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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEXANDER RHUE, JR.,

APPELLANT.

APPELLATE CASE NO. 2021-001306

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to suppress evidence after finding that the first and second search warrants lacked probable cause but finding that a third search warrant contained sufficient probable cause and the items sought to be suppressed would have been inevitably discovered during the search pursuant to the third search warrant?

STATEMENT OF THE CASE

In July of 2017, the Georgetown County Grand Jury indicted[1] Appellant, Alexander Rhue Jr., for obstruction of justice, two counts of criminal conspiracy, murder, and desecration of human remains, indictments 2017-GS-22-870-874. (R. p. **, Indictments). Appellant's sister, Tiesh Annette Rhue and father, Alexander Rhue, Sr. were also indicted on these charges. (R. p. 294, lines 10-25). On September 24, 2021, the Honorable Robert J. Bonds heard pre-trial motions with regard to all three co-defendants. (R. pp. **, September 24, 2021, transcript). Gregory Voight represented Appellant. Ronald Hazzard represented co-defendant Alexander Rhue, Sr. William Edgeworth represented co-defendant Tiesh Rhue. Alicia Richardson and Elizabeth Smith represented the State. On October 11, 2021, Appellant and the two co-defendants proceeded to jury trial before the Honorable J. Bonds. The same lawyers who represented the parties during the pre-trial hearing represented them at trial.

During the trial the State elected to dismiss the conspiracy charges. (Tr. p. 1411, lines 13-18). The judge directed a verdict of acquittal on the desecration of human remains charges. (Tr. p. 1653, line 21 – p. 1654, lines 1-20). The jury found Appellant guilty of murder and obstruction of justice. The jury found the co-defendant, Tiesh Rhue guilty of murder and obstruction of justice. The jury found the co-defendant Alexander Rhue, Sr. not guilty of murder but guilty of obstruction of justice. The judge sentenced Appellant and his sister to thirty-seven (37) years for murder and eight (8) years concurrent for obstruction. (Tr. pp. 1856-1857). The judge sentenced Alexander Rhue Sr. to eight (8) years provided upon the service of 549 days time suspended with three (3)

[1] It is unclear who testified before the Grand Jury as the witness is listed as the Georgetown Police Department.

years of probation. (Tr. p. 1855, lines 7-16). Appellant served a timely notice of intent to appeal on November 2, 2021. This appeal follows.

STANDARD OF REVIEW

"Accordingly, appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion—in this case whether reasonable suspicion exists—is a question of law subject to de novo review." State v. Frasier, No. 2020-001405, 2022 WL 4491598, at *2 (S.C. Sept. 28, 2022)

STATEMENT OF FACTS

On March 9, 2017, Leon Harris Sr. reported that his adult son, Leon Harris Jr, [JR] was missing. (Tr. p. 520, lines 14-20). Harris Sr. reported that he last saw his son on February 23, 2017. (Tr. p. 521, lines 10-15). An officer conceded that a police report included information that Harris Sr. was afraid that something bad had happened to his son, JR, because he was selling drugs to the Mexicans. (Tr. p. 619, line 17 – p. 620, 621, lines 1-10). The officer testified that he interviewed Luis Flores who admitted buying drugs from JR. (Tr. p. 623, lines 7-15; p. 656, lines 1-3). Investigator Allen Morrison was questioned about the fact that prior to JR being reported missing, three men were searching for him by the Black River, where his body was later found. (Tr. p. 1336, line 17 – p. 1337, lines 1-11).

JR's Department of Motor Vehicle information listed his address on Highmarket Street in Georgetown. (Tr. p. 526, lines 22-23). Officers with the Georgetown Police Department learned that JR lived at the Highmarket address with his wife Tiesh Rhue. (Tr. p. 526, line 24 – p. 527, lines 1-6). The police talked with Tiesh at her workplace at the steel mill. (Tr. p. 527, lines 5-23). Tiesh told the police that she last saw JR. at the house on Highmarket Street on the night of February 25, 2017. (Tr. p. 528, lines 1-19). She told the police that they argued about him talking with another woman, he gathered some clothes and left. Kyle Walton, formerly with the Georgetown Police Department, testified that based on a Facebook post he interviewed Calvin Thomas, a friend of JR. (Tr. p. 1115, lines 7-20). Thomas told Walton that on the night of February 25, 2017, he saw JR walking near the old Bank of America building at the intersection of Highmarket and Fraser Streets. (Tr. p. 1116, lines 5-23).

