STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2016-001364

THE STATE,

Respondent,

v.

MARK LORENZO BLAKE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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The trial judge properly denied Appellant's motion to suppress the evidence obtained as a result of the search of his home.

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant for possession with intent to distribute (PWID) heroin. (R.* Indictment.) On June 14–15, 2016, Appellant proceeded to a trial before the Honorable D. Garrison Hill and a jury. Jason King and Tamara Vanpala, Esquires, represented Appellant, and Assistant Solicitors Stephanie Linger and Lauren Frierson represented the State. The jury found Appellant guilty, and Judge Hill sentenced him to twelve years' imprisonment with credit for time served. (Tr. 381, 389).

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

As part of an ongoing drug investigation, officers from the Charleston County Sheriff's Office conducted surveillance on Appellant after receiving information through a confidential informant that involved controlled purchases. (Tr. 44, line18–Tr. 45, line 10). As a result of the investigation, the officers obtained a search warrant for Appellant's residence. (Tr. 45, line 11–13). After taking into consideration Appellant's criminal history, which included drug and weapon charges, a tip that a child may be in the home, and the nexus between drugs and weapons[1], law enforcement decided to take Appellant into custody by way of a felony traffic stop. (Tr. 46, lines 5–19). A felony traffic stop involves officers "pinching" in the suspect's vehicle to prevent escape by maneuvering law enforcement vehicles in front and behind; exiting with weapons drawn; commanding loudly for the suspect to show his hands, exit the vehicle, and get on the ground; and then handcuffing the suspect when he complies. (Tr. 46, line 22–Tr. 47, line 9).

On February 22, 2013, officers followed Appellant from his residence to the workplace of his girlfriend, where they conducted the felony traffic stop. (Tr. 44, lines 18–19; Tr. 48, lines 1–19). The officers pinched in Appellant's vehicle, exited with their guns drawn, and ordered him to show his hands and exit his vehicle. (Tr. 48, line 20–Tr. 49, line 5). He did not comply, so the officers removed him from his vehicle and took him to the ground. (Tr. 49, lines 5–12). He was placed under arrest for drug distribution charges, handcuffed, and secured in an officer's vehicle. (Tr. 49, line 21–Tr. 50, line 2). The officers had obtained a lawful search warrant signed by a judge to search Appellant's residence; they drove him there following the arrest and used his keys to gain access. (Tr. 51, line 6–Tr. 52, line 4). In the kitchen, officers found a bowl containing rice and drugs, a whisk, a mixing bowl, and scales. (Tr. 201, lines 1–4).

[1] *State v. Banda*, 371 S.C. 245, 253–54, 639 S.E.2d 36, 40–41 (2006).

Pretrial, Appellant moved to suppress the evidence found during the search, claiming the search was conducted unreasonably. (Tr. 39, lines 3–11). He challenged the constitutionality of the search and asked that the State demonstrate the search was executed in a reasonable manner. (Tr. 39, lines 15–19). The State called Detective Frank Waddell of the Charleston County Sheriff's Office to testify regarding the felony traffic stop and arrest. (Tr. 40, line 3). Detective Waddell testified that following Appellant's arrest, the officers had also arrested his girlfriend and then headed to Appellant's residence to conduct a search. (Tr. 50, line 3–Tr. 51, line 8). He advised Appellant he had a lawful search warrant signed by a judge to search his residence. (Tr. 51, lines 6–8). He explained they did not use a ram to get into the apartment but used Appellant's keys. (Tr. 51, line 16–Tr. 52, line 4).

Appellant was detained on the front stoop while officers conducted the search, and he was very agitated, speaking loudly and repeatedly in an aggressive manner. (Tr. 53, line 1–Tr. 54, line 3). Det. Waddell testified he even had to put his hands on Appellant when he continued to stand up after being ordered to sit back down; he placed his left hand on Appellant's right shoulder and pushed him back into the seat. (Tr. 64, line 14–Tr. 65, line 3). Det. Waddell further stated that after being taken into custody, Appellant was not cooperative; rather, he indicated they kept Appellant in the presence of law enforcement personnel instead of leaving him unattended because it was a safety issue. (Tr. 61, lines 9–20). Det. Waddell testified that he tried to explain to Appellant the reason for the search. (Tr. 54, lines 13–16). On cross-examination, defense counsel asked whether Det. Waddell gave Appellant a copy of the search warrant, to which he replied that he left a copy at the residence. (Tr. 62, lines 7–13). He testified that Appellant "made vague inquiries as to what's going on, I haven't done anything, this is private property, what are y'all doing, general inquiries of that nature," but did not say that Appellant asked to see the search warrant. (Tr. 62, lines 19–24). He further explained Appellant

