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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

The State of South Carolina,
Respondent,

vs.

Royal Daniel Williams, III,
Petitioner.

Appellate Case No. 2020-000049

PETITION FOR REHEARING

Undersigned counsel respectfully submits this petition for rehearing pursuant to Rule 221, SCACR. Counsel submits this Court has overlooked or misapprehended the facts and law relative to Petitioner's claims and therefore rehearing is necessary. Specifically, this Court overlooks the following facts: (1) that the DNA evidence connecting Petitioner to the crime could not be dated and was not inconsistent with Petitioner's innocence; (2) the cell phone data showed only that the two lived near one another (which was never disputed) and again was not inconsistent with Petitioner's innocence; (3) the testimony of the two witnesses was not consistent with the probable time of the victim's death; (4) the composite sketch did not resemble Petitioner and the women in the taxi allegedly with Petitioner did not identify him as being the person they rode with; (5) the existence of the black bookbag lacked any probative value. Also, the Court failed to engage Petitioner's claim that the search warrant was stale because it was three years old, and the Court misapplied the speedy trial analysis which shows Petitioner's right to a speedy trial was violated.

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

Relevant Facts

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

The State called Patricia Stewart, the victim's mother, as its first witness in this trial. Tr. 294. She testified her daughter, Sherilyn, worked at Starbucks and had a son. Tr. 194. Back on January 23, 2016, Stewart was taking care of her grandson while her daughter went to work. Tr. 195. She did not know what time her daughter was supposed to get off work. Tr. 195. Her son had spent the night with Ms. Stewart. Tr. 196. On Saturday, January 23, 2016, her daughter did not call her. Tr. 197. Around 4:00pm Ms. Stewart tried to call her daughter but did not get an answer. She tried until 10:00pm but still received no answer. She decided to go to her daughter's apartment. Tr. 197.

Stewart picked up her sister and drove to her daughter's apartment. She saw her daughter's car in the driveway. Tr. 197. She went to the apartment and found the door unlocked. It was dark inside and when she got to the end of the hallway she felt something. She turned on a light and saw her daughter on the floor. Tr. 197.

Stewart's sister called 911. She tried to perform CPR. Tr. 198. She stayed until the sheriff's department officers came to the apartment. Tr. 198. She provided a statement to an officer. Tr. 199.

Stewart testified her daughter did not have any enemies, or any disputes, with anyone. Tr. 200.

The State then called Lt. Michael Brumbles, a Lieutenant over patrol for the Florence County Sheriff's Office. Tr. 203. He received the call from dispatch and responded to the scene. Tr. 205. He testified he did not observe anything in disarray. Tr. 208. He did not see any signs of struggle. Tr. 209. On cross-examination, Brumbles admitted he had not been to the apartment before and was unable to testify whether or not anything inside the apartment was out of the ordinary. Tr. 212-13.

Thomas "Bo" Myers, the deputy coroner for Florence County testified. Tr. 214. He was called and responded to the scene around 11:38 that evening. Tr. 216. He noticed the body was fully clothed. She was wearing black. Her shoes were on, but one was "kind of knocked loose." Tr. 221, l. 7. He noticed a circular injury to the left side of her forehead that was consistent with a gunshot injury. Tr. 221. Based on the location of the lividity in her body, the coroner believed the body had been moved although he did not see any signs of the body having been moved. Tr. 223. Myers also testified the victim appeared cold to the touch. Tr. 225. From that, he deduced she had been dead for "longer than a few hours." He was incapable of providing a better approximation. Tr. 225. Given her degree of rigor mortis, Myers concluded she had been dead for more than several hours and less than days. Tr. 227. Meyers testified that the presumed time of death was 4 o'clock in the afternoon. Tr. 252. He conceded on cross-examination that the time of death was not a precise calculation. Tr. 259. In his capacity as coroner, Myers scheduled an autopsy with

the staff at MUSC. It was scheduled for January 25. Tr. 254. He received the final autopsy report on April 4. Tr. 255.

