

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to the Court of Appeals
Appeal from Georgetown County
Honorable Robert J. Bonds, Circuit Court Judge
—————

Opinion No. 2024-UP-263 (S.C. Ct. App. Filed July 17, 2024)

Lower Court Case No. 2017-GS-22-00872
—————

THE STATE,

RESPONDENT,

V.

ALEXANDER RHUE, JR.,

PETITIONER.

APPELLATE CASE NO. 2021-0013062
—————

APPENDIX
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEXANDER RHUE, JR.,

APPELLANT.

APPELLATE CASE NO. 2021-001306

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err 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?

STATEMENT OF THE CASE

In July of 2017, the Georgetown County Grand Jury indicted¹ Appellant, Alexander Rhue Jr., for obstruction of justice, two counts of criminal conspiracy, murder, and desecration of human remains, indictments 2017-GS-22-870-874. (R. p. 1861). Appellant's sister, Tiesh Annette Rhue and father, Alexander Rhue, Sr. were also indicted on these charges. (R. p. 353, lines 10-25). On September 24, 2021, the Honorable Robert J. Bonds heard pre-trial motions with regard to all three co-defendants. (R. pp. 1-59). Gregory Voight represented Appellant. Ronald Hazzard represented co-defendant Alexander Rhue, Sr. William Edgeworth represented co-defendant Tiesh Rhue. Alicia Richardson and Elizabeth Smith represented the State. On October 11, 2021, Appellant and the two co-defendants proceeded to jury trial before the Honorable J. Bonds. The same lawyers who represented the parties during the pre-trial hearing represented them at trial.

During the trial the State elected to dismiss the conspiracy charges. (R. 1362, lines 13-18). The judge directed a verdict of acquittal on the desecration of human remains charges. (R. p. 1604, line 21 – p. 1605, lines 1-20). The jury found Appellant guilty of murder and obstruction of justice. The jury found the co-defendant, Tiesh Rhue guilty of murder and obstruction of justice. The jury found the co-defendant Alexander Rhue, Sr. not guilty of murder but guilty of obstruction of justice. The judge sentenced Appellant and his sister to thirty-seven (37) years for murder and eight (8) years concurrent for obstruction. (R. pp. 1807-1808). The judge sentenced Alexander Rhue Sr. to eight (8) years provided upon the service of 549 days time suspended with three (3) years of probation. (R. p. 1806, lines 7-16). Appellant served a timely notice of intent to appeal on November 2, 2021. This appeal follows.

¹ It is unclear who testified before the Grand Jury as the witness is listed as the Georgetown Police Department.

STANDARD OF REVIEW

“Accordingly, appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court’s factual findings for any evidentiary support, but the ultimate legal conclusion—in this case whether reasonable suspicion exists—is a question of law subject to de novo review.” State v. Frasier, No. 2020-001405, 2022 WL 4491598, at *2 (S.C. Sept. 28, 2022)

STATEMENT OF FACTS

On March 9, 2017, Leon Harris Sr. reported that his adult son, Leon Harris Jr, [JR] was missing. (R. p. 471, lines 14-20). Harris Sr. reported that he last saw his son on February 23, 2017. (R. p. 472, lines 10-15). An officer conceded that a police report included information that Harris Sr. was afraid that something bad had happened to his son, JR, because he was selling drugs to the Mexicans. (R. p. 570, line 17 – p. 571, 572, lines 1-10). The officer testified that he interviewed Luis Flores who admitted buying drugs from JR. (R. p. 574, lines 7-15; p. 607, lines 1-3). Investigator Allen Morrison was questioned about the fact that prior to JR being reported missing, three men were searching for him by the Black River, where his body was later found. (R. p. 1287, line 17 – p. 1288, lines 1-11).

JR's Department of Motor Vehicle information listed his address on Highmarket Street in Georgetown. (R. p. 477, lines 22-23). Officers with the Georgetown Police Department learned that JR lived at the Highmarket address with his wife Tiesh Rhue. (R. p. 477, line 24 – p. 478, lines 1-6). The police talked with Tiesh at her workplace at the steel mill. (R. p. 478, lines 5-23). Tiesh told the police that she last saw JR. 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. (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).

Roasario Grate, JR's girlfriend, testified that she last saw JR on the evening of February 25, 2017, when she picked him up from work. (R. p. 625, lines 8-14). She testified that they ran

some errands and then she dropped JR off at his dad's house. (R. p. 625, lines 21-23). Grate testified that around 10:00 PM that night she received phone calls from Tiesh on JR's phone. (R. p. 630, line 7 – p. 631, lines 1-13). Grate also testified about a verbal altercation that took place on New Year's Eve at the Riverview Club between JR, Tiesh and Appellant, Tiesh's brother, Alexander Rhue, Jr. (R. p. 634, line 25 – p. 635, 636, lines 1-4). Grate testified that on the night of February 25, 2017, she went out with friends and JR was supposed to meet her out later but never made it. (R. p. 629, line 14 – p. 630, lines 1-4; p. 634, lines 13-21).

The next day, March 10, 2017, Tiesh agreed to a recorded interview with the police at the station. (R. p. 485, line 1 – p. 486, lines 1-12). A properly redacted version of the interview was admitted in evidence, without objections, as State's Exhibit #21. (R. p. 497, lines 6-16). After the interview on March 10, 2017, officers obtained a search warrant for the house on Highmarket Street. (R. p. 1168, lines 1-17, R. p. 1818). After finding stained carpet padding, missing carpet, and a presumptive positive blood test, officers obtained a second search warrant. (R. p. 1175, lines 9-11; R. p. 1823). Samples were collected and sent for analysis. One DNA analyst testified that the deceased could not be excluded from one of the samples. (R. p. 1489, lines 19-22). Another DNA analyst testified that DNA profiles developed from the carpet padding and spot on the wall matched the DNA profile of the deceased. (R. p. 1513, lines 1-11; p. 1521, lines 17-25). Appellant's DNA was not found in the bedroom where these sample were collected.

After the search of the house, the police again interviewed Tiesh on March 11, 2017. (R. p. 523, line 21 – p. 524, lines 1-25). A properly redacted version of the interview was admitted in evidence, without objections, as State's Exhibit #27. (R. p. 525, lines 1-14). The police also interviewed Alexander Rhue Sr., Tiesh and Appellant's father. (R. p. 526, line 6 – p. 527, lines 1-

13). A properly redacted version of the interview was admitted in evidence, without objections, as State's Exhibit #28. (R. p. 527, line 14 – p. 528, lines-1-4).

That same day, March 11, 2017, a dead body was found in the Black River. (R. p. 712, lines 4-15). The body was taken out of the water, placed in a body bag and released to the coroner. (R. p. 728, lines 11-15). An officer testified that they searched the area near where the body was found, which included the Riverview Club, but they did not find any additional evidence. (R. p. 727, line 10 – p. 728, lines 1-10). The forensic pathologist testified that when she received the body the hands and ankles were bound with speaker wire. (R. p. 812, lines 16-25; p. 1204, lines 17-20). The pathologist testified that the cause of death was homicidal violence. (R. p. 838, lines 2-3). The body was later identified as Leon Harris Jr, "JR.," by a tattoo on his arm. (R. p. 394, lines 7-25).

On March 13, 2017, Appellant provided a recorded statement to police. A properly redacted version of the interview was admitted in evidence, without objections, as State's Exhibit #97. (R. p. 1058, line 12 - p. 1059, 1060, lines 1-10). On March 14, 2017, officers obtained a third search warrant for the house on Highmarket Street. (R. p. 544, lines 7-18). On March 15, 2017, officers again interviewed the father, Alexander Rhue Sr. (R. p. 549, line 7 – p. 550, lines 1-15). The interview was admitted in evidence, without objections, as State's Exhibit #29. (R. p. 550, lines 16-25). On March 22, 2017, officers again interviewed Tiesh. (R. p. 1247, line 10 – p. 1248, lines 1-17). A properly redacted version of the interview was admitted in evidence, without objections, as State's Exhibit #107. (R. p. 1248, lines 18-25).

