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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Florence County
The Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ROYAL DANIEL WILLIAMS, III,

PETITIONER.

Appellate Case No. 2024-000838

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I. Did the trial court and Court of Appeals err by allowing the use of Williams 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

The Florence County Grand Jury indicted Petitioner for murder during the April 2017 term. The case was scheduled for trial in June 2019. On June 13, 2019, the trial court heard pre-trial motions. A jury was selected on June 17, 2019, and further pre-trial matters were discussed. As a result, the State sought and was granted a continuance and the jury was dismissed. A hearing on the State's motion for a Schmerber Order was held and the Order was granted June 18, 2019.

On September 9, 2019, Appellant proceeded to trial. The jury found Petitioner guilty of murder, and he was sentenced to life without parole. Petitioner filed a motion for new trial which was denied.

On January 13, 2020, Petitioner filed a notice of appeal. On June 15, 2022, attorney for Petitioner, Elizabeth Franklin-Best, Esq., perfected the appeal by filing the Final Brief of Appellant and the Final Reply. The State filed its Final Brief of Respondent on June 29, 2022. Oral argument was held on April 2, 2024, and on April 17, 2024, the South Carolian Court of Appeals issued an unpublished per curium Opinion affirming Petitioner's conviction and sentence. *State v. Williams*, No. 2020-000049, 2024 WL 1655470 (S.C. Ct. App. Apr. 17, 2024). Appellate counsel filed a Petition for Rehearing on April 25, 2024, which was then denied on May 5, 2024. On August 28, 2024, Appellate Counsel, Jordan Wayburn, Esq., filed a timely Petition for Writ of Habeas Corpus to the South Carolina Court of Appeals on behalf of Petitioner. This Return now follows.

STATEMENT OF FACTS

On Friday, January 22, 2016, Sherilyn Joseph (Victim) dropped her child off with her mother, Patricia Stewart, prior to heading to work at Starbucks. The child was planning to spend the night with Stewart. (T.194-196; R.462-464). On Saturday, Stewart expected Victim to contact

her to speak to her son even though Victim would be at work. Victim never called. Later on Saturday, Stewart tried contacting Victim, as did several other family members. (T.196-197; R.464-465). After getting no answer or response all day, Stewart left to go to Victim's apartment around 10:00 pm to see if she could locate her daughter. (T.197; R.465).

After picking up her sister to go with her, Stewart got to Victim's apartment and went to the door. The door was open. She walked into the dark room and hit something with her foot. Upon turning on the light, she found Victim lying dead on the floor. (T.197; R.465). Stewart's sister called 911. Stewart began CPR and indicated blood was coming out of Victim's nose and that she was not moving. (T.198; R.466).

The deputy coroner, Bo Myers, testified he arrived on scene and began examining the body. He noted a gunshot wound to the left side of the forehead. (T.221; R.489). Additionally, he described the body's lividity, indicating blood was settling. He explained time of death for Victim was sufficiently prior to his arrival to allow for the blood to settle. (T.222-224; R.490-492). He also explained the body was cold relative to its environment, which meant that she had been dead for more than a few hours. (T.224-225; R.492-493). Finally, he explained rigor mortis was about half-way through its process, meaning she had been dead more than a few hours but less than days. (T.227; R.495). He later testified that based on his examination and information collected by the investigators, he "determined that the presumed time of death was approximately 4 o'clock that afternoon on the same date." (T.252; R.520).

Dr. Angela Phillips performed the autopsy on Victim. She found cause of death to be a gunshot wound which pierced the skull, went through the brain, and ended up under the skin on the back of the head. (T.273; 278; R.541; 546). She also noted there were no defensive wounds. (T.275; R.543).

Seargent Clendenin assisted in processing the scene of the crime. He indicated the passenger seat was laid back. They swabbed the seat looking for DNA. (T. 302; R.570). He noted a comforter was located near the victim. There was a hole with a blood smear on the comforter. Wrapped up inside the comforter was a pillow. Additionally, the comforter had a burnt area and tested positive for gunshot residue. (T.304; 309; R.572; 577). A bullet hole went through the pillow and comforter. (T.304; R.572). Additionally, he indicated a used condom was located in the wastebasket beside the victim's bed. (T.305; R.573).