Roasario Grate, JR's girlfriend, testified that she last saw JR on the evening of February 25, 2017, when she picked him up from work. (Tr. p. 674, lines 8-14). She testified that they ran

some errands and then she dropped JR off at his dad's house. (Tr. p. 674, lines 21-23). Grate testified that around 10:00 PM that night she received phone calls from Tiesh on JR's phone. (Tr. p. 679, line 7 – p. 680, lines 1-13). Grate also testified about a verbal altercation that took place on New Year's Eve at the Riverview Club between JR, Tiesh and Appellant, Tiesh's brother, Alexander Rhue, Jr. (Tr. p. 683, line 25 – p. 684, 685, lines 1-4). Grate testified that on the night of February 25, 2017, she went out with friends and JR was supposed to meet her out later but never made it. (Tr. p. 678, line 14 – p. 679, lines 1-4; p. 683, lines 13-21).

The next day, March 10, 2017, Tiesh agreed to a recorded interview with the police at the station. (Tr. p. 534, line 1 – p. 535, lines 1-12). A properly redacted version of the interview was admitted in evidence, without objections, as State's Exhibit #21. (Tr. p. 546, lines 6-16). After the interview on March 10, 2017, officers obtained a search warrant for the house on Highmarket Street. (Tr. p. 1217, lines 1-17, R. p. *, SW #1, included as Exhibit #1 in Motion to Suppress). After finding stained carpet padding, missing carpet, and a presumptive positive blood test, officers obtained a second search warrant. (Tr. p. 1224, lines 9-11; SW #2, included as Exhibit #2 in Motion to Suppress). Samples were collected and sent for analysis. One DNA analyst testified that the deceased could not be excluded from one of the samples. (Tr. p. 1538, lines 19-22). Another DNA analyst testified that DNA profiles developed from the carpet padding and spot on the wall matched the DNA profile of the deceased. (Tr. p. 1562, lines 1-11; p. 1570, lines 17-25). Appellant's DNA was not found in the bedroom where these sample were collected.

After the search of the house, the police again interviewed Tiesh on March 11, 2017. (Tr. p. 572, line 21 – p. 573, lines 1-25). A properly redacted version of the interview was admitted in evidence, without objections, as State's Exhibit #27. (Tr. p. 574, lines 1-14). The police also interviewed Alexander Rhue Sr., Tiesh and Appellant's father. (Tr. p. 575, line 6 – p. 576, lines

1-13). A properly redacted version of the interview was admitted in evidence, without objections, as State's Exhibit #28. (Tr. p. 576, line 14 – p. 577, lines 1-4).

That same day, March 11, 2017, a dead body was found in the Black River. (Tr. p. 761, lines 4-15). The body was taken out of the water, placed in a body bag and released to the coroner. (Tr. p. 777, lines 11-15). An officer testified that they searched the area near where the body was found, which included the Riverview Club, but they did not find any additional evidence. (Tr. p. 776, line 10 – p. 777, lines 1-10). The forensic pathologist testified that when she received the body the hands and ankles were bound with speaker wire. (Tr. p. 861, lines 16-25; p. 1253, lines 17-20). The pathologist testified that the cause of death was homicidal violence. (Tr. p. 887, lines 2-3). The body was later identified as Leon Harris Jr, "JR.," by a tattoo on his arm. (Tr. p. 443, lines 7-25).

On March 13, 2017, Appellant provided a recorded statement to police. A properly redacted version of the interview was admitted in evidence, without objections, as State's Exhibit #97. (Tr. p. 1107, line 12- p. 1108, 1109, lines 1-10). On March 14, 2017, officers obtained a third search warrant for the house on Highmarket Street. (Tr. p. 593, lines 7-18). On March 15, 2017, officers again interviewed the father, Alexander Rhue Sr. (Tr. p. 598, line 7 – p. 599, lines 1-15). The interview was admitted in evidence, without objections, as State's Exhibit #29. (Tr. p. 599, lines 16-25). On March 22, 2017, officers again interviewed Tiesh. (Tr. p. 1296, line 10 – p. 1297, lines 1-17). A properly redacted version of the interview was admitted in evidence, without objections, as State's Exhibit #107. (Tr. p. 1297, lines 18-25).