was handcuffed behind his back sitting in a chair so he was not handed a copy as he would not have been able to hold it and read it behind his back, but he was advised of his warrants and the nature of the search warrant and what led to it. (Tr. 63, line 20–Tr. 64, line 5). He denied telling Appellant not to worry about where the search warrant was; rather, he opined that he would have been advised that a copy was being left at the residence as standard practice. (Tr. 64, lines 6–11).

Defense counsel introduced a copy of the search warrant statute, section 17-13-150 of the S.C. Code, as Defendant's Exhibit #1 and asked Det. Waddell to read it. (Tr. 65, lines 7–20). The statute provided in part: "When any person is served with a search warrant such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued." (Tr. 65, lines 15–18). He also introduced a copy of the search warrant as Defendant's Exhibit #2. (Tr. 66, lines 1–9). Defense counsel pointed out that the search warrant contained a phrase that read: "copy of this search warrant shall be delivered to the person in charge of the premises searched at the time of search if practical." (Tr. 66, lines 15–23). Sergeant Mark Bryant also testified regarding his involvement in the felony traffic stop and search warrant. (Tr. 74, line 2–Tr. 75, line 10). He testified Appellant had "a bit of an attitude," was talking back and raising his voice, and was not calm while the search was in progress. (Tr. 75, lines 11–21). On cross-examination, he admitted he did not give Appellant a copy of the search warrant. (Tr. 80, lines 15–17).

Next, Detective Andrew Miller testified that while the officers were conducting the search, Appellant asked repeatedly why he was being arrested even though Det. Miller said it was explained to him at the time. (Tr. 84, lines 2–10). On cross-examination, he testified he did not give Appellant a copy of the search warrant and did not recall him asking for one. (Tr. 86, lines 17–22). The defense then called Appellant, who offered a slightly different version of the

felony traffic stop and the events that transpired. He claimed he stepped out of the car and was tackled. (Tr. 96, lines 2–18). He also testified that he asked for the search warrant but the detectives told him, "Don't worry about that." (Tr. 97, lines 3–16). On cross-examination, the State presented Appellant with his statement and asked him to read a portion that stated: "Up the stairs and told us we were both under arrest for distribution of heroin and we sold over two ounces . . . ." (Tr. 104, lines 3–23). Appellant confirmed Det. Waddell told him why he was under arrest and why the search was happening. (Tr. 107, lines 6–11).

After the testimony of the witnesses, defense counsel argued based on *United States v. Thompson*, 667 F. Supp. 2d 758, 763 (2009), that the search was unreasonable because officers did not "give" Appellant a copy of the search warrant, and he moved to suppress all the evidence. (Tr. 109, lines 4–Tr. 112, line 4). He argued the statute requires officers to serve a copy on the defendant, not just leave a copy at the residence. He claimed they could only leave a copy at the resident if no one was there, which was not the case here. (Tr. 110, lines 1–8). He further argued the takedown that was part of the felony traffic stop was a factor in the unreasonableness of the execution of the search. (Tr. 111, lines 15–22).

The State then argued the circumstances in *Thompson* were different because a woman who was not part of the investigation was left outside in the heat for five hours with only a shirt on, and law enforcement did not identify themselves or explain what they were doing. (Tr. 112, lines 10–21). The solicitor argued that here, the felony traffic stop was necessary—based on the information officers had about Appellant's prior conviction and pending charges for guns and drugs—to minimize danger upon taking Appellant into custody. (Tr. 13, lines 1–15). She referred to the testimony by officers that Appellant was informed why he was being arrested and that a search was going to be executed at his residence. (Tr. 113, lines 16–20; Tr. 114, lines 22–25). She further argued that a copy of the search warrant could not be handed to him because he

was belligerent and had his hands cuffed behind his back such that it would have been impossible for him to hold the copy. (Tr. 116, lines 8–23). Finally, she pointed out that the rationale behind suppressing evidence is to deter unlawful government behavior and because the government behaved lawfully and reasonably here while taking into consideration the safety of the community, suppression would not deter unlawful behavior. (Tr. 116, line 24–Tr. 117, line 8).

