STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2012-213141

THE STATE,

Respondent,

v.

ALPHONSO CHAVES THOMPSON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General

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

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia Street
Spartanburg, SC 29306

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly declined to quash the search warrant and suppress the evidence discovered during the search of the River Drive home because the search warrant affidavit established a reliable probable cause basis to believe narcotics would be discovered at the residence. Furthermore, even if the trial judge 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 in 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 court properly admitted Appellant's oral and written confessions in which he admits that the narcotics found at the River Drive home belonged to him. Appellant's contention that his confession was the fruit of an unlawful arrest is not preserved for review. Nonetheless, Appellant's confession was neither the result of an unlawful arrest nor coercion.

III.

The trial court properly denied Appellant's motion for a directed verdict as to the charge of possession of a weapon during a violent crime. Evidence existed which, in the light most favorable to the State, established both constructive possession and nexus with trafficking narcotics.

STATEMENT OF THE CASE

Appellant Alphonso Chaves Thompson was charged with trafficking in cocaine, greater than 400 grams; possession with intent to distribute marijuana, and possession of a weapon during commission of a violent crime. (R. p. 356.) He proceeded to a jury trial on January 23, 2012, before the Honorable J. Derham Cole. On January 25, 2012, the jury returned guilty verdicts on all counts. (R. p. 327, line 13 – p. 328 line 24.) For trafficking in cocaine, greater than 400 grams, Appellant was sentenced to a prison term of twenty-five years and a fine of $200,000; for possession with intent to distribute marijuana, Appellant was sentenced to a prison term of five years; and for possession of a weapon during commission of a violent crime, Appellant was sentenced to a prison term of five years. (R. p. 332; R. p. 360-362.) This appeal follows.

STATEMENT OF FACTS

The charges in this case arise from the execution of a search warrant at a residence on River Drive in Spartanburg County.[1] The River Drive home is a property owned by Ernest Grant. (R. p. 94, lines 16-23.) Appellant's mother, Loretta Thompson, entered a lease-purchase agreement with Grant for the River Drive home.[2] (R. p. 95, lines 4-18; p. 102, lines 4-16.) The home consists of three bedrooms, and the property also has a detached two-car garage. (R. p. 99, lines 1-13.) The property is situated on a narrow, dead-end street. (R. p. 100, lines 9-20.) A tall red privacy fence, put up after the Thompsons assumed residence, surrounds the property. (R. p. 100, lines 1-8; p. 107, lines 6-8; p. 195, lines 2-7; p. 213, lines 2-8; p. 242, lines 8-13.)

At trial, Appellant stated his current address as 39 Bridgebain Drive in Fountain Inn. (R. p. 31, lines 16-17; p. 235, lines 4-5.) At the time of his arrest, he resided at 110 Larchwood Drive in Simpsonville. (R. p. 235, line 8 – p. 236, line 4.) Appellant reported the River Drive home as his parents' residence. (R. p. 31, lines 18-23; p. 239, lines 14-21.) He conceded he was a regular and frequent visitor there, had keys to the house and the front gate, stayed overnight, stored personal property there, had free access to the home without providing notice or warning to his mother, cared for animals there, ate meals there, and could access the detached garage with a garage door opener kept in the house. (R. p. 36, line 9 – p. 37, line 5; p. 41, line 7 – p. 42, line 13; p. 239, lines 22-25; p. 251, line 25 – p. 252, line 7; p. 253, lines 6-10.) Appellant checked in on his late father

---

[1] In recitation of facts, Appellant refers to Federal charges and purported conclusions by US Attorney Andrew Mormon. Appellant attempted to offer a transcript of a Federal proceeding to the trial court. Judge Cole declined to consider this information, and Appellant has not appealed this ruling. (R. p. 9, line 10 – p. 10, line 24.)

[2] As noted by Appellant, the address is listed in various documents as "River Street" and "River Drive." For ease of reference, for purposes of this brief, Respondent refers to the address at all times as "River Drive." As the property was owned by a non-party, the property is referred to only as "River Drive."

just about every day. (R. p. 42, lines 14-16.) He spent the night there whenever he felt like it. (R. p. 42, line 17 – p. 43, line 16.) Appellant kept jackets and shirts there in the closet of the bedroom he had lived in at one point. (R. p. 37, line 25 – p. 38, line 13; p. 40, line 22 – p. 41, line 4.) Appellant also conceded that one of the guns in the house belonged to him. (R. p. 40, lines 20-21.)

Officers executed a no-knock warrant at River Drive on May 13, 2010. (R. p. 107, lines 20-23; p. 108, lines 22-24.) Appellant's father, an elderly gentleman, was the only person home when police arrived. (R. p. 109, lines 6-18; p. 112, lines 3-14.) Several weapons were found inside the residence:

- Bushmaster .223 rifle with magazine and rounds in the master bedroom (R. p. 114, line 22 – p. 116, line 25.)
- SKS style assault rifle, 7.69 caliber, in the master bedroom closet (R. p. 117, lines 2 – 24.)
- SKS style rifle behind chest of drawers in master bedroom. (R. p. 169, line 17 – p. 170, line 17.)
- Intratec 9mm pistol with magazine and rounds in the closet of the first bedroom on the right (R. p. 118, lines 3-18.) The pistol was purchased by Appellant on November 17, 2000 at a nearby pawn shop. (R. p. 119, lines 18-25.)
- A magazine for another type of weapon not found in the home with .40 caliber rounds located with the 9mm pistol. (R. p. 118, line 19 – p. 119, line 14.)
- Remington 870 pump shotgun in the master bedroom with shotgun shells and shell holder. (R. p. 120, line 5 – p. 121, line 19.)

