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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Aiken County
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2023-000632

THE STATE,

RESPONDENT,

V.

RASHAWN VERTEZ CARTER,

PETITIONER.

BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

Whether exigent circumstances justified the warrantless "ping" of Carter's phone and, if not, whether suppression was appropriate under the good faith and attenuation doctrines.

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. (R.p.599). The court of appeals affirmed Carter's convictions in a published opinion. State v. Carter, 438 S.C. 463, 884 S.E.2d 195 (Ct. App. 2022), reh'g denied (Mar. 22, 2023). This Court granted certiorari on one issue: whether the trial court should have granted Carter's motion to suppress on the ground that the warrantless tracking of his cell phone violated the Fourth Amendment and Article 1, §10 of the South Carolina Constitution.

STATEMENT OF FACTS

On May 9, 2015, Elizabeth Miller was asleep in her home at the Hahn Village apartment complex in Aiken. (R.p.95). At around five o'clock in the morning, she was awakened by three masked men with handguns demanding money. (R.p.98; 468). One of the men held her at gunpoint while the other two ransacked her apartment. (R.p.98–100). The men forced Miller to lie on her stomach. Two of them held their guns to her head while another held his gun against her back. (R.p.102). One of them sexually assaulted her with a handgun. (R.p.102).

The men told Miller to "take off [her] clothes" and she started screaming. (R.p.102). Miller heard one of the men say "oh shit," and it got quiet. (R.p.102). She got up from the bed and saw the body of one of the burglars lying in the bathroom doorway near the back door to the apartment. She ran through the front door to her neighbor's apartment and heard gunshots. (R.p.103–04). Minutes later, her boyfriend Melvin Chandler arrived. Miller ran to his vehicle and called 911 at 5:22 a.m. (R.p.105; 488). Miller spoke with police, then went to the hospital because she was bleeding from her vagina. (R.p.108–09).

Miller's neighbor, Keith Byrd, witnessed the burglars arrive in a car via a dirt path behind the apartment. (R.p.133). Byrd observed three men enter the home. He called Miller's boyfriend, Melvin Chandler, to alert him. (R.p.138). Shortly after, he heard a gunshot followed by a flurry of more gunshots. (R.p.139). Minutes later, Chandler showed up at Byrd's back door asking him to hold a plastic bag full of money. (R.p.140).

Police arrived and found a man lying unconscious near the back door with a shirt wrapped around his face and a gunshot wound to the head. He was later identified as Darius Scruggs, referred to throughout trial as "Black Boy." Officers rendered medical aid to Scruggs and secured the crime scene. (R.p.146–47; 150). They discovered a group of shell casings in the

yard, a single shell casing by the back door, a bullet hole in the back screen door going inward, and a Taurus handgun on the floor near the back door. (R.p.178–85; State's Exhibits #25, 33). Police did not find any physical evidence connecting any other suspects to the crime scene. (R.p.482). Miller's cell phone was discovered in Scruggs' pocket. (R.p.147; 470).

Officers interviewed Chandler, Miller, Byrd, and others at the scene. Chandler cooperated with police, even when they discovered a shoe box full of cocaine in Miller's closet. (R.p.190). Chandler testified he was a drug dealer and kept cocaine in the apartment. (R.p.428; 435). Miller testified she was unaware Chandler kept drugs there. (R.p.120).

Officers interviewed Miller's neighbor, Treasure Simpkins, and her daughter, Jasmine Hammond. (R.p.365–66; 163). Simpkins and Hammond testified they were awake at the time of the robbery because they were "looking for" Hammond's boyfriend, Rashawn Carter, who had been ignoring Hammond's calls. (R.p.362; 371; 374). They testified they witnessed a man they knew as "Trill" running from the apartment complex as police arrived. (R.p.362–64; 374–75).

Investigators went to the hospital where Scruggs was on life support. They encountered Scruggs' brother, Patrick Neely. Neely told police he had information about the robbery and gave police the names and phone numbers of others involved, including Rashawn Carter. (R.p.463). Neely testified at trial to the "same information" he told officers at the hospital. (R.p.294, line 19). He testified he was involved in planning the robbery, which was aimed at Chandler's stash of cocaine and money. (R.p.284). Others involved were Scruggs, Rick Jackson, Rodriguez Jackson, and Rashawn Carter. The group was riding in a silver Nissan driven by Carter, and their discussions took place in the early morning hours at an establishment called Club Climax. (R.p.277). According to Neely, he did not go with the others to carry out

the robbery because his brother wouldn't allow him to participate. (R.p.286). Scruggs took Neely's .40-caliber handgun and gave it to Carter. (R.p.286). Neely stayed behind while the others left to carry out the robbery. Neely estimated the group left him around 5:00 in the morning. (R.p.293-94).

Neely got a call from Carter early the next morning at around 7:00 or 8:00. (R.p.288). He met him at Carter's nephew's home, and Carter informed him that his brother was "gone." (R.p.302). Carter's nephew, Shaqueal Campbell, lived in the same apartment complex as Neely. (R.p.291). Also present was Campbell's girlfriend, Sanquesha Ramsey. Phone records corroborated that Carter used Ramsey's phone to contact Neely. (R.p.315, line 22–24; p.288). Carter explained "It happened too fast and there wasn't nothing I could do." (R.p.291). Neely then spoke with his mother and learned that Scruggs had been shot in the head. Scruggs died from his wound. Neely testified he retrieved his gun from Carter and gave it to "somebody else." (R.p.292).

The State was able to corroborate much of Neely's testimony. Melvin Chandler testified he kept a "trap house" separate from Miller's apartment from which to sell drugs. (R.p.428). On the night of the robbery, Chandler met Rick Jackson, a.k.a. "Massacre," at the trap house. (R.p.429; 280). Jackson was riding in a gray or silver car. (R.p.430). When Chandler left the trap house to visit a girlfriend (not Miller), he told Jackson where he was going. On the way to his second girlfriend's house, he got a call from Byrd alerting him to the three men entering Miller's apartment. (R.p.431). Chandler called his friend Trill and another friend named Gary for help. (R.p.432–43). Presumably, one of these men shot and killed Darius Scruggs through the back screen door. Chandler's testimony was corroborated with phone records. (State's Exhibit #21).

Police obtained Darius Scruggs' cell phone from his father and discovered text messages between Scruggs and Rick Jackson from the night of the robbery confirming that Rick Jackson served as an accomplice by alerting the other three of Chandler's location so they would know when it was safe to carry out the robbery. (R.p.484; State's Exhibit #101). At 3:50 a.m., Jackson texted Scruggs to ask "where y'all parked at?" Later, at 5:03 a.m., Jackson texted Scruggs: "He leaving to fuck a bitch . . . I doubt if he come there but just be 050 . . . He said he coming back so go ahead." (R.p.486-87). Scruggs responded by asking "Is he leaving da house or what." Jackson texts back, "Go head fool." (R.p.487). At 5:16, Jackson texted Scruggs: "Tighten up, they know what's going on leave now." (R.p.488). Historical location data confirmed Jackson was in the area of Chandler's trap house when he sent the texts. (State's Exhibit #21).

