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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

VINCENT T. SHIVERS, III,

Petitioner.

Appellate Case No. 2022-000425

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF THE ISSUE

The Court of Appeals erred by affirming the trial court's decision to deny Petitioner's motion to suppress evidence gathered by law enforcement after Deputy Hale entered Shivers's fenced backyard without a warrant or an objectively reasonable basis for believing someone inside the home required emergency assistance.

RESPONDENT'S COUNTER STATEMENT OF THE ISSUE

The Court of Appeals properly found that the trial court did not err in denying the suppression motion because the record supports the conclusion that law enforcement would have inevitably discovered that the victim was deceased in her home, and a subsequent investigation as to Petitioner's whereabouts would have ensued considering Petitioner could not be located, and did not intend to return to the scene of the crime.

STATEMENT OF THE CASE

Petitioner, Vincent Thomas Shivers, III, is confined in the South Carolina Department of Corrections as a result of his Lexington County convictions and sentence arising from the murder of his long-time girlfriend, Roselynn Cedeno, ("the victim"). The Lexington County Grand Jury indicted him in December 2020 for murder (2020-GS-32-2419) and in May 2021 for possession of a firearm during the commission of a violent crime (2020-GS-32-2422). He proceeded to a jury trial before the Honorable Debra R. McCaslin on March 21-25, and March 28-29, 2022.

The jury convicted him of both charges (ROA, 1484-1486), and Judge McCaslin sentenced him to seventy-five (75) years for murder and five (5) years concurrent for the weapons offense, with credit for nine hundred thirty-six (936) days of time served. (ROA, 1504-1506; 1527-1530). Jack B. Swerling, Deborah B. Barbier, and Alissa L. Wilson represented Petitioner at trial. Eleventh Circuit Deputy Solicitor L. Suzanne Mayes and Assistant Solicitor LeAnna S. McMenamin prosecuted the case.

Petitioner timely served and filed a notice of appeal. He filed an Initial Brief of Appellant on March 7, 2023, and Respondent filed its Initial Brief on June 12, 2023. In an unpublished per curiam opinion, the South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. *State v. Shivers*, Op. No. 2025-UP-042 (S.C. Ct. Appeals filed February 5, 2025). On February 19, 2025, Petitioner filed a petition for rehearing, which was denied by Order on March 12, 2025.

Petitioner filed a Petition for Writ of Certiorari and the Record on Appeal in the South Carolina Supreme Court on March 28, 2025. Respondent submits the return to the petition.

RESPONDENT'S STATEMENT OF FACTS

Viewed in the light most favorable to the prosecution, the direct and circumstantial evidence is that in September of 2019, Petitioner and the victim were living in a Lexington County residence. They had lived together for roughly a decade. Petitioner worked at Camping World, while the victim was a homemaker. They did not have any children together. The victim's son, Tommy Cedeno, testified that "[t]hey were very private people," who did not have parties or socialize with anyone except her family. (ROA, 408-411; 240-246).

Events Leading up to the Discovery of the Victim's Death

Tommy, his wife and children, and his maternal grandparents all live on the same property in Beaufort, South Carolina. The victim left Beaufort and moved to Aiken when she started dating Petitioner, and she was living with him in Lexington in September of 2019. (ROA, 406-411; 435-436). On September 1, 2019, Hurricane Dorian, then a Category 5 hurricane, was projected to make landfall in Beaufort, and the Cedeno family expected the governor to issue a mandatory evacuation order. As a result, Tommy and his mother exchanged calls and text messages that day about the family evacuating to her residence. He informed her that he was planning to stay in Beaufort to watch over the property, but that the rest of the family was coming to her home. The plan was for her to contact them on the morning of September 2nd, and they would leave between 7AM and 8AM. (ROA, 411-420; 439-440). On Monday, September 2nd, Tommy and both of his grandparents unsuccessfully tried to call the victim. The Cedeno family stayed in Beaufort despite a mandatory evacuation order (for one day) because they did not have anywhere else to go. (ROA, 420-431).

