appellant for trafficking in cocaine base in an amount between twenty-eight and one-hundred grams, trafficking in cocaine in an amount equal to or greater than ten grams but less than twenty-eight grams, possession of alprazolam with intent to distribute, possession of oxycodone, and possession of a firearm during the commission of a violent crime. Thereafter, in October of 2014, the Beaufort County Grand Jury amended two of its earlier indictments and charged Appellant with trafficking in cocaine base in an amount equal to or greater than ten grams but less than twenty-eight grams and possession of cocaine with intent to distribute. On January 26, 2015, a jury trial was commenced in the Beaufort County Court of General Sessions with the Honorable Carmen T. Mullen, circuit court judge, presiding. At the conclusion of trial, the jury acquitted Appellant of possession of alprazolam with intent to distribute and possession of a firearm during the commission of a violent crime while convicting him of trafficking in cocaine base, possession of cocaine with intent to distribute, the lesser-included offense of possession of alprazolam, and possession of oxycodone. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty-six years for trafficking in cocaine base, twenty-six years for possession of cocaine with intent to distribute, one year for possession of alprazolam, and five years for possession of oxycodone. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On July 28, 2011, Investigator Justyna Lindahl of the Beaufort County Sheriff's Office sought a "no knock" search warrant for a multi-room mobile home located on Miranda Circle in Beaufort, South Carolina, at the conclusion of a several-month-long narcotics investigation conducted by members of the Beaufort/Jasper Multi-Agency Drug Task Force. (R. p. 31; pp. 62-63; pp. 129-130; pp. 426-446). In seeking a search warrant for the Miranda Circle residence, Investigator Lindahl prepared a lengthy search warrant affidavit that included the following information:

> 1. That within the previous month the Beaufort/Jasper Multi-Agency Drug Task Force has received information from a Reliable and Confidential Informant working under the direction and control of the Beaufort/Jasper Multi-Agency Drug Task Force that illegal drugs are being sold and distributed by a black male known as Trevin Mill[i]dge AKA "Horse." Based on this information, a drug investigation was started.
>
> 2. The Reliable and Confidential Informant advised that Trevin Mill[i]dge resides at 6 Miranda Circle, Port Royal, Beaufort County, SC. The Reliable and Confidential Informant positively identified the residence at 6 Miranda Circle, Port Royal, SC to members of the Beaufort/Jasper Multi-Agency Drug Task Force as the residence from which the Reliable and Confidential [Informant] bought Crack Cocaine from. Further investigation revealed that according to the South Carolina Department of Motor [V]ehicles that Trevin Lorenzo Millidge . . . lives at 6 Miranda Circle, Beaufort, SC 29906.
>
> 3. Within the last month a Reliable and Confidential Informant working under the direction and control of the Beaufort/Jasper Multi-Agency Drug Task Force conducted multiple controlled purchases of a quantity of Cocaine from a black male known to the Confidential Informant as Trevin Mill[i]dge AKA "Horse" from within the residence at 6 Miranda Circle, Port Royal, South Carolina, 29906, in the County of Beaufort. The controlled purchase was monitored by members of the Beaufort/Jasper Multi-Agency Drug Task Force at the incident location.
>
> 4. That within the last 72 hours a Reliable and Confidential Informant working under the direction and control of the Beaufort/Jasper Multi-Agency Drug Task Force did conduct a controlled purchase of a quantity of Crack Cocaine from a black male known to the Confidential Informant as Trevin Mill[i]dge AKA "Horse" from within the residence at 6 Miranda Circle, Port Royal, South Carolina, 29906, in the County of Beaufort. The controlled purchase was

monitored by members of the Beaufort/Jasper Multi-Agency Drug Task Force at the incident location.

5. The Confidential Informant was shown an unmarked photograph of Trevin Lorenzo Mill[i]dge . . . . The Confidential Informant positively identified Trevin Lorenzo Mill[i]dge as the same black male who sold the Confidential Informant a quantity of Crack Cocaine.

