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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMANTHA FORD RABON,

APPELLANT

APPELLATE CASE NO 2024-000330

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

1. The Respondent's argument that participation in a criminal conspiracy to commit murder makes all actors both principals and accessories, regardless of when during the commission of the murder such participation takes place, eliminates the legal distinctions between an accessory, an accomplice, and a principal.

Respondent argues that appellant "provided the murder weapon, informed the killer when the victims would be home. She was more than an accessory. She was a co-conspirator that participated in this murder. The denial of the directed verdict was the correct decision. The evidence presented regarding the actions of the Appellant was left up to the jury to decide guilt or innocence, and they decided Appellant was guilty beyond a reasonable doubt." Brief of Respondent, page 7. This argument misapprehends appellant's argument before this Court concerning the scope of criminal liability as a principal, accomplice, and accessory.

As noted in appellant's brief, the question before the Court regarding appellant's conviction for murder does not turn on the existence of a conspiracy to accomplish that murder. For the sake of the directed verdict and the argument before this Court, appellant acknowledged evidence was presented that, a full week before the murders, appellant hired Grainger to kill her father and brother, provided a firearm for use in the crime, and informed Grainger of the date and time the crime may be best accomplished.[1]

Respondent's focus on the criminal conspiracy elements (with extensive reliance on the testimony of Grainger and Martin) ignores the impact of charging appellant as a principal for murder. "A conspiracy to commit a crime does not merge with the completed offense." State v. Crawford, 362 S.C. 627, 638–39, 608 S.E.2d 886, 892 (Ct. App. 2005). "Once an agreement has

[1] This acknowledgement was based on the assertion of both Grainger and Martin. R. 757, ll. 9 – 12; 758, l. 22 – 760, l. 10; R. 771, ll. 10 – 23.

been reached, the crime of conspiracy has been committed; no further act need take place." Id., 362 S.C. at 639, 608 S.E.2d at 892. That the goal of the conspiracy was accomplished, in this case a double murder, does not alter or change the state's ability to prosecute for the conspiracy itself.

Under South Carolina law, a "person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony by counseling, hiring, or otherwise procuring the felony to be committed is guilty of a felony and, upon conviction, must be punished in the manner prescribed for the punishment of the principal felon." S.C. Code Ann. §16-1-40 (1993). The state's error in the present case centers on its election to proceed to trial on indictment for murder as a principal.[2]

"In a murder case, for example, if two people plan or agree to commit the murder, *and both of them are present at the scene of the crime*, but only one of them actually shoots and kills the victim, both participants in the plan or agreement are nevertheless guilty of the murder." State v. Johnson, 444 S.C. 442, 449, 908 S.E.2d 102, 106 (2024) (emphasis added). The impact of being "present" during the commission of the crime, to both potentially aid in its commission and promote its accomplishment, creates accomplice liability under the hand of one hand of all concept noted in Johnson.

The Respondent's reliance on State v. Blackwell, 220 S.C. 342, 67 S.E.2d 684 (1951), does not negate the common law requirement of being present for accomplice liability to attach. Blackwell specifically denotes acts that constitute "constructive presence" that extends the reach of accomplice liability to those actively involved in accomplishing the crime but not physically

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[2] The state did indict appellant as an accessory before the fact, which would have subjected appellant to the same punishment as a principal under S.C. Code Ann. §16-1-40. R. 1109. The state elected to proceed to trial under the indictment for murder as a principal.

present the moment the crime occurs. Those falling under being constructively present during the commission of a crime include those who "watch at proper distances and stations to prevent interference or surprise or to encourage the commission of the unlawful act or to favor, if necessary, the escape of those immediately engaged in the commission of the unlawful act". Id., 220 at 350, 67 S.E.2d at 688. This "constructively present" analysis would not capture appellant, whose alleged actions took place at least a week before the crime was committed.

Before the Court in this matter is a contrary scenario: an accused who was not present during the commission of the crime being charged as a principal with conviction resting on the hand of one hand of all rationale of accomplice liability.

2. Neither the inevitable discovery nor the good faith exceptions apply to the search of a cell phone under an invalid search warrant absent a time pressure or a truly independent source for the search.

The state asserts that both inevitable discovery and good faith as rationales for denying suppression.

A. Inevitable discovery does not exist absent an independent source of discovery apart from the original violation.

The state's argument before the trial court was that since the phone was in its possession lawfully[3] it would have inevitably discovered the phone's full contents and suppression was not warranted. R. 62, l. 20 – 63, l. 21. The error in this position stems from reliance on a general

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[3] Appellant disputes the cell phone was lawfully seized in light of the problems outlined in the search warrant of her residence before this Court in Appellant's second question presented.

probable cause assertion that appellant was involved in the crimes as an excuse for the defective warrant.

However:

> what makes a discovery "inevitable" is not probable cause alone, as the district judge thought, but probable cause plus a chain of events that would have led to a warrant (or another justification) independent of the search. Otherwise the requirement of a warrant for a residential entry will never be enforced by the exclusionary rule. A warrant requirement matters only when the police have probable cause, because otherwise they can't get one. (Under the second clause of the fourth amendment, "no Warrants shall issue, but upon probable cause".) To say that a warrant is required for a search is to say that the police must get judicial approval before acting. Yet if probable cause means that discovery is inevitable, then the prior-approval requirement has been nullified. An argument can be made that probable cause is enough to make a daylight search reasonable, that the second clause of the fourth amendment disfavors warrants, and that those "who have viewed the fourth amendment primarily as a requirement that searches be covered by warrants, have stood the amendment on its head."

