STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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SC Court of Appeals

Certiorari to the Court of Appeals
Appeal from York County
Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 6113 (S.C. Ct. App. Filed July 2, 2025)

Lower Court Case No. 2018-GS-46-03874, 2018-GS-46-03876, 2018-GS-46-07327, 2022-GS-46-00076

THE STATE,

RESPONDENT,

V.

HAROLD GENE WHITE III,

PETITIONER

APPELLATE CASE NO. 2025-001765

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on August 4, 2025.

QUESTION PRESENTED

Whether the Court of Appeals erred in concluding the search warrants for Petitioner's home and phone were supported by probable cause,

A. where the Court of Appeals concluded there was probable cause evidence would be found in either Petitioner's home or in the home of Yolanda Adams, and where the proper question was whether there was probable cause evidence would be found in Petitioner's home, since probable cause must be particularized to the place to be searched, and

B. where the totality of the circumstances was insufficient to establish probable cause, particularly given staleness?

STATEMENT OF THE CASE

On October 11, 2018, a York County Grand Jury indicted Harold Gene White, III, Petitioner, for possession with intent to distribute oxycodone, possession with intent to distribute marijuana, and possession of cocaine. On January 20, 2022, Petitioner was indicted for possession with intent to distribute hydrocodone. Petitioner was tried before the Honorable Brian M. Gibbons, from April 20 – 21, 2022, in a bench trial. Christopher Wellborn represented Petitioner. Erin Joyner and Daniel Porter prosecuted the case. R. 498 – 505; R. 1.

The court broke to deliberate and reconvened on April 28, 2022 to announce the verdicts. As to possession with intent to distribute hydrocodone, Petitioner was convicted, and he was sentenced to 7 years' imprisonment for a second offense. As to possession with intent to

distribute oxycodone, Petitioner was convicted of the lesser offense of possession of oxycodone, and he was sentenced to serve 2 years' imprisonment for a second offense. As to possession of cocaine, Petitioner was convicted, and he was sentenced to 3 years' imprisonment for a second offense. As to possession with intent to distribute marijuana, Petitioner was convicted as indicted, and he was sentenced to 2 years' imprisonment for a first offense. All sentences were run concurrently. R. 283; R. 284, l. 1 – 3, l. 17; R. 292, l. 23 – 13, l. 8; R. 506 – 513.

On April 29, 2022, Petitioner served his notice of intent to appeal. On July 2, 2025, the Court of Appeals affirmed Petitioner's convictions in *State v. White*, Op. No. 6113 (S.C. Ct. App. filed July 2, 2025) (Howard Adv. Sh. No. 24 at 16). App. 56 – 67. On July 17, 2025, Petitioner served his petition for rehearing. App. 68 – 76. On August 4, 2025, the Court of Appeals issued an order denying rehearing. App. 77. This petition for writ of certiorari follows.

REASONS WHY CERTIORARI SHOULD BE GRANTED

Certiorari should be granted because the decision of the Court of Appeals is in conflict with prior decisions of this Court, and substantial constitutional issues are directly involved. *See* Rule 242(b), SCACR. Substantial constitutional issues are directly involved because whether the evidence should have been suppressed turns on whether the searches and seizures were in violation of the Fourth Amendment and article I, section 10 of the South Carolina Constitution.

The decision of the Court of Appeals is in conflict with prior decisions of this Court including: *State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014) ("A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in *a particular place*.") (emphasis added); and *State v. Thompson*, 419 S.C. 250, 256–57, 797 S.E.2d 716, 719 (2017) (the crucial question is whether it is reasonable to believe that the items to be seized will

be found "*in the place to be searched.*"). At issue in this case is whether evidence seized pursuant to a search warrant for Petitioner Harold White's home should have been suppressed. Law enforcement had also gotten a separate search warrant for another home, which belonged to Yolanda Adams. The Court of Appeals concluded there was probable cause that incriminating evidence "would be found in either White's or Adams's home[.]" This conclusion conflicts with prior cases from this Court which have explained that probable cause must be particularized to the place to be searched (here, Petitioner's home). The likelihood that evidence would be found in either Place 1 or Place 2 was not probable cause individualized to Place 1. An affidavit which merely showed evidence was likely to be found in either the place to be searched (Petitioner's home) or in another place (Adams's home) did not establish probable cause for Petitioner's home.