After speaking with Neely and obtaining Carter's cell phone number, police shared the number with SLED. SLED agents used a "web-based data base" to identify names associated with the number based on information from third party vendors. (R.p.245). The program associated the number with the names "Vertes Parker" and Sanquesha Ramsey. Police asked Treasure Simpkins whether she recognized either of those names, and learned Carter's full legal name is Rashawn Vertez Carter. (R.p.246).

Police then contacted Carter's phone provider, T-Mobile. Police spoke with T-Mobile's "law enforcement representative" and submitted an "exigent request" 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 for real-time phone location 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."[1] (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.230). T-Mobile eventually approved the request and began sending emails every 15–20 minutes with the GPS coordinates of Carter's cell phone. (R.p.226).

Police received a notification at 4:40 that afternoon and learned Carter's cell phone was in Batesburg-Leesville. (R.p.249). Officers headed in that direction, but received another notification that Carter's phone was moving again. Using the updates from T-Mobile, police were able to locate Carter at an apartment complex in Columbia at around "four or five" that afternoon. (R.p.249; 301). Officers saw Carter in the parking lot next to a silver Nissan Altima. (R.p.324–25). Jasmine Hammond was with him. When asked by police, Carter claimed they were driving a Dodge Cobalt, but Hammond admitted they were in the silver Nissan. (R.p.330). Officers asked Carter if he would be willing to come to police headquarters in Aiken for an interview, and Carter agreed. (R.p.326–28). Carter had two cell phones in his possession. He gave one of them, a Galaxy Note smart phone, to Hammond before going with police back to Aiken, along with approximately $800. (R.p.388–89). He told Hammond to get rid of the phone. (R.p.389). Police later found a text message (pursuant to a search warrant) from Carter to Treasure Simpkins instructing her to "take the phones up there, wash them with water, everything." (R.p.473). Jasmine Hammond agreed to drive the silver Nissan back to Aiken police headquarters. (R.p.389).

In his interview with police, Carter claimed he was with Jasmine Hammond at his mother's house from 10:30 on the night of the incident until 11:00 or 12:00 the next morning.

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[1] Police originally submitted an exigent request for Elizabeth Miller's phone and learned it was the phone recovered from the body of Darius Scruggs. (R.p.242–43).

(State's Exhibit #9 at 14:20). He told police that "Black Boy" was his "very close friend," and admitted he knew Patrick Neely as well, but denied having spoken with Neely recently. However, Neely's phone records showed a call from Carter that morning. (State's Exhibit #21, slide 44). He pretended he didn't know Scruggs had been shot. When asked whether he was at Club Climax the night before, he denied it, claiming he didn't even know where Club Climax was. One of the investigators told Carter that "some of his people" told them he was at the club at two o'clock that morning. (State's Exhibit #9 at 15:25). Carter continued to deny that he was there. When an investigator told Carter that Jasmine Hammond spoke with investigators at Hahn village at six o'clock that morning, he continued to insist she was in bed with him all night. Eventually, after investigators indicated they did not believe Carter, he changed his story. (State's Exhibit #9 at 25:00). He admitted he was with "Black Boy" at Club Climax around midnight that night, but claimed he dropped "Black Boy" off at his brother's house and went home. When confronted with the fact that security cameras at Hahn Village captured an image of his rental car, he repeatedly insisted he was "not in the car" at that time, and suggested it could have been his sister's boyfriend. (State's Exhibit #9 at 38:00; 50:00). After repeatedly insisting he was not at the scene of the crime, he terminated the interview and was allowed to leave.

While police were interviewing Carter, Whitney Simpkins brought the rental car to the police station. (R.p.250; 255). She gave consent for police to search the car, but they did not find anything of evidentiary value. (R.p.251). The car appeared to have been wiped down in some areas. (R.p.254). Police discovered a box for a Verizon cell phone that was purchased at Walmart the same day, and obtained surveillance video from Walmart showing Carter purchasing a new cell phone hours after the burglary. Police also obtained surveillance video of Rodriguez Jackson purchasing a new cell phone at a Walmart in Aiken that same day. (R.p.480).

The State completed its case against Carter by using historical phone records and peripheral witness testimony to show Carter was with his co-conspirators in the hours leading up to the burglary. (State's Exhibit #21). Whitney Simpkins, who was so close with Carter that she referred to him as her "brother," testified she rented the silver Nissan and allowed Carter to borrow the car on the night before the incident, and Carter returned it the next morning. (R.p.306–09). Co-conspirator Rodriguez Jackson was with Carter both times. (R.p.308).

Jasmine Hammond testified Carter confessed to her that he participated in the burglary. She testified that on the way to Columbia, Carter told her "what happened with the home invasion." (R.p.381). Carter told her he was the driver and that Scruggs had been shot in the head. (R.p.387). She authenticated jail calls and a letter from Carter imploring her to retract her story and provide him with an alibi. (State's Exhibits #12A (R.p.600), 13A (R.p.610), and 14A (R.p. 623)). Carter did not present a case.

STANDARD OF REVIEW

When reviewing the denial of a motion to suppress based on the Fourth Amendment, the appellate court reviews the trial court's factual findings—including credibility findings—for any evidentiary support, but the ultimate legal conclusion is a question of law subject to de novo review. State v. Frasier, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022).

ARGUMENT

Exigent circumstances justified the warrantless ping of Carter's phone. Suppression was not appropriate because police acted in good faith and Carter's interview was attenuated from the search. Any error was harmless because of the strength of the other evidence against him.

This case raises the question whether police may "ping" a suspect's phone to ascertain its location in the wake of a serious crime. A ping is an electronic signal, sent by a service provider at the request of law enforcement, which reveals the phone's GPS coordinates. This type of limited search is permissible without a warrant in exigent circumstances, such as where the suspect poses a danger to the community and is likely to destroy evidence of the crime. Police reasonably believed immediate action was necessary to locate Carter, who had participated in a violent home invasion just hours earlier. Police acted pursuant to the Stored Communications Act, which authorizes warrantless pings in exigent circumstances. Even if this search ran afoul of the state or federal constitution, suppression of Carter's interview was not appropriate because it was not "fruit" of the search. Finally, any error was harmless due to the strength of the other evidence against Carter. This Court should affirm.

A. South Carolinians have a privacy interest in their real-time cell phone location data.

The threshold question in this case is whether a "ping" of real-time cell phone location data implicates a constitutionally-protected privacy or security interest. The State believes it does, under both the federal and state constitutions. But this Court should be specific about the nature of the right and the proper test to be used in the constitutional analysis.