Charles Watson, Eric Weir and Steve Smith, were Petitioner's coworkers at Columbia Camping World where Petitioner was the finance manager. Mr. Watson testified that he worked with Petitioner on Sunday, September 1st, and that Petitioner acted normally and did not mention

taking time off or a planned vacation. Petitioner's coworkers testified that he did not show up for work on Monday, September 2nd, and that this was "very much out of his character. He was … number one in the company for finance and … he had a sharp reputation for being on time." As the day wore on and he did not show, his coworkers' concerns increased to the point that they started to "get worried for him." (ROA, 385-387).

Mr. Smith, the general manager, had unsuccessfully tried to contact Petitioner by phone several times when Petitioner did not show up for work on the 2nd. Mr. Weir, a coworker, was asked to drive by Petitioner's residence because he was familiar with the area and knew where Petitioner lived. (ROA, 458-60; 468-469; 495). When Mr. Weir drove by the residence that morning, he testified that he did not see any lights on, he did not see any activity in the house, and he did not see Petitioner's F-150, so he drove away. (ROA, 387-390; 398-399).

Petitioner was scheduled to work on Tuesday, September 3rd but, once again, he did not come in that morning. (ROA, 390-391). Mr. Smith again attempted to contact Petitioner and also texted and left a voicemail for the victim because she was listed as his emergency contact. (ROA, 460-461; 467-478). Mr. Weir was aware that Petitioner had a heart condition and had previously had a heart attack and was concerned that Petitioner could be in danger. (ROA, 391). Mr. Weir again drove to Petitioner's residence and rang the doorbell but heard no answer, only the barking of dogs. (ROA, 391). He noticed the victim's blue sedan parked next to a retaining wall in the driveway but did not see Petitioner's truck. He then returned to work, but messaged Petitioner on Facebook, which received no reply. Petitioner never returned to work. (ROA, 390-391). After all of these unsuccessful efforts to locate Petitioner and the growing concern for Petitioner's safety, Mr. Smith called the Lexington County Sheriff's department and requested a welfare check. Mr.

Smith went by Shivers' residence later that afternoon and informed officers that Petitioner drove a blue or black F-150. (ROA, 480-481).

Discovery of the Victim

Deputy Joshua Hale testified that he received a call for a welfare check at Petitioner's residence on Tuesday, September 3rd, because Petitioner had not reported to work on the 1st or 2nd and that no one had been able to contact Petitioner or his girlfriend despite numerous calls and visits to the residence. (ROA, 500-504). Upon arrival, Deputy Hale knocked and rang the doorbell several times with no response. He testified that he could hear a dog barking and the sounds of the dog being loose by the front door. On his way to the front door, he saw the blue Honda Accord parked in the driveway, but did not see Petitioner's truck. Deputy Hale requested a "records check" on the blue Honda Accord's license plate and was subsequently advised that it belonged to the victim, who also lived at that address. (ROA, 504-507). He again knocked on the front door rang the doorbell to no avail. He returned to his car and unsuccessfully tried to find Petitioner on social media. He also checked and saw that a package in the mail had not been retrieved, and that package was addressed to the victim. The package had her phone number listed on it and Deputy Hale called the number four times without response. (ROA, 507-510).

Deputy Hale went back to the front door and tried to make contact but did not receive any response. He then looked into and knocked on the garage door and announced his presence. Still, he did not get any response. Next, he went into the backyard and looked around. Not seeing anyone, he walked under the deck and saw a room with a light on and dogs running loose. He noticed a cell phone on the vanity in the room. Although he knocked on the door and announced his presence, no one responded. (ROA, 510-519). At that point, Deputy Hale called his supervisor and told him of what had occurred thus far including the conversations with Mr.

Smith, his unsuccessful efforts to reach Petitioner or the victim by phone, and that the dogs were loose in the house. During the conversation, Deputy Hale walked onto the deck and saw "what appeared to be a body" covered by bedding when he looked through the window. He was unsure if the person was alive or dead, and "determined that immediate aid needed to be rendered" to this person. He knocked on the window and announced his presence but, again, there was no response. (ROA, 510-520). The door leading into this room, which was determined to be the master bedroom, was unlocked. Upon entering the bedroom, Deputy Hale checked for any signs of life by tapping the body and repeatedly directing the person to "Get up!" He lifted the sheet covering the body and discovered that it was a woman, whose legs and feet were "extremely pale." He also saw dried blood. On the floor to his right, he saw six brass shell casings. (ROA, 520-524). Even though he had found the victim, Deputy Hale was still concerned that Petitioner was abducted or injured and that a suspect may still be in the house. He conducted a protective sweep and found that no one else was in the house, then went back into the master bedroom before EMS and other officers arrived and found firearms in the closet. (ROA, 524-532; 536; 555).

