STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN COLE CARROLL,

APPELLANT.

APPELLATE CASE NO. 2024-000722

FINAL BRIEF OF APPELLANT

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2.

Whether the court erred by refusing to suppress the evidence obtained from appellant's cellphone since the affidavit to the search warrant did not contain probable cause for the search, and the oral supplementation was not reliable where Detective Shipp could not even recall the magistrate or city court judge he allegedly provided the additional information too?

3.

Whether the court erred by refusing to suppress the evidence obtained from the cell tower records where the affidavit to the search warrant for those records was unsigned, and it also did not state probable cause making it an unsworn invalid search warrant?

STATEMENT OF THE CASE

Appellant was indicted at the January 17, 2023 term of the Colleton County grand jury for the offense of murder. R. 402. His case was called to trial on April 22, 2024, before the Honorable Robert J. Bonds and a jury. R. 72.

On April 24, 2024, the jury found appellant guilty of murder. R. 397, l. 21 – 398, l. 1. Judge Bonds sentenced appellant to sixty years' imprisonment. R. 401, ll. 1-5.

This appeal follows.

STANDARD OF REVIEW

In Fourth Amendment search and seizure cases, the standard of review is limited to the following:

> The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling. The appellate court will reverse only when there is clear error.

State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (citations and internal quotation marks omitted).

This deference does not bar appellate courts from conducting their own review of the record to determine whether the trial judge's decision is supported by the evidence. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010).

When reviewing a magistrate's decision to issue a search warrant, we must consider the totality of the circumstances. See State v. Missouri, 337 S.C. 548, 524 S.E.2d 394 (1999)(citing Illinois v. Gates, 462 U.S. 213 (1983)). Although great deference must be given to a magistrate's conclusions, a magistrate may only issue a search warrant upon a finding of probable cause. See State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999).

STATEMENT OF FACTS

Appellant filed a motion in *limine* to suppress the defendant's phone records R. 58. Appellant also filed an amended motion in *limine* to suppress the defendant's and victim's phone records. R. 14. Finally, appellant filed a motion in *limine* to suppress the cell tower records evidence. R. 1.

In the motion in *limine* to suppress the defendant's phone records and the Amended Motion in *Limine* to Suppress Defendant and Victim Phone Records, defense counsel Mathews noted that the affidavit stated that "a white male is seen running back in the direction of the 100 building in a late-model pickup and seen leaving the area [of the shooting]." This affidavit did not allege probable cause to search appellant's cell phone or the phone of his former girlfriend, the decedent. R. 73, l. 16 – 76, l. 11.

The motion noted "[i]n addition to not alleging probable cause, the warrants have other defects: Municipal Court Judge's name is not legible, the judge has not indicated the date by which the return must be made, and the judge has not signed the return . . ." Citing S.C. Code Ann. §17-13-140 and State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). The amended motion stated: "If the point of a search warrant is proof of judicial oversight, then these warrants fail miserably." R. 15. The motion also cited State v. Warner, 436 S.C. 395, 872 S.E.2d 638 (2022), as to the necessity for probable cause. R. 14.

In the Motion in *Limine* to Suppress the cell tower records, the motion pointed out that the affidavit in support of the search warrant was unsigned. The motion noted, pursuant to State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009), that the warrant was nothing more than "unfinished paper" which made it an invalid search warrant. R. 1.

The affidavit, in short, was not even supported by an oath or affirmation. The unsigned affidavit stated, "[O]n May 22, 2021 at approximately 22:14 p.m., officers with the Walterboro Police Department responded to a report of shots fired at the Forest Pointe Apts. Officers arrived on scene to find the victim deceased in her vehicle. Further investigation revealed that the victim had a recent report (2100034) with the Walterboro Police Department in reference to domestic violence. The offender in that case is also the offender in this case and was identified through video footage at the time of the incident. The offender was the only individual seen in the area near the victim's vehicle." *See* Motion in *Limine* to Suppress Cell Tower Records at R. 6.

At the pretrial hearing, defense counsel Mathews argued that the search warrants in this case were woefully defective. They did not allege probable cause. Defense counsel cited State v. Warner, noting that all warrant affidavits, including the cell tower warrant affidavit, must allege probable cause. R. 73, l. 12 – 74, l. 23. Defense counsel told the judge that the return to the search warrant for appellant's cell phone was also not signed. *See* Motion in *Limine* to Suppress Phone Records at R. 60.

Further, the affidavit for appellant's phone only stated that after reviewing camera footage of the area, it showed a vehicle followed the victim's car into the apartment complex then turning into the parking area of the 100 building. "[S]hortly after a white male is seen walking from this area to the area that (sic) the victim parked (300 building). After the incident occurs the white male is seen running back in the direction of the 100 building and the late model pickup truck can be seen leaving the area. A phone was seized for further investigation." R. 63; 75, l. 8 – 76, l. 11.

