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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Georgetown County
The Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ALEXANDER RHUE, JR.,

PETITIONER.

Appellate Case No. 2024-001886

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Appellant Alexander Rhue, Jr. was indicted for the murder of Leon Harrison, Jr., obstruction of justice, desecration of human remains, and two counts of criminal conspiracy. (R. p. 1861–1865). 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 p. 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*[1] to show the evidence recovered from all three searches should be admitted at trial. Sept. 17, 2021 (R. p. 1-59).

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 trial. (R. p. 1858–60).

Petitioner was found guilty of murder and obstruction of justice. (R. p. 1778, ll. 2–10). Petitioner was sentenced by the Honorable Robert J. Bonds to thirty-seven years' imprisonment for murder and eight concurrent years for the obstruction charge. (R. p. 1807, l. 22–p. 1808, l. 8). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his Appeal.

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[1] *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).

The Court of Appeals affirmed Petitioner's conviction in an unpublished opinion dated July 17, 2024.

STATEMENT OF FACTS

On March 11, 2017, Perry Collins was working in the yard of his home on the Black River in Georgetown County when he looked down into the river and saw a body floating in the water. (R. p. 704, l. 22–p. 705, l. 19). Collins called the police and, at the request of authorities, followed the body until it got snagged on a limb. (R. p. 705, l. 20–p. 706, l. 7). One of those who responded was Albert Kohut, who worked at the Georgetown Sheriff's Office. (R. p. 711, l. 24–p. 712, l. 6). Kohut rode a boat to where the body was. (R. p. 720, ll. 9 – 20). Kohut used a boat hook to bring the body back to shore. (R. p. 721, l. 22–p. 723, l. 14). Authorities would identify the body as Leon Harrison Jr., also called JR. (R. p. 543, l. 22–p. 544, l. 2). Harrison's body was badly decomposed, and his hands and feet had been tied with speaker wire. (R. p. 544, ll. 7–9).

The discovery helped bring to a conclusion a missing person case in Georgetown County. On March 9, JR's father and Brittani Green both went to the police to report that JR was missing. (R. p. 576, ll. 15–18). As police investigated, they found that the last place that JR was seen alive was on February 25, 2017, at a home on Highmarket Street that he shared with his wife, Tiesh Rhue, Petitioner, and Petitioner's father; the couple had an argument and Tiesh Rhue told authorities that her husband had angrily stormed out. (R. p. 479, ll. 3–15).

As part of their investigation into JR's disappearance, the police conducted three searches at the Highmarket Street home.

Investigator Bert Powell testified that he did not know that a crime had been committed at the time of the first search warrant. (R. p. 585, l. 24 – p. 587, l. 1). However, police were trying to find information to confirm that JR lived at the Highmarket house. (R. p. 587, ll. 2–5).

The first search warrant authorized officers to look for "bank records, legal documents, identification, passports, debit/credit cards, phone records, vehicle information, insurance paper

work, travel documents, or anything that can aid investigators in ascertaining the whereabouts of Leon Harrison Jr." (R. p. 1819). While they were searching, Investigator Powell saw something that "just didn't look right" on the floor near one of the bedroom closets. (R. p. 505, ll. 7 – 11). A rug and a blanket lie on the floor. (R. p. 505, ll. 16 – 18). Underneath, the carpet had been removed. (R. p. 505, ll. 20 – 22). The officers saw what they thought might be blood. (R. p. 507, ll. 5–18).

Officers then sought a second warrant. (R. p. 507, ll. 17 – 18). That warrant authorized the officers to search for "[b]lood 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. 1825). Pursuant to the second warrant, they found more carpet that had been removed and more stains that they believed to be blood under a tote at the foot of the bed. (R. p. 509, ll. 14 – 20; p. 512, ll. 6–8).

After the body was discovered, police returned to the Highmark residence for a third search on March 14. (R. p. 544, ll. 12–13; p. 545, ll. 16–17). This time, they were definitively looking for evidence of murder. (R. p. 544, ll. 15 – 18). The third warrant described what officers were looking for as speaker wire, as well as "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). The officers found the carpet essentially unchanged from the time of the first search. (R. p. 548, ll. 17–23).

