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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY LAMAR HERNDON,

APPELLANT

APPELLATE CASE NO. 2023-001834

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
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STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court err by denying Appellant's motion to suppress evidence discovered on the electronic devices seized from his residence, including an external hard drive, where the search warrant failed to comply with S.C. Code Ann. § 17-13-140 because the warrant was issued by a Beaufort County magistrate who did not have jurisdiction over the area where the property sought was located, namely Charleston County at the Department of Homeland Security?

2.

Did the trial court err by denying Appellant's motion to suppress evidence discovered on the electronic devices seized from his house, including an external hard drive, where the sixty-three day delay between when law enforcement seized the devices from Appellant's house and when they obtained a warrant to search the devices was unreasonable in violation of the Fourth Amendment?

STATEMENT OF THE CASE

A Beaufort County grand jury indicted Appellant on August 10, 2023, for three counts of second degree criminal sexual conduct (CSC) with a minor, two counts of third degree criminal sexual conduct (CSC) with a minor, and twelve counts of first degree sexual exploitation of a minor. R. 536-600. Pretrial motions were heard on November 14, 2022, before the Honorable Carmen Mullen.[1] Appellant's case was called to trial on November 13, 2023, before Judge Mullen, and a jury. R. 158. Solicitor Duffie Stone and Assistant Solicitor Hunter Swanson represented the state. Jim Brown and Jonathan Lewis represented Appellant. R. 159.

On November 16, 2023, the jury found Appellant guilty as indicted. R. 528, l. 6 – 530, l. 10. He was sentenced to twenty years for each count of second degree CSC with a minor, fifteen years for both counts of third degree CSC with a minor, and twenty years for each count of first degree sexual exploitation of a minor. Judge Mullen ordered all sentences for the criminal sexual conduct offenses and the sentence for one count of sexual exploitation of a minor be served consecutively. However, the sentences for the remaining eleven counts of sexual exploitation of a minor were ordered to be served concurrently. Appellant's aggregate sentence is one hundred and ten years. R. 531, l. 19 – 534, l. 5.

This appeal follows.

[1] Appellant's case was originally scheduled for trial the week of November 14, 2022, when pretrial motions were heard. However, the parties consented to a continuance due to an ongoing criminal investigation concerning Logan Heisler's possible sexual exploitation of the children involved in Appellant's case since the investigation was related to Appellant's third party guilt defense.

STATEMENT OF FACTS

In 2019, Appellant lived on Hilton Head Island with his wife. Appellant's cousin, Logan Heisler, lived next door to Appellant with his then girlfriend, Hannah Parada. Parada had two daughters, Minor 1 and Minor 2, who were then aged eleven and eight respectively. The girls lived with Parada and Heisler. Appellant often watched the girls at his house when Parada and Heisler were working. Parada would also allow the girls to play at Appellant's house whenever they wanted. R. 345, l. 21 – 351, l. 3.

On March 28, 2019, Heisler brought two thumb drives to the law office of Catherine Olivetti and her partner Daphne Withrow, both licensed attorneys in South Carolina. The thumb drives contained files that appeared to be child pornography. After viewing the files, Olivetti notified law enforcement. Master Sergeant Zachariah Cushman and Sergeant Seth Reynells with the Beaufort County Sheriff's Office responded to Olivetti's office. After viewing some of the files, which included photographs and videos, Cushman and Reynells concluded the content was child pornography depicting Minor 1, Minor 2, and allegedly Appellant. However, some of the files appeared to be photoshopped or altered. R. 379, l. 7 – 386, l. 5; R. 249, ll. 19-24.

When questioned by law enforcement on March 28, 2019, Heisler said upon discovering the pornography, "he became upset and scared, and drove to the lawyer's office." Master Sergeant Cushman was led to believe that Heisler had created the thumb drives from an SD card during the same week Heisler brought the thumb drives to Olivetti's office. However, a folder containing the files on one of the thumb drives stated it was created on January 10, 2019, eleven weeks prior. Cushman testified that he "did not think about the ramifications" of the creation date. He claimed he did not arrest Heisler for possession of child pornography from January 10, 2019, until March 28, 2019, because law enforcement never confirmed that January 10, 2019,

was the actual creation date (the date the files were saved on the thumb drive). Cushman maintained that he did not know how long Heisler had the thumb drives, which contained child pornography, in his possession. R. 386, l. 11 – 398, l. 8.

