IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

Appellate Case No. 2020-000049

The Honorable Thomas Anthony Russo

The State of South Carolina……..……Respondent,

v.

Royal Daniel Williams, III……...…Appellant.

APPELLANT'S BRIEF

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II. Whether the trial court erred in not suppressing the fruits of the February 19, 2016 search warrant that allowed law enforcement to search through the phone records of Royal Williams when the original warrant was stale and law enforcement did not seek to receive an additional warrant before gathering the correct information from Sprint in violation of Mr. Williams's Fourth Amendment right to be free from unreasonable searches and seizures?

II. Whether the trial court erred when it allowed the State to obtain a buccal swab from Mr. Williams when the State lacked probable cause to believe that Mr. Williams murdered the victim?

III. Whether the trial court erred when it granted a continuance to the State to allow it to remedy an evidentiary issue when Mr. Williams had been held in pre-trial detention for three years awaiting trial?

IV. Whether the trial court erred in not dismissing Mr. Williams's case based on the State's violating Mr. Williams's right to a speedy trial?

STATEMENT OF THE CASE

Mr. Williams was indicted on one count of murder on April 6, 2017 by the Florence County grand jury. He was tried before the Honorable Thomas Russo and a jury between September 9-14, 2019. Mr. Williams was convicted and received a sentence of life in prison. Mr. Williams was represented by Thurmond Brooker. The State was represented by Ed Clements.

This appeal timely follows.

RELEVANT FACTS

Royal Williams was convicted for the murder of Sherilyn Joseph, a young woman who lived her son in an apartment duplex. The case against appellant was highly circumstantial with the state failing to produce any evidence that appellant killed the victim. Even taking all of the evidence in the light most favorable to the state as this Court must at this juncture, the evidence failed to prove beyond a mere suspicion that appellant was guilty of this crime. The trial court erred in submitting the case to the jury.

Relevant Facts

The State offered evidence from law enforcement officials and two witnesses who observed a man in a taxi cab who was picked up from the crime scene around the time the State alleges the victim died. Both the cell phone testimony and the DNA testimony offered by the State were highly contested, both on cross-examination and by appellant's own defense experts.

The State called Patricia Stewart, the victim's mother, as its first witness in this trial. ROA 562. She testified her daughter, Sherilyn, worked at Starbucks and had a son. ROA 462. Back on January 23, 2016, Stewart was taking care of her grandson while her daughter went to work. ROA 463. She did not know what time her daughter was supposed to get off work. ROA 463. Her son had spent the night with Ms. Stewart. ROA 464. On Saturday, January 23, 2016, her daughter did

not call her. ROA 465. Around 4:00pm Ms. Stewart tried to call her daughter but did not get an answer. She tried until 10:00pm but still received no answer. She decided to go to her daughter's apartment. ROA 465.

Stewart picked up her sister and drove to her daughter's apartment. She saw her daughter's car in the driveway. ROA 465. She went to the apartment and found the door unlocked. It was dark inside and when she got to the end of the hallway she felt something. She turned on a light and saw her daughter on the floor. ROA 465.

Stewart's sister called 911. She tried to perform CPR. ROA 466. She stayed until the sheriff's department officers came to the apartment. ROA 466. She provided a statement to an officer. ROA 467.

Stewart testified her daughter did not have any enemies, or any disputes, with anyone. ROA 468.

The State then called Lt. Michael Brumbles, a Lieutenant over patrol for the Florence County Sheriff's Office. ROA 471. He received the call from dispatch and responded to the scene. ROA 473. He testified he did not observe anything in disarray. ROA 476. He did not see any signs of struggle. ROA 477. On cross-examination, Brumbles admitted he had not been to the apartment before and was unable to testify whether or not anything inside the apartment was out of the ordinary. ROA 480-81.

Thomas "Bo" Myers, the deputy coroner for Florence County testified. ROA 482. He was called and responded to the scene around 11:38 that evening. ROA 484. He noticed the body was fully clothed. She was wearing black. Her shoes were on, but one was "kind of knocked loose." ROA 489, l. 7. He noticed a circular injury to the left side of her forehead that was consistent with a gunshot injury. ROA 489. Based on the location of the lividity in her body, the coroner believed

the body had been moved although he did not see any signs of the body having been moved. ROA 491. Myers also testified the victim appeared cold to the touch. ROA 493. From that, he deduced she had been dead for "longer than a few hours." He was incapable of providing a better approximation. ROA 493. Given her degree of rigor mortis, Myers concluded she had been dead for more than several hours and less than days. ROA 495. Meyers testified that the presumed time of death was 4 o'clock in the afternoon. ROA 520. He conceded on cross-examination that the time of death was not a precise calculation. ROA 527. In his capacity as coroner, Myers scheduled an autopsy with the staff at MUSC. It was scheduled for January 25. ROA 522. He received the final autopsy report on April 4. ROA 523.

The State called Dr. Angelina Phillips, a forensic pathologist with the Medical University of South Carolina, to testify. ROA 538. She was qualified without objection in the field of forensic pathology. ROA 540. She testified the victim's cause of death was a gunshot wound to the head. ROA 541. She could not determine whether the range was intermediate to distant. ROA 542. There was a comforter at the scene with a hole in it. She did not find any evidence of defensive wounds. ROA 543. She also did not find any evidence of recent sexual activity although she could not rule it out. ROA 544. She identified the bullet as “medium-caliber" but did not make a specific identification. ROA 545.

