RECEIVED

Dec 12 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Kristi F. Curtis, Circuit Court Judge

JERALD JERMAINE HOWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001319

PETITION FOR WRIT OF CERTIORARI

MOLLY M. KEEGAN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether the PCR court erred by refusing to find trial counsel was ineffective for failing to move to suppress or object to the warrantless extraction of petitioner's cellphone because the warrantless search violated the Fourth Amendment's prohibition against unreasonable searches and seizures as he had a reasonable expectation of privacy to the contents of his cellphone and where he was prejudiced by trial counsel's deficient performance?

STATEMENT

In April of 2019, the Berkeley County grand jury indicted petitioner for murder and destruction, desecration, or removal of human remains. App. 797-800. On July 14, 2019, petitioner proceeded to a jury trial before the Honorable R. Markley Dennis. App. 1. James W. Smiley, IV, represented petitioner. App. 2. Bryan Alfaro and Bart Stegall prosecuted the case for the state. App. 2. The jury found petitioner guilty as indicted. App. 640, ll. 13-24. Judge Dennis imposed a life sentence as to the murder charge and ten years concurrent as to the desecration charge. App. 653, ll. 12-13. Petitioner filed a timely notice of appeal, however, the South Carolina Court of Appeals dismissed petitioner's appeal at his request. App. 801-804.

On May 7, 2020, petitioner filed an application for post-conviction relief (PCR). App. 655-61. On February 22, 2021, the state filed a return and motion for more definite statement. App. 662-72. On August 25, 2021, petitioner filed an amended application for PCR adding several grounds for relief. App. 673-80. On December 20, 2021, the state filed an amended return. App. 687-701. Thereafter, on October 17, 2022, Sarah Grass Drawdy, on behalf of petitioner, filed a motion to add three additional grounds for PCR relief. App. 681-86. On June 26, 2023, an evidentiary hearing was held before the Honorable Kristi F. Curtis. App. 702-78. Sarah G. Drawdy and Bruce A. Byrholdt represented petitioner, and Danielle Dixon represented the state. App. 702. On July 1, 2025, Judge Curtis signed an order denying PCR and dismissing petitioner's application with prejudice. App. 779-96.

This petition follows.

ARGUMENT

The PCR court erred by refusing to find trial counsel was ineffective for failing to move to suppress or object to the warrantless extraction of petitioner's cellphone because the warrantless search violated the Fourth Amendment's prohibition against unreasonable searches and seizures as he had a reasonable expectation of privacy to the contents of his cellphone and where he was prejudiced by trial counsel's deficient performance.

Relevant facts

Trial

During petitioner's trial, the state presented evidence that sometime between February 17, 2014 and February 24, 2014, Nicole Goodlett went missing and was subsequently killed. App. 143, ll. 15-17; 146, l. 18 – 147, l. 4; *see also* App. 797-800. The state presented evidence that the last phone call Goodlett's brother, Daniel Goodlett, had with her was on February 17, 2014. App. 143, ll. 13-17. After that conversation, he received texts from Goodlett's phone that were different from how she normally texted. App. 144, l. 9 – 146, l. 8. He contacted his father, and they decided they were going to check on Goodlett which led to them filing a missing person's report. App. 146, l. 11 – 147, l. 17. A missing person's report was filed for Goodlett on March 12, 2014. App. 157, ll. 4-11. Several witnesses testified about their last communications with Goodlett and texts they received that did not sound like Goodlett. App. 171, l. 19 – 174, l. 10; 261, l. 1 – 263, l. 12; 269, l. 14 – 273, l. 24; 382, ll. 3-14. However, the state did not present evidence of how Goodlett died, where Goodlett died, or when Goodlett died. App. 342, ll. 14-22; 135, ll. 12-17. Particularly, the elected coroner could determine neither the manner nor the cause of death. App. 483, l. 13 – 484, l. 4.

Goodlett and petitioner were in a relationship and had twins together. App. 143, ll. 2-4; 159, ll. 11-13; 261, ll. 13-23; 265, ll. 1-7; 288, ll. 20-24. They lived together in Spartanburg, South Carolina. App. 191, ll. 4-9.