A ping is not a record. Cf. Carpenter v. United States, 585 U.S. 296, 315 (2018) (discussing historical location data records, which are "a detailed chronicle of a person's physical presence compiled every day, every moment, over several years"). A ping is an electronic signal

that generates real-time GPS location data "only at the specific command" of a cell phone provider. United States v. Caraballo, 831 F.3d 95, 99 (2d Cir. 2016). When done at the request of police, this constitutes a search.

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

Article 1, section 10 of the South Carolina Constitution mirrors the Fourth Amendment except that it contains an additional clause prohibiting "unreasonable invasions of privacy." S.C. Const. art. I, § 10. This Court has noted that the framers of Article 1, section 10 were concerned primarily with the danger to privacy posed by electronic surveillance. Planned Parenthood S. Atl. v. State, 438 S.C. 188, 310, 882 S.E.2d 770, 836 (2023) (Kittredge, J. dissenting).

While the West committee spoke frequently of wiretapping and the interception of "communications," it broadened its focus—at the suggestion of the Attorney General—to more general language about the protection of "data." Id. Attorney General McLeod's focus on the "vast amounts of information relating to the private affairs of citizens" which could be accessed by the government would surely seem to encompass cell phone location data. The committee made references to "data processing banks" containing "pages and pages of information." Proceedings of the Committee to Make a Study of the Constitution of South Carolina (1895), Gen. Assemb., 97th Sess. 3 (S.C. Oct. 6, 1967). This brings to mind the Carpenter court's focus on the vast accumulation of historical location data which can, in the aggregate, capture "the

whole of a person's movements." Carpenter, 585 U.S. at 310–12. The same cannot be said of limited collection of real-time data for short periods of time upon specific request.

Nonetheless, the State believes real-time location data deserves some level of constitutional protection because the alternative would be unacceptable. The total absence of constitutional protection for real-time data would run counter to the spirit of the right to privacy and the right of the people "to be secure" in their effects against a too-great state power to surveil. This position is consistent with the ordinary and popular meaning of section 10 and the intention of that section's framers. See State v. Long, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014); City of Charleston v. Oliver, 16 S.C. 47, 52 (1881).

There is not uniformity among courts across the country as to whether pings constitute searches under the Fourth Amendment. Those courts holding pings are not searches have reasoned there is no reasonable expectation of privacy in a person's movements in public places. See, e.g., United States v. Riley, 858 F.3d 1012, 1018 (6th Cir. 2017), cert. denied, 138 S. Ct. 2705 (2018); United States v. Hammond, 996 F.3d 374, 393 (7th Cir. 2021) (citing United States v. Knotts, 460 U.S. 276 (1983)). Other courts have declined to address the question, instead assuming a search occurred and grounding their decisions in the exigent circumstances doctrine. United States v. Banks, 884 F.3d 998, 1011 (10th Cir. 2018), cert. denied, 139 S. Ct. 638 (2018); United States v. Wallace, 885 F.3d 806, 810 (5th Cir. 2018).

The majority of courts which have considered the issue have held that pings are searches, and some state courts have done so under their state constitutions. Most courts have employed the Katz "reasonable expectation of privacy" test. Katz v. United States, 389 U.S. 347 (1967). However, the Supreme Court of Kentucky held a ping was a search under a property-based theory. Commonwealth v. Reed, 647 S.W.3d 237, 247 (Ky. 2022) (describing a ping as a

"technological trespass"). Because a ping forces a cell phone to transmit a signal revealing its location, it acts to "commandeer" the phone and convert it to the government's use. Id.

Arguably, the conversion theory is the better test to apply to pings. The idea that cell phone location data is private is becoming harder to defend. Smartphone apps collect and sell location data to third party companies known as "data brokers," who then package and sell the data to advertisers. Although the data is anonymous, investigative journalists have demonstrated it is easy to put a name to a number.[2] Even the President can be tracked with publicly-available location data.[3] While these investigations have used historical data, location data is stored constantly and is available in "near-real time."[4] Technological companies like Google and Apple also collect location data. State v. Muhammad, 451 P.3d 1060, 1071 n. 3 (Wash. 2019).

Location data is available to the public for purchase. Federal law enforcement and intelligence agencies have purchased location data from data brokers.[5] In this case, SLED obtained cell phone subscriber data from an "online database" using Carter's phone number, which helped establish Carter's identity. (R.p.245–46). While police did not purchase location

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[2] Jennifer Velentino-DeVries et al., Your Apps Know Where You Were Last Night, and They're Not Keeping It Secret, N.Y. Times (Dec. 10, 2018), https://www.nytimes.com/interactive/2018/12/10/business/location-data-privacy-apps.html.

[3] Stuart A. Thompson and Charlie Warzel, How to Track President Trump, N.Y. Time (Dec. 20, 2019), https://www.nytimes.com/interactive/2019/12/20/opinion/location-data-national-security.html. In this investigation, it took "only minutes—with assistance from publicly available information—for [New York Times reporters] to deanonymize location data and track the whereabouts of President Trump."

[4] See Valentino-Devries, supra n.2. See also Editorial, Total Surveillance Is Not What America Signed Up For, N.Y. Times (Dec. 21, 2019), https://www.nytimes.com/interactive/2019/12/21/opinion/location-data-privacy-rights.html. ("Your smartphone can broadcast your exact location thousands of times per day, through hundreds of apps, instantaneously to dozens of different companies. Each of those companies has the power to follow individual mobile phones wherever they go, in near-real time.").

[5] Charlie Savage, Intelligence Analysts Use U.S. Smartphone Location Data Without Warrants, Memo Says, N.Y. Times (Jan. 22, 2021), https://www.nytimes.com/2021/01/22/us/politics/dia-surveillance-data.html.

data in this case, this Court can assume most law enforcement agencies have the capacity to do so.

Employing a property-based test would maintain a narrow scope for this opinion—electronic searches via "forced signal"—and avoid broad statements about privacy questions which are not implicated by the facts of this case. See State v. Drayton, 415 S.C. 43, 45, 780 S.E.2d 902, 903 (2015) (explaining appellate courts should avoid deciding novel issues unless necessary). A property-based approach would also apply to technology which allows law enforcement to directly track cell phones without relying on service providers. Andrews v. Baltimore City Police Dep't, 8 F.4th 234, 236 (4th Cir. 2020) (describing police use of "stingray" devices).

B. Police generally need probable cause to search, but this Court should be clear that pings may be justified under the "community caretaking" doctrine, which does not require probable cause. This Court should also consider whether pings may be justified under reasonable suspicion in some circumstances.