The State called Dr. Angelina Phillips, a forensic pathologist with the Medical University of South Carolina, to testify. Tr. 270. She was qualified without objection in the field of forensic pathology. Tr. 272. She testified the victim's cause of death was a gunshot wound to the head. Tr. 273. She could not determine whether the range was intermediate to distant. Tr. 274. There was a comforter at the scene with a hole in it. She did not find any evidence of defensive wounds. Tr. 275. She also did not find any evidence of recent sexual activity although she could not rule it out. Tr. 276. She identified the bullet as “medium-caliber" but did not make a specific identification. Tr. 277.

Sgt. Andrew Clendenin of the Florence County Sheriff's Office's crime scene unit also testified. Tr. 286. He arrived at the scene around midnight. Tr. 289. Law enforcement towed the victim's car back to the Florence County Sheriff's Office impound yard. Tr. 293. Clendenin took DNA swabs from the inside door handle and head rest of the car. Tr. 294. A number of photographs of the scene were introduced through his testimony. Tr. 296. He also obtained a sample of the victim's blood at the autopsy and placed it into evidence. Tr. 298. It was sent to the Richland County Sheriff's Office forensic lab. Tr. 298.

At the victim's apartment Clendenin noticed a partially smoked cigar laying on an end table. He Also noticed a comforter, pillow, and pillowcase were near the victim and had a gunshot through it. Tr. 298. She was wearing a Starbucks uniform. Tr. 299. He was unable to successfully lift any fingerprints from her apartment. Tr. 299. In the master bedroom there was a wastebasket. In the wastebasket he found a used condom. Tr. 300. Reviewing the car, Clendenin noticed the passenger seat of the car was reclined. He swabbed for DNA on the inside of the passenger side

door. Tr. 302. He also attempted to obtain DNA from the head rest on the reclined seat. Tr. 302. Clendenin noted he did not detect forced entry into the home and that the rear door was locked. Tr. 304. Both the condom and the condom wrapper were located in the wastebasket. Tr. 305. He took DNA samples from the inside of the passenger door handle. Tr. 306.

Law enforcement obtained samples from "several" other individuals and they were sent for additional testing. Tr. 310. He received a sample from appellant and sent it to the Richland County Sheriff's Office for testing. Tr. 312.

The next day Clendenin received a DVR system from Investigator Collins who captured surveillance near the victim's apartment. Tr. 313. Clendenin made a copy of the DVR and returned it to Collins. Tr. 314.

A gun believed to be connected with this case was sent to SLED for testing. There were fibers found on the gun inside the slide. They did not match anything. The bullet and the gun were not a match. Tr. 315.

Clendenin could not recall if the victim's mother found the door locked or unlocked. According to his report which he was presented with to refresh his memory, she claimed the door was unlocked when she arrived. Tr. 316.

No gun or shell casings were found at the crime scene. Tr. 317. Clendenin was unable to collect any fingerprints of evidentiary value. Tr. 318. He did not attempt to collect touch DNA from the front doorknob. Tr. 319. No items in the kitchen were processed. Tr. 323. DNA was extracted from the cigar. Tr. 326. Clendenin did not take an inventory of any other items in the trash can. Tr. 337. Clendenin obtained DNA from appellant on June 28, 2019 and February 26, 2019. Tr. 339.

Ashleigh Dixon of the Richland County Sheriff's Department testified. She is a serologist in the DNA laboratory. Tr. 384. She processed a number of items from the crime scene. Tr. 386. She did not conduct the DNA analysis. Tr. 388.

The State called its DNA analyst, John Barron. Tr. 407. Barron worked for the Richland County Sheriff's Department. Tr. 408. He was qualified as an expert without objection. Tr. 411. He testified the DNA on the cigar tip belonged to the victim. Tr. 414. The victim's DNA was also on the coffee cup. Tr. 414. The DNA on the headrest and door handle from the car was a mix of several people. Tr. 415. The victim's DNA was also on the condom. Tr. 416.