At a pretrial hearing Sept. 24, 2021, Petitioner brought a motion to suppress evidence found in the searches of the home. (R. p. 18, l. 22–p. 19, l. 2). Petitioner argued that the first warrant was not justified by probable cause because it did not allege a crime. (R. p. 20, ll. 8 – 13). He argued that the second and third warrants were also impermissible under the fruit of the poisonous tree doctrine. (R. p. 22, l. 17–p. 24, l. 20).

In an order dated October 6, 2021, the court granted the motion to suppress the first two warrants. However, the trial court then held:

> 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 search 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).

At trial, there was evidence of tension between Petitioner and the victim. The relationship between Petitioner and JR was troubled. One person who knew both of them recalled that Petitioner would often take his sister's side in arguments with JR. (Rp. 733, ll. 12–16). Rosario Grate, JR's girlfriend, remembered a words being exchanged between Petitioner, JR, and Tiesh at a New Year's Eve 2016. (R p. 626, ll. 5–6; p. 634, l. 25–p. 635, l. 10).

Antwan Simmons, who sometimes worked with Petitioner, recalled driving from Georgetown to Myrtle Beach one Saturday as part of a furniture run. (R. p. 753, ll. 19–22; p. 754, ll. 22–25; p. 756, ll. 13–15). Petitioner waved down Simmons and rode along. (R. p. 756, ll. 20–23). After a period of silence, Petitioner eventually spoke. (R. p. 757, ll. 14–21). "You know JR?" he asked Simmons. "Yeah," Simmons responded. "Well, that f****r out of here, I took that n***a for a ride," Petitioner replied. (R. p. 757, ll. 16–17). Simmons understood Petitioner to be saying that he had killed JR. (R. p. 757, l. 22–p. 758, l. 4).

Petitioner was convicted of murder and obstruction of justice. (R. p. 1778, ll. 2–10). He was sentenced to eight years for obstruction of justice and 37 years for murder, to run concurrently. (R. p. 1807, l. 22–p. 1808, l. 8). Petitioner then appealed to the South Carolina Court of Appeals,

which affirmed his conviction in an unpublished ruling. *See State v. Rhue*, Op. No. 2024-UP-263 (S.C. Ct. App. filed July 17, 2024). After denial of his petition for rehearing, Petitioner files this petition for writ of certiorari.

STANDARD OF REVIEW

"On appeals involving a motion to suppress based on Fourth Amendment grounds, appellate courts apply a deferential standard of review and will reverse only in cases of clear error." *State v. Moore*, 429 S.C. 465, 472, 839 S.E.2d 882, 885–86 (2020). "[I]n reviewing Fourth Amendment cases, appellate courts must affirm the trial court's ruling if there is any evidence to support it." *Id.* at 472, 839 S.E.2d at 886.

ARGUMENT

The Court of Appeals, like the trial court before it, 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.

Petitioner argues that the Court of Appeals was mistaken 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. Petitioner's argument is meritless.[2]

In South Carolina, the issuing of a search warrant is controlled by two sources: first, section 17-13-140 of the South Carolina Code;[3] second and more significantly, the Fourth Amendment's protection against unreasonable searches.[4]

Searches are authorized under South Carolina law to find, among other things, "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" and "property constituting evidence of crime or tending to show that a particular person committed a criminal offense." S.C. Code Ann. § 17-13-140 (West).

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[2] Respondent did not concede below, and does not concede here, that the first two search warrants lacked probable cause. However, because the trial court and the Court of Appeals both found the evidence admissible under the inevitable discovery doctrine, Respondent focuses in this petition on the bases for the rulings Petitioner seeks to appeal to this Court.

[3] "If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched." S.C. Code Ann. § 17-13-140 (West).