Based on the files Cushman observed on the thumb drives and the information he received from Heisler and Parada, law enforcement obtained a search warrant for Appellant's house. During the execution of the search warrant, law enforcement seized a My Passport external hard drive, numerous other electronic devices, a "shoebox of children's underwear and outfits," lingerie, sex toys, and a pair of high heeled shoes, among other evidence. R. 218, l. 3 – 238, l. 18.

Over a month later, on April 30, 2019, the My Passport external hard drive as well as the other electronic devices seized from Appellant's residence and the thumb drives received from Heisler were sent to Homeland Security in Charleston for analysis. R. 252, l. 23 – 253, l. 5. Files containing child pornography were found on the hard drive. Appellant, Minor 1, and Minor 2 allegedly appeared in the videos and photographs. R. 260, l. 11 – 294, l. 14. Files containing child pornography were also found on the thumb drives received from Heisler. However, none of the files found on the thumb drives were an "exact match" to the files found on the hard drive or other electronic devices seized from Appellant's house. While some of the images looked the same and appeared to have been taken at the same time, the files did not have the exact same hash value. This puzzled law enforcement and prompted additional questioning of Logan Heisler in January 2020. R. 310, l. 21 – 314, l. 14. However, it was never determined why the hash values did not match.

On September 21, 2022, years after the investigation involving Appellant was complete, Hannah Parada called the police to report that Heisler was caught videotaping Minor 2, who was

then eleven years old, in the shower with his cell phone. Master Sergeant Cushman responded to Parada and Heisler's house in response to the complaint. Minor 2 and Heisler told Cushman that "there was a video that had been deleted between the time the call was made for [law enforcement] to respond and the time [Cushman] showed up." When questioned as to why he recorded Minor 2 in the shower, Heisler admitted that "after 2019 he was curious to see what [Minor 2] looked like in the bathroom." During this investigation, Parada told Master Sergeant Cushman that she saw a video, which was recorded by Heisler, "in which she believed she [Parada] was drugged and raped." Despite these allegations, Heisler was never arrested. R. 425, l. 10 – 426, 7.

STANDARD OF REVIEW

Appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This Court reviews the trial court's factual findings for any evidentiary support. However, the ultimate legal conclusion is a question of law this Court reviews *de novo*. State v. Frasier, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022).

ARGUMENT

1.

The trial court erred by denying Appellant's motion to suppress evidence discovered on the electronic devices seized from his residence, including an external hard drive, where the search warrant failed to comply with S.C. Code Ann. § 17-13-140 because the warrant was issued by a Beaufort County magistrate who did not have jurisdiction over the area where the property sought was located, namely Charleston County at the Department of Homeland Security.

Relevant Facts

Appellant moved pretrial to suppress the evidence discovered on the My Passport external hard drive and the other electronic devices seized from his residence pursuant to the Fourth Amendment and S.C. Code Ann. § 17-13-140. During the pretrial hearing, it was established that the My Passport external hard drive and the other electronic devices seized from Appellant's house on March 28, 2019, were transported from Beaufort County to the Department of Homeland Security in Charleston on April 30, 2019. A search warrant to examine the digital evidence was issued by a Beaufort County magistrate on May 30, 2019, and delivered to the Department of Homeland Security in Charleston that same day. Henry Cook, a Homeland Security investigator, began executing the search warrant and analyzing the digital evidence on June 7, 2019, within ten days of the warrant being issued. R. 95, ll. 10-21.

Defense counsel argued law enforcement failed to comply with S.C. Code Ann. § 17-13-140 because the magistrate who issued the warrant in Beaufort County did not have jurisdiction over the area where the property sought was located, namely Charleston County at the Department of Homeland Security. Counsel contended that law enforcement was required

pursuant to the statute to obtain a search warrant from a magistrate in Charleston County or a circuit court judge who had statewide jurisdiction. R. 93, l. 9 – 94, l. 16. By way of example, counsel explained that digital and electronic evidence is frequently seized from all over the state and transported to the South Carolina Law Enforcement Division in Columbia for analysis and, in those cases, law enforcement has a Richland County magistrate issue a search warrant. R. 95, l. 24 – 96, l. 7.

The trial court denied Appellant's motion. It found the language "the area where the property sought is located" in the statute referred to the evidence's "original location," meaning "where it was seized," which in this case was Beaufort County. Accordingly, the court denied the motion based on "territorial jurisdiction." R. 97, ll. 12-15.