Sgt. Andrew Clendenin of the Florence County Sheriff's Office's crime scene unit also testified. ROA 554. He arrived at the scene around midnight. ROA 557. Law enforcement towed the victim's car back to the Florence County Sheriff's Office impound yard. ROA 561. Clendenin took DNA swabs from the inside door handle and head rest of the car. ROA 562. A number of photographs of the scene were introduced through his testimony. ROA 564. He also obtained a

sample of the victim's blood at the autopsy and placed it into evidence. ROA 566. It was sent to the Richland County Sheriff's Office forensic lab. ROA 566.

At the victim's apartment Clendenin noticed a partially smoked cigar laying on an end table. He Also noticed a comforter, pillow, and pillowcase were near the victim and had a gunshot through it. ROA 566. She was wearing a Starbucks uniform. ROA 567. He was unable to successfully lift any fingerprints from her apartment. ROA 567. In the master bedroom there was a wastebasket. In the wastebasket he found a used condom. ROA 568. Reviewing the car, Clendenin noticed the passenger seat of the car was reclined. He swabbed for DNA on the inside of the passenger side door. ROA 570. He also attempted to obtain DNA from the head rest on the reclined seat. ROA 570. Clendenin noted he did not detect forced entry into the home and that the rear door was locked. ROA 572. Both the condom and the condom wrapper were located in the wastebasket. ROA 573. He took DNA samples from the inside of the passenger door handle. ROA 574.

Law enforcement obtained samples from "several" other individuals and they were sent for additional testing. ROA 578. He received a sample from appellant and sent it to the Richland County Sheriff's Office for testing. ROA 580.

The next day Clendenin received a DVR system from Investigator Collins who captured surveillance near the victim's apartment. ROA 581. Clendenin made a copy of the DVR and returned it to Collins. ROA 582.

A gun believed to be connected with this case was sent to SLED for testing. There were fibers found on the gun inside the slide. They did not match anything. The bullet and the gun were not a match. ROA 583.

Clendenin could not recall if the victim's mother found the door locked or unlocked. According to his report which he was presented with to refresh his memory, she claimed the door was unlocked when she arrived. ROA 584.

No gun or shell casings were found at the crime scene. ROA 585. Clendenin was unable to collect any fingerprints of evidentiary value. ROA 586. He did not attempt to collect touch DNA from the front doorknob. ROA 587. No items in the kitchen were processed. ROA 591. DNA was extracted from the cigar. ROA 594. Clendenin did not take an inventory of any other items in the trash can. ROA 605. Clendenin obtained DNA from appellant on June 28, 2019 and February 26, 2019. ROA 607.

Ashleigh Dixon of the Richland County Sheriff's Department testified. She is a serologist in the DNA laboratory. ROA 652. She processed a number of items from the crime scene. ROA 654. She did not conduct the DNA analysis. ROA 656.

The State called its DNA analyst, John Barron. ROA 675. Barron worked for the Richland County Sheriff's Department. ROA 676. He was qualified as an expert without objection. ROA 679. He testified the DNA on the cigar tip belonged to the victim. ROA 682. The victim's DNA was also on the coffee cup. ROA 682. The DNA on the headrest and door handle from the car was a mix of several people. ROA 683. The victim's DNA was also on the condom. ROA 684.

On Items 7 and 8—the headrest and door handle, there were multiple individuals identified. ROA 690. On the headrest, it was 2,800 more likely appellant was in the mixture than any random person. ROA 690. Regarding the door handle, the probability was that it was 120,000 more likely he was one of the individuals than a random person. ROA 691. As for the condom, he was 12,500 more likely to be a source of the DNA than a random person. ROA 691. Targeting the Y chromosome, Barron testified it that it was 1,850 more likely that appellant was the source of the

DNA. ROA 691. Combining those two analyses, Barron testified it was 23,000,000 times more likely appellant was the contributor of the DNA in the condom than any random person. ROA 692. Without objection, Barron testified "it's pretty incriminating as far as I'm concerned as a scientist." ROA 692, ll. 17-18. As discussed later, this testimony was vigorously challenged by defense counsel's expert witness. Two other male subjects' DNA were analyzed by Barron, but he excluded them from the scene. ROA 693. Over the previous objection based on the search warrant, the court allowed the DNA report into evidence. ROA 694. There was no seminal fluid present on the condom. ROA 698, 725.

The State called James Swinton, a dispatcher with Speedy Cab Company. ROA 771. He sent Keya Goins, a driver to an address in Florence at 3:40pm. ROA 772.

Linda Jones testified. ROA 781. She is the cousin of Keya Bacote, a cab driver. ROA 781. Bacote picked her up from work and then then took her on another call. ROA 782. Jones was sitting in the second row of the van on the passenger side. ROA 782. They arrived at an apartment duplex. ROA 783. They picked up a male who sat beside her. ROA 784. Later, she worked with law enforcement to create a sketch of the person she saw. ROA 787. She created that sketch on February 5. ROA 787. She thinks he may have had a hoodie on. ROA 787. She thinks he may have had a bookbag. ROA 789.