ARGUMENT

The Court of Appeals erred in concluding the search warrants for Petitioner's home and phone were supported by probable cause,

A. where the Court of Appeals concluded there was probable cause that evidence would be found in either Petitioner's home or in the home of Yolanda Adams, and where the proper question was whether there was probable cause evidence would be found in Petitioner's home, since probable cause must be particularized to the place to be searched.

Relevant facts

Just before 6:00 p.m. on March 29, 2017, Petitioner's nine-month-old daughter (Child) was found dead at the home of his mother, Yolanda Adams (Adams), on Simpson Street in Rock Hill. Earlier in the day, Child and her twin brother (Brother) were at Petitioner's home on

Amanda Lane. However, either Adams or her neighbor, Jasmine Rawlinson, picked the twins up from Petitioner's home and took them to Adams' home at approximately 11:00 a.m. or 12:00 p.m. Petitioner said Adams picked the children up, but Adams claimed Rawlinson picked them up. Adams fed Child a bottle of formula and cereal and took a nap with the twins her bed. Adams woke up and left Child sleeping. Adams' friend, Williette Beard, and another resident of the Adams's home, Amanda Pettrey, were there. Adams asked Beard and Pettrey to watch the twins. Adams left. R. 26, l. 3 – 27, l. 18.

Petitioner came by his mother's house and saw Child sleeping in bed and Brother playing with Beard. There was no indication Petitioner had physical contact with Child at that time. Petitioner left. Adams returned. The mother of the twins, Julisa White, and another resident of Adams's Simpson Street home, Darrell Ross, as well as Rawlinson and Pettrey, were present in the home. Adams checked on Child and found her unresponsive. 911 was called but Child could not be resuscitated. An autopsy was done, and seventeen days later, on April 15, 2017, a toxicology report revealed Child had fentanyl and norfentanyl in her system. R. 27, l. 18 – 28, l. 4; R. 37, ll. 2-11.

As seen, toxicology results came back on April 15, 2017. On April 17, 2017, Agent Baird sought a search warrant for Petitioner's home and phone. On April 25, 2017, she sought a search warrant for cellular telephone data for mobile phones recovered during the search of Petitioner's home, including a phone recovered from Petitioner's person.

The affidavit for the warrant to search Petitioner's Amanda Lane home and obtain his phone stated the following:

> I, Special Agent Trista Baird, being duly sworn state the following:
>
> Special Agent (S/A) Trista Baird is employed with the South Carolina Law Enforcement Division (SLED) and is assigned to the Special Victim's Unit—

Department of Child Fatalities. S/A Baird has worked in law enforcement since 2007. S/A Baird has been employed by SLED since May of 2013. Prior to working with SLED, S/A Baird was employed with the Rock Hill Police Department as a detective assigned to investigate child and vulnerable adult abuse.

On March 29, 2017, at approximately 5:56 pm, Piedmont Medical Center EMS and Rock Hill Police Department (RHPD) were dispatched to [redacted] Simpson Street in the city limits of Rock Hill, South Carolina, in reference to a 9-month-old female ([Child], dob [redacted]/2016; dod 3/29/2017) unconscious and not breathing. EMS arrived on scene and found [Child] supine on the living room floor with a female performing chest compressions. She was unresponsive, not breathing, had no pulse, and had vomit coming from her mouth. She was transported to Piedmont Medical Center where she was pronounced deceased. York County Coroner's Office, RHPD, and SLED responded to the hospital.

According to [Child's] father (Harold Gene White III), his mother (Yolanda Harris Adams) picked up his twins ([Child] and [Brother]) from his residence ([redacted] Amanda Lane, Rock Hill, South Carolina) at approximately 11:00 am or 12:00 pm on March 29, 2017. Adams took the twins to her residence at [redacted] Simpson Street. Later in the afternoon, he went to Adams' house and found [Child] asleep in Adams' bed. [Brother] was playing with Adam's [sic] friend (Williette Woodward Beard) in the living room. Adams was not home. He then left the residence.