The judge first stated that he was denying the motion to suppress as to the decedent's phone, finding appellant did not have "standing" to challenge what was discovered and taken from that phone. Defense counsel had argued under State v. McKnight, 291 S.C. 110, 352 S.E.2d 471

(1987), that appellant had the statutory right to challenge a defective search warrant if the state sought to admit evidence seized pursuant to that defective search warrant against him, which it clearly did here. This was a separate statutory "standing" grounds that was different than a constitutional "right to privacy" grounds. The statutory grounds gave standing to the person challenging defects in the search warrant or search warrant process if the state intended to use evidence obtained as a result of the search against the challenger. R. 76, l. 13 – 79, l. 9.

The solicitor argued that the state did not need a search warrant for the decedent's phone since it was found it her automobile after she was shot and killed, and the solicitor asserted that appellant did "not pay for" or use the decedent's cell phone and he therefore had no expectation of privacy in that phone. The solicitor also offered that the victim's "new boyfriend" gave law enforcement the decedent's passcode. R. 76, l. 13 – 77, l. 22. The record is silent on how the solicitor allegedly knew appellant never used the decedent's cell phone despite the fact appellant and the decedent had lived together as boyfriend/girlfriend. As seen, the state was aware of a prior domestic violence allegation against appellant when he was living with the decedent.

As to appellant's cell phone, the solicitor argued that detective Shipp provided supplemental oral testimony which the state submitted saved the defective search warrant from being invalid. The judge asked what judge signed the search warrant, since it was not clear from the warrant itself. R. 79, l. 10 – 83, l. 8.

Detective Charles Shipp then testified during the pretrial hearing that he had obtained the search warrants in this case. He identified appellant's phone as being a black LG Tracphone. R. 85, ll. 13-22. Shipp maintained that the affidavit which alleged that a white male was seen during the incident around the 100-building walking towards the victim's car was correct, and he said "while on scene, it was brought to my knowledge that we had a prior report with the victim. And

we took the information from that report and saw that the offender in that case was Justin Carroll. Take a look at his DMV, compared it to video footage we were looking at on scene." R. 86, l. 6 – 87, l. 13. Detective Shipp maintained this was the probable cause for the search warrant for appellant's phone.

Shipp also said appellant became his lead suspect because of a prior incident between appellant and his ex-girlfriend, the decedent, and also DMV information and a DMV photo. R. 88, l. 17 – 89, l. 2.

On cross-examination, the following occurred:

> Q Where did you do this? Where did you do this affidavit?
>
> A Where?
>
> Q Physically where? What place?
>
> A I was in the judge's office.
>
> Q Which judge's office?
>
> A I don't recall the specific judge.
>
> Q What building?
>
> A I don't recall.
>
> Q Was it in Walterboro?
>
> A It was in Walterboro.
>
> Q It was in Walterboro?
>
> A Outside the city limits.
>
> Q It was outside the city limits where you went.
>
> A Correct.
>
> Q Okay. So you're saying then that 22 Klein Street, the jail, that's not in Walterboro?

A That is in Walterboro.

Q And the magistrate's offices, they are or they are not in Walterboro?

A It wasn't his office at 22 Klein Street.

Q Okay.

A It's a second office.

Q A second office, all right. How far away from Walterboro was it?

A I don't recall.

Q You got to be pretty specific in a murder investigation. Was it 10 miles away?

A I don't recall.

Q Was it in Ruffin?

A It was not in Ruffin.

Q Was it in Smoaks?

A No.

Q Edisto Beach?

A No.

Q All right. Man or a woman?

A It was a man.

Q Okay. Black man or white man?

A White man.

R. 89, l. 18 – 92, l. 6.

The judge then questioned Shipp about what judge allegedly signed the search warrant and about the information in the affidavit. R. 94, l. 25 – 97, l. 12.

The judge then heard the defense motion to suppress the cell tower records information as a result of that allegedly defective search warrant affidavit. Defense counsel argued there was no signed affidavit for that warrant. *See* Motion in *Limine* to Suppress Cell Tower Records at R. 6.

Further, the unsigned affidavit did not provide probable cause since it only alleged vague allegations about the victim having made a prior report of domestic violence with the Walterboro Police Department, and it alleged the offender in that domestic violence case was also the offender in this case. R. 6.

Defense counsel argued that the search warrant affidavit without a signed affiant was invalid. Defense counsel said he did not know if the state was acting in bad-faith, but it was "unfinished paper" at a minimum making the search warrant illegitimate, invalid, or illegal pursuant to State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009). R. 99, l. 4 – 100, l. 6.

The state then called detective Shipp again as a witness. Shipp maintained he had Judge Kane-O'Quinn sign the search warrant and said his failure to sign the affidavit was an oversight. R. 100, l. 18 – 101, l. 17.

Assistant solicitor Swanson then alleged that the failure to sign the affidavit was a mistake but that the judge should nonetheless uphold the affidavit under the good-faith exception. The solicitor also claimed it was a scrivener's error, even though the affidavit was completely unsigned and not merely signed in the wrong place. R. 102, ll. 3-15. The judge then said he would rule on the legality of the search warrants for appellant's phone and cell tower information prior to the trial beginning. R. 103, ll. 11-19.

