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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

The Honorable H. Steven DeBerry, Circuit Court Judge

Appellate Case No. 2023-001182

The State, Respondent,

v.

Antonio Denon Brayboy, Appellant.

APPELLANT'S REPLY TO RESPONDENT'S INITIAL BRIEF

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I. THE TRIAL COURT INCORRECTLY RULED THAT APPELLANT DID NOT HAVE AN EXPECTATION OF PRIVACY IN HIS CELL PHONE RECORDS AND THE CSLI, THAT THERE WAS PROBABLE CAUSE FOR THE ISSUANCE OF THE SEARCH WARRANT, PARTICULARLY WHERE THE VAGUE ALLEGATIONS DID NOT EVEN STATE WHAT, IF ANY CRIME APPELLANT COMMITTED

The State misinterprets the Appellant's argument in appealing the decision of the lower court. Not only does the State misinterpret the argument, but the State also further fails to mention pertinent facts related to the phone records. The real issue here is that the State obtained the Appellant's phone records through an invalid search warrant, then introduced those records as evidence of the Appellant's guilt. Although obtained through an invalid warrant, the Appellant's calls and identification are not competent evidence of guilt. In fact, they are not evidence of guilt at all. This information should have been suppressed on the basis it was obtained through the invalid search warrant and the fruit of the poisonous tree.

The State has maintained that their search warrant, although lacking the bare minimum, is valid. Yet, essentially asks this Court to assume contradicting information is accurate.

It is important to note, the State discussed what Edwards "would" have informed the Magistrate about in connection with the investigation. (Resp. Initial Brief pg. 13). The State cannot assume any information was provided to the Magistrate in an attempt to support the validity of a search warrant. A Defendant should not have to depend on the speculation that the officer would have told the Magistrate Judge something in obtaining a search warrant. Search warrants are a necessary tool to protect the rights of individuals. To allow assumptions to be made as to what was used to support the application of a search warrant in completely improper. Along with assumptions, Edwards provided testimony regarding supplementing his affidavit to the Magistrate that would not be possible. The entire purpose of a police file is to keep record of when and how

different aspects of the investigation occurred. The record shows Edwards discovered that the alleged victim was on Skipthegames, but there is no indication or discussion of the Appellant being on Skipthegames until ***after*** the Appellant's illegally obtained phone records are received and reviewed by Edwards and Clark. Edwards testified and read into the record his report.

Q All right. I want you to read to the Court your case notes related to January 16th, 2020. And specifically what was highlighted.

A Okay. On January 16th, 2020, okay, I highlighted, "I, Investigator Edwards, along with Investigator Clark, reviewed Antonio Brayboy's cell phone and discovered Mr. Brayboy was also on SkipTheGames web site during the same time frame as the male victim, Rashad Maurice Jones. Investigator Clark discovered Mr. Brayboy had an ad posted on SkipTheGames and provided the information to this investigator.
"I, Investigator Edwards, reviewed the SkipTheGames ad and observed Mr. Brayboy was soliciting himself as a male prostitute. Investigator also discovered that both parties texted each other prior to Mr. Jones's death."

Q Okay. All right. So it was after he got -- now on this date, which is the 16th; right?

A Yes, sir.

Q This is after you already got Mr. Brayboy's records; right?

A Yes.

Q It was hard to correspond anything without getting his records; right?

A That's correct.

Q There was no connection to Mr. Brayboy until y'all got his cell phone records?

A Yes, sir.

Tr. pg. 68, lines 7-25 – pg. 69 lines 1-8.

The State then goes on to argue that Edwards supplemented his testimony to the Magistrate and included that he had talked to a personal friend of the victim" and goes on to discuss Edwards informing the Magistrate of statements made by the alleged victims family. The affidavit and any alleged oral testimony provided to the Magistrate fail to address "the 'veracity' and basis of knowledge" of the persons supplying hearsay information. See State v. Bellamy, 336 S.C. at 143, 519 S.E.2d at 348 (quoting Illinois v. Gates, 462 U.S. at 238). There is no showing of reliability of these individuals. See State v. Philpot, 317 S.C. 458, 461, 454 S.E.2d 905, 907 (Ct. App. 1995) (finding an affidavit insufficient when it failed to attest to a confidential informant's reliability). Looking at the four corners of the affidavit, there is no information from which a court could conclude the witnesses were reliable. See State v. Robinson, 415 S.C. 600, 605, 785 S.E.2d 355, 357–58 (2016) (finding the contents of a search warrant's affidavit sufficient on its face to provide the court a substantial basis to believe the confidential informant was reliable because the affidavit provided that: (1) the HCPD, (2) had a confidential informant, (3) who bought cocaine, (4) from the subject home, and (5) the informant had made previous purchases from the home).

Most, if not all of the information the State uses to support their arguments in speculative. For example, speculating that the Magistrate would have known the cell phone records, subscriber information, and CSLI the State was requesting the search warrant for would identify the caller and could place the caller at the crime scene at the time of the murder. None of which can even reasonably be speculated. Calling an individual does not make one guilty of a crime. Nor is it probable cause of guilt. If anything, it is suspicion. However, mere suspicion is not enough.