During the investigation, officer Michael Nix executed a search warrant for a blue Jeep that had a West End Auto paper tag on the back of it. App. 353, ll. 11-24. He recovered an iPhone 4 in a black case from the center console area of the Jeep. App. 354, ll. 10-15. The state entered the black iPhone 4 as State's Exhibit 12 into evidence, without objection from trial counsel. App. 357, ll. 3-11. On March 27, 2014, Lindsey McGraw conducted a phone extraction of the iPhone 4 using Cellebrite. App. 360, l. 25 – 362, l. 1; 365, l. 11. She determined that the registered user associated with the phone was petitioner, by both his Apple ID and phone number. App. 362, ll. 2-22. She generated an electronic report which she gave to the investigator. App. 363, ll. 19-22.

William Gary, a senior investigator, testified concerning petitioner's statements which were made on March 20 and March 26, 2014. App. 293, ll. 17-25. During a March 26, 2014, interview, petitioner was asked about an iPhone 4. App. 308, ll. 3-10. Gary testified that petitioner said that he no longer had the phone, the screen was cracked, and that it must be in the trash. App. 308, ll. 10-13. Gary testified that he had a search warrant for petitioner's Jeep Cherokee that was purchased on February 18th. App. 308, ll. 16-21. The iPhone 4 was located, and Gary received a report related to a search of the iPhone 4. App. 317, ll. 18-24. He received a phone extraction report from Lindsey McGraw and reviewed the report. App. 319, ll. 16-21. The state entered excerpts from the web browser history of petitioner's iPhone 4 from the extraction report. App. 321, l. 20 – 322, l. 11. Gary detailed the following searches: "Cainhoy Elementary School" and "Huger, South Carolina," on February 24, 2014; "Huger News" in

Huger, South Carolina, "Breaking News," and "Huger, South Carolina news," on February 26, 2014; "Berkeley County, South Carolina and Huger, South Carolina news," on February 27, 2014; "Huger, South Carolina news," on March 1, 2014; and "Berkeley County news," on March 2, 2014. App. 323, l. 11 – 324, l. 16. Then, on March 3, 2014, the following searches were made: "can you identify a burned body," "how authorities identify a burned body," and "burned body cases solvable challenge for investigators." App. 324, ll. 18-23. There were no searches for Cainhoy Elementary School, Huger news, Berkeley County news, or Spartanburg news prior to February 24, 2014. App. 325, ll. 14-25.

Later, on November 26, 2015, a human skull and bones were discovered behind Cainhoy Elementary School. App. 343, l. 18 – 344, l. 3; App 430, ll. 1-7, 14-24. The hunter who found the skull reported his findings on November 27, 2015. App. 433, ll. 6-8. The skull and bones were identified as Goodlett's. App. 343, ll. 21-23; App. 463, ll. 2-4; 527, ll. 7-10. The state's forensic anthropology expert testified that 55-to-60% of the skeleton was recovered and found evidence that the body was burned while it still had flesh on it. App. 529, ll. 8-24.

After the state rested its case, trial counsel moved for a directed verdict as to both charges. App. 549, l. 10 – 550, l. 3. Primarily, trial counsel argued that the state failed to establish an essential element of the murder charge – malice aforethought. App. 550, l. 4 – 551, l. 25. The trial court denied trial counsel's directed verdict motion finding that "the nature of the conduct after is what leads to" the malicious conclusion. App. 557, ll. 8-10.

In the state's closing argument, the state reiterated that "this case is a circumstantial evidence case." App. 574, ll. 4-5. The state also highlighted the iPhone that was recovered from the search of petitioner's Jeep. App. 586, ll. 3-20. It emphasized the extraction that was

conducted for petitioner's cellphone and went through, in detail, each Google search that petitioner made. App. 586, l. 21 – 589, l. 14.

The jury ultimately returned a verdict of guilty as indicted. App. 640, ll. 13-24. Judge Dennis imposed a life sentence as to the murder charge and ten years concurrent as to the desecration charge. App. 653, ll. 12-13.