6. Trevin Lorenzo Mill[i]dge . . . has numerous criminal convictions in the State of South Carolina. Mill[i]dge was convicted of Possession of Cocaine on 03-16-00, Simple Possession of Marijuana on 12-14-87, Disorderly Conduct on 06-24-88, Sale and Distribution of Crack Cocaine on 02-09-89, Sale and Distribution of Crack Cocaine on 02-23-95, Disorderly Conduct on 07-22-93 and other charges. Trevin Lorenzo Mill[i]dge has the following criminal convictions in the State of North Carolina. Mill[i]dge was convicted of Possession with Intent to Sell and Deliver Cocaine on 08-01-94.

7. Based on the ongoing criminal activity, substantiated by the controlled purchase of Crack Cocaine from the residence at 6 Miranda Circle, Port Royal, South Carolina, in the County of Beaufort, a search warrant . . . is requested for the above listed residence located at 6 Miranda Circle, Port Royal, South Carolina, in the County of Beaufort.

Based on the above statement of facts, collected by Beaufort/Jasper Multi-Agency Drug Task Force officers, it is the affiant's belief that there is an active and on-going criminal enterprise, involving the Storage, Sale and Distribution of illegal drugs, operating via 6 Miranda Circle, Port Royal, South Carolina, in the County of Beaufort.

(R. pp. 426-446). Additionally, in the search warrant affidavit, Investigator Lindahl included information derived from her training, experience, and participation in other narcotics investigation that indicated drug traffickers commonly keep drugs, firearm, money, drug paraphernalia, ledgers, and other items connected to the drug trade in their residences. (R. pp. 426-446). After Investigator Lindahl presented that affidavit to a judge, a search warrant was issued for the Miranda Circle residence. (R. p. 130; pp. 426-446).

Thereafter, at approximately 4:54 a.m. on July 30, 2011, officers from the Drug Task Force executed the search warrant at the Miranda Circle residence with the assistance of members of the S.W.A.T. team. (R. pp. 50-51; pp. 57-58; pp. 66-67; pp. 76-77; pp. 95-96; pp.

104-105; pp. 129-130; p. 135; pp. 213-214; pp. 426-446). Inside the residence, the officers located several individuals, including Appellant Trevin Millidge. (R. p. 59; p. 67; pp. 76-77; pp. 132-133). Appellant and the other individuals were then detained, secured, and removed from the residence so a search of that location could be conducted. (R. p. 59; p. 67). Once those individuals were secured, Sergeant Kyle Strickland, an officer with the Beaufort County Sheriff's Office, searched Appellant's person and located clear plastic bags containing cocaine and crack cocaine in his pockets along with $828 in cash and an identification that listed 6 Miranda Circle as his address.[1] (R. pp. 66-69; pp. 135-136; pp. 140-141). At that point, Appellant was handcuffed and taken into custody. (R. pp. 216-217; p. 225).

After Appellant was taken into custody, Sergeant Walker Michaud of the Beaufort County Sheriff's Office spoke with Appellant while he was seated in the front seat of an unmarked law enforcement vehicle parked in the front yard of Appellant's residence. (R. pp. 26-27; pp. 215-216). At the outset of their conversation, Sergeant Michaud informed Appellant of his rights, including his rights to remain silent, have an attorney present, have an attorney appointed if he could not afford one, and refuse to answer any questions or make any statements at any time. (R. p. 27; pp. 217-219). The officer then asked Appellant if he understood his rights and wished to speak with him, and Appellant responded that he did. (R. p. 29; pp. 219-220). At that point, Sergeant Michaud reviewed the search warrant with Appellant and questioned him about his activities. (R. pp. 222-223). During their ensuing conversation that lasted roughly thirty minutes, Appellant revealed he had returned to his home just before the officers arrived, had gone to a club and sold drugs on the preceding night, and had hidden roughly an ounce of cocaine in a pair of shorts concealed in his closet. (R. pp. 29-30; pp. 222-223; p. 233).