In order to search pursuant to a warrant, police must have probable cause. U.S. Const. amend. IV; S.C. Const. art. 1, § 10. The probable cause standard also generally applies to warrantless searches, e.g. under the automobile exception. See Wayne R. LaFave, Search & Seizure: A Treatise on the Fourth Amendment § 3.1(a) (6th ed. March 2024 update). However, probable cause is not required when police act to protect people in danger of death or serious bodily injury rather than in furtherance of a criminal investigation. For example, where there is a fire, a lost child, or another situation which raises the "need to protect or preserve life or avoid serious injury," the exigent circumstances exception allows police to act immediately as long as there is an objectively reasonable basis for doing so. See United States v. Taylor, 624 F.3d 626, 631

(4th Cir. 2010) (explaining when "police behavior falls outside the criminal justice rubric . . . [search] warrants and the probable cause standard are inapposite"); Michigan v. Fisher, 558 U.S. 45, 49 (2009); Caniglia v. Strom, 593 U.S. 194, 206 (2021) (Kavanaugh, J., concurring). For the benefit of law enforcement, it is important for this Court to acknowledge that warrantless pings may be permissible in certain emergency situations without resort to the warrant procedure and without probable cause that a crime has been committed.

Courts addressing exigent circumstances in the context of pings carried out during criminal investigations have either applied the probable cause standard or the "objective, reasonable belief" or a comparable standard. See State v. Sinapi, 295 A.3d 787, 808 (R.I. 2023); United States v. Gilliam, 842 F.3d 801, 804 (2d Cir. 2016). This Court should leave open the possibility of a third option: that investigative pings may be justified under reasonable suspicion in appropriate circumstances.

In Terry v. Ohio, the Supreme Court rejected "a rigid all-or-nothing model" of the Fourth Amendment, instead recognizing that its central concern is reasonableness. Terry v. Ohio, 392 U.S. 1, 17 (1968). The Court declined to apply the probable cause standard to safety frisks, instead explaining "the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures." Id. at 20. The Court emphasized the need to protect officers and "others in the area" from armed and dangerous criminals. The Terry court also emphasized the limited nature of the intrusion, noting frisks are "less than a 'full' search." Id. at 26. The Court cited Camara v. Municipal Court, 387 U.S. 523, 534–535 (1967), where the Court employed a balancing test weighing the "governmental interest which allegedly justifies

official intrusion upon the constitutionally protected interests of the private citizen" against "the invasion which the search (or seizure) entails." Terry, 392 U.S. at 20–21.

The same analysis is appropriate for pings in exigent circumstances. As discussed above, a ping does not reveal the contents of a phone, such as text messages, emails, internet search history, or any of the other "broad array of private information" stored on cell phones. Riley v. California, 573 U.S. 373, 397 (2014). Nor does a ping reveal "a detailed chronicle of a person's physical presence compiled every day, every moment, over several years." Carpenter, 585 U.S. at 315. A ping, as used in this case and as authorized by the exigent circumstances provision of the Stored Communications Act, is a single-use investigative tool meant to locate a cell phone in an emergency situation. Although a ping may be called a "search," it is qualitatively different than an exhaustive search of a cell phone, office, or home. Payton v. New York, 445 U.S. 573, 585 (1980) (explaining "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed").

The police conduct in this case resembled an investigative stop. Police used a ping to locate Carter so they could determine whether he posed an immediate risk to public safety, and there was a minimal invasion of Carter's privacy. In emergency situations, particularly those involving violent offenses, allowing pings on a lesser degree of suspicion than probable cause may strike the right balance between public safety and privacy in one's real-time location data. See Wayne R. LaFave, Search & Seizure: A Treatise on the Fourth Amendment § 3.2(a) (6th ed. March 2024 Update) (discussing whether "the probable cause requirement may call for a greater or a lesser quantum of evidence, depending upon the facts and circumstances of the individual case").

It is not necessary to a resolution of this case to decide whether reasonable suspicion may justify pings in certain situations because police had probable cause to believe Carter was party to this crime. Probable cause exists "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." Ornelas v. United States, 517 U.S. 690, 696 (1996). Police promptly obtained reliable information from Carter's co-conspirator, Patrick Neely, mere hours after the crime was committed, before the suspects had an opportunity to completely cover their tracks. (R.p.294). Neely, who had known Carter "[n]early all [his] life," laid out for police Carter's involvement in the crime. (R.p.276). Police 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). Because police had probable cause, the question becomes whether they were justified in submitting the exigent request without first seeking a warrant.

C. Exigent circumstances justified the warrantless ping.

The facts available to police at the time they submitted the exigent request supported an objectively reasonable belief that immediate action was necessary to locate Carter because he had just participated in a violent felony, posed a danger to the community, and was likely engaging in the destruction of evidence. The intrusion on Carter's privacy was minimal because he was in a public place, he took no steps to keep his location secret, and police obtained a search warrant before obtaining any of his phone's content or historical location data. The limited search was reasonable in the circumstances.

Investigator Jeremy Hembree testified to the circumstances of the exigent request:

> We had responded, obviously, to a home invasion where we had a deceased individual. We believed he was part of the group that had committed the home

> invasion. At that point we had some unknown individuals who had participated in a home invasion and were unsure if they had [participated] in the shooting, but they also had done the home invasion while armed. So we felt that there was a need to get them off the street as soon as possible.

(R.p.224).

As for the need to act immediately, Hembree testified:

> It was a fluid scene that morning. We were still actively investigating the scene. So it wasn't feasible for me necessarily to go away for a certain amount of time to obtain a search warrant . . . .

(R.p.230).

Investigator Hembree's testimony—that it was not feasible to leave the scene to prepare an affidavit and seek a warrant—is entitled to a degree of deference. Welsh v. Wisconsin, 466 U.S. 740, 751 (1984) (explaining courts should give "indulgence to officers acting to deal with threats or crimes of violence which endanger life or security"); Schmerber v. California, 384 U.S. 757, 770 (1966) (explaining officer "might reasonably have believed that he was confronted with an emergency"). Because South Carolina has a written warrant affidavit and signature requirement, warrants are not simply a telephone call away. See S.C. Code §17-13-140; In re Snyder, 308 S.C. 192, 196, 417 S.E.2d 572, 574 (1992) (explaining South Carolina's written warrant affidavit requirement).

A warrant is not required "when 'the exigencies of the situation' make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment." Kentucky v. King, 563 U.S. 452, 460 (2011). Such exigencies include the need to pursue a fleeing suspect, protect individuals who are threatened with imminent harm, or prevent the imminent destruction of evidence. Id. at n.3. To determine whether a law enforcement officer faced an emergency that justified acting without a warrant, courts employ an objective test and look to the totality of circumstances. Missouri v. McNeely, 569 U.S. 141, 149

(2013). Police should obtain a warrant when it is "practicable" to do so. Terry v. Ohio, 392 U.S. 1, 20 (1968).

The exigent circumstances exception is, at its core, based on reasonableness. United States v. Caraballo, 831 F.3d 95, 103 (2d Cir. 2016) (explaining "the exigent-circumstances analysis is merely a 'finely tuned approach' to Fourth Amendment reasonableness") (quoting McNeely). When there is "a plausible claim of specially pressing or urgent law enforcement need" and the government action in question "was tailored to that need," courts should "balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable." Illinois v. McArthur, 531 U.S. 326, 331 (2001). "In the Fourth Amendment context, a court is concerned with determining whether a reasonable officer would be moved to take action." State v. Wright, 416 S.C. 353, 369, 785 S.E.2d 479, 487 (Ct. App. 2016).

