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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
J. Derham Cole, Circuit Court Judge
Appellate Case No. 2023-000168

Adonis Williams, Petitioner,

v.

State of South Carolina, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF QUESTIONS PRESENTED

I. The Court of Appeals correctly affirmed Petitioner's convictions and sentences because any possible error in the admission of the text messages would be entirely harmless in light of the evidence in the record.

STATEMENT OF THE CASE

Procedural History

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During its July 2009 term, the Richland County Grand Jury indicted Petitioner for kidnapping (2009-GS-40-2697), armed robbery (2009-GS-40-2698), and first-degree burglary (2009-GS-40-2701). On September 6–9, 2011, Petitioner proceeded to a jury trial before the Honorable James R. Barber, III.[1] Following deliberations, the jury convicted Petitioner as indicted. Judge Barber sentenced him to a term of imprisonment of twenty-five years for kidnapping, twenty-five years for armed robbery, and twenty-five years for first-degree burglary. The sentences were to run concurrently.

Petitioner filed a timely notice of appeal. By written Order dated March 30, 2012, the South Carolina Court of Appeals dismissed Petitioner's appeal for failing to timely order the transcript as required by Rule 207, SCACR. The Remittitur was issued on January 24, 2013.

Petitioner served and filed an Application for Post-Conviction Relief as well as two amended Applications. On February 1, 2016, an evidentiary hearing was held before the Honorable J. Derham Cole, during which Petitioner proceeded on his Second Amended Application. The Application included a request for a belated appeal pursuant to White v. State.

[1] Initially, on February 8–11, 2010, Petitioner proceeded to a jury trial before the Honorable Clifton Newman, where he was represented by Byron E. Gipson, Esquire. That trial proceeded on the charges of first-degree burglary, armed robbery, and kidnapping, as well as additional charges of resisting arrest (2009-GS-40-2740) and assault on an officer while resisting arrest (2009-GS-40-2741). Following the presentation of all evidence, the jury convicted Petitioner of resisting arrest and acquitted Petitioner of assault on an officer while resisting arrest. Judge Newman sentenced Petitioner to a term of imprisonment of one year for resisting arrest. The jury could not reach a verdict on the charges of first-degree burglary, armed robbery, and kidnapping, so Judge Newman declared a mistrial with respect to those charges.

In a written order filed on September 10, 2018, Judge Cole granted a belated appeal pursuant to White v. State but denied relief on the other allegations and dismissed the application.

A timely notice of intent to appeal was served on September 19, 2018. Petitioner filed his Brief of Petitioner Pursuant to White v. State and the Court of Appeals affirmed his convictions and sentences in an unpublished opinion. See Williams v. State, Op. No. 2022-UP-380 (S.C. Ct. App. Filed October 12, 2022). This Return follows Petitioner's service and filing of a Petition for Writ of Certiorari.

Factual Background

During the morning hours of March 22, 2009, at approximately seven o'clock, the victim was asleep in her home when she heard a loud banging noise. App.p. 152. When she woke up, she saw a masked man wearing a dark blue and white bandana, black pants, a beige coat with a green diamond on the back of it, and a toboggan-type hat. App.pp. 152–53, 190. He was not wearing gloves, and he held a revolver. App.pp. 152, 153. The man entered the victim's bedroom from the hallway and was standing between the hallway door and the victim's bed. App.p. 153. The man then stated to the victim: "I'm coming down. I'm coming down bad. I need some money. I need you to take me to a teller." App.p. 153. The victim got out of her bed and began to get dressed. App.p. 153. Meanwhile the man stayed in her bedroom in a location from which he could see both the victim and the side door through which he broke into the victim's home. App.pp. 153–54.

As she walked through her home, the victim noticed her furniture had been knocked all over the room. App.pp. 154–55. The victim attempted to use her front door to exit her home, but the man insisted she use the side door. App.pp. 154–56. The man then instructed the victim to drive him to the A.T.M. App.p. 156–57. The victim got into the driver's side of her Toyota

Tacoma pickup truck, which was parked in her driveway right next to her house, and the man got into the passenger's side. App.p. 157–58. The man gave instructions to the victim, dictating the manner in which she should leave her neighborhood. App.p. 158. While driving, the victim was able to observe the left side of the man's face, where he had a chicken pox scar around his eye. App.p. 159. She also observed dark blood veins in the man's eyes. App.pp. 160, 189.