According to Adams, her neighbor (Jasmine Latasha Rawlinson) picked the twins up from Harold White and brought them to her house around lunchtime. Adams then fed the twins a bottle each with formula mixed with infant cereal. Then, the three of them lay down on her bed and went to sleep. Adams and [Brother] both woke up, got out of bed, and left [Child] sleeping in the bed. Adams got her children ready for their doctor's appointment and asked Amanda Jo Pettrey (who resides at her residence) and Beard to watch [Child] and [Brother] while she took her children to the doctor. When she home [sic], Adams was told that [Child] was still asleep and went to check on her. She found her unresponsive and not breathing. Adams brought [Child] to Julisa White, who had arrived on scene at some point prior to Adams' arrival. Amanda Pettrey began CPR in the living room. Rawlinson, who was also on scene, called 911. Darrell Rodney Ross, who resides at the residence, was asleep in one of the bedrooms for most of the day.

An autopsy was completed on March 30, 2017. **The toxicology report from NMS Labs revealed that [Child] had 17 ng/mL of Fentanyl and 5.2 ng/mL of Norfentanyl in her blood at the time of death.**

It is the belief of this affiant that information gained from this search is necessary to assist investigators in determining the cause and manner of death of [Child], the

individuals who were present at the time and leading up to her death, and the timeline of events surrounding her death.

R. 299 (emphasis added).

The subsequent affidavit for cellular data extraction was identical, except that it contained the additional sentences: "These cellphones were obtained from a search warrant that was executed on April 18, 2017 at [redacted] Amanda Lane Rock Hill, South Carolina. Extractions of these cellphones are needed at this time." R. 306. The search warrant for the phones was obtained on April 25, 2017. R. 303 – 307. There was no oral supplementation of the affidavits. R. 22, ll. 20-22.

Authorities searched Petitioner's home on April 17, 2017, and did not find any fentanyl or norfentanyl. However, they recovered phones and they recovered other drugs: cocaine, oxycodone, cyclobenzaprine, hydrocodone, alprazolam, and marijuana. Most of the drugs were found in the top drawer of a chest of drawers in the master bedroom. The same drawer contained Petitioner's passport and credit cards. Pursuant to the search warrant executed on April 25, 2017, extraction of data from the cellular phone seized from Petitioner recovered text messages about drug transactions. R. 89, l. 3 – 101, l. 18; R. 111, l. 9 – 124, l. 6.

As seen, the authorities did not find fentanyl, and Petitioner was not tried for the death of Child. Petitioner was instead indicted and tried for the drugs found in his home several weeks after his daughter's death: possession with intent to distribute oxycodone, possession with intent to distribute hydrocodone, possession with intent to distribute marijuana, and possession of cocaine. R. 5, ll. 3-15.

Citing the Fourth Amendment and South Carolina's parallel constitutional provision, Petitioner argued the affidavit for his home and phone did not establish probable cause, particularly given staleness, and objected to the admission of the evidence. Petitioner also

moved to suppress the cell phone data from the second warrant as fruit of the poisonous tree since the first warrant was unsupported by probable cause. The trial court denied the motion to suppress and found the warrant was not stale. R. 19, l. 10 – 22, l. 22; R. 50, l. 5 – 71, l. 11.

The Court of Appeals affirmed, concluding,

> The totality of the circumstances set forth in Special Agent Baird's April 17 affidavit established a fair probability that incriminating evidence related to the cause of Infant's death, including evidence of the unlawful possession of fentanyl, **would be found in either White's or Adams's home despite the passage of nineteen days** since Infant's death. Likewise, the totality of the circumstances set forth in Special Agent Baird's April 25 affidavit established a fair probability that incriminating evidence related to the cause of Infant's death would be found in data extracted from the cell phones seized in the April 17 search of White's home. Therefore, **the April 17 and 25 warrants were supported by probable cause.**

State v. White, Op. No. 6113 (S.C. Ct. App. filed July 2, 2025) (Howard Adv. Sh. No. 24 at 16) (emphasis added). App. 62.

Discussion

The Court of Appeals improperly substituted the likelihood evidence would be found at Adams's home (for which a separate warrant was obtained) for the likelihood evidence would be found at Petitioner's home (the subject of the challenged warrant) in order to reach the probable cause threshold for the search of Petitioner's home. This was error because probable cause must be particularized to the place or item to be searched.

"All unreasonable searches and seizures are absolutely forbidden by the Fourth Amendment." *Nathanson v. United States*, 290 U.S. 41, 46 (1933). "At the very core of the Fourth Amendment is a person's right to retreat into his own home and there be free from unreasonable government intrusions." *State v. Missouri*, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004) (quoting *Kyllo v. United States*, 533 U.S. 27, 31 (2001)) (cleaned up). "Under the Fourth

Amendment, an officer may not properly issue a warrant to search a private dwelling unless he can find probable cause therefor from facts or circumstances presented to him under oath or affirmation. Mere affirmance of belief or suspicion is not enough." *Nathanson*, 290 U.S. at 47.