Evidentiary hearing

During his post-conviction relief evidentiary hearing, petitioner testified that his trial counsel never challenged the phone records entered at trial and did not discuss challenging the search warrant with him. App. 713, ll. 19-25. He did not recall trial counsel moving to suppress any of the evidence related to the cellphones during pretrial hearings. App. 714, ll. 1-7. He further testified that without the phone records, there was no evidence against him. App. 716, ll. 8-10. On cross-examination, petitioner testified that the cellphone record showed both phones pinging. App. 721, ll. 10-24. He agreed that Goodlett used one of the phones, although both were registered in his name to his Verizon account. App. 721, l. 18 – 722, l. 4. He agreed that the phones pinged together both before and after Goodlett went missing. App. 722, ll. 5-9. He also agreed that the phones pinged together in the Lowcountry area. App. 722, ll. 12-15. He recalled that evidence was introduced at trial of Google searches like "Can they identify a burned body" which were found in his cellphone. App. 723, ll. 8-16. On redirect examination, petitioner reaffirmed that trial counsel never challenged the phone records including the Google searches. App. 724, ll. 8-19.

Petitioner called Jody Black, a retired law enforcement officer, who was retained to assist in reviewing the records in petitioner's case. App. 727, ll. 12-13. He testified that law enforcement obtained a "broad-spectrum" search warrant for a car, certain other items, and a

phone. App. 729, ll. 9-12. He explained that, in his experience, a specific warrant is needed for each item, and thus, a certain search warrant to give permission by the court to extract information would be needed. App. 729, ll. 13-23. He testified that he did not see any information specific to a cellphone to extract information in this case. App. 729, ll. 23-25. He could not find any record that the state had requested permission from the court to extract the information from the cellphone itself. App. 730, ll. 8-11.

Then, during cross-examination, trial counsel testified that the phone records were a big part of the state's case. App. 745, l. 25 – 746, l. 10. He explained that he never filed a motion to suppress the phone record evidence, and he did not review the search warrants in the case. App. 746, ll. 11-16. He agreed he did not challenge the pings that showed the phones traced together from North Carolina down to Berkeley County. App. 750, ll. 1-4. He further testified that he "didn't do anything with the search warrants, quite frankly. It wasn't the focus of [his] case." App. 750, ll. 22-23. He reiterated that he did not challenge the search warrants, but he did not see something that "threw a big red flag" at him. App. 750, l. 24 – 751, l. 4. On redirect examination, he explained that the cellphone pings were from subpoenaed phone records that the Federal Bureau of Investigation (FBI) used to do their triangulation. App. 761, ll. 12-22.

PCR counsel then argued that trial counsel testified that he only glanced at the search warrants and emphasized that search warrants were very important in a murder case. App. 765, ll. 9-11. PCR counsel highlighted that there should be a search warrant for the contents of a cellphone, and in petitioner's case, an extraction occurred without a challenge to the lack of a search warrant. App. 765, ll. 12-19. PCR counsel argued that there was no legal way to get the contents of the cellphone without a subsequent search warrant for the contents of the cellphone. App. 767, ll. 1-7. PCR counsel concluded that trial counsel's performance was ineffective, and

had he kept the contents of the cellphone out, there would have been a different outcome. App. 770, ll. 6-15.

The PCR court's ruling

In its order of dismissal, the PCR court determined that petitioner failed to prove that counsel was ineffective for failing to move to suppress evidence from a cellphone seized without a warrant at the detention center or that counsel was ineffective for failing to object to the warrantless extraction of a cellphone. App. 793. The PCR court found that the seizure of the phone at the detention center did not violate the Fourth Amendment, and that, to the extent he contended that there was a warrantless extraction, the phone from the detention center was not the phone that was extracted. App. 793. The PCR court noted that no search warrants were entered during the evidentiary hearing, so the court was left to speculate about whether the warrants were sufficient for extraction. App. 794. The PCR court concluded that petitioner failed to meet the burden of proving a Fourth Amendment violation related to the extraction of the iPhone 4. App. 794.