On Items 7 and 8—the headrest and door handle, there were multiple individuals identified. Tr. 422. On the headrest, it was 2,800 more likely appellant was in the mixture than any random person. Tr. 422. Regarding the door handle, the probability was that it was 120,000 more likely he was one of the individuals than a random person. Tr. 423. As for the condom, he was 12,500 more likely to be a source of the DNA than a random person. Tr. 423. Targeting the Y chromosome, Barron testified it that it was 1,850 more likely that appellant was the source of the DNA. Tr. 423. Combining those two analyses, Barron testified it was 23,000,000 times more likely appellant was the contributor of the DNA in the condom than any random person. Tr. 424. Without objection, Barron testified "it's pretty incriminating as far as I'm concerned as a scientist." Tr. 424, ll. 17-18. As discussed later, this testimony was vigorously challenged by defense counsel's expert witness. Two other male subjects' DNA were analyzed by Barron, but he excluded them from the scene. Tr. 425. Over the previous objection based on the search warrant, the court allowed the DNA report into evidence. Tr. 426. There was no seminal fluid present on the condom. Tr. 430, 457.

The State called James Swinton, a dispatcher with Speedy Cab Company. Tr. 503. He sent Keya Goins, a driver to an address in Florence at 3:40pm. Tr. 504, 504.

Linda Jones testified. Tr. 513. She is the cousin of Keya Bacote, a cab driver. Tr. 513. Bacote picked her up from work and then then took her on another call. Tr. 514. Jones was sitting in the second row of the van on the passenger side. Tr. 514. They arrived at an apartment duplex. Tr. 515. They picked up a male who sat beside her. Tr. 516. Later, she worked with law enforcement to create a sketch of the person she saw. Tr. 519. She created that sketch on February 5. Tr. 519. She thinks he may have had a hoodie on. Tr. 519. She thinks he may have had a bookbag. Tr. 521.

Deborah Goff from SLED drew the sketch. Tr. 532. Ms. Jones rated the composite drawing an 8 based on the similarity of the sketch to the person she believes she saw. Tr. 534. She did not draw a hoodie in the sketch because Ms. Jones did not mention a hoodie during the two hours they worked on the sketch. Tr. 538.

Ms. Bacote has been a driver with Speedy Cab for 25 years. Tr. 540. The call for the cab came in around 4:00 to 4:05. Tr. 543. That information was not noted on the manifest. She testified based on her memory because she regularly picks up Linda Jones at that time. Tr. 544. Her passenger called her twice—once from a number with a 704 area code, and then from a 803 area code. Tr. 545. She said he had "good wavy hair" in the front. Tr. 546. She saw travel items in his bag, like toothpaste and deodorant. Tr. 549. She told law enforcement she could not identify the person she picked up from any of the pictures they showed her. Tr. 552. She saw the same passenger two days later when he called for a cab. He had shaved his head. Tr. 552. She acknowledged she gave Chad Collins the following description of the person she picked up that day: "[H]e was about 5'9", 5'10", light-skinned, kind of good hair, pulled back in a ponytail, kind

of built, and I know he had a back." Tr. 557, ll. 10-13. At trial, she testified she "guessed on the ponytail." Tr. 559, l. 2.

The State then called Lerron Whitten to testify. Tr. 569. He lives on Plum Street in Darlington. Tr. 571. Law enforcement came to his house investigating the murder. He showed them the gun he had. Tr. 573. Appellant left a bookbag at his house. Tr. 574. He had known appellant for 3 or 4 months prior to this. Tr. 576. Without objection, he testified appellant was "going to court or something." Tr. 577, 578.

The State called Investigator Chad Collins of the Florence County Sheriff's Office to testify. He arrived at the victim's apartment at around 11:30 to 12:00. He and Investigator Thomas McFadden worked the case jointly. Tr. 627. He noted the victim was fully clothed. It appeared she had just come home from work. Tr. 635. Two days after the initial investigation at the crime scene, Collins received information that too him to a home on Springfield Road in Florence County. The owner had a camera system on his house. He was given permission to take the system to the Sheriff's office and downloaded material from it. Tr. 641. The video revealed the victim's car turning into the duplex. It also showed a van. Tr. 648. The date stamp was January 23, 2016 at 4:59pm. Tr. 649. The state incorrectly elicited Collin's testimony that that was "around 4 o'clock." Tr. 649, ll. 9-10.