Appellant's argument that the search warrant is void of any accusation of a crime is overwhelmingly valid. The State tries to assert they could not accuse Brayboy of any crime because

they did not know his identity. The State supports the Appellant's position when they say the State did not know the Appellant's identity at the time of the issuance of this search warrant so they could not accuse him of any crime. S.C. Code Ann. § 17–13–140 (2014) (stating, in part, a search warrant may be issued to search for and seize property tending to show that a particular person committed a criminal offense); State v. Jones, 342 S.C. 121, 126, 536 S.E.2d 675, 678 (2000). The State wants this Court to essentially believe that being the last person to speak to someone prior to their murder is a crime or evidence they committed a crime. If that is the case, and if the State did not know the identity of the subscriber, they could have at the minimum, accused the subscriber of a crime. Then, the State argues the search warrant states that on the front of the search warrant it says involves a homicide, thus the warrant does assert a crime was committed. To accept this begs the question, does that mean that whenever a search warrant is obtained in an investigation, the owner of those records or place to be searched is accused of murder? (i.e. obtaining a search warrant for a mother's house when their child is missing).

This would negate any requirement for a valid affidavit, or even an affidavit at all. If an investigator can claim they relied upon good faith and acted on objectively reasonable reliance on the invalid search warrant. As for inevitable discovery, there is nothing in the record giving certainty that Asia Cooper would make a statement. The State cannot claim inevitable discovery when they do not know what would have or could have happened. Further, the State does not know with certainty if a Judge would have issued a warrant based solely on the testimony of Asia Cooper. The exclusionary rule would apply. As the State has pointed out, the purpose of the exclusionary rule is to deter future unlawful police conduct. State v. Calandra, 414 U.S. 338, 347 (1974). It is unlawful conduct for police to illegally search and obtain an individual's records. Not only is that misconduct but it is also misconduct to manipulate and attempt to misrepresent to the jury matters

of fact related to an investigation. Knowingly doing so is not simply unethical, it is illegal and tantamount to perjury.

The State wants to argue it was harmless error because the Appellant discloses his phone number at the time of his arrest. His disclosure of his phone number does not eliminate the violation of the Appellant's expectation of privacy. The Courts have made clear an individual's CSLI is protected as it discloses protected and invasive activity. Further, the State wants to argue it was a harmless error because Asia Cooper identifies the Appellant's phone number but is unable to testify as to his number at the time of the alleged crime, because she did not know the Appellant at the time.

The alleged victim's phone pinging in the path toward Lake City is not evidence of a crime, nor is it evidence that the Appellant committed the crime. The State presented no evidence at trial of the Appellant being in possession of the alleged victim's phone. The only evidence presented at trial were the alleged victim's phone and the Appellant's phone traveling in the same direction. The State cannot corroborate anything, without the Appellant's CSLI. The State has no other evidence of the Appellant's guilt. Further, the State never supports their allegation that there was other competent evidence.

When looking at the cases cited in State v. Drayton, which found a harmless error when the defendant's guilt was conclusively proven by other competent evidence, the current case does not fall under this umbrella. State v. Drayton, 415 S.C. 43, 780 S.E.2d 902 (2015). In State v. Livingston, the defendant was identified by one of the surviving victims as one of his assailants. State v. Livingston, 282 S.C. 1, 3 (S.C. 1984). There is nothing in the record that conclusively shows Appellant's guilt. In fact, the only testimony they had was uncorroborated on multiple grounds.

The state wants to pretend as if there is a confession out there to the stated individual. There was no recorded confession. The "confession" the state continues to reference is a statement made by an individual who was unhappy with the outcome of her relationship with the Appellant.

For the reasons above, the search warrant is invalid, and all evidence obtained from the invalid search warrant should have been suppressed.

II. THE TRIAL COURT INCORRECTLY RULED IN ALLOWING EVIDENCE OF SKIPTHEGAMES AND SPOTLIGHT TO BE SUBMITTED TO THE JURY WITHOUT PROPER AUTHENTICATION

The State never produced a witness from Skipthegames which could testify as to the records themselves, the process, method or storage of or reliability of the records. The State was unable to authenticate the advertisement posted to Skipthegames. No evidence was produced that the advertisement with the phone number alleged to be the Appellants was ever actually posted by the Appellant.

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. S.C.R. Evid. 901. The State did not satisfy this requirement in bringing in law enforcement agents that have no direct tie or connection to the entities, neither Skipthegames nor Spotlight. The agents that testified could not testify to how the platforms worked or how the data was stored. More importantly, the agents could not provide any direct testimony regarding ads posted on Skipthegames. In order to authenticate the advertisement, the State would have needed to bring someone in who could testify the advertisement was in fact posted to their website, was stored on their server and was unaltered or doctored. None of which the agents had the ability or authority to do so. Further, they could not testify to the websites data system or requirement for imputing said data.