Investigator Allen Morris testified at trial that, based on the interviews with Tiesh, Rhue, Sr. and Rhue Jr., he understood that all three were at the Highmarket Street house on the night of February 25, 2017, into the morning of February 26, 2017. (Tr. p. 1266, line 20 – p. 1267, lines

1-15). On March 29, 2017, based on cellular phone records obtained, investigators obtained surveillance video from Walmart for the evening of February 25, 2017, into the early morning of February 26, 2017. (Tr. p. 616, line 11 – p. 617, lines 1-20). After reviewing the video, Investigator Morris testified that he saw a subject who matched the description of Rhue Sr. (Tr. p. 1270, lines 3-14). The investigator testified, over objection, that another person with Rhue Sr.in the video was the Appellant, Rhue Jr. (Tr. p. 1290, lines 9-23). An employee from Walmart testified that the customer purchased two bottles of hydrogen peroxide. (Tr. p. 1182, lines 9-24).

At the close of the State's case Appellant moved for a directed verdict of acquittal. (Tr. p. 1631, line 23 – p. 1632 -1636). In arguing against the directed verdict motion the State relied on testimony from Antwan Simmons, a cousin of the deceased. (Tr. p. 1636, line 22 – p. 1637, line 1). At trial Simmons claimed that, during a trip to Myrtle Beach to pick up furniture with Appellant and Shawn Simmons, Appellant asked about JR and then said, "Well, that fucker out of here, I took that nigga for a ride." (Tr. p. 806, lines 14-17). The third person in the truck, Shawn Simmons, did not testify at trial. The State also relied on testimony from a jail house snitch, Austin Kight, who claimed that Appellant told him, ". . . that they didn't have anything on him and that we dumped the body. And the only way they would know that it was – they guy was – there were tattoos that was on his arm." (Tr. p. 1637, lines 1-2; p. 931, line 25 – p. 932, lines 1-3). The State additionally relied on the testimony of Meyan Thomas, another cousin of the deceased and purported friend of Appellant. (Tr. p. 1637, lines 3-6). Thomas testified that at 3:05 AM on February 26, 2017, she received a text from Appellant that said, "Boo, I'm in D.C., had a family emergency, ASAP, had to catch the Greyhound up here. I'll explain more later. Love you, Queen. I'm sorry. I'll hit you tomorrow. Shit is real crazy right now. Love you." (Tr. p. 786, line 12 – p. 787, lines 1-14). The State's case against Appellant was based on these three alleged statements,

and the purported inconsistency about his whereabouts on February 25-26, 2017. The judge denied the motion for directed verdict stating, "I will tell you that, as it relates to the murder charge for Mr. Rhue Jr., while it may not be very strong, sir, I think there definitely is evidence that's been presented that is going to allow that charge to go to the jury. I think by virtue of the testimony alone." (Tr. p. 1649, line 21 – p. 1650, line 1). The judge directed a verdict of acquittal for the desecration of human remains charges against all three defendants.

ARGUMENT

The trial judge erred in refusing to suppress evidence after finding that the first and second search warrants lacked probable cause but finding that a third search warrant contained sufficient probable cause and the items sought to be suppressed would have been inevitably discovered during the search pursuant to the third search warrant.

On September 24, 2021, prior to the trial that began on October 11, 2021, the judge heard pre-trial motions. (R. p. **Sept. 24, 2021 Tr. pp. 1-59). Appellant submitted a written motion to suppress and memorandum of law citing both the Fourth Amendment to the United States Constitution and the South Carolina Constitution, art. I, §10. (R. p. ** Motion to Suppress). The motion addressed three separate search warrants executed on the Highmarket Street house where the deceased and his wife, Tiesh Rhue lived, and where Appellant, Alexander Rhue Jr. and his father, Alexander Rhue Sr., were frequent overnight guests. Appellant argued the motion to suppress during the pre-trial hearing. (R. p. **Sept 24, 2021, tr. pp. 18-51). The judge asked the State to submit a memorandum. (Sept 24, 2021, Tr. p. 49, lines 16-22; R. p. **, State's Motion in Opposition to Defense Motion to Suppress).

The judge addressed the motion to suppress in a written order. (R. p. ** Written Order). In the written order the judge wrote:

> The attorney for each defendant made a motion to suppress evidence taken from the Defendants' home under three separate search warrant sue to a lack of probable cause. Specifically, the Defense claimed the first search warrant did not note that any crime occurred, the second search warrant was the result of officers finding blood on the carpet after moving a clothing bin and rug from the floor without additional probable cause while looking for documents, and the third warrant was a product of the prior warrants with no additional facts alleged that a crime occurred at the resident. Additionally the Defense argued that the good faith exception does not apply and the any discovered in the home was not inevitable discovery.