[1] While Appellant was being searched, another officer conducted a search of Tyrone Jenkins, who was also inside the Miranda Circle residence at the time the search warrant was executed, and located a crack pipe in Jenkins's pocket. (R. pp. 77-78; p. 132-133).

Appellant further stated there was approximately $1,000 in cash in his dresser while claiming his girlfriend had no knowledge in regard to the drugs. (R. pp. 230-232).

Meanwhile, officers conducted a search of the Miranda Circle residence. (R. pp. 78-79; p. 96; p. 99; p. 105). During a search of the residence's master bedroom, officers located: (1) a handgun; (2) a magazine loaded with seven rounds; (3) bills addressed to Appellant; (4) quantities of cash totaling $950; (5) a bottle of inositol powder, which is a common cutting agent used in the drug trade; (6) a bag containing approximately twenty-three alprazolam pills; and (7) several bags containing cocaine and crack cocaine, including one bag that had been hidden in a pair of shorts found in the closet. (R. pp. 79-85; pp. 143-149; pp. 155-157; p. 172; pp. 263-269). Likewise, during a search of the bathroom connected to the master bedroom, officers found $22 in cash and a partial oxycodone pill. (R. pp. 97-99). Additionally, during a search of the residence's kitchen, officers located a digital scale covered in white residue and what appeared to be a ledger containing records of drug sales. (R. p. 86; pp. 99-100; pp. 158-159). Furthermore, in the residence's den, officers located a police scanner concealed in a desk drawer. (R. p. 106; pp. 162-163). All of the evidence discovered during the searches of Appellant's residence and person was then collected and secured, and the suspected drugs were ultimately analyzed and identified as roughly fourteen grams of crack cocaine, nine grams of cocaine, twenty-three alprazolam pills, and one tablet of oxycodone. (R. pp. 250-251; pp. 263-270).

Subsequently, Appellant was indicted for trafficking in cocaine base, possession of cocaine with intent to distribute, possession of alprazolam with intent to distribute, possession of oxycodone, and possession of a firearm during the commission of a violent crime, and he proceeded to trial. (R. pp. 21-22; pp. 447-458). At the outset of trial, defense counsel indicated he intended to challenge the admission of Appellant's incriminating out-of-court statement, and

the trial judge conducted an in camera hearing on the matter. (R. p. 23; p. 27). During the hearing, Sergeant Michaud testified about his interview of Appellant at the time the search warrant was executed at his residence, confirmed he informed Appellant of his rights at the beginning of the interview, and noted Appellant affirmatively stated he understood his rights before speaking with the officer. (R. pp. 26-29). Additionally, Sergeant Michaud indicated he did not threaten Appellant, use force on Appellant, draw his weapon on Appellant, touch Appellant, or make any promises to Appellant during the course of the interview. (R. pp. 29-30). Likewise, he indicated Appellant did not appear to be under the influence of drugs or alcohol at the time of the interview and did not ask to speak with an attorney at any point during the course of the interview. (R. p. 29; p. 31). However, Sergeant Michaud readily acknowledged Appellant's statement was not recorded in any manner. (R. p. 31).

Following the presentation of Sergeant Michaud's testimony, defense counsel contended Appellant's statement was inadmissible because no showing had allegedly been made establishing Appellant validly waived his rights before speaking with the officer. (R. pp. 32-33). In response, the solicitor noted evidence had been presented establishing Appellant had, in fact, waived his rights before making a statement. (R. p. 33). After considering the arguments of counsel, the trial judge found by a preponderance of the evidence Appellant's out-of-court statement was voluntarily made and admissible. (R. p. 33).

