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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County
The Honorable Doyet A. Early, Circuit Court Judge

Appellate Case No. 2023-000632

THE STATE,

RESPONDENT,

V.

RASHAWN VERTEZ CARTER,

PETITIONER.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I.

The fruits of an unreasonable search should be excluded if suppression's deterrence benefits outweigh its substantial social costs. Upon learning Carter was involved in a freshly-committed home-invasion burglary and armed robbery, police obtained real-time location data upon request to Carter's cell phone provider. Police tracked his location for approximately one hour, finding him in a public parking lot in Columbia. He voluntarily travelled back to Aiken for an interview, with no questioning in the meantime. Carter argued his interview should have been suppressed. The Court of Appeals, affirmed, finding exigent circumstances justified the police actions, and suppression was not warranted because police acted in good faith. Is certiorari warranted on this issue?

II.

During the interview, police told Carter they did not believe his story, confronted him with contrary information, and encouraged him to tell the truth. The substance of the officers' representations was proved at trial through other evidence. The Court of Appeals held the trial court did not conduct a proper Brewer analysis, but determined the error was harmless based on overwhelming evidence. Is certiorari warranted on this issue?

STATEMENT OF THE CASE

An Aiken County grand jury indicted Appellant Rashawn Carter for first-degree burglary, armed robbery, kidnapping, first-degree assault and battery, possession of a firearm by a person convicted of a violent felony, and possession of a weapon during the commission of a violent crime. Carter proceeded to jury trial on February 12–16, 2018, before the Honorable Doyet A. Early. He was convicted of burglary, armed robbery, kidnapping, and both weapons offenses and sentenced to concurrent terms of 35, 30, 30, 5, and 5 years' incarceration, respectively. His convictions were affirmed on appeal in a unanimous published opinion. State v. Carter, 438 S.C. 463, 884 S.E.2d 195 (Ct.App.2022). His petition for rehearing was denied on March 22, 2023.

ARGUMENT

I. Police use of real-time cell phone location data to locate Carter on the day of the burglary was reasonable because exigent circumstances justified the minimal intrusion into Carter's privacy. Furthermore, suppression was not appropriate because Carter's voluntary statement, taken more than an hour later, was not "fruit" of the search. Finally, any error was harmless because admission of the interview did not reasonably affect the result of trial. The Court of Appeals applied the correct law and reached the correct result. Certiorari is not warranted.

Relevant facts

These charges arose from a nighttime home-invasion burglary of the Aiken home of Elizabeth Miller. Miller's boyfriend was a drug dealer, and the assailants were looking for drugs and money. (R.p.428; 435). At around five o'clock in the morning on May 9, 2015, Miller was awakened by three masked African-American males with handguns demanding money. (R.p.98; 468). One of the men held her at gunpoint while the other two ransacked her apartment. The men forced Miller to lie on her stomach and sexually assaulted her with a handgun. (R.p.102).

While the robbery was occurring, an unknown man or men (presumably associates of Miller's boyfriend) arrived. One of them shot and killed one of the burglars. (R.p.103–04). The others fled. Miller called 911 at 5:22 a.m. (R.p.105; 488). The brother of the deceased burglar was privy to the robbery scheme, and spoke with police at the hospital. (R.p.463). He told them Carter was involved and gave them Carter's phone number.

Based on this information, police contacted Carter's service provider, T-Mobile, and spoke with their "law enforcement representative." Police submitted an "exigent request" form provided by T-Mobile requesting to obtain the phone's real-time location data. (R.p.222–23; 248–49). This occurred "shortly . . . prior to lunchtime." (R.p.221, line 24). Investigator Jeremy Hembree testified he believed the exigent request was necessary because "we had some

unknown individuals who had committed a home invasion . . . while armed" and "there was a need to get them off the street as soon as possible." (R.p.224). Hembree testified "it wasn't feasible for me necessarily to go away for a certain amount of time to obtain a search warrant, locate a judge, just for call detail records because [a] search warrant won't provide us with location information . . . at the time." (R.p.226, 229–30). T-Mobile approved the request and began sending emails every 15–20 minutes with the GPS coordinates of Carter's cell phone.