Defense counsel further sought a ruling on whether the state was permitted to search the electronic devices in June 2019 pursuant to the March 28, 2019, search warrant. He argued both the statute, § 17-13-140, and the face of the March 28, 2019, warrant, required the warrant be executed within ten days after it was dated. See R. 135 – 146. The trial court found the devices were not searched pursuant to the March 28, 2019, warrant. However, the court commented that the state is permitted "to go outside the ten days when they do forensic investigations or dumps." R. 99, l. 2 – 100, l. 18.

Discussion

The trial court erred by denying Appellant's motion to suppress evidence discovered on the electronic devices seized from his residence, including the My Passport external hard drive, because the search warrant failed to comply with S.C. Code Ann. § 17-13-140. Pursuant to this statute, the warrant was required to be issued by a magistrate or state court judge who had "jurisdiction over the area where the property sought is located." The search warrant in this case

was issued by a Beaufort County magistrate who did not have jurisdiction over the area where the electronic devices were located, specifically Charleston County at the Department of Homeland Security.

The Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution require warrants be issued only "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; S.C. Const. Art. 1, § 10. "This is a minimum standard, and state legislatures are free to enact stricter requirements for the issuance of search warrants." State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471, 472 (1987) (citing State v. York, 250 S.C. 30, 156 S.E.2d 326 (1967)).

S.C. Code Ann. § 17-13-140 is the "general search warrant statute" in South Carolina. State v. Covert, 382 S.C. 205, 209, 675 S.E.2d 704, 743 (2009). This statute contains requirements different from those mandated by the Fourth Amendment and Article I, Section 10 of the South Carolina Constitution, and is in some ways stricter than the federal and state constitutions. Covert, 382 S.C. at 209, 675 S.E.2d at 743 (citing McKnight, 291 S.C. 110, 352 S.E.2d 471). Consequently, a search warrant that would survive constitutional scrutiny may still be defective under § 17-13-140. McKnight, 291 S.C. 110, 352 S.E.2d 471.

The South Carolina General Assembly enacted a requirement that search warrants may only be issued by a magistrate "having jurisdiction over the area where the property sought is located." S.C. Code Ann. § 17-13-140. The statute states in relevant part:

> 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 . . .

S.C. Code Ann. § 17-13-140 (emphasis added).

As defense counsel argued at trial, the magistrate who issued the warrant to search the electronic devices seized from Appellant's residence did not have jurisdiction over the area where the devices were then located and stored. Law enforcement transported the evidence from Beaufort County, where it was originally seized on March 28, 2019, to the Department of Homeland Security in Charleston County on April 30, 2019, a month before the warrant was issued by a Beaufort County magistrate. There is no authority to support the trial court's finding that the language of the statute refers to the "original location" of the evidence sought to be searched, in this case Beaufort County, as opposed to the current location of the evidence. In short, the state was required to obtain a warrant from a Charleston County magistrate or a judge who had statewide jurisdiction. Consequently, the search warrant was defective because it failed to comply with § 17-13-140. This defect was apparent from the face of the warrant. The evidence obtained as a result of this invalid warrant should have been suppressed by the trial court.

Our Supreme Court has previously held search warrants were defective for failing to comply with this statute and suppressed the evidence obtained as a result of the invalid warrants. In State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987), police officers appeared before a magistrate to obtain a warrant, but did not complete an affidavit in support thereof. Our Supreme Court held the warrant was defective because the officers failed to comply with the affidavit requirement of § 17-13-140. Id. at 113, 352 S.E.2d at 473; See S.C. Code Ann. § 17-13-140 (requiring search warrants be issued "only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant."). The Court held a search warrant affidavit which is itself insufficient to establish probable cause may be supplemented before the magistrate by sworn oral testimony but sworn oral testimony alone does not satisfy the statute. Id. The Court

found the mandatory requirement of an affidavit lacking, thereby requiring suppression. Id. at 113-14, 352 S.E.2d at 473.

In State v. Covert, 382 S.C. 205, 675 S.E.2d 704 (2009), law enforcement officers obtained and served a search warrant on September 26, 2002. The warrant was signed by the magistrate and dated September 28, 2002. However, the accompanying two page affidavit was signed by the magistrate on both pages and both signatures were dated September 26, 2002. Covert, 382 S.C. at 207, 675 S.E.2d at 741. Our Supreme Court held the warrant was invalid due to the absence of the magistrate's signature at the time the warrant was served. Id. at 208, 675 S.E.2d at 742. The Court concluded that under South Carolina law an unsigned warrant is not a warrant and is not capable of being issued within the meaning of § 17-13-140. Id. at 210, 675 S.E.2d at 743.