As the victim drove away from her home, she proceeded down Caroline Street, turned right onto Leesburg Road, and then took a left towards the V.A. hospital. App.p. 158. While on the way to the A.T.M., the victim lit a Virginia Slim Menthol cigarette. The man asked for one, so she gave him a Virginia Slim Menthol cigarette. App.pp. 165, 197. The victim then drove to her usual A.T.M., which was located on Garners Ferry Road across the street from the V.A. hospital. App.pp. 158, 160.

When she arrived at the A.T.M., she pulled into a handicap parking space in the parking lot. App.p. 160. The man instructed the victim to get the money from the A.T.M. while he stayed in the truck. App.p. 161. The victim retrieved $200 from the A.T.M, but the man told her to get more, so she tried again. App.p. 162. On her second attempt to get more money from the A.T.M., the victim was only able to retrieve an additional $100. App.p. 162. The man stayed in the car each time she went to the A.T.M. App.p. 183. The man still appeared to be upset, so the victim took out her billfold and began giving him anything she had in that. App.p. 163.

The victim then got back in the car, and the man instructed her to drive back the way they had come to the A.T.M. App.pp. 163–64. At that point, the man had a key and the cigarette butt in his hand. App.p. 166. The man then instructed her to stop at a home with a red door on Patricia Drive, where he indicated his car was located and further instructed her to stay in her truck. App.pp. 167, 193, 202.

After the man exited her vehicle, with the cigarette she had given him, the victim immediately started her vehicle and drove to a Citgo gas station approximately two blocks away in order to call 911. App.p. 167. While in the Citgo station, the victim left her car parked on the left side of the building. App.pp. 169, 198, 210. She then informed the employees at the Citgo what had happened and called 911. App.p. 169. She waited there until law enforcement arrived. App.p. 169.

When law enforcement arrived, at approximately 8:30 in the morning, she filled out a robbery questionnaire and gave a statement, giving a description of the man. App.pp. 170, 187, 208, 263, 284–85. In her description, she indicated the man's height and build, as well as her observations of the man's left side of his face. App.p. 172. Specifically, the victim described the man as a black male, who was taller than she was (approximately five feet, ten inches), slender, about 170 pounds, with short black hair, dark spots in his eyes, and a chicken pox scar[2]. App.pp. 182, 188–89, 195–96, 201, 267, 271, 277, 510–11. She further described the man was wearing a mask, a dark blue and white bandana with a design, black hat, dark pants, beige windbreaker, and no gloves. App.pp. 182, 188, 190–91, 196, 271–72. She indicated she did not know if the man had facial hair because he was wearing a bandana the entire time. App.pp. 188, 270. She also showed law enforcement the route she was forced to take, indicating the A.T.M. location and specifically the location the man exited her truck. App.pp. 170–71, 260.

When she returned to the Citgo station to retrieve her truck, she noticed the windows had been broken. App.pp. 180, 198, 210–11, 264. Initially, law enforcement believed the vandalism of the truck was connected to the victim's kidnapping, but another individual, Charles Alexander Blankenbecklor, who was with a man named Isaac Tucker a/k/a Boochee, was ultimately

[2] Petitioner testified he does, indeed, have a mark on his temple, which he described as a "spot" or a "scratch." App.p. 652.

charged and convicted for that vandalism. App.pp. 478–82, 505–07, 508–09, 516–18, 534–36, 560, 562. Indeed, Blankenbecklor did not match the description of the assailant given by the victim and had no connection to Petitioner. App.p. 506–08.