Investigator Allen Morris testified at trial that, based on the interviews with Tiesh, Rhue, Sr. and Rhue Jr., he understood that all three were at the Highmarket Street house on the night of February 25, 2017, into the morning of February 26, 2017. (R. p. 1217, line 20 – p. 1218, lines 1-

15). On March 29, 2017, based on cellular phone records obtained, investigators obtained surveillance video from Walmart for the evening of February 25, 2017, into the early morning of February 26, 2017. (R. p. 567, line 11 – p. 568, lines 1-20). After reviewing the video, Investigator Morris testified that he saw a subject who matched the description of Rhue Sr. (R. p. 1221, lines 3-14). The investigator testified, over objection, that another person with Rhue Sr. in the video was the Appellant, Rhue Jr. (R. p. 1241, lines 9-23). An employee from Walmart testified that the customer purchased two bottles of hydrogen peroxide. (R. p. 1133, lines 9-24).

At the close of the State's case Appellant moved for a directed verdict of acquittal. (R. p. 1582, line 23 – p. 1583 -1587). In arguing against the directed verdict motion the State relied on testimony from Antwan Simmons, a cousin of the deceased. (R. p. 1587, line 22 – p. 1588, line 1). At trial Simmons claimed that, during a trip to Myrtle Beach to pick up furniture with Appellant and Shawn Simmons, Appellant asked about JR and then said, "Well, that fucker out of here, I took that nigga for a ride." (R. p. 757, lines 14-17). The third person in the truck, Shawn Simmons, did not testify at trial. The State also relied on testimony from a jail house snitch, Austin Kight, who claimed that Appellant told him, ". . . that they didn't have anything on him and that we dumped the body. And the only way they would know that it was – they guy was – there were tattoos that was on his arm." (R. p. 1588, lines 1-2; p. 882, line 25 – p. 883, lines 1-3). The State additionally relied on the testimony of Meyan Thomas, another cousin of the deceased and purported friend of Appellant. (R. p. 1588, lines 3-6). Thomas testified that at 3:05 AM on February 26, 2017, she received a text from Appellant that said, "Boo, I'm in D.C., had a family emergency, ASAP, had to catch the Greyhound up here. I'll explain more later. Love you, Queen. I'm sorry. I'll hit you tomorrow. Shit is real crazy right now. Love you." (R. p. 737, line 12 – p. 738, lines 1-14). The State's case against Appellant was based on these three alleged statements,

and the purported inconsistency about his whereabouts on February 25-26, 2017. The judge denied the motion for directed verdict stating, “I will tell you that, as it relates to the murder charge for Mr. Rhue Jr., while it may not be very strong, sir, I think there definitely is evidence that’s been presented that is going to allow that charge to go to the jury. I think by virtue of the testimony alone.” (R. p. 1600, line 21 – p. 1601, line 1). The judge directed a verdict of acquittal for the desecration of human remains charges against all three defendants.

ARGUMENT

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). Appellant 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 Appellant, Alexander Rhue Jr. and his father, Alexander Rhue Sr., were frequent overnight guests. Appellant 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.

CONCLUSION

Based on the above argument this Court should reverse the convictions and remand for a new trial.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of April, 2023.


CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this final brief of appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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SC Court of Appeals



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Apr 19 2023

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,

RESPONDENT,

V.

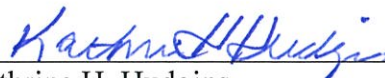
ALEXANDER RHUE, JR.,

APPELLANT.

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 Final Brief of Appellant in the above-referenced case has been served upon Julianna E. Battenfield, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 19th day of April, 2023.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Honorable Robert Bonds, Circuit Court Judge

Appellate Case No. 2021-001306

THE STATE,RESPONDENT,

v.

ALEXANDER RHUE, JR.,APPELLANT.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial judge err 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?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

Whether the trial court properly found probable cause for the third search warrant and rightly admitted all evidence collected from the first two warrants because of inevitable discovery when the victim was an official missing person under South Carolina law who was last seen at the marital home, who was then found two weeks later deceased, bound, and floating in a river.

STATEMENT OF THE CASE

Appellant Alexander Rhue, Jr. was indicted along with his sister¹ and father at the July 2017 Georgetown County Grand Jury for the murder of Leon Harrison, Jr., obstruction of justice, desecration of human remains, and two counts of criminal conspiracy. 2017-GS-22-0870, -0872, -0875, -0882, -0883. His case was prosecuted by Deputy Solicitor Alicia Richardson and Assistant Solicitor Elizabeth Smith. Appellant was represented by Gregory Voight, Esq., Tiesh Rhue was represented by William “Josh” Edgeworth, Esq., and Alexander Rhue, Sr. was represented by Ronald Hazzard, Esq. R. 1.

The Honorable Robert J. Bonds held the first round of pre-trial motions on September 24, 2021, and the second on October 11, 2021, after he received memorandums for and against the defense’s motion to suppress. The State argued all three warrants were proper, but that the third one was particularly valid because of inevitable discovery. They argued *State v. Fletcher*, *State v. Sullivan*, and *State v. Dupree*² to show the evidence recovered from all three searches should be admitted at trial. Sept. 24, 2021 R. 1-60.

Two more rounds of pre-trial motions were held on September 24, 2021, (Search Warrant argument: R. 79-80), and October 12, 2021. (Search Warrant argument: R. 354-357). The solicitor brought up the autopsy photographs’ admissibility, but the court declined to address the issue right then. Judge Bonds excluded the first two search warrants executed on **** Highmarket Street – Tiesh Rhue and the victim’s marital home – via a written Order but ruled the third one cured the issues with the first two, and all the evidence obtained was admissible at

¹ Co-appellant Tiesh Rhue identically appeals the issue Alexander Rhue, Jr. raises in his brief in her appeal, Case No. 2021-001275. Alexander Rhue, Sr. did not appeal.

²*State v. Fletcher*, 363 S.C. 221, 609 S.E.2d 572 (Ct. App. 2005) (*rev’d on other grounds by State v. Fletcher*, 379 S.C. 17, 664 S.E.2d 480 (2008)); *State v. Sullivan*, 267 S.C. 610, 230 S.E.2d 621 (1976); *State v. Dupree*, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003).

trial. Judge Bonds denied the defense's motion to suppress evidence because of inevitable discovery. *Id.*, R. 310, R. 355-356, R. 591-601; Written Order denying Motion to Suppress. Appellant proceeded to trial by jury on the murder, desecration, and obstruction charges from October 11-15 and October 18-20, 2021. The State rested on October 19th, and all three defendants moved for a directed verdict. Judge Bonds denied the directed verdict motions for murder and obstruction of justice for all three defendants citing *State v. Mealor*, 425 S.C. 625, 825 S.E.2d 53 (2019). He ruled there was substantial testimony when viewed in the light most favorable to the State to allow the case to go to the jury. However, he directed a verdict of acquittal for desecration of human remains for all three defendants. R. 1582-1587, R. 1601, R. 1604-1607.

Tiesh Rhue and Appellant Alexander Rhue, Jr. were found guilty of murder and obstruction of justice. The State *nolle prossed* the conspiracy charges and the trial court granted Appellant's directed verdict motion for the desecration charge. Tiesh Rhue and Alexander Rhue, Jr. were both sentenced by the Honorable Robert J. Bonds to thirty-seven years' imprisonment for murder and eight concurrent years for the obstruction charge. Alexander Rhue, Sr., was found guilty of obstruction of justice only. Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his Appeal. This Brief of Respondent follows. R. 1362, R. 1604, R. 1777-1778, R. 1807-1809.