In State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009), a SLED agent faxed a search warrant to a magistrate and the magistrate swore the agent over the telephone. Based on the language of § 17-13-140 that commands a warrant "be issued only upon affidavit sworn to before the magistrate," Herring argued the warrant was invalid because the statute requires the affiant appear before the magistrate *in person*. Our Supreme Court disagreed. The Court held the language does not state an affidavit must be sworn in person. It only requires the affidavit be sworn. Emphasizing that the agent who prepared the warrant was sworn over the phone by the magistrate, the Court held this procedure complied with the literal terms of the statute and there was no defect in the warrant. Id.

Respectfully, this Court should hold the search warrant in this case was invalid because the Beaufort County magistrate who issued the warrant did not have jurisdiction over the area were the property sought was located as required by § 17-13-140. Again, law enforcement

transported the electronic devices the state sought to search from Beaufort County to Charleston County a month before the warrant was issued. Consequently, a Charleston County magistrate or a judge with statewide jurisdiction was required to issue the warrant. Because the warrant was defective for failing to comply with the jurisdictional requirement of § 17-13-140, the evidence found on the electronic devices should have been suppressed. See McKnight, 291 S.C. at 113, 352 S.E.2d at 473 (When . . . the State is unable to demonstrate a good faith attempt to comply with the statute [§ 17-13-140], exclusion is the proper remedy.").

2.

The trial court erred by denying Appellant's motion to suppress evidence discovered on the electronic devices seized from his house, including an external hard drive, where the sixty-three day delay between when law enforcement seized the devices and when they obtained a warrant to search the devices was unreasonable in violation of the Fourth Amendment.

Relevant Facts

Appellant moved pretrial to suppress the evidence discovered on the My Passport external hard drive and the other electronic devices seized from his residence pursuant to the Fourth Amendment because law enforcement waited sixty-three days to obtain a search warrant for the devices from the date they were seized. During the pretrial hearing, it was established that the My Passport external hard drive and the other electronic devices were seized from Appellant's house on March 28, 2019, pursuant to a search warrant issued by a Beaufort County magistrate that same day. The devices were then transported from Beaufort County to the Department of Homeland Security in Charleston on April 30, 2019. The Department of Homeland Security took custody of the devices but did not "interact with the devices at all until" a search warrant was obtained. A search warrant to forensically examine the devices was issued by a Beaufort County magistrate on May 30, 2019, and delivered to the Department of Homeland Security in Charleston that same day. Henry Cook, a Homeland Security investigator, began executing the search warrant and analyzing the digital evidence on June 7, 2019. R. 173, l. 14 – 178, l. 21.

Citing to United States v. Pratt, 915 F.3d 266 (4th Cir. 2019), defense counsel argued sixty-three days was an "unreasonable delay" in violation of the Fourth Amendment. R. 170, ll. 16-23. The trial court stated it read Pratt and maintained the case was different. In Pratt, law

enforcement seized Pratt's phone from his person without a warrant after Pratt admitted he had nude photographs of a seventeen year old he was suspected of sex trafficking over state lines on the phone. Pratt refused to consent to the seizure of his phone or to disclose the phone's passcode. The Federal Bureau of Investigations (FBI) waited thirty-one days to obtain a search warrant to forensically examine the phone.

The trial court maintained Pratt was "completely" different from this case because in Pratt, the police seized Pratt's phone from his person without a warrant, but in this case, law enforcement seized the external hard drive and other devices from Appellant's home pursuant to a search warrant. R. 171, ll. 1-9. However, the court acknowledged that the Fourth Circuit Court of Appeals held the thirty-one day delay between when police seized Pratt's phone and when they obtained a warrant to search the device was unreasonable in violation of the Fourth Amendment. R. 171, l. 10 – 172, l. 1.

Defense counsel emphasized that in Pratt, the defendant did not contend that the seizure of his phone was unconstitutional. Pratt only argued that waiting thirty-one days to obtain a search warrant for the phone after it was seized was an unreasonable delay in violation of the Fourth Amendment. Counsel maintained that that is what occurred in this case except law enforcement waited sixty-three days after the seizure of Appellant's devices to obtain a warrant to search them. R. 172, l. 23 – 173, l. 25.