Collins then started talking to taxi cab companies. Tr. 650. He reached out to a company in Darlington, Speedy's Cab and found out they had sent the taxi on that date and to that place. Tr. 651. He and McFadden then went to Speedy Cab Company. Tr. 651. They also spoke with Ms. Bacote. Tr. 652. They also spoke with Linda Jones. Tr. 653. They enlisted the assistance of the forensic artist. Tr. 654. At some point, the investigation took them to Leron Whitten's house although it is not clear what particular evidentiary item led them there. Tr. 655. His home was

searched and he provided a DNA sample. Tr. 656. Whitten's DNA was excluded from the small number of items processed by the Florence County Sheriff's Office. Tr. 656. Aaron Smith's DNA was also taken. Tr. 656. He too was excluded from the limited number of DNA samples law enforcement took from the victim's apartment.

Law enforcement realized Whitten and the appellant knew one another. Tr. 657. The officers' investigation took to Bennettsville, SC where appellant's grandmother lived. Tr. 657. Then they went to Darlington. Tr. 658. They also went to Darlington to where Chimyra Wright lived. She and appellant have a child together. Tr. 658. Collins was able to determine a Straight Talk phone was purchased by the victim in Laurinsburg, NC. Tr. 661.

Collins obtained search warrants for the victim's phone. Tr. 661. In analyzing the records, he testified he saw a number with some frequency. Tr. 663. He completed a search warrant with respect to that number and obtained the records. Tr. 664. The person connected with that number was appellant. Tr. 665. Contacts between the two began in January 14, 2016. Tr. 666. The last contact was on January 22, 2016. During that time there had been 383 contacts. Tr. 666. Beyond January 22, 2016 there were no other contacts between the two. Tr. 667. According to Collins, her phone last pinged off a cell tower at 3:11. Tr. 668. Other people tried to reach her at 4:52. Tr. 668-69. Collins testified appellant's phone pinged in areas near the victim. Tr. 669. At 4:42 it pinged off a tower in Darlington. Tr. 670.

Collins testified he began to review the video around 2:00 since that is the time he knew she would be heading to work. Tr. 677. At 2:51, the car turned down Century Drive in the direction of Pine Needles Road. Tr. 677. The car returned at 3:53pm. Tr. 679. The taxi cab arrived at 4:33pm. Tr. 679. Collins did not see anyone else pull up. Tr. 680.

The State conceded it was not a strong case during its closing argument. The Solicitor argued: I'm asking you to go back and vote your conscious (sic) please. If that means we're twisting things, please let that man go. But if you see it the way I see it, that is that law enforcement made a great investigation under not ideal circumstances, there wasn't a lot to go on to begin with but they developed the evidence and we're here today and we're asking you to grade our paper. Tr. 1163, ll. 8-14.

On cross-examination, Collins admitted he did not account for every vehicle that entered the area where the victim's duplex was located. He only accounted for the time frames in which he thought he might see something, given the victim's work schedule. Tr. 689. Collins did not obtain the victim's work records, so he did not know exactly when she left work. Tr. 690. He also admitted he could not tell from the video the color of the car he attributed as belonging to the victim. Tr. 692. He also could not see the license plate nor the people in the car. Tr. 692. Trial counsel pointed out during cross examination that if the victim did not return home until around 4 o'clock that afternoon, then the call for a cab pick up at that location would have occurred 13 minutes before the victim got home. Tr. 694.

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

Tr. 694, ll. 8-18.

According to the cab company logs, they received a call at 3:40 to go to the Century Drive address to pick up a passenger. A review of appellant's phone records, entered into evidence, did not show appellant making a call to the company. Tr. 702- 705. Appellant's next outward bound

call was at 4:42. Tr. 705. There is also no evidence in appellant's phone record that he received a call from the cab company trying to clarify where the apartment was located, as testified to by Bacote. Tr. 706.

It appeared appellant's phone pinging off a nearby cell tower occurred roughly an hour before the passenger left Century Drive in the cab. Tr. 708.

Collins also confirmed that Ms. Bacote did not inform him that she had a second encounter with the man from the apartment complex a week later. Tr. 711.