Deborah Goff from SLED drew the sketch. ROA 800. Ms. Jones rated the composite drawing an 8 based on the similarity of the sketch to the person she believes she saw. ROA 802. She did not draw a hoodie in the sketch because Ms. Jones did not mention a hoodie during the two hours they worked on the sketch. ROA 806.

Ms. Bacote has been a driver with Speedy Cab for 25 years. ROA 808. The call for the cab came in around 4:00 to 4:05. ROA 811. That information was not noted on the manifest. She

testified based on her memory because she regularly picks up Linda Jones at that time. ROA 812. Her passenger called her twice—once from a number with a 704 area code, and then from a 803 area code. ROA 813. She said he had "good wavy hair" in the front. ROA 814. She saw travel items in his bag, like toothpaste and deodorant. ROA 817. She told law enforcement she could not identify the person she picked up from any of the pictures they showed her. ROA 820. She saw the same passenger two days later when he called for a cab. He had shaved his head. ROA 820. She acknowledged she gave Chad Collins the following description of the person she picked up that day: "[H]e was about 5'9", 5'10", light-skinned, kind of good hair, pulled back in a ponytail, kind of built, and I know he had a back." ROA 825, ll. 10-13. At trial, she testified she "guessed on the ponytail." ROA 827, l. 2.

The State then called Lerron Whitten to testify. ROA 837. He lives on Plum Street in Darlington. ROA 839. Law enforcement came to his house investigating the murder. He showed them the gun he had. ROA 841. Appellant left a bookbag at his house. ROA 842. He had known appellant for 3 or 4 months prior to this. ROA 844. Without objection, he testified appellant was "going to court or something." ROA 845, 846.

The State called Investigator Chad Collins of the Florence County Sheriff's Office to testify. He arrived at the victim's apartment at around 11:30 to 12:00. He and Investigator Thomas McFadden worked the case jointly. ROA 895. He noted the victim was fully clothed. It appeared she had just come home from work. ROA 903. Two days after the initial investigation at the crime scene, Collins received information that too him to a home on Springfield Road in Florence County. The owner had a camera system on his house. He was given permission to take the system to the Sheriff's office and downloaded material from it. ROA 909. The video revealed the victim's car turning into the duplex. It also showed a van. ROA 916. The date stamp was January

23, 2016 at 4:59pm. ROA 917. The state incorrectly elicited Collin's testimony that that was "around 4 o'clock." ROA 917, ll. 9-10.

Collins then started talking to taxi cab companies. ROA 918. He reached out to a company in Darlington, Speedy's Cab and found out they had sent the taxi on that date and to that place. ROA 919. He and McFadden then went to Speedy Cab Company. ROA 919. They also spoke with Ms. Bacote. ROA 920. They also spoke with Linda Jones. ROA 921. They enlisted the assistance of the forensic artist. ROA 922. At some point, the investigation took them to Leron Whitten's house although it is not clear what particular evidentiary item led them there. ROA 923. His home was searched and he provided a DNA sample. ROA 924. Whitten's DNA was excluded from the small number of items processed by the Florence County Sheriff's Office. ROA 924. Aaron Smith's DNA was also taken. ROA 924. He too was excluded from the limited number of DNA samples law enforcement took from the victim's apartment.

Law enforcement realized Whitten and the appellant knew one another. ROA 925. The officers' investigation took to Bennettsville, SC where appellant's grandmother lived. ROA 925. Then they went to Darlington. ROA 926. They also went to Darlington to where Chimyra Wright lived. She and appellant have a child together. ROA 926. Collins was able to determine a Straight Talk phone was purchased by the victim in Laurinsburg, NC. ROA 929.

Collins obtained search warrants for the victim's phone. ROA 929. In analyzing the records, he testified he saw a number with some frequency. ROA 931. He completed a search warrant with respect to that number and obtained the records. ROA 932. The person connected with that number was appellant. ROA 933. Contacts between the two began January 14, 2016. ROA 934. The last contact was on January 22, 2016. During that time there had been 383 contacts. ROA 934. Beyond January 22, 2016 there were no other contacts between the two. ROA 935.

According to Collins, her phone last pinged off a cell tower at 3:11. ROA 936. Other people tried to reach her at 4:52. ROA 936-37. Collins testified appellant's phone pinged in areas near the victim. ROA 937. At 4:42 it pinged off a tower in Darlington. ROA 938.

Collins testified he began to review the video around 2:00 since that is the time he knew she would be heading to work. ROA 945. At 2:51, the car turned down Century Drive in the direction of Pine Needles Road. ROA 945. The car returned at 3:53pm. ROA 947. The taxi cab arrived at 4:33pm. ROA 947. Collins did not see anyone else pull up. ROA 948.

The State conceded it was not a strong case during its closing argument. The Solicitor argued: I'm asking you to go back and vote your conscious (sic) please. If that means we're twisting things, please let that man go. But if you see it the way I see it, that is that law enforcement made a great investigation under not ideal circumstances, there wasn't a lot to go on to begin with but they developed the evidence and we're here today and we're asking you to grade our paper. ROA 1431, ll. 8-14.