The judge ruled that the oral supplementation of the search warrant affidavits made them legally sufficient. R. 106, l. 2 – 109, l. 5. The judge found that the failure to sign the cell tower records affidavit was a scrivener's error, as urged by the solicitor. R. 107, l. 4 – 109, l. 9.

Trial evidence

Kevin Baker was a firefighter and paramedic with the Colleton County fire department. He remembered on May 22, 2021, he responded to the scene of a shooting at Forest Circle at around 10:34 p.m. R. 142, l. 8 – 143, l. 15. The body of the decedent, Donasia Holloway, was found slumped in the front seat of her Lexus with multiple gunshot wounds. She had a wound to her head and was deceased when Baker arrived at the apartment complex. R. 143, l. 6 – 144, l. 19.

The decedent's mother, Shameka Holloway, then testified. R. 147, l. 23 – 148, l. 4. Holloway noted that her daughter was twenty-two years old when she was killed. She said her daughter was at her house at nine p.m. on May 22, 2021. She had just returned from a vacation in Florida for a week. R. 148, l. 2 – 149, l. 4.

Holloway identified a photograph of a Lexus her daughter was driving that night instead of her normal car. Holloway noted that the decedent had dated and lived together with appellant for about two years. They lived at the Forest Pointe apartments before they broke up in 2021. R. 150, l. 8 – 154, l. 23. Holloway explained that they called 9-1-1 because of appellant's behavior that month, and they packed appellant's belongings and took them to his grandmother's house at that time. R. 155, l. 2 – 156, l. 4.

Sergeant Ross Hantz testified that he was living at the Forest Pointe apartments in May of 2021. Hantz remembered hearing gunshots on May 22, 2021 at around ten p.m. Hantz called 9-1-1, put on his police uniform, and went outside with his flashlight to investigate. He found a silver Lexus parked next to his patrol car in the apartment complex parking lot, and he saw the decedent slumped over in the driver's seat. There were bullet holes in the car. R. 160, l. 13 – 165, l. 13. Hantz was able to obtain the surveillance tape of the parking lot, and he noted he saw a pickup truck with its lights on in the area on that tape. R. 165, l. 14 – 166, l. 20.

On State's Exhibit 8, the surveillance tape, it showed a vehicle, apparently the Lexus, come into the parking lot with another vehicle or truck driving in after it. This was at 22:05 p.m.

On State's Exhibit 17, *taken from the decedent's phone,* it showed a white male approaching the Lexus and a text message said "follow[ed] me to my apartment and I saw him behind me and locked myself in the car. I've asked him multiple times to leave me alone. Trying not to be fed [up] but this has to stop!!"

State's Exhibit 17 also showed a white male with a black mask covering his face with a cigarette in his hand approaching the driver side window. State's Exhibits 8 and 17 are both on file for this Court's review. Appellant was pointed to in the courtroom as being the man with the cigarette in his hand outside of the decedent's car before she was shot. Hantz maintained you could not see a muzzle flash of the actual shooting at that time because the headlights were on. R. 173, l. 4 – 174, l. 15.

On cross-examination, Hantz said he found a piece of candy in the grass near the area of the Lexus where the decedent was shot. He took possession of that piece of candy for it to be tested for DNA evidence. R. 175, l. 1 – 176, l. 4. It was later revealed that it was not a match to appellant. R. 349, l. 19 – 359, l. 1.

Former deputy Julie Swank testified that on the night of May 23, 2021, she heard a BOLO for a white GMC single-cab pickup truck traveling on Savannah Highway towards Colleton. She stopped appellant's pickup truck at around two a.m. that morning pursuant to that BOLO. R. 197, l. 9 – 200, l. 23. Appellant's cellphone was seized that evening. R. 203, l. 3 – 204, l. 20.

Whitlee Fisk was an investigator with the Walterboro Police Department. She testified she executed a search warrant on appellant's truck on May 24, 2021. R. 206, l. 21 – 207, l. 18. Fisk said she found "nothing" in appellant's truck. R. 207, l. 19 – 208, l. 3. Fisk remembered that

detective Shipp was somehow able to get the decedent's phone and that they went to the home of her current boyfriend. The boyfriend knew the passcode to the phone, and when he started to testify about what he saw when he opened the phone, defense counsel objected. The jury was removed from the courtroom. R. 208, l. 1 – 209, l. 5.

Defense counsel Mathews then noted his pretrial motion to suppress the contents of the victim's and the defendant's phones. Defense counsel argued that the state knew that they needed the search warrant for the phone which was ultimately defective but that the pre-warrant viewing of the phone was not legal because there were no exigent circumstances that warranted the police not obtaining a search warrant before searching the phone. R. 209, l. 5 – 218, l. 25.

The solicitor again argued that appellant had no standing to challenge whether a search warrant was needed or whether that search warrant was ultimately valid. Defense counsel again cited State v. McKnight for the principle that since evidence from the search warrant or invalid search warrant was being introduced against appellant, he had the right to challenge the need for and validity of that search warrant. The judge again overruled the objection and allowed in the critical video and the contents on the decedent's phone. R. 209, l. 5 – 218, l. 25.