No documentation connected the weapons in the master bedroom to Appellant or to any other occupant of the home. (R. p. 130, line 13 – p. 132, line 10; p. 133, line 14 – p. 135, line 3; p. 185, lines 5-15.) The master bedroom also had equipment for monitoring

surveillance video of the front drive. (R. p. 170, line 18 – p. 172, line 24; p. 185, lines 16-24; p. 195, lines 9-19; p. 196, lines 3-10.)

In the living room, officers found a money counter. (R. p. 172, line 25 – p. 174, line 18.) They also found $3,410.00 in a polo shoe under an end table in the living room. (R. p. 186, lines 2-9.)

In the kitchen, Pyrex dishes were found in the dishwasher. (R. p. 122, lines 4-6.) Such dishes are commonly used in cooking crack cocaine. (R. p. 123, lines 1-6.) Officers also found a vacuum sealer in a kitchen cabinet. (R. p. 123, lines 8-9.) There was a green, plant-like residue on the sealer and an odor of marijuana. (R. p. 123, lines 20-23.) A sealer is commonly used to repackage quantities of marijuana for sale. (R. p. 124, lines 12-19.) There was a bowl in the kitchen containing partially burned marijuana cigarettes called "roaches." (R. p. 124, line 21 – p. 125, line 20.) A bag of suspected marijuana was also located in a kitchen cabinet. (R. p. 161, lines 12-15.) A second sealer was also noted in the kitchen on top of kitchen cabinets. (R. p. 162, line 4- p. 163, line 12.)

A bag of marijuana weighing 38.73 grams was located in the first bedroom on the right upstairs, the same room where Appellant's pistol was found. (R. p. 160, lines 2-23; p. 188, line 25 – p. 189, line 2.) A piece of mail addressed to "A. Thompson" was also found in the first bedroom.[3] (R. p. 176, line 4 – p. 177, line 21.)

In the detached garage, officers located several more items of interest. The garage was cluttered with car parts and appeared to be used as a work shop for automobiles. (R. p. 144, line 20 – p. 145, line 15; p. 179, lines 6-10.) They found inositol powder, a dietary supplement commonly used for cutting cocaine. (R. p. 140, line 7 – p. 143, line 13; p.

[3] While Appellant claimed his residence at the time of arrest was on Larchwood Drive in Simpsonville, this piece of mail was addressed to yet another address, 106 Rocking Chair Lane in Spartanburg. The mail was old, notifying Appellant that a headlight shield had been back ordered and was expected on January 9, 2003.

168, line 17 – p. 169, line 8.) A bag of white powder was found in the back of the garage among car parts and tires, hidden under a door panel for a car. (R. p. 143, line 14 – p. 144, line 19; p. 179, lines 11-18.) The powder was determined to be cocaine with a net weight of 253 grams with a purity of 60.2%, therefore containing 152.3 grams pure cocaine.[4] (R. p. 203, lines 4-14; p. 204, lines 1-2; p. 204, lines 10-14.) Officers also found a box of wrappings such as cellophane and foil commonly used in packaging bulk marijuana, and the items smelled of marijuana and had a residue. (R. p. 163, line 17 – p. 168, line 9.) Later testing proved there was marijuana in the wrappings. (R. p. 189, line 12 – p. 190, line 6.) A volume of mover's packing saran wrap was also in the garage. (R. p. 175, lines 8-19.)

A Super Sport Monte Carlo was parked in the garage.[5] (R. p. 151, lines 12-16.) Upon opening the door, officers detected the scent of marijuana. (R. p. 151, lines 17-18.) The vehicle key was on the front seat, and officers used the key to open the trunk. (R. p. 151, lines 18-23.) Immediately visible in the trunk were a bag of white powder, a bag of green plant-like material, and a set of scales. (R. p. 151, lines 22-25.) Upon moving a speaker in the trunk, officers discovered what they believed to be another set of scales and another bag of green plant-like material. (R. p. 152, lines 1-4.) The item thought to be scales bore the initials "A.T.," Appellant Alfonso Thompson's initials. (R. p. 152, line 24 – p. 153, line 3.) The item marked "A.T." also had a white powder residue. (R. p. 159, lines 7-16.) Appellant testified that the item did belong to him and was part of a welding helmet, not scales. (R. p. 238, line 7 – p. 239, line 4.) The green material found in the

[4] Special Agent Davis explained that the net weight should be considered in determining weight of the drug as pure cocaine "will kill you;" a cutting agent is always required for cocaine sold for consumption. Purity is considered by investigators in determining whether the drug is from a high level organization as cocaine is typically less pure at each level of sale. (R. p. 205, line 13 – p. 206, line 17.)

[5] The Monte Carlo was not registered to Appellant. (R. p. 180, lines 9-14.)

trunk tested positive for marijuana, the bags weighing 23.69 grams and 112.73 grams.[6] (R. p. 188, lines 16-24.) The white powder was found to be cocaine with a net weight of 251.6 grams and with a purity of 72%, therefore containing 181.1 grams pure cocaine. (R. p. 203, lines 4-14; p. 203, line 25 – p. 204, line 3; p. 204, lines 10-14.) With packaging, the bags of white substance weighed about 522 grams. (R. p. 156, lines 9-14.)