STATEMENT OF FACTS

Tiesh Rhue named her husband “Hopefully” in her phone. She was tired of him having a girlfriend on the side (and paying for his child support) and wanted to reconcile with him.

However, after inviting him to take a romantic bath with her on the evening of February 25, 2017, she arrived at their marital home to find him talking on the phone with his girlfriend.

Thirty-two-year-old Leon Harrison, Jr., (“victim”; “JR”) was killed in his master bedroom fifteen minutes from Pawley’s Island by his wife and her brother (Appellant) in the early morning hours of February 26th. His wife never reported him missing. Law enforcement only got involved after the victim’s father reported him missing two weeks after he was last seen.³

December 31, 2016 – *New Year’s Eve*

Leon Harrison (“JR”) and his girlfriend, Rosario Grate, were at the Riverview Club when Appellant and his sister Tiesh Rhue, showed up. Even though Tiesh knew about JR and Rosario’s one-year relationship, harsh words were exchanged. R. 625-626, R. 634-635.

February 13, 2017 – *Tiesh’s phone to “Hopefully”* (R. 1536-1539)

2:21 PM – I’ve dedicated my heart to you and you know I have done completely everything in my power to love you the way you want to be loved, but I see that you think I’m a whore and you hate me because I’ve never played no one in your face, but there’s so much – so many bitches you played in my face. I’m crazy because from the moment I married you I’ve been in love with you, and being crazy in love makes you be extremely insane. I would never hurt you ever again, but you’re breaking me down daily all cause you can’t choose me and only me.

- **2:51 PM** – I want you and only you and now that you know that you choose now to play with my heart.

³ R. 397, R. 730, R. 1533, R. 1536-1537, R. 1541.

- **2:54 PM** – I know you can respond so please text me back. I’m not a whore or a li[a]r, I’m just a woman in love with her husband.
- **2:56 PM from “Hopefully”** – You sometimes act a little too crazy and I don’t have time.
- **2:57 PM to “Hopefully”** – Read all my messages, you know I’m crazy in love with you.
- **2:59 PM** – I want my marriage with you to work, but you have to want me too and only me flaws and all.
- **3:04 PM** – Hello.⁴
- **4:43 PM from Hopefully** - Tie, sh** is not right, we just need help or something, but this hands-on thing I can’t do neither. The accusing it got me want to say eff it for real.

February 16, 2017 – *Tiesh to “Hopefully” her Husband*

1:14 PM – I was trying to be strong, but I can’t no more, this is the end of me, I’ve parked the car and I’m taking these pills, all of them. I hope you know I’ve loved you so much that no one can have me. I hope I die today.

February 23, 2017

- The last day JR’s father and the mother of his children, Brittani Green, ever saw him.
- JR was behind on paying child support to Green, and that angered Tiesh because she was married to him, and the support came out of her tax return instead of JR’s.⁵

February 25, 2017 – *The Last Time JR (the victim) Was Seen*

- **2:52 P.M.** – **Tiesh to “Hopefully:”** Let’s take a bath, light some candles, and after rub each other with some oil and then make love. He responds, “Sounds like a plan.” R. 1541.

⁴ Texts between the two continued until 4:49 P.M. that day. R. 1538-1540.

⁵ R. 157, R. 395-396, R. 429, R. 472-473, R. 566, R. 612.

- **5:55 P.M.** – JR was last seen at work at PCL Construction. Alex Rhue, Sr., who took care of the children while the victim and Tiesh were at work, called him to ask him if he needed a ride, but he declined. R. 379-389, R. 480.
- **9:00 P.M.** – JR’s girlfriend Rosario picked him up and dropped him off at his father’s house at 15** Front Street after the two ran errands. She reported he was wearing dirty black jeans, a plain blue or black t-shirt, and work boots. R. 112, R. 482, R. 613, R. 621, R. 625.
- **10:19 P.M.** – Tiesh worked at the steel mill until 10:00 P.M., then returned to her house. She found her husband on the back porch on the phone with the other woman, Rosario Grate, so she started an argument with him. R. 479, R. 1012.
- **10:53 P.M. and 10:58 P.M.** – Tiesh’s phone connected to Tower 1642, Sector 2, the tower that serviced her home, at **** Highmarket Street in Georgetown, SC. R. 1425.
- **11:00 P.M.** – Tiesh used JR’s phone to call Rosario. (To JR, while on the phone): “Your little bitch, she answered the phone. Why don’t you talk to her?” Tiesh called Rosario by her name and told her what was on her mind. There were five outgoing calls from JR’s phone to Rosario from 10:19 P.M. to 11:07 P.M. R. 630-632, R. 1012.
- **11:07 P.M.** – Tiesh called Rosario back several times after the first call, but she refused to answer. Tiesh left multiple voice messages, with the last outgoing call at 11:07 P.M. JR had told Rosario he would meet up with her later that night, but he never showed up. Rosario never heard from him again. R. 482-483, R. 625, R. 628-634, R. 1012.
- JR was reportedly seen in the evening hours at a Bank of America in downtown Georgetown, but a specific time was never provided to police. The bank was just around the corner from the Highmarket St. house. State’s Exhibit 89 (a map of the City of Georgetown.) R. 1066-1070.

- **11:23 P.M. and 11:24 P.M.** – Tiesh’s phone called **1-800-XXX-5483**, a Western Union Netspend number, twice. She attempted to withdraw money from her and JR’s account, but she was unsuccessful. The phone utilized Tower 1642. R. 1012-1013.
- **11:25 A.M.** – JR’s phone placed an outgoing call to that same Western Union from Tower 1642. His phone also recorded a voicemail where Tiesh is heard calling for her father over what sounded like an altercation in the background. R. 286, R. 1013, R. 1414.

February 26, 2017⁶ - *JR is Killed*

- **12:41 A.M.** – JR’s phone called Alex Rhue, Sr.’s. R. 1011.
- **1:07 A.M.** – Appellant Alex Rhue, Jr. and Sr. were seen on the nearby Walmart surveillance cameras purchasing two bottles of hydrogen peroxide. The Walmart was only two miles from the Highmarket Street house. R. 1122-1136; State’s Exhibits 101 (Disk) and 102 (Receipt).
- **1:28 A.M., 2:09 A.M., and 2:14 A.M.** – Rhue Jr.’s phone (**XXX-8145**) was in the same location from 1:28 A.M. to 2:09 A.M. utilizing Sector 2, Tower 1642: the tower servicing the crime scene. He used the phone for 74 seconds at 2:09 A.M., then it stopped connecting to the network until 2:14 A.M., when it moved from the crime scene to the northwesterly Prince Street, in the direction of the Black River. R. 1417-1419, R. 1447-1475.
- **1:52 A.M.** – JR’s phone called Rhue, Sr. for 254 seconds and left a voicemail using Tower 1642. The phone went dark after 1:53 A.M. and was never turned on again.⁷
- **1:56 A.M. to 1:59 A.M.** – Rhue Sr.’s phone (**XXX-1052**) utilized Tower 1642 at 1:56 A.M., then moved to Tower 1565 at 1:59 A.M., when it stopped connecting to the network. It

⁶ The cell phone records were retrieved pursuant to Google Subscriber Search Warrants (without objection) and the State’s expert witness, Allen Huggins, utilized CellHawk and Geofencing technology to track the victim and the three co-defendants’ patterns of life from February 25 to 26, 2017. R. 1369-1415.