When the jury returned to the courtroom, the video, State's Exhibit 17, was played over the defense objection. R. 218, l. 4 – 219, l. 25. State's Exhibit 17, which is on file with this Court, shows a man that was identified as appellant standing outside the decedent's Lexus immediately before the state alleged she was shot and killed.

The state also introduced State's Exhibits 23 and 24, which were apparently taken from appellant's cellphone…843-635-1**1. State's Exhibit 24 are incriminating text messages in this case. R. 230, l. 17 – 232, l. 19.

Investigator Charles Shipp from the Walterboro police then testified that he found the decedent's phone underneath her inside the car, and he seized it. R. 244, l. 12 – 245, l. 21. Shipp testified he compared a photograph of appellant found on the phone to a DMV photo and determined it was appellant. R. 248, l. 10 – 249, l. 24. When appellant was stopped in his pickup truck early the next morning, a gunshot residue test was conducted on his hands, and he was released following that GSR test. R. 249, l. 17 – 255, l. 14.

Shipp identified appellant's phone number as being 843-635-1**8, and he confirmed he watched a video off the decedent's iPhone which showed a person he identified as appellant. Defense counsel again objected to this evidence. R. 255, l. 12 – 263, l. 10. Shipp identified text messages which contained expressions of love between appellant and the decedent which later changed to crude comments and disparaging remarks when the decedent was on vacation with her new boyfriend in Ft. Lauderdale, Florida. R. 263, l. 1 – 267, l. 4.

As to the cell tower records, the state called Dylan Hightower as a witness. He was an investigator with the Fourteenth Circuit solicitor's office. R. 289, l. 7 – 295, l. 10. This evidence, including State's Exhibit 26, which was introduced over objection, traced appellant's inculpatory whereabouts between seven p.m. on May 22, 2021 until 1:56 a.m. on May 23, 2021. R. 295, l. 9 – 300, l. 16; 295, l. 21 – 308, l. 10. Those tracking maps, State's Exhibits 25 and 26 are before this Court for viewing.

The forensic pathologist, Dr. Nick Batalis, testified that the decedent was shot four times. She was shot once in the left ear, once in the left side of the neck, and twice in her left elbow. The shot in her neck was the cause of death, as he discovered in his autopsy on May 28, 2021. R. 337, l. 4 – 343, l. 1.

The defense then presented SLED agent Samuel Stewart as a witness. Stewart testified that the appellant's DNA was excluded from the piece of candy found next to the decedent's car on the night she was shot. Appellant's DNA was also excluded from the shell casings found nearby. R. 356, l. 7 – 359, l. 1.

ARGUMENT

1.

The court erred by ruling appellant did not have "standing" to challenge the evidence the state located on his former girlfriend-decedent's phone since appellant had the right to challenge evidence taken as the result of an invalid search warrant and search warrant procedure pursuant to *State v. McKnight*, 291 S.C. 110, 352 S.E.2d 471 (1987) since that evidence was impermissibly used against him at trial given the lack of probable cause alleged for the search warrant.

The Amended Motion in *Limine* to Suppress Defendant and Victim Phone Records noted that pursuant to S.C. Code Ann. § 17-13-140 and State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987), that appellant did not have to show an expectation of privacy in order to challenge the defective search warrant for his former girlfriend-decedent's cell phone. The primary benefit of the statute "is to the person arrested..." State v. McKnight, 291 S.C. 110, 352 S.E.2d 471, 474 (1987). R. 14. The motion to suppress noted that the affidavit in support of the search warrant for appellant's phone and the decedent's phone both provided:

> On May 22, 2021, officers with the Walterboro Police Department responded to 504 Circle (Forest Pointe Apts) Walterboro, SC 29488 in reference to multiple shots fired in the area. Upon initial response a silver lexus ([redacted]) was observed to have what appeared to be bullet damage to the driver side window, furthermore a black female was observed in the driver seat and appeared to be nonresponsive. A review of the camera footage in the area revealed a vehicle that followed the victim into the complex then turning into the parking are of the 100 building. Shortly after a white male is seen walking from this area to the area that the victim parked (300 building). After the incident occurs the white male is seen running in the direction of the 100 building and a late model pickup truck can be seem leaving the area. The phone was seized for further investigation.

R. 14

Defense counsel argued that, as stated in his motion, S.C. Code Ann. § 17-13-140 and State v. McKnight provided appellant the right to challenge the defective search warrant for the decedent's phone since any person against whom the evidence obtained from the warrant was offered against had standing to object to the validity of the search. R. 73, l. 16 – 74, l. 13. Defense counsel argued that the search warrant was "woefully defective." R. 74, l. 14 – 75, l. 9. In addition, the return was not signed, and the language about "a white male is seen running back in the direction of the 100 building in a late model pickup can be seen leaving the area," did not provide probable cause to conclude that evidence probative to the shooting would be found on the decedent's phone. R. 75, l. 4 – 76, l. 11. As seen, the amended motion to suppress also noted that "[i]n addition to not alleging probable cause, the warrants have other defects: Municipal Court Judge's name is not legible, the judge has not indicated the date by which the return must be made, and the judge has not signed the return . . ."[1] R. 15.