Probable cause must be particularized to the place or item to be searched. *See Illinois v. Gates*, 462 U.S. 213, 238 (1983) (the task of the issuing magistrate is to determine whether "there is a fair probability that contraband or evidence of a crime will be found *in a particular place*") (emphasis added); *Maryland v. King*, 569 U.S. 435, 467 (2013) (Scalia, J., dissenting) ("the Fourth Amendment's Warrant Clause forbids a warrant to 'issue' except 'upon probable cause,' and requires that it be 'particula[r]' (*which is to say, individualized*) *to 'the place to be searched*, and the persons or things to be seized'"); *State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014) ("A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in *a particular place*.") (emphasis added); *State v. Thompson*, 419 S.C. 250, 256–57, 797 S.E.2d 716, 719 (2017) (the crucial question is "whether it is reasonable to believe that the items to be seized will be found *in the place to be searched*."); *State v. Tench*, 353 S.C. 531, 534, 579 S.E.2d 314, 316 (2003) ("The magistrate's task in determining whether to issue a search warrant is to make a practical, common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found *in the particular place to be searched*.") (emphasis added).

The Court of Appeals concluded: "The totality of the circumstances set forth in Special Agent Baird's April 17 affidavit established a fair probability that incriminating evidence related to the cause of Infant's death, including evidence of the unlawful possession of fentanyl, *would*

be found in either White's or Adams's home despite the passage of nineteen days since Infant's death." App. 62 (emphasis added).

Whether there was a fair probability evidence would be found in *either* Petitioner's home *or* in his mother's home was not the proper analysis. The proper analysis is whether there was a fair probability evidence would be found in Petitioner's home, because probable cause must be individualized to the place to be searched. Probable cause for Adams's home could not stand in for probable cause for Petitioner's home. The State could not merely show evidence was likely to be found in one place or the other if the police searched both. It was required to show the probability evidence would be found in this particular place—Petitioner's home, not Adams's. *Gates*, 462 U.S. at 238; *Kinloch*, 410 S.C. at 617, 767 S.E.2d at 155. As explained below, the State did not make that showing.

B. <u>where the totality of the circumstances were insufficient to establish probable cause, particularly given staleness.</u>

Discussion

There was no probable cause for the April 17 affidavit. "A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Kinloch*, 410 S.C. at 617, 767 S.E.2d at 155 (citing *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006); *Illinois v. Gates*, 462 U.S. at 238). "An affidavit must contain sufficient underlying facts and information upon which a magistrate may make a determination of probable cause." *State v. Smith*, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990) (citing *State v. Viard*, 276 S.C. 147, 276 S.E.2d 531 (1981)). "Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. His action cannot be a mere

ratification of the bare conclusions of others." *Id.* (cleaned up). "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." *State v. Baccus*, 367 S.C. at 50, 625 S.E.2d at 221 (citing *Franks v. Delaware*, 438 U.S. 154 (1978)). "In reviewing a magistrate's probable cause determination, circuit judges must determine whether the issuing magistrate had a substantial basis upon which to conclude that probable cause existed." *Kinloch*, 410 S.C. at 617, 767 S.E.2d at 155.

The affidavit stated that: on March 29, 2017, Child had been at Adams's home for approximately six hours. Child had been transported to Adams's home from Petitioner's home by either Adams or her friend Rawlinson. Adams then fed Child a bottle of formula and cereal, and Adams napped with Child in Adams's bed. Child simply appeared to be sleeping when Adams got up from the nap. When Adams returned home, Child was unresponsive and had vomit coming from her mouth. These facts, as presented to the magistrate, did not support a determination there was probable cause to believe that Child was exposed to fentanyl while at Petitioner's home. There was no probable cause to search this "particular place"—Petitioner's home—because the investigation did not connect Child's death to evidence likely to be found at Petitioner's home. There was likewise no probable cause that evidence of Child's death would be found on Petitioner's phone. No connection was made between Child's death and Petitioner's phone. *E.g.*, *Illinois v. Gates*, 462 U.S. at 238; *State v. Kinloch*, 410 S.C. at 617, 767 S.E.2d at 155. "Mere affirmance of belief or suspicion is not enough." *Nathanson*, 290 U.S. at 47. *See also State v. Thompson*, 419 S.C. at 252, 797 S.E.2d at 717 (trial judge erred in denying motion to suppress where affidavit supporting search warrant failed to establish a fair probability the evidence sought would be found at 120 River Street).