500 grams of cocaine, approximately 18 ounces, would have an approximate street value of $18,000. (R. p. 128, lines 7-24.) If broken down into grams, at $500 per gram, such an amount could earn approximately $50,000. (R. p. 128, line 25 – p. 129, line 3.) If made into crack cocaine, the value could be even higher. (R. p. 128, lines 7-8.) Marijuana was valued at approximately$160 per ounce, or $960 for 6 ounces. (R. p. 129, lines 15-19.) If sold as a quarter pound, the value may be $250-$300. (R. p. 129, lines 20-24.)

Investigators saw Appellant regularly visit River Drive prior to making cocaine deliveries in the six months immediately preceding execution of the warrant. (R. pp. 2-5.) One investigator stated they had information that Appellant had control of River Drive though he did not reside there. (R. p. 136, lines 1-3.) Lieutenant over the narcotics and vice section of the Spartanburg Sheriff's Office Steve Cooper explained that it was common practice for drug traffickers to operate from homes from which they "distance themselves," not placing the property in their own names. (R. p. 136, lines 4-10.) Cooper referred to such homes as "stash houses," locations where narcotics and weapons may be kept and often owned by a family member, girlfriend, or other person of trust. (R. p. 137, lines 1-13; p. 178, lines 15-19.) It was opined that River Drive had many characteristics of a stash house. (R. p. 174, line 19 – p. 175, line 6.)

[6] An ounce is approximately 28.35 grams. The total of the three bags of marijuana found was about 175 grams, or 6 ounces. (R. p. 189, lines 9-11.)

An arrest warrant was also served, and Appellant was transported to River Drive while the search warrant was being executed. There, he gave oral and written statements claiming responsibility for the cocaine and marijuana found in the home. (R. pp. 351-353; State's exhibit # 2, taped confession.)

ARGUMENTS

I.

The trial judge properly declined to quash the search warrant and suppress the evidence discovered during the search of the River Drive home because the search warrant affidavit established a reliable probable cause basis to believe narcotics would be discovered at the residence. Furthermore, even if the trial judge 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 in 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.

A. The search warrant affidavit contained sufficient reliable information to establish a probable cause basis to believe narcotics would be found at the targeted residence at the time of the search.

Appellant challenges the search warrant pursuant to the Fourth Amendment and Article I, section 10, of the U.S. and S.C. Constitutions as well as S.C. Code Ann. § 17-13-140. Appellant contends that the search warrant was lacking in probable cause. "A determination of probable cause depends upon the totality of the circumstances." State v. Adams, 291 S.C. 132, 133-134, 352 S.E.2d 483, 485 (1987). 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." Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). Critically, in making a 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). "The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant is issued." State v.

Bellamy, 323 S.C. 199, 203, 473 S.E.2d 838, 840 (Ct. App. 1996) aff'd, 336 S.C. 140, 519 S.E.2d 347 (1999)). The appellate court's duty is "to ensure that the issuing magistrate had a substantial basis upon which to conclude that probable cause existed." Adams, 291 S.C. 132"A reviewing court should give great deference to a magistrate's determination of probable cause." Bellamy, 323 S.C. 199 The issues of informant reliability, staleness of information, and relevance to River Drive cannot be considered in isolation. Rather, the whole of the affidavit is to be considered. Gates, 462 U.S. 213

Given all the circumstances set forth in the affidavit, clearly there was a fair probability that evidence of a crime would be found at River Drive. In the present case, the issuing court was presented in the warrant affidavit with information from several sources as to Appellant's activities over a two-year time period:

> June 2007: Two different Confidential Reliable Informants (CRI's) provided information that they had been purchasing cocaine from a man named "Poo Bear" over several months. In corroboration of their claims, they provided photo identifications as well as information on two vehicles, a Honda station wagon and a blue and gold Ford 350 "dually" pickup.
>
> August 2007: Keith Jeter is arrested. Jeter states that "Poo Bear" would deliver large amounts of cocaine to his residence.
>
> September 2008: Fred Meadows, who grew up with Poo Bear, says he bought cocaine from Poo Bear, who was known to drive a blue and gold Ford F350 "dually" pickup. Poo Bear would deliver cocaine to Meadows' residence.
>
> Late 2008: Another informant states Poo Bear has a residence at the end of River Street on the left hand side and is a large scale cocaine trafficker.
>
> January 2009: Two more CRI's purchase 18 ounces of cocaine from Poo Bear and identify him in a photo lineup as Appellant. They also know Poo Bear to drive a blue and gold F350 "dually" pickup truck.

February 11, 2009: Jose Luis Diaz-Arroyo is arrested with a kilogram of cocaine and claims his brother-in-law, Alejandro Sosa-Galvan, supplied Poo Bear, having cocaine delivered to him at River St. on several different occasions.

July 30, 2009: A fifth CRI says he is supplied by Deangelo Young, known as "Little Man." In a controlled buy, the CRI gave Little Man $4000.00, and Little Man proceeded to a home on Tamara Way. The home belonged to Poo Bear's girlfriend. Poo Bear was driving a white Honda Civic. Little Man received 4 ounces of cocaine, and delivered the cocaine to the CRI.

Late 2009 – May 2010: In the six months preceding the warrant issued on May 13, 2010, Spartanburg Sheriff's Office narcotics officers conducted surveillance at River Street, and observed Appellant driving the Ford F350, white Honda Civic, and gray Honda station wagon described by the informants. According to the affidavit, investigators observed Appellant visit River Street during this six month period before making cocaine deliveries.