The State then argues harmless error, claiming that the advertisement was cumulative to Asia Cooper's testimony. Asia Cooper's testimony does not prove the Appellant's guilt. Each and every time the State attempts to claim there was external, competent and cumulative evidence, they reference cases with first had knowledge or evidence. Communications between two individuals is not evidence of guilt of a crime. If that was the case, if a mother was the last to speak to their child prior to their disappearance, this theory would require that the mother be one guilty of the child going missing. The State also points to the Appellant's presence at the scene of the crime, no testimony puts the Appellant at the scene of the crime. Further, there is no evidence that the Appellant made any statements to Asia Cooper.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR DIRECTED VERDICT AS THERE WAS NO CORROBORATING EVIDENCE PRESENTED AND FURTHER INADMISSIBLE EVIDENCE WAS PUT IN FRONT OF THE JURY

There is an issue of corroboration here. The issue this Appellant takes up with this Court is the testimony of Asia Cooper. Asia Cooper's testimony cannot be relied upon as sole evidence of guilt without any corroborating evidence. None of which the State was able to produce. The State wants to focus on corroboration of a Defendant's confession, arguing it does not apply here, yet portray to the Court, Asia Cooper's statement is the Defendant's confession. If a Defendant's confession cannot stand alone, unless such confession is corroborated by proof, then a third parties relayed "confession" must fall under more scrutiny.

The State alleges they corroborated many of the facts that the Appellant allegedly admitted to Asia Cooper. However, this is false. In fact, some of her testimony is contradicted by the investigation itself. Asia Cooper testified the alleged victim portrayed himself as a woman. However, other testimony and evidence indicated that the alleged victim would meet up with women for sex at the park where he was found not men. Further, she could not testify firsthand to

ever seeing the Appellant with a .45 caliber weapon. Further, when she told law enforcement where she believed the gun was, no warrant was obtained, no further investigation was done to locate this alleged .45 caliber weapon in the possession of the Appellant.

The State is attempting to disguise a third-party statement as an admission of guilt by the Appellant. At no time during Miranda, pre-Miranda or at trial, did the Appellant ever confess to this murder, or "admit" to any of the statements the State has alleged in their brief. The State misidentifies Asia Cooper's statements. There is no evidence that the Appellant "admitted" anything.

Further, the State did not prove any acts committed by the Appellant. With the improper evidence admitted, all the State proved was the general whereabouts of the phone registered with the number (704) 777-8982. The State does not and cannot prove the Appellant met the alleged victim, cannot prove the Appellant got into the alleged victim's car, shot the victim, or any other allegations the State claims they proved.

The State is also incorrect in arguing that the State proved malice through testimony of the pathologist, firearms expert and those that processed the crime scene. None of the testimony provided by those individuals proved that the Appellant committed the acts accused. None of the evidence presented by any individual proved the Appellant committed the acts. There was no eyewitness. There was no eyewitness that could place the Appellant at the scene or in the alleged victim's car. After a forensic analysis of a condom wrapper found next to the vehicle, a forensic analysis of the interior of the vehicle, there was no DNA matching that of the Appellant to be a contributor to the semen or any DNA found in the car. The Appellant was not found with a gun. The Appellant was not found with the alleged victim's phone. All of the statements made by the State throughout their arguments are conjecture.

The State continues to suggest if the improperly admitted evidence is removed, there is more than sufficient evidence to prove the case. However, just as before, the State never points to what this evidence was. The State references Closs v. Leapley, in which a burglary conviction supported by evidence where footprints in the snow corroborated petitioner's possession of stolen items, yet the State makes no connection to how this case falls under that corroboration. Closs v. Leapley, 18 F.3d 574 (8th Cir. 1994). This failure on the State's part is due to the fact that no such evidence exists. The State did not have a case without the illegally obtained CSLI data. The State wants this Court to believe Asia Cooper's testimony is corroborated, however it is not. Therefore, Judge DeBerry erred in denying the motion for directed verdict as well as erred in allowing the submission of inadmissible evidence.

When the Court removes the inadmissible evidence and the uncorroborated testimony, there is no facts that could possibly lead a reasonable jury to convict the Appellant. Submitting the case to the jury with the inadmissible evidence and uncorroborated evidence was a method of confusing the jury and ultimately did so.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court and remand for a ruling of acquittal.

Respectfully submitted,
December 3, 2024

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PROOF OF SERVICE

I certify that I have served the Appellant's Reply to Respondent's Initial Brief upon the below listed by sending a copy of same by electronic mail, on today's date addressed as follows:

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December 3, 2024

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Re: The State, Respondent v. Antonio Denon Brayboy, Appellant
Appellate Case No. 2023-001182

Dear Madame Clerk:

Attached and for filing, please find Appellant's Reply to Respondent's Initial Brief and Proof of Service in the above-referenced matter.

Should anything additional be required, please do not hesitate to contact me.

Sincerely,

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