(R. p. **, Written Order p. 2). The judge found that the first and second search warrants lacked probable cause. (R. p. **, Written Order p. 3). With regard to the third search warrant, the judge wrote, "The third search warrant of the Rhue home did have sufficient probable cause independent

from the prior warrants. The third search warrant was served after the victim's body was found wrapped in wire, and the warrant sought an several things in the home including wire similar that the kind found on the victim, blood hair, DNA, weapons, and clothing. Any evidence discovered during the execution of the first and second warrants would have been inevitably discovered during the search under the third search warrant. Therefore, the evidence discovered during the searches shall not be suppressed." (R. p. **, Written Order, p. 3). The trial judge correctly found that the first and second search warrants lacked probable cause. The judge, however, erred in finding that the third search warrant provided sufficient probable cause and refusing to suppress evidence based on the inevitable discovery doctrine.

"The Fourth Amendment to the United States Constitution guarantees the right of the people to be free from unreasonable searches and seizures and provides that no warrants shall be issued except upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized." McHam v. State, 404 S.C. 465, 476, 746 S.E.2d 41, 47 (2013) (citing U.S. Const. amend. IV). In State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001), the South Carolina Supreme Court wrote: "In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures. *See* S.C. Const. art. I. § 10. The relationship between the two constitutions is significant because '[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution.'"

In South Carolina, the General Assembly has imposed stricter requirements than federal law for issuing a search warrant. Search warrants may be issued "only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant." S.C. Code Ann. § 17-13-140; See State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). "The affidavit must set forth

particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter." Baccus, 367 S.C. at 50-51, 625 S.E.2d at 221 (citing Franks v. Delaware, 438 U.S. 154 (1978)). If no supplemental testimony is taken, a magistrate's probable cause determination is limited to the four corners of the search warrant affidavit. State v. Kinloch, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014) (citing State v. Herring, 387 S.C. 201, 214, 692 S.E.2d 490, 497 (2009)).

Search Warrant #1

The trial judge correctly found that the first search warrant lacked probable cause. Under the description of property sought the affidavit in support of the first search warrant reads, "Investigators are searching for bank records, legal documents, identifications, passports, debit/credit cards, phone records, vehicle information, insurance paperwork, travel documents, or anything that can aid investigators in ascertaining the whereabout of Leon Harrison Jr." (R. p. **, Affidavit in Exhibit 1 Motion to Suppress). Under the reason for affiant's belief that the property sought is on the subject premises the affidavit reads:

> On 2/25/2017 subject Leon Harrison Jr. was last seen at the address on his SC DMV **** Highmarket St. in the City of Georgetown by his wife. He has not been seen since. Johnson maintains a domicile at this residence and he is known to stay there from time to time and keeps work clothing there. Due to the above stated facts there is probable cause to believe that the requested documentary evidence may be in the home and a search warrant is being requested. These documents will help to track Harrison's movements and will aid in locating him and reuniting him with his family.

(R. p. **, Affidavit in Exhibit 1 Motion to Suppress).

S.C. Code Ann. § 17-13-140 provides:

> Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize (1) stolen or embezzled property; (2) property, the possession of which is unlawful; (3) property which is being used or has been used in the commission of a criminal

> offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; (4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense; (5) any narcotic drugs, barbiturates, amphetamines or other drugs restricted to sale, possession, or use on prescription only, which are manufactured, possessed, controlled, sold, prescribed, administered, dispensed or compounded in violation of any of the laws of this State or of the United States. Narcotics, barbiturates or other drugs seized hereunder shall be disposed of as provided by § 44-53-520.

The property sought in the affidavit did not comply with the statute. Additionally, the search warrant lacked probable cause. "A search warrant may issue only upon a finding of probable cause." State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). The duty of the appellate court is simply to determine whether the magistrate had a substantial basis for concluding that probable cause existed. Id. at 144, 519 S.E.2d at 349 (citing Illinois v. Gates, 462 U.S. 213, 238–39, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)). "The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him ... there is a fair probability that contraband or evidence of a crime will be found in a particular place." State v. Dunbar, 361 S.C. 240, 253, 603 S.E.2d 615, 622 (Ct.App.2004) (citing Gates, 462 U.S. at 238, 103 S.Ct. 2317). The affidavit fails to provide the magistrate with information to allow the magistrate to find that there is a fair probability that contraband or evidence of a crime will be found at the house. At the time this search warrant issued, March 10, 2017, there was no evidence of a crime, just a missing person report. The affidavit lacked probable cause.