⁷ R. 1011, R. 1395, R. 1407-1415; State’s Exhibit 115 (the voicemail),

turned back on at 8:50 A.M. and utilized Sector Two of Tower 1642 until 12:50 P.M., then returned to Sector One. Basically, Rhue, Sr. was at the crime scene that whole time.⁸

- **2:00 A.M. to 6:00 A.M.** – Tiesh’s phone stopped connecting from the network from 2:00 A.M. to 6:00 A.M. R. 1414-1419, R. 1424-1425.
- **3:05 AM** – Rhue, Jr. texted Meyan Thomas telling her he had a family emergency and had to rush off to D.C. on a bus to deal with some issues. “Love you, Queen. I’m sorry, I’ll hit you tomorrow. Shit is real crazy right now. Love you.” R. 736-738; State’s Exhibit 42 (text).⁹
- **6:00 A.M.** – Tiesh’s phone came back online. R. 1425.
- Tiesh texted the victim a few times on the 26th and 27th asking where he was. She stopped after the 27th. R. 1531, R. 1542; State’s Exhibit 121 (text messages).

On or About Saturday, March 4, 2017, and Monday, March 6, 2017

Antwan Simmons was working with Appellant Rhue, Jr., on a roof, and heard him say, “You know JR? Well, that fucker out of here, I took that nig** for a ride.” Rhue, Jr. told him JR and Tiesh had gotten into an argument, so Tiesh called him, and he went to handle it. She and JR had been fighting over money because child support for another woman’s children was being taken out of Tiesh’s tax return. Simmons got people to look for JR on Monday, March 6, because JR’s father told him he had not seen his son recently. R. 754, R. 757-759, R. 1088.

⁸ R. 1012, R. 1408-1416, R. 1414-1416.

⁹ Meyan Thomas later testified that she was “torn and confused” when she found out that the victim had been missing since the time Rhue, Jr. had texted her about the “emergency.” “It wasn’t like JR to just go missing,” “then, seeing the message, I just was putting it together. I didn’t understand why [Rhue, Jr.] sent it at that time of morning. And then, after this, I haven’t heard from him.” R. 739.

Wednesday, March 8, 2017

Three men were seen looking for the victim by the Black River. March 8th was Brittani Green's¹⁰ birthday. She said it was "unusual" that JR had not called her to wish her happy birthday, because he always did. R. 397-398, R. 574, R. 1287.

Thursday, March 9, 2017

8:58 A.M. – Mr. Harrison, Sr. met with Inv. Powell and reported his son missing at the Georgetown City Police Department. He had last seen his son on February 23rd, and it was unusual to not have seen him for two weeks. Brittani Green also reported JR missing. She had last seen him on February 23rd, and had last talked to him on Friday night, February 24th. He usually called his children every night at bedtime, and it was strange that he had not called for two weeks. She had attempted to call him over the last two weeks but did not get through.¹¹

11:03 A.M. – Police opened an official missing persons investigation by retrieving JR's DMV information and putting him into NCIC. Officers confirmed that JR was missing with his aunt, who was an employee of the Georgetown County Detention Center. R. 477-479, R. 613.

Friday, March 10, 2017 – Tiesh is Interviewed, and her House is Searched

A.M.: – Rosario Grate reported her boyfriend missing and gave consent for law enforcement to search her cell phone. R. 483-484, R. 612; State's Exhibit 20 (consent to search); R. 627. Law enforcement interviewed Grate, Tiesh, Brittani Green, Catessa Tucker, JR's employer, Rhue, Jr., and Rhue, Sr. "At the time we were interviewing everyone we could that would come and speak with us to try to find out what happened to Mr. Harrison . . . Or if anything had happened to [him]; we just wanted to try and find him, that was the idea."

¹⁰ Brittani Green had multiple children with JR.

¹¹ R. 156-157, R. 431, R. 471-477, R. 566, R. 611-612.

Law enforcement issued a press release with JR's DMV photo informing the public of JR's missing persons status. The release stated JR was last seen at **** Highmarket Street between 10:00 and 11:00 P.M. on February 25, 2017 by his wife.¹² Meyan Thomas sought out the police and told them that Appellant Rhue, Jr. and JR did not get along well; that Rhue Jr. had always had a problem with JR, wishing JR had never married his sister. R. 484 R. 733.

Tiesh's First Interview – State's Exhibit 21 (Redacted)

Investigators Powell and Morris interviewed Tiesh about JR's disappearance at the steel mill where she worked. She told them he had come over to the house they shared the night of February 25, 2017, and admitted they'd had an argument. Tiesh signed two consent forms to search her two smart phones and to take her DNA.¹³ She initially said JR had his phone, but later admitted she had taken it. Law enforcement secured a search warrant for the phone records and RSCIC created a map. R. 1218-1219. Tiesh told investigators she and JR had been "on and off," and that he had not been living with her full time. She admitted she had come home and found JR texting his paramour and admitted to calling her on JR's phone. JR left the house and she had not seen him since. She said she took a shot of tequila then went to sleep. R. 479.

Tiesh's Second Interview – State's Exhibit 21 (Redacted CD)

Police picked Tiesh up from the steel mill and drove her to the station. She came freely and voluntarily. Inv's Powell and Morris spoke with her for 54 minutes. She gave written consent for the officers to search her cell phones.¹⁴

¹² R. 158-159, R. 475-476, R. 480-481; State's Exhibit 19 (Press Release), R. 1167, R. 1280.

¹³ R. 158-160, R. 163-165, R. 208, R. 478-479, R. 485-486, R. 497, R. 1159-1163, R. 1530; State's Exhibits 104 and 105 (voluntary consent forms).

¹⁴ R. 166-167, R. 171-174, R. 179-180, R. 485-487.

First Search Warrant – Exhibit #1, Motion to Suppress

A.M. – Officer Anderson presented the first affidavit to Magistrate Judge O’Donnell and Inv’s Powell and Morris, Lt. Walton, and Captain Pierce executed it. Their intent was to confirm where JR resided the most – Rosario’s house or Tiesh’s – to focus their search. **** Highmarket St. was a three-bedroom house: Tiesh and the victim stayed in one room, the children in another, and Rhue Jr., and Rhue, Sr. in the third room.¹⁵

Officers found two pill bottles, a DSS child support document, and a toll violation ticket with JR’s name and address (matching his DMV record) on them. The documents were lying on the floor in the master bedroom. While in the master, officers noticed a large stain on the carpet lying in plain view that “didn’t look right.” The room was in “disarray” with “stuff all over the place.” They also noticed a rug with a flannel blanket underneath in a strange place in the room, and moved a tote, the rug, and the blanket to find a place where the carpet had been completely cut away. R. 500-501, R. 506, R. 1168-1169. Carpet fibers and debris were “everywhere” around the spot. Blood stains had soaked through the carpet padding into the subfloor, and a presumptive swab test confirmed the presence of blood. Officers also noticed a second area where the carpet had been cut away, and stains in the area field-tested positive for blood. A broken mirror by the closet was also observed. Officers stopped searching the house and went to apply for a second search warrant.¹⁶

¹⁵ R. 212-214, R. 449, R. 499, R. 956-957, R. 1168 (looking for “proof of residency,”) 1176-1177, R. 1208-1209; Exhibit 1, Defense Motion to Suppress.

¹⁶ R. 407, R. 504-505, R. 512, R. 957-961, R. 1169, R. 1174-1175, R. 1180, R. 1183, R. 1187-1288; State’s Exhibit 24 (thumb drive with photos of the house).

7:41 P.M. to 8:35 P.M. – Second Search Warrant: *Exhibit # 2, Motion to Suppress*

Officers obtained a second search warrant from Judge O’Donnell at 7:41 P.M and executed it at 8:35 P.M. They cut out three pieces of the stained carpet padding from both places where the carpet was missing that were positive for blood. However, the DNA was diluted from a cleaning solution,¹⁷ so it did not initially produce a match. However, after SLED utilized an INVAC forensic vacuum, a match to the victim and another contributor came back. The probability of matching an individual that was not the victim was 1 in 3.1 octillion.