At that point, defense counsel moved to suppress the evidence discovered during the search of Appellant's residence. (R. pp. 34-35). In support of the suppression motion, defense counsel contended no information was included in the search warrant affidavit to establish the reliability of the confidential informant and nothing had been presented to establish the controlled drug buys from Appellant's residence actually occurred. (R. pp. 34-35). As a result,

defense counsel maintained the search warrant affidavit failed to establish a probable cause basis supporting a conclusion drugs would be found in a search of the residence. (R. p. 35). In response, the solicitor asserted the search warrant affidavit contained information establishing the officers corroborated the information provided by the confidential informant, conducted surveillance, and conducted controlled buys. (R. pp. 35-36). Based on that included information, the solicitor argued the search warrant affidavit established a probable cause basis supporting the issuance of the search warrant. (R. pp. 35-36). After considering the arguments of counsel, the trial judge denied the suppression motion and found the search warrant was properly issued based on the corroboration of the information provided by the informant, the surveillance conducted by the officers, and the controlled buys performed at the residence. (R. pp. 36-37).

Thereafter, during trial, the officers from the Drug Task Force testified about the execution of the search warrant at the Miranda Circle residence and the discovery of drugs and other incriminating evidence during searches of both the residence and Appellant's person. (R. pp. 50-69; pp. 76-86; pp. 95-99; pp. 104-106; pp. 129-172). Additionally, Sergeant Michaud testified over objection about his interview of Appellant and the incriminating statement Appellant made during that interview. (R. pp. 215-233). The officer further confirmed Appellant freely made the incriminating statement after he was informed of his rights, indicated he wished to speak with the officer, and voluntarily made a statement without being threatened, coerced, or promised anything. (R. pp. 217-221; p. 224). Furthermore, Renita Berry, the expert drug analyst who examined the evidence collected in Appellant's case, confirmed the substances discovered during the searches were crack cocaine, cocaine, alprazolam, and oxycodone, and the

incriminating items discovered during the searches were admitted into evidence over defense counsel's objection. (R. pp. 88-89; pp. 250-253; pp. 263-270; pp. 272-273).

Subsequently, at the conclusion of trial, the jury convicted Appellant of trafficking in cocaine base, possession of cocaine with intent to distribute, possession of alprazolam, and possession of oxycodone. (R. pp. 412-413). The trial judge then sentenced Appellant to an aggregate term of imprisonment of twenty-six years. (R. p. 425).

ARGUMENT

I.

The trial judge properly declined to suppress the incriminating evidence obtained during and as a result of the search of Appellant's residence because the search warrant affidavit contained sufficient information to establish a reliable probable cause basis to believe cocaine, crack cocaine, and other incriminating evidence would be discovered in that residence at the time of the search. Moreover, even if the trial judge somehow erred in finding the search warrant affidavit sufficiently established a probable cause basis for the search, the trial judge properly declined to suppress the evidence discovered as a result of the search because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that belief in and reliance on its validity was unreasonable.

Appellant contends the trial judge erred in denying his motion to suppress the evidence obtained as a result of a search that was conducted at his Miranda Circle residence. In support of that contention, Appellant maintains the search warrant affidavit used to acquire a search warrant for that residence was insufficient to establish a probable cause basis for the search due to the fact it allegedly contained insufficient information in regard to the reliability of a confidential informant who supplied information to and worked with Drug Task Force officers during the course of an investigation into Appellant's illicit activities. To the contrary, the trial judge properly denied Appellant's suppression motion because the search warrant affidavit contained sufficient reliable information to establish a probable cause basis to believe cocaine, crack cocaine, and other incriminating evidence would be found in Appellant's home at the time of the search. Moreover, even if the search warrant had somehow been insufficient to establish probable cause, suppression of the evidence recovered as a result of the search of Appellant's residence nonetheless would not have been warranted because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that Investigator Lindahl's belief in its validity was entirely unreasonable. Accordingly, the trial judge properly denied Appellant's suppression motion. Appellant's convictions should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). 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).

