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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Robert J. Bonds, Circuit Court Judge

Opinion No. 2024-UP-263

THE STATE,

RESPONDENT,

V.

ALEXANDER RHUE, JR.,

PETITIONER.

APPELLATE CASE NO. 2021-001306

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Alexander Rhue, Jr., respectfully requests that this Court grant rehearing. On July 17, 2024, this Court affirmed Petitioner's convictions for murder and obstruction of justice. State v. Alexander Rhue, Jr., No. 2024-UP-263 (S.C. Ct.App. July 17, 2024). Counsel respectfully submits that, in finding that the third search warrant of the Rhue residence was supported by probable cause, this Court overlooked the fact that the deceased was seen **leaving** the Rhue residence prior to his disappearance. The facts that the deceased stayed at the residence and this was purportedly the last place he was seen are not sufficient to establish probable cause. Under the description of

items sought the affidavit provides the magistrate with the information that the deceased was tied with speaker wire but provides no reason as to why police believe that he was tied with the wire in the house. The State failed to show how or when the deceased was killed, bound and ended up in the Black River some distance from the Rhue residence.

The circumstances set forth in the affidavit in support of the third search warrant fail to provide the magistrate with information to believe that evidence of a crime would be found inside the residence. When the unlawful information is redacted from the affidavit in support of the third search warrant, the reason affiant's belief that the property sought is on the subject premises reads:

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

The third search warrant lacked probable cause. There is nothing in the affidavit to link the discovery of the body in the river to the Rhue residence. Counsel respectfully seeks rehearing.

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

On September 24, 2021, prior to the trial that began on October 11, 2021, the judge heard pre-trial motions. (R. pp. 1-59). Petitioner submitted a written motion to suppress and memorandum of law citing both the Fourth Amendment to the United States Constitution and the South Carolina Constitution, art. I, §10. (R. p. 18). The motion addressed three separate search warrants executed on the Highmarket Street house where the deceased and his wife, Tiesh

Rhue lived, and where Petitioner, Alexander Rhue Jr. and his father, Alexander Rhue Sr., were frequent overnight guests. Petitioner argued the motion to suppress during the pre-trial hearing. (R. pp. 18-51). The judge asked the State to submit a memorandum. (R. p. 49, lines 16-22; R. p. 1832).

The judge addressed the motion to suppress in a written order. (R. p. 1858). In the written order the judge wrote:

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

(R. p. 1859). The judge found that the first and second search warrants lacked probable cause.

(R. p. 1860). With regard to the third search warrant, the judge wrote, "The third search warrant of the Rhue home did have sufficient probable cause independent from the prior warrants. The third search warrant was served after the victim's body was found wrapped in wire, and the warrant sought an several things in the home including wire similar that the kind found on the victim, blood hair, DNA, weapons, and clothing. Any evidence discovered during the execution of the first and second warrants would have been inevitably discovered during the search under the third search warrant. Therefore, the evidence discovered during the searches shall not be suppressed." (R. p. 1860). The trial judge correctly found that the first and second search warrants lacked probable cause. The judge, however, erred in finding that the third search warrant provided sufficient probable cause and refusing to suppress evidence based on the inevitable discovery doctrine.

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

In South Carolina, the General Assembly has imposed stricter requirements than federal law for issuing a search warrant. Search warrants may be issued “only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant.” S.C. Code Ann. § 17-13-140; *See State v. McKnight*, 291 S.C. 110, 352 S.E.2d 471 (1987). “The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter.” Baccus, 367 S.C. at 50-51, 625 S.E.2d at 221 (citing Franks v. Delaware, 438 U.S. 154 (1978)). If no supplemental testimony is taken, a magistrate’s probable cause determination is limited to the four corners of the search warrant affidavit. State v. Kinloch, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014) (citing State v. Herring, 387 S.C. 201, 214, 692 S.E.2d 490, 497 (2009)).

Search Warrant #1

The trial judge correctly found that the first search warrant lacked probable cause. Under the description of property sought the affidavit in support of the first search warrant reads, “Investigators are searching for bank records, legal documents, identifications, passports, debit/credit cards, phone records, vehicle information, insurance paperwork, travel documents, or anything that can aid investigators in ascertaining the whereabouts of Leon Harrison Jr.” (R. p. 1819). Under the reason for affiant’s belief that the property sought is on the subject premises the affidavit reads:

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

(R. p. 1820).

S.C. Code Ann. § 17-13-140 provides:

Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize (1) stolen or embezzled property; (2) property, the possession of which is unlawful; (3) property which is being used or has been used in the commission of a criminal offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; (4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense; (5) any narcotic drugs, barbiturates, amphetamines or other drugs restricted to sale, possession, or use on prescription only, which are manufactured, possessed, controlled, sold, prescribed, administered, dispensed or compounded in violation of any of the laws of this State or of the United States. Narcotics, barbiturates or other drugs seized hereunder shall be disposed of as provided by § 44-53-520.