On cross-examination, Collins admitted he did not account for every vehicle that entered the area where the victim's duplex was located. He only accounted for the time frames in which he thought he might see something, given the victim's work schedule. ROA 957. Collins did not obtain the victim's work records, so he did not know exactly when she left work. ROA 958. He also admitted he could not tell from the video the color of the car he attributed as belonging to the victim. ROA 960. He also could not see the license plate nor the people in the car. ROA 960. Trial counsel pointed out during cross examination that if the victim did not return home until around 4 o'clock that afternoon, then the call for a cab pick up at that location would have occurred 13 minutes before the victim got home. ROA 962.

> Q: Based on the math what it means is that somebody called and said I need a pickup at Century Drive, Apartment A, 13 minutes before she arrived home; right?

A: yes. Base on—

Q: At least?

A: Based on the math, yes.

ROA 962, ll. 8-18.

According to the cab company logs, they received a call at 3:40 to go to the Century Drive address to pick up a passenger. A review of appellant's phone records, entered into evidence, did not show appellant making a call to the company. ROA 970- 973. Appellant's next outward bound call was at 4:42. ROA 973. There is also no evidence in appellant's phone record that he received a call from the cab company trying to clarify where the apartment was located, as testified to by Bacote. ROA 974.

It appeared appellant's phone pinging off a nearby cell tower occurred roughly an hour before the passenger left Century Drive in the cab. ROA 976.

Collins also confirmed that Ms. Bacote did not inform him that she had a second encounter with the man from the apartment complex a week later. ROA 979.

Bacote had testified that one of the numbers she received a call from was a North Carolina number with the area code 704. When law enforcement received the records, that number was traced to a Jessica Craig. Law enforcement did not undertake any efforts to speak with Ms. Craig, other than to call that number which came back as inactive. They did not even simply drive to Charlotte which is where the address was identified in the records. ROA 983- 986.

The person who requested the ride from the cab company also called back from a second number. ROA 987. Law enforcement did not attempt to track down the person associated with that number either. ROA 987-89.

The gun used in this case was never recovered. ROA 998. The black bag that allegedly belonged to appellant was not at Leron Whitten's house when police initially searched it on February 1. ROA 999. On February 22, when they went to Whitten's house a second time, they found the bag. ROA 999. Jones, who actually observed the bag, never identified the bag at Whitten's house to be the bag she observed the man had in his possession when she picked him up from Century Drive. ROA 1000. Neither did Bacote. ROA 1001-02. There were no calls between the appellant and the victim on the date of her death. ROA 1009.

Lieutenant Chris Johnson of SLED testified. ROA 1024. Without objection he was qualified as an expert in the area of call detail analysis and cellular analysis. ROA 1025, 1028-29. Johnson was asked to evaluate two sets of phone records, from Sprint and AT&T. ROA 1029. The signal strength around Florence is about a mile to a mile and a half. In the rural areas, it can reach to 3 miles. ROA 1043. Johnson created a call detail analysis of appellant's phone. ROA 1057. There are five towers in the area of the Century Drive address. ROA 1058. Phone companies typically do not provide the cellular range of their towers. ROA 1059. Johnson did not calculate the ranges of an of any of the towers. ROA 1080-81. It appears appellant's phone used a tower that serviced the Century Drive address at 3:26 and 3:55 pm on January 23, 2016. ROA 1064- 65. From 4:42 until 8:16, it utilized a tower that was consistent with an address at 225 Plum Street. ROA 1066. At 3:13 on January 23, 2016, there was a routed call but Johnson could not tell if it was a voicemail or any other kind of communication. ROA 1090-1092.

The state called Thomas McFaddin to testify, a criminal investigator with the Florence County Sheriff's Office. ROA 1108. After talking to the victim's co-workers, law enforcement developed several potential suspects. ROA 1116. They obtained DNA swabs from Jonas Hicks, Kenton Gainey, Gary Floyd (her child's father), and Aaron Smith. ROA 1116. He also obtained

a swab from Leron Whitten after additional investigation. ROA 1117. He initially believed Whitten was their suspect since the witnesses had described their passenger as being "built" and Whitten fit that description. Also, he had a weight bench. ROA 1117. The individuals from the cab did not identify him as the person in the cab with them. ROA 1117. Law enforcement also developed a lead in Bennettsville. ROA 1118. It appears the women from the cab excluded a number of different potential suspects. ROA 1118-1119. Eventually they decided to call in SLED for the sketch artist. ROA 1119. Law enforcement took the sketch to Bennettsville and showed it to appellant's grandmother. ROA 1120. They spoke to appellant's brother, Antonio, too. ROA 1121. Appellant's subscriber information from his cell phone showed an address of 326 Orange Street. ROA 1123. His address according to his driver's license is 200 Powell Street, Bennettsville, South Carolina. ROA 1129. McFaddin indicated they went to Whitten's home "several times," "at least three times" during the course of this investigation. ROA 1130. Law enforcement interviewed another suspect in Laurinburg, North Carolina based on a tip, but that did not pan out. ROA 1131-1132.

McFaddin confirmed they never obtained the victim's work records. ROA 1135. Aaron Smith was another person the victim had sexual relations with. ROA 1138. Julius Hickson and the victim also had sexual relations during the time frame. ROA 1138. The victim's classmate, Kenton Raheem Gainey was also approached and provided a DNA sample. ROA 1140. His sample was never provided to SLED for DNA analysis. ROA 1141. Julius Hickson's DNA was never submitted for comparison. ROA 1141.