ANALYSIS

A. Propriety of the Ruling Denying Appellant'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 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), the South Carolina Supreme Court explained probable cause as it relates to the issuance of a search warrant:

> In order to justify the issuance of a search warrant, probable cause must be shown, but the term 'probable cause' does not import absolute certainty. In determining whether there is sufficient evidence to sustain a finding of probable cause, each case stands on its own facts. The evidence need not be sufficient to support a

> conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed.

(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."); 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.

In the case sub judice, the search warrant affidavit used to obtain the search warrant for Appellant's Miranda Circle residence contained information establishing a direct nexus between Appellant's distribution of cocaine and crack cocaine and the Miranda Circle residence through the inclusion of information regarding a confidential informant's successful controlled purchases of cocaine and crack cocaine from Appellant **at** that particular residence on multiple occasions, including within the seventy-two-hour time period preceding the issuance of the search warrant, and the fact the controlled drug buys were successful established the reliability of the confidential informant who took part in those transactions. 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."); Dupree, 354 S.C. at 691, 593 S.E.2d at 445 ("The controlled buy was evidence of the credibility and trustworthiness of the informant."); see also Bellamy, 336 S.C. at 145, 519 S.E.2d at 349 (finding a search warrant sufficiently established the confidential informant's reliability where, "[a]lthough the affidavit is 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 generally United States v. Anderson, 851 F.2d 727, 729 (4th Cir. 1988) ("[T]he nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence."). Additionally, the search warrant affidavit contained information establishing the officers conducting the drug investigation corroborated some of the information provided by the confidential informant by confirming Appellant's connection to the Miranda Circle residence through South Carolina Department of Motor Vehicles records and by having the confidential informant identify Appellant as the person distributing the drugs from an unmarked photograph of him. See 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."). Furthermore the search warrant affidavit contained information establishing Appellant had previously been convicted of numerous crimes in the past, including multiple crimes involving the possession and distribution of cocaine and crack cocaine. See Rutledge, 373 S.C. at 318, 644 S.E.2d at 792 (recognizing information regarding Rutledge's prior convictions for marijuana was relevant to the establishment of a probable cause basis for the issuance of a search warrant); see also United States v. Melvin, 419 F.2d 136, 141 (4th Cir. 1969) (instructing "some weight may

normally be given to the fact of prior convictions of similar crimes" in a probable cause analysis).

In light of the information regarding the controlled buys at the Miranda Circle residence, the officers' corroboration of certain details of the investigation, and Appellant's prior convictions for similar crimes involving cocaine and crack cocaine, the search warrant affidavit in Appellant's case established the confidential informant working with the Drug Task Force was reliable and provided the issuing judge with a substantial basis to conclude there was a probable cause basis to believe more cocaine, crack cocaine, and other incriminating evidence would be found in a search of Appellant's residence. See Gates, 462 U.S. at 233 ("[A] deficiency in [veracity or basis of knowledge] 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."); cf. State v. Robinson, 415 S.C. 600, 605-606, 785 S.E.2d 355, 357-358 (2016) (instructing a search warrant affidavit containing the following information was sufficient on its face – if the information was true – to establish the reliability of a confidential informant: "A confidential and reliable informant working for the Horry County Police Department purchased a quantity of off white powder substance represented as being cocaine and field-testing positive for cocaine attributes from the occupants of the house identified as [the Home]. That the informant has been able to make recent continuous purchases of illegal drugs from this residence leads to the affiant's belief that there is the possibility there may be more illegal drugs located at this residence." (brackets in original)); State v. Viard, 276 S.C. 147, 150-151, 276 S.E.2d 531, 532 (1981) ("Affiant alleged his informant had been at the residence, saw drugs there within the past 72 hours, and purchased drugs during a controlled buy which field tested positive for depressants. We conclude the affidavit contained sufficient underlying facts and information upon which the magistrate made