The solicitor then argued that while the defense was relying on State v. McKnight and the statute -- and not constitutional grounds to suppress the fruits of the search of the victim's cellphone -- that appellant did not have standing to challenge what was taken from the victim's cellphone. The solicitor said:

> "Here we are talking about the Donasia Holloway's cellphone that is on her person that Mr. Carroll does not pay for, does not use, does not have possession of. Why would he ever have a right or expectation of privacy on an ex-girlfriend's phone, we didn't even need a search warrant. A search warrant doesn't even matter. The phone was actually gotten into because the new boyfriend gave law enforcement the passcode."

R. 76, l. 13- 77, l. 22.

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[1] Defense counsel very respectfully stressed that the search warrant for the decedent's phone, appellant's phone, and the cell tower tracking information each contained "woeful" deficiencies and showed unfortunate disorganization or sloppiness on the part of law enforcement.

The judge stated that he did not see where appellant had any standing to challenge the search of his ex-girlfriend's cellphone unless "he's a co-owner of the phone or he's on the account..." R. 77, l. 23 – 78, l. 10. Defense counsel repeated his argument was based on State v. McKnight and the statute and not an expectation of privacy protected by the Constitution. Defense counsel said if his argument relied on the Constitution, he agreed that appellant would have no standing to challenge the search. Counsel noted the state obtained a search warrant that was defective during a "woefully" disorganized search procedure and that appellant had the right to challenge that defective search warrant under State v. McKnight. R. 78, l. 11 – 79, l. 9.

The judge later ruled that he "adopted that solicitor's argument" as it related to the "phone dump" of the decedent's phone. Meaning, the judge agreed appellant did not have "standing" to challenge evidence taken from the decedent's cellphone, thereby rejecting appellant's argument that he had the right to challenge the evidence if the state intended to use it against him pursuant to the statute and State v. McKnight. R. 105, l. 23 – 106, l. 1.

Discussion

The solicitor's argument at first blush on standing seems somewhat logical. In retrospect, following a murder where the ex-boyfriend is the suspect, the fact that the cellphone belonged to the decedent-victim should not give the defendant "standing" to challenge evidence obtained from that phone which the state sought to introduce against him at his murder trial for killing the decedent.

However, the state here knew of the prior domestic violence incident between appellant and the decedent *when they were living together* in this same apartment complex where this shooting occurred. R. 87, ll. 6-13; 88, ll. 17-23. Appellant and the decedent living together while boyfriend and girlfriend standing alone -- McKnight aside -- weighed strongly in favor of getting

a warrant since the decedent's former boyfriend -- appellant – may well have used the decedent's cell phone with permission since they were a couple at that time. Further, the fact someone is a murder victim should not give the state the right to do a "phone dump" on the contents of the dead person's phone to discover all the private facts of her life contained on her phone without a proper warrant. Law enforcement correctly concluded it needed a warrant, it just failed to get a valid search warrant.

The United States Supreme Court has recognized that our cellphones contain some of the most private facts of our lives on them:

> "Modern cellphones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans 'the privacies of life[.]' The fact that technology now allows an individual to carry such information in his hand does not make the information less worthy of the protection for which the founders fought. Our answer to the question of what police must do before searching a cellphone seized incident to arrest is accordingly simple- get a warrant."

See Riley v. California, 570 U.S. 373, 402-03 (2014).

As stated, law enforcement needed to get a *valid* warrant to search the decedent's phone that was found next to her in the car after she was shot. It was totally foreseeable that this phone was going to contain private matters the decedent would not share with society if she was alive. Again, appellant had been living with the decedent until a short time before she was killed. Not surprisingly, the decedent's cellphone contained information and intimate text messages between her and appellant. Some of these messages expressed their love for one another in better times. Later messages contained crude and sexually explicit messages after they became estranged.

Further, as a policy matter, the fact the decedent was dead did not mean that the state, or any other party claiming an interest, was free to rummage through the decedent's phone, email

account, or similar devices belonging to her without a proper warrant.[2] It is not a hardly a stretch to conclude that the privacy interests of other living persons are also going to be involved, and traditional respect for the dead person's reputation is also at issue. Cf. National Archives and Records Administration v. Favish, 541 U.S. 157 (2004)(Refusal to release certain death photographs involving the decedent pursuant to FOIA); Ajemian v. Yahoo!, Inc., 478 Mass. 169, 84 N.E.3d 766 (2017); In re Request requiring FACEBOOK,Inc to produce documents and Things, 923 F.Supp.2d 1204 (N.D. Calf. 2012)(Family members cannot compel disclosure by way of a civil subpoena of the decedent's Facebook account to dispute claim the decedent committed suicide when falling from an apartment building).

