RECEIVED
Aug 28 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Florence County
Thomas A. Russo, Circuit Court Judge

Opinion No. 2024-UP-128 (S.C. Ct. App. filed April 17, 2024)

Lower Court Case No. 2017-GS-21-00588

THE STATE,

RESPONDENT,

V.

ROYAL DANIEL WILLIAMS, III,

PETITIONER.

APPELLATE CASE NO. 2024-000838

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

JORDAN WAYBURN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on May 6, 2024.

QUESTION PRESENTED

1. Did the trial court and Court of Appeals err by allowing the use of Williams's cell site location information at trial, thus permitting investigators to conduct a second search three years after their search warrant expired?

STATEMENT OF THE CASE

Petitioner Royal Williams, III was indicted for murder in 2017. R. 1576. In September 2019, he was tried before Judge Thomas Russo and a jury in Florence County. R. 269. Thurmond Brooker represented him at trial. R. 269. Solicitor Ed Clements and Frederick Hoefer, II represented the state. R. 269. The jury found Williams guilty, and Judge Russo sentenced him to life in prison. R. 1446:9-11; 1454:2-6.

Brooker filed a notice of appeal and initial brief in the Court of Appeals. Elizabeth Franklin-Best and Jillian Lesley then took over the appeal. William Blitch and Joseph Maye represented the state. The Court of Appeals (Geathers, Hewitt, and Vinson, JJ.) affirmed in an unpublished opinion. Franklin-Best filed a petition for rehearing, which the Court of Appeals denied on May 6, 2024. Subsequently, counsel assumed Williams's representation, and this petition for certiorari follows.

STATEMENT OF FACTS

On January 23, 2016, someone murdered Sherilyn Joseph in her apartment by shooting her in the head. That afternoon, Joseph's mother was unable to reach her daughter and late that night went to Joseph's apartment at 3618-A Century Drive in Florence. R. 462:13-17; 465:2-24. Investigators never found the murder weapon. R. 585:19-24; 1132:10-17. The deputy coroner put the time of death around 4:00 p.m. R. 495:14-20. As the state explained at the beginning of closing arguments, "this was a case of who done it." R. 1361:16-17.

Based on a neighbor's security footage, investigators learned a cab picked someone up from Joseph's apartment around the time of death. R. 908:19-909:22; 916:3-5. They eventually tracked down Speedy Cab in Darlington and learned it received a call at 3:40 p.m. for a pick-up at Joseph's address. R. 918:18-919:1. Lakeya Bacote, the cab driver who answered the call, eventually testified she picked up a man with "good wavy hair in the front." R. 814:25. She testified the man had a black bag with toiletries, and she dropped him off on Donerail Street in Darlington. R. 816:16-817:16. When another investigator showed Bacote several pictures of potential suspects, she "told him somebody that looked could be him, this person [sic]," but that she "wasn't quite sure with the pictures he was showing me." R. 819:20-25. Bacote testified she was never shown a photo of Williams. R. 827:23-828:8.

Bacote's cousin Linda Jones was a passenger in the cab that day. R. 781:6-25. Jones testified at trial she was in the second row of the minivan when Bacote picked up the man from Century Drive. R. 782:17-25. Jones testified she rode to Darlington with the man in the cab. R. 785:7-11. Jones met with a sketch artist at the police station—SLED agent Deborah Goff, R. 800:4-8—and developed a sketch of the man in the cab that Jones identified at trial. R. 785:24-787:21; 801:10-22; 1460. In her interview Jones did not tell Goff the man was wearing a hoodie.

R. 806:5-11. However, at trial Jones described the man as wearing a hoodie, having "low cut" hair, and carrying a black bag. R.787:22-788:6; 789:10-790:2. Jones remembered investigators showing her photos of potential suspects, but she told them none of the pictures were the man from Century Drive. R. 792:19-793:13; 827:10-21. Investigator McFadden testified he showed Bacote and Jones a photo of Williams but they could not positively identify him as the man in the cab and "could not say for a fact it was him." R. 1144:14-1145:17.

On February 19, 2016, Chad Collins from the Florence County Sheriff's Office obtained a warrant for Sprint's records on a particular phone number. R. 1599-1600. Collins executed the warrant on February 23, and Sprint produced some records. R. 1601. Three years later, in 2019, the state discovered Sprint sent the wrong information. R. 422:22-423:4; 370:7-14. Sprint had produced the records for an unrelated phone number with location data from West Virginia. R. 102:1-6. At that time the state chose not to obtain a new warrant—even though the 2016 warrant specified that it "shall not be valid for more than ten days from the date of issuance," R. 1600—and contacted Sprint again to receive the location records. R. 102:6-12. Sprint complied and it identified the requested phone number as registered to Williams. R. 1465.