The PCR court then found that, even assuming that the warrants did not cover extraction, petitioner did not prove that law enforcement violated his Fourth Amendment rights. App. 794. Specifically, it determined that petitioner abandoned any reasonable expectation of privacy on the iPhone 4 due to his statement to police that the screen was cracked, and it must be in the trash. App. 794. The PCR court concluded that petitioner failed to prove a Fourth Amendment violation, and thus, did not prove deficiency or prejudice. App. 794. In addition, the PCR court noted that the extraction was performed on March 27, 2014, which was before the United States Supreme Court decided *Riley v. California*, 573 U.S. 373 (June 25, 2014). App. 795. Due to this, the PCR court found that McGraw acted in good faith because the law was far from settled

as to the necessity of obtaining a warrant to search a cell phone, citing to *State v. Moore*, 429 S.C. 465, 483, 839 S.E.2d 882, 891 (2020). App. 795. Therefore, the PCR court determined that petitioner failed to show a reasonable probability the outcome would have been different if counsel challenged the cellphone extraction, and thus, denied petitioner's claim. App. 795.

Discussion

The PCR court erred by refusing to find trial counsel was ineffective for failing to move to suppress or object to the warrantless extraction of petitioner's cellphone because the warrantless search violated the Fourth Amendment's prohibition against unreasonable searches and seizures as he had a reasonable expectation of privacy to the contents of his cellphone and he did not abandon his cellphone, which ultimately prejudiced petitioner.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and that the deficient performance prejudiced the petitioner. *Strickland*, 466 U.S. at 687. Under the second prong, petitioner must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *Cherry v. State*, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (*citing Strickland*, 466 U.S. at 688). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." *Thompson v. State*, 423 S.C. 235, 245, 814 S.E.2d 487, 492 (2018) (*citing Rutland v. State*, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016).

Through its exclusionary rule, the Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const. amend. IV. Similarly, the South Carolina Constitution provides protection against unlawful searches and seizures. *See* S.C. Const. art. I, 10. Evidence seized in violation of the Fourth Amendment is excluded in both state and federal court. *See Mapp v. Ohio,* 367 U.S. 643 (1961); *State v. Forrester,* 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001).

Thus, under the Fourth Amendment, individuals are free from unreasonable searches and seizures by the government. *State v. German*, 439 S.C. 449, 461, 887 S.E.2d 912, 918 (2023) (*citing State v. McCall*, 429 S.C. 404, 409, 839 S.E.2d 91, 93 (2020)). Further, a "warrantless search is unreasonable per se, unless it falls within a recognized exception to the warrant requirement." *Id.* (citing *Riley v. California*, 573 U.S. 373, 382 (2014)). As relevant, abandonment is a recognized exception to the warrant requirement. *Id.* (*citing State v. Counts*, 413 S.C. 153, 163, 776 S.E.2d 59, 65 (2015)). In such cases, "the *burden is upon the State to justify a warrantless search.*" *State v. Bailey*, 276 S.C. 32, 35, 274 S.E.2d 913, 915 (1981) (emphasis added).

However, abandoned property "has no protection from either the search or seizure provisions of the Fourth Amendment." *State v. Brown*, 423 S.C. 519, 522, 815 S.E.2d 761, 763 (2018). Under an abandonment analysis, "the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy." *Id.* (citing *State v. Dupree*, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995)). "Abandonment is a question of intent and exists only if property has been voluntarily discarded under circumstances indicating no

future expectation of privacy with regard to it." *Id.* at 529, 815 S.E.2d at 766 (citing 68 Am. Jur. 2d *Searches and Seizures* § 23, at 135 (2010) (C.J. Beatty, dissenting)).[1]

A legitimate expectation of privacy is both subjective and objective, and thus, an individual must show "(1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable." *Id.* at 526, 815 S.E.2d at 765 (citing *State v. Missouri*, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004)). Moreover, in *Brown*, concerning the abandonment analysis, the question is "whether Brown could reasonably expect to maintain any privacy interest in his phone after he chose to cancel cellular service and stop looking for it." *Id.* at 527, 815 S.E.2d at 765. In any event, modern cellphones "differ in both a quantitative and a qualitative sense from other objects," which is an important factor to be considered in any abandonment analysis. *Id.* at 528, 815 S.E.2d at 766.