her independent determination of probable cause."). As a result, the search warrant for the Miranda Circle residence was properly issued, and the trial judge correctly found the search warrant to be valid after viewing the information contained in the search warrant affidavit in a common sense fashion and in its totality. See 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). Accordingly, Appellant's motion to suppress the evidence discovered during the search of that residence was properly denied. 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."). Appellant's convictions 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 somehow insufficient to establish a substantial basis for a finding of probable cause in Appellant'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 Lindahl's lengthy and detailed search warrant affidavit was not "bare bones." Instead, that multi-page affidavit contained statements establishing a confidential informant working under the direction, control, and supervision of Drug Task Force officers had recently purchased cocaine and crack cocaine from Appellant at the Miranda Circle residence on multiple occasions. 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 of Appellant's residence, Investigator Lindahl acted in an objectively-reasonable manner by obtaining a search warrant from the issuing judge that complied with all of South Carolina's statutory warrant requirements, and the search warrant affidavit used to obtain that search warrant was subsequently found to be sufficient upon review by another judge. See

Messerschmidt v. Millender, 565 U.S. 535, __ (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."); see generally 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). Under those circumstances, Investigator Lindahl 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 Miranda Circle 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.").

Critically, because Investigator Lindahl 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

Appellant'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, 565 U.S. at __ ("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)); State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) ("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 both the judge who issued the search warrant and the trial judge erred in concluding the search warrant affidavit provided a substantial basis for a finding of probable cause, Appellant's suppression motion was

nonetheless properly denied and the incriminating evidence discovered during and after the search of the Miranda 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. 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."). Appellant's convictions should be affirmed.

II.

The trial judge committed no error in admitting into evidence the incriminating statement Appellant made after the search warrant was executed at his home because that statement was not the product on an unlawful search and was freely and voluntarily made after Appellant was informed of and validly waived his constitutional rights with a full understanding of those rights.

Appellant contends the trial judge erred by allowing his incriminating statement to be admitted into evidence. In support of that contention, Appellant maintains his incriminating statement should have been excluded as the product of an unlawful search. Appellant further appears to maintain he was not informed of his constitutional rights before making his incriminating statement while asserting the trial judge's decision to admit that statement was questionable in light of the testimony establishing the interview was not recorded and no written waiver was obtained. To the extent Appellant is arguing his incriminating statement was the product of an unlawful search, the search of his home was not unlawful for all the previously-articulated reasons and, thus, could not serve as a basis for the exclusion of the statement. Likewise, to the extent Appellant is challenging the trial judge's determination he freely and voluntarily made a statement after being informed of and waiving his constitutional rights, the evidence and testimony presented during trial established Appellant was informed of his rights, understood those rights, waived those rights by making a statement, and was not coerced or threatened into making an involuntary statement. As a result, Appellant's statement was fully admissible during trial, and the trial judge's decision to admit the statement was proper and supported by the evidence. Appellant's convictions should be affirmed.

STANDARD OF REVIEW

In appeals involving a challenge to an evidentiary ruling, an appellate court will not reverse a trial judge's ruling on such a matter absent a clear abuse of discretion resulting in

prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); 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). Likewise, "[w]hen reviewing a trial court's ruling concerning voluntariness [of a statement], [the appellate court] does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by **any evidence**." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (emphasis added). Importantly, "[t]he trial judge's determination of the voluntariness [of a statement] will not be disturbed unless so manifestly erroneous as to show an abuse of discretion amounting to an error of law." State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998).

ANALYSIS

"[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda v. Arizona, 384 U.S. 436, 444 (1966). Prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, he has a right to an attorney, and an attorney will be appointed to him prior to any questioning if he desires one and cannot afford one. Id. at 479. Once those warnings are given to a suspect and the suspect is

afforded an opportunity to exercise his rights, the suspect may knowingly and intelligently waive those rights and make a statement. Id.