Blood found on the mattress in the room matched the victim and Tiesh. Bloody bedsheets were also recovered. A blood spot was swabbed on the wall by the bedroom door, and the DNA came back to three individuals, with Tiesh listed as a partial contributor. A transfer stain on the wall by the closet (near the bedroom door) that looked like blood castoff stain had Tiesh and another person’s DNA in it. A spot thought to be blood on the wall by the kitchen’s laundry room matched Tiesh and another individual. Multiple cell phones (that they later got search warrants for (unchallenged at trial)) and the blanket that was laid over the largest spot where the carpet was cut away were recovered.¹⁸

Saturday, March 11, 2017 – JR’s Body is Found

11:00 A.M. – *Tiesh’s Third Interview: State’s Exhibit 27 (Redacted Interview)*

Investigators Powell and Morris met briefly with Tiesh (who volunteered to come again) a third time in the 11:00 A.M. hour on March 11th. The purpose of the interview was to discuss items

¹⁷ Richland County Sheriff’s Office’s DNA Technical Lead and Lab Director testified, “Hydrogen peroxide can destroy the DNA.” R. 1491-1492; State’s 115 (DNA Profiler Report).

¹⁸ R. 513, R. 1483, R. 1489-1491, R. 1513, R. 1489.

found in her home pursuant to the search warrants. She was not in custody, was not under arrest, and was not in handcuffs.¹⁹

11:55 AM – *Interview with Alexander Rhue, Sr., Appellant's Father*

Investigator Powell met with Rhue, Sr. at 11:55 A.M. while he was babysitting Tiesh's five children at his house.²⁰ A redacted version of this interview was admitted into evidence at trial. State's Exhibit 28. Rhue, Sr. told the officers that he was at **** Highmarket Street the evening of February 25, 2017, and said Tiesh had arrived home around 10:00 P.M. When asked if Rhue, Jr. was there at the time, he lied and said he did not know; I did not see him. He told them he went to bed between 9:00 and 9:30 P.M. in the bedroom he and Rhue, Jr. often shared, but had gotten up to check on the house. R. 246-247, R. 526-528

12:15 P.M. – *911 Call Came in About the Victim's Body*

Perry Collins called 911 to report having seen a body floating in the Black River below his home while he was out gardening. Law enforcement from the Georgetown County Sheriff's Officer were dispatched to Colonel Cole Drive and arrived just after noon. There was a 30-foot sharp ridge above that portion of the river, so the police used a boat to recover the body, which was currently stationary against a log. The individual's pants were down around their ankles, their hands were over their head, and there was no shirt. The hands and the feet were tightly bound left over right with multiple loops of orange speaker wire, and there were deep lacerations across the right palm. R. 230, R. 545, R. 664, R. 705-706, R. 710-720, R. 722-726, R. 812, R. 963, R. 1199. R. 1204; State's Photo 1466.

¹⁹ R. 215-218, 224-225, R. 515-524, R. 537-538, R. 542-543, R. 1159-1160, R. 1199

²⁰ This interview was recorded on a body camera, but the trial court did not allow the jury to see it. State's Exhibits 4 and 28. He only allowed witnesses to testify about what happened during the tape. R. 562.

The body was in an advanced stage of decomposition with discoloring and degloving of skin. A smaller wound was found on the left side of the ribcage, with a larger wound on the right side of the abdomen that looked like “bite marks or stab marks or animal activity”. The body was taken to a forensic pathologist immediately after it was retrieved, and an autopsy was done. The body was identified as Leon Harrison, Jr., by a distinctive tattoo on his body, and the cause of death was homicidal violence. Law enforcement checked around the bank and the Riverview Club and the Brown’s Ferry Bridge (Dunbar Bridge) for other evidence but found none. R. 394, R. 725-728, R. 824, R. 838, R. 1200.

March 14, 2017 – The House is Searched Again

Interview with Alexander Rhue, Jr.– State’s Exhibit 97 (Redacted DVD)

Investigator Powell met with Rhue, Jr., at Rhue Sr.’s home on Palm Street as other law enforcement were serving the third search warrant at **** Highmarket Street. He admitted he had not told law enforcement the truth about not leaving the house the night of the 25th to the morning of the 26th the first time he spoke with them. He gave law enforcement a buccal swab for his DNA. R. 246, R. 256-258, R. 309, R. 549-550, R. 1065; State’s Exhibit 10.

Third Search Warrant – Executed Four Days After the First Two

12:02 P.M. to 1:17 P.M. – Three days after the body was found and four days after executing the first two warrants, law enforcement secured a third search warrant from Judge O’Donnell and executed it at the Highmarket St. house at 1:17 P.M. In it, they particularly described the items to be searched for: speaker wire, sharp objects, and any other evidence related to JR’s murder. They knew the body was Leon Harrison, Jr. when they searched the home, because they explicitly said in the affidavit that he had been identified by a tattoo. Officers searched multiple vehicles and the home. No evidence was found in the vehicles, but officers took more photographs and seized

a backpack with a myriad of speakers, wires, and cables along with a box cutter, and a steak knife, from the home. R. 235, R. 449, R. 502, 544-548, R. 964-965, R. 1203-1213, R. 1286; Photos 754, 761, 769, 828, 915 on State's Exhibit 39 (Flash drive); Pp. 1839-1840, p. 40, p. 46 Memo in Opposition to the Motion to Suppress.

An area beside the window in the master bedroom tested positive for blood, and a stain thought to be blood on a door jamb of the closet (right behind the first place the carpet was cut away) was swabbed. It was consistent with a cast-off stain.²¹ A toothbrush of the victim was also collected for DNA purposes. The DNA on it matched the standard JR's father gave to establish a familial match. R. 437, R. 965-966, R. 1215-1216.

Interview with Alexander Rhue, Sr. – State's Exhibit 30 (Exhibit 29 was voided: R. 552-553)

Rhue, Sr. pulled up to **** Highmarket Street as officers were serving the second search warrant. Officers asked him about the fight Tiesh had gotten into and where the scratches on her body had come from. R. 256. Information he relayed to officers was deemed inadmissible at trial. R. 256, R. 309, R. 549-553, R. 563-565.

March 22 or 23, 2017

Tiesh's Fifth Interview – State's 107 (Redacted Interview)

Investigator Powell interviewed Tiesh for the last time when she came to the station to retrieve her cell phones. She was not being interrogated or held against her will, and she was free to leave at any time, and the interview lasted approximately twenty-two. When they confronted her with the fact that the body had been found, she changed her story about what she was doing

²¹ Expert testimony defined a cast-off stain as “a blood stain that results from some sort of force being applied to a blood source or an object that contains blood. The force causes blood drops to fly off the surface and possibly land on another.” R. 967; Photos 829, 835, 842, 847, 894 on State's Exhibit 39 (Flash drive of photos.)

that night. Her fourth interview did not procure relevant evidence. R. 258-259, R. 267-271, R. 282-290, R. 1058-1060, R. 1247-1248.

March 29 to May 11, 2017

Investigators retrieved the Walmart surveillance footage and identified an individual matching Rhue, Sr. on the tape, buying two bottles of hydrogen peroxide with a man who looked like Rhue, Jr., at 1:00A.M. on February 26th. Rhue, Sr. was arrested on March 30th and charged with obstruction of justice. R. 576-577. Investigators interviewed Rhue, Sr. again on April 2, 2017, after he initiated contact, and he admitted he had lied to law enforcement previously the first time they spoke with him about not leaving his house that night and about not knowing what his son was doing or where he was that night. They spoke to him again on April 6, 2017, where he again admitted he lied about not leaving his house that night. R. 305, R. 315-320; R. 532, R. 538-549; R. 567-568, R. 1133, R. 1219-1221; State's Exhibit 9 (recorded interview.)²² Law enforcement interviewed Tiesh's five children at their schools on April 25, 2017, arrested Rhue Jr. on May 5, 2017, charge Rhue, Sr. with murder and the rest of the indictments on May 10, 2017, and arrested Tiesh for all her indictments on May 11, 2017. R. 578, R. 1089.