Search Warrant #2

Under the description of property sought the affidavit in support of the second search warrant reads, "Blood evidence, gun powder residue, bullets, fibers, any and all DNA evidence, carpet, blankets, flooring, and trace evidence that could be linked with the location of the missing

person." (R. p. **, Affidavit in Exhibit 2 Motion to Suppress). Under the reason for affiant's belief that the property sought is on the subject premises the affidavit reads:

> On 02/25/2017 the victim Leon Harrison Jr. went missing from his residence at **** Highmarket St. in the City of Georgetown. On 03/10/2017 at ****Highmarket St. whilst conducting a search warrant of the premises for evidence that could aid in locating the victim Harrison. There was foreign stain on the carpet in victim's bedroom which is consistent with blood. Beside the stain was a rug covering a section of carpet padding where the carpet was removed. Investigators observe a stain on the carpet padding which was tested, tested positive on a presumptive blood test.. Now a search warrant is being requested for the furtherance of developing the blood evidence and any evidence that could further the investigation.

(R. p. **, Affidavit in Exhibit 2 Motion to Suppress).

The blood evidence referenced in the affidavit in support of the second search warrant was only discovered as a result of the first search warrant that lacked probable cause. The items seized pursuant to the second search warrant must be suppressed. In State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996), the South Carolina Supreme Court wrote:

> The "fruit of the poisonous tree" doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. See Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). However, the challenged evidence is admissible if it was obtained from a lawful source independent of the illegal conduct. State v. Cox, 287 S.C. 260, 335 S.E.2d 809 (Ct.App.1985).

The items seized pursuant to the execution of the second search warrant must be excluded because these items were only discovered as a result of the illegal actions of the police in obtaining and executing search warrant number one that lacked probable cause.

Search Warrant #3

Under the description of property sought the affidavit in support of the third search warrant reads, "All areas of the before mentioned properly or places located at **** Highmarket St. in search any speaker wire consistent with crime scene photos taken by the Georgetown County

Sheriff's Office, which shows the victim was bound around his wrist and ankles with speaker wire. Also any knives, edged cutting tools/weapons, blood, hairs, fibers, any and all trace DNA evidence, clothing to include, black work jean, black or blue work T-shirt, work boots." (R. p. **, Affidavit in Exhibit 3 Motion to Suppress). Under the reason affiant's belief that the property sought is on the subject premises the affidavit reads:

> On Saturday 2/25/2017, the victim, Leon Harrison Jr. went missing from his residence of **** Highmarket St., in the City limits of Georgetown. On Friday 3/10/2017, at****Highmarket St. whilst conducting a search warrant of the premises for evidence that could aid in locating the victim, Harrison, a foreign stain was found on a portion of carpet padding, where the a portion of the carpet had been cut away, at the opening to the victim's bedroom closet, covered by a flannel blanket that was covered by an area rug. This stain on the carpet padding was tested with a presumptive blood testing kit, and did test positive for blood. A search warrant was obtain and executed for the furtherance of developing the blood evidence and any evidence that could further the investigation. On Saturday 3/11/2017, a victim was found near Colonel Cole Dr., in Georgetown County, in the Black River. The victim remains were decomposed, but the body was identified as Harrison due to a tattoo on his inner left forearm. A search is being requested for the before mentioned items that could develop leads in this case.

(R. p. **, Affidavit in Exhibit 3 Motion to Suppress).

The trial judge found that, "The third search warrant of the Rhue home did have sufficient probable cause independent from the prior warrants." (R. p. **, Written Order, p. 3). The trial judge erred. When the information obtained from the first two warrants is excised from the affidavit, the affidavit for the third search warrant lacks probable cause. The trial judge also wrote, "Any evidence discovered during the execution of the first and second warrants would have been inevitably discovered during the search under the third search warrant. Therefore, the evidence discovered during the searches shall not be suppressed." (R. p. **, Written Order, p. 3). The inevitable discovery doctrine is not applicable because, when the unlawful information is redacted, the third search warrant lacked probable cause. The evidence obtained from the first and second

search warrants would not have been inevitably discovered during the search under the third search warrant because the third search warrant also lacked probable cause.