In National Archives and Records Administration v. Favish, 541 U.S. 157, 167-170 (2004), the Supreme Court noted, regarding a freedom of information act request for, inter alia, death scene photographs of Vincent Foster, Jr., a key President Clinton advisor, that the privacy rights and interests of living persons are at times an issue when information or other personal items pertaining to the decedent are sought through seemingly legitimate channels.

Thus, the solicitor's argument, which the judge accepted, about appellant having no possible socially acceptable interest in the contents of the decedent's cell phone was misplaced. The state was aware appellant and the decedent had been living together as a couple, and the fact that couples often share cell phones, or exchange text messages and photographs on them is common knowledge. In any event, defense counsel was correct in this argument that appellant had a right to challenge the defective search warrant for the decedent's phone pursuant to S.C.

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2 For example, S.C. Code Ann. § 62-2-1035 allows estate representatives to access digital assets only with explicit consent from the decedent before death or through a court order.

Code Ann. § 17-13-140 and State v. McKnight since the state sought to introduce evidence taken from that phone against appellant:

> "The General Assembly has imposed stricter requirements than federal law for issuing a search warrant. Both the Fourth Amendment of the United States Constitution and Article I, § 10 of the South Carolina Constitution require an oath or affirmation before probable cause can be found by an officer of the court, and a search warrant issued. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Additionally, the South Carolina Code mandates that a search warrant "shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record...." S.C. Code Ann. § 17–13–140 (1985). Oral testimony may also be used in this state to supplement search warrant affidavits which are facially insufficient to establish probable cause. *See* State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997). However, "sworn oral testimony, standing alone, does not satisfy the statute." State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987)."

State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678-79 (2000).

Moreover, there was no evidence here that the decedent's phone was abandoned. The fact that the decedent's cellphone was found with her in her car after she had been shot was not surprising. It would have been of interest if the decedent's cellphone was not with her at the time she was shot and killed inside of her car. Our Supreme Court has gone to great lengths to ensure that valid search warrants are obtained for a citizen's cellphone and has only found that an expectation of privacy was diminished or abandoned where it was obvious a person had no intention of reclaiming his or her phone after accidently leaving it behind. *Cf.* State v. Moore, 429 S.C. 465, 839 S.E.2d 882 (2020) (Hearn, J., concurring in result, and Beatty, CJ, dissenting from the refusal to grant Moore a new trial).

As Justice Alito noted in his concurring opinion in Riley v. California, 570 U.S. 373, 407 (2014), our cellphones contain and store a quantity of information "[s]ome highly personal, that no person would ever have had on his person in hard-copy form. This calls for a new balancing

of law enforcement and privacy interests. This Court strikes this balance in favor of privacy interests with respect to all cellphones and information found in them, and this approach leads to anomalies."

In State v. Warner, 436 S.C. 395, 872 S.E.2d 638 (2022), our Supreme Court found that a remand on the defendant's motion to suppress cell-site location information was required so the trial court could rule on unresolved legal issues -- including whether there was probable cause to issue the warrant for Warner's phone. The Supreme Court noted that the affidavit to the search warrant provided the magistrate with no facts or circumstances and only conclusory statements that some unknown person considered Warner as a suspect based on unprovided information. State v. Warner, 436 S.C. at 404, 872 S.E.2d at 642. The Court also reasoned that it thought some supplemental information must have been given to the magistrate who issued the vague warrant, also making a remand for fact finding prudent.

In reviewing a magistrate's probable cause determination for issuance of a search warrant, the circuit court judge must determine whether the issuing magistrate had a substantial basis upon which to conclude that probable cause existed under the totality of the circumstances. *See* State v. Kinloch, 410 S.C. 612, 767 S.E.2d 153 (2014). A magistrate may only issue a search warrant upon a finding of probable cause. See State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999). Here, as seen, the affidavit contained only vague assertions that a white male was seen running away from the area of the shooting. It did not provide probable cause for the issuance of the warrant.

At trial, the state offered a video from the former girlfriend's phone of a person identified as appellant standing next to the driver's side door of the decedent's Lexus with a mask over his face, smoking a cigarette just before the state maintained she was shot and killed. Further, the state introduced text messages from the decedent's phone between appellant and the decedent.

The text messages from Fort Lauderdale showed a great deal of anger or hostility on appellant's part about the decedent being with another man or her new boyfriend. This provided fodder for the state the argue this was appellant's motive to murder the decedent. The evidence obtained from the decedent's cellphone was highly inculpatory and inflammatory. Appellant had the right to challenge the search pursuant to State v. McKnight, and the judge erred by ruling otherwise.

Since the judge erroneously ruled against appellant on the initial matter of "standing," the ruling of the trial judge respectfully cannot stand. Appellant at a minimum would be entitled to a remand for the consider his State v. McKnight challenge to the decedent's search warrant. However, the search warrant affidavit for the decedent's cell phone did not contain probable cause which mandates suppression of the evidence seized from it. See State v. Kinloch, 410 S.C. 612, 767 S.E.2d 153 (2014); State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999). Further, since the search warrants and the search procedures as to the decedent's cell phone, appellant's cell phone, and the cell phone tracking search warrant were each defective as seen further infra, the proper remedy is to grant appellant a new trial.