May 11-12, 2010: Investigators purchase cocaine from Arthur Jones. Jones disclosed that he was buying cocaine from Poo Bear. Jones detailed his arrangement with Poo Bear, stating that Poo Bear would front him powder cocaine on a monthly basis which Jones would convert into crack for sale. Whenever Jones ran out, he would call Poo Bear and tell him he was ready for him. On May 11, 2010, Jones made a recorded phone call to Poo Bear to "re-up," and Poo Bear agreed to come by. Jones claimed that Poo Bear would typically come by within days. On May 12, 2010, after phone calls were exchanged, Poo Bear arrived in a white Honda Civic. Jones gave Poo Bear $9000.00, and Poo Bear said he would deliver the package the following day. Jones stated this meant Thompson would bring cocaine. Investigators observed and recorded the transaction from a room in Jones' house. Thompson left and was loosely followed in the Honda Civic afterward.

(R. pp. 2-5.)

In reviewing the information gained from five CRI's, four other informants (Jeter, Meadows, Diaz-Arroyo, and Jones), and the observations of narcotics officers, a pattern of conduct was clearly established. The information from various sources consistently pointed to similarities in dealing with Appellant, e.g. the type of vehicle he drove, Appellant's use of others' residences (Tamara Way and River Drive, belonging to a

girlfriend and his parents, respectively), deliveries made to buyers at their residences, and a price of about $1000.00 per ounce (Jones and Little Man). As such corroborating details emerged from multiple individuals who had no connection to one another over the years, these stories appear to be more reliable. Moreover, it appears each of these nine individuals knew the information about Appellant firsthand from their own dealings with him, and the four witnesses not labeled as CRI's were under arrest and cooperating with law enforcement at the time their statements were given.[7] State v. Driggers, 322 S.C. 506, 473 S.E.2d 57 (Ct. App. 1996)(evidence of past reliability not usually required when information is provided by an eyewitness because, unlike the paid informer, the eyewitness does not ordinarily have the opportunity to establish record of reliability); United States v. Miller, 925 F.2d 695 (4th Cir. 1991)(informant may be relied on in finding of probable cause even if affidavit is devoid of stated reasons why the police believe him or her to be reliable; where informant provided information in hope of more lenient sentence, such motivation was by itself sufficient indicator of reliability to rely on in finding probable cause); United States v. Perez, 393 F.3d 457 (4th Cir. 2004)(person being identified by name in warrant affidavit lends credence; circumstances surrounding face-to-face meeting provide indicia of credibility not found in warrant based solely on

[7] Appellant correctly points out that the body of the does not set forth details as to past reliability of those labeled "confidential reliable informants." It stands to reason that this characterization is based on the officer's own experience. However, even considering them as other face-to-face informants, as argued above, probable cause is met in this case. State v. Peters, 271 S.C. 498, 248 S.E.2d 475 (1978)(even if there was not sufficient evidence to support the informant's credibility based upon prior dealings, where informant gave description of automobile which would contain marijuana and officer's direct observation of automobile conforming in every respect to informant's tip provided sufficient circumstances to assure reliability of the informant's information); See also State v. Dupree, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003)(reliability may be established by other means than by previous supply of information); State v. Hughes, 353 N.C. 200, 539 S.E.2d 625 (2000)(A tip was received from an informant known to Officer Matthews as a confidential reliable informant and passed on to other officers. The officers who obtained the warrant failed to set forth the basis for reliability, and Matthews did not testify. Court found that without more, there was not sufficient indication of reliability to use the confidential and reliable informant standard. However, even an anonymous tip can form the basis of reasonable suspicion where there are sufficient indicia of reliability or after police corroboration.)

phone call from anonymous informant); Gates, 462 U.S. at 233-34(deficiency in one of the elements may be compensated for in determining reliability, such as when informant provides detailed description and firsthand knowledge).

Further, the information contained in the warrant was not stale. In the present case, the information gathered over the course of two years showed that Appellant's criminal activity had been going on consistently for an extended period of time. See for example United States v. Reyes, 798 F.2d 380 (10th Cir. 1986)(Information of drug transactions in October 1983, January 1984, and aborted drug transaction in May 1984 not stale at time warrant was obtained in October 1984 because facts indicated ongoing activity). Investigators had personally observed Appellant stopping by River Drive prior to delivering cocaine during the six months immediately preceding issuance of the warrant. Moreover, the contact between Appellant and Jones the day before the warrant was issued supports the conclusion that drug activity was ongoing, particularly in light of the preceding two years of consistent drug dealing. Even though the deal was not completed when Jones decided he no longer wished to cooperate with law enforcement, Appellant's behavior was consistent with Jones' description of Appellant's "M.O." in drug transactions on prior occasions. Even though drugs were not exchanged in the interaction, officers observed through the recorded interaction that money was given with the understanding that Appellant would be delivering more cocaine to Jones in the coming days. Coupled with law enforcement observations of Appellant stopping by River Drive immediately before making deliveries of cocaine, there was a reasonable inference that evidence of drug activity may be seized there. Therefore, the warrant relied on Appellant's activities not only over the course of two years but also on his actions within two days of the issuance of the warrant.