The staleness of the warrant also weighs in favor of suppression. The Court of Appeals simply held there was probable cause to search Petitioner's home "*despite* the passage of nineteen days since Infant's death." *State v. White*, Op. No. 6113 (S.C. Ct. App. filed July 2, 2025) (Howard Adv. Sh. No. 24 at 22) (emphasis added). App. 62. "The appellate courts of this state have routinely held that the information contained in an affidavit providing a timely and direct nexus between the contraband sought and the location to be searched . . . is sufficient to support a search warrant." *Thompson*, 419 S.C. at 257, 797 S.E.2d at 719. "[A]n affidavit in support of a search warrant 'must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time.'" *State v. Simmons*, 430 S.C. 1, 13, 841 S.E.2d 845, 851 (2020) (quoting *State v. Winborne*, 273 S.C. 62, 64, 254 S.E.2d 297, 298 (1979)). "Moreover, 'the reason for this rule is that probable cause, with time, dissipates.'" *Id.*

"[T]he determination of whether a lapse of time is sufficient to invalidate a search warrant for staleness is case-specific." *Simmons*, 430 S.C. at 14, 841 S.E.2d at 851.

> While the lapse of time involved is an important consideration and may in some cases be controlling, it is not necessarily so. There are other factors to be considered, including the nature of the criminal activity involved, and the kind of property for which authority to search is sought. Obviously, **a highly incriminating or consumable item of personal property is less likely to remain in one place as long as an item of property which is not consumable or which is innocuous** in itself or not particularly incriminating.

State v. Corns, 310 S.C. 546, 550–51, 426 S.E.2d 324, 326 (Ct. App. 1992) (quoting *United States v. Steeves*, 525 F.2d 33 (8th Cir, 1975)) (emphasis added). "[W]here the affidavit properly recites facts indicating activity of a protracted and continuous nature, a course of conduct, the passage of time becomes less significant." *State v. Clifton*, 302 S.C. 431, 433, 396 S.E.2d 831,

833 (Ct. App. 1990), overruled on other grounds by *Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999) (quoting *United States v. Johnson*, 461 F.2d 285, 287 (10th Cir. 1972)).

"If no supplemental oral testimony is taken, an issuing judge's probable cause determination is limited to the four corners of the search warrant affidavit." *State v. Thompson*, 419 S.C. at 257, 797 S.E.2d at 719. "In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention." *State v. Thompson*, 363 S.C. 192, 200, 609 S.E.2d 556, 560 (Ct. App. 2005).

The first warrant was issued 19 days after the child's death. The affidavit provided no timely and direct nexus between the contraband sought and the places or items to be searched. There was no supplemental testimony. The affidavit did not support a finding of probable cause given the lack of a timely and direct nexus between the contraband sought (evidence of fentanyl exposure to Child weeks earlier) and the place to be searched (Petitioner's home). Fentanyl is consumable and incriminating. It is unlikely a guilty party would still have that evidence around several weeks after Child's death. *Corns*, 310 S.C. at 550-51, 426 S.E.2d at 326. The warrant was stale. *Thompson*, 419 S.C. at 257, 797 S.E.2d at 719.

Generally, evidence derived from an illegal search or seizure is deemed fruit of the poisonous tree and is inadmissible. *Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963). "Evidence seized in violation of the Fourth Amendment must be excluded from trial." *State v. Khingratsaiphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002). However, given the good faith exception to the exclusionary rule, "suppression is only appropriate in a few situations, including when an affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *State v. Weston*, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (citing *United States v. Leon*, 468 U.S. 897, 923 (1984); *State v. Johnson*, 302 S.C. 243,

395 S.E.2d 167 (1990) (cleaned up)). The affidavit did not provide why evidence of fentanyl administration would be found in Petitioner's home or phone, particularly weeks after Child's death. Any belief the affidavit established probable cause was unreasonable. The exclusionary rule should have applied. U.S. Const. amend. IV; *Wong Sun v. United States*, 371 U.S. at 484-85.