2.

The court erred by refusing to suppress the evidence obtained from appellant's cellphone since the affidavit to the search warrant did not contain probable cause for the search, and the oral supplementation was not reliable where Detective Shipp could not even recall the magistrate or city court judge he allegedly provided the additional information too.

Regarding the search of appellant's phone, the solicitor acknowledged the defense Motion to Suppress, which referenced only the mention of "a white male" running in the area of the shooting. The solicitor maintained, while this was not a very detailed description of probable cause, that detective Shipp told her that he supplemented the probable cause with sworn oral testimony. The judge then asked what judge signed the search warrant, and the solicitor admitted that detective Shipp was not even sure what judge signed the warrant. R. 79, l. 13 – 80, l. 19.

The solicitor offered, "at any rate" detective Shipp allegedly supplemented the probable cause written assertions verbally. The solicitor maintained that appellant's phone had "kind of been wiped clean" and that text messages "and things of that nature" had been erased.[3] R. 80, l. 18 – 81, l. 5.

The judge inquired whether the magistrate should have written down what was allegedly supplemented orally so there would be a record of it. The solicitor asserted that this was not necessary. R. 81, l. 6 – 82, l. 12. The judge remarked that the affidavits providing the belief of why evidence would be found on the cell phones did not seem to provide probable cause. R. 81, l. 6 – 82, l. 12.

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[3] The point appeared to be that the state did not think much inculpatory evidence was obtained from appellant's cell anyway. However, as seen infra, the tracking information from appellant's cell phone was strongly urged to be damaging inculpatory evidence against appellant, and the state would urge appellant's cell phone information also corroborated other evidence it had obtained against appellant.

During detective Shipp's *in-camera* testimony, he said he indicated that a white male was seen in the area of the shooting. R. 86, l. 6 – 87, l. 5. Shipp testified that he had a prior report of an incident involving appellant and the decedent. He also apparently compared appellant's photograph to that on file with the Department of Motor Vehicles R. 87, ll. 6-13; 88, ll. 17-23.

As seen on cross-examination, it became clear that detective Shipp was not even sure what magistrate signed the warrant or allegedly heard his oral supplementation of his affidavit which lacked probable cause for the issuance of a search warrant. R. 89, l. 17 – 97, l. 8. The failure to conclusively name the judge who allegedly considered the oral supplementation and who signed the search warrant was tantamount to their being no proof of any supplemental sworn testimony at all. See State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000)(Magistrate did not have sufficient information about the veracity of the available information and its source to determine whether there was probable cause to issue a search warrant). Whomever the Magistrate or Municipal Judge was in this case, he or she did not have probable cause to issue the search warrant.

Further, appellant's cellphone was seized from him when he was interviewed by law enforcement without his consent. His phone was described as "one black LG Tracphone." R. 20. Again, the affidavit only referenced a white male running from the direction of the 100 building at the apartment complex, and that a late-model pickup truck could be seen leaving the area. *See* Affidavit at R. 21. The Motion to Suppress also noted that there was no indication appellant consented to the seizure of his phone during the interview with the police. R. 15.

The judge correctly initially noted that the affidavit in this case did not supply probable cause to search appellant's cellphone. It is elementary that a magistrate may only issue a search warrant upon a finding of probable cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999).

A probable cause determination requires a magistrate to make a practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge a person supplying the information has, that "there is a fair probability that contraband or evidence of a crime will be found in a particular case." State v. King, 349 S.C. 142, 150, 561 S.E.2d 640, 644 (Ct. App. 2010).

The search warrant affidavit also must contain sufficient underlying facts and information upon which a magistrate may make a determination of probable cause. The magistrate should determine probable cause based on all of the information available to him at the time the warrant was issued. State v. Dupree, 354 S.C. 676, 684, 583 S.E.2d 437, 441 (Ct. App. 2003).

A court reviewing a magistrate's decision has a duty to ensure the issuing magistrate had a *substantial basis* upon which to conclude that probable cause existed. State v. Baccus, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). In reviewing the validity of a warrant, an appellate court may only consider information brought to the magistrate's attention. State v. Thompson, 363 S.C. 192, 200, 609 S.E.2d 556, 560 (Ct. App. 2005). Here, what judge considered what information is unclear.

In this case, detective Shipp did not even recall the name of the magistrate he allegedly provided minimal oral supplementation to in this case. The written affidavit for appellant's cellphone was woefully inadequate, as defense counsel correctly argued. The oral supplementation also did not provide probable cause for the search of appellant's phone.

Because the information taken from appellant's phone was used to seemingly corroborate evidence taken from the decedent's phone and the cell tower records, the error was not harmless since it cannot be said beyond a reasonable doubt it did not contribute -- in an illegitimate way -- to the verdict. *See* State v. Covert, 368 S.C. 188, 628 S.E.2d 482 (2006). An error is harmless

where it could not reasonably have affected the result of the trial, and that cannot be said as it pertains to the refusal to suppress the fruits of appellant's defective search warrant and the search procedure. State v. Reeves, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990).

3.