The trial court found this case was not "clearly on all fours" with Pratt and denied Appellant's motion without any further reasoning. When defense counsel stated he could not see "how 63 days is less than 30 (the number days police waited to obtain a warrant in Pratt), the court asserted, "I have ruled" and counsel moved on to his next motion. R. 179, l. 18 – 180, l. 2.

Discussion

The trial court erred by denying Appellant's motion to suppress the evidence discovered on the My Passport external hard drive and the other electronic devices seized from his house, because the sixty-three day delay between when the police seized the devices from Appellant's house and when they obtained a warrant to search the devices was unreasonable in violation of the Fourth Amendment.

"The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. Evidence seized in violation of the Fourth Amendment must be excluded from trial." State v. Crummey, 443 S.C. 94, 107, 902 S.E.2d 391, 398 (Ct. App. 2024) (quoting State v. Dill, 423 S.C. 534, 542, 816 S.E.2d 557, 562 (2018); See State v. Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002); U.S. Const. amend IV.

A seizure that is "lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests." United States v. Jacobsen, 466 U.S. 109, 124 (1984) (citing United States v. Place, 462 U.S. 696 (1983)). To determine if an extended seizure violates the Fourth Amendment, this Court must balance the government's interest in the seizure against the individual's possessory interest in the object seized. United States v. Pratt, 915 F.3d 266, 271 (4th Cir. 2019) (citing United States v. Place, 462 U.S. 696, 703, and United States v. Van Leeuwen, 397 U.S. 249, 252-53 (1970)).

"A strong government interest can justify an extended seizure." Pratt, 915 F.3d at 271 (citing Illinois v. McArthur, 531 U.S. 326, 332-33 (2001) (suspect prevented from entering home for two hours while officers obtained a warrant); United States v. Montoya de Hernandez, 473 U.S. 531, 541-44 (1985) (suspected canal smuggler detained for sixteen hours); United States v. Van Leeuwen, 397 U.S. 249, 252-53 (1970) (package detained for twenty-nine hours while

seeking a warrant)). "But if the individual's interest outweighs the government's, an extended seizure may be unreasonable." Id. (citing Rodriguez v. United States, 575 U.S. 348, 354-55 (2015) (traffic stop extended for dog sniff without reasonable suspicion); Place, 462 U.S. at 698-99, (traveler's luggage detained at airport for ninety minutes to conduct dog sniff). "An individual diminishes his interest if he consents to the seizure or voluntarily shares the seized object's contents. Pratt, 915 F.3d at 271-72 (citing United States v. Christie, 717 F.3d 1156, 1162-63 (10th Cir. 2013)).

In United States v. Pratt, which was discussed extensively at trial, the Fourth Circuit Court of Appeals held the thirty-one day delay in obtaining a search warrant after police seized Pratt's phone was unreasonable and violated the Fourth Amendment. 915 F.3d at 269. The FBI investigated Pratt for running a prostitution ring that included juveniles. Id. Agents found a post in which Pratt advertised the sexual services of a seventeen year old at a hotel in Columbia, South Carolina. Id. An agent scheduled a date with the juvenile and when he entered the hotel room, he identified himself to the juvenile as law enforcement. Id. The juvenile admitted she was seventeen and working as a prostitute. She said her boyfriend Pratt brought her to South Carolina from North Carolina. Id. Upon further questioning, she stated she had texted nude photographs of herself to Pratt's phone. Agents confronted Pratt in the parking lot of the hotel and Pratt admitted he had nude photographs of the juvenile on his phone. Id. at 270. An agent then seized Pratt's phone and told him the FBI would obtain a search warrant. Id. Pratt refused to consent to the seizure or disclose the phone's passcode. Id. The FBI did not get a warrant to search the phone for thirty-one days after seizing it. Id. The government explained that the delay was caused by the need to decide whether to seek a warrant in North Carolina or South Carolina. Id.

The Fourth Circuit held Pratt did not "diminish his possessory interest in the phone" because he did not consent to its seizure or voluntarily share the phone's contents. Id. at 272. The court further concluded that the government's explanation for the delay—that agents had to decide where to seek a warrant since Pratt committed crimes in both North Carolina and South Carolina—was insufficient to justify the extended seizure of Pratt's phone. Id. The court found the agents simply "failed to exercise diligence by spending a whole month debating where to get a warrant." Id. Accordingly, the court held the delay was unreasonable.