Bacote had testified that one of the numbers she received a call from was a North Carolina number with the area code 704. When law enforcement received the records, that number was traced to a Jessica Craig. Law enforcement did not undertake any efforts to speak with Ms. Craig, other than to call that number which came back as inactive. They did not even simply drive to Charlotte which is where the address was identified in the records. Tr. 715-18.

The person who requested the ride from the cab company also called back from a second number. Tr. 719. Law enforcement did not attempt to track down the person associated with that number either. Tr. 719-721.

The gun used in this case was never recovered. Tr. 730. The black bag that allegedly belonged to appellant was not at Leron Whitten's house when police initially searched it on February 1. Tr. 731. On February 22, when they went to Whitten's house a second time, they found the bag. Tr. 731. Jones, who actually observed the bag, never identified the bag at Whitten's house to be the bag she observed the man had in his possession when she picked him up from Century Drive. Tr. 732. Neither did Bacote. Tr. 733-34. There were no calls between the appellant and the victim on the date of her death. Tr. 741.

Lieutenant Chris Johnson of SLED testified. Tr. 756. Without objection he was qualified as an expert in the area of call detail analysis and cellular analysis. Tr. 757, 760-61. Johnson was asked to evaluate two sets of phone records, from Sprint and AT&T. Tr. 761. The signal strength around Florence is about a mile to a mile and a half. In the rural areas, it can reach to 3 miles. Tr. 775. Johnson created a call detail analysis of appellant's phone. Tr. 789. There are five towers in the area of the Century Drive address. Tr. 790. Phone companies typically do not provide the cellular range of their towers. Tr. 791. Johnson did not calculate the ranges of an of any of the towers. Tr. 812-13. It appears appellant's phone used a tower that serviced the Century Drive address at 3:26 and 3:55 pm on January 23, 2016. Tr. 796-97. From 4:42 until 8:16, it utilized a tower that was consistent with an address at 225 Plum Street. Tr. 798. At 3:13 on Januaryt 23, 2016, there was a routed call but Johnson could not tell if it was a voicemail or any other kind of communication. Tr. 822- 824.

The state called Thomas McFaddin to testify, a criminal investigator with the Florence County Sheriff's Office. Tr. 841. After talking to the victim's co-workers, law enforcement developed several potential suspects. Tr. 848. They obtained DNA swabs from Jonas Hicks, Kenton Gainey, Gary Floyd (her child's father), and Aaron Smith. Tr. 848. He also obtained a swab from Leron Whitten after additional investigation. Tr. 848. He initially believed Whitten was their suspect since the witnesses had described their passenger as being "built" and Whitten fit that description. Also, he had a weight bench. Tr. 849. The individuals from the cab did not identify him as the person in the cab with them. Tr. 849. Law enforcement also developed a lead in Bennettsville. Tr. 850. It appears the women from the cab excluded a number of different potential suspects. Tr. 850-51. Eventually they decided to call in SLED for the sketch artist. Tr. 851. Law enforcement took the sketch to Bennettsville and showed it to appellant's grandmother.

Tr. 852. They spoke to appellant's brother, Antonio, too. Tr. 853. Appellant's subscriber information from his cell phone showed an address of 326 Orange Street. Tr. 855. His address according to his driver's license is 200 Powell Street, Bennettsville, South Carolina. Tr. 861. McFaddin indicated they went to Whitten's home "several times," "at least three times" during the course of this investigation. Tr. 862. Law enforcement interviewed another suspect in Laurinburg, North Carolina based on a tip, but that did not pan out. Tr. 863-64.

McFaddin confirmed they never obtained the victim's work records. Tr. 867. Aaron Smith was another person the victim had sexual relations with. Tr. 870. Julius Hickson and the victim also had sexual relations during the time frame. Tr. 870. The victim's classmate, Kenton Raheem Gainey was also approached and provided a DNA sample. Tr. 872. His sample was never provided to SLED for DNA analysis. Tr. 873. Julius Hickson's DNA was never submitted for comparison. Tr. 873.

McFaddin confirmed that he took several pictures to the women in the cab, and that they told him some of them had "similar features" to the man in the cab but that they could not definitively identify them as the person in the cab that day. Tr. 875. They viewed appellant's picture, but they did not definitively identify him as the man in the cab. Tr. 876- 77.