Prior to trial Williams made a motion to suppress his cell site location information. R. 343:4-14, 356:10-14. He argued that when investigators "went back to Sprint three years later" because it "gave [them] the wrong cell site location information, they did not submit a new warrant to Sprint, . . . which they were required to [do] because that old warrant was dead." R. 358:3-7. He objected because the "information was being submitted warrantless, which obviously *Carpenter* [*v. United States*, 585 U.S. 296 (2018),] says you can't do anymore." R. 359:7-9; *see* R. 101:6-21. Williams argued that in 2019 the state needed to go "back through the probable cause procedure" before requesting the documents again based on the expired warrant. R. 373:3-9.

Judge Russo denied his motion and allowed the state to admit the Sprint records at trial. R. 422:22-423:12; 751:16-22. He reasoned that "simply exchanging or swapping out the correct records for the incorrect records pursuant to that initial warrant would not require the issuance of an additional search warrant." R. 423:6-9.

Based on the cell site location information, the state had an expert create fifteen maps of Williams's location. R. 1052:13-18. He testified the information placed Williams at Joseph's apartment around the time of her death and in Darlington when Bacote dropped off the man from Century Drive. R. 1057:5-17; 1052:13-20. Williams was ultimately convicted of murder and sentenced to life in prison. R. 1446:9-11; 1454:2-6; 1578.

Williams appealed raising five issues, all of which the Court of Appeals rejected in an unpublished opinion. *State v. Williams*, Op. No. 2024-UP-128 (S.C. Ct. App. filed Apr. 17, 2024); App. 1-5. As to the cell site location information, Williams argued the 2016 warrant was expired and ineffective and that, pursuant to *Carpenter*, the state needed to obtain a new warrant before requesting Williams's location information again. App. 24. The Court of Appeals disagreed and affirmed the trial court's admission of the location information. *Williams*, Op. No. 2024-UP-128, at *2; App. 3. First, it concluded the warrant was timely executed in 2016 and thus did not violate section 17-13-140 of the South Carolina Code, which provides warrants must be "executed and return made only within ten days after it is dated." *Id.*; S.C. Code Ann. § 17-13-140. Second, the Court of Appeals reasoned that under *State v. Weaver*, 374 S.C. 313, 649 S.E.2d 479 (2007), the ten-day limitation is "ministerial" and its violation "does not require suppression in the absence of prejudice to the defendant." *Williams*, Op. No. 2024-UP-128, at *2 (citations omitted); App. 3. The Court of Appeals did not explain why the request to Sprint in 2019 was not a second search requiring another, valid warrant. Williams filed a petition for rehearing challenging that decision,

App. 6, and the Court of Appeals denied it, App. 32. Williams now petitions this Court for a writ of certiorari to review the Court of Appeals' decision.

Argument

I. The trial court and Court of Appeals allowed the warrantless search of Williams's cell site location information in 2019.

At the time investigators searched Williams's cell site location information without a valid warrant, the Supreme Court of the United States had clearly held the Fourth Amendment requires a warrant before obtaining such "time-stamped data [that] provides an intimate window into a person's life." *Carpenter v. United States*, 585 U.S. 296, 311 (2018). The state's warrantless search therefore violated the Fourth Amendment.

Under *Carpenter*, "the Government must generally obtain a warrant supported by probable cause before acquiring" cell site location information. 585 U.S. at 316. This is because "[m]apping a cell phone's location . . . provides an all-encompassing record of the holder's whereabouts," and people have a "reasonable expectation of privacy in the whole of [their] physical movements." *Carpenter*, 585 U.S. at 311, 313. Cell site location information obtained without a valid warrant is subject to the exclusionary rule. *See State v. Warner*, 436 S.C. 395, 402-05, 872 S.E.2d 638, 641-43 (2022). The state bears the burden of proving evidence was obtained without violating the Fourth Amendment, a question of law which this Court reviews de novo. *State v. Frasier*, 437 S.C. 625, 636 & n.4, 879 S.E.2d 762, 768 & n.4 (2022).

The state obtained Williams's cell site location information one time: in 2019. That is when the state "called [Sprint] up" and requested his records. R. 102:6-9. That request was a search under the Fourth Amendment. *Carpenter*, 585 U.S. at 316 ("The Government's acquisition of the cell-site records was a search within the meaning of the Fourth Amendment."). *Carpenter* therefore required investigators to obtain a valid warrant prior to the search. The state's failure to

do so violated Williams's right to be free from unreasonable searches and seizures, and Judge Russo erred by denying his motion to suppress the fruits of that search.