John Barron, a DNA analyst, testified he compared DNA from swabs of the passenger side of the victim's car and from the used condom with a sample from Royal Daniel Williams, III (hereinafter "Petitioner"). He testified it is 2,800 times more likely that Petitioner contributed to the DNA mixture found on the headrest than a random person. (T.422; R.690). On the door handle, it is 120,000 times more likely Petitioner is included that a randomly selected person. (T.422-423; R.690-691). Looking at the condom mixture, it is 12,500 times more likely to include Petitioner than a random person. (T. 423; R.691). Barron also indicated they looked solely to the Y chromosome and determined it was 1,850 times more likely that Petitioner contributed to the mixture than another randomly selected male. He also indicated you could combine the possibilities and conclude it is 23 million times more likely to be Petitioner versus a random person. (T.424; R.692).

Speedy Cab received a call to dispatch a cab to the victim's residence at 3:40 PM. (T.503-504; R.771-772). Lakeya Bacote was the cab driver. She picked up the gentleman at Victim's residence. She initially had trouble locating the pick-up location, so she called the number given — a 704 area code number. The person she picked up told her what to look for and then called her back from another phone number -- an 803 area code number. Bacote already had a fare riding

with her, her cousin Linda Jones. (T.543-546; R.811-814). The gentleman got in and rode in the back beside Jones. She noted he had textured or wavy hair at least in the front since he had a hoodie on. When he got in the cab, he was carrying a black bookbag with travel-sized toiletries. (T.549; R.817). Bacote indicated he was headed to Doneraile Street in Darlington, but instead got off on a side street. (T. 542-543; 547; R.810-811; 815). Several days later she got another call from the same person for a cab to pick him up at 225 Plum Street. She said this time when she picked him up, he had shaved his head. (T.552; R.820).

Linda Jones was riding with Bacote at the time she picked the gentleman up from Victim's residence. (T.514; R.782). Jones was later contacted by law enforcement to see if she could provide details for a sketch. (T.517-518; R.785-786). They completed a sketch based on her memory of the person who sat beside her from Florence to Darlington. (T.533-534; R.801-802).

Leron Whitten lived at 225 Plum Street, an address near where the gentleman Bacote picked up got dropped off and the address where the gentleman was picked up the second time Bacote saw him. Petitioner left a black bookbag at Whitten's house. (T.574-575; R.842-843).

Investigator Collins obtained security footage from a residence near Victim's home. The video showed the victim's car returning home and then later a van, which appeared to be a taxi, arriving and leaving Victim's residence. (T.647-648; 676-679 R.915-916; 944-947). No other movement around the residence was shown on the video. Based on his investigation, he was able to contact Jones who had been in the van and arrange the sketch. The jury had the sketch to compare to Petitioner as well as photos of Petitioner from around the time of the murder. (State's Exhibits 12, 19 and 20; R.1460, 1461, and 1462).

Investigator Collins also reviewed the cell phone records from the victim. (State's Exhibit 7; R. 1459). They indicated numerous communications with a specific number. As a result, he

obtained subscriber information for the number, and it was connected to Petitioner. (T.665; State's Exhibit 10, pages 1-5; R.933; R.1463). The contacts between Petitioner and Victim began on January 14 and ended January 22, the day before her murder. (T.665-666; R.933-934). After 383 contacts between the two, there were no further contacts or attempts by Petitioner after January 22. (T.667; R.935). According to the cell phone records both Victim's and Petitioner's phones were in use around Florence during the afternoon of the murder. (T.667-669; R.935-937). While Victim's phone did not have any additional locations, Petitioner's showed contact with a cell tower in Darlington, roughly in the area where he was dropped off by the cab. (T.670; R.938).