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

Search Warrant #2

Under the description of property sought the affidavit in support of the second search warrant reads, “Blood evidence, gun powder residue, bullets, fibers, any and all DNA evidence, carpet, blankets, flooring, and trace evidence that could be linked with the location of the missing person.” (R. p. 1824). Under the reason for affiant’s belief that the property sought is on the subject premises the affidavit reads:

On 02/25/2017 the victim Leon Harrison Jr. went missing from his residence at **** Highmarket St. in the City of Georgetown. On 03/10/2017 at ****Highmarket St. whilst conducting a search warrant of the premises for evidence that could aid in locating the victim Harrison. There was foreign stain on the carpet in victim’s bedroom which is consistent with blood. Beside the stain was a rug covering a section of carpet padding where the carpet was

removed. Investigators observe a stain on the carpet padding which was tested, tested positive on a presumptive blood test.. Now a search warrant is being requested for the furtherance of developing the blood evidence and any evidence that could further the investigation.

(R. p. 1824).

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

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

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

Search Warrant #3

Under the description of property sought the affidavit in support of the third search warrant reads, “All areas of the before mentioned property or places located at **** Highmarket St. in search any speaker wire consistent with crime scene photos taken by the Georgetown County Sheriff’s Office, which shows the victim was bound around his wrist and ankles with speaker wire. Also any knives, edged cutting tools/weapons, blood, hairs, fibers, any and all trace DNA evidence, clothing to include, black work jean, black or blue work T-shirt, work boots.” (R. p. 1829). Under the reason affiant’s belief that the property sought is on the subject premises the affidavit reads:

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

(R. p. 1830).

The trial judge found that, “The third search warrant of the Rhue home did have sufficient probable cause independent from the prior warrants.” (R. p. 1860). The trial judge erred. When the information obtained from the first two warrants is excised from the affidavit, the affidavit for the third search warrant lacks probable cause. The trial judge also wrote, “Any evidence discovered during the execution of the first and second warrants would have been inevitably discovered during the search under the third search warrant. Therefore, the evidence discovered during the searches shall not be suppressed.” (R. p. 1860). The inevitable discovery doctrine is not applicable because, when the unlawful information is redacted, the third search warrant lacked probable cause. The evidence obtained from the first and second search warrants would not have been inevitably discovered during the search under the third search warrant because the third search warrant also lacked probable cause.

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

The inevitable discovery doctrine, one exception to the exclusionary rule, states that if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful

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

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

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

Relying on State v. Davis, 371 S.C. 412, 639 S.E.2d 457 (2007), the trial court first redacted any reference to Bantan's initial consent due to the fact that his will was overcome by the officers' show of force and then found the remaining search warrant still gave rise to probable cause to search the residence. See Davis, 371 S.C. at 415–17, 639 S.E.2d at 459–60 (noting that a court may redact alleged misstatements in an affidavit and consider the remaining content of the affidavit to determine whether it is sufficient to establish probable cause).

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

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

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

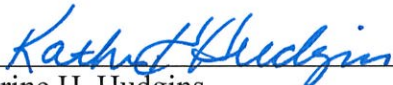
The affidavit, once properly redacted, lacks probable cause for the magistrate to determine that evidence of a crime will be found inside the house. The facts that the deceased stayed at the house and this was purportedly the last place he was seen are not sufficient to establish probable cause. Under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

In affirming the convictions and finding that the third search warrant was supported by probable cause this Court wrote, "Considering the body's state of decomposition, the evidence of homicidal activity, and that the Rhue residence was the last place Victim was seen alive before the recovery of his remains and his last known residence, it is logical that police would seek to search the premises as part of the ensuing homicide investigation. Indeed, authorities would have been remiss *not* to search the last place Victim was seen alive." State v. Rhue, No.

2021-001306, 2024 WL 3441434, at *1 (S.C. Ct. App. July 17, 2024). While perhaps logical for the police to want to search the Rhue residence, probable cause was still required. The police were remiss in failing to provide the magistrate with probable cause to believe that evidence of a crime would be found inside the residence on three separate occasions.

Counsel respectfully submits that this Court overlooked the fact that the deceased was seen **leaving** the Rhue residence prior to his disappearance. The wife of the deceased, Tiesh Rhue, told the police that she last saw him at the house on Highmarket Street on the night of February 25, 2017. (R. p. 479, lines 1-19). She told the police that they argued about him talking with another woman, he gathered some clothes and left. Kyle Walton, formerly with the Georgetown Police Department, testified that based on a Facebook post he interviewed Calvin Thomas, a friend of JR, the deceased. (R. p. 1066, lines 7-20). Thomas told Walton that on the night of February 25, 2017, he saw JR walking near the old Bank of America building at the intersection of Highmarket and Fraser Streets. (R. p. 1067, lines 5-23).

The circumstances set forth in the affidavit in support of the third search warrant fail to provide the magistrate with information to believe that evidence of a crime would be found inside the residence. There is nothing in the affidavit to link the discovery of the body in the river to the Rhue residence. The third search warrant lacked probable cause. Counsel respectfully seeks rehearing.



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This 29th day of July, 2024.

ATTORNEY FOR PETITIONER

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

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V.

ALEXANDER RHUE, JR.,

PETITIONER.

APPELLATE CASE NO. 2021-001306

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Alexander Rhue, #297969, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 29th day of July, 2024.



Kathrine H. Hudgins
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ATTORNEY FOR PETITIONER

From: [Stock, Chris](#)
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Subject: Rhue, A. - Petition for Rehearing - 2021-001306
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Ms. Brown,

Please find attached for service the Petition for Rehearing for Alexander Rhue's appeal which will be filed today with the Court of Appeals.

Thank you.
Chris

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