McFaddin confirmed that he took several pictures to the women in the cab, and that they told him some of them had "similar features" to the man in the cab but that they could not

definitively identify them as the person in the cab that day. ROA 1143. They viewed appellant's picture, but they did not definitively identify him as the man in the cab. ROA 1144-1145.

McFaddin confirmed that he received an anonymous email implicating another person, Tyree Taylor. The women from the cab apparently knew Taylor and said the man in the cab was not him. ROA 1150. McFaddin testified they conducted additional investigation on Aaron Smith than other suspects. ROA 1153.

McFaddin testified they asked Gary Floyd where he was that night. He stated he was working at Wal-Mart. McFaddin said he spoke to someone at Wal-Mart but did not obtain a copy of his work records from that night. Instead, he "continued moving on." ROA 1154, ll. 22-23. Kenton Gainey's girlfriend told the police she was with him, so they moved on. ROA 1157.

At the end of the State's case, trial counsel motioned for a directed verdict. ROA 1167.

The defense presented its case. Trial counsel called Thomas J. Slovenski, a cellular forensic examiner, analyst, author, instructor, and consultant to testify. ROA 1237. He was qualified as an expert without objection. ROA 1238. He was presented with the Sprint records for analysis. ROA 1240. He testified that the SLED analysis done in this case was antiquated and that most federal agencies are now using different methodology. ROA 1247. Slovenski prepared a report in connection with his work on this case. ROA 1253. Slovenski testified that the SLED report was narrow in scope and did not take into account other nearby cell towers providing service in that area on the Sprint network. ROA 1259. His report was, he said, more accurate because it utilized manufacturer and templates, and also takes into account a huge database of antenna information from that area. ROA 1261. He also testified that Sprint specifically states that routed calls are not to be taken as accurate due to the routing fashion. They should not be mapped because it could impact the accuracy of the mapping. ROA 1263.

The defense also presented the testimony of Robert Bennett, an expert with an advanced degree in pharmacy. ROA 1290. He testified that law enforcement's conclusions regarding the DNA were not as strong as they sound.:

> But when those numbers start going down, then that means there potentially could be other people that also match that. So, for example, in in one in 12,5000, that's a relatively low match even though the number seems high. And let me give you an example as far as how does that compare to the population database which is the way DNA is compared. If you look at the population of Florence County, for example, 168,500 people and if it's one in 1 in 12,500 percent chance of a match, that means that just in Florence County there are 11 other people that his DNA potentially could match. If you look at the population of South Carolina, 5.8 million, then there potentially could be 434 people in the state of South Carolina that could also match. So the number is relatively low to be able to do a, have a degree of confidence of a confirmation that it is him and only him.

ROA 1301, l. 15- 1302, l. 4.

As for the other items of evidence, the probability that appellant was a match was low. ROA 1303-1308.

Kendrall Davis also testified for the defense. ROA 1331. For the five years she has known appellant, he has had a bald head. ROA 1332.

At the close of the evidence, the defense again moved for a directed verdict. ROA 1335.

I. The trial court erred by denying appellant's motion for a directed verdict because the evidence adduced at trial did not rise above a mere suspicion that appellant was implicated in the victim's murder.

The State's case against appellant did not meet the standard for allowing the case to go to the jury at the directed verdict stage. As is well-established under South Carolina law, a case should be submitted to the jury when the evidence is circumstantial "if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). *See also State v. Williams*, 321 S.C.327, 332, 468 S.E.2d 626, 629 (1996). "The jury weighs the

evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict…" *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. *Id.* at 133, 322 S.E.2d at 452 (citing *State v. Manis*, 214 S.C. 99, 51 S.E.2d 370 (1949).

Here, the evidence submitted by the State did not raise above a mere suspicion appellant was guilty of the murder of the victim.

At most the State's case against appellant showed that he may have been in the vicinity of the victim's apartment around the time the police believed she died through its analysis of the cell phone data. And again, taking the evidence in the light most favorable to the State as required at this point (although the fact is highly contested), appellant's DNA was found in a used condom, in a wastebasket, next to the victim's bed. The evidence also showed there were communications between the two for about a week prior to her death. These facts taken together, however, do not at all tend to show appellant murdered the victim. He was not tied to the murder weapon, nor the bullets used. There was no evidence of ill-will between the two. No one positively identified him at the scene. There were no statements offered that appellant killed the victim, or even had any animus towards the victim. There was plenty of evidence that the victim had multiple other sexual partners during this time frame.

In *State v. Bostick* 392 S.C. 134, 708 S.E.2d 774 (2011), the South Carolina Supreme Court, analyzing the evidence in the light most fav1orable to the State, found that the State's evidence only raised a suspicion of guilt that Bostick committed the crime. The State's case consisted of the following evidence: (1) the decedent's car keys, calculator, and other items from her home were found in the Bostick family's burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick's mother did not use those accelerants when she burned things

in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick's jeans excluded about ninety-nine percent of the population, the blood could not be matched to the decedent's DNA. Also, the weapon used to kill the decedent was never introduced into evidence, and there was no evidence introduced to show that Bostick had knowledge the decedent may have had money in the briefcase or if any money was, in fact, in the briefcase on that date. *Id*. at 141-42, 708 S.E.2d 778.