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; Brinegar v. United States, 338 U.S. 160, 183 (1949) (Jackson, J., dissenting) (reasonableness of warrantless searches "should depend somewhat upon the gravity of the offense," and otherwise impermissible search may be allowable "if it was the only way to save a threatened life and detect a vicious crime"). Another factor is the degree of the intrusion. 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, 392 U.S. at 17; Missouri v. McNeely, 569 U.S. 141, 151 (2013). Courts also consider whether "police made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy." McArthur, 531 U.S. at 332.

The police actions in this case were objectively reasonable. Police had reliable 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. Given the seriousness of the crime, police were justified in believing Carter posed an immediate public safety risk. Elizabeth Miller told police she was robbed by three men, all of whom were armed. See Wright, 416 S.C. at 369–70, 785 S.E.2d at 488 (holding warrantless search of hotel room was reasonable because "a potentially armed and dangerous murder suspect was attempting to flee, creating exigent circumstances"). One of these men was killed during the robbery, an act of vigilantism that could have prompted retaliation. This was not a "mine-run criminal investigation . . . ." Carpenter, 585 U.S. at 320.

Carter disputes this was a serious crime. He argues: "The State called this a 'home invasion,' but in reality, it was the botched robbery of a drug den." Brief of Petitioner at 20. It was undisputed at trial this was Elizabeth Miller's home. Her boyfriend, Melvin Chandler, stayed there "occasionally" and—without Miller's knowledge—kept some drugs there. (R.p.91, 128). Chandler kept a separate house where he sold drugs. (R.p.428).

In a case about privacy rights, it is unfortunate to hear Petitioner minimize the seriousness of this crime. Elizabeth Miller was awakened in the middle of the night by a group of masked men, had a gun held to her head, and was raped with a handgun. (R.p.101–02). The men were telling her to "take [her] clothes off" when they were interrupted by a vigilante. (R.p.102). This crime occurred at Hahn Village, a public housing complex in Aiken which has since been demolished.[6] Most people would not call Elizabeth Miller's home a castle, but under the law of South Carolina, every woman's home is her castle. This was the place where Miller's

[6] Matthew Enfinger, "Hahn Village demolition to begin in March, Aiken Housing Authority gives update on residents," Post and Courier, February 7, 2021. The article reads in part: "While Hahn Village has served a refuge [sic] for those seeking affordable housing in Aiken County, it has also seen its share of crime." The article recounts three incidents: and armed standoff with a wanted fugitive; a double homicide; and a "mob assault where shots were fired."

privacy rights should have been at their zenith. Instead, she was raped in her own bed. When she was able to get away, she witnessed a man lying on her floor with a gunshot wound to his head. This was a crime of the utmost seriousness, and police naturally viewed the perpetrators as armed and dangerous. Cf. Welch (police were not justified in making warrantless entry into home to seek evidence of misdemeanor DUI).

Police were also justified in believing any delay in apprehending him could result in the destruction of important evidence. The facts bore out this belief. On Carter's instructions, his girlfriend destroyed his cell phone, which contained potential evidence against him. (R.p.270). Someone wiped down the car Carter was driving before taking it to the police station, likely destroying biological evidence proving his co-defendants had been in the car. (R.p.254). If police had discovered Scruggs's blood in the car, this case would never have gone to trial. The car Carter was driving was a rental. If police had waited, it could have been returned to the rental company before police had a chance to search. Carter was located halfway across the state in Columbia, raising the possibility he was in the process of fleeing. The State had a compelling need to ascertain his whereabouts, confirm or dispel their suspicions that he was a culprit in this violent crime, and prevent the destruction of important evidence.

Not only was the government's need compelling in this case, the intrusion on Carter's privacy was minimal. 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 was his current location in public places, 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). The trial court correctly found the ping had little impact on Carter's privacy. (R.p.235–36).

The ping did not reveal a detailed chronicle of Carter's daily habits or associations, the privacy interest implicated by the long-term location data in Carpenter. It revealed nothing about Carter except the current location of his cell phone for a short period of time. At trial, this information was introduced only to explain how police found him, not as evidence in itself. As the solicitor explained, the State was not using the data "to inculpate him in any way, it's just to explain how they . . . located him." (R.p.232).

The United States Supreme Court took care in Carpenter to make clear that cell phone location data is subject to an exigent circumstances analysis: "[I]f law enforcement is confronted with an urgent situation, such fact-specific threats will likely justify the warrantless collection of CSLI." Carpenter, 138 S. Ct. at 2223. In Carpenter, there was no emergency compelling the government to obtain the historical location data without first obtaining a warrant. The situation is different with real-time data. Taking the time to go through the warrant procedure could defeat the purpose of obtaining the data—locating the suspect as soon as possible to prevent the destruction of evidence and danger to others. The circumstances justified the limited intrusion. See Commonwealth v. Almonor, 120 N.E.3d 1183, 1198 (Mass. 2019) (holding exigent circumstances justified warrantless "ping" of suspect's cell phone where police had reasonable grounds to believe that the defendant "posed an immediate risk to the safety of police and others" because he had committed a "brutal murder" and was armed, and there was a risk that the suspect

would attempt to conceal or destroy the weapon); United States v. Banks, 884 F.3d 998, 1012 (10th Cir.) (2018), cert. denied, 139 S. Ct. 638 (2018) (holding exigent circumstances justified warrantless ping where suspect threatened to kill police informant); United States v. Caraballo, 831 F.3d 95, 98, 102 (2d Cir. 2016), cert. denied, 137 S. Ct. 654 (2017) (holding exigent circumstances justified police use of real-time cell phone GPS location data where they discovered the body of a woman who was the victim of a homicide and concluded "her assailant could still be armed" and in possession of potential evidence).

Carter claims there was no exigency because police allowed Carter to leave the police station after the interview. But Carter ignores the realities of the situation. When police "let Carter go," they had gathered enough information to feel comfortable that Carter was not an immediate threat to public safety. Furthermore, they had reduced the danger that Carter would destroy evidence of the crime. While police interviewed Carter, they obtained consent to search the silver Nissan he drove as the getaway car. (R.p.250–51, 255). They searched for fingerprints, DNA, and weapons but found none. Having addressed their concerns about community safety and the destruction of evidence, police made the reasonable choice to refrain from arresting Carter until their investigation was complete. This was still only a half-day removed from the burglary. The police were not required to arrest Carter at the earliest opportunity. Hoffa v. United States, 385 U.S. 293, 310 (1966) ("The police are not required to guess at their peril the precise moment at which they have probable cause to arrest a suspect," or to "call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction."); State v. Bultron, 318 S.C. 323, 333, 457 S.E.2d

616, 622 (Ct. App. 1995). That the police showed diligence does not demonstrate there was no exigency.