The trial judge distinguished the *Thompson* case and ultimately found this was not an unreasonable search. He based his ruling on the testimony of the officers that established justifiable reasons for the way the arrest and search were conducted. (Tr. 121, lines 18–25). He took into consideration the risk to officer safety based on Appellant's criminal history and found that the failure to give a copy of the search warrant to Appellant when he was handcuffed behind his back was not "enough in and of itself to deem the search unreasonable within the meaning of the Fourth Amendment." (Tr. 122, lines 1–13). He therefore denied the motion to suppress. (Tr. 124, lines 1–3).

At trial, Detective Frank Waddell testified similarly to his pretrial testimony. Afterward, the State called Philip Roberson, who was a narcotics sergeant with the Charleston County Sheriff's Office and was involved in executing the search warrant at Appellant's residence. (Tr. 197, line 16–Tr. 199, line 12). His role was to search the kitchen and part of the bedroom. (Tr. 200, lines 18–21). He testified that in the kitchen he found a bowl in the refrigerator that contained rice and drugs; he also found a whisk, mixing bowl, and scales. (Tr. 201, lines 1–4). He explained that the drugs he found were in bindles, which he said were packaged similar to a headache powder, and ten of them make up a bundle. (Tr. 201, lines 7–16). On cross-examination, Roberson testified that he recalled getting into the apartment not by forced entry but by using a key. (Tr. 209, lines 11–18).

Deputy Andrew Miller testified next regarding his role in the search as evidence custodian. (Tr. 212, lines 1–21). He collected all evidence found on the scene, took photographs of it, and transported it back to headquarters. (Tr. 212, line 24–Tr. 213, line 13; Tr. 222, lines 1–6). He verified at trial that the bowls the drugs were found in were in the same condition as the day of the search except for the addition of fingerprint powder. (Tr. 222, line 7–Tr. 223, line 22). On cross-examination, defense counsel questioned him about a photograph of the door, and Dep. Miller testified he did not remember whether a key was used for entry. (Tr. 233, lines 15–20). He admitted the door looked like it had been busted open, but on redirect, he said it did not look like the door had been rammed because there was no large round mark on the door and the handle was not broken. (Tr. 233, lines 15–23; Tr. 237, lines 2–17). When defense counsel asked him on recross, "Isn't this just a photograph of the door before it was busted open?" he answered that he would not take a photograph before entry because it would put him at risk. (Tr. 238, lines 14–24).

Jason Riley then testified as a forensic technician for the sheriff's department and went through the evidence storage process and explained chain of custody. (Tr. 245, line 9–250, line 2). He recalled that Dep. Miller submitted Evidence ID No. 135986, eleven bundles and one bindle of a brown substance, into evidence to him. (Tr. 250, line 23–Tr. 251, line 7). He testified he would not have accepted them into evidence if they had been tampered with. (Tr. 253, lines 21–25). He transported the evidence on several occasions, taking it to the City of Charleston's drug lab, and testified that it appeared to be in the same condition as when he first saw it. (Tr. 254, lines 1–14). He named two other people in his unit who also touched the evidence: Investigators Mark Watson and Aaron Meyer. (Tr. 255, lines 12–18). On cross-examination, he went over the dates the evidence was signed in and out and testified it was outside of his control three times. (Tr. 256, line 4–Tr. 258, line 17).

Next, Susan Payne testified as the evidence custodian in the forensic services division of the City of Charleston Police Department. (Tr. 259, lines 2–16). She handled the evidence in Appellant's case and testified she would not have transported it if it had been tampered with. (Tr. 260, line 20–Tr. 261, line 7). She testified it looked like it was in the same condition as when she first saw it and that she received it from Jason Riley and transported it to Renee Hilton. (Tr. 262, lines 2–18). On cross-examination, she testified in more detail that after receiving the evidence from Riley on March 1, 2013, she placed it in a safe and then it went to Elizabeth Mitchell before coming back to her on June 1, 2015. (Tr. 263, line 3–Tr. 264, line 11). It then went to Renee Hilton and stayed at the Charleston Police Department for seven days, from June 1–8, 2015, before going back to the sheriff's office. (Tr. 264, lines 12–18). Payne received it again on November 23, 2015, before it went to Hilton again. (Tr. 264, lines 19–22). She admitted that when she received it back from Mitchell on June 1, 2015, the bag had been cut open. (Tr. 265, lines 8–14).