The link to River Drive was also adequately established in the warrant affidavit. River Drive was mentioned in late 2008 by the third CRI. River Drive was again referenced by Diaz-Arroyo as the location where Galvan would deliver drugs to Appellant. The information from these two individuals was confirmed by investigators' observations of Appellant visiting the River Drive home before delivering cocaine in the six months prior to execution of the warrant. When the warrant was obtained, Jones had given Appellant $9,000.00 in anticipation that cocaine would be delivered to him. Where prior information established that Appellant would receive cocaine at River Drive and stop there on his way to deliver cocaine, it was reasonable to believe that the narcotics Jones waited for would be found at River Drive.

Further, while Appellant claimed residence in Simpsonville at the time the warrant was executed, he also conceded that he regularly visited River Drive and even spent the night there on occasion. His activities there established that he was at least a sometime resident of the home and exercised the privileges of a resident in his free movement at the property.

For all these reasons, the State submits the trial judge properly declined to quash the search warrant and suppress the evidence discovered during the search of the targeted residence because the search warrant affidavit established a reliable probable cause basis to believe narcotics would be discovered at the targeted residence at the time of the search while containing no false, inaccurate, or misleading information.

B. *Even if the trial court erred in in finding that the search warrant affidavit sufficiently established a probable cause basis for search, the trial court properly declined any motion to suppress evidence resulting from the search because the 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.*

Even if the search warrant was improperly issued due to some deficiency in the search warrant affidavit, suppression of the evidence recovered in the search of the targeted residence was not warranted because the warrant was obtained in good faith and was not so lacking in indicia of probable cause that the law enforcement officer's belief in its validity was unreasonable. Accordingly, the trial judge properly declined to quash the search warrant and correctly denied Appellant's motion to suppress the evidence discovered during the search of the targeted residence. Appellant's conviction should be affirmed.

As a preliminary matter, in a footnote, Appellant asserts in his brief that the portion of the affidavit regarding delivery to River Street by Sosa-Galvan is patently false based on an isolated portion of investigator's reports from the case where River Drive is not mentioned in chronicling an interview with Diaz-Arroyo coupled with the solicitor's assertion that Raymond would have relied on information from Davis in preparing the affidavit. (R. p. 21, line 18 – p. 24, line 25; pp. 334-337.) In the footnote, Appellant asserts that the court should consider that Raymond "was confused or, he put materially false information in the warrant application," in determining whether officers acted in good faith. However, at trial, Appellant appears to have raised this issue in support of his argument that the informants were not reliable, and Appellant did not request a hearing pursuant to Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978)("[W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was

included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.") In fact, Appellant objected to the agent who prepared the reports being called during pre-trial motions. (R. p. 50, line 17 – p. 52, line 2.) The court seems to have understood that the DEA-6 forms were not being offered only to "assist the court in understanding the facts of the affidavit and how that ought to be interpreted and that sort of thing." (R. p. 51, line 17 – p. 52, line 2.) Therefore, to the extent that Appellant argues that this evidence is somehow probative of a lack of good faith on the part of officers, the issue is not preserved. State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005)(The argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review).

Even if the search warrant affidavit in Appellant's case did not sufficiently establish the confidential informant's reliability or the timeliness of the information justifying the search, the trial judge properly declined to suppress the evidence discovered as a result of the search because Raymond acted in good faith in obtaining the search warrant and acted in objectively reasonable reliance on the issuing judge's probable cause determination in conducting the search. See U.S. v. Leon, 468 U.S. 897, 922 (1984) ("[T]he marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant

cannot justify the substantial costs of exclusion."). Critically, Raymond complied with the statutory warrant requirements in obtaining the search warrant and included information in the search warrant affidavit establishing a pattern of conduct observed for two years, culminating in an attempted purchase days before the warrant was obtained.[8] Under those circumstances, even if the issuing judge erred in determining the search warrant affidavit was sufficient to establish probable cause, the affidavit was not so lacking in indicia of probable cause that it was entirely unreasonable for officers to rely on the warrant after it was issued. State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997)(recognizing that application of the good-faith exception is not prohibited simply because a search warrant was deficient in some respect); see also 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.") Accordingly, as officers did not act unreasonably in relying on the search warrant, the trial judge properly declined to suppress the evidence discovered in the search of the targeted residence. See Segura v. United States, 468 U.S. 796, 806, 104 S. Ct. 3380, 82 L. Ed. 2d 599 (1984)("By its terms, the Fourth Amendment forbids only 'unreasonable' searches and seizures.").

Based on the foregoing, even if the search warrant should not have been issued due to some deficiency in regard to the search warrant affidavit, the trial judge properly declined to suppress the evidence recovered during the search because the affidavit was

[8] Notably, the transaction was not completed when the informant, Jones, refused to continue his cooperation. However, Jones had delivered money to Appellant and expected cocaine to be delivered the following day.

not so lacking in indicia of probable cause as to render reliance upon the search warrant entirely unreasonable.

II.

The trial court properly admitted Appellant's oral and written confessions in which he admits that the narcotics found at the River Drive home belonged to him. Appellant's contention that his confession was the fruit of an unlawful arrest is not preserved for review. Nonetheless, Appellant's confession was neither the result of an unlawful arrest nor coercion.

Appellant was tried for narcotics and weapons found at River Drive. He was arrested for a transaction involving an informant on May 12, 2010. Appellant argues that his confession should have been suppressed because (1) it was the fruit of an unlawful arrest pursuant to the warrant describing his activity on May 12, 2010 and (2) his confession was involuntary.

A. Appellant's contention that his confession should have been suppressed as the fruit of an unlawful arrest is not preserved for review. Even if the issue was preserved, it would be without merit.