At oral argument below, Carter asserted the exigent circumstances exception cannot justify pings except in the most extreme cases, such as the Boston Marathon bombing. But the exigent circumstances doctrine does not apply in only the most extreme of cases. Courts across the country have found exigent circumstances in circumstances very similar to those of this case. See Muhammad, 451 P.3d at 1060 (finding warrantless ping justified by exigent circumstances in rape and felony murder case where facts demonstrated that defendant "was in flight, that he might have been in the process of destroying evidence, that the evidence sought was in a mobile vehicle, and that the suspected crimes (murder and rape) were grave and violent charges"); State v. Sinapi, 295 A.3d 787, 807 (R.I. 2023) (holding exigent circumstances existed because "at the time of the warrantless search of defendant's real-time CSLI, the detectives were pursuing a fleeing suspect, potentially involved in a brutal murder"); United States v. Hobbs, 24 F.4th 965 (4th Cir.) (2022), cert. denied, 142 S. Ct. 2825 (2022) (finding exigent circumstances justified warrantless ping where suspect assaulted and threatened to kill his girlfriend, her family, and any responding officers if she called police, noting "officers did not attempt to enter Hobbs' home without a warrant or to track Hobbs' movements for an extended period"); United States v. Gilliam, 842 F.3d 801, 804 (2d Cir. 2016) (holding exigent circumstances justified warrantless ping where "officers had a substantial basis to believe that Gilliam was bringing [victim] to New York City to require her to work there as a prostitute").

In State v. Murphy, 292 A.3d 660 (Vt. 2023), the Vermont Supreme Court held exigent circumstances justified the warrantless ping of a murder suspect's cell phone. A fatal shooting occurred at 2:00 a.m. on December 27, and police developed Murphy as a suspect. Police

submitted an exigent request to ping Murphy's cell phone on December 28. Murphy's phone was turned off, but AT&T began sending law enforcement cell phone pings on December 29. Using the real-time location data, police located and arrested Murphy at a hotel. Id. at 663–65. The court found exigent circumstances justified the warrantless search because police had probable cause to believe Murphy had committed a grave and violent offense, was likely armed and dangerous, was likely to destroy evidence of the crime, and the search was unintrusive. Id. at 676–78 (citing Dorman v. United States, 435 F.2d 385, 393–94 (D.C. Cir. 1970) (holding exigent circumstances justified the warrantless search of a home several hours after an armed robbery where search was "only to locate the person of the suspect," even though police were not in "hot pursuit" but were investigating a "relatively recent crime")).

Commonwealth v. Reed is the only case cited by Carter where an appellate court found exigent circumstances did not justify a warrantless ping. There, Reed robbed an acquaintance at a gas station and fled the scene. There were no injuries. After pinging Reed's cell phone, police were able to locate and arrest Reed on the same evening. The Kentucky Supreme Court held the search was improper, but its opinion has limited persuasive value. The court explained the State did not present an exigent circumstances argument or any supporting facts to the trial court. Commonwealth v. Reed, 647 S.W.3d 237, 251 (Ky. 2022). The State did not present any facts showing evidence was in danger of being destroyed or the basis by which Reed could be considered a danger to others. Id. The opinion contains little analysis of exigent circumstances.

Regardless, Reed, a 4-3 decision, is a poor example for this Court to follow. Common sense South Carolinians expect that police will use reasonable, nonintrusive means to locate people suspected of serious, violent crimes when there is reliable information, promptly

obtained, which allows them to prevent further danger to the public and enable prosecution. The cases cited by the State show courts have overwhelmingly found exigency in similar cases.

Exigent circumstances under the South Carolina Constitution.

Carter argues: "Even if this Court concludes that the exigent circumstances exception applies under the Fourth Amendment, it should reject this application under the state constitution." Brief of Petitioner at 22. The framers of Article 1, section 10 were cognizant of the exigent circumstances doctrine, and did not intend that warrants should be required in all circumstances. See Payton, 445 U.S. at 591 (discussing the "obviously relevant, if not entirely dispositive, consideration of what the Framers of the Amendment might have thought to be reasonable"). On the contrary, the drafters recognized that police must be able "under certain circumstances, to act promptly" to "protect[] the populace against criminals." Proceedings of the Committee to Make a Study of the Constitution of South Carolina (1895), Gen. Assemb., 97th Sess. 5–7 (S.C. Oct. 6, 1967). They understood that the "old system of going to a magistrate to get a warrant" may not always be practicable, and one member declared he would "rather see a few private secrets aired than I would to have the police hamstrung." Id.

The exigent circumstances doctrine, like the right against unreasonable searches, was not created by the United States Supreme Court from thin air. District of Columbia v. Heller, 554 U.S. 570, 592 (2008) (recognizing the Fourth Amendment "codified a pre-existing right"). It has roots in the English common law, which remains in full force in South Carolina. Lange v. California, 141 S. Ct. 2011, 2023 (2021); Shecut v. McDowell, 5 S.C.L. 38 (S.C. Const. App. 1812). The appellate courts of this state have applied the exigent circumstances doctrine on countless occasions. See State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344, 348 n.2 (Ct. App. 2004) (noting the "uniformity and well-settled nature of exigent circumstances law in

federal and state courts throughout the United States"). There is no reason why this Court should create a separate exigency doctrine for the state constitution, especially when exigency is determined on a case-by-by basis.

D. The police acted in good faith.

Aiken police acted in good faith when they submitted an exigent request to ping Carter's phone. The Stored Communications Act authorized their conduct and police were entitled to rely on that law. Appellate precedent at the time suggested the ping was not even a search. Suppression was not appropriate.

The exclusionary rule does not apply "when the police act with an objectively 'reasonable good-faith belief' that their conduct is lawful." Hamrick v. State, 426 S.C. 638, 828 S.E.2d 596, 604 (2019). The sole purpose of the exclusionary rule is to deter misconduct by law enforcement. Davis v. United States, 564 U.S. 229, 246 (2011). The rule is aimed at "intentional conduct that was patently unconstitutional." Herring v. United States, 555 U.S. 135, 143 (2009). The police misconduct must be "substantial and deliberate." United States v. Leon, 468 U.S. 897, 909 (1984). The rule's costly toll upon truth-seeking and law enforcement objectives presents a "high obstacle for those urging its application." Hudson v. Michigan, 547 U.S. 586, 591(2006).

The good faith exception was first recognized in the context of officer reliance on search warrants, see Leon, but was quickly extended to reliance on statutes authorizing warrantless searches. In Illinois v. Krull, 480 U.S. 340 (1987), the United States Supreme Court explained that "[u]nless a statute is clearly unconstitutional, an officer cannot be expected to question the judgment of the legislature that passed the law." Id. at 349–50. Unless a statute's

unconstitutionality is "obvious," officers have a "responsibility to enforce the statute as written." Id. The court explained in Michigan v. DeFillippo:

> Police are charged to enforce laws until and unless they are declared unconstitutional. The enactment of a law forecloses speculation by enforcement officers concerning its constitutionality—with the possible exception of a law so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws. Society would be ill-served if its police officers took it upon themselves to determine which laws are and which are not constitutionally entitled to enforcement.