Investigators Collins and McFadden began going to locations of interest. They went to 225 Plum Street, the location where Whitten lived. Whitten was ultimately excluded as a suspect. Thereafter, they went to an address in Bennettsville. Petitioner's grandmother lived at this address. They also went to another address which ultimately was determined to be the residence of Petitioner's brother. As Investigator McFadden indicated, all the leads and trails followed led back to Petitioner. (9/13T.29-30; R.1132-1133).

STANDARD OF REVIEW

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. The South Carolina Appellate Court Rules set forth a nonexclusive list of the circumstances in which review may be granted. Therein, Rule 242(b) continues: "[t]he following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court." Rule 242(b), SCACR.

ARGUMENT

I. The existing warrant was validly issued and timely executed; the State obtaining full *compliance* with that warrant at a later date did not render the warrant invalid under the circumstances of this case and Petitioner has nevertheless failed to demonstrate prejudice under controlling precedent.

Certiorari is not warranted in this matter. Petitioner's assertion of a Fourth Amendment violation for a warrantless search misconstrues the applicable law in this case and Petitioner's presented issue fails to satisfy any of the above stated grounds for granting review. Moreover, Petitioner's presentation of the issue for purposes of seeking certiorari is not consistent with the arguments previously presented to the Court of Appeals. The trial court was entirely within its discretion to deny the motion to suppress and the Court of Appeals was correct to affirm the trial court's ruling on the basis that the proper acquisition and execution of the 2016 warrant did not subject the requested evidence to suppression due to some of it being received at a later date. The Court of Appeals rightly found no error, and alternatively found no prejudice to Petitioner arose from the circumstances of the case. For the following reasons, Respondent argues the Petition for Writ of Certiorari should be denied.

South Carolina Code of Laws § 17–13–140 addresses the acquisition, execution, and return of warrants by law enforcement. Probable cause in support of the warrant is not in dispute here, and *State v. Weaver* is the controlling precedent for addressing whether or not violations of the

statute's execution and return time period impact the validity of a warrant. To wit, such requirements are ministerial in nature and will not invalidate a warrant in the absence of defendant demonstrating prejudice resulting therefrom. *State v. Weaver*, 374 S.C. 313, 323, 649 S.E.2d 479, 483 (2007). The Court of Appeals properly applied this law to the facts of this case and found that 1) the warrant was timely executed within the ten-day window of validity established by statute, 2) even if there was a violation of the ten-day requirement, Williams did not meet his burden for establishing prejudice therefrom, and 3) the correct cell phone data received in 2019 was the exact same data that law enforcement would have acquired in 2016, if not for Sprint's error in compliance with the warrant. Its affirmance on these grounds was correct.

Collectively, Petitioner argues now that 1) the State's 2016 warrant became invalid after the ten-day timeframe, despite conceding the fact that the State complied with the statutory execution and return requirements; 2) the State obtaining, at a later date, the same warrant supported data that Sprint had mistakenly not produced constituted a violation of Petitioner's 4th Amendment right to privacy; 3) the Court of Appeals misunderstood his argument and erred in ruling that the CSLI records did not have to be suppressed "because the warrant was properly executed within ten days after it was issued;" and 4) "*Weaver* does not apply and he is not required to show prejudice prior to suppression."[1] (Petition for Writ of Certiorari, p. 8-9). Petitioner's arguments are not only in error, but they are not even consistent with his own assertions to the Court of Appeals.

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[1] The Petitioner also argues that the issue in this case is a novel question of law and that the evidence in question was not harmless. *Weaver* makes clear that both the execution and the return fall under the classification of ministerial acts, and it is controlling authority for either circumstance. Thus, the legal issue is not a novel one. Respondent further responds that there is no error on the part of the trial court and Court of Appeals, but nevertheless, the CSLI evidence would be harmless in light of the other evidence presented at trial.