While Appellant elicited testimony during the Jackson v. Denno[9] hearing regarding the arrest warrant, he made no argument that his confession was the fruit of an unlawful arrest. Further, there is no indication that the trial court understood that the confession was objected to as the fruit of an unlawful arrest. Following the Jackson v. Denno hearing, the trial court stated simply, "I find based upon the testimony presented the state has established by the greater weight of the evidence that the statement given by the defendant was freely and voluntarily made; and therefore the motion to exclude is denied." (R. p. 89, lines 12-16.)

[9] Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964) (Fourteenth Amendment forbids use of involuntary confession; defendant objecting to admission of confession is entitled to fair hearing in which both underlying factual issues and voluntariness of confession are actually and reliable determined).

Counsel then discussed "other motions," expressing concern under Lyle[10] that the transaction involving Jones not be mentioned during trial. (R. p. 89, lines 18-22.) The solicitor responded that he would not be mentioning the prior events absent the defense challenging the arrest warrant as defective. (R. p. 89, line 23 – p. 92, line 4.) No additional comment was made from the defense indicating that the arrest warrant was being challenged.

Further, when the confession was admitted, Appellant objected to the confession "on the grounds that the *search* was improper and without probable cause, and because the statement made was made not voluntarily and freely by [Appellant] but subject to coercion and threats." [Emphasis supplied.] (R. p. 216, line 23 – p. 217, line 2.) Based on all the foregoing, Appellant's objection was based on the confession as fruit of an improper search warrant, not fruit of an improper arrest warrant. "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. ...A party may not argue one ground at trial and an alternate ground on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 - 694 (2003).

Even if the matter were preserved for appellate review, Appellant's arrest was lawful. On May 12, 2010, Appellant accepted $9,000.00 as payment for 9 ounces of cocaine which he was to deliver to Jones.[11] While delivery of the cocaine had not yet been made, the cocaine had been sold. Jones had informed police that this was Appellant's "M.O.," that he would deliver cocaine within days of collecting advance payment. Officers had observed the delivery of the money and Appellant's promise to

[10] State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)(discussing evidence of other bad acts to prove a common scheme or plan).

[11] 9 ounces would equate to just over 255 grams, satisfying the amount "between 200 and 400 grams."

deliver the package the following day. (R. pp. 2-5.) Based on this information from Jones, there was probable cause to believe that Appellant would be in possession of the cocaine he had sold to but not yet delivered to Jones. There was probable cause to believe Appellant had done exactly what the arrest warrant said he had done, that is "knowingly sell, manufacture, bring into the state and/or possess between 200 and 400 grams of cocaine." There is no testimony in the record regarding what details of the "police investigation" mentioned in the warrant were provided to the issuing court, but this is because the arrest warrant was not challenged at trial. Nonetheless, based on the record before this court, there was a probable cause basis for Appellant's arrest.

B. The trial court properly admitted Appellant's confession. The State established under the totality of the circumstances that the confession was voluntarily made.

"The requirement that only voluntary confessions be admitted is based on the Fifth Amendment's right against self-incrimination, and was incorporated and made applicable to the States through the Fourteenth Amendment." State v. Santiago, 370 S.C. 153, 182, 634 S.E.2d 23, 38 - 39 (Ct. App. 2006)(citing Malloy v. Hogan, 378 U.S. 1, 6, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964)). "During the Jackson v. Denno hearing, the trial judge must examine the totality of the circumstances surrounding the confession and determine whether the State has carried its burden of showing [by a preponderance of the evidence] the confession was voluntarily made." Santiago, 634 S.E.2d, 40. In considering the voluntariness of a confession, courts should consider factors such as police coercion; length of interrogation; location; continuity; defendant's maturity; education; physical condition; mental health; whether the defendant was advised of rights to remain silent and have counsel present, background, experience, and conduct of the accused; age; threats of violence; and promises of leniency. State v. Miller, 375 S.C. 370, 652 S.E.2d

444 (Ct. App. 2007). "Coercive police activity is a necessary predicate to finding a statement is not voluntary." Miller, 652 S.E.2d, 452.

Appellant owned "Ridiculous Rides," an automobile shop in Boiling Springs. (R. p. 145, lines 16-20; p. 237, lines 10-19.) Officers obtained a warrant for Appellant's arrest based on the May 12 incident wherein Appellant received $9000.00 cash, promising to deliver drugs the next day. (R. p. 84, line 21 – p. 86, line 16.) Appellant was arrested at Ridiculous Rides on May 13, 2010, and transported to River Drive after execution of the search warrant at that location began. (R. p. 71, line 20 – p. 72, line 9; p. 86, lines 17-21; p. 139, lines 14-25; p. 183, line 25 – p. 184, line 8; p. 244, lines 3-8.) Appellant was transported by Sheriff's deputy Joe Pharis and Special Agent Jerry Davis. Pharis read Appellant his rights while in the vehicle. (R. p. 86, line 22 – p. 87, line 8; p. 147, lines 5-12; p. 196, line 19 – p. 197, line 1; p. 197, line 22 – p. 198, line 9.) Upon arrival at River Drive, they sat on the back of Investigator Christopher Raymond's pickup truck parked outside the tall privacy fence.[12] (R. p. 63, lines 2-9; p. 197, lines 2-19; p. 212, line 16 – p.213, line 8; p. 213, lines 15-22; p. 218, lines 4-12.)