Renee Hilton, a criminalist at the City of Charleston Police Department, testified next. (Tr. 266, lines 8–20). The trial court qualified her as an expert in drug analysis without voir dire or objection by the defense. (Tr. 269, lines 14–21). Hilton testified she analyzed the substances in this case and that they were previously tested by her lab two years before. She had to look over the previous analyst's work to see if she came to the same conclusion; she did and was able to pass the review and release the report. (Tr. 270, line 20–Tr. 271, line 14). She testified that the reason the drugs were retested was because the previous analyst was no longer employed there and was not available to testify. (Tr. 272, lines 13–18). She testified each time a substance is tested there is an amount removed for testing that changes the weight and that temperature can also affect weight. (Tr. 272, line 24–Tr. 273, line 14). She testified that she prepared a lab

report on December 1, 2015. (Tr. 273, line 15–Tr. 274, line 8). When the State tried to admit the report, defense counsel objected and the jury took a recess. (Tr. 274, lines 9–20).

Appellant objected to the chain of custody based on the fact that the State did not call Elizabeth Mitchell to testify, citing *State v. Joseph*, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997). (Tr. 275, lines 5–21). He also complained that Ashley Carr Earl and Mark E. Watson did not testify. (Tr. 275, line 22–Tr. 276, line 9). Appellant moved to exclude the drugs based on the chain of custody, claiming Mitchell was a crucial element. (Tr. 276, lines 14–16). The State argued that case law including *State v. Hatcher*, *State v. Taylor*, *State v. Pope*, and *Fleming v. United States* supported its argument that for fungible evidence such as drugs, the chain of custody must be established as far as practicable, that not every person was required to testify, and that the State presented a sufficient chain of custody. (Tr. 276, line 17–Tr. 279, line 23). After thorough arguments from both parties, the trial judge ruled the chain of custody had been sufficiently established, noting that the purpose of a chain of custody is to ensure the item is what it is purported to be. (Tr. 299, line 15–Tr. 300, line 8). He found the chain had been established as far as practicable, the identity of all people who handled the evidence had been established, and there was no evidence of tampering. (Tr. 300, lines 8–16). Finally, he determined that any discrepancies were certainly grounds the defense could pursue on cross-examination regarding credibility but did not change his ruling on admissibility. (Tr. 300, lines 17–20).

After the State rested, the trial judge clarified his ruling after realizing he had misnamed the case he was relying on. He explained he was relying on *State v. Hatcher* and *State v. Taylor*. He noted "[t]here was expert testimony by Ms. Hilton that the State presented that demonstrates the likely and probable manner in which Ms. Mitchell tested and resealed this fungible item. And the identity of the people who transported it and had control at various times was established as far as practicable." (Tr. 319, lines 1–21). Defense counsel renewed his motions to

suppress based on the search and also based on the chain of custody and moved for a directed verdict. The trial judge denied all the motions. (Tr. 319, line 22–Tr. 320, line 11).

Ultimately, the juror found Appellant guilty and Judge Hill sentenced him to twelve years' imprisonment with credit for time served. (Tr. 381, 389).

ARGUMENT

I.

The trial court properly admitted the second chemist's report, testimony, and drug evidence because the State established a sufficient chain of custody for the substance tested.

Appellant argues the trial court erred in admitting the second chemist's report, testimony, and drug evidence, claiming the State failed to establish an adequate chain of custody for the substance tested. On the contrary, the trial court properly determined the State had demonstrated a sufficient chain of custody as far as practicable based on South Carolina case law and properly admitted the evidence. Thus, this Court should affirm its decision.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Pagan,* 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.*

A party offering into evidence fungible items such as drugs must establish a complete chain of custody as far as practicable. *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). "Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis." *Id.* However, testimony from each custodian of the evidence is not required to establish a chain of custody sufficient for admissibility. *Id.* "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." *Id.* In proving chain of custody, the State need not negate all possibility of

tampering so long as the chain of possession is complete. *Id.* at 92, 708 S.E.2d at 753. "In applying this rule, we have found evidence inadmissible only where there is a missing link in the chain of possession *because the identity of those who handled the [substance] was not established at least as far as practicable*." *Id.* "The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be." *Id.* at 95, 708 S.E.2d at 755. "Where there is evidence to establish the identity of those who have handled the evidence and the manner in which it was handled, a weakness in the chain merely raises a question of credibility, not admissibility." *State v. Taylor*, 360 S.C. 18, 24, 598 S.E.2d 735, 737 (Ct. App. 2004). The *Taylor* Court pointed out that our Supreme Court noted this distinction between credibility and admissibility in *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837–38 (2001), when it stated: "[w]e have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the [evidence] was not established at least as far as practicable . . . . On the other hand, where the identity of persons handling the specimen is established, we have found evidence regarding its care goes only to the weight of the specimen as credible evidence." *Id.* at 25, 598 S.E.2d at 738. The Court of Appeals held, "We believe it is clear from these decisions that if the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission, *absent proof of tampering, bad faith, or ill-motive*." *Id.* (emphasis added).