Upon initial observation of the truck, law enforcement observed glass on both the inside and the outside of the vehicle, as well as personal belongings of the victim. App.p. 212. Further, law enforcement had information the robber did not leave anything in the victim's truck. App.p. 212. Investigator Kristin Polis then processed the truck for fingerprints, focusing on the passenger side. App.p. 214. In particular, she processed the passenger side door handle, the center console, the dash area around the glove box, and the exterior of the passenger door. App.p. 219. She was unable to retrieve any usable fingerprints, which she indicated is not uncommon. App.pp. 219–20, 222, 250, 255, 341. Investigator Polis also processed a cigarette disposal container, which was left in the truck and was believed to be used to break the windows, for both fingerprints and DNA. App.pp. 220, 222. That did not produce any usable fingerprints. App.p. 220. After processing the truck for fingerprints, Investigator Polis then processed the vehicle for DNA, swabbing the interior and exterior passenger door handle, the side of the center console, the passenger door latch, and the passenger door window and lock controls. App.pp. 220–21, 250.

Law enforcement released the truck to the victim, and she and law enforcement proceeded to the victim's home. App.pp. 172, 222. Upon entering the home, it was apparent damage had been done to the side door, and there was an area with some dirt around the door, and furniture had been pushed forward. App.pp. 223, 226, 239–41, 265–66, 286. Investigator Polis also walked through the home with the victim in order to determine the relevant areas to be processed. App.pp. 223, 239. The wires to the telephone line had been cut as well, and the area

around the box which housed those wires had been freshly disturbed. App.pp. 173–74, 224, 228, 250. Fingerprints and some ridge detail were found on the box that housed the telephone wires, but Investigator Polis was unable to lift them. App.pp. 229–30, 253. Consequently, the box was taken into evidence. App.pp. 230, 245.

Deputy Benjamin Lasher returned to the drop–off location on Patricia Drive and assisted in setting up a perimeter for a canine track. App.p. 261. When the canine unit arrived, he indicated to those officers the direction in which the victim indicated the man had gone. App.p. 262. Those officers then began a canine track, which was unsuccessful. App.pp. 262, 287.

The following day, law enforcement again went to the victim's home to speak with her and to go back through her home and her truck. App.pp. 300, 302, 468–69, 519. After speaking with the victim, they determined a cigarette butt could be pertinent to the investigation. App.pp. 302–03, 470–71, 525. As a result, Investigator Isenhoward proceeded to the drop–off location on Patricia Drive. App.pp. 303, 313, 472–73. Upon searching the area, law enforcement discovered a Virginia Slims cigarette butt, which was collected into evidence. App.p. 305–07, 473–75.

Subsequently, on March 25, 2009, Investigator Harold Bouknight made a comparison of the latent fingerprints found on the telephone box and Petitioner's fingerprints. App.pp. 319–23. Investigator Bouknight determined Petitioner's fingerprint was a match to that left on the telephone box. App.pp. 324–25, 328, 485. Sergeant Stan Richards also did an independent comparison, which yielded the same results—the fingerprint on the telephone box was a match to Petitioner. App.pp. 343–44. In addition to the box with the telephone wires, Investigator Polis also processed the side door, the storm door attached to the side door, and the bedroom

doorknob for fingerprints and DNA. App.pp. 232–34, 242–43. No usable fingerprints were discovered. App.pp. 233, 244.

DNA swabs taken from the victim's home, the victim's truck, the cigarette butt found on Patricia Drive, the victim, Petitioner, Tucker, and Blankenbecklor were subsequently submitted for analysis. App.pp. 356, 359, 375, 379, 381, 503–04. From the DNA on the cigarette butt, Dr. Gray Amick determined the DNA consisted of a mixture, from which Petitioner and the victim could not be excluded as contributors.[3] App.pp. 377, 386–88, 412–13. In fact, the likelihood of the victim and Petitioner being the contributors to that sample was 140 Quintillion times more likely than the mixture being from the victim and an unknown randomly selected individual. App.pp. 387–88. Furthermore, the DNA from the cigarette butt was determined to be that of Petitioner's through a CODIS search. App.pp. 432–33, 484. Many of the swabs submitted, however, were too weak to interpret who could have been a contributor to that DNA profile. App.p. 383–85.

After the fingerprint found at the victim's home and the DNA on the cigarette butt had been matched to Petitioner, law enforcement began a search around the Garners Ferry Road and Leesburg Road area for Petitioner. App.pp. 435–37, 449. The team encountered Petitioner at a home located on True Street, which is located in the search area, and also encountered Petitioner's girlfriend, Dawn Shea. App.pp. 437–38, 450–51, 458–59. When law enforcement first encountered Petitioner at this home, they attempted to arrest him, but Petitioner took off running. App.pp. 452, 455–56, 459. The search continued. App.pp. 450–53, 463.