Post-Arrest

A man approached law enforcement and wrote a statement that Rhue, Jr. told him he was in jail for a murder case, and that law enforcement had "nothing on him" because they had dumped the "man with tattoos on his arms' body". He spent time with Rhue, Jr. in the J. Reuben Long Detention Center in Horry County, which is where he heard Rhue, Jr. confess to JR's killing. He came forward because it was "the right thing to do." R. 881-885; State's Exhibit 77 (statement).

²² This tape of this interview was excluded at trial. R. 317.

STANDARD OF REVIEW

“[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court’s factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to de novo review.” *State v. Frasier*, 437 S.C. 625, 633-634, 897 S.E.2d 762, 766 (2022) (adopting a new standard of review distinct from the clear error standard from the *State v. Morris*, 441 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) era).

ARGUMENT

I. The trial court properly found probable cause in the third search warrant’s affidavit and rightly admitted evidence from the first two warrants because of inevitable discovery. The victim was last seen at his marital home two weeks before his body was found bound by the hands and feet floating in a river. A neutral and detached magistrate properly allowed officers to search the home when the date of death matched the date of disappearance.

Appellant argues the trial court erred by finding probable cause in the third search warrant, and in failing to suppress the evidence recovered from all three search warrants after it found it would have been inevitably discovered anyway. The State disagrees and submits Appellant’s argument is without merit. The victim was last seen in his marital home two weeks before he was found floating in the Black River, murdered, with his hands and feet bound. Those are specific, articulable facts given to a magistrate, who rightly issued warrants to search.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures . . . and no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.” U.S. Const. amend. IV; *see also* S.C. Const. art. I § 10 (emphasis added). The provision is intended to protect reasonable expectations of privacy. *See generally Katz v. United States*, 389 U.S. 347 (1967).

“In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures” along with a protection against *unreasonable* invasions of privacy. *State v. Forrester*, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); S.C. Const. art. I, § 10 (1971) (“warrants shall . . . particularly describe the place to be searched, the person or thing to be seized, and the information to be obtained.”) “The laws of search and seizure are aimed at protecting a basic American right: the right to be left alone.” Magistrate’s Bench Book, § 4(a), *Search Warrants*. Appellate courts have “sought to

guard our state citizens' constitutional right to privacy *but* still give credence to the government's interest in conducting legitimate searches." *State v. Counts*, 413 S.C. 153, 170, 776 S.E.2d 59, 69 (2015) (emphasis added).

Normally, the Fourth Amendment requires law enforcement to have a warrant to conduct a search. *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). It must be issued by a "neutral and detached" judicial officer, who is:

[i]nterposed . . . between the citizen and the police. This was not done to shield criminals nor make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals.

McDonald v. United States, 335 U.S. 451, 455-456 (1948) (emphasis added).

Warrant and Warrant Affidavit Requirements

All search warrants issued in South Carolina must be filled out on a form prescribed by the Attorney General's Office. S.C. Code § 17-13-160 (1985). Once the magistrate receives the form, he or she must determine if there is probable cause to believe that "particularly-described seizable evidence is presently located at the particularly-described location." Magistrate's Bench Book, § b (1), *Search With a Warrant*; *State v. Tench*, 353 S.C. 531, 579 S.E.2d 314 (2003). The magistrate first places the officer under oath, reminds the officer that the penalty for perjury attaches to the statements in the affidavit, then makes a probable cause determination. *Id.*; *State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997); S.C. Code § 17-13-140 (2003).

The search warrant and the warrant affidavit must contain sufficient underlying facts and information for a probable cause determination. *State v. Dupree*, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003). The affidavit must "particularly describe the place to be searched and the objects to be seized." U.S. Const. amend. IV; S.C. Const. art. 1, § 10; S.C. Code Ann. § 17-13-

140 (2003). General, “exploratory rummaging” in a person’s belongings is *not* authorized under our constitutions. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). However, “[t]his particularity requirement must be applied with a practical margin of flexibility, depending on the type of property to be seized . . . as the circumstances and nature of activity under investigation permit.” *State v. Sullivan*, 281 S.C. 522, 524, 316 S.E.2d 404, 406 (1984); *State v. Malloy*, 409 N.W.2d 707, 708 (Iowa Ct. App. 1987) (approving a warrant authorizing the seizure of “evidence of instrumentalities which would substantiate abuse.”) Sometimes, “requiring a more detailed description would unreasonably thwart an investigation.” *Fletcher*, 363 S.C. at 254.

The search must be limited in scope to only those items specified in the warrant.²³ “Affidavits are not meticulously drawn by lawyers but are normally drafted by non-lawyers in the haste of a criminal investigation and should therefore be viewed in a common sense and realistic fashion.” *Fletcher*, 363 S.C. at 251, 609 S.E.2d at 587-588; *State v. Sullivan*, 267 S.C. 610, 230 S.E.2d 621 (1976). The written affidavits must be judged by the facts presented, and *not* on the particular words used. *Id.*

Probable Cause

As reasonableness determined through a totality of the circumstances analysis is the crux of the inquiry here, a search is reasonable if there was probable cause to believe the search would produce evidence of a crime or contraband. *Illinois v. Gates*, 462 U.S. 213 (1983). What, then, is probable cause? A statement of facts “which would lead a man of ordinary care and prudence to believe that the object to be sought is presently located at the designated place.” Magistrate’s

²³ An exception is once officers are inside a home, any item in plain view with a readily apparent incriminating nature is fair game for them to use to further an investigation. *State v. Wright*, 391 S.C. 436, 446, 706 S.E.2d 324, 328-329 (2011); *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993); *State v. Culbreath*, 300 S.C. 232, 387 S.E.2d 255 (1990); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

Bench Book, § b (2), *Probable Cause Requirement*. The officer must reasonably believe evidence of a crime will be found, and the belief must stem from recent observations considering all circumstances or evidence. *State v. Baker*, 251 S.C. 108, 160 S.E.2d 556 (1968). There is no hearsay prohibition for officers attempting to establish probable cause. *Sullivan*, 267 S.C. 610, 615-616, 230 S.E.2d at 623-624; *Draper v. United States*, 358 U.S. 307 (1959). Magistrates are only concerned with probabilities, not certainties. *Id.*

The magistrate then makes a practical, common-sense decision after reviewing the totality of the circumstances set forth in the affidavit and all other information available to them at that time about whether there is “a fair probability that evidence of a crime will be found in a particular place.” *State v. Williams*, 297 S.C. 404, 377 S.E.2d 308 (1989); *State v. Crane*, 296 S.C. 336, 372 S.E.2d 587 (1988). The totality of the circumstances test is based upon “the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Brinegar v. United States*, 338 U.S. 160 (1949). If the officer gave a magistrate specific and articulable facts that there was a fair probability that evidence of a crime might be found at a named location, the warrant should be issued and the citizen’s right to privacy must yield to the interest of the state to protect its citizens. Evidence collected should be admitted.²⁴

²⁴ *The Mapp v. Ohio*, 367 U.S. 643 (1961), exclusionary rule is not in the South Carolina Constitution. If items are seized with a faulty warrant, but officers acted in good faith, the evidence should still be admitted at trial subject to the Rules of Evidence. *United States v. Leon*, 468 U.S. 897, 924 (1984).

Suppression is therefore only appropriate when: (a) the judge was misled by information in an affidavit; (b) the judge wholly abandoned his judicial role so that no well-trained officer would rely on the warrant; (c) the affidavit was so lacking in probable cause that belief in its truth was entirely unreasonable; or (d) the warrant was so deficient on its face (failing absolutely to particularize the place to be searched or things to be seized) that the police officers executing the warrant could not reasonably presume it to be valid. *Id.* at 923.