In *Schrock, supra*, a double-homicide case, the South Carolina Supreme Court reversed a conviction where the State did not offer any evidence that the defendant was at the scene of the crime, could not definitely testify that the footprint found at the scene was made by shoes allegedly owned by the defendant, the State could not establish that cigarettes found at the scene had been smoked by the defendant, a hand print found at the scene was not the defendant's, and shoes presented in evidence were not identified by any witness who had seen the defendant actually wearing the shoes.

Also, in *State v. Arnold,* 361 S.C. 386, 605 S.E.2d 529 (2004), the South Carolina Supreme Court found evidence insufficient when the defendant's fingerprint on a coffee cup lid tab established that he was in the borrowed BMW on the same day the victim was last seen, and that the BMW was abandoned in Tennessee where the defendant stayed after his stay in Savannah, Georgia only raised a suspicion of guilt and was not sufficient to uphold the conviction. *Also see Mitchell*, *supra* at 409 ("The only evidence linking respondent to the burglary is the fingerprint"). Respectfully, this Court should enter a judgement of acquittal because the evidence was insufficient to support the conviction and sentence.

II. The trial court erred in not suppressing the fruits of the February 19, 2016 search warrant that allowed law enforcement to search through the phone records of Royal Williams because the original warrant was stale and law enforcement did not obtain an additional warrant before gathering the correct information from Sprint in violation of Mr. Williams's Fourth Amendment right to be free from unreasonable searches and seizures.

At a pre-trial hearing on June 17, 2018, defense counsel argued to suppress the fruits of the February 19, 2019 search warrant that secured Mr. Williams's cell phone records and tracking information. Counsel argued that the warrant (originally executed in March 2016), was now stale because the State did not obtain a new warrant after ten days when it failed to obtain the proper information. Pre-Trial Transcript 52. The court denied the motion, holding that the warrant was valid because it had been executed within ten days of its issuance, even though the information provided by Sprint was not the information that law enforcement had intended to obtain.

According to the Supreme Court decision in *Carpenter v. United States,* an individual maintains a legitimate expectation of privacy, for Fourth Amendment purposes, in the record of his physical movements as captured through cell-site location information. *Carpenter v. United States, 585 U.S.___,* 138 S. Ct. 2206 (2018). The government must generally obtain a search warrant supported by probable cause before acquiring cell-site location information. *Id* at 2222. The governing law for issuance, execution, and return of search warrant for property connected with the commission of a crime issued in the State of South Carolina is found in SC Code of Law Ann. §17-13-140 (2016). This section unambiguously states that any warrant issued hereunder shall be executed and return made *only within ten days after it is dated*. S.C. Code Ann. *§ 17-13-140* (2016) (emphasis added). A search warrant will be invalidated for failure to observe the statutory ten-day requirement for execution and return of a warrant only if defendant can show he was prejudiced by the failure. *State v. Weaver*, 374 S.C. 313, 649 S.E.2d 479 (2007). The Fourth Circuit has explained that "there is no question that time is a crucial element of probable cause."

United States v. McCall, 740 F.2d 1331, 1335 (4th Cir. 1984). This is because a judge may only issue a warrant if it is based on "allegations of 'facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time.'" *Id*. at 1335-36 (quoting *Sgro v. United States*, 287 U.S. 206, 210 (1932)); *State v. Winborne*, 273 S.C. 62, 254 S.E.2d 297 (1979).

On February 19, 2016, law enforcement obtained a search warrant to obtain the cell site information for Mr. William's cell phone number from Sprint Wireless. The warrant was executed on February 23, 2016, and the information from the warrant was returned later that same day. In March 2019, over three years later, law enforcement discovered that the information obtained from the 2016 Sprint warrant was incorrect and contacted Sprint to obtain the correct information pursuant to the original search warrant. According to the decision in *Carpenter,* a valid search warrant is required to obtain someone's location through a cell provider. South Carolina law provides that a warrant is only valid if executed and returned upon ten days after its issuance. Therefore, when Florence County sought the correct information *over three years* after the issuance of the original warrant, that warrant was stale and no longer valid. The proper procedure would have been to seek a new warrant for the correct information from the magistrate judge.

Since the warrant was no longer valid, the fruits of the warrant should have been suppressed pursuant to *Weaver* and as a violation of Williams's right to be free from unreasonable searches and seizures pursuant to the Fourth Amendment of the Constitution. Respectfully, this Court should reverse Williams's conviction and sentence.

III. The trial court erred when it allowed the state to obtain a buccal swab from Royal Williams because the state lacked probable cause to believe that he murdered the victim.

Trial counsel also argued to suppress the buccal swab that law enforcement obtained from Mr. Williams because there was insufficient evidence to suspect that Mr. William's committed the victim's murder. ROA 328. Counsel further argued that the warrant was conclusory based on the standard set forth in *Illinois v. Gates*, 462 U.S. 213 (1982). The court denied the motion, stating that there was no issue with the warrant or the process in which it was obtained. ROA 428.