In continuing to search for Petitioner, law enforcement also searched Petitioner's sister's apartment pursuant to a search warrant. App.pp. 440–42, 488, 498–99, 531. Thereafter, law

[3] Tucker and Blankenbecklor were both excluded from the mixture. App.p.387

enforcement received information that Petitioner was known to hang out with a friend, Zab. App.pp. 454, 460. Based on that information, law enforcement determined where Zab worked and lived, and ultimately apprehended Petitioner in Zab's home. App.pp. 454–55, 461–62, 499–500.

Shea gave law enforcement consent to search her home to search for anything related to the crimes, including the weapon and clothing worn. App.pp. 438–39, 490, 531. During their search, law enforcement found a phone belonging to Petitioner. App.pp. 439, 490–93. On the phone, law enforcement found text messages, which indicated the police were looking for Petitioner and Petitioner was about "to go into hiding." App.p. 497. Law enforcement was unable to recover the items of clothing which the victim described or the gun. App.pp. 498, 531–32.

ARGUMENT

The Court of Appeals correctly affirmed Petitioner's convictions and sentences because any possible error in the admission of the text messages would be entirely harmless in light of the evidence in the record.

Petitioner maintains the Court of Appeals erred in finding Petitioner abandoned his cell phone and, therefore, text messages obtained from the cell phone were properly admitted. Even if this finding was error, any admission of the text messages was entirely harmless in light of the evidence in the record establishing Petitioner's identity as the perpetrator of the crimes.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In search and seizure cases, an appellate court in South Carolina is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) ("[A]ppellate courts must affirm if there is any evidence to support the trial court's ruling."); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (" 'When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.' " (citation omitted)). Critically, the appellate court will not reverse merely because it would have reached a

different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 ("In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge's ultimate determination de novo but, rather, would apply a deferential standard of review.").

Harmless Error

Even assuming the text messages were improperly admitted by the trial court, any admission would be entirely harmless in light of the evidence in the record.[4] The minimal evidence of flight provided by the text messages was cumulative to other evidence, including Petitioner's own statements. Additionally, given the overwhelming evidence in the record, the evidence presented in the text message could not have reasonably affected the jury's verdict.

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[4] The State notes that Petitioner failed to meet his burden of having an expectation of privacy prohibiting the search of the phone. See Rakas v. Illinois, 439 U.S. 128, 132, n. 1 (1978) ("The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure."). Initially, he never established a sufficient connection to the residence such that he could challenge the initial search, whether by warrant or by consent of the actual homeowner. Any item within the house was subject to search upon the consent of the homeowner, especially when officers were trying to establish ownership of the cell phone. See State v. Moore, 429 S.C. 465, 477, 839 S.E.2d 882, 888 (2020) ("To the extent Petitioner retained an expectation of privacy in his cell phone left next to the victim's body, that expectation of privacy was diminished to the point that the finder could properly examine the item in a manner limited to determining the owner."). Further, and most significant, it does not appear Petitioner maintained a password or other restriction on access to his device. By leaving it in someone else's house with unfettered access by anyone in the house, he clearly did not evince an expectation of privacy in the phone. See e.g., State v. Brown, 423 S.C. 519, 532, 815 S.E.2d 761, 768 (2018) (Beatty, C.J. dissenting) ("Brown also placed a passcode on his cell phone to protect his personal information from unauthorized access. See [State v. K.C., 207 So.3d 951, 955 (Fla. Dist. Ct. App. 2016)] (concluding that contents of defendant's cell phone, which was left in a stolen vehicle, were still protected by a password given "the password protection that most cell phone users place on their devices is designed specifically to prevent unauthorized access to the vast store of personal information which a cell phone can hold when the phone is out of the owner's possession"). Brown never relinquished this passcode.").