Significantly, if a defendant is advised of his constitutional rights and then chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence the defendant knowingly, intelligently, and voluntarily waived his rights. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990); see Berghuis v. Thompkins, 560 U.S. 370, 384 (2010) (instructing the prosecution must establish the accused understood his rights in order for the accused's waiver of those rights to be valid). In determining whether a valid waiver of rights occurred, the particular facts and circumstances surrounding the case must be examined, including the background, experience, and conduct of the accused. North Carolina v. Butler, 441 U.S. 369, 374-375 (1979). Importantly, a valid waiver of rights can be established through proof of express written or oral statements **or** can be inferred from the actions and words of the person interrogated. Id. at 373; see Berghuis, 560 U.S. at 384 ("An 'implicit waiver' of the 'right to remain silent' is sufficient to admit a suspect's statement into evidence." (citation omitted)); State v. Kennedy, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998) ("An express waiver is unnecessary to support a finding that the defendant has waived the right to remain silent or the right to counsel guaranteed by Miranda.").

However, even if a defendant validly waives his rights and makes a statement, a confession or statement by a defendant is nonetheless not admissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). The reason for the prohibition against the use of an involuntary confession is that "coerced confessions" have been recognized to be "inherently untrustworthy." Dickerson v. United States, 530 U.S. 428, 433 (2000); see also Jackson v. Denno, 378 U.S. 368, 385-386 (1964) ("[T]he Fourteenth Amendment forbids the use

of involuntary confessions not only because of the probable unreliability of confessions that are obtained in a manner deemed coercive, but also because of the 'strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will,' and because of 'the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.' " (citations omitted)).

Importantly, "[t]he process for ascertaining whether a statement is voluntary is bifurcated because the process involves determinations by both the trial judge and the jury." State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008). Pursuant to the bifurcated process, the trial judge must first determine in an evidentiary hearing whether the State proved the statement was voluntarily made by a preponderance of the evidence and then, if the trial judge finds the State met its burden, the statement is submitted to the jury where its voluntariness must be proven beyond a reasonable doubt. Id. When considering the voluntariness and admissibility of a defendant's statements, the trial judge should examine the totality of the circumstances under which the statements were made, including the characteristics of the accused and the details of the interrogation, to determine whether the State has met its burden of proof. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). Factors to be considered in the totality of the circumstances analysis include: (1) the age of the accused; (2) the educational level and intelligence of the accused; (3) the accused's knowledge of his constitutional rights; (4) the length of the accused's detention; (5) the nature of the questioning and whether it was repeated and prolonged; and (6) the presence or absence of the use of punishment, including deprivation of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218,

226 (1973). Ultimately though, the "ultimate test" of voluntariness involves determining whether the confession was "the product of an essentially free and unconstrained choice by its maker" or was the product of an overborne will and critically-impaired capacity for self-determination. Id. at 225-226; see State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996) ("The question is whether the defendant's will was overborne when he confessed."); see also Miller v. Fenton, 796 F.2d 598, 604 (3rd Cir. 1986) ("We emphasize that the test for voluntariness is not a but-for test: we do not ask whether the confession would have been made in the absence of the interrogation. Few criminals feel impelled to confess to the police purely of their own accord, without any questioning at all.").

In Appellant's case, the evidence presented during trial established Appellant was fully informed of his rights prior to trial and expressly stated he understood those rights before he made an incriminating statement that he was in no way coerced or threatened into making, and Appellant did not directly dispute or refute that evidence at any point during the trial proceedings.[23] See Berghuis, 560 U.S. at 388-389 ("[A] suspect who has received and understood Miranda warnings, and has not invoked his Miranda rights, waives the right to remain silent by making an uncoerced statement to the police."); see also State v. Key, 256 S.C. 90, 97, 180 S.E.2d 888, 891 (1971) ("[U]ndisputed testimony is more conclusive than testimony

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[2] Specifically, during the in camera hearing, Sergeant Michaud testified Appellant "was asked if he understood his rights, and he stated he did." (R. p. 29).