The court erred by refusing to suppress the evidence obtained from the cell tower records where the affidavit to the search warrant for those records was unsigned, and it also did not state probable cause making it an unsworn invalid search warrant.

As seen, defense counsel argued there was no signed affidavit for the cell phone tower records. *See* Motion in *Limine* to Suppress Tower Records and unsigned affidavit at R. 6. The unsigned affidavit also did not provide probable cause, since it only provided vague allegations about a prior incident of domestic violence involving appellant and the decedent. R. 6.

Defense counsel argued that, while he could not prove the state was acting in bad-faith, the affidavit to the search warrant did not provide probable cause, and it was not even signed. It was "unfinished paper," and this was an invalid search warrant. It did not contain a sworn affidavit, which is an affidavit upon "oath or affirmation." R. 99, l. 4 – 100, l. 6. *See* State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009).

The solicitor claimed that the failure to sign the affidavit was not intentional, that it was a scrivener's error, and that the judge should not suppress the evidence seized as a result of it. R. 103, ll. 3-19. In addition, it must be remembered that detective Shipp did not even remember the magistrate he allegedly presented the unsigned affidavit to in this case, making the situation such that to this day it is unclear what judge in fact signed this search warrant. The trial judge here ruled the oral supplementation of the search warrants made them—the affidavits—legally sufficient, and the judge found the failure to sign the cell tower records affidavit was a scrivener's error. R. 106, l. 2 – 109, l. 9.

In South Carolina, search warrants may be issued "only upon affidavit sworn to before the magistrate…establishing the grounds for the warrant." S.C. Code Ann. § 17-13-140 (2003); State

v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter. Franks v. Delaware, 438 U.S. 154 (1978).

In this case, defense counsel correctly argued that the affidavit was "unfinished paper" -- it was an unsworn affidavit since it was not signed. The affidavit was invalid because it was not given under oath or affirmation, as required by South Carolina law. Appellant submits an indictment signed on the wrong line for a true bill may be a scrivener's error – an unsigned affidavit to a search warrant conversely cannot be a scrivener's error because there was no signature at all, and that results in the search warrant being invalid. This case is even stronger than State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000) was for this Court to conclude that the affidavit here was the equivalent of having no affidavit at all.

Further, defense counsel also correctly argued that the affidavit was insufficient because it did not provide probable cause to show the magistrate why it was believed that appellant was probably the murderer such that appellant's cellphone with its attendant cell tower records should be provided to law enforcement to be used as evidence against him. "Mere conclusory statements which give the magistrate no basis to make a judgement regarding probable cause are insufficient. State v. Baccus, 367 S.C. 41, 51, 625 S.E.2d 216, 221 (2006); State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997).

In this case, the cell tower information was highly prejudicial. Dylan Hightower of the Fourteenth Circuit Solicitor's Office testified that he obtained the records for appellant's cellphone—843-635-1**1. This provided him appellant's movements during the critical times from May 22, 2021 at 7:08 a.m. until May 23, 2021 at 1:56 a.m. R. 293, l. 21 – 294, l. 10. The cell site diagram, State's Exhibit 23, is before this Court for viewing. In tracing appellant's

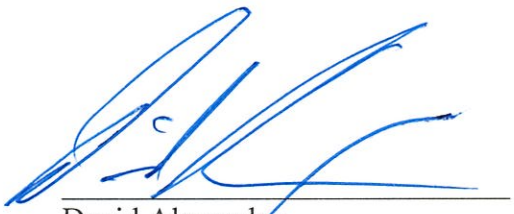
movements on the night of the murder, Hightower testified that at 10:16 p.m., appellant's phone was "around the area where the incident location took place." R. 298, ll. 8-10. At 10:17 p.m., the device started "moving out east of downtown Walterboro heading in the direction of Highway 17 towards Charleston." R. 298, ll. 11-15.

The state also introduced maps incorporating the cell towers and the "incident location" over the defense's objection that the search warrant which allowed for their creation was invalid. State's Exhibits 25 and 26 are also before this Court for viewing. R. 299, l. 7 – 300, l. 3.

The error in admitting the cell tower evidence was not harmless, since this evidence traced appellant's movements on the night of the fatal shooting, and it was highly prejudicial. *See* State v. Reeves, supra. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed and this case remanded to the Colleton County Court of General Sessions for a new trial.



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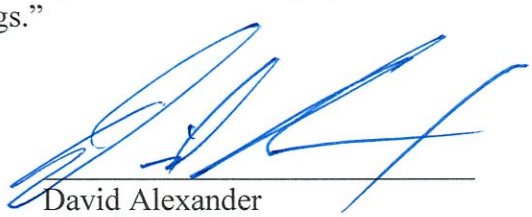
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 17th day of September, 2025.

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."



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ATTORNEY FOR APPELLANT

This 17th day of September, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
Sep 17 2025
SC Court of Appeals

Appeal from Colleton County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN COLE CARROLL,

APPELLANT.

APPELLATE CASE NO. 2024-000722

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 and Designation of Matter 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 17th day of September, 2025.

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