Here, the identity of each person in the chain was established, the manner of handling was reasonably demonstrated, and there was no proof of tampering, bad faith, or ill-motive. The State called witnesses in the chain of custody to explain their roles, beginning with Sgt. Roberson who was part of the search team and actually found the drugs and related items in the kitchen of Appellant's residence. Dep. Miller then testified he received the evidence from the

members of the search team and put it in a bag. Jason Riley then testified that Dep. Miller submitted the drug evidence to him for transport to the City of Charleston Police Department drug lab on March 11, 2013. (Tr. 251, lines 2–7; Tr. 256, lines 13–17). Riley then testified the evidence came back to Mark Watson, another staff member in his office, on April 1, 2013. (Tr. 256, lines 22–24). He testified it stayed in the evidence room until June 1, 2015, when it was signed out to the lab; then it came back from the lab on June 8, 2015, and was signed out again on November 23, 2015, and came back December 7, 2015. (Tr. 256, line 25–Tr. 257, line 17). He explained he does not transport evidence if any of the seals are broken and would not have accepted the items into evidence if they appeared to be tampered with. (Tr. 353, line 24–Tr. 253, line 2. lines 23–25). Next, Susan Payne of the City of Charleston Police Department testified about picking up the evidence and transporting it for analysis. Payne testified she received it from Riley on March 1, 2013, and placed it in the safe.[2] It went to Elizabeth Mitchell next and then went back to the sheriff's office before it was returned to Payne on November 23, 2015. It then was transported to Renee Hilton on June 1, 2015, where it stayed until June 8, 2015. Payne admitted Mitchell had cut the bag open. She testified that on June 1, 2015, and November 23, 2015, the evidence was in substantially the same condition as when she first saw it. (Tr. 261, line 14–Tr. 262, line 5; Tr. 265, lines 8–11). She testified her procedure is to always check the package before transporting to make sure it is sealed correctly and check for initials on the seal. (Tr. 260, lines 1–14). She would not have accepted it if it appeared to have been tampered with. (Tr. 261, lines 1–7). Hilton then testified she tested the substance after it had been tested two years prior by Mitchell. She testified she knew Mitchell had previously examined the evidence

[2] The record shows Riley testified the date he transported the evidence to the City of Charleston Police Department was March 11, 2013, while Payne testified she received it from Riley on March 1, 2013. However, no dispute regarding this date has arisen, and it is likely simply a typographical error on the part of the court reporter.

but was no long employed because she left for another career. She explained that because Mitchell was unavailable to testify, the drugs were retested. (Tr. 270, line 20–Tr. 272, line 18; Tr. 304, lines 1–21). Hilton testified that Mitchell would have been required to heat seal them after testing and put an initial over the heat seal. (Tr. 305, lines 1–8).

At trial, Appellant argued this case was similar to *State v. Joseph*, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997), where this Court found the trial court erred in admitting drug evidence because of defects in the chain of custody. However, *Joseph* is based on Rule 6(a)(2)(C), SCRCrimP, which allows a party to object to the introduction of a chemist's report and if such an objection is made, the trial judge shall require the chemist to testify at trial. The Court noted that Rule 6 provided an alternative means of establishing a chain of custody in circumstances where reports and affidavits were admitted in lieu of live testimony. However, that is not what happened here. The State did not attempt to admit any report from the first chemist, Elizabeth Mitchell. Indeed, the State had the drugs retested by Hilton because Mitchell was not available to testify. So Rule 6 does not apply and neither does *Joseph.*

Despite Appellant's contention otherwise, evidence exists in the record as to how Mitchell obtained and handled the substance. Even though Mitchell did not testify, her identity and the manner in which she handled the evidence were established. Susan Payne testified she placed the evidence in the safe and that it then went to Elizabeth Mitchell, the first chemist. She received the substance after Mitchell had cut open the bag but testified that her policy is to make sure everything she transports is packaged and sealed correctly and has the person's initials on the seal. She also testified the substance was in substantially the same condition when she received it from Mitchell. Hilton testified Mitchell's initials were over the heat seal. All of this constitutes evidence as to how Mitchell obtained it (from Payne) and how she handled it (cut it

open and then resealed it and initialed on the seal). The record also provides evidence that when Mitchell had the substance, she tested it.