McFaddin confirmed that he received an anonymous email implicating another person, Tyree Taylor. The women from the cab apparently knew Taylor and said the man in the cab was not him. Tr. 882. McFaddin testified they conducted additional investigation on Aaron Smith than other suspects. Tr. 885.

McFaddin testified they asked Gary Floyd where he was that night. He stated he was working at Wal-Mart. McFaddin said he spoke to someone at Wal-Mart but did not obtain a copy

of his work records from that night. Instead, he "continued moving on." Tr. 886, ll. 22-23. Kenton Gainey's girlfriend told the police she was with him, so they moved on. Tr. 889.

At the end of the State's case, trial counsel motioned for a directed verdict. Tr. 899.

The defense presented its case. Trial counsel called Thomas J. Slovenski, a cellular forensic examiner, analyst, author, instructor, and consultant to testify. Tr. 970. He was qualified as an expert without objection. Tr. 970. He was presented with the Sprint records for analysis. Tr. 972. He testified that the SLED analysis done in this case was antiquated and that most federal agencies are now using different methodology. Tr. 979. Slovenski prepared a report in connection with his work on this case. Tr. 985. Slovenski testified that the SLED report was narrow in scope and did not take into account other nearby cell towers providing service in that area on the Sprint network. Tr. 991. His report was, he said, more accurate because it utilized manufacturer and templates, and also takes into account a huge database of antenna information from that area. Tr. 993. He also testified that Sprint specifically states that routed calls are not to be taken as accurate due to the routing fashion. They should not be mapped because it could impact the accuracy of the mapping. Tr. 995.

The defense also presented the testimony of Robert Bennett, an expert with an advanced degree in pharmacy. Tr. 1023. He testified that law enforcement's conclusions regarding the DNA were not as strong as they sound.:

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

> that could also match. So the number is relatively low to be able to do a, have a degree of confidence of a confirmation that it is him and only him.

Tr. 1033, l. 15- 1034, l. 4.

As for the other items of evidence, the probability that appellant was a match was low. Tr. 1036- 1041.

Kendrall Davis also testified for the defense. Tr. 1063. For the five years she has known appellant, he has had a bald head. Tr. 1063.

At the close of the evidence, the defense again moved for a directed verdict. Tr. 1067.

ARGUMENTS

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

The State's case against appellant did not meet the standard for allowing the case to go to the jury at the directed verdict stage. As is well-established under South Carolina law, a case should be submitted to the jury when the evidence is circumstantial "if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). *See also State v. Williams*, 321 S.C.327, 332, 468 S.E.2d 626, 629 (1996). "The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict…" *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. *Id.* at 133, 322 S.E.2d at 452 (citing *State v. Manis*, 214 S.C. 99, 51 S.E.2d 370 (1949).

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

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

In *State v. Bostick* 392 S.C. 134, 708 S.E.2d 774 (2011), the South Carolina Supreme Court, analyzing the evidence in the light most fav1orable to the State, found that the State's evidence only raised a suspicion of guilt that Bostick committed the crime. The State's case consisted of the following evidence: (1) the decedent's car keys, calculator, and other items from her home were found in the Bostick family's burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick's mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick's jeans excluded about ninety-nine percent of the population, the blood could not be matched to the decedent's DNA. Also, the weapon used to kill the decedent was never introduced into evidence, and there was no evidence introduced to show that Bostick had knowledge the decedent may have

had money in the briefcase or if any money was, in fact, in the briefcase on that date. *Id*. at 141-42, 708 S.E.2d 778.

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

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

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

At a pre-trial hearing on June 17, 2018, defense counsel argued to suppress the fruits of the February 19, 2019 search warrant that secured Mr. Williams's cell phone records and tracking information. Counsel argued that the warrant (originally executed in March 2016), was now stale

because the State did not obtain a new warrant after ten days when it failed to obtain the proper information. Pre-Trial Transcript 52. The court denied the motion, holding that the warrant was valid because it had been executed within ten days of its issuance, even though the information provided by Sprint was not the information that law enforcement had intended to obtain.