The Court of Appeals held the records did not have to be suppressed "because the warrant was properly executed within ten days after it was issued." *Williams*, Op. No. 2024-UP-128, at *2 (citing § 17-13-140). Respectfully, the Court of Appeals misunderstood Williams's argument. It is not disputed that in 2016 the state complied with the ten-day execution and return requirement when Sprint turned over the unrelated cell records. But the state violated the Fourth Amendment in 2019 when it requested and received his cell site location information from Sprint without a valid warrant. The only warrant for Williams's phone records expired in 2016, and an expired warrant is ineffective. 79 C.J.S. *Searches* § 269 (West) ("Where the time [for a warrant] has expired, the search is illegal, or is treated as a warrantless search . . . ."); *cf. State v. Covert*, 382 S.C. 205, 209-10, 675 S.E.2d 740, 742-43 (2009) (holding facially invalid warrant lacking magistrate's signature "is not a warrant" and requires statutory suppression); *United States v. Jones*, 565 U.S. 400, 403 (2012) (holding search by placing GPS tracker on a car was improper where agents installed the tracker eleven days after receiving a warrant valid for only ten days). It is of no importance that investigators had or executed a warrant in 2016. What matters is the 2019 request—*search*—not what came before.

II. The Court of Appeals incorrectly imposed a prejudice requirement for suppression under the Fourth Amendment.

The Court of Appeals held that "even if the ten-day requirement was violated, Williams did not meet his burden of establishing that he was prejudiced by the violation." *Williams*, Op. No. 2024-UP-128, at *2. This incorrect statement of law severely misinterprets and extends *State v. Weaver*, 374 S.C. 313, 649 S.E.2d 479 (2007). Williams's complaint is about the state's

warrantless search, not the requirement investigators furnish a return after execution of a warrant. Therefore, *Weaver* does not apply and he is not required to show prejudice prior to suppression.

In *Weaver* officers impounded the defendant's vehicle and obtained a warrant to search it. 374 S.C. at 318, 649 S.E.2d at 481. "However, the return was never made on the warrant as required by S.C. Code Ann. § 17-13-140 (2003)." *Id.* The Court rejected the defendant's argument that failure to comply with the statute required suppression. 374 S.C. at 323, 649 S.E.2d at 483-84. It reasoned that "failure to observe the ten-day requirement for the execution and return of a warrant" is a "ministerial requirement" that "does not necessarily void the warrant." *Id.* (citing *State v. Wise*, 272 S.C. 384, 386, 252 S.E.2d 294, 295 (1979)). Because the defendant "did not show he was prejudiced by the state's failure to comply with the return requirement," the search was still valid. *Weaver*, 374 S.C. at 323, 649 S.E.2d at 484.

Weaver applied a reasonable rule because—absent prejudice—the purposes of the Fourth Amendment are still served regardless of the "ministerial" return. All other cases applying this ministerial rule and prejudice requirement also concerned the return. *State v. Wise*, 272 S.C. 384, 386, 252 S.E.2d 294, 295 (1979) (return filed late); *State v. Mollison*, 319 S.C. 41, 47, 459 S.E.2d 88, 92 (Ct. App. 1995) (no return filed); *State v. Corns*, 310 S.C. 546, 426 S.E.2d 324 (Ct. App. 1992) (return filed late and failed to list items seized); *see also State v. Sachs*, 264 S.C. 541, 565 n.10, 216 S.E.2d 501, 513 n.10 (1975) ("[E]rrors in a return, absent prejudice to the accused, should not involve the exclusionary rule.").[1] No South Carolina court has ever expanded the rule beyond

[1] Similarly, the cases the Court relied upon in *Wise* where it first applied the ministerial rule and prejudice requirement also all concerned the return. *See Evans v. United States*, 242 F.2d 534, 536 (6th Cir. 1957) (return made to different commissioner); *People v. Massey*, 38 Misc. 2d 403, 407, 238 N.Y.S.2d 531, 536 (App. Term 1963) (return made to different magistrate); *United States v. Gaitan*, 4 F.2d 848, 851 (S.D. Cal. 1925) (no return filed).

a late or insufficient return, and properly so. While the return requirement imposed by section 17-13-140 is fairly described as "ministerial," the warrant requirement imposed by the Fourth Amendment is not. *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007) ("Generally, a warrantless search is *per se* unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures." (citing *State v. Freiburger*, 366 S.C. 125, 131, 620 S.E.2d 737, 740 (2005)). Because Williams is not objecting that the state failed to timely file its return to the warrant, *Weaver* does not apply. Thus, the Court of Appeals erred in applying *Weaver*'s prejudice requirement.