It is interesting that Appellant cites *Hatcher* for the proposition that "the mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody." *Hatcher*, 392 S.C. at 95, 708 S.E.2d at 755. The Supreme Court stated this in the context of agreeing with this Court on that statement. However, if one looks at this Court's opinion, which the Supreme Court reversed, this Court stated, "[E]vidence the drugs had not been tampered with is not sufficient to overcome missing links in the chain of custody." *State v. Hatcher*, 384 S.C. 372, 378, 681 S.E.2d 925, 928 (Ct. App. 2009) *reversed*, *State v. Hatcher*, 392 S.C. 86, 708 S.E.2d 750 (2011). Whether one considers the actual bag being sealed upon presentation for testing or more generally whether there is any evidence of tampering, the Supreme Court properly contemplated this as simply one factor in its determination that the trial judge had not abused his discretion in admitting the drug evidence. However, the Court made clear it also looked at the requirement that evidence of how the item was obtained and handled was present for the purpose of ensuring it was what it was purported to be. Finally, the Court reiterated its consistent holding that the chain of custody need be established only as far as practicable and that every person handling the evidence need not be identified in all cases. *Hatcher*, 392 S.C. at 95, 708 S.E.2d at 755. In *Hatcher*, in determining the chain of custody was insufficient, this Court noted: (1) a party who received the evidence at SLED was not identified, (2) no testimony of how the evidence was handled while in one officer's possession was presented, (3) one officer did not testify regarding how the evidence came to be in her custody, (4) the date the evidence was left at SLED was not revealed, and (5) no evidence was presented as to where the evidence was stored pending the analysis. Nevertheless, our Supreme Court found the chain of custody was established as far as practicable. The Court considered the

testimony of members of the chain of custody regarding "their handling of the drugs and the fact that there was no evidence of tampering" and properly focused on the record's indication that "the drugs received for testing were in fact, those taken from Hatcher without any alteration, tampering, or substitution." *Id.*

As in *Hatcher*, here there is much more than simply evidence that the bag was sealed or not tampered with. Indeed, the chain of custody established here did not have as many deficiencies as the one in *Hatcher* that the Supreme Court still found sufficient. The trial court did not abuse its discretion in admitting the drug evidence based on a sufficient chain of custody, and this Court should affirm.

II.

The trial judge properly denied Appellant's motion to suppress the evidence obtained as a result of the search of his residence.

Appellant argues the trial judge erred in denying his motion to suppress the evidence obtained as a result of the search of his residence, claiming the search violated the Fourth Amendment and the South Carolina Constitution because it was conducted unreasonably. Specifically, he argues the officers used excessive force during the felony traffic stop and that combined with the officers' actions during the search and their failure to hand Appellant a copy of the search warrant rendered the execution of the search warrant unreasonable. Thus, he argues the evidence obtained during the search should have been suppressed. On the contrary, the trial court properly denied the motion to suppress, finding the search was not conducted unreasonably. This Court should affirm.

"The reasonableness of a search and seizure is evaluated based upon the totality of the circumstances." *United States v. Thompson*, 667 F. Supp. 2d 758, 763 (S.D. Ohio 2009). In order to satisfy the reasonableness factor, officers must both obtain a valid warrant *and* conduct the search in a reasonable manner. *Id.* "The willingness (or unwillingness) of officers to present a warrant to an occupant when asked goes to the reasonableness of a search." *Id.* The United States District Court acknowledged in *Thompson* that the Fourth Amendment does not require the executing officer to present a copy of the search warrant before conducting the search. *Id.* *Thompson* answered the questioned left open by the United States Supreme Court in *Groh v. Ramirez*—"whether it would be unreasonable under the Fourth Amendment for an executing officer to refuse to produce a warrant at the outset of a search *upon the request* of an occupant." *Id.* Specifically, the *Groh* Court stated: "Whether it would be unreasonable to refuse a request to furnish the warrant at the outset of the search when, as in this case, an occupant of the premises

is present **and poses no threat to the officers' safe and effective performance of their mission**, is a question that this case does not present." *Id.* (quoting *Groh v. Ramirez*, 540 U.S. 551, 562 n.5 (2004)).