In petitioner's case, the PCR court erred by denying relief as trial counsel was deficient for failing to challenge the state's evidence obtained from the extraction of his iPhone 4[2] because law enforcement did not procure a search warrant to extract the contents of his cellphone. Particularly, trial counsel testified that he did not review the search warrants in petitioner's case and did not do anything with the search warrants. App. 746, ll. 11-16; 750, ll. 22-23; 750, l. 24 –

---

[1] Chief Justice Beatty also outlines in his dissent that *Riley* created a categorical rule that, absent exigent circumstances, law enforcement must procure a search warrant before searching the data content of a cellphone. *Id.* at 530-31, 815 S.E.2d at 767 (C.J. Beatty, dissenting).

[2] For clarity, the PCR court is correct that the cellphone seized at the detention center was not the cellphone that was ultimately extracted. App. 793. The cellphone seized at the detention center was a white iPhone 5 recovered from petitioner's person that was entered as State's Exhibit 11 during petitioner's trial. App. 218, l. 9 – 219, l. 14; 518; ll. 3-9. The cellphone upon which law enforcement conducted an extraction was an iPhone 4 that was recovered from the center console of a blue Jeep during the execution of a search warrant for the car. App. 317, l. 18 – 318, l. 7; 353, ll. 17-24; 354, ll. 10-17. The result of the extraction, as relevant, were various web searches. App. 319, l. 16 – 320, l. 22. The black iPhone 4 was entered as State's Exhibit 12 during petitioner's trial. App. 354, l. 18 – 355, l. 4; 357, ll. 3-11.

751, l. 4. Petitioner presented evidence from Jody Black, a retired law enforcement officer who reviewed the records in petitioner's case, that law enforcement obtained a obtained a "broad-spectrum" search warrant for a car, certain other items, and a phone. App. 729, ll. 9-12. There was no information specific to a cellphone to extract information in this case, and there was not any record that the state had requested permission from the court to extract the information from the cellphone itself. App. 729, ll. 23-25; 730, ll. 8-11. Although the PCR court concluded that it was left to speculate whether the warrants were sufficient for extraction because they were not entered, such a finding ignores the evidence presented from Black concerning the contents of the search warrants. App. 794; 729, ll. 23-25; 730, ll. 8-11. By failing to review the search warrants in petitioner's case, trial counsel overlooked that law enforcement did not seek permission to conduct a search that extracted the contents from petitioner's cellphone. Thus, trial counsel's performance was deficient because it fell below reasonable professional norms. *Strickland*, 466 U.S. at 686.

Moreover, the PCR court relies upon *State v. Moore*, 429 S.C. 465, 839 S.E.2d 882 (2020),[3] however petitioner's case is distinguishable from the limited warrantless search of a SIM card addressed in *Moore*. App. 795. In *Moore*, our Supreme Court held that law enforcement's identification of the number assigned to a flip phone by examining the SIM card was reasonable and did not violate the Fourth Amendment. 429 S.C. at 477-78, 839 S.E.2d at 889.[4] The PCR court's reliance on *Moore* is misplaced because its limited holding has little to

[3] In addition, a Texas court noted that "at least one state supreme court has determined that a limited search of a SIM card to establish ownership is wholly distinct from examining a phone's contents." *Martinez v. State*, 689 S.W.3d 30, 41 (Tex. App. Fort Worth 2024) (*citing Moore*, 429 S.C. at 472, 839 S.E.2d at 886).