State v. Spears, 393 S.C. 466, 482–83, 713 S.E.2d 324, 332–33 (Ct. App. 2011), the South Carolina Court of Appeals wrote:

> The inevitable discovery doctrine, one exception to the exclusionary rule, states that if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, the information is admissible despite the fact it was illegally obtained. Nix v. Williams, 467 U.S. 431, 444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). As explained by the *Nix* Court, "if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings." Id. at 447, 104 S.Ct. 2501. Therefore, in Nix, the Court allowed the introduction of physical evidence of the victim's body despite the fact that the defendant's statements regarding the location of the body had been obtained in violation of his right to counsel. Id. at 437, 449–50, 104 S.Ct. 2501. The Court noted that search parties were approaching the location of the body, and there was testimony that it would only have taken an additional three to five hours to discover the victim's body if the search had continued. Id. at 449, 104 S.Ct. 2501.

The prosecution in the present case failed to establish by a preponderance of the evidence that the items discovered during the execution of the first and second search warrants would have inevitably been discovered by **lawful** means. In relying on the third search warrant as allowing admission under the inevitable discovery doctrine, the trial judge failed to remove the unlawful information included from the first and second search warrants.

In Spears the Court of Appeals found that the trial judge correctly redacted reference to an invalid consent to search but found the inevitable discovery doctrine allowed admission of the evidence because the remaining portion of the search warrant provided probable cause. The Court of Appeals wrote:

> Relying on State v. Davis, 371 S.C. 412, 639 S.E.2d 457 (2007), the trial court first redacted any reference to Bantan's initial consent due to the fact that his will was overcome by the officers' show of force and then found the remaining search

> warrant still gave rise to probable cause to search the residence. See Davis, 371 S.C. at 415–17, 639 S.E.2d at 459–60 (noting that a court may redact alleged misstatements in an affidavit and consider the remaining content of the affidavit to determine whether it is sufficient to establish probable cause).

Spears, 393 S.C. at 483, 713 S.E.2d at 333.

In the present case, when the unlawful information is redacted from the affidavit in support of the third search warrant, the reason affiant's belief that the property sought is on the subject premises reads:

> On Saturday 2/25/2017, the victim, Leon Harrison Jr. went missing from his residence of **** Highmarket St., in the City limits of Georgetown. [REDACTIONS] On Saturday 3/11/2017, a victim was found near Colonel Cole Dr., in Georgetown County, in the Black River. The victim remains were decomposed, but the body was identified as Harrison due to a tattoo on his inner left forearm. A search is being requested for the before mentioned items that could develop leads in this case.

The affidavit, once properly redacted, lacks probable cause for the magistrate to determine that evidence of a crime will be found inside the house. The facts that the deceased stayed at the house and this was purportedly the last place he was seen are not sufficient to establish probable cause. Under the description of items sought the affidavit provides the magistrate with the information that the deceased was tied with speaker wire but provides no reason as to why police believe that he was tied with the wire in the house. The State failed to show how or when the deceased was killed, bound and ended up in the Black River some distance from the Highmarket house. The State failed to establish a sufficient link between the Highmarket house and the death of Harris to establish probable cause to search. The trial judge erred in refusing to suppress items unlawfully obtained. The error is not harmless.

CONCLUSION

Based on the above argument this Court should reverse the convictions and remand for a new trial.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of November, 2022.

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Nov 14 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEXANDER RHUE, JR.,

APPELLANT.

APPELLATE CASE NO. 2021-001306

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 14th day of November, 2022.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

From: Stock, Chris
To: SC - BROWN MELODY; Angela Brown
Cc: Hudgins, Kathrine
Subject: Rhue, A. - Initial Brief of Appellant - 2021-001306
Date: Monday, November 14, 2022 4:48:00 PM
Attachments: Rhue, A. - Initial Brief of Appellant - 2021-001306.pdf
Rhue, A. - Initial Brief of Appellant - 2021-001306 - AG Cover Letter.pdf

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Ms. Brown,

Please find attached for service the Initial Brief of Appellant and Designation of Matter for Alexander Rhue, Jr.'s appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

Chris Stock
Administrative Assistant
Commission on Indigent Defense
Appellate Division
(803) 734-1330