As long as a magistrate had a substantial basis for concluding a search would uncover evidence of wrongdoing by the totality of the circumstances, appellate courts should uphold it. *State v. Dupree*, 354 S.C. 676, 683-684, 583 S.E.2d 437, 441 (Ct. App. 2003); *State v. 192 Coin-Operated Video Game Machs.*, 338 S.C. 176, 525 S.E.2d 872 (2000); *State v. Jones*, 342 S.C. 121, 536 S.E.2d 675 (2000). “Appellate courts should give great deference to a magistrate’s determination of probable cause.” *State v. Driggers*, 322 S.C. 506, 510, 473 S.E.2d 57, 59 (Ct. App. 1996). “[S]earches based on warrants will be given judicial deference to the extent that an otherwise marginal search may be justified if it meets a realistic standard of probable cause.” *State v. Bennett*, 256 S.C. 234, 241, 182 S.E.2d 291, 241 (1971); *United States v. Ventresca*, 380 U.S. 102 (1965) (holding that affidavits for search warrants must be tested and interpreted in a commonsense and realistic fashion).

Inevitable Discovery

Even if something went wrong with the warrant process, evidence may be admitted at trial if the prosecution can establish by a preponderance of the evidence that the information obtained by ill-advised means ultimately or inevitably would have been discovered by lawful means. *State v. Stewart*, 435 S.C. 405, 414, 867 S.E.2d 33, 37 (Ct. App. 2021); *State v. Moore*, 429 S.C. 465, 839 S.E.2d 882 (2020); *State v. Cardwell*, 425 S.C. 595, 601, 824 S.E.2d 451, 454 (2019); *Nix v. Williams*, 467 U.S. 431, 443-444 (1984). At that point, any deterrent effect on law enforcement would have “so little basis” that withholding relevant evidence to deter future violations would not outweigh the “enormous societal cost of excluding truth . . . in the administration of justice.” *Nix*, 47 U.S. at 445.

This Case

Judge Bonds found the first and second search warrants lacked probable cause but found the third one was a valid search warrant under the Fourth Amendment and Article 1, Section 10 of the South Carolina Constitution. *See* Judge’s Written Order. When addressing the third warrant, Judge Bonds said:

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 several things in the home including wire similar to 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 should not be suppressed.

Written Order, p. 3.

He found the third warrant had probable cause independent from the prior warrants. *Id.*

Respondents maintain that Judge Bonds erred in finding the first and second search warrant lacked probable cause under the totality of the circumstances, especially considering the special circumstance of a missing persons case. The affidavits met the requirements of S.C. Code Ann. § 17-13-140.²⁵ However, Respondents choose to not belabor the point, as all of the evidence properly came in, regardless, under Judge Bond’s correct ruling as to the third search warrant. The text of the first and second search warrants can be found in Exhibits 1 and 2 of the Defense’s Motion to Suppress.

²⁵ S.C. Code § 17-13-140: “Any magistrate . . . 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” and **(5)** drug evidence.

The Third Search Warrant

At issue here is the text of the third search warrant. Exhibit # 3, Motion to Suppress.

Description of Property Sought:

All areas of the before mentioned property or places located at **** Highmarket Street in search of 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 jeans, black or blue work T-shirts, work boots.

Affiant's Belief that the Property to be Sought is on the Subject Premises:

On Saturday 2/25/2017, the victim, Leon Harrison, Jr. went missing from his residence of **** Highmarket Street 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 the carpet padding, where the portion of the carpet had been cut away, at the opening to the victim's 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[ed] and executed for the furtherance of developing the blood evidence and any evidence that could further the investigation. On Saturday 3/11/2017, a body 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.

Exhibit 3, Motion to Suppress.

There is more than enough probable cause in that affidavit to justify the search. Courts may not do surgery and exhaustively pick apart a warrant affidavit on appeal; they only must decide if there was a sufficient basis for probable cause. Respondents, again, do not concede that the first two warrants lacked probable cause. However, for argument's sake, if the language that

referenced the first two warrants was removed from the language of the third, probable cause remains:²⁶

Description of Property Sought:

All areas of the ~~before mentioned~~ property or places located at **** Highmarket Street in search of 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 jeans, black or blue work T-shirts, work boots.

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~~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[ed] and executed for the furtherance of developing the blood evidence and any evidence that could further the investigation.~~ On Saturday 3/11/2017, a body 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.

Just the fact that the victim was last seen at **** Highmarket Street on approximately the day his body was dumped in the river (according to the level of decomposition), and the fact that his hands and feet were bound – indicating a crime – was enough to develop probable cause. Those are specific, articulable facts that the officers gave the magistrate to demonstrate why they thought the Highmarket Street residence would contain evidence of a crime under S.C. Code § 17-13-140.

²⁶ See *State v. Spears*, 393 S.C. 466, 483-483, 713 S.E.2d 324, 332-333 (Ct. App. 2011) (admitting evidence because of the inevitable discovery doctrine because the remaining portion of the search warrant – after references to an invalid consent to search were removed – still gave rise to probable cause.); *State v. Davis*, 371 S.C. 412, 639 S.E.2d 457 (2006).

In *State v. Spears*, this Court admitted a weapon into evidence in an armed robbery, kidnapping, and unlawful weapon case even though it was collected after officers searched based on a co-defendant's improperly coerced consent. *Spears*, 393 S.C. at 482-484, 713 S.E.2d at 332-333. The weapon was admitted because the warrant affidavit still contained a substantial basis for probable cause to search. This Court found the prosecution also established the weapon would have been inevitably discovered at the suspect's home by lawful means anyway, and thus, it was admissible for two separate reasons. *Id.* Removing the language about consent, the affidavit read:

An armed robbery occurred at Bell's Bait and Tackle Shop in Elloree, South Carolina, and a suspect, Phillip Spears, was positively identified by a store clerk from a six-photo line-up compiled by SLED. Information was received by officers from the Calhoun County Sheriff's Office that suspect sometimes stayed at 140 Charlotte Circle in the City of Orangeburg, so officers responded to that location.

Upon arriving at 140 Charlotte Circle, a second suspect, Titus Bantan, was located and had also been positively identified from a six-photo line-up compiled by SLED as one of the armed robbery suspects.

Spears, 393 S.C. at 483-484, 713 S.E.2d at 333.

The only reason for police to search 140 Charlotte Circle was that Spears "sometimes stayed there." What is the difference between that home and this one, where the victim definitely resided and was definitely last seen? Also consider *State v. Davis*, where this Court found the trial court improperly granted the motion to suppress even though law enforcement had included a false statement in the warrant affidavit. 371 S.C. 412, 415, 639 S.E.2d 457, 458-459 (2006). This Court removed the offending language from the affidavit and found it still had probable cause because the "sequence of events was still logical from an investigative standpoint." *Id.* at 417, 639 S.E.2d at 460. In fact, this Court did not let a criminal go free "because the constable [] blundered." – Judge Cardozo, *State v. Defore*, 242 N.Y. 13, 150 N.E. 585 (Ct. App. N.Y. 1976).

The officers in this case specifically articulated (with particularized language) what items they sought, which included blood, DNA, fibers, and all the evidence collected from the search pursuant to the second search warrant. It is not a stretch to say that blood, DNA, fibers, etc. might be found in the place the victim was last seen (even without knowledge that yes, in fact, incriminating blood, DNA, fibers, etc. *did* exist in the place he was last seen,) because the victim was very obviously murdered. Blood, DNA, fibers, etc. are all standard protocol evidence to be collected after a crime has been discovered and an investigation has begun. What better place to begin an investigation than where the person was last seen?