[4] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

Probable cause is governed by a common-sense approach. *See Florida v. Harris*, 568 U.S. 237, 244, 133 S.Ct. 1050, 1055, 185 L. Ed.2d 61 (2013). Appellate courts "reject[] rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach." *Id.* Under U.S. Supreme Court precedent, probable cause requires "the kind of 'fair probability' on which 'reasonable and prudent [people,] not legal technicians, act.'" *Id.* (alteration in original) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 231, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)); *see also id.* at 244, 133 S.Ct. at 1056 ("Probable cause . . . is 'a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules.'" (quoting *Gates*, 462 U.S. at 232, 103 S.Ct. 2317)). "[I]n 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)). And as the Iowa Supreme Court has noted, "[c]lose cases must be resolved in favor of upholding warrants, as public policy is promoted by encouraging officers to seek them." *State v. Green*, 540 N.W.2d 649, 654 (Iowa 1995) (citing *Gates*, 462 U.S. at 236–37, 103 S.Ct. at 2331, 76 L.Ed.2d at 547).

Given this common-sense approach, the requirement that the results of searches lacking probable cause be excluded is not absolute; in limited circumstances, our courts have found that some evidence gathered under disputed authority may nonetheless be admitted. One exception comes in cases where evidence would have been "inevitably discovered" pursuant to a lawful search. "[T]he 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." *State v. Moore*, 429

S.C. 465, 481, 839 S.E.2d 882, 890 (2020) (alteration in original) (quoting *State v. Cardwell*, 425 S.C. 245, 251, 601, 824 S.E.2d 451, 454 (2019)).

It is under this doctrine that the Court of Appeals properly affirmed the trial court's decision deeming admissible the evidence uncovered in the first two searches of the Highmarket residence. As the Court of Appeals found:

> 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).

Here, the inevitable discovery doctrine applies. Officers present at the earlier searches of the Highmarket residence testified that the house was in substantially the same condition during the third search. Petitioner and his conspirators had several days before any of the searches to do what cleaning they were going to do; there is no reason to doubt that the blood found during the first two searches would also have been uncovered in the third.

Despite Petitioner's best efforts, he cannot get beyond the common-sense rationale supporting the issuance of the third search warrant. The victim in this case had been found dead; his death was likely a homicide; and it is fairly probable that the last place the victim of a homicide is seen alive will contain "property which . . . 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" or "property constituting evidence of crime or tending to show that a particular person committed a criminal offense." § 17-13-140.

This, in fact, is the simple logic of Petitioner's own proposal for what the search warrant affidavit should have read:

> 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.[5]

Pet. at 19 (first alteration in original).

Petitioner concedes that it was "perhaps logical for the police to want to search the Rhue residence." Pet. at 20. It was logical because it was fairly probable that evidence concerning the murder of the victim would be found there. *See Crummey*, 443 S.C.at 107, 902 S.E.2d at 398 ("[I]n determining whether a search warrant should be issued, magistrates are concerned with probabilities and not certainties." (quoting *Dupree*, 354 S.C. at 683, 583 S.E.2d at 441)). It was logical, in other words, because law enforcement had provided probable cause for the search.

However, Petitioner argues that the State must not simply have probable cause to search a location, but a theory of the case. *See* Pet. at 19 (listing, among its reasons why probable cause was not satisfied, the lack of information in the search warrant materials "show[ing] how or when the deceased was killed, bound and ended up in the Black River some distance from the Highmarket house."). That is not what our law requires; it requires a reason for the search, not a step-by-step narration of the crime. *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

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[5] 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).

forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place.").

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). Petitioner does not explain how it would be impossible for the victim to have been at the bank prior to arriving at the Rhue residence. The victim was seen at several locations before he disappeared; there is only one location that is the last location at which the victim was seen alive at a particular time. That is where law enforcement had probable cause to conduct a search.

CONCLUSION

There is nothing novel here for this Court to determine, and no need to clarify a standard that the Court of Appeals, and the trial court before it, faithfully applied. There was probable cause for the third search, if not for the first two; the disputed evidence would have been found during the third search; the inevitable discovery doctrine applies. This Court should deny the petition for the writ of certiorari.

Respectfully Submitted,

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