[4] The *Moore* court also held that, even accepting the argument advanced by Moore, there are several exceptions to the exclusionary rule, including independent source doctrine, inevitable

no bearing on petitioner's case. App. 795. Importantly, the extraction of petitioner's cellphone far exceeded the limited warrantless search of Moore's SIM card to establish the ownership of the phone. *Moore*, 429 S.C. at 472-73, 839 S.E.2d at 886. Instead of a search confined to the ownership of petitioner's phone, law enforcement went several steps further. In petitioner's case, law enforcement conducted a Cellebrite extraction for the contents of his cellphone. App. 360, l. 25 – 362, l. 1; 365, l. 11. Perhaps most offensively, law enforcement conducted the extensive search of petitioner's cellphone without a warrant, while the officers in *Moore* obtained a subsequent search warrant for the contents of Moore's flip phone once it was identified as his. *Moore*, 429 S.C. at 476, 839 S.E.2d at 888. In fact, the key distinction in *Moore* to determine that the Fourth Amendment had not violated was that law enforcement's search was of only the phone's SIM card "*not the contents of the phone*." *Id.* (emphasis in original). Therefore, given that the warrantless search of petitioner's cellphone far exceeds the type of search permissible under the Fourth Amendment, as discussed by our Supreme Court in *Moore*, it cannot be said that *Moore*'s holding has any application to petitioner's case.[5] *See id.*; *see also German*, 439 S.C. at 461, 887 S.E.2d at 918.

The PCR court also erred by determining that petitioner abandoned any reasonable expectation of privacy in his iPhone 4. App. 794. The question is whether, in discarding the

---

discovery, and the good-faith exception, all of which our Supreme Court determined applied to the instant case. 429 S.C. at 478, 839 S.E.2d at 889.

[5] In addition, Chief Justice Beatty recognized in his dissent that Moore had a reasonable expectation of privacy in the contents of his SIM card because, in his view, there is no distinction between the digital contents of a SIM card and the full contents of a cellphone. *Moore*, 429 S.C. at 487, 839 S.E.2d at 893 (C.J. Beatty, dissenting). Moreover, Justice Beatty highlighted that the search of the SIM card was anything but limited because it recovered the cellphone number, thirty-four contact entries, and three text messages. *Id.* at 487-88, 839 S.E.2d at 893-94. Against this backdrop, there is no argument to be made that the forensic examination and extraction of petitioner's cellphone, which revealed a variety of digital contents to which petitioner had a reasonable expectation of privacy, including his web searches, comported with the Fourth Amendment's prohibition against unreasonable searches and seizures.

property, petitioner relinquished his reasonable expectation of privacy. *Brown*, 423 S.C. at 522, 815 S.E.2d at 763. Although petitioner made statements during an interview that he no longer had the iPhone 4, as the screen was cracked and stated that it must be in the trash, the iPhone 4 was not recovered in the trash. App. 308, ll. 5-13. In fact, the phone was recovered in the center console of his Jeep which he purchased on February 18, 2014. App. 308, ll. 16-23; 346, ll. 10-17; 354, ll. 7-17. That petitioner's phone was discovered in the center console of his car demonstrates no intention that he voluntarily discarded the phone. *Brown,* 423 S.C. at 529, 815 S.E.2d at 766 (citing 68 Am. Jur. 2d *Searches and Seizures* § 23, at 135 (2010) (C.J. Beatty, dissenting)). There is no indication in the record that officers who executed the search warrant of petitioner's Jeep believed that the iPhone 4 was abandoned. App. 309, ll. 7-20; 317, l. 18 – 318, l. 7; 353, l. 2 – 354, l. 17; 455, ll. 1-4. In addition, it is without question that cellphones raise considerable privacy concerns given that they represent a storage facility for nearly every aspect of his or her life – from the mundane to the intimate. *Riley*, 573 U.S. at 395-96. The record supports that petitioner could reasonably expect to maintain a privacy interest in his phone which was discovered in his car, despite the statements he made to law enforcement, and thus, the PCR court erred by finding that petitioner abandoned his privacy expectation and by failing to consider the important factor that modern cellphones differ in a quantitative and qualitative sense from other property. *Brown*, 423 S.C. at 527-28, 815 S.E.2d at 765-66; App. 795.