Rather, Williams argues the search of Sprint's records that produced his location information was conducted without a valid warrant since it occurred outside of the ten-day validity of the warrant. That portion of § 17-13-140 which provides "[a]ny warrant issued hereunder shall be executed and return made only within ten days after it is dated" operates as substantive limitation on warrants. *Cf. Covert*, 382 S.C. at 208-09, 675 S.E.2d at 742 (magistrate signature strictly necessary before warrant effective). A search conducted outside of those ten days—particularly three years outside—is not conducted pursuant to a valid warrant, and the fruits of that search must be suppressed under the Fourth Amendment unless an exception to the warrant requirement applies. *See* 79 C.J.S. *Searches* § 269 ("[F]ailure to comply with the time limit [in a warrant] cannot be excused as being a mere ministerial or clerical defect"). Williams did not need to show prejudice for the same reasons anyone subjected to a warrantless search does not have to show prejudice: the Fourth Amendment requires suppression regardless.

III. The Court should grant certiorari because this case presents an issue of first impression: Is a search based upon an expired warrant valid?

To counsel's knowledge, no South Carolina appellate court has considered a search performed with an expired warrant under § 17-13-140.[2] In *State v. Chandler*, 267 S.C. 138, 226 S.E.2d 553 (1976), the Court presented the defendant's argument that a search was invalid because "the warrant was executed at nighttime although it authorized a search 'in the daytime only.'" 267 S.C. at 142, 226 S.E.2d at 555. However, the Court did not discuss that deviation from the warrant. Instead, seemingly to address another argument presented by the defendant, the Court noted merely that the exclusionary rule should be applied only where deterrence is served. 267 S.C. at 143, 226 S.E.2d at 555. It undertook no analysis of § 17-13-140, the validity of warrants after expiration—which is distinct from terms of the execution, such as "in the daytime only"—or the propriety of law enforcement officials disregarding the express language of the warrant itself and the statute.

While the expiration of a warrant has not been considered by South Carolina courts, this Court has considered the validity of a warrant that was not signed by a magistrate. *State v. Covert*, 382 S.C. 205, 207, 675 S.E.2d 740, 741 (2009). Such an "unfinished paper" "is not a warrant," and any evidence obtained based on it must be suppressed for failing to comply with § 17-13-140. 382 S.C. at 209-10, 675 S.E.2d at 742-43. The lack of a magistrate's signature "is not excusable

---

[2] The only case counsel can find discussing a search conducted late is *Farmer v. Sellers*, 89 S.C. 492, 72 S.E. 224 (1911). However, that was a civil case during prohibition where, in executing a search warrant, a "dispensary constable" shot and killed a man suspected of possessing "contraband liquor." 89 S.C. at 494, 72 S.E. at 225. The constable's search warrant was issued forty-eight days prior, and the Court held the "reasonable promptness" of its execution was a question for the jury. 89 S.C. at 498, 72 S.E. at 226-27. But at that time warrants did not expire by statute, nor did that warrant prescribe when it was to be executed. *See* 89 S.C. at 497-99, 72 S.E. at 226-27. Thus, *Farmer* is patently of little use in determining whether a criminal defendant's Fourth Amendment rights were violated. However, in deciding "reasonable promptness" was a jury question, the Court noted "there can be no hard and fast limitation of time fixed by judicial authority as unreasonable in all cases and under all circumstances." 89 S.C. at 498-99, 72 S.E. at 226-27. While "judicial authority" might refrain from declaring "hard and fast" rules, the General Assembly did not, and the ten-day expiration period in § 17-13-140 is a legislative declaration that all warrants are invalid after ten days.

as merely procedural or ministerial, but rather negates the existence of a warrant . . . ." 382 S.C. at 208-09, 675 S.E.2d at 742. For the same reasons outlined in *Covert*, a warrant officials attempt to execute outside of the ten-day validity established by statute is not valid, nor is the search permissible even if the officers who executed it are "entirely innocent of any intentional wrong." 382 S.C. at 209, 675 S.E.2d at 742. A search based on such a facially invalid warrant is not lawful, and the fruits of it must be suppressed. 382 S.C. at 209-10, 675 S.E.2d at 742-43.

While no other case squarely addresses the effect of an expired warrant, it seems likely courts in the future will be required to address searches performed after a warrant expires. Perhaps law enforcement officials in this state have been generally diligent in executing or renewing warrants, and then when they made mistakes trial courts have properly suppressed any evidence obtained. But this question will arise again, and guidance is necessary.