Michigan v. DeFillippo, 443 U.S. 31, 38 (1979).

At the time of this search, a federal statute authorized cell providers to share real-time location data upon request to law enforcement in exigent circumstances. The Stored Communications Act (SCA) provides that a cell phone provider "may divulge a record or other information pertaining to a subscriber . . . to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency . . . ." 18 U.S.C.A. § 2702(c). The SCA also establishes under what circumstances providers can share historical and real-time data with police in non-exigent circumstances.

A standard practice has developed around the Stored Communications Act. As has been documented in other reported cases, T-Mobile and other providers treat exigent requests differently than search warrants, in effect treating exigent requests as exigent and search warrants for records and long-term ping orders as non-exigent. This was the case in United States v. Banks, 884 F.3d 998, 1010 (10th Cir. 2018). There, officers obtained a search warrant for real-time location data and presented it to T-Mobile at around 10 p.m. on a Friday night. In response, "a T-Mobile representative said the office was 'done processing' 'normal ping orders' until the following Monday." The officers then sent an exigent request. T-Mobile responded quickly and

began sending pings shortly after midnight. Id. The same thing happened in United States v. Caraballo, 831 F.3d 95, 98–100 (2d Cir. 2016). There, officers obtained real-time data pursuant to an exigent request rather than a search warrant because, in their experience, this was the only way to receive a prompt response. The court explained: "In the officers' view, Sprint distinguished between requests made with a warrant and requests—through its emergency process—made without a warrant. The latter category of requests would be acted on rapidly, but the former would be processed in the order in which they were received, which could result in significant delay." Id. at 105 n.9. See also Hobbs, 24 F.4th at 972 ("Based on the record before us, we hold that the officers reasonably concluded that use of the 'exigent form' was necessary to obtain a prompt response from the cell phone provider when an armed and dangerous suspect was at large.").

In this case, Investigator Hembree testified that a "search warrant won't get you real-time data." (R.p.230). This is because T-Mobile treats exigent requests as the normal, lawful way to request real-time location data in emergency situations. This policy is a direct reflection of the Stored Communications Act. Indeed, the exigent request form sent in this case, provided by T-Mobile, specifically cites § 2702 of the Stored Communications Act as authority. (Court's Exhibit #2, R.p.639). This does not mean the Stored Communications Act trumps the Constitution. But it shows there was a system in place to process exigent requests created in good faith reliance on a duly-enacted federal statute. Cell phone providers developed a compliance system that was consistent with the Stored Communications Act, and officers acted within those parameters.

Federal courts have applied the good faith exception to exigent requests made pursuant to the SCA. United States v. Hammond, 996 F.3d 374, 393 (7th Cir. 2021) (holding officer

"reasonably relied on § 2702 of the Stored Communications Act in requesting Hammond's real-time CSLI."); United States v. Lewis, 38 F.4th 527, 539 (7th Cir. 2022), cert. denied, 143 S. Ct. 2499, 216 L. Ed. 2d 457 (2023) (applying good faith exception to real-time location data); United States v. Caraballo, 831 F.3d 95, 105 (2d Cir. 2016) (holding "federal law authorized a warrantless cell phone pinging in [exigent] circumstances"); United States v. Baker, 563 F. Supp. 3d 361, 384 (M.D. Pa. 2021); United States v. Takai, 943 F. Supp. 2d 1315, 1324 (D. Utah 2013).

Likewise, after Carpenter, courts applied the good faith exception to historical location data records obtained in compliance with the Stored Communications Act. See United States v. Carpenter, 926 F.3d 313, 314 (6th Cir. 2019) (on remand from United States Supreme Court, holding search of historical CSLI was conducted in good faith reliance on Stored Communications Act); United States v. Chavez, 894 F.3d 593, 608 (4th Cir. 2018) ("Chavez does not, and cannot, deny that investigators in this case reasonably relied on court orders and the Stored Communications Act in obtaining the cell site records. Without question, then, the good-faith exception to the exclusionary rule applies to investigators' actions here.").

Reliance on the SCA was objectively reasonable. Binding precedent at the time of the search strongly supported the constitutionality of the Act, and the reasonableness of this search in general. Even today, the law in two federal circuits is that pings of real-time data location in public places are not searches under the Fourth Amendment. United States v. Riley, 858 F.3d 1012, 1018 (6th Cir. 2017); United States v. Hammond, 996 F.3d 374, 391 (7th Cir. 2021). These courts, writing after Carpenter, relied on United States Supreme Court precedent to reach this conclusion. In particular, the holding of United States v. Knotts, 460 U.S. 276 (1983), is directly on point with the facts of this case: "A person travelling in an automobile on public

thoroughfares has no reasonable expectation of privacy in his movements from one place to another." Id. at 281. And United States v. Jones, 565 U.S. 400 (2012), involved police physically placing a GPS device on a car, a situation not present here. The Jones court wrote that its trespass-based theory of a search would not apply to "the transmission of electronic signals without trespass." Id. at 411. Neither Jones nor any other case existing at the time rendered the exigency provision of the SCA "clearly unconstitutional," and police were justified in their continued reliance on the exigent request procedure.

Police were not required to have appellate precedent explicitly authorizing their conduct in order to reasonably believe that conduct was lawful. Such a rule would freeze search and seizure law in time so that police would never use advancements in technology to fight crime. In the absence of a judicial opinion rendering the SCA "clearly unconstitutional," officers were justified in relying on it. United States v. Castellanos, No. 1:21-CR-348-TWT-JKL, 2023 WL 2466789 at 11 (N.D. Ga. Feb. 17, 2023), report and recommendation adopted, No. CV 1:21-CR-348-TWT, 2023 WL 2471337 (N.D. Ga. Mar. 10, 2023) (explaining "there was no settled authority at the time (just as there remains still no settled authority today) establishing that a warrant was necessary to obtain real-time CSLI, especially where the CSLI had been requested based on exigent circumstances.").

Finally, police showed restraint by obtaining a search warrant before obtaining historical location data and text messages. Their conduct was not "intentional" or "patently unconstitutional." Herring, 555 U.S. at 143. Instead, police made "reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy." Illinois v. McArthur, 531 U.S. at 332. The good faith exception applies.

E. Carter's interview was not the fruit of the search, and he would have been interviewed regardless.

Carter's interview was not "fruit of the poisonous tree." His statements were voluntary and occurred only after Carter coolly reflected on whether he wanted to speak to police. Furthermore, police would have eventually found and interviewed Carter without using cell phone data. This interview would have almost certainly played out in the same way: with Carter denying involvement in the robbery. The exclusionary rule does not apply.