Over thirty years ago, this Court recognized: "Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence." State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) (citing, *inter alia*, Long et al. v. Conroy et al., 246 S.C. 225, 143 S.E.2d 459 (1965)). This principle has not changed. See, e.g., State v. Brewer, 411 S.C. 401, 409, 768 S.E.2d 656, 660 (2015) ("The admission of improper evidence is harmless [when] it is merely cumulative to other evidence." (quoting State v. Johnson, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989))); State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) (admission of improper evidence is harmless where the evidence is merely cumulative to other evidence.); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) (any error in admission of evidence cumulative to other unobjected to evidence is harmless).

"Some errors—when considered in the context of the facts of a particular case—are so insignificant and inconsequential they do not require reversal of a conviction." State v. Reyes, 432 S.C. 394, 405–06, 853 S.E.2d 334, 340 (2020). As this Court has noted:

> Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it "could not reasonably have affected the result of the trial."

State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (quoting State v. Key, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971)). This Court has further articulated:

> "[O]ur jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict." State v. Tapp, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012). Put simply, the harmless error rule embodies a commonsense principle our appellate courts have long recognized—"whatever doesn't make any difference, doesn't matter." State v. Jolly, 304 S.C. 34, 39, 402 S.E.2d 895, 898 (Ct.

> App. 1991) (quoting McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987)).
>
> In determining whether error is harmless beyond a reasonable doubt, we often look to whether the "defendant's guilt has been conclusively proven . . . such that no other rational conclusion can be reached." State v. Collins, 409 S.C. 524, 538, 763 S.E.2d 22, 29-30 (2014) (quoting State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006)). Thus, "overwhelming evidence" of a defendant's guilt is a relevant consideration in the harmless error analysis. See State v. Kromah, 401 S.C. 340, 361-62, 737 S.E.2d 490, 501 (2013).

Reyes, 432 S.C. at 406, 853 S.E.2d at 340.

In the instant case, the evidence of flight obtained from the text messages was cumulative to other testimony and evidence in the record. Most significantly, it was cumulative to Petitioner's own testimony. When asked why he was attempting to get away from police seeking to arrest him, he indicated he knew why the police were there:

> **Q. At that moment in time did you have any idea why they were there or why he said I'm placing you under arrest?**
>
> **A. Yes, sir.**
>
> **Q. All right. So you had heard that there were warrants for you?**
>
> **A. Yes, sir.**
>
> Q. Okay. And you didn't want to get arrested.
>
> A. I mean, basically I didn't want to get arrested.

App.p.599 (emphasis added). Petitioner's own testimony established the nexus between his flight and the officers seeking to arrest him on the current charges. See State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) ("Flight evidence is relevant when there is a nexus between the flight and the offense charged." (citing State v. Robinson, 360 S.C. 187, 195, 600

S.E.2d 100, 104 (Ct. App. 2004))). The jury heard he escaped arrest and was not found until a later time. App.p.459-460. Additionally, as discussed above, there was significant testimony regarding the manhunt for Petitioner including all of the various locations searched after this incident. Petitioner was eventually located in the residence of a friend. He was located hiding in a closet of a bedroom at the residence. App.p.461. As a result, the jury understood Petitioner fled custody after the incident, knew the police were looking for him, and even escaped an attempt to place him in custody before being found hiding in the closet at a friend's residence. The evidence from the text messages was merely cumulative and could not have impacted the jury's verdict.

Additionally, there is overwhelming evidence tying Petitioner to this crime such that the minimal evidence of guilt established through the text messages could not have impacted the verdict of the jury beyond a reasonable doubt. Fingerprints, DNA, and a readily identifiable scar that the victim could see throughout the incident all linked Petitioner to the crime. There is no allegation in the record that the victim is making up the kidnapping or the armed robbery. The only question was whether it was Petitioner who committed the crime. The minimal evidence of flight from the text messages was so insignificant to the State's presentation that it was never mentioned by the State during closing argument. The State focused instead on the fingerprint found near the cut phone wires, the DNA on the cigarette that matched the cigarette given to Petitioner by the victim, and the scar she used to identify Petitioner to law enforcement. The text messages, even if improperly admitted, could not have impacted the jury's verdict beyond a reasonable doubt, and so any error in their admission was entirely harmless. As a result, this Court should deny the Petition for Writ of Certiorari and affirm Petitioner's convictions and sentences.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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