IV. The cell site location information was an important part of demonstrating Williams was at Joseph's apartment the day she was killed—its admission was not harmless.

Evidence obtained in violation of the Fourth Amendment must be excluded from trial. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961); *State v. Gamble*, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013) (citing *State v. Khingratsaiphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002)). Because the second request to Sprint for Williams's cell site location information was a warrantless search, the trial court erred by allowing its admission, R. 483:12-25, the admission of fifteen maps based on that data, R. 1055:16-1057:3, and an expert from SLED to use the maps as proof of Williams's location, R. 1057:5-1068:7.

"The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *State v. Tapp*, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (internal quotation marks omitted) (quoting *State v. Charping*, 313 S.C. 147, 157, 437 S.E.2d 88, 94 (1993)); *Chapman v.*

California, 386 U.S. 18, 24 (1967) ("[B]efore a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt."). An error is harmless "where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." *State v. Bryant*, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) (citing *State v. Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989)).

Much of the state's evidence did little but demonstrate Joseph and Williams knew each other. An investigator testified there were 383 calls or texts between the pair in the ten days leading up to her death. R. 933:18-934:22. An expert testified DNA from Joseph's car and a condom in her bedroom matched Williams, placing him in her home. R. 685:4-18, 690:17-692:18. However no witness testified to how long the DNA had been there. At most, that evidence allows an inference the two were seeing each other, but not that Williams was the murderer on January 23, 2016.

The state's only evidence placing Williams near Joseph on January 23, other than through the cell site location information, was the testimony of Lakeya Bacote and Linda Jones. While their testimony established that a man called a cab to Century Drive and got out in Darlington, they could not confidently identify that man as Williams. Further, their testimony was at times inconsistent with each other and investigators, such as Bacote insisting she was never shown a photo of Williams. But the state supported their weak identification of Williams by using cell site location information to place his phone near Century Drive and in Darlington at the times Bacote picked up and dropped off the man in the cab.

Because of the weak eyewitness testimony, Williams's location information was a key part of the state's attempt to prove he was the man in the cab—and it had no other theories about who could have killed Joseph except the man in the cab. Thus, the state explained in closing how

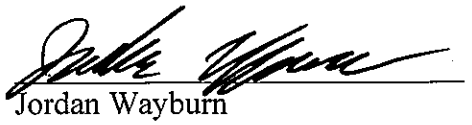
important the "time frame" is and told the jury to "check behind me if you need to with this evidence [because w]ith the phone logs we can illustrate exactly what we're talking about." R. 1371:9-13. The state then explained what it believed occurred before Joseph's approximate time of death as 4:00 p.m.: "From 3:11 to 3:53 her cell phone and Royal Williams' cell phone is bouncing off the same tower." R. 1372:5-8. It argued the records showed him "in proximity to Sherilyn Joseph's residence on Century Drive until the cab let him out in Darlington . . . ." R. 1382:13-18.

It cannot be said Williams's location information was harmless beyond a reasonable doubt because that was the only evidence—other than uncertain eyewitness testimony—tying him to the victim's location on the day of the murder. Further, the information was used to corroborate Williams as the man in the cab that the witnesses saw. In short, the cell site location information obtained without a warrant "almost certainly affected the result of the trial and therefore could not be harmless." *State v. Davis*, 371 S.C. 170, 182, 638 S.E.2d 57, 63 (2006).

CONCLUSION

The trial court erred by denying Williams's motion to suppress the fruits of a warrantless search. Both it and the Court of Appeals incorrectly allowed the state to rely on an expired warrant. They impermissibly required Williams to show prejudice before applying the exclusionary rule, and that error was not harmless. This Court should grant Williams's petition, allow full briefing on the issue, and review the Court of Appeals' decision.

Respectfully Submitted,



Jordan Wayburn
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of August, 2024.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Florence County
Honorable Thomas A. Russo, Circuit Court Judge

Opinion No. (S.C. Ct. App. filed April 17, 2024)

Lower Court Case No. 2017-GS-21-00588

THE STATE,

RESPONDENT,

V.

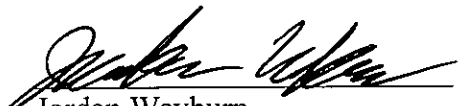
ROYAL DANIEL WILLIAMS, III,

PETITIONER.

APPELLATE CASE NO. 2024-000838

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 writ of certiorari to the Court of Appeals and appendix in the above-referenced case has been served upon W. Joseph Maye at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Royal Daniel Williams, III, #338068, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 28th day of August, 2024.



Jordan Wayburn
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330
ATTORNEY FOR PETITIONER