While sitting on the truck, Appellant provided a written statement on a form containing Miranda warnings. (R. p. 198, lines 12-14; p. 221, line 18 – p. 222, line 13.) The first page of the form was read to Appellant, and he signed it. (R. p. 62, lines 8-11; p. 214, lines 1-19; p. 214, line 24 – p. 215, line 1.) Appellant was given the option to write the statement himself or dictate to Raymond, and Appellant chose to write the statement by hand himself. (R. p. 62, lines 13-16; p. 64, lines 11-16; p. 67, line 23 – p. 68, line 2; p. 217, lines 19-25; pp. 351-353.) Appellant confessed that the cocaine and marijuana found in the garage belonged to him. (R. p. 199, lines 2-6; p. 219, line 15 – p. 220, line 4; p.

[12] Appellant claimed he could see his parents from this location, but Davis and Raymond did not believe such was the case. (R. p. 208, line 2- p. 209, line 14; p. 212, line 23 – p. 213, line 8.)

222, lines 14-18.) Appellant signed each page. (R. p. 62, lines 17-20; p. 220, line 4.) Raymond and Davis were present when Appellant executed the statement. (R. p. 62, lines 21-24; p. 220, lines 5-6.) An audio recording was made after Appellant executed his written statement. (R. p. 64, line 19 – p. 65, line 8.; p. 216, lines 13-20; State's exhibit #2, recorded statement.) In that recording, Appellant was asked what belonged to him out of what was found, to which he responded, "cocaine and marijuana." Appellant claimed ownership of the cocaine and marijuana found in the Monte Carlo, stating he had put the drugs there last week. (State's exhibit #2, taped confession.) Appellant also acknowledged the other narcotics found in the garage belonged to him. (State's exhibit #2, taped confession.)

Appellant was a business owner, approximately 30 years old, had completed eleven years of schooling, and appeared to understand English. (R. p. 63, lines 20-24; p. 214, lines 20-23; p. 234, line 24 – p. 235, line 2; p. 237, line 10 – p. 238, line 8.) No promises or threats were made. (R. p. 65, lines 12-15; p. 199, lines 7-10; p. 218, lines 1-2 & lines 15-16; p. 224, line 19 – p. 225, line 13.) Raymond and Davis denied mentioning anything about Appellant's parents. (R. p. 66, lines 7-12; p. 69, lines 14-22; p. 70, lines 10-15; p. 220, lines 16-20.) Raymond denied that Appellant had tried to write or say anything claiming responsibility so as to keep his parents from going to jail. (R. p. 68, lines 4-11; p. 70, lines 10-15.) Appellant had no direct contact with his parents during this time. (R. p. 218, lines 22-24.)

However, Appellant claimed that officers had informed him that his parents would be going to jail, specifically Raymond. (R. p. 73, lines 4-15; p. 78, lines 6-7; p. 246, lines 11-13.) Appellant stated that officers did not completely advise him of his rights. (R. p. 81, lines 12-14.) During trial, contrary to both his written and oral

statements in which he explicitly references cocaine and marijuana, Appellant initially stated that officers informed him that they found "something...but they never said what it was." (R. p. 247, lines 2-12.) Upon prompting, Appellant stated that he had been told that drugs were found. (R. p. 247, lines 13-15.) Appellant denied knowing what type of drugs and been found. (R. p. 250, lines 4-11.) Upon being prompted again, Appellant stated that they told him it was cocaine and marijuana. (R. p. 250, lines 12-14.) Appellant denied knowing where the drugs were located and what amounts were found. (R. p. 250, lines 15-19.) Appellant stated that he had no knowledge of drugs in the house and only claimed responsibility to keep his ill father from being arrested. (R. p. 72, lines 18-19; p. 247, line 16 – p. 249, line 14; p. 250, line 20 p. 251, line 11; p. 259, lines 13-14; p. 260, line 17 – p. 262, line 20.) Appellant claimed that he had tried to give a statement claiming that he was confessing to keep his parents from jail but officers erased it. (R. p. 74, line 3 – p. 75, line 17; p. 257, line 12 – p. 258, line 23.) Appellant claims that he also tried to write the statement so as to explain that he was only taking responsibility in order to prevent his father from going to jail, but officers would not let him. (R. p. 75, line 4-7.)

Appellant denied having seen any of the items mentioned in the living room or kitchen when he visited. (R. p. 252, lines 6-16.) Appellant also testified that the Monte Carlo belonged to his friend Deon Jackson, and Appellant denied knowing that there were drugs inside. (R. p. 76, lines 7-18; p. 253, line 11 – p. 254, line 5.) Appellant also affirmed he owned the pistol but had given it to his father. (R. p. 259, line 18 – p. 260, line 7.) Appellant claimed to be working under the Monte Carlo's hood on the electric fans and denied any work involving the trunk of the car. (R. p. 76, lines 17-18; p. 238, line 13 – p. 239, line 4; p. 254, line 4 – p. 255, line 14.) Nonetheless, Appellant stated

that he did put the part to the welding mask in the trunk. (R. p. 255, line 15 – p. 256, line 15.) Notably, the narcotics found were immediately visible when the trunk was opened.

A threat to arrest family members, if it occurred, could render a confession involuntary. State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (Ct. App. 1992). "[H]owever, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed on appeal unless it is so manifestly erroneous as to show an abuse of discretion." State v. McClure, 312 S.C. 369, 371-372, 440 S.E.2d 404, 405 (Ct. App. 1994). As in McClure, 312 S.C. 369, the issue in the present case comes down to a question of credibility, a question which the trial judge resolved in favor of the officers. As such, the trial court did not abuse its discretion in admitting Appellant's statements.