A search warrant may be issued only upon the finding of probable cause. *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006).

> "The task of the issuing magistrate [in evaluating the existing of probable cause] is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit [of a search warrant] before him [or her], 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." (quoting *Illinois v. Gates, supra).*

Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. *Id.* In *Aguilar v. Texas*, 378 U.S. 108 (1964), the Supreme Court held that law enforcement's statement that appellant had heroin in his home was conclusory and did not amount to the probable cause required for a search warrant of his home. Although the ultimate measure of the constitutionality of a government search is reasonableness, warrantless searches are typically unreasonable where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing. *Carpenter,* 138 S. Ct. at 2221. In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement. *Riley v. California,* 134 S. Ct. 2473, 2482 (2014). When deciding whether evidence can be gathered from a person's body*, State v. Register*, 308 S.C. 534, 419 S.E.2d 771 (1992) controls in South Carolina. In this case, the court held that:

> [W]here a warrant authorizing a bodily intrustion into a potential witness is sought, the State must initially show that there is probable cause to believe a crime has been committed, and probable cause to beliee that it was committed by a particular subject. Once the court has found the existence of probable cause on both grounds, the State must then show (1) a clear indication that material evidence relevant to the question of the suspect's guilt will be found, and (2) that the method used to secure this evidence is safe and reliable.
>
> 308 S.C. at 537-38; 419 S.E.2d at 773.

Also, In *Schmerber v. California*, 384 U.S. 757 (1966), the United States Supreme Court held that minor intrusions beyond the body's surface will be permitted in stringently limited conditions, because such intrusions may readily offend those principles of dignity and privacy which are protected by the Fourth Amendment.

> The court must balance the seriousness of the crime, the importance of the evidence the investigation, and the unavailability of alternative, less intrusive means of obtaining evidence, on one hand, against the concern for the potential witness' constitutional right to be free from bodily intrusion on the other. *In re Snyder,* 308 S.C. 192, 417 S.E.2d 572 (1992).

In *Register,* the trial judge held the need to identity of the perpetrator in a violent homicide outweighed the prejudice. *Id* at 771. The Court of Appeals reversed the decision, finding that the trial court completely failed to properly balance the necessity for acquiring evidence against the constitutional safeguards of bodily intrusions searches and seizures. *Register,* 419 S.E.2d at 773. Furthermore, the court held that the trial court's order failed to find either the existence of probable cause or a clear indication that the requested evidence is relevant to the question of Register's guilt.

Here, similar to the *Register* case, Mr. Williams challenged the *Schmerber* order due to lack of probable cause. Clearly, according to *Snyder, Schmerber and Register,* the court prioritizes the suspect's Fourth Amendment rights against an unreasonable search and seizure over law enforcement's ability to collect evidence from just anybody. In this situation, the judge erred because the State failed to meet their strenuous burden of securing probable cause that Mr.

Williams was guilty of any crime, enough to go to the judge and secure a buccal swab. Although Mr. William's DNA was found in a condom at the scene and in and around the victim's car, that fact alone proves no wrongdoing. At most it proved that Mr. Williams was in the victim's apartment at some point.

Additionally, issuing the search warrant violated the Supreme Court precedent set forth in *Illinois v. Gates* because the prosecution used conclusory statements in their warrant application without allowing the judge to evaluate the evidence and reach the conclusion on his own. This search warrant was granted without any showing that Mr. Williams committed any sort of crime. Therefore, because the State failed to meet its burden for a search warrant of the body, as laid out in *Register,* the evidence of the buccal swab should have been suppressed. The trial court judge erred in allowing the State to obtain a buccal swab from Mr. Williams. This Court should reverse Williams's convictions.

IV. Whether the trial court erred when it granted a continuance to the state to allow it to remedy an evidentiary issue when Royal Williams had been held in pre-trial detention for three years awaiting trial.

Trial counsel argued at a pretrial hearing held on June 17, 2018 that the State's request for a continuance should be denied. Counsel stated that the continuance was unfair and would only prejudice the defendant. ROA 161-162. The court granted the continuance, holding that the continuance for the State would ensure that they had a fair and impartial trial, the court also found no evidence of prejudice. *Id. at 57, 58.*

The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion. *State v. Colden*, 372 S.C. 428,434, 641 S.E.2d 912, 916 (S.C.App. 2007). In *State v. Squires*, 248 S.C. 239, 149 S.E.2d 601 (1966), the South Carolina Supreme Court found, in pertinent part that "there is no showing that any other evidence on behalf of the appellant could have been produced, or that any other points in their behalf could have been raised had more time been granted for the purpose of preparing for trial. In *State v. Tanner,* 299 S.C. 459, 385 S.E.2d 832 (1989), the South Carolina Supreme Court used the *Squire* case to find that a continuance is necessary only where the continuance will provide something worth "evidentiary value" and "no real harm would have befallen the adverse party" from the continuance.