According to the Supreme Court decision in *Carpenter v. United States,* an individual maintains a legitimate expectation of privacy, for Fourth Amendment purposes, in the record of his physical movements as captured through cell-site location information. *Carpenter v. United States, 585 U.S.___,* 138 S. Ct. 2206 (2018). The government must generally obtain a search warrant supported by probable cause before acquiring cell-site location information. *Id* at 2222. The governing law for issuance, execution, and return of search warrant for property connected with the commission of a crime issued in the State of South Carolina is found in SC Code of Law Ann. §17-13-140 (2016). This section unambiguously states that any warrant issued hereunder shall be executed and return made *only within ten days after it is dated*. S.C. Code Ann. *§ 17-13-140* (2016) (emphasis added). A search warrant will be invalidated for failure to observe the statutory ten-day requirement for execution and return of a warrant only if defendant can show he was prejudiced by the failure. *State v. Weaver*, 374 S.C. 313, 649 S.E.2d 479 (2007). The Fourth Circuit has explained that "there is no question that time is a crucial element of probable cause." *United States v. McCall*, 740 F.2d 1331, 1335 (4th Cir. 1984). This is because a judge may only issue a warrant if it is based on "allegations of 'facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time.'" *Id*. at 1335-36 (quoting *Sgro v. United States*, 287 U.S. 206, 210 (1932)); *State v. Winborne*, 273 S.C. 62, 254 S.E.2d 297 (1979).

On February 19, 2016, law enforcement obtained a search warrant to obtain the cell site information for Mr. William's cell phone number from Sprint Wireless. The warrant was executed

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

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

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

Trial counsel also argued to suppress the buccal swab that law enforcement obtained from Mr. Williams because there was insufficient evidence to suspect that Mr. William's committed the victim's murder. Tr. 60. Counsel further argued that the warrant was conclusory based on the standard set forth in *Illinois v. Gates*, 462 U.S. 213 (1982). The court denied the motion, stating that there was no issue with the warrant or the process in which it was obtained. Tr. 160.

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

> "The task of the issuing magistrate [in evaluating the existing of probable cause] is simply to make a practical, common-sense decision whether, given all the

> circumstances set forth in the affidavit [of a search warrant] before him [or her], including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." (quoting *Illinois v. Gates, supra).*

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

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

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

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

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

Here, similar to the *Register* case, Mr. Williams challenged the *Schmerber* order due to lack of probable cause. Clearly, according to *Snyder, Schmerber and Register,* the court prioritizes the suspect's Fourth Amendment rights against an unreasonable search and seizure over law enforcement's ability to collect evidence from just anybody. In this situation, the judge erred because the State failed to meet their strenuous burden of securing probable cause that Mr. Williams was guilty of any crime, enough to go to the judge and secure a buccal swab. Although Mr. William's DNA was found in a condom at the scene and in and around the victim's car, that fact alone proves no wrongdoing. At most it proved that Mr. Williams was in the victim's apartment at some point.

Additionally, issuing the search warrant violated the Supreme Court precedent set forth in *Illinois v. Gates* because the prosecution used conclusory statements in their warrant application without allowing the judge to evaluate the evidence and reach the conclusion on his own. This search warrant was granted without any showing that Mr. Williams committed any sort of crime. Therefore, because the State failed to meet its burden for a search warrant of the body, as laid out

in *Register,* the evidence of the buccal swab should have been suppressed. The trial court judge erred in allowing the State to obtain a buccal swab from Mr. Williams. This Court should reverse Williams's convictions.

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

Trial counsel argued at a pretrial hearing held on June 17, 2018 that the State's request for a continuance should be denied. Counsel stated that the continuance was unfair and would only prejudice the defendant. Tr. 54. The court granted the continuance, holding that the continuance for the State would ensure that they had a fair and impartial trial, the court also found no evidence of prejudice. *Id at 57, 58.*

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

In this instance, the trial court abused its discretion when it granted a continuance to the state to correct an evidentiary issue. In pretrial motions, the state argued that the granting of the continuance was fair because the appellant received a continuance earlier in the proceedings. The

difference is, however, that Mr. Williams's attorney only had four months to work on the case when it asked the judge for its continuance. The State had three years to pull its case together. The whole time Williams remained in pre-trial detention. It was an abuse of discretion on the trial court's part because the state produced no evidence that any new evidence of value would be produced because of this continuance. Meanwhile, Mr. Williams remained in pre-trial detention without a bond when the State had years to pull its case together. The trial court abused its discretion in granting the continuance and simply should have not allowed the State to correct its "evidentiary issue." Respectfully, this Court should reverse Mr. Williams's convictions and sentence.

