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Aug 26 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2021-001306

THE STATE,

RESPONDENT,

v.

ALEXANDER RHUE, JR.,

APPELLANT.

RETURN TO PETITION FOR REHEARING

Appellant Alexander Rhue, Jr., requests a rehearing of his appeal in this murder and obstruction case, arguing that this Court erred in finding police had probable cause to search the residence and last known location of an individual missing for two weeks after his decomposing body was found in a river. Nothing in the Court's opinion rested on an oversight or misapprehension of fact or law. *See* Rule 221(a), SCACR. The petition should be denied.

ARGUMENT

This Court properly found that probable cause existed for the issuance of the third search warrant, subjecting any evidence found under the first two warrants to the inevitable discovery doctrine.

Three search warrants were issued in this case; Appellant challenges evidence uncovered as a result of the first two searches. However, regardless of the validity of the initial warrants,¹ this Court properly found that the third search warrant was supported by probable cause and would have led to the inevitable discovery of the evidence gathered pursuant to the disputed warrants. *See State v. Moore*, 429 S.C. 465, 481, 839 S.E.2d 882, 890 (2020) (“The inevitable discovery doctrine provides that illegally obtained information may nevertheless be admissible if the prosecution can establish by a preponderance of the evidence that the information would have ultimately been discovered by lawful means.” (quoting *State v. Cardwell*, 425 S.C. 595, 601, 824 S.E.2d 451, 454 (2019)) (cleaned up)).

As a result, if the third warrant was supported by probable cause, the trial court properly refused to suppress the evidence. And as this Court correctly found in its opinion on this matter:

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, Op. No. 2024-UP-263 (S.C. Ct. App. filed July 17, 2024).

Appellant attempts to undermine the validity of the third search warrant with the finest parsing of language, arguing that “this Court overlooked the fact that the deceased was seen **leaving** the Rhue residence prior to his disappearance.” Pet. for Rehearing at 1, 11. Appellant also highlights testimony at trial that the victim was seen at another location the evening he disappeared.

¹ The State does not concede that probable cause did not exist for the first two search warrants. However, because this Court focused on the third search warrant and the inevitable discovery doctrine in its ruling here, the State follows the Court’s lead.

Neither point changes the fact that the last confirmed, specific time the victim was seen alive was at the Rhue residence.

“The term ‘probable cause’ does not import absolute certainty. Rather, in determining whether a search warrant should be issued, magistrates are concerned with probabilities and not certainties.” *State v. Crummey*, 443 S.C. 94, 107, 902 S.E.2d 391, 398 (Ct. App. 2024) (quoting *State v. Dupree*, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003)). This Court applies a deferential standard of review to determine “whether the [issuing] magistrate had substantial basis for concluding probable cause existed.” *State v. Driggers*, 322 S.C. 506, 510, 473 S.E.2d 57, 59 (Ct. App. 1996).

As Appellant notes, when the disputed information from the affidavit for the third search warrant is removed, 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. [REDACTIONS] On Saturday 3/11/2017, a victim was found near Colonel Cole Dr., in Georgetown County, in the Black River. The victim[’s] 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.²

Pet. at 10 (first alteration in original).

Appellant seems to argue that the State must develop a complete theory of the case before a search warrant can be issued. *See* Pet. at 10 (saying the affidavit “provides no reason as to why police believe that [the victim] was tied with the wire in the house,” and that it does not “show how or when the deceased was killed, bound and ended up in the Black River some distance from

² Appellant stretches the record by stating that “the trial judge failed to remove the unlawful information included from the first and second search warrants.” Pet. at 9. The trial court specifically found that “[t]he third search warrant of the Rhue home did have sufficient probable cause *independent from the prior warrants.*” (R. p. 1860) (emphasis added).

the Highmarket House”). That is not required. Search warrants are often investigatory tools to help authorities develop evidence of how a suspected crime occurred. *See* S.C. Code Ann. § 17-13-140 (allowing search warrants to help find, among other things, “property constituting evidence of crime or tending to show that a particular person committed a criminal offense”).

All that is required for this court to affirm the trial court’s ruling is a finding that the issuing judge had a “substantial basis” for the belief that the location authorities sought to search would yield evidence of a crime. *Driggers*, 322 S.C. at 510, 473 S.E.2d at 59; *see also Crummey*, 443 S.C. at 107, 902 S.E.3d at 398 (“A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” (quoting *State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014))). The issuing judge correctly concluded that there was a fair probability that police might find evidence of a crime at the last known location of a badly decomposed homicide victim, whether the victim was coming to that location, departing from it, or remaining there for a while.

Petitioner’s attempt to invoke the testimony of Kyle Walton, a former Georgetown Police Officer, fares no better. Walton testified that he heard from a witness that the victim was seen around a nearby bank the same evening; however, Walton also said the witness’s statements were never confirmed and did not provide a specific time when the victim was seen at the bank. (R. p. 1070, lines 9–13). Appellant does not explain how it would be impossible for the victim to have been at the bank prior to arriving at the Rhue residence.

CONCLUSION

Appellant would have this Court declare that there is no probable cause to search the last known location of a homicide victim because he was reportedly seen leaving that location. The

idea that the Court overlooked or misapprehended that small detail is unfounded; the idea that this alleged mistake tainted the Court's opinion lacks credibility. The petition for rehearing should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to R. Brandon Larrabee, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Return to Petition for Rehearing has been forwarded to Appellant's counsel, Katherine H. Hudgins, Esq., via email today, August 26, 2024 to KHudgins@sccid.sc.gov and to her assistant at cstock@sccid.sc.gov.

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

This 26th day of August, 2024.

s/ Donna D'Alessio

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