On appeal, Petitioner conceded that the warrant was obtained on February 19, 2016, *and executed* on February 23, 2016. However, Petitioner then inaccurately argued that "the information *from the warrant* was returned later that same day." (Final Brief of Appellant, p. 21) (emphasis added). It was not, at least not in full. Sprint mistakenly provided some incorrect tower data and as a result, failed to provide all of the data demanded in the warrant. Nevertheless, Petitioner maintained that the administrative error by Sprint in its production resulted in an invalid warrant once the ten-day time period expired. *Contrary to his current arguments presented for certiorari*, Petitioner explicitly cited *Weaver,* cited its prejudice requirement, and relied upon its holding while insisting the timeframe of the warrant was a critical element to the issue of prejudice and the warrant's validity. (Final Brief of Appellant, p. 20-21). Similarly, Petitioner acknowledged the prejudice prong of *Weaver* again during oral argument and did not argue that it was inapplicable to this case. (April 2, 2024 Oral Argument, at 8:38-9:00). Petitioner did so a third time, in seeking a rehearing from the Court of Appeals. (Petition for Rehearing, App., p. 23; 24). Petitioner cannot now alter the underlying basis of his appeal in an effort to obtain a Writ of Certiorari.

In any case, Petitioner is simply mistaken. Petitioner's argument hinges on the premise that there was no valid warrant in the case[2], but he offers no cogent explanation for why the 2016 warrant is invalid. Instead, Petitioner simply insists that the 2016 warrant became invalid after the ten-day time period for execution and return lapsed, while in the same breath dismissing as inapplicable this Court's precedent that addresses warrant validity in the context of the ten-day time period for execution and return. To confound matters further, and despite clear language to

[2] Petitioner's argument does not even take into account the additional sustaining ground of the good faith exception to the exclusionary rule, had either the trial court or the Court of Appeals required further analysis before finding the suppression unwarranted.

the contrary, Petitioner attempts to argue that *Weaver* only applies to issues concerning the Return to the warrant, not the execution, and he does so despite having previously conceded to the Court of Appeals and in his Petition that the State timely executed the warrant on February 23, 2016. His collective arguments and concessions are irreconcilable with the facts and law of this case.

Weaver, and the cases that preceded it, present a very simple premise: "[t]he failure to observe the ten-day requirement for the execution and return of a warrant, a ministerial requirement, does not necessarily void the warrant. The warrant will be invalidated only if the defendant can show he was prejudiced by the failure." *State v. Weaver*, 374 S.C. 313, 323, 649 S.E.2d 479, 484 (2007)(internal citations omitted); See also *State v. Mollison*, 319 S.C. 41, 459 S.E.2d 88 (Ct.App.1995) (the "failure to comply with inconsequential ministerial requirements of [§ 17–13–140] does not require suppression in the absence of prejudice to the defendant"); *State v. Wise*, 272 S.C. 384, 386, 252 S.E.2d 294, 295 (1979) (failure to comply with the ten-day execution and return period under § 17–13–140, due to administrative error, did not void the underlying warrant in question as such was a ministerial requirement and lacked a demonstration of prejudice by the appellant.). This Court has made clear that this is the rule in which the validity of warrants must be reviewed in the context of execution and return. And, there is no separation or distinguishing language that would limit the application of this rule to only a warrant's return.[3]

The analysis of the Court of Appeals was concise and accurate: the State timely and properly executed its warrant within the ten-day timeframe required. As such, law enforcement's actions to execute the warrant did not violate the statute. Nevertheless, even if a violation existed, Petitioner failed to establish prejudice under *Weaver*, noting that the data received at a later date

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[3] This argument was also not raised or argued to the Court of Appeals. (Final Brief of Appellant, p. 20-21).

was identical to what would have been provided by Sprint, if not for their error in compliance.

Petitioner has failed to show a statutory violation that would invalidate the 2016 warrant and has failed demonstrate any prejudice stemming from Sprint's delayed compliance with the warrant, there is no novel question of law as this is simply the application of a well-established rule to an otherwise unremarkable set of facts, there is no dissent from the Court of Appeals, there is no conflict with prior precedent, and the nature of the claim does not *directly* involve substantial constitutional issues. Certiorari should be denied.

CONCLUSION

The Court of Appeals' reasoning and legal basis for affirming the trial court's decisions was well-founded and proper. For all the foregoing reasons, it is respectfully submitted that certiorari be denied in this matter.

(signature block on following page)

Respectfully submitted,

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