Based on this location data, police located Carter at an apartment complex in Columbia. Officers asked Carter if he would be willing to come to police headquarters in Aiken for an interview, and Carter agreed. (R.p.324–25). Back in Aiken, Carter voluntarily spoke with police and denied involvement in the burglary. (State's Exhibit #9).

In his direct appeal, Carter argued his convictions should be reversed based on the admission of this interview. He raised a constitutional challenge, arguing police violated the federal and state constitutions by receiving Carter's real-time cell phone location data from his service provider without a warrant. The Court of Appeals held that exigent circumstances justified the police conduct, and that suppression was not warranted because the officers acted in good faith. However, the Court of Appeals held the trial court failed to address Carter's argument that interview should have been redacted to exclude statements made by the investigator in the course of the interview. Citing State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015), and State v. Washington, 431 S.C. 619, 848 S.E.2d 794 (Ct.App.2020), the Court of Appeals held that many of the officer's statements should have been redacted. However, the court found the error harmless due to the strength of the case against Carter.

Constitutional claims

While this case does involve a novel question whether police may use real-time cell phone location data provided by a service provider without a warrant, this issue need not be addressed to resolve the case. The Court of Appeals correctly rested its decision on well-settled constitutional principles, and made no new law. Even assuming for argument's sake that the "exigent request" underlying the phone company's decision to share Carter's real-time location data with police violated the Fourth Amendment or the South Carolina Constitution, suppression of Carter's subsequent interview with police was not warranted because exigent circumstances existed, Carter's statement was not a "product" of the location tracking, and the police acted in good faith. None of these are novel issues, there is no dissenting opinion, and the Court of Appeals applied the correct law. See Rule 242, SCACR (listing considerations governing certiorari review). Certiorari is not warranted on this issue.

The most glaring flaw in Carter's argument for suppression is that Carter's interview was not a product of the alleged illegal search. The United States Supreme Court has explained the circumstances in which a statement should be excluded based upon its relationship to an illegal search or seizure. Most of the cases involve an unlawful, involuntary detention which directly gives rise to an incriminating statement. See Brown v. Illinois, 422 U.S. 590 (1975); Dunaway v. New York, 442 U.S. 200 (1979); Taylor v. Alabama, 457 U.S. 687 (1982). The Brown court listed factors for courts to consider when deciding whether a statement is fruit of an unconstitutional search or seizure or an act of free will that stands apart from its origins: "The temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct are all relevant." Brown,

422 U.S. at 603–04 (citing Johnson v. Louisiana, 406 U.S. 356, 365 (1972)) (internal citation omitted).

Police did not question Carter when they initially made contact with him. Instead, he agreed to come from Columbia back to Aiken to given a post-Miranda, non-custodial statement at the police station. Carter had an hour-long car ride from Columbia to Aiken during which "to consider carefully and objectively his options and to exercise his free will." Taylor, 457 U.S. at 691. Carter was friendly with the investigators, riding in the front passenger's seat and talking about sports along the way. During the course of his interview, he did not admit guilt and denied being at the scene of the crime. He was allowed to leave after the interview was over, and was not arrested until police gathered highly incriminating evidence from his cell phone provider pursuant to a search warrant. Accordingly, the trial court properly held that his statement was not the fruit of the alleged illegal search.

Furthermore, the Court of Appeals correctly held exigent circumstances justified the police actions in this case. Police had reliable insider information that Carter was involved in a violent nighttime home invasion, armed robbery, and sexual assault, and that he was driving the car used to carry out the robbery. Police got this information from Carter's co-conspirator, Patrick Neely, mere hours after the crime was committed, before the suspects had an opportunity to cover their tracks. They examined Neely's phone to corroborate his information, and were able to "make at least a very rough assessment of [his] reliability." Illinois v. McArthur, 531 U.S. 326, 332 (2001) (factoring degree of suspicion into exigent circumstances analysis).