In addition, while the PCR court is correct that the extraction in petitioner's case was conducted mere months before the United States Supreme Court decided *Riley*, *see* App. 795, as Justice Hearn highlights in her separate opinion in *Moore*, the fact that the law was "far from settled" demonstrated the unsettled nature of our case law, and thus, "militate[s] in favor of requiring a warrant." *Moore*, 429 S.C. at 485, 839 S.E.2d at 892 (J. Hearn, concurring in part,

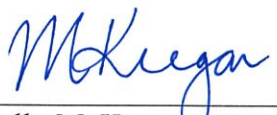
dissenting in part). Even further, the PCR court's reasoning that the officer was shielded by good faith because the law was "far from settled as to the necessity of obtaining a warrant to search a cell phone," App. 795, fails to consider that there was not controlling precedent to support law enforcement's warrantless search of petitioner's cellphone, *Moore*, 429 S.C. at 485, 839 S.E.2d at 892 (J. Hearn, concurring in part, dissenting in part). Nor was trial counsel expected to "anticipate" changes in the law by objecting to the warrantless extraction of petitioner's phone given that a search without a warrant is *per se* unreasonable, and the unsettled nature of our case law concerning searches of the contents of cellphones provided a reasonable basis for an objection. *See Katz v. United States*, 389 U.S. 347, 357 (1967) (explaining that searches without a warrant are *pre se* unreasonable under the Fourth Amendment unless some exception applies); *Thornes v. State*, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993) (stating that "[t]his Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial."). Therefore, that the United States Supreme Court provided firm guidance in *Riley* that "[o]ur answer to the question of what police must do before searching a cell phone incident to an arrest is accordingly simple—get a warrant," *Riley*, 573 U.S. at 403 (Chief Justice Roberts writing for the majority), a few months after the warrantless search and extraction of the contents of petitioner's cellphone is of no consequence. Taken together, law enforcement should have obtained a search warrant before it forensically searched petitioner's cellphone, and trial counsel was deficient for failing to challenge the resulting warrantless extraction. Accordingly, the PCR court erred by failing to find trial counsel's performance deficient. *Strickland*, 466 U.S. at 687; App. 795.

Petitioner was also greatly prejudiced by trial counsel's deficient performance. The state acknowledged in its closing argument that petitioner's case was "a circumstantial evidence

case." App. 574, ll. 4-6. To that end, the state's own witnesses admitted throughout petitioner's trial that they did not know how Goodlett died, where Goodlett died, or when Goodlett died. App. 342, ll. 14-22; 135, ll. 12-17. The state could not elicit an opinion from its forensic pathologist as to the manner of Goodlett's death or the cause of her death. App 483, l. 13 – 484, l. 4. Therefore, the state's case against petitioner relied heavily on the circumstantial evidence it believed linked him to the crime. As trial counsel admitted during petitioner's evidentiary hearing, the phone records were thus "a big part of the state's case," and without them, little evidence would have remained for the state to prove its case against petitioner. App. 745, l. 25 – 746, l. 10. Because of that, there is a reasonable probability that had trial counsel challenged the warrantless extraction of petitioner's phone which yielded damaging Google searches like "can you identify a burned body" and numerous searches for "breaking news" in the area where Goodlett's body was discovered, the result of the proceeding would have been different. App. 324, ll. 18-23; *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625. In addition, petitioner was further prejudiced by trial counsel's deficient performance because the state reiterated and highlighted the Google searches that petitioner made repeatedly during its closing argument, all of which were obtained from the warrantless search of petitioner's cellphone. The state emphasized the extraction that was conducted for petitioner's cellphone and went through in detail each Google search that petitioner made. App. 586, l. 21 – 589, l. 14. Therefore, petitioner was prejudiced by trial counsel's deficient performance because his errors sufficiently undermine the outcome of the trial. *Strickland*, 466 U.S. at 687; *Thompson*, 423 S.C. at 245, 814 S.E.2d at 492.

CONCLUSION

By reason of the foregoing argument, this Court should grant the petition for writ of certiorari to allow full briefing on the issue.



Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of December, 2025.