Petitioner and the victim's home was searched pursuant to a warrant. Officers determined there were no signs of forced entry. Officers found and seized seven fired brass cartridges with "HPR .45 auto" on the headstamp of each cartridge, one "projectile" in a dresser, two more bullets between the victim's back and her camisole, and two more lying on the carpet under her body. (ROA, 632-638; 639-646; 671; 691). Officers found two empty suitcases and a suitcase with a partial box of HPR .45 ACP inside of it in the master bedroom. This ammunition was consistent with the shell casings that had been recovered. On one of the shelves in the master bedroom closet, they found and seized two magazines that were specific to a Springfield Armory

XD .45 caliber but could be fired in any .45 caliber weapon. Each magazine had twelve HPR .45 auto cartridges in it, which was consistent with the fired cartridge cases seized the previous day. An empty box for a Springfield Armory XD .45 weapon was also found in the closet. However, they never found a Springfield Armory XD .45 pistol in the house. (ROA, 663; 672-676).

Forensic pathologist Dr. Thomas Beavers determined the victim's cause of death to be by "multiple gunshot wounds" and that "the manner of death [was] homicide." (ROA, 1218; 1220-1221). The victim had been shot seven times. At least three of the shots were fired by the shooter standing over her and shooting her in the back while she lay face down on the floor. Three of the shots – including one going through the right lung, and two striking her heart - were fatal. (ROA, 1237-1251; 1253). No defensive wounds were identified or any evidence that she had been in an altercation. Dr. Beavers opined that the victim had been dead between twelve (12) and seventy-two (72) hours when her body was found on September 3rd. (ROA, 1227-1233;1566-1269).

Petitioner's Movements after the Murder

After the discovery of the victim, Petitioner was entered as a missing person and the information in the database included both a photograph of him and information about his F-150. A "press release" BOLO for local agencies on Wednesday, September 4th was issued, and an "exigent circumstances" request was made through Verizon for Petitioner's cell phone records that was followed up with a search warrant. The records reflect that the last known communications between Petitioner and the victim was a text message Petitioner sent to her at 5:22PM on Sunday, September 1st, that said "on my way." (ROA, 585-588; 600; 1036-1037). These records also corroborated Tommy Cedeno's testimony about his communications with his mother on September 1st, as well as his and other family members' unsuccessful efforts to

contact her beginning at 10:21AM on September 2nd. The last digital activity was the victim contacting an online game at 6:42PM September 1st. (ROA, 799-828).

Petitioner's American Express records also revealed that he had made a purchase at the Circle K/Shell gas station located at the corner of Lake Murray Bld. and St. Andrews Rd. in Irmo, South Carolina, at 8:04AM. on September 2nd. The store's surveillance video showed him filling up his F-150 and then leaving in the opposite direction from his home and in the direction of I-26 on St. Andrews Rd. (ROA, 575-585; 599). His American Express records also reflected that he had purchased a ticket to fly to London, England on Air Canada at 3:34PM on September 4th. (ROA, 564; 574).

Petitioner's Arrest

An arrest warrant charging Petitioner with murder was obtained on September 5th. By the evening of Thursday, September 5th, law enforcement was notified that Petitioner had earlier crossed into Canada. Video surveillance showed Petitioner crossing into Canada which law enforcement received from Canadian authorities. (ROA, 560-567; 1019). The case changed from a missing person search to a homicide investigation with Petitioner as a suspect because the video (State's Ex. 52) reflected that he was alone in his vehicle, there were no signs of duress or threats to him, and he was smiling. A "traveler history" provided by the Canada Border Services Agency reflected that he had entered into Canada at 1PM on September 3rd. Lexington County was notified after 5PM on September 5th that Petitioner had been arrested at a Toronto airport, where he had a ticket to fly to London, England on Air Canada. (ROA, 567-575).