Here, Appellant did pose a threat to officer safety as attested to by the officers' testimony. Det. Waddell testified Appellant was agitated, speaking loudly and repeatedly in an aggressive manner. (Tr. 53, line 1–Tr. 54, line 3). He even had to put his hands on him when Appellant continued to stand up after being ordered to sit back down; he placed his left hand on Appellant's right shoulder and pushed him back into the seat. (Tr. 64, line 14–Tr. 65, line 3). Waddell further stated that after being taken into custody, Appellant was not cooperative; rather, he indicated they kept Appellant in the presence of law enforcement personnel instead of leaving him unattended because it was a safety issue. (Tr. 61, lines 9–20). Sergeant Mark Bryant testified that Appellant had "a bit of an attitude," was talking back and raising his voice, and was not calm while the search was in progress. (Tr. 75, lines 11–21). Even Appellant himself testified he got agitated and got an attitude with the officers. (Tr. 97, lines 10–13). He described getting into a verbal dispute with Det. Waddell and admitted he stood up and Det. Waddell pushed him back down into the chair. (Tr. 97, line 23–Tr. 98, line 10). This testimony shows that Appellant did pose a "threat to the officers' safe and effective performance of their mission" and, thus, distinguishes this case from the question left open in *Groh* and answered in part by *Thompson*.

In *Thompson*, which Appellant presented to the trial judge to support his argument that the failure to hand Appellant a copy of the search warrant rendered the search unreasonable, one of the factors the Court considered was the officers' refusal to provide Mrs. Thompson with a copy of the search warrant. However, the Court focused on the fact that she asked for a copy. Here, the only evidence indicating Appellant asked for a copy is his own self-serving testimony.

Det. Waddell testified that Appellant did not ask to see the search warrant but merely made vague inquiries about what was going on. (Tr. 62, lines 19–24). Det. Miller testified that Appellant kept asking why he was being arrested but did not remember him asking for a copy of the arrest warrant or search warrant. (Tr. 84, lines 2–10; Tr. 86, lines 20–22). The other factors in *Thompson* that made the search unreasonable included the fact that she was naked when officers arrived, they only allowed her to put on a shirt, they made her wait outside in the heat for five hours, she remained naked from the waist down in view of fourteen officers, and she went without food and water.

As the trial judge pointed out, the case at hand is quite different from *Thompson*. He found the officers presented credible testimony giving justifiable reasons for the way the arrest was conducted, that there was no question the arrest was valid, no question the search warrant was valid, and no issue about probable cause. Due to Appellant's prior convictions for violent offenses involving weapons, the trial judge found there was a risk to officer safety that made the entire arrest and search sequence reasonable. He specifically found the failure to put a copy of the search warrant in Appellant's hand when he was handcuffed behind his back was not enough, in and of itself, to deem the search unseasonable within the meaning of the Fourth Amendment. Because Appellant became agitated, hostile, uncooperative, and non-compliant, he put the officers' safety at risk. He noted that "[i]f they had to constantly protect themselves and [the] integrity of the search against [Appellant]'s outburst and statements then that may be a reason why they were not able to give him a copy of the warrant." (Tr. 123, lines 5–9). He found the search was conducted reasonably within the Fourth Amendment and denied the motion to suppress. (Tr. 119–24). To the extent Appellant argues a State constitutional violation, this issue is not preserved for appeal. Although Appellant argued at trial that the search violated both the United States and the South Carolina Constitutions, the trial judge did not rule on whether a

violation of the State constitution occurred. Thus, this issue is not preserved for this Court's review. *See State v. Dunbar*, 356 S.C. 138, 140, 587 S.E.2d 691, 693–94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."). This Court should affirm.

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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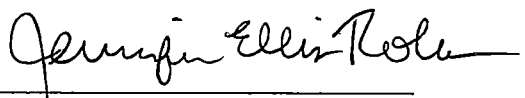
BY: 
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May 24, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2016-001364

THE STATE,

Respondent,

v.

MARK LORENZO BLAKE,

Appellant.

PROOF OF SERVICE

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

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 24th day of May, 2017.

ANGELA BENNETT
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May 24, 2017

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RE: State v. Mark Lorenzo Blake
Appellate Case No. 2016-001364

Dear Ms. Hudgins,

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

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/ab
Enclosures

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