In this instance, the trial court abused its discretion when it granted a continuance to the state to correct an evidentiary issue. In pretrial motions, the state argued that the granting of the continuance was fair because the appellant received a continuance earlier in the proceedings. The difference is, however, that Mr. Williams's attorney only had four months to work on the case when it asked the judge for its continuance. The State had three years to pull its case together. The whole time Williams remained in pre-trial detention. It was an abuse of discretion on the trial

court's part because the state produced no evidence that any new evidence of value would be produced because of this continuance. Meanwhile, Mr. Williams remained in pre-trial detention without a bond when the State had years to pull its case together. The trial court abused its discretion in granting the continuance and simply should have not allowed the State to correct its "evidentiary issue." Respectfully, this Court should reverse Mr. Williams's convictions and sentence.

V. The trial court erred in not dismissing Mr. William's case based on the state's violation of his right to a speedy trial.

At the pre-trial hearing, trial counsel argued the court should dismiss the indictments against Mr. Williams because his three-year pre-trial detention violated his right to a speedy trial. ROA 241. Counsel argued a violation of Mr. Williams's right to a speedy trial pursuant to *Barker v. Wingo*, 407 U.S. 514 (1972). The court held that, although the timing was concerning, the facts did not meet the criteria set forth for a violation of Mr. Williams's right to a speedy trial. ROA 257.

The Sixth Amendment of the United States Constitution provides that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed. *U.S. Const. amend VI.* One of the main goals of the speedy trial right is to prevent undue trial incarceration. *Id.* The Supreme Court has held four factors as relevant when deciding whether an appellant has been deprived on their constitutional right to a speedy trial. Those factors are (1) length of delay; (2) reason for the delay; (3) defendant's assertion of the right; and (4) prejudice to the defendant. *State v. Palmer*, 415 S.C. 502, 783 S.E.2d 823 (Ct. App. 2016). A speedy trial…simply means a trial without unreasonable and unnecessary delay. *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012).

In *Barker v. Wingo*, the Supreme Court created a balancing test to determine whether a defendant's right to a speedy trial has been violated. First, there must be a determination that the delay is presumptively prejudicial. *Id* at 482. When analyzing delay, the Supreme Court held that the clock starts running on a defendant's speedy trial right when he is indicted, arrested, or otherwise officially accused. *Langford*, 735 S.E.2d at 482. There were twenty-three months in between his indictment and his time for trial with facts that the court deemed not that complicated. *Id.* Therefore, the South Carolina Supreme Court deemed the delay to be presumptively

prejudicial. After there appears to be a delay, next the court looks at why. According to the Supreme Court, "different weights should be assigned to different reasons." *Barker*, 92 S.Ct. at 2192. A deliberate attempt to delay trial to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than the defendant. *Id.* Third factor is the defendant's responsibility to assert his rights. *Id.* The last factor is the prejudice to the defendant, the court in *Barker* identified three interests that this is meant to protect (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused and (iii) to limit the possibility that the defense will be impaired. *Id.*

In this case, this Court should find that Williams's rights to a speedy trial, as protected by the Sixth Amendment, were violated based on the Supreme Court test set forth in the *Barker* case. The first prong of the balancing test is that the delay is presumptively prejudicial. In *Langford*, the *Barker* analysis was used to prove that there was not a due process violation. In *Langford,* there was a twenty-three-month delay in bringing defendant to trial on charges of armed robbery, kidnapping, burglary, and civil conspiracy. *Id* at 483. This was held to be presumptively prejudicial because although there were multiple charges, the facts were not complicated. Here, similar to *Langford*, the facts of the case are not complicated and there was a three-year delay between indicted and when Appellant was brought to trial. The delay is presumptively prejudicial. The next prong in the analysis is the reasoning as to why the delay occurred. As mentioned earlier the Supreme held that different weights should be assigned for different reasons. Contrary to the facts in *Langford,* in this case, the delay would be what the Supreme Court classifies as a "neutral mistake" by the State. The state argued that they needed the continuance to correct an evidentiary

mistake and as the state claimed in *Barker*, this factor weighs less heavily, but nonetheless on the State because the burden must weigh on the government rather than the defendant. *Barker*, 92 S.Ct. at 2192. Therefore this Court should construe this factor in favor of Mr. Williams. Third, is the defendant's assertion of the right to a speedy trial. Although Mr. Williams did not file a motion asserting his right to a speedy trial, that fact alone does not defeat his claim. The onus remains on the State to bring a defendant to trial. Lastly, the court considers the prejudice to the defendant. In *Langford,* the state held that there was no prejudice to the defendant because he caused the delay by attempting coerce the witness out of testifying. In contrast, Mr. Williams did nothing to contribute to the delay.

In this case, Mr. Williams had been in pretrial incarceration for three years due to no fault of his own. Therefore, the fourth prong should go in favor of Mr. Williams. Using the test laid out in *Barker* and shown through *Langford*, Mr. Williams meets all four prongs of the case and the trial court erred in not dismissing this case for violating his Sixth Amendment right to a speedy trial. Respectfully, this Court should reverse Mr. Williams's convictions and sentence.

CONCLUSION

Respectfully, this Court should reverse appellant's convictions and sentence.

Respectfully submitted,

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

Appellate Case No. 2020-000049

The Honorable Thomas Anthony Russo

The State of South Carolina……..……Respondent,

v.

Royal Daniel Williams, III……...…Appellant.

CERTIFICATE OF COUNSEL

I hereby certify that this brief complies with Rule 211 SCAR(b).

/s/ Elizabeth Franklin-Best

June 15, 2022.