Upon Petitioner's arrest, Canadian officers advised him that he was being arrested under the Canadian warrant, and he was handcuffed and searched. A cell phone and a set of keys was seized from Petitioner's person as well as his one piece of carry-on luggage. He was advised of

his Canadian rights, which included being informed of the reason for the arrest, his right to speak to an attorney, and that his consulate would be notified if he wished. Four officers then took him to a transport van in the garage, so that he could be taken to a Canada Border Services Agency and processed on the arrest warrant. While the officers spoke to each other, no one spoke to Petitioner. (ROA, 923-927; 938-939). When Officers began talking about locating Petitioner's black F-150, Petitioner spontaneously volunteered its location in the garage. Officers then reached the transport van and Petitioner was placed in the rear seat. (ROA, 927-929; 978). As Petitioner was being secured in the seatbelt, Petitioner voluntarily stated:

> "[L]isten, be careful, there's two guns in the truck. One in the middle console, it's loaded and another in an old briefcase in the backseat also loaded. One's a Kimber .45 and one's an XT9. I was going to eat one in Niagara Falls for what I'd done."

(ROA, 929; 945).

Petitioner's truck was brought back to Lexington where it was searched pursuant to a warrant. A Kimber .45 caliber pistol was recovered from a briefcase and a Springfield 9 mm pistol was recovered from the console. Neither of these was the murder weapon. Police never recovered the Springfield .45 caliber pistol associated with the box seized from the master bedroom, even though that weapon was entered into NCIC. (ROA, 1039-1047).

STANDARD OF REVIEW

Appellate review of a motion to suppress based on the Fourth Amendment is a dual inquiry which reviews the trial court's factual findings for any evidentiary support, however the ultimate legal conclusion is a question of law subject to de novo review. *State v. Frasier*, 437 S.C. 625, 633-634, 879 S.E.2d 762, 766 (2022).

ARGUMENT

The Court of Appeals properly found that the trial court did not err in denying the suppression motion because the record supports the conclusion that law enforcement would have inevitably discovered that the victim was deceased in her home, and a subsequent investigation as to Petitioner's whereabouts would have ensued considering Petitioner could not be located, and did not intend to return to the scene of the crime.

The Court of Appeals affirmed the trial court's denial of Petitioner's motion to suppress the evidence gathered by law enforcement after Deputy Hale entered Petitioner's fenced backyard while conducting a welfare check. The Court of Appeals did not address whether Fourth Amendment protections are invoked when law enforcement conducts a welfare check but held that based on a preponderance of the evidence, law enforcement would have inevitably discovered the evidence Petitioner moved to suppress at trial.

Though the issue goes unaddressed, Respondent maintains that Deputy Hales' actions are justified under the emergency aid exception and the circumstances of the entry. "'[T]he exigencies of the situation' [may] make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403, 126 S.Ct. 1943, 1947 (2006) citing *Mincey v. Arizona*, 437 U.S. 385, 393-394, 98 S.Ct. 24 (1978). "One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." *Id*. "Exigencies" exist when an officer would reasonably suspect that the conditions create a need to act "now or never" to protect an important public interest. *Roaden v. Kentucky*, 413 U.S. 496, 505, 93 S.Ct. 2796 (1973). Based on the information Deputy Hale was given and further gathered at the residence, he had an objectively reasonable basis for believing that someone could be injured and in need of assistance in the home. There is no indication that at the time Deputy Hale entered the

backyard, he had any other motive than to address his concerns for Petitioner and the victim's safety. That alone is sufficient to affirm.

Petitioner argues that inevitable discovery was not an issue that was raised and ruled upon at trial due to the trial court's ruling that Deputy Hale's entry into Petitioner's backyard was constitutional, and that the facts supporting inevitable discovery of the evidence are not supported by the record on appeal. (Petition at 14). Petitioner further contends that the Court of Appeals reliance on *State v. Cardwell*, 425 S.C. 595, 824 S.E.2d 451 (2019) is contradictory to Petitioner's case considering that in Petitioner's case, the State did not prove by a preponderance of the evidence that law enforcement would have inevitably discovered the evidence. (Petition at 14).