Verbal evidence may be excluded if it "derives . . . *immediately* from an unlawful entry and an unauthorized arrest." Wong Sun v. United States, 371 U.S. 471, 485 and n.12 (1963) (emphasis added). In Wong Sun, police made a warrantless, forcible entry into a suspect's home and "almost immediately handcuffed and arrested him." Id. While under the stress of this exciting event, the suspect made an incriminating statement to police. The Supreme Court held the statements were inadmissible because they were not "sufficiently an act of free will to purge the primary taint of the unlawful invasion." Wong Sun, 371 U.S. at 486. By contrast, a statement given later by a different suspect, after he had been arraigned and returned voluntarily to speak with police, was admissible because it was voluntary and "the connection between the arrest and the statement had 'become so attenuated as to dissipate the taint.'" Id. at 491.

In subsequent cases, the Supreme Court has clarified 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 gives rise shortly thereafter 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 v. Illinois, 422 U.S. 590, 603–04 (1975) (citing Johnson v. Louisiana, 406 U.S. 356, 365 (1972)) (internal citation omitted).

When police initially made contact with Carter in the parking lot in Columbia, Carter lied and claimed he was driving a Dodge Cobalt, when he in fact was driving the silver Nissan Altima. (R.p.40–41). The State agrees this statement was not attenuated from the search such that it would not have been subject to the exclusionary rule.

However, Carter's interview in Aiken was sufficiently attenuated such that the exclusionary rule does not apply. 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 v. Alabama, 457 U.S. 687, 691 (1982). Carter was friendly with the investigators, riding unrestrained in the front passenger seat of a plainclothes officer's pickup truck and talking about sports. (R.p.33–34, 49). They did not talk about the robbery. (R.p.49–50). Carter was comfortable enough that he dozed off during the trip. (R.p.49). His girlfriend followed behind. (R.p.44). His voluntary decision to take an hour-long trip with officers and then sit for an interview was an intervening circumstance between the alleged illegal search and the evidence sought to be excluded. See United States v. Seidman, 156 F.3d 542, 549 (4th Cir. 1998) (explaining suppression of a defendant's voluntary statement was not appropriate where "the brief intrusion into Seidman's home was at worst a minor and technical invasion of Seidman's rights" and "Seidman was neither arrested without probable cause, nor involuntarily transported to the police station and interrogated in the hope that something would turn up").

The official conduct in this case was not flagrant. Carter's statement was not the product of a forcible, illegal search of his home, as in Wong Sun and Brown. There was no illegal seizure; Carter went with the officers willingly. There was no coercion or duress; Carter made his statement voluntarily after Miranda warnings. The voluntary nature of Carter's statement is evident from the video recording. This is not a case where the "impropriety . . . was obvious" or "had a quality of purposefulness." Brown v. Illinois, 422 U.S. 590, 605 (1975).

Finally, suppression of the interview was inappropriate under the inevitable discovery doctrine. Police would have found and spoken with Carter through alternative means, as they did with other suspects in the case. (R.p.476). Because Carter's statement was voluntary and intelligent, there is no reason to believe he would have given a different story to police if the interview had taken place a few hours later. Accordingly, "the State and the accused [ended up] in the same positions they would have been in had the impermissible conduct not taken place," and suppression was not appropriate. Nix v. Williams, 467 U.S. 431, 447 (1984). This Court should affirm.

F. Any error was harmless.

Even if this Court finds the statements should have been excluded, their admission was harmless. "An error is harmless if it did not reasonably affect the result of the trial." State v. Jenkins, 412 S.C. 643, 651, 773 S.E.2d 906, 910 (2015). Appellate courts must determine the materiality and prejudicial character of the error in relation to the entire case. Id. To warrant reversal based on the wrongful admission of evidence, the complaining party must prove resulting prejudice. State v. Green, 397 S.C. 268, 287, 724 S.E.2d 664, 673 (2012). The burden is on the Appellant to satisfy the court that there was prejudicial error. State v. Motley, 251 S.C. 568, 575, 164 S.E.2d 569, 572 (1968).

The State presented damning testimony from Carter's co-conspirator, Patrick Neely, laying out Carter's involvement in the crime. (R.p.284–87). Neely testified Carter was involved in the planning of the robbery, Carter used Neely's gun, and Carter told Neely the next morning that his brother had been shot during the robbery. Neely's testimony was corroborated through phone records and other witness testimony.

Multiple witnesses testified Carter was in possession of the silver Nissan on the night of the incident and after, including Sanqueesha Ramsey, the person who rented the car. Phone records obtained pursuant to a search warrant proved Carter was at Club Climax with his co-conspirators in the hours leading up to the burglary. Phone records also definitively showed coordination between Darius Scruggs and Rick Jackson during the burglary, further corroborating Neely's testimony about the others involved.

Carter's interview mostly concerned Carter's whereabouts leading up to the robbery, not his presence at the scene of the crime. While Carter did lie about his whereabouts earlier that night, he steadfastly maintained his innocence. His statement to police was not nearly as damaging as his other statements admitted at trial.

In particular, the State admitted Carter's confession to his girlfriend admitting involvement. She testified Carter admitted to being the "driver" for the burglary. (R.p.387). Carter instructed her to destroy their cell phones after police asked to interview him.

The State introduced Carter's jail calls, which showed clear consciousness of guilt. On August 26, 2025, Carter called Jasmine Hammond from jail and attempted to convince her to retract her statements to police. (R.p.600). Aware he was being recorded, he told her to "read between the lines" about what he was telling her. He told her to tell police she lied because she was mad at him for being unfaithful. (R.p.601). "That's the only thing that can . . . free me."

(R.p.602). On a call with an unknown female in 2016, Carter—identifying himself as "Jordan"— implored her to say she "flagged [him] down" on Greene Stret at "around 5:00, 5:05 or 5:10 or some shit. . . . tell them that I dropped you off at your house . . . and I went in your house to use the restroom and then I left." (R.p.610). He also implored her to tell Whitney (presumably Simpkins) to "change her statement so her statement can't be credible . . . ." (R.p.617). He told her to "switch the story" and tell police Carter was alone when he picked her up and that "we never went to River Glen, we never went to them apartments." (R.p.618). River Glen apartment complex was where Carter told Patrick Neely his brother was dead. (R.p.288–89). Neely testified he saw Whitney at River Glen that morning. (R.p.292). Whitney also testified she went there with Carter. On another call that same day, he asked for help in getting Whitney and Jazz (presumably Jasmine Hammond) to change their stories to "come up with something to free me." (R.p.630–34).

Carter's interview with police and statement at the scene—that he was driving a Dodge Dart, not a Nissan Altima—were not nearly as inculpatory. This evidence was not so damaging in relation to the other evidence that it tipped the scales in favor of conviction over acquittal. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding error is harmless when it "could not reasonably have affected the result of the trial"). Any error was harmless. This Court should affirm.

CONCLUSION

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

Respectfully submitted,

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