[3] Notably, notwithstanding the fact the undisputed evidence presented during trial established Appellant was informed of his constitutional rights before making a statement, Appellant's apparent appellate contention he was not advised of his rights to remain silent and have an attorney present is wholly unpreserved for appellate review and cannot properly be considered or addressed on appeal because defense counsel never raised such a contention to the trial judge and, instead, simply contended no showing was made Appellant waived his rights. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing a party cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue on appeal); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial.").

which is in dispute, and it is less difficult for this court to reason that guilt is conclusively proven when there is no denial, than when an accused person disputes the truthfulness of the State's evidence."). Similarly, in addition to the evidence regarding Appellant's waiver of his constitutional rights, the undisputed evidence presented during trial established Appellant's incriminating statement was the voluntary product of his own free will and was made with full knowledge of his rights and without the use of threats, promises, force, or coercion during the course of an interview that lasted just thirty minutes or so. See Von Dohlen, 322 S.C. at 244, 471 S.E.2d at 695 ("The pertinent inquiry is, as always, whether the defendant's will was 'overborne.' "); see also State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2008) ("Coercive police activity is a necessary predicate to finding a statement is not voluntary."); cf. Breeze, 379 S.C. at 545, 665 S.E.2d at 251 ("Conversely, Breeze did not contradict [the officer]'s testimony with respect to the issue of whether the statement was voluntary. . . . Faced with [the officer]'s undisputed testimony the trial court concluded the State had showed that Breeze voluntarily made the statement. Based on [the officer]'s testimony, we cannot conclude the trial court's ruling is unsupported by any evidence."). Under those circumstances, the evidence presented was sufficient to prove Appellant validly waived his rights before he voluntarily made his incriminating statement. See Berghuis, 560 U.S. at 385-386 ("The record in this case shows that Thompkins waived his right to remain silent. There is no basis in this case to conclude that he did not understand his rights; and on these facts it follows that he chose not to invoke or rely on those rights when he did speak. . . . If Thompkins wanted to remain silent, he could have said nothing in response to Helgert's questions, or he could have unambiguously invoked his Miranda rights and ended the interrogation."); United States v. Hicks, 748 F.2d 854, 859 (4th Cir. 1984) ("A waiver of the right to counsel and the right not to incriminate oneself

need not be explicit, but may be inferred from all of the circumstances. Hicks said he understood his rights before he answered questions, he did not request counsel, and he was a person who had had two years of college education.").

In light of the fact the evidence and testimony presented during trial established Appellant was informed of and knowingly and intelligently waived his constitutional rights before voluntarily making an incriminating statement, Appellant's statement could properly be admitted into evidence and used against him during trial. See State v. Davis, 309 S.C. 326, 342, 422 S.E.2d 133, 143 (1992) ("Once the court determines that a defendant received and understood his rights, the court allows a confession into evidence. It then is for the jury ultimately to decide whether the confession was voluntary."), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999); see also Berkemer v. McCarty, 468 U.S. 420, 433, n. 20 (1984) ("[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of Miranda are rare."). As a result, the trial judge committed no error in admitting Appellant's incriminating statement into evidence during trial, and his credibility determinations, factual conclusions, and ruling on the matter were fully supported by the evidence. See Saltz, 346 S.C. at 136, 551 S.E.2d at 252 (recognizing a trial judge's ruling in regard to the voluntariness of a statement will be affirmed on appeal when supported by **any** evidence); see also State v. Cutro, 332 S.C. 100, 117, 504 S.E.2d 324, 332 (1998) ("The trial judge, not this Court, is in the best position to be the arbiter of [the witness's] credibility."); State v. Tutton, 354 S.C. 319, 325, 580 S.E.2d 186, 190 (Ct. App. 2003) ("The determination of a witness's credibility must be left to the trial judge who saw and heard the witness and is therefore in a better position to evaluate his or her veracity."). Accordingly, there is no basis to

disturb the trial judge's ruling on appeal. See State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct. App. 2007) ("Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion."). Appellant's convictions 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,

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January 30, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Carmen T. Mullen, Circuit Court Judge
Appellate Case No. 2015-000281

THE STATE,

Respondent,

vs.

TREVIN MILLIDGE,

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."

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