The Fourth Circuit also rejected the government's alternative argument that it could retain Pratt's phone indefinitely because it had independent evidentiary value, like a murder weapon. Id. at 373. The court found that "only the phone's files had evidentiary value." Id. "The agents could have removed or copied incriminating files and returned the phone." Id. "The phone itself is evidence of nothing." Id. Consequently, the court held the district court erred by denying Pratt's motion to suppress. Id.

The Fourth Circuit in Pratt cited to United States v. Mitchell, 565 F.3d 1347 (11th Cir. 2009) in support of its holding. Id. at 272. In Mitchell, Immigration and Customs Enforcement (ICE) agents were investigating individuals engaged in distributing and receiving child pornography over the internet. 565 F.3d at 1349. Mitchell was identified as a possible target of the investigation based on information obtained from the issuer of his credit card, which reflected two charges used to purchase access to a child pornography website. Id. Agents conducted a "knock and talk" at Mitchell's residence. Mitchell admitted that a desktop computer found in the home "probably" contained child pornography. Id. Agents seized the hard drive of this computer but failed to obtain a warrant to search the hard drive for twenty-one days. Id. The agent explained that he left town for a two week training course and did not think the

warrant was urgent. The Eleventh Circuit considered the delay unreasonable because the agent could have applied for a warrant before he left or asked another agent to do so. Id. at 1352. Accordingly, the court held the district court erred by denying Mitchell's motion to suppress. However, the Eleventh Circuit held that overwhelmed police resources or other "overriding circumstances" could justify extended delays. Id. at 1352-53.

In this case, like in Pratt and Mitchell, the state has "no persuasive justification for the delay in obtaining a search warrant" for the devices found in Appellant's house. See Pratt, 915 F.3d at 272. The state provided no explanation whatsoever for the delay. Law enforcement simply failed to exercise due diligence in obtaining a warrant. Officers with the Beaufort County Sheriff's Office waited a month to transport the electronic devices to the Department of Homeland Security in Charleston and then another month to obtain a warrant to allow Homeland Security investigators to examine the devices. Investigator Frank Brennan informed the trial court during the pretrial hearing that Homeland Security "cannot interact with the devices at all until we have a search warrant." R. 177, ll. 6-14. Homeland Security was forced to wait until the Beaufort County Sheriff's Office obtained a warrant so that investigators could begin to search the devices.

Appellant never diminished his possessory interest in the external hard drive or the other electronic devices. He did not consent to their seizure or voluntarily share their consents. The devices were seized pursuant to a search warrant executed at Appellant's residence. Given Appellant's undiminished possessory interest, the sixty-three day delay violates the Fourth Amendment where the state did not proceed diligently nor present an overriding reason for the delay. Moreover, like the phone in Pratt, the external hard drive and other electronic devices in this case had no independent evidentiary value. See Pratt, 915 F.3d at 273. Only the files on the

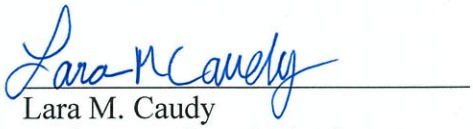
devices had evidentiary value. Law enforcement could and should have copied any incriminating files and returned the devices to Appellant in a reasonable timeframe.

Respectfully, this Court should hold that the trial court erred by denying Appellant's motion to suppress, reverse Appellant's convictions, and remand for a new trial. See Wong Sun v. United States, 371 U.S. 471, 484 (1963) (The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine.).

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of May, 2025.

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SC Court of Appeals

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."

This 30th day of May, 2025.

Lara M. Caudy
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TIMOTHY LAMAR HERNDON,

APPELLANT

APPELLATE CASE NO. 2023-001834

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 Joshua A. Edwards, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 30th day of May, 2025.

Lara M Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

From: Mcinnis, Sara
To: Josh Edwards
Cc: Susan Spencer; Caudy, Lara
Subject: 2023-001834 State v. Timothy L. Herndon Final Brief of Appellant
Date: Friday, May 30, 2025 12:23:00 PM
Attachments: 2023-001834 State v. Timothy L. Herndon Final Brief of Appellant.pdf

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Good Afternoon Mr. Edwards,

Attached for service in the above-referenced case is the final brief of appellant, which will be filed with the Court of Appeals today, May 30, 2025, via email filing.

Respectfully,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330