Furthermore, it may also be noted that a threat to arrest a family member "does not render a confession involuntary *if* the police have probable cause to arrest the family member and thus could lawfully carry out the threat." United States v. Ortiz, 943 F. Supp. 2d 447, 456-457 (S.D.N.Y. 2013). Where Appellant's parents occupied the home, thereby exercising control of the premises, and at least some of the evidence of drug activity on the premises was readily visible in the home (for example, the marijuana and sealers seen in the kitchen), thereby indicating that they had knowledge that narcotics were present, police would have had probable cause to arrest either or both of Appellant's parents. See for example State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981)("Where contraband materials are found on premises under control of accused, this fact in and of itself gives rise to inference of knowledge and possession which may be sufficient to carry case to jury.") .

III.

The trial court properly denied Appellant's motion for a directed verdict as to the charge of possession of a weapon during a violent crime. Evidence existed which, in the light most favorable to the State, established both constructive possession and nexus with trafficking narcotics.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593, 593, 606 S.E.2d 475, 477-478 (2004). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

The crime of possession of a weapon during commission of a violent crime requires "that the State must prove a nexus between the predicate offense and the defendant's actual or constructive possession of a firearm during its commission." State v. Whitesides, 397 S.C. 313, 316, 725 S.E.2d 487, 488 (2012).[13] Here, the underlying violent offense was drug trafficking. S.C. Code Ann. § 16-1-60. Whitesides states:

> A nexus may be established by showing that the firearm furthered, advanced, or helped in the commission of the crime. A nexus between possession of a firearm and drug trafficking would exist if the firearm is accessible to the trafficker and thereby 'provides defense against anyone

[13] Appellant argued only on constructive possession in his motion. (R. p. 227, line 25 – p. 229, line 20; p. 264, line 24 – p. 265, line 4.) Whitesides was decided in April 2012, a few months after Appellant's conviction in January 2012.

> who may attempt to rob the trafficker of his drugs or drug profits.'

Whitesides, 725 S.E.2d. 490.

Appellant accurately states that no evidence indicated that he was in actual possession of a weapon on his person at the time of his arrest. However, the State presented substantial circumstantial evidence to prove guilt when viewed, together with all reasonable inferences, in the light most favorable to the State.

Five weapons were found in the home where evidence indicates Appellant stored and packaged narcotics for sale. One weapon was admittedly belonging to Appellant was found in the home, though he subsequently stated he had given it to his father. (R. p. 40, lines 20-21; p. 260, lines 5-7.) While Appellant stated the pistol was in the middle bedroom, officers reported a bag of marijuana weighing 38.73 grams was located in the first bedroom on the right upstairs, the same room where Appellant's pistol was found. (R. p. 160, lines 2-23; p. 188, line 25 – p. 189, line 2.) A piece of mail addressed to Appellant was also found in the room. (R. p. 288, line 4 – p. 177, line 21.) Appellant also still kept personal belongings such as clothing in the home. (R. p. 40, line 22 – p. 41, line 4.) He still spent the night there on occasion, whenever he pleased. (R. p. 42, line 17 – p. 43, line 5; p. 252, lines 4-5; p. 253, lines 4-8.) In the same room, officers found a magazine for a type of weapon not found in the home, indicating another weapon may be owned but not on premises. (R. p. 118, line 19 – p. 119, line 14.) Appellant admitted he had free access to the home, had a key to the home, and often visited and spent the night there. The weapons were found in areas of the home accessible to anyone with the free access to the home which Appellant enjoyed. Therefore, evidence supports an inference of constructive possession.

Four guns were found in Appellant's parents' bedroom, the same room with video monitoring equipment. Appellant admitted that he had assisted in erecting the fence and installing the security camera system. (R. p. 260, lines 11-16.) Though Appellant testified that security measures at the home were taken because another property belonging to his parents had been broken into (R. p. 242, line 1 – p. 243, line 8), it could be inferred that the high fence, surveillance equipment, and weaponry were present to effectuate security for Appellant's drug operation. An experienced narcotics officer testified that River Drive had many characteristics of a "stash house." (R. p. 136, lines 4-10; p. 137, lines 1-13; p. 178, lines 15-19.; p. 174, line 19 – p. 175, line 6.) Therefore, while the jury could have determined that the armaments in Appellant's home were consistent with legitimate gun ownership, it could also reasonably be inferred that these weapons were in place to protect the illicit business of trafficking narcotics. This was a matter for the jury to resolve. Accordingly, the trial court properly denied Appellant's motion for directed verdict and correctly sent all charges to the jury for consideration.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY: Mary S. Williams
Mary S. Williams
Bar # 76192

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

ATTORNEYS FOR RESPONDENT

Sept. 16, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2012-213141

THE STATE,

Respondent,

v.

ALPHONSO CHAVES THOMPSON,

Appellant.

CERTIFICATE OF COUNSEL

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

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY: 
Mary S. Williams
Bar # 76192

Office of the Attorney General
Post Office Box 11549

Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Sept. 16, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2012-213141

THE STATE,

Respondent,

v.

ALPHONSO CHAVES THOMPSON,

Appellant.

PROOF OF SERVICE

I, Ellen DuBois, 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:

Michael P. Scott, Esquire
Nexsen Pruet, LLC
Post Office Box 486
Charleston, SC 29402

I further certify that all parties required by Rule to be served have been served.
This 16th day of September, 2014.

Ellen DuBois

ELLEN DUBOIS
Legal Assistant

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