Appellant argues the police trampled all over his liberties in this case, and that now, the home of every murder victim will be open season for law enforcement. This is simply not true. This was not a case like any other. This was a missing persons case. Leon Harrison, Jr. had been officially declared a missing person in South Carolina under S.C. Code § 23-3-120 (2009). Law enforcement have, necessarily, special powers to investigate missing persons cases for obvious reasons, still subject to the totality of the circumstances balancing tests as mentioned above. *See, e.g.,* S.C. Code 23-3-220 to 250 (1985); *see* pp. 15 and 17 of the Final Report of the Committee the Make a Study of the South Carolina Constitution of 1895 (1969) (adding the Art. I, § 10 protection against unreasonable invasions of privacy *alongside* a provision allowing for warrants so officers could protect the health, safety, and welfare of citizens.) The magistrate rightly found probable cause here in all three warrants after soberly performing that balancing test.

As an aside as it may not be directly applicable here, law enforcement sometimes secure warrants to search for missing persons at the place they were last seen *because* they might have harmed themselves. Death by suicide, assisted or not, is a crime in South Carolina. *See* S.C. Code § 16-3-1090 (1998); *State v. Levelle*, 34 S.C. 120, 13 S.E. 319 (1891) (overruled on other

grounds by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019)) (finding suicide is an unlawful and felonious act). People only go missing because of the actions of others or of themselves. Law enforcement, in the interests of the community, the family of the person, and, indeed, the person, are tasked with finding out which one. Needs of officers in a missing persons investigation (where a crime may not yet be directly apparent) must be weighed against the Fourth Amendment and privacy rights of citizens by neutral magistrates, and warrants must issue upon probable cause.

To add to the legality and admissibility of the evidence here, the investigators testified that the property was in exactly the same condition when they executed the third warrant as it was when they executed the first two warrants *four days earlier*. Oct. 1, 2021 Affidavit by Inv. Morris, Memo in Opp. Exhibit. No repairs had been made. The carpet was still missing. The subfloor still had the blood stains. The walls had not been cleaned. *Id.* Therefore, all the evidence recovered after the second warrant was executed would have still been there, ready to be collected, and it would have been collected after officers executed the third warrant.

To secure an affirmance here, Respondents must only prove by a preponderance of the evidence that the information collected by (not conceded) unlawful means ultimately or inevitably would have been discovered by *lawful* means; and that has been done. The trial court, therefore, properly found the third search warrant had probable cause because the magistrate made a practical, commonsense determination when reviewing an affidavit issuing the warrant(s). The court also properly admitted all the evidence recovered prior to its execution because of inevitable discovery. Reviewing the trial court's factual findings for any evidentiary support but reviewing its legal conclusions de novo, this Court should affirm.

CONCLUSION

For all the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed. Even if the lower court committed some type of error, the State maintains it is harmless under *State v. Wise*, 359 S.C. 14, 596 S.E.2d 475 (2004).

Respectfully submitted,

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OFFICE OF THE ATTORNEY GENERAL

April 19, 2023

Columbia, South Carolina

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Honorable Robert Bonds, Circuit Court Judge

Appellate Case No. 2021-001306

THE STATE,RESPONDENT,

v.

ALEXANDER RHUE, JR.,APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

This 19th day of April 2023.

s/Julianna E. Battenfield
Julianna E. Battenfield
Assistant Attorney General

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Honorable Robert Bonds, Circuit Court Judge

Appellate Case No. 2021-001306

THE STATE,RESPONDENT,

v.

ALEXANDER RHUE, JR.,APPELLANT.

PROOF OF SERVICE

I, Julianna E. Battenfield hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent, Certificate of Compliance, and Proof of Service have been forwarded to Appellant’s counsel, Kathrine H. Hudgins, Esq., via email today, April 19, 2023 to KHudgins@sccid.sc.gov, and Ms. Hudgin’s legal assistant, Chris Stock, to CStock@sccid.sc.gov.

I further certified that all parties required by Rule to be served have been served. This 19th day of April 2023.

s/Julianna E. Battenfield.
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ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Alexander Rhue, Jr., Appellant.

Appellate Case No. 2021-001306

Appeal From Georgetown County
Robert J. Bonds, Circuit Court Judge

Unpublished Opinion No. 2024-UP-263
Heard June 6, 2024 – Filed July 17, 2024

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of Columbia,
for Appellant.

Attorney General Alan Wilson, Deputy Attorney General
Donald J. Zelenka, and Senior Assistant Attorney
General Melody J. Brown, all of Columbia, and Solicitor
Jimmy A. Richardson, II, of Conway, all for Respondent.

PER CURIAM: Alexander Rhue, Jr. appeals his convictions for the murder of
Leon Harrison, Jr. (Victim) and obstruction of justice, arguing the trial court erred

in failing to suppress evidence obtained pursuant to a search warrant for lack of probable cause. We affirm.

Viewing the totality of the circumstances, with deference to the magistrate, we agree sufficient probable cause supported the issuance of the third search warrant. *See State v. Frasier*, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022) ("[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis."); *id.* at 633–34, 879 S.E.2d at 766 (providing that under this "dual inquiry," an appellate court will "review the trial court's factual findings for any evidentiary support" and any questions of law de novo); *State v. Crummey*, Op. No. 6059 (S.C. Ct. App. filed May 8, 2024) (Howard Adv. Sh. No. 17 at 23) (noting appellate courts defer to a magistrate's determination of whether probable cause existed to support issuance of a search warrant). Extracting the illegally obtained evidence from the two prior searches, the third warrant provides that a decomposed body identified as Victim was found bound by speaker wire in the Black River, with the last place Victim was seen being the Rhue residence. *See State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014) ("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."); *Crummey*, Op. No. 6059 (S.C. Ct. App. filed May 8, 2024) (Howard Adv. Sh. No. 17 at 23) (providing that "magistrates are concerned with probabilities and not certainties" when determining whether the issuance of a search warrant is appropriate (quoting *State v. Dupree*, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003))). 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.

Furthermore, we hold the trial court properly found evidence seized by authorities during the first and second search warrants of the Rhue residence would have been inevitably discovered and therefore exclusion was unnecessary. *See State v. Moore*, 429 S.C. 465, 478–79, 839 S.E.2d 882, 889 (2020) ("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." (quoting *State v. Copeland*, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996))). From reviewing the record, it is evident that investigators would have discovered the carpet and blood stain evidence when executing the third warrant in furtherance of a homicide

investigation; the only difference being such seizures would be permitted within the scope of that warrant. *See id.* at 481, 839 S.E.2d at 890 (providing that under the inevitable discovery doctrine, "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) (emphasis added))). Thus, the trial court properly admitted the evidence seized from all three search warrants.

AFFIRMED.

WILLIAMS, C.J., and KONDUROS and TURNER, JJ., concur.

RECEIVED**Jul 29 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

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.

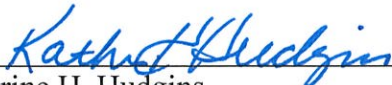
The affidavit, once properly redacted, lacks probable cause for the magistrate to determine that evidence of a crime will be found inside the house. The facts that the deceased stayed at the house and this was purportedly the last place he was seen are not sufficient to establish probable cause. Under 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

RECEIVED⁷³

Jul 29 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

THE STATE,

RESPONDENT,

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
Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
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ATTORNEY FOR PETITIONER

RECEIVED**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

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THE STATE,

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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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August 26, 2024.

RECEIVED⁷⁹

Aug 26 2024

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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

Donna D'Alessio, Legal Assistant to
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The South Carolina Court of Appeals

The State, Respondent,

v.

Alexander Rhue, Jr., Appellant.

Appellate Case No. 2021-001306

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. Bruce Williams

C.J.

U. Ke

J.

[Signature]

J.

Columbia, South Carolina

cc:

- Alan McCrory Wilson, Esquire
- Melody Jane Brown, Esquire
- Kathrine Haggard Hudgins, Esquire
- Donald J. Zelenka, Esquire
- Jimmy A. Richardson, II, Esquire

Richard Brandon Larrabee, Esquire
The Honorable Robert J. Bonds

FILED
Oct 07 2024