Given the seriousness of the crime, police were justified in believing Carter posed an immediate public safety risk, and that any delay in apprehending him could result in the destruction of important evidence. See State v. Wright, 416 S.C. 353, 369–70, 785 S.E.2d 479,

488 (Ct. App. 2016) (holding warrantless search of hotel room was reasonable because "a potentially armed and dangerous murder suspect was attempting to flee, creating exigent circumstances"). Courts should give "indulgence to officers acting to deal with threats or crimes of violence which endanger life or security . . . ." Welsh v. Wisconsin, 466 U.S. 740, 751 (1984). An important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made. Welsh, 466 U.S. at 753.

Furthermore, the intrusion into Carter's privacy was minimal. Courts should "make the scope of the particular intrusion, in light of all the exigencies of the case, a central element in the analysis of reasonableness." Terry v. Ohio, 392 U.S. 1,17 (1968); Missouri v. McNeely, 569 U.S. 141, 151 (2013). Police pursued the least intrusive course, refraining from obtaining any content or historic location data from Carter's phone until obtaining a search warrant. The only information police learned about Carter by obtaining his cell phone's real-time location data was his current location in a public parking lot, information he took no steps to conceal and "voluntarily conveyed to anyone that wanted to look." United States v. Knotts, 460 U.S. 276, 281 (1983) (holding real-time electronic tracking of suspect did not violate Fourth Amendment because he had no reasonable expectation of privacy in his public movements); United States v. Riley, 858 F.3d 1012, 1018 (6th Cir. 2017), cert. denied, 138 S. Ct. 2705 (2018) (holding police use of real-time GPS location data to determine a suspect's location was not a search because individuals have no legitimate expectation of privacy in their public movements and tracking did not reach within the home).

Finally, the Court of Appeals correctly held that even if a constitutional violation occurred, suppression was not warranted because the police acted in good faith. Suppression is a last resort, not a first impulse. Hudson v. Michigan, 547 U.S. 586, 591(2006). The rule's costly

toll upon truth-seeking and law enforcement objectives presents a "high obstacle for those urging its application." Id. The rule applies only where its deterrence benefits outweigh its substantial social costs. Id.

This is not a case where the "impropriety . . . was obvious" or "had a quality of purposefulness." Brown, 422 U.S. at 605. The "exigent request" was submitted pursuant to common practice and T-Mobile policy, and T-mobile handed the data over voluntarily. The lead investigator testified that a search warrant for call detail records, which are content-based records, wouldn't provide him with real-time location data, which he needed for public safety reasons. This demonstrates that, based on his understanding, a warrant was not required for real-time data. This belief was reasonable. Even now, no binding precedents forbid the police conduct in this case. These facts bring this case within the purview of the "good faith exception" to the exclusionary rule. See Hamrick v. State, 426 S.C. 638, 828 S.E.2d 596, 604 (2019) (explaining the exclusionary rule does not apply "when the police act with an objectively 'reasonable good-faith belief' that their conduct is lawful"). Certiorari is not warranted on Carter's constitutional claims.

II. The trial court correctly admitted Carter's recorded statement to police because the officers' questions and representations were not admitted for their truth, were cumulative to other evidence, did not imply Carter was required to prove himself innocent, and were not unfairly prejudicial to Carter. Even if the trial court erred, the Court of Appeals correctly found the error harmless due to overwhelming evidence. Certiorari is not warranted.

The Court of Appeals' decision on this issue does not address any novel questions of law. As recounted in the Court of Appeals' opinion, the interview consisted of police questioning Carter about his whereabouts on the night of the robbery, and confronting him with contrary

information when he told them lies. The Court of Appeals held that the trial court's analysis fell short of what is required by Brewer, but found the error harmless. The State argued below, and maintains, that the officer's statements were not admitted for their truth, and therefore were not hearsay. The Court of Appeals correctly held the officer's comments fell short of the type of prejudicial burden-shifting in Brewer. While Carter understandably disagrees with the decision, the Court of Appeals applied the correct law and reached the correct result. The Court of Appeals' decision is a straightforward application of the harmless error doctrine, and does not warrant this Court's review. Certiorari is not warranted.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Anne Mueller, certify that I have served the within Return To Petition For Certiorari on David Alexander, Esquire, counsel of record for the Petitioner by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 12th day of June, 2023.

Anne Mueller

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