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

At the pre-trial hearing, trial counsel argued the court should dismiss the indictments against Mr. Williams because his three-year pre-trial detention violated his right to a speedy trial. Tr. 134. Counsel argued a violation of Mr. Williams's right to a speedy trial pursuant to *Barker v. Wingo*, 407 U.S. 514 (1972). The court held that, although the timing was concerning, the facts did not meet the criteria set forth for a violation of Mr. Williams's right to a speedy trial. Tr. 150.

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

In *Barker v. Wingo*, the Supreme Court created a balancing test to determine whether a defendant's right to a speedy trial has been violated. First, there must be a determination that the delay is presumptively prejudicial. *Id* at 482. When analyzing delay, the Supreme Court held that the clock starts running on a defendant's speedy trial right when he is indicted, arrested, or otherwise officially accused. *Langford*, 735 S.E.2d at 482. There were twenty-three months in between his indictment and his time for trial with facts that the court deemed not that complicated. *Id.* Therefore, the South Carolina Supreme Court deemed the delay to be presumptively prejudicial. After there appears to be a delay, next the court looks at why. According to the Supreme Court, "different weights should be assigned to different reasons." *Barker*, 92 S.Ct. at 2192. A deliberate attempt to delay trial to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than the defendant. *Id.* Third factor is the defendant's responsibility to assert his rights. *Id.* The last factor is the prejudice to the defendant, the court in *Barker* identified three interests that this is meant to protect (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused and (iii) to limit the possibility that the defense will be impaired. *Id.*

In this case, this Court should find that Williams's rights to a speedy trial, as protected by the Sixth Amendment, were violated based on the Supreme Court test set forth in the *Barker* case. The first prong of the balancing test is that the delay is presumptively prejudicial. In *Langford*, the *Barker* analysis was used to prove that there was not a due process violation. In *Langford,* there was a twenty-three-month delay in bringing defendant to trial on charges of armed robbery, kidnapping, burglary, and civil conspiracy. *Id* at 483. This was held to be presumptively prejudicial

because although there were multiple charges, the facts were not complicated. Here, similar to *Langford*, the facts of the case are not complicated and there was a three-year delay between indicted and when Appellant was brought to trial. The delay is presumptively prejudicial. The next prong in the analysis is the reasoning as to why the delay occurred. As mentioned earlier the Supreme held that different weights should be assigned for different reasons. Contrary to the facts in *Langford,* in this case, the delay would be what the Supreme Court classifies as a "neutral mistake" by the State. The state argued that they needed the continuance to correct an evidentiary mistake and as the state claimed in *Barker*, this factor weighs less heavily, but nonetheless on the State because the burden must weigh on the government rather than the defendant. *Barker*, 92 S.Ct. at 2192. Therefore, this Court should construe this factor in favor of Mr. Williams. Third, is the defendant's assertion of the right to a speedy trial. Although Mr. Williams did not file a motion asserting his right to a speedy trial, that fact alone does not defeat his claim. The onus remains on the State to bring a defendant to trial. Lastly, the court considers the prejudice to the defendant. In *Langford,* the state held that there was no prejudice to the defendant because he caused the delay by attempting coerce the witness out of testifying. In contrast, Mr. Williams did nothing to contribute to the delay.

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

CONCLUSION

Respectfully, this Court should grant rehearing.

Respectfully submitted,

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April 25, 2024

CERTIFICATE OF SERVICE

Counsel hereby certifies she has served a copy of this petition for rehearing on Joe Maye of the South Carolina Attorney General's Office via email at JMaye@scag.gov on this date, April 25, 2024.

/s/ Elizabeth Franklin-Best