"[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. Cardwell*, 425 S.C. 595, 601, 824 S.E.2d 451, 454 (2019) citing *Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501 (1984). The evidence at trial included testimony from friends and family of Petitioner and the victim, and their concern regarding Petitioner's failure to show up for work on multiple days, and the victim's sudden cease of communication between family members when they had planned to stay at the victim's residence due to a mandatory evacuation. The victim's son, Tommy Cedeno, communicated with the victim prior to the landfall of Hurricane Dorian, and they had agreed that the family, to include the victim's parents and Tommy's children and wife, would evacuate from Beaufort to the victim and Petitioner's shared residence in Lexington. They planned to touch base the next morning, and the family had planned to leave between 7AM and 8AM. However, after attempting to call the victim that morning with no response, the family

stayed in Beaufort. Tommy testified that it was unusual for his mother to not quickly answer his texts and calls. (ROA, 411-431; 439-440).

Charles Watson and Eric Weir, both worked with Petitioner at Camping World and testified that Petitioner did not show up to work on September 2nd or 3rd, which was out of character for Petitioner because he had a reputation for being on time and had not requested time off. After attempts of messaging Petitioner with no reply and attempting to check on Petitioner at his residence, Mr. Smith called the victim and left her a voicemail inquiring about Petitioner's wellbeing. After all of these unsuccessful efforts to locate Petitioner, Mr. Smith called the Lexington County Sheriff's department and requested a welfare check. (ROA, 375-383; 384-387; 390-391; 458-461; 467-478; 495).

It is clear that numerous people were worried about the victim and Petitioner's wellbeing since neither could be reached by phone or in person when visiting the residence. Even if Deputy Hale left the residence unaware as to the victim's death and no suspicions of Petitioner committing a crime, the concern of Petitioner's wellbeing as reported by Mr. Smith remains imminent. Deputy Hale was aware that Petitioner had a heart condition and also noticed that Petitioner's vehicle was not in the driveway of the residence, but the victim's vehicle was. He checked and saw that a package in the mail had not been retrieved, which was addressed to the victim and listed her phone number. Deputy Hale called that number four times but never got a response. (ROA, 507-510). Petitioner and the victim would have been reported as missing, and law enforcement is well within reason to obtain search warrants for Petitioner and the victim's cell and bank records in an attempt to determine their last known locations in efforts of ensuring their safety.

Petitioner's argument appears to focus on the timeframe of inevitable discovery, arguing that the State did not present any evidence at trial that the evidence leading to Petitioner's arrest would have been discovered within a specific timeframe. (Petition at 15). Petitioner alleges that had Deputy Hale not entered the fenced backyard and seen the victim through the window, he would not have entered the home and discovered information that implicated Petitioner which led to his detainment by Canadian authorities at the Pearson Airport in Toronto, Canada, where he made two statements to Canadian authorities. Despite Petitioner's contention, the record provides for ample opportunities that law enforcement could have discovered the information leading them to Petitioner. While Petitioner argues that he would not have been detained by Canadian authorities had Officer Hale not entered his backyard, that argument only suggests that Petitioner would have escaped custody, not that he would not have been identified as a suspect for the victim's murder. Petitioner's statement is the only evidence that is a circumstance of timing, and the overwhelming additional evidence in support of his guilt would have been discovered absent Petitioner's arrest in Toronto.

Petitioner's reliance on *Nix v. Williams*, 467 U.S. 431 (1984) is misplaced on the relevant timing of discovering the evidence. The *Nix* Court, along with three earlier courts, found that the search for the 10-year-old victim would have continued had Williams not earlier led the police to the body and the body inevitably would have been found. *Id*., 467 U.S. at 449. The testimony suggested that it likely would have taken an additional three to five hours to discover the body, however the *Nix* Court placed no emphasis on the timeframe that the search could have taken, but that the search would have resumed regardless of Willliams' information. *Id*., 467 U.S. at 449-450.

Contrary to Petitioner's assertion that this Court is left to speculate when the victim would have been found, and that the evidence obtained in this case would still be available, the record supports that absent Deputy Hale's entry into the fenced backyard, the primary concern of Petitioner and the victim's wellbeing remains. *See United States v. Lauria*, 70 F.4th 106, 124 (2d Cir. 2023) (finding that the inevitable discovery exception did not apply when the government would have had no reason to pursue alternative lawful means to procure the evidence at issue). The victim and Petitioner's whereabouts would have continued to be pursued, and the information law enforcement collected that supports Petitioner's guilt would have been discovered absent Deputy Hale's lawful entry into the backyard.

CONCLUSION

Based on the foregoing reasons, Petitioner shows no cause to review the well supported Court of Appeals opinion. Respondent respectfully requests the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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