United States v. Brown, 64 F.3d 1083, 1085 (7th Cir. 1995) (internal quotations omitted).

This requirement that an independent source, free of the taint of the original violation, has been applied by our courts. In State v. Moore, 429 S.C. 465, 839 S.E.2d 882 (2020)[4], our Supreme Court reviewed a suppression claim arising out of the alleged improper search of a cell phone. The phone in question was searched without a warrant to confirm ownership through access to the SIM card and later searched under a warrant. In applying inevitable discovery to excuse any potential 4th Amendment violation of accessing the SIM card's ownership information, our Supreme Court noted that "[w]hile the officers obtained the call logs between the two phones by executing the warrant on Petitioner's flip phone, *they could have also obtained the same information by searching Hall's phones, which they had in their lawful possession.*"

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4 The solicitor referred to this Court's earlier opinion in State v. Moore, 421 S.C. 167, 805 S.E.2d 585 (Ct. App. 2017) in argument during the suppression hearing. R. 63, ll. 1 – 10.

State v. Moore, 429 S.C. 465, 481, 839 S.E.2d 882, 891 (2020). Under Moore, the source of the inevitable discovery was not the improper search or seizure, but an independent source free of the taint of the violation. The mere fact that the police had possession of the phone does not dictate the outcome of this issue. No such independent source exists in the present case. The warrant authorizing access to the cell phone improperly identified the source of the phone as connected to Randy Grainger, the shooter. R. 62, ll. 5 – 16. The resulting warrant authorizing the search of the phone was therefore invalid as it was based upon a material misrepresentation of the source of the phone.

To find inevitable discovery, this court would need to find the phone was initially lawfully seized (a contested point before this Court) and that the errors in the search warrant for the phone could then be excused since a "proper" search warrant would have been issued had the state's warrant for the phone told the issuing magistrate it was seized from appellant's home rather than Grainger's home. As noted, this position effectively neuters the warrant requirement, since any time evidence connecting an accused to a crime is discovered establishing probable cause, authorities can simply claim "we could have gotten a warrant" and thus inevitable discovery applies. As the 7th Circuit Court of Appeals warned in Brown, this view of the impact of probable cause "means that discovery is inevitable, then the prior-approval requirement has been nullified" making the warrant requirement a formality to be avoided, not a fundamental protection of the Constitution to be protected. Brown, 64 F.3d at 1085.

B. The state's "good faith" argue fails due to the misconduct of asserting the phone was discovered at the home of the alleged shooter, Randy Grainger.

Recently, in State v. Carter, 445 S.C. 157, 912 S.E.2d 264 (2025), our Supreme Court applied the good faith exception when a federal statute was involved. In Carter, our Supreme Court held that the "officers acted with 'an objectively reasonable good-faith belief that their conduct [was] lawful' by relying on a valid federal statute." Id., 445 S.C. at 163, 912 S.E.2d at 268. In applying good faith in this setting, our Supreme Court noted: "Where there is no misconduct" by the police, there is "no deterrent purpose to be served," and there will be no "suppression of the evidence." Id., 445 S.C. at 163, 912 S.E.2d at 267–68 (*quoting* State v. Adams, 409 S.C. 641, 653, 763 S.E.2d 341, 348 (2014)).

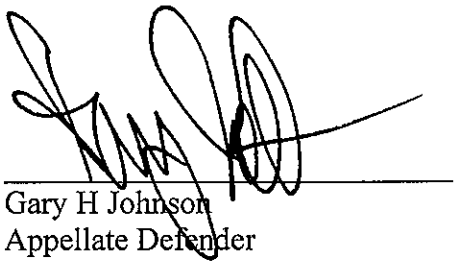
However, our courts have been reluctant to use "good faith" to excuse improper compliance with the warrant requirement absent the pressure of time or emergency such as that faced in Carter. For example, "the good faith exception is not available, where, as here, the warrant issued is based on a search-warrant affidavit of the officer which contained representations known to be false." State v. Robinson, 415 S.C. 600, 609, 785 S.E.2d 355, 359–60 (2016).

Contrasting Robinson with State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009) is instructive. In Herring, as in Carter, our Supreme Court found a good faith exception due to the time pressure and problems associated with an active shooting investigation and that "officers made a good faith attempt to comply with the affidavit procedures. . ." Id. at 215, 692 S.E.2d at 497. Here, investigators were under no pressure associated with an active shooting investigation or other emergency. *This warrant was signed two years after the shootings.* There were no exigent circumstances demanding action that excuse informing the magistrate that the phone to

be searched had been seized from Grainger's residence. Thus, good faith does not serve to save the warrant in the present case.

CONCLUSION

For the reasons outlined both herein and in her Initial Brief, Appellant is entitled to a reversal of her conviction and remand for a new trial free from the taint of the improperly obtained evidence.



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This 20th day of August, 2025.

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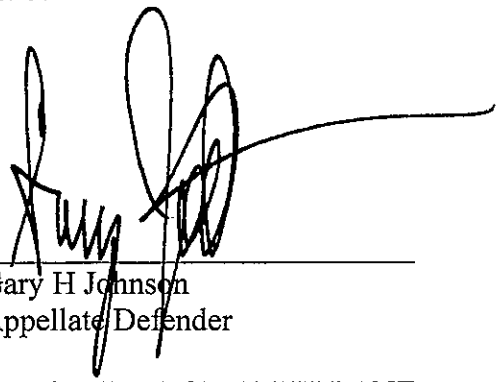
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Reply Brief of Appellant in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 20th day of August, 2025.



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