The South Carolina Constitution's privacy provision provided an additional basis for suppressing the evidence. The South Carolina Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained." S.C. Const. art. I, § 10. The South Carolina Constitution "affords a higher level of privacy protection than the Fourth Amendment." *State v. Counts*, 413 S.C. 153, 170, 776 S.E.2d 59, 68 (2015) (citing *State v. Weaver*, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007)). "[S]earches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution resulting in the exclusion of the discovered evidence." *State v. Forrester*, 343 S.C. 637, 644, 541 S.E.2d 837, 841 (2001).

Article I, section 10 protected Petitioner from unreasonable searches and seizures and invasions of privacy in his home and phone. The search was unreasonable for the reasons explained in the Fourth Amendment analysis above.[1] The evidence should have been suppressed pursuant to article I, section 10. *Forrester*, 343 S.C. at 644, 541 S.E.2d at 841.

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[1] Getting the phone with an eye towards extracting all the data from it was an enormous privacy intrusion, and it was unreasonable. *See Riley v. California*, 573 U.S. at 395 ("more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every

The Court of Appeals found the second search warrant, for the cell phone data, was also supported by probable cause.

> Likewise, the totality of the circumstances set forth in Special Agent Baird's April 25 affidavit established a fair probability that incriminating evidence related to the cause of Infant's death would be found in data extracted from the cell phones seized in the April 17 search of White's home.

State v. White, Op. No. 6113 (S.C. Ct. App. filed July 2, 2025) (Howard Adv. Sh. No. 24 at 16) (emphasis added). App. 62.

The cellular data should have been excluded as fruit of the poisonous tree. As discussed above, the first warrant, which was for the seizure of the phone as well as the search of Petitioner's home, did not support a determination there was probable cause to believe that evidence of fentanyl exposure of Child would be found in Petitioner's home and phone. That there was issued a second warrant, for the phone data, did not save the evidence. The affidavits for both warrants were identical, except for a sentence in the cellular data warrant stating the phones were obtained during the execution of the prior warrant. The affidavit for the phone data suffered from the same infirmities as the prior affidavit. No facts were provided to the magistrate to indicate a fair probability that evidence related to Child's death would be found in the data. Notably, the affidavit for cellular phone data did not state there were drugs found during the execution of the prior warrant, and the signatures on the warrants show that a different

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aspect of their lives—from the mundane to the intimate."). Moreover, authorities used Cellebrite to extract data from the phones. *See State v. German*, 439 S.C. 449, 473, 887 S.E.2d 912, 924 (2023), cert. denied, 144 S. Ct. 1011 (2024) ("The drafters of our constitutional provision were concerned with the emergence of new technology enabling more invasive searches."); *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 330, 882 S.E.2d 770, 846 (2023) (James, J., dissenting) (the "privacy provision in article I, section 10 provides citizens with heightened Fourth Amendment protections, especially protection from unreasonable law enforcement use of electronic devices to search and seize information and communications.").

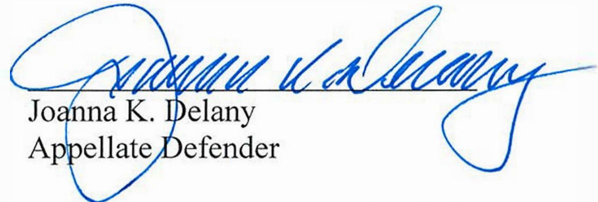
judge signed each warrant. *See* R. 299; R. 306. "Mere affirmance of belief or suspicion is not enough." *Nathanson*, 290 U.S. at 47.

Both the drugs and the cell phone evidence should have been suppressed. U.S. Const. amend. IV; *Wong Sun v. United States*, 371 U.S. at 484-85; S.C. Const. art. I, § 10; *Forrester*, 343 S.C. at 644, 541 S.E.2d at 841.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented.

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of September, 2025.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
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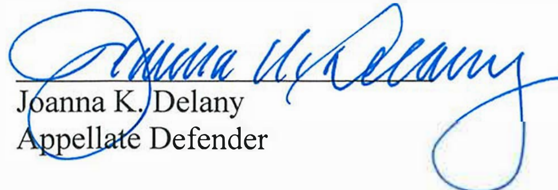
HAROLD GENE WHITE III,

PETITIONER

APPELLATE CASE NO. 2025-001765

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the petition for writ of certiorari to the Court of Appeals and the accompanying appendix in the above-referenced case have been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Harold Gene White